

Shelving Justice: The Discovery of Thousands of Untested Rape Kits in Detroit

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In August 2009, approximately 11,000 sexual assault kits (SAKs; “rape kits”) were found in a Detroit police department storage facility, the vast majority of which had never been tested for DNA evidence. To address this problem, a multidisciplinary action research project was formed to bring together researchers and practitioners from law enforcement, prosecution, forensic sciences, medicine/nursing, and victim advocacy to develop evidence-based response strategies. In this paper, we will draw upon qualitative interviews with Detroit stakeholders, archival records, and ethnographic observations to examine the events surrounding the discovery of the rape kits and why police personnel did not view the accumulation of so many untested SAKs as a problem. Over the course of this three-year action research project, Detroit stakeholders worked together to enact local- and state-level reforms to test these kits and to prevent this problem from happening again.

SHELVING JUSTICE: THE DISCOVERY OF THOUSANDS OF UNTESTED RAPE KITS IN DETROIT

One of the key challenges for successful urban revitalization is crime control and prevention (Braithwaite 2013; Ross et al. 2001; Sampson and Raudenbush 2004). As Dreier et al. (2004) noted, crime “damages quality of life” (p. 92), and is both a cause and consequence of many of the “acute injustices prevailing in American metropolitan life” (p. xi). High crime rates, both violent crimes against persons and widespread property crimes, make it difficult for cities and regions to attract economic development, and prolonged economic decay means that city coffers are often not sufficient to provide for its citizens (Bursik 1988; Dreier et al. 2004; Eisinger 2003). Social services, crime prevention, and crime response suffer, which creates a vicious cycle whereby residents’ needs are not being met and their individual well-being suffers, as does the overall health of the city (Dreier et al. 2004; Johansen et al. in press).

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Detroit has struggled for decades with the crippling effects of crime, economic downturn, and the resulting challenges those problems create in providing for its citizens (Eisinger 2003; Fine 1989; Schulz et al. 2002; Sugrue 2014). Detroit consistently ranks among the highest crime rate cities in the United States: In the 1990 FBI Uniform Crime Report data for cities of 500,000 to 999,999 citizens, Detroit had the highest rate of violent crime (2,699 violent crimes per 100,000 citizens); in 2000, Detroit was second highest (2,325 per 100,000); and in 2010, Detroit was highest (2,378 per 100,000). Detroit has also had a turbulent track record in its response to crime, marked by high-profile cases of police lethality (e.g., the 1992 fatal beating of Malice Green) and a culture of excessive force. In 2003, Detroit entered into two federal consent decrees with the Department of Justice following several civil lawsuits regarding excessive force, false arrests, and illegal detentions (Hicks 2014). The consent decrees were extended twice over a 10-year period and were finally lifted in 2014 (Hicks 2014; Pearce 2014). In short, Detroit has a long history of ineffectual (at best) and deadly (at worst) response to violent crime.

Given these long-standing challenges, it is perhaps not entirely surprising that in Detroit's most recent economic downturn in the 2000s and early 2010s, there are parallel concerns regarding the effectiveness of its police force in combating violent crime and responding to the needs of residents. In August 2009, approximately 11,000 rape kits were found in a police property storage facility, stockpiled over 30 years, with virtually no investigation action taken on the vast majority of those reported sexual assaults (MDSVPTB 2013). A rape kit, or sexual assault kit (SAK), contains biological evidence collected from the victim's body after the assault (e.g., blood, semen, saliva) that can be analyzed for DNA, which can be instrumental in solving crimes and preventing future attacks (Johnson et al. 2012; Tofté 2013). Testing a rape kit requires resources—time and effort from the police to investigate the case and submit the kit for forensic testing; time and effort from the police crime lab staff to analyze the specimens for DNA; and time and money to outsource the testing to a private laboratory if the police department lab cannot keep pace with the demand for forensic testing of crime scene evidence (Johnson et al. 2012; Tofté 2013). Initial estimates indicated that the vast majority of these 11,000 rape kits had never been submitted for forensic testing and DNA analysis (MDSVPTB 2013).

In Detroit, a city that is predominantly African American (82 percent in the 2000 Census, and 82.7 percent in the 2010 Census), with a third of its inhabitants living under the poverty level (21.7 percent of families and 26.1 percent of individuals in 1999; 32.3 percent of families and 37.6 percent of individuals in 2009), the victims whose assaults were documented in these untested rape kits were most likely Black women, and a sizable number of them were likely poor Black women. In other words, violent crimes committed against thousands of African-American women in Detroit were not investigated by the police and the DNA evidence from these crimes was never tested, which was, as one public official stated, a "*shocking discovery*," one that violated public trust and compromised public safety. A full-scale press, led by the Elected Prosecutor with support of multiple state-level agencies, ensued to understand how and why this problem happened and how it could be remedied.

The purpose of this paper is to describe a multiyear, multidisciplinary collaborative action research project that was formed after the discovery of the untested rape kits and to present results regarding how and why Detroit amassed so many untested rape kits over 30 years. We will examine the events surrounding the discovery of the kits in 2009, as the initial identification of the problem was quite telling with respect to how and why

Detroit amassed so many untested rape kits. Drawing upon data from qualitative interviews, archival records, and ethnographic observations of Detroit stakeholders, we will examine how practitioners realized that there were thousands of rape kits in police property—and whether they viewed those untested kits as a problem. To provide context for these findings, we will first provide a more detailed description of what a rape kit entails and what it means for victims and for public safety when a kit is not tested. Then, we will present our results regarding the discovery of the kits and how those events shed some light on the root causes of this problem.

MEDICAL FORENSIC EXAMS AND SAKs: WHAT ARE THEY AND WHY DO THEY MATTER?

When rape victims seek help from the legal, medical, mental health systems, and/or rape crisis centers after a sexual assault, most are advised to have a medical forensic exam (MFE; Campbell 2008; Martin 2005). The purpose of this exam is to provide health care to victims (IAFN 2009; Ledray et al. 2011), which includes: diagnosing and treating injuries, offering emergency contraception to prevent pregnancy (if applicable), and administering prophylaxis for sexually transmitted infections that might have been contracted in the assault (Department of Justice 2013). In addition to these health care components, the MFE can include the collection of an SAK or “rape kit” to preserve the physical evidence from survivors’ bodies to aid in the prosecution of the crime (Campbell et al. 2005; Martin 2005). The process of collecting an SAK is time-consuming (usually four hours long) and highly invasive for victims, as it includes: plucking head and pubic hairs; swabbing the vagina, anus, mouth, and/or breasts to collect semen, blood, or saliva; and obtaining fingernail scrapings in the event the assailant was scratched during the attack.

After an SAK has been collected by a health care professional, it is taken into custody by law enforcement personnel, who are responsible for submitting it to a crime laboratory for forensic testing. At the lab, the samples in the kit are screened for whether they contain biological evidence (i.e., bodily fluids, such as semen, saliva, blood), and if so, then analyzed for DNA (see Butler 2010). The resulting DNA profile can be uploaded in CODIS (Combined DNA Index System), the national forensic DNA database, which consists of reference DNA profiles from convicted offenders and from samples obtained at crime scenes (Butler 2010). The sample in the SAK is compared to those reference samples and if there is a match (termed a “hit”) then law enforcement personnel have a promising investigative lead as to the identity of the offender and/or to a pattern of repeat offending (i.e., matching DNA profiles across multiple crimes).

Despite the tremendous utility of SAKs to the criminal justice system, it appears that in many jurisdictions throughout the United States, law enforcement personnel are *not* routinely submitting rape kits for DNA testing (Lovrich et al. 2004; Strom and Hickman 2010). For instance, in the late 1990s, media reports revealed that New York City had approximately 16,000 untested rape kits in police property (Bashford 2013; The Weiner Report 2002). In 2009, it became public that the city and county of Los Angeles had approximately 12,000 rape kits in police custody (Human Rights Watch 2009). Indeed, a growing number of cities throughout the United States have disclosed that they have large numbers of untested rape kits: Phoenix, Dallas, Houston, San Antonio, Memphis,

Cleveland, Las Vegas, Milwaukee, Salt Lake City, San Francisco, Birmingham, New Orleans, Denver, Albuquerque, Seattle, and Tulsa (see www.endthebacklog.org).

The failure to test rape kits poses a significant threat to public safety (Human Rights Watch 2009 2010). When SAKs are not analyzed for DNA evidence, sexual offenders are not identified and apprehended, which allows them to commit additional crimes. Prior research consistently finds that most rapists are serial rapists (Abbey et al. 2012; Lisak and Miller 2002; Swarthout et al. 2011), so it is troubling to consider how many repeat offenders are not being identified because SAKs are not being tested. Rape kit testing is also critical for exonerating those who have been falsely accused of sexual assault, as the DNA evidence within the kit could clear pending or past charges (Human Rights Watch 2009). For the survivors themselves, the failure to test the kit is a breach of trust as they consented to the exam with the understanding that the kit would be analyzed and acted upon by the criminal justice system (Tofte 2013). For all these reasons, Strom and Hickman (2010) referred to the problem of untested rapes as “justice denied” (p. 382) because there is no opportunity for that evidence to inform criminal proceedings—to clear those wrongly accused, to aid in the prosecution of a perpetrator, to give justice to the survivor, and/or to protect the safety of the community as a whole.

A CASE STUDY OF DETROIT’S UNTESTED RAPE KITS: HOW AND WHY DID IT HAPPEN?

Detroit is one of a growing number of cities in the United States that has large numbers of untested rape kits in police property. In August 2009, approximately 11,000 rape kits were found in a remote police property storage facility, stockpiled over 30 years, from 1980 to 2009. Within months after the discovery of the kits, policy makers from a state government violence against women agency applied for funding from the Department of Justice, Office of Violence against Women in April 2010 for a pilot project to assess the scope of the problem and develop cost projections for testing, investigation, prosecution, and victim advocacy. Based on their analysis of 400 randomly sampled kits, it appeared that the overwhelming majority of the SAKs in police property had never been tested, the cases had not been adequately investigated, the survivors had been treated in retraumatizing ways by police personnel, and the community needed a long-term plan for change (MDSVPTB 2013; Pierce and Zhang 2011). Building on those findings, local practitioners and policy makers decided to partner with the senior author of this paper to apply for a National Institute of Justice grant to conduct a three-year action research project on the problem of untested rape kits. The goal of this funding mechanism was to promote an evidence-based approach whereby communities selected for the grant would work closely with their researchers to examine the underlying causes of why the jurisdiction had accumulated so many kits, and then based on those data, to develop and evaluate strategies for testing the kits, notifying victims, and creating changes in policy and practice (NIJ 2010). Detroit was selected as one of two recipients of this grant, which began in April 2011, nearly two years after the discovery of the kits.

The first issue to be examined by the team is the focus of this article: whether the police knew that they had large numbers of untested rape kits. Were they aware that they had a problem? If not, how did they not know? If so, why did they not see so many untested SAKs as a problem? To explore these questions (and the other substantive goals of the

project), we crafted a multimethod research design, similar to Rusch's (2012) long-term study of a congregation-based community organizing group in Detroit, that involved prolonged engagement with community stakeholders, archival record review, interviews, and ethnographic observations. Full methodological details of our project can be found in Campbell et al. (2015), but briefly, for this paper, we drew upon three primary data sources: (1) qualitative interviews with key stakeholders across all organizations in Detroit that work with rape victims (police, prosecution, crime lab, medical/nursing, victim advocacy; N = 42 interviews: 16 one-time/cross-sectional interviews, 26 longitudinal interviews [10 individuals interviewed twice; 2 individuals interviewed three times]); (2) archival records (intra- and interorganizational records, both publicly available documents and internal documents (N = 98 documents)); and (3) ethnographic observations of the multidisciplinary action research project team meetings (N = 81 observations, approximately 186 hours of observation). Data coding and analysis proceeded in a three-phase process of data condensation, data display, and drawing and verifying conclusions (Miles et al. 2014). Lincoln and Guba's (1985) criteria for establishing the trustworthiness of the data (credibility, transferability, dependability, confirmability) were also formally assessed and documented (see Campbell et al. 2015).

In research on sensitive topics, extra care is warranted regarding both the conduct of the research/evaluation itself as well as the reporting of its findings (Dickson-Swift et al. 2008; Liamputtong 2007). The data collection and analysis procedures used in this project conformed to the American Psychological Association's guidelines for the ethical treatment of human subjects in research, and were reviewed and approved by the Michigan State University Institutional Review Board. The quotes selected for inclusion in this paper reflected the sentiments expressed by *many* individuals within the team. However, it is often helpful to have some degree of attribution for a quote (for context), and by and large, it was possible to include text such as, "*a member of the local police department noted that...*" without compromising confidentiality. Quotes attributed as "*a member of the collaborative noted that...*" reflect sentiments expressed by stakeholders across all disciplines/organizations, so that specifying organizational affiliation was not necessary as this particular idea was shared throughout the entire collaborative. Excerpts from archival records presented in this paper are from PDF scans of the actual documents and are presented verbatim.

How Did It Happen: Seeing the Problem versus Seeing It *as* a Problem

How did officials in Detroit discover that they had so many untested SAKs? The kits were found in August 2009, but the story actually begins about one year prior, in September 2008 when the police department crime laboratory was closed by mutual agreement of local and state officials due to a high error rate in ballistics testing and broader systemic concerns regarding the processing of crime scene evidence (Baker 2009). The closure of the crime lab was a significant scandal, as it called into question the fairness and accuracy of countless past, present, and future criminal cases if indeed the analysis of crime scene evidence was faulty. As part of local-, county-, and state-level efforts to address problems created by the closure of the police crime lab, all aspects of police evidence storage and forensic testing needed to be examined—including how and where police were storing property.

In addition to a primary crime scene evidence property room, the police department had an off-site remote storage facility in what had once been a multilevel parking structure in inner-city Detroit. In August 2009, representatives from the local police, state police, and prosecutor's office toured that facility to discuss evidence storage procedures. During that tour, an assistant prosecutor noticed dozens of storage boxes on shelving units:

“We’re walking through, I see these like steel shelving units with boxes and I say, ‘What are those?’ They said, ‘Those are rape kits.’ I said, ‘Rape kits! What are all these rape kits doing here?’ I estimated... 10000 or more... And [I asked], ‘Are they tested or untested?’ And the officers [said], ‘I don’t know’” (emphases in original).

There was nothing on the boxes, nothing easily accessible in the police records that could have answered the prosecutor's questions regarding how many kits they had and how many had been tested. Thousands of rape kits were sitting in police storage and it was wholly unclear how many there were and if any of them had been tested. *How could the police not know?*

As we examined archival records regarding police property storage procedures and interviewed local, state, and national stakeholders, it became clear that it is entirely possible that a police department may not know that they have large numbers of untested rape kits in their possession. Police property storage facilities hold thousands of pieces of evidence from all types of crimes and crime scenes (Rossmo 2008). Each piece of evidence is tagged and entered into a computerized database, and then the evidence itself is typically placed in boxes or bins, such that items from different crime scenes are stored together in one box/bin (each appropriately labeled). For instance, Bin “A” might contain three rape kits along with ballistics evidence, paint chips, clothing, etc., from other, nonsexual assault crimes; Bin “B” might contain two rape kits, plus other assorted evidence, and so on. With this method of storage, rape kits are distributed across multiple bins, making it difficult to see whether there is a problem (i.e., that rape kits are accumulating over time). A database query would be necessary to determine how many SAKs were in property, but there would be few, if any, visual cues that a problem was developing.

This approach to property storage is not atypical. For example, New York City had this type of “distributed” approach to storing evidence and when their property facilities were reorganized in the late 1990s, rape kits that had been previously dispersed throughout storage were located and grouped together, which revealed that they had a very large stockpile (Bashford 2013). The reorganization made it possible for stakeholders to see the problem, and perhaps more importantly, police officials in NYC saw the pile *as* a problem: They immediately informed the prosecutors, forensic scientists, and Mayor's Office about the discovery and then they worked together to develop an action plan for testing all kits.

This distributed approach to storing rape kits was also used in Detroit until 2002 when the property room was reorganized and SAKs were pulled from their bins and stored together in banker-style boxes. However, unlike what happened in New York City, police personnel in Detroit did not see thousands of rape kits *as* a problem—they did not reach out to city officials, the prosecutor's office, or forensic scientists about the matter. They moved the boxes to off-site storage, and rape kits continued to accumulate for approximately seven more years, until they were noticed by the assistant prosecutor in the August

EXHIBIT 1. Excerpts from First Letter from Prosecutor to Police Chief.

I am writing this letter because I have recently been made aware of some alarming [REDACTED] practices in regard to the handling of evidence.

It is my understanding that over ten thousand (rough estimate) rape kits and other unanalyzed pieces of evidence are being stored in the “overflow property room” warehouse. It is my further understanding that hundreds of other pieces of evidence and records including case jackets/files are also there; some of it unmarked and not cataloged in any intelligible way.

I urge you at this time to choose an independent entity to conduct and audit of the contents of all the [REDACTED] property storage rooms. I also suggest that you expand your investigation to include [REDACTED] information entry practices into CODIS and other that procedures as they relate to the destruction of evidence.

Representatives from both of our offices must sit down immediately to discuss the investigation of the above captioned matters.

2009 tour. Thus, for many years, police officials did not see that they had a problem, and then when they might have (due to property reorganization), they did not see the accumulation of untested rape kits *as a problem*.

The ways in which the police department responded in the aftermath the discovery of the kits further suggest that they didn’t see this as a problem. Immediately after the tour, the assistant prosecutor informed the elected Prosecutor, who made repeated efforts to ascertain the status of these kits. Exhibit 1 (below) and Exhibit 2 (next page) are excerpts from letters sent by the Prosecutor to the then Chief of Police. The first letter requests that an independent body conduct a full audit of the contents of the police storage facility; the second letter requests an itemized list of the SAKs in question and their testing status. It does not appear that the Chief provided a written reply to either letter (i.e., the research team asked the police for such records and none were provided, and the prosecutor’s office has no record of a reply to either letter). In other words, direct, immediate requests for information about the status of the kits were largely ignored, and as one police official later remarked in a research interview, “*Honestly, it was just a big broo-ha-ha about nothing.*”

The police department’s response in the media and in local-, regional-, and state-level meetings about the kits further suggested that they did not view this as a significant problem. Police representatives argued semantics and challenged the estimates of how many kits were in property. For instance, police officials objected to word “discovery” as it could imply that the kits had been lost and were then found—or that they had been deliberately hidden. Police executives emphasized that the kits were never lost, were never hidden, and had always been properly accounted for. These debates about semantics were frustrating to many other Detroit-area and state-level stakeholders, as one local stakeholder noted:

EXHIBIT 2. Excerpts from Second Letter from Prosecutor to Police Chief.

Please consider this letter to be a formal request for immediate production of a list of all of the over 7,500 rape kits in question. We are receiving many inquiries about these kits on both adjudicated cases and cases that have yet to go to trial. We must know what is in that "warehouse" starting with the rape kits. We need to know the following about each kit, including but not limited to:

Name(s) of the Victim(s)
Date of the offense/Examination
Evidence Tag Number w/ a List of the Chain of Custody
Description
Which police officer put the kit on evidence?
Where was the kit done, i.e., what hospital or clinic?
Who picked the kit up from the hospital or clinic?
When was the rape kit pick up from hospital or clinic?
Was the kit analyzed?
If not, why not?
Any other information that you are able to provide about the kit

I am sure that you know that these kits should not be opened to obtain this information. It is imperative that your Department move on this as soon as possible. Please provide this information to us in increments of 100 kits. In other words, we cannot wait until information is compiled on every kit. We can get started with our analysis as we receive the information.

EXHIBIT 3. Excerpts from Media Reports Regarding the Scope of the Problem.

CBS News.com, March 4th, 2010

In [REDACTED] the [REDACTED] Prosecutor [REDACTED] recently said [REDACTED] is worried about 10,000 untested rape kits in the [REDACTED] evidence storage facility. [REDACTED], spokesman for the [REDACTED] says there are really about 7,000 kits in storage with an estimated 5,800 kits that are untested. He attributes this to cases where there is a known alleged assailant, no charges being pressed, a guilty plea or insufficient evidence to proceed.

"Does it matter what we call it? All their arguing didn't sit well with me, and I know it didn't sit well with others. I mean, look at it—thousands and thousands of kits are just sitting there, ignored for years, and so your response is to argue what exact word we're going to use to describe this incredible travesty of justice? Ok, fine, if we won't use the word 'discovery' anymore, will [the police] admit there's a problem here?"

Police officials also steadfastly denied that there were 11,000 untested SAKs in police property, and the "numbers debate" played out in the press, as seen in Exhibit 3 (above)

where representatives suggested fewer kits were in police property (7,000) and that there were justifiable reasons why there had been no testing of the kits (e.g., identity of assailant was known, insufficient evidence to proceed).

[Correction added on 25 June 2015, after first online publication: the duplicate paragraph has been removed.]

Again, other stakeholders were frustrated by the police department's focus on the numbers, particularly because documentation that could have substantiated their claims was not forthcoming:

"If it's not 11000 then provide some proof about how many it is then... on the one hand, I understand why they're arguing about the numbers because if it's not 11000 then we shouldn't be saying it's 11000. But they've got to come up with some documentation to show that, and they haven't."

For local- and state-level stakeholders, the "numbers debate" was frustrating because it detracted from what they felt was the real issue: Thousands of unsubmitted SAKs sat in police property and the police were not acknowledging that this was a serious problem. As one member of the multidisciplinary collaborative noted: *"It's like a numbers game to them (the police), arguing whether this many thousand or that many thousand. Really, so if it's 7500 instead of 10000 it's okay? Like having 7500 untested kits is acceptable? I don't think they see this as a problem."*

"Justifiable Reasons:" Why the Police Did Not See Untested Rape Kits as a Problem

In the months after the discovery of the kits, and extending to the beginning of the multidisciplinary collaborative action research project (two years later), police officials did not make any public statements that conveyed alarm or serious concern regarding the rape kits. Instead, police officials maintained that there were valid reasons for why SAKs had not been tested (see Exhibit 3 above). As to what those reasons might be, police officials did not elaborate at the time, but an internal report that surfaced in late 2012 provided some insight as to how police officials viewed the situation (at the time) and why police representatives might have responded as they did after the discovery of the kits.

After the property tour discovery in 2009, the police department launched an Internal Affairs investigation of the kits, culminating in five-page report. That report was not shared with the prosecutor's office or any other Detroit-area or state-level organizations who were vested in this issue, nor was it disclosed to the collaborative action research project; the report surfaced three years later, in 2012 when it was released to the media in response to a FOIA (Freedom of Information Act) request from a national news organization doing a feature story on the Detroit SAKs. As shown in Exhibit 4 (next page), the Internal Affairs investigation involved selecting 36 SAKs from police property (one batch of 10 SAKs and a second batch of 26 SAKs) and then pulling the corresponding police reports to see how the respective officers in charge (OIC) characterized each case and whether they documented a reason as to why the kit was not submitted.¹ The Internal Affairs report concluded that there were *"justifiable reasons"* why all 36 SAKs had not been submitted for testing.

EXHIBIT 4. Summary Statement from the Police Internal Affairs Investigation.

	INTER-OFFICE MEMORANDUM INTERNAL AFFAIRS	
To:	Chief of Police [REDACTED]	
Subject:	FINDINGS OF THE PRELIMINARY INVESTIGATION INTO THE ALLEGATION THAT UNTESTED RAPE KITS ARE BEING HELD AT THE SECONDARY PROPERTY ROOM	
<p>In an effort to ascertain whether or not the untested Rape Kits required testing, I randomly selected ten (10) Rape Kits that bore only the hospital evidence tape and were therefore not tested at the Crime Lab. The collection dates of these Rape Kits were from 2001 through 2008. The evidence tags documented the corresponding Sex Crimes case number and the complainant's name.</p> <p>...</p> <p>Upon inspection, it was revealed that for all ten (10) cases there were justifiable reasons for these kits being untested. These ranged from the complainant's refusal to prosecute, the complainant's refusal to cooperate (no contact) and in two cases the defendants plead guilty and therefore physical evidence was not needed.</p> <p>...</p> <p>[REDACTED] Again, it was determined that there were justifiable reasons why all twenty-six of these Rape Kits had not been tested by the Crime Lab.</p>		

The Internal Affairs report lists—case by case—why each SAK was not submitted for DNA testing (see Exhibit 5, next page). It does not appear that the cases were reinvestigated and the extent to which Internal Affairs staff carefully reviewed the existing case materials is unclear given that a single line of text, with no supporting information, was provided as explanation (see samples in Exhibit 5). For example, in Case #05 below, the report states that the kit was not submitted for DNA testing because the complainant refused to prosecute. Technically, the state makes the decision to prosecute—not the crime victim—and there's no indication in the records for this case that the report had been forwarded to the prosecutor for consideration of charges. In Case #08, the report states that the complainant did not appear for scheduled appointments with police, therefore, they decided not to test the rape kit for DNA. As one victim advocacy professional noted when this report became public, *“since when do we make decisions that affect public safety by [whether] someone kept an appointment?... Seriously, there's no other way the police could have done something?”* Overall, in 35 of the 36 cases cited in the Internal Affairs report, police officials maintain that the OIC followed proper procedures. The reasons given for why kits were not submitted were usually (71 percent of the time) attributed to the fault of the victim, typically because of the victims' perceived credibility.

EXHIBIT 5. Reasons Why SAKs Were Not Submitted.

