

Marquette University

e-Publications@Marquette

Social and Cultural Sciences Faculty Research
and Publications

Social and Cultural Sciences, Department of

2020

Thinking Forensically: Law, Medicine and the *Nomos* of Sexual Violence

Heather R. Hlavka

Marquette University, heather.hlavka@marquette.edu

Sameena A. Mulla

Marquette University, sameena.mulla@marquette.edu

Follow this and additional works at: https://epublications.marquette.edu/socs_fac



Part of the [Social and Behavioral Sciences Commons](#)

Recommended Citation

Hlavka, Heather R. and Mulla, Sameena A., "Thinking Forensically: Law, Medicine and the *Nomos* of Sexual Violence" (2020). *Social and Cultural Sciences Faculty Research and Publications*. 279.

https://epublications.marquette.edu/socs_fac/279

Thinking Forensically: Law, Medicine and the *Nomos* of Sexual Violence

Heather R. Hlavka and Sameena Mulla¹

Introduction

In the present moment, the state renders rape and sexual assault knowable through criminal justice processes that rely heavily on forensic technology and expertise.² In its most pervasive form, this technology and expertise entails legal processes that are informed by medical knowledge and scientific procedures. The law itself mediates which medical and scientific expertise may become legal artifacts or ‘legal artifice’, and ultimately, it is the law that ‘defