

‘The Second Victimization’:
Forensic Medical Practitioners’
attitudes to standardisation in
forensic evidence collection

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Introduction

- Forensic Science Regulator and FRS-G 207
 - Existing awareness of sources of contamination
 - Forensic Sampling Strategies
 - Faculty of Forensic and Legal Medicine Guidance (July 2016)
 - FME Kits and proformas
 - Tensions and Workarounds in Sampling Decision-Making
 - Limited complainant account
 - Complainant autonomy and dignity
 - Division of labour and resources
- Limits to Standardisation

Forensic Science Regulator and FSR-G 207

- Mentioned at earlier ESRC Seminar Series workshop
 - Gillian Tully Forensic Science Regulator
 - Guidance on limiting contamination in collection of samples in Sexual Assault Referral Centres and Custody Suites
 - <https://www.gov.uk/government/publications/sexual-assault-referral-centres-and-custodial-facilities-dna-anti-contamination>
 - Forensic practitioners highly aware of potential for contamination, and spoke with dread about it, particularly in light of technological developments
 - Instructions given by the police lab, they want everything because now they are in a position to extract, be able to extract DNA from one cell and that's a problem as well as these methods are so sensitive, because of the contamination, possible contamination, you have to keep it in mind the contamination, when you have it, the possibility to get the DNA pattern from one single cell (FME D)

Awareness of sources of contamination

- Forensic examination suites I visited had rigorous routines for limiting potential for contamination
 - I mean, to be honest, our decontamination, um, either, say it's either myself or [another FNE] we do the same thing, so at the time we do, we'll go upstairs, we'll change into theatre scrubs, hat and mask, we go upstairs, we make up the bucket of Actechlore, we will clean the unit down. Now bearing in mind that it gets cleaned after every case, and there is a record of decontamination which will stand up in court because the decontamination protocol was set up between the police lab and the infection control health board, um, so that's all done. We meet the client at the door, say they've arrived with the police for example, we meet the client at the door, and we take them upstairs. There's a small, almost like sitting room area, it's very sparse and it's sparse for a reason, because we can't have any cross-contamination (FNE E)

Awareness of Sources of Contamination

- Compared this to Ontario where more concern with treatment of complainant than contamination
 - We have a very nice space here, as you may have noticed, it's very different from the hospital, when they have been here in Emergency for a few hours, or sometimes they've been in another Emergency, they've been transferred here, they are often traumatised, in shock, um, so it's very lovely here, as soon as you walk through the door, it's just a total different feeling, very peaceful, it's very supportive for women, I probably see men here as well, but it's very supportive. (SANE D)
- Interviews with SANE nurses performed in examination room, inconceivable in England and Wales

Forensic Sampling Strategies

- Tension between emphasis on the evidential over the therapeutic evident in sampling of the body of complainant (or suspect)
- FSR-G 207 10.1.5 “The Faculty of Forensic and Legal Medicine (FFLM) sampling guidelines should be followed”
 - FFLM updated sampling guidance in July 2016
 - Sampling decisions (in guideline) based upon combination of known persistence rates of genetic material on and inside the body, as well as the account taken from the complainant
 - Recovery of body fluids, cellular material, lubricant and other visible trace evidence, (e.g. soil). Limited data on persistence. Routinely obtain if incident has occurred within the preceding 2 days (48 hours). However, if the examinee has not washed, then sample the relevant area of skin up to 7 days (168 hours) (inclusive) post incident.
 - Complainant’s account and time since assault should know where to sample

FME Kits and Proformas

- FMEs agreed with this
 - Then there is all this standard procedure how many days, how many for what, you know... for vaginal, this thing examination and to take specimens from there ten days is the reported, last reported this thing, depending on whether they've had a bath or shower, if they shower you can still get something, bath you obviously lose more, again if your, the ideal thing is less than 24 hours is the best you are going to get, up to 72 hours you are still going to get after that, every hour you delay is going to be less and less, but still the chances are and after about 5 days I would say not just taking high vaginal swabs you'd have to take endo-cervical swabs (FME B)
- Such guidance was recorded in formal kits
 - We do, we have what is known as the "rape kit" where almost all the equipment we'll be needing to conduct an appropriate examination is available. They come in sealed boxes... So there's a box with everything you need and we have a forensic science laboratory form which gives us a wee pro-forma that is a double-sided page where you tick off all the samples that you have taken and so there is a degree of guidance. (FME G)

