Untested Rape Kits: Delays, Destruction, and Disregarded Victims
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Untested Rape Kits: Delays, Destruction, and Disregarded Victims

By Erin Gordon

A former lawyer, Erin Gordon is a San Francisco–based legal affairs journalist and the author of the women’s fiction novels Cheer, Heads or Tails, and Beshert.

For the past several years, the issue of tens of thousands of untested rape kits languishing on shelves across the country has garnered attention from state lawmakers and advocacy groups, spurred policy changes, and secured funding or grants to test the kits and clear the backlog. But another equally disturbing problem has come to light: the destruction of rape kits before the DNA evidence is tested.

According to an investigation by CNN, since 2010, 25 law enforcement agencies in 14 states destroyed rape kits in 400 cases before the statutes of limitations expired or when there was no time limit to prosecute.

The 2018 report “Destroyed: How the Trashing of Rape Kits Failed Victims and Jeopardizes Public Safety” notes that once the physical evidence contained in these shoe box–sized containers is gone, it can “never be used to lock up a rapist or set free the wrongfully convicted.”

System Fails Rape Victims

Criminal justice experts say that, as with the plethora of untested rape kits, the destruction of rape kits indicates a systemic problem in our culture—a distinct failure to regard sexual crimes as seriously as other violent crimes. “Show me another crime where it’s okay to destroy evidence before we learn its value,” says Rebecca Campbell, a psychology professor at Michigan State University in East Lansing whose research focuses on sexual assault.

Mass destruction of rape kits also illustrates how uncoordinated and unsystematic the criminal justice system is. “The destruction of rape kits signals a fundamental misunderstanding by crime labs and law enforcement about statutes of limitation and policies regarding the destruction of evidence,” observes Campbell, who served as lead researcher for the Detroit Sexual Assault Kit Action Research Project, a four-year multidisciplinary study of Detroit’s untested rape kits funded by the National Institute of Justice in Washington, D.C.

“It’s very concerning that biological, forensic evidence is never even being analyzed,” she adds. “That means it won’t inform sentencing or affect the investigation. The process of getting an exam is difficult for victims—it’s invasive. Destroying the results before finding its value says we don’t value this evidence, this crime, these survivors.”

Indeed, sexual assault is regarded as a low priority by many in law enforcement, says Ilse Knecht, director of policy and advocacy at the Joyful Heart Foundation, a New York City–based organization that works to heal and empower sexual assault survivors. It was founded in 2004 by TV actress Mariska Hargitay, star of Law & Order Special Victims Unit. “Our society doesn’t recognize sexual assault for the violent crime it is, doesn’t understand the impact it has on victims,” Knecht points out. “There’s a complete
underplaying of how violent an act—how dehumanizing and invasive—it is.”

Advocates for rape kit reform say victims have the right not just to have their kit promptly tested but also to be kept apprised of its status in the system.

**Value of Rape Kit Evidence**

Law enforcement and prosecutors don’t always understand how useful rape kits can be to a legal case, according to Bradley Campbell, a University of Louisville criminal justice professor who has spent years studying the backlog of rape kits. Plus, “if a victim doesn’t want to move forward, law enforcement usually doesn’t move a case forward” by testing the kit anyway, which is a distinct risk to public safety, he explains.

“Rape kits are not only useful in helping specific victims but also in getting violent criminals off the street,” Campbell adds.

In particular, rape kits can help identify serial rapists, link rapes to homicides and other violent crimes in different locations, and be used to reopen cold cases. No less important, Campbell notes, rape kit DNA can exonerate the wrongly accused. When kits are trashed, that evidence is gone.

With little across-the-board policy, investigators and detectives are often forced to make one-off decisions about tossing rape kits even though they’ve received no training in DNA evidence.

**Bias Against Victims**

Knecht notes that another concern is investigators who do not understand trauma and how victims might behave after a sexual assault. Specifically, he says sexual assault victims who do not want to talk about an incident over and over should not be equated with an unwillingness to cooperate. Plus, avoidance and withdrawal are common PTSD-related responses from rape victims.

What’s more, typical law enforcement comments about a sexual assault victim—“she was laughing through the investigation,” “she couldn’t remember the details of the assault,” “her story doesn’t add up”—similarly show that there’s a lack of training about the neurobiology of trauma and how it prevents victims from encoding memories.

And even if victims do not file a report with law enforcement at the time the kit was collected, that does not negate their right to report the crime and have the kit tested in the future, according to the Joyful Heat Foundation’s model policy.

Institutional bias and prejudice also play a role in the destruction of rape kits, according to Knecht. “Many rape victims come from marginalized groups—sex workers, drug abusers, the mentally ill—the exact people targeted by predators,” she explains. “To some in law enforcement, these people are throwaways. No one cares that they’re victims. And there’s often just one person making that decision [to destroy a kit].”

**Why Preserving Kits Is Crucial**

Though several organizations, including the National Institute of Justice, have recommendations and model legislation regarding the preservation of rape kits, each state’s evidence laws are different, and
local jurisdictions can also enact their own rules. The Joyful Heart Foundation has developed a survivor-centered model for comprehensive state legislation to end the rape kit backlog and recently amended it to address premature destruction of kits.

“Kits associated with a reported crime that is uncharged or unsolved should be preserved for 50 years or the length of the statute of limitations, whichever is greater,” says Knecht, who created the DNA Resource Center at the National Center for Victims of Crime, Washington, D.C., and formerly led its efforts to reform policies and practices related to rape kit testing.

Preserving rape kits for decades is necessary, particularly in the case of child rape kits, because the average age to come forward from childhood abuse is 52, according to Professor Marci Hamilton, CEO of CHILD USA, a think tank at the University of Pennsylvania in Philadelphia dedicated to interdisciplinary, evidence-based research to prevent child abuse and neglect.

“A child has a whole life to come forward,” Hamilton points out. “We cannot destroy the best evidence of sexual abuse.”

Although there are no scientific studies about how common the destruction of child rape kits is, according to Hamilton, “anecdotally, the best children’s hospitals are convinced it’s a problem. The CNN story raised awareness that it’s not just a backlog problem. Some kits are disappearing.”

In the case of child sexual assault, investigators may persuade themselves that no assault occurred so it’s okay to destroy evidence. “But they may not understand the way child predators operate, the ways assaults are covered up,” Hamilton notes. “Plus, law enforcement may not be fully aware of the statute of limitations. One very easy thing to do is to have a place for the statute of limitations on the forms they fill out—it will wake up investigators and prosecutors.”

Officials typically cite constraint on resources and high caseloads at labs and sex crimes units as reasons for not pursuing cases and destroying kits. To initiate meaningful reform, every jurisdiction should launch top-to-bottom assessments of sex crimes units, analyzing the policies, caseload, and distribution of resources, Knecht advises.

**How Periodic Reviews Can Help**

For the last 18 years, the Women’s Law Project in Philadelphia has conducted a yearly case review of sexual assault claims designated as unfounded and therefore not investigated. As part of that review, a cross-section of 10 to 12 experts, including lawyers and social workers, spend a few days combing through files.

“We sit down with the captain of the special victims unit and a shift supervisor and go through files we have questions about,” which is usually about a third of that year’s cases, says Carol Tracy, the Women’s Law Project’s executive director.

Sometimes the case reviewers find that a particular investigator had a tendency to conduct victim interrogations rather than interviews. Sometimes they uncover gender bias. Rape kits, Tracy explains, are one part of the case review. They also analyze, for example, whether a decision not to move forward with a case was made before the kit was processed.

These kinds of assessments are “a systems improvement project, not a ‘gotcha,’” Tracy says. “If law
enforcement has confidence in their work, they’d welcome advocate review.”

Notably, Pennsylvania does not have a problem with destruction of rape kits or even with backlog.

The Joyful Heart Foundation similarly recommends that all jurisdictions conduct periodic reviews of randomly selected closed sex crimes cases. Auditors, Knecht says, should go through files page by page, asking whether the detective’s notes illustrate bias, whether the victim had an interpreter and was given a ride to the hospital, whether law enforcement kept up contact with the victim throughout the case, whether the case was closed prematurely or incorrectly, and, of course, whether the rape kit was preserved.

Since the CNN report, Knecht notes that the Joyful Heart Foundation has received quite a few calls from individuals and jurisdictions eager to shift to a more victim-centered approach.

Calls for Reform

Rebecca Campbell suggests a bottom-up approach to rape kit preservation policy. “While we work on advocacy regarding laws preventing the destruction of evidence, in our own jurisdictions we can establish protocol and policies,” she says. “Already there are Sexual Assault Response Teams and Multidisciplinary Teams, and we need more.”

Sexual Assault Response Teams, which typically include advocates, law enforcement officers, forensic medical examiners, forensic laboratory personnel, and prosecutors, assist survivors through the maze of community services available to them. Multidisciplinary Teams focus on overarching policies, help develop model procedures, and provide information to stakeholders and community members.