E [REDACTED]	Case #05 [REDACTED]	Complainant refused to prosecute
E [REDACTED]	Case #08 [REDACTED]	Complainant failed to show for scheduled appointments
E [REDACTED]	Case #08 [REDACTED]	Complainant refused to contact OIC
E [REDACTED]	Case #08 [REDACTED]	Complainant proven to be lying about rape
E [REDACTED]	Case #08 [REDACTED]	Complainant stated she was a prostitute and did not want to pursue matter
E [REDACTED]	Case #08 [REDACTED]	Complainant refused to cooperate
E [REDACTED]	Case #08 [REDACTED]	Complainant refused to provide statement

Prior research has found that police inaction in sexual assault cases is often attributed to some perceived fault of the victim (see Lonsway and Archambault 2012; Spohn and Tellis 2012 for reviews), and victims frequently withdraw from the investigation due to insensitive, victim-blaming treatment (and are then labeled “complainant refused to prosecute”; Human Rights Watch 2013; Kelley and Campbell 2013; Patterson 2011a, 2011b). This Internal Affairs report is certainly suggestive of these patterns, and to pursue this issue further, the research team reviewed 1,268 police files associated with untested rape kits (including these cases included in the Internal Affairs investigation). This review found clear and consistent evidence that police did not believe the victims and blamed them for what had happened to them (if anything had happened to them, they often noted in the police reports), so therefore the police did not investigate the cases and submitted the rape kits for testing.

Rape survivors were commonly assumed to be prostitutes, often based on the time of day and/or where the assault occurred, so the police indicated in their reports that the assault was not really a rape, but “*a deal gone bad*” (i.e., the victim was “*claiming*” rape because she had not been paid). The Internal Affairs case cited above as “*complainant stated she was a prostitute and did not want to pursue the matter*” was actually the OIC stating that the victim was a prostitute and it is unclear whether the victim or the police officer did not want to pursue the matter. Adolescent victims were also widely disbelieved and assumed to be lying to avoid getting into trouble by concocting a false story about being raped. When younger victims or their families were not responsive to police officers’ questioning, the case was often marked “*complainant refused to prosecute.*” Victims who were sexually

assaulted by friends or acquaintances had “*got-what-they-got*” because they had chosen to associate with the perpetrator and their files were also commonly marked “*complainant refused to prosecute*.” It was often difficult to determine whether the “decision” not to prosecute was made by the officers or the victims—and if it was the victims, whether that decision occurred before or after the police indicated their disbelief of the survivors’ account of the rape.

The Internal Affairs report—and the actual police reports—help explain why police officials defended their actions after the discovery of the kits: In their view, they had looked into the matter and concluded that testing was not warranted in these cases. The thoroughness and validity of the investigation is certainly subject to debate, but it does shed some light as to how police officials were viewing the issue at the time. The reports also explain why the police did not submit kits for testing and why they did not see large numbers of untested SAKs as a problem: In their view, the kits did not deserve to be tested because the assaults were “*not really a rape*.” These findings are consistent with prior studies on rape victims’ experiences with law enforcement and the criminal justice system response to sexual assault (e.g., Campbell 2008; Human Rights Watch 2013; Maddox et al. 2011; Maier 2008, 2012; Martin 2005; Monroe et al. 2005; Patterson 2011a, 2011b), and highlight how victim blaming affects all aspects of the investigation, including rape kit testing (see also Patterson and Campbell 2012; Shaw and Campbell 2013). Without consistent supervision and training in Detroit to challenge these practices, labeling case after case as “*a deal gone bad*,” or otherwise dismissing it as “*not really a rape*,” went unchallenged and unsubmitted SAKs continued to accumulate for decades.

MOVING FORWARD: HOW THE POLICE CHANGED THEIR POSITION ON UNTESTED RAPE KITS

When the collaborative action research project on Detroit’s untested rape kits began in 2011, the police department’s defense institutional practices made it seem doubtful that the ideal of evidence-based reform would be achieved. However, as the project progressed, attitudes and behaviors regarding rape kit testing began to change, largely due to four interrelated factors. First, the collaborative action research project provided a mechanism for regular, sustained contact between police department officials and representatives from diverse disciplines: prosecution, forensic science, medicine/nursing, victim advocacy, and research/evaluation. Colleagues from both within the criminal justice sector (e.g., state police, prosecutors) and those from outside (e.g., victim advocacy) asked pointed questions that helped bring latent beliefs and stereotypes to light. Because all organizations had agreed—in writing—to participate in the three-year action research project, the group had to, as one stakeholder noted, “*stick together and stay together... no one could push back from the table... we had to keep talking and finding common ground*.” Furthermore, the research grant was federally funded, and given the city’s likely need for ongoing state and federal financial support, there were clear incentives for continued engagement.