Tensions and Workarounds in Sampling

- Incomplete accounts
 - FMEs uncertain that the account provided is complete
 - “you only get so much of the story perhaps at the initial time and what has happened in a couple of cases, a dozen is that two or three days later someone will say “well he anally penetrated me as well” okay, well that shouldn’t affect anything because I personally will always ask the complainer quietly, when I’ve got a bit of confidence they’ve relaxed, I’ll ask “did anything else happen that you haven’t mentioned?” so you don’t get caught out.” (FME C)
 - What’s happened then, what I was going to say, was that less experienced people have not asked that at the time of the examination and so have directed their samples on what they were told, and therefore 2 or 3 days later further evidence has come to light which has been missed. So the lab have actually said, in all cases we want you to take everything... If in doubt, is there doubt, or if you can’t get a clear story, or as happens in many of the situations, they don’t remember for whatever reason you take the whole damn lot (FME C)
 - ‘Quiet questions’ or ‘Total Collection Strategy’ to ensure all useful trace material collected

Tensions and Workarounds in Sampling

- Complainant-Centric Sampling
 - Concern with Total Collection Sampling that it results in collection of multiple intrusive and unnecessary samples
 - Experienced FMEs preferred Quiet Questions
 - I'm involved with some introductory training to the CID officers and I'll explain to them that you should only take samples, you should only undertake, how's best to say this, only undertake procedure, unless there is a valid reason and your going to get um, an appropriate end result. If a complainer, normally female, the vast number are female, if she says quite clearly and categorically that he's been nowhere near her back passage, nothing has been near her back-passage, then there is no way I'm going to examine somebody's back passage, because I'm not going to humiliate them further and I make that quite clear although it says on the pro-forma from forensic science anal swabs, I won't do anal swabs unless there's good reason for it, uh, some people may think that is inappropriate but I make it clear when I'm doing the introductory, if the complainer has been so intoxicated or under the influence of a drug and they don't know what has happened to them, if they have no recollection whatsoever, then it is my responsibility to have a look just to make sure, but if they say to me "definitely not" then we'll not take the samples. (FME G)

Tensions and Workarounds in Sampling

- Complainant-Centric Sampling

- FMEs negotiate with guidelines in order to make space for complainant to rest

- Yes the process is that I check, when it's during the night-time whether it is urgent or not, whether the situation of the victim, it should, the main process must be focused on the victim for the benefit of the victim and when the victim is not in a situation for an examination during the night time, I would do it during the daytime, because when there's no shower, no bath, there's no danger for loss of evidence. (FME D)
- YES and the circumstances and the circumstances may vary from case to case and it's the, I think that's the main problem and you can only be a good pathologist or forensic medical examiner when you can just assess the case, the actual case and make the appropriate decisions that's, that's the secret s'not I have my guidelines, I go according to my guidelines, no it's not like this, I HATE THIS, I hate everything that has to do with bureaucracy, fold it, punch it, file it, away... Guidelines, guidelines, guidelines; when you are interested in your job and you are interested in doing a good job you don't need guidelines, that's it. When you are not interested and you are stuck to the guidelines, that's not a good job. (FME D)

Tensions and Workarounds in Sampling

- Division of Labour and Resources

- FMEs aware of costs of analysis and aimed to reduce future work for forensic scientists

- [D]epends on the case, we don't do it in every case, if you don't have nails like I don't, it's no use swabbing them. If the girl says "I never touched him, I never scraped him or scratched him." You are giving the lab work that costs money, in terms of equipment, reagent, personnel and you are wasting their time. Now we can't have that. (FME B)
- You have to balance that against the work that has to be done in the lab, so you have to use the lab to the best of resources. We could swab the whole body as we do with a post-mortem in a murder, in a murder every bit of a body is swabbed you know, but can't do that with a living person, the lab would not be able to cope. We have to narrow, okay our, and remember there's the clothing still, and the best way, the best swabs of skin are the clothing because the saliva, any other secretions, the clothing is going to soak them up. If someone's been grabbed by clothing, there's skin there, so clothing is much more useful, but if someone tells us he's been grabbed by the neck, or he's been grabbed by the wrist, then we do swab those areas, but not routinely (FME B)
- and the same thing, as you said, the upper torso, bite marks, the swabs that you take for saliva, even if they are not washed with soap and water, that would remain even on the clothes that you are wearing and taken off it is still there so you can take from that. (FME A)

Conclusion: Limits to standardisation

- Guideline sampling decision-making problematised by:
 - Limited account
 - Therapeutic duty to the dignity of the complainant
 - Managing division of labour/resources
- Not novel to social scientists: 'tacit knowledge' (Collins 1975) or 'workarounds' (Leigh-Star 1985)
- Does emphasise the specific difficulties introduced by medical interests, in particular therapeutic emphasis and autonomy
 - I think if it is later than one week, it doesn't make sense to take all the samples, but semen might be present even after one week so it depends a little bit. It is now, according to the guidelines, all the samples should be done, but it is rare that we see victims after a couple of days, it's rare, but then I think I'd like to reduce because I can only do and propose what I am convinced of, and if doesn't make sense why upset the victim again. (FME D)