According to Bradley Campbell, state and local agencies could enact mandatory submission laws that would require that rape kits be submitted and tested within a certain number of days, require every law enforcement agency to have at least one person specifically trained in rape kit handling, and require that victims be updated about the status of their rape kit.

Kentucky, for example, enacted Senate Bill 63 after a 2015 audit revealed more than 3,000 untested sexual assault kits. The state, Campbell says, is still working to fully implement it because the crime lab remains under resourced.

Also in Kentucky, Senate Bill 97 was introduced in February 2019 and signed by the governor in late March. The new act provides that if a victim chooses not to pursue a case, a website will inform the victim where the rape kit is being stored and the date it is eligible for destruction.
What *Perspectives* Means to Me

By Laura Possessky

Laura Possessky is the chair of the editorial board for *Perspectives*. She is a media attorney in Washington, D.C.; a past president of the Women’s Bar Association of D.C.; and a current D.C. Bar Delegate to the ABA House of Delegates. You can reach her at laura@dcbarista.com, @DCBarista on Twitter, or through ABA Connect in the *Perspectives* forum.

I joined the editorial board of *Perspectives* because I believe that telling stories about women in law is vital to advancing gender equity. I am amazed by the myriad narratives about women’s experiences in the profession and the power those stories have to inspire and call us to action. With *Perspectives*’ recent transition to an all-digital format, it seems a fitting opportunity to share insights from behind the scenes of *Perspectives* and why this column is a mainstay to support the ABA Commission on Women in the Profession’s mission.

*Perspectives*, the publication for the ABA Commission on Women, is dedicated to reporting on topics of interest to women lawyers, highlighting their accomplishments, and promoting women’s advancement and retention in the profession. While we navigate the challenges of pay equity and power in the profession, having a perspective on how far women in law have advanced over the years really helps.

The most rewarding aspect of serving on the editorial board is the opportunity to tell inspirational stories of the deeply personal sacrifices women have made to pursue legal careers and the impressive successes they have accomplished. While many people are familiar with the achievements of contemporary leaders like Ruth Bader Ginsburg and Hillary Clinton, our present reality is shaped by thousands of women who have pursued careers in the law to advocate for a more just and equitable society and advance the role of women in the profession.

My work with *Perspectives* is part of a career-long avocation of disseminating great narratives about women. I enjoy honoring the accomplishments of women. Recently, in celebration of the Women’s Bar Association (WBA) of the District of Columbia centennial, I chaired a documentary digital shorts project about the organization’s history. Working closely with American University School of Communication Film Division Chair Brigid Maher and a team of amazing film graduate students, we developed a series of vignettes on the organization’s history around the themes of suffrage, leadership, diversity, community, and celebration.

This two-year effort was a great journey to intentionally reframe and tell our history. Among painstakingly preserved records, photographs, and video documenting the WBA’s history, narratives of its women members revealed themselves in fragments and began to take shape. The WBA-DC founders, Emma Gillett and Ellen Spencer Mussey, had the ability to become lawyers but not the right to vote, so they became leaders in the suffragist movement and started American University’s Washington College of Law for women to formally study law.

Equally inspiring, Dovey Roundtree, who was the first African American member of the WBA-DC in 1962, forged an impressive path as a community leader serving her country in the military, fighting in the courtroom as an accomplished litigator, and leading her church as an ordained clergy member in addition...
to breaking down racial lines in the then all-white organization. These narratives illustrate how one woman’s story can educate, inspire, and offer insights into our past as well as our future.

When I convene with my editorial board colleagues, we engage in rousing conversations about events and issues facing women in the legal profession. We are a passionate bunch. Our animated discussions always focus on discovering fascinating stories about women’s accomplishments that prompt ideas for our readers to frame their own experiences in the law. We thoughtfully discuss each issue to capture the zeitgeist of the moment through our articles. We love what we do, and I hope that our readers are as excited and inspired by these stories as we are.
CHAIR’S COLUMN

In or Out? New Research on Why Experienced Women Lawyers Leave the Legal Profession

By Stephanie A. Scharf

For the past year, the Commission on Women in the Profession, working with the ABA Presidential Initiative on Achieving Long-Term Careers for Women in Law, has focused on understanding the factors that enhance or impede career trajectories for women lawyers. In summer and early fall 2019, four innovative research reports will be published with new insights about why experienced women lawyers leave the legal profession and why they stay.