Second, the substantive findings of the research project provided “*something for the group to react to, to talk about*.” The research team shared interim findings with each organization (privately) and with the larger group in order to highlight past practices that contributed to the accumulation of kits, which laid the groundwork for discussions for what could be

done differently in the future. As one local stakeholder noted about the research project and how it benefited change efforts: *“It was right there, in front of our faces and we never saw it... You (the research team) held up the mirror and showed us... in your calm, steady, here-are-the-facts way, this is what it I... I see this completely differently now... What we did was wrong.”*

Third, there were significant changes in the police department leadership over the course of this project, and the recent administrations have had a markedly different view, one that acknowledges untested SAKs as a problem, and a problem they are committed to resolving. For example, the current leadership of the sex crimes unit was deeply invested in the action research project and made it possible for the research team to access the police reports necessary for this analysis—knowing that the contents therein would likely not be flattering, but recognizing that past practices needed to be changed. A commitment to changing past practices in the department, including, but certainly not limited to, rape kit testing, has been a continuing theme for the current Chief of Police.

Finally, in the years since the discovery of the kits in 2009, more cities have come forward to disclose that they too were facing similar problems with rape kit testing, which has allowed for broader national and regionalized coordination and communication. The first multicity summit on rape kit testing was held in October 2014 to bring together elected officials and frontline practitioners from Detroit, Cleveland, and Memphis to discuss emerging best practices, training, and information sharing. Detroit stakeholders were also able to connect with colleagues in other cities that have since cleared their backlogs of untested SAKs (e.g., Los Angeles, Dallas, Phoenix) to seek their input on model protocols, training programs, and other resources for creating reform.

With these internal and external pressures and supports, Detroit was successful in bringing about significant changes in rape kit practices, in spite of the city’s continued economic crisis. The police department created a policy such that all new/current SAKs would be submitted for forensic testing (covered by state dollars) and police leadership supported new evidence-based trainings on trauma-informed, offender-focused investigational methods (which was provided by state agencies, with federal grant funding). The organizations in the action research project collaborative worked together, under the leadership of prosecutor’s office, to secure \$4 million in funding from the state Attorney General’s office to test all remaining previously untested Detroit SAKs and to support new state-wide legislation requiring all current SAKs to be submitted for testing (as an unfunded mandate). The SAK Evidence Submission Act (PA 227) was unanimously passed by both houses of the Michigan legislature and was signed by the Governor into law on June 26, 2014. Thus, in spite of the city’s limited resources, practitioners and policy makers have been able to leverage partnerships at the local, county, state, and federal level to test the kits discovered in August 2009, and to prevent future rape kits from being shelved.

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Note

¹The Internal Affairs report states that the 36 SAKs were “randomly selected” from police property, but it is statistically improbable that selection was random because 33 of the 36 SAKs were collected between the years 2005 and 2008 (and 22 were from 2008 alone); the SAKs spanned nearly 30 years, from 1980 to 2009.

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Archivando la Justicia: El Descubrimiento de Miles de Casos de Violación Sin Examinar en Detroit

Resumen

En agosto del 2009, aproximadamente 11,000 casos de abuso sexual (SAKs) ("archivos de casos de violación") fueron encontrados en el depósito del departamento de policía de Detroit, la gran mayoría de los cuales nunca pasaron por un examen de calificación como evidencia de ADN. Para enfrentar este problema, se formó un proyecto de acción-investigación multidisciplinaria para congregar investigadores y especialistas en la aplicación de la ley y fiscales, ciencias forenses, medicina/enfermería, y defensores de las víctimas, para desarrollar estrategias de respuesta en base a evidencia. En este artículo nos basamos en entrevistas cualitativas con líderes de Detroit, documentos de archivo, y observaciones etnográficas para examinar los eventos alrededor del descubrimiento de los casos de violación y el por qué el personal de policía no vio como problema la acumulación de tantos SAK sin examinar. Durante el curso de los tres años de este proyecto de acción-investigación, líderes de Detroit trabajaron para promulgar reformas a nivel local y estatal para verificar estos casos y para evitar que este problema vuelva a ocurrir en el futuro.