The first study provides novel data on the everyday work experiences of women in large private law firms and through simultaneous perspectives of men, women, and managing partners. Of particular interest are data on the extent to which firms are providing experienced women the necessary “access to success” for advancement into the upper ranks of partnership and firm leadership, and why even experienced women stay or leave their firms. As a hint, there is somewhat of a “men are from Mars, women are from Venus” quality about what firms need to achieve a highly diverse cadre of women lawyers at the top echelon of firms.

The second study entails a first-ever survey of the professional outcomes for women and men who graduated from law school 20 or more years ago, across all areas of practice and covering those who have left the legal profession. A striking finding is that by the time 25 plus years have passed after law school graduation, some 25 percent of men and 40 percent of women are no longer in a job that requires a law degree. Our findings raise a key question: At a time when legal careers should be flourishing, why have so many women (and men) decided not to practice law, and what can we do about that tremendous loss of talent?

Our third and fourth reports rest on new personal interviews and focus group data as part of a deep dive into the reasons why women stay and why they leave the legal profession, with a special national focus on women lawyers of color. I am hopeful that the information we provide will be used as building blocks for lawyers and leaders in many different practice settings, to truly enhance diversity at the senior levels of organizations.

The research on long-term careers owes its impetus to former ABA President Hilarie Bass, whose energy and commitment led her to forming the presidential initiative for 2017–2018, which was generously continued by current ABA President Robert Carlson. The work of the initiative also owes a great deal to the enthusiasm and efforts of Roberta “Bobbi” Liebenberg, with whom I have the honor of co-chairing the initiative. Bobbi is one of the legal profession’s most generous and insightful leaders for advancing women in the law, as well as a role model for women in sophisticated legal roles.

Leaders can point the way, but I believe that many, many people—men and women—contribute to the mission of achieving gender parity in the legal profession. The Commission on Women actively supports programs, publications, and processes for advancing women in the law. We welcome your ideas along with whatever time you can give to making things happen. Please do not be shy about contacting us!

With warm regards,

Stephanie A. Scharf, Chair, ABA Commission on Women in the Profession
Men in the Mix Project Under Way

The Commission on Women in the Profession’s Men in the Mix Project aims to better understand the obstacles men face in becoming better allies for women lawyers. Why don’t more men participate in women’s affinity groups, engage in open conversation about how to promote gender equity in their organizations, and advocate for their women colleagues to be treated as equals?

To discover some answers, the Commission recently held informal focus groups. An event took place in New York City on April 30 and featured Scott Musoff and Maura Barry Grinalds of Skadden, Arps, Slate, Meagher & Flom LLP and Michael Blair of Debevoise & Plimpton LLP, on the panel; Ingrid Busson-Hall of PayPal moderating; and Anne Collier of Arudia facilitating. Another event took place in Dallas on May 2 and featured Lysha Weston of AT&T Inc.; Julia Simon of Mary Kay Inc.; and Michael Hurst of Lynn Pinker Cox Hurst, LLP, on the panel; Alan Bryan of Walmart Inc. moderating; and Anne Collier of Arudia facilitating. CWP is excited about this ongoing study and looks forward to the results coming out next year.
CWP NEWS

Connect with Other Women Lawyers

*Perspectives* is not just a newsletter, but a conversation! Join the *Perspectives* community on ABA Connect. CWP wants to hear what readers think about the articles, and the community will also serve as an open forum for women lawyers to discuss the timely topics brought forward in each issue. [https://connect.americanbar.org/diversityinclusionconnect/communities/community-home?CommunityKey=58b39306-566e-4970-83fe-afaa1e4c53b1](https://connect.americanbar.org/diversityinclusionconnect/communities/community-home?CommunityKey=58b39306-566e-4970-83fe-afaa1e4c53b1)
Support Opportunities Available for 2019 Brent Luncheon—Deadline: June 25

The Margaret Brent Women Lawyers of Achievement Award was established in 1991 to recognize the accomplishments of up to five outstanding women lawyers who have achieved professional excellence in their area of specialty and actively paved the way to success for other women lawyers. This year’s honorees (https://www.americanbar.org/groups/diversity/women/margaret-brent-awards/2019-brent-honorees) will be celebrated on Sunday, August 11, 2019, at a luncheon during the ABA Annual Meeting in San Francisco, California.

A variety of support opportunities—ranging from tickets to tribute ads to support packages—are available. To ensure acknowledgment within the program book for support packages, a commitment must be made by June 25. For more information about this year’s program and/or to commit your support, go to www.ambar.org/brentawards.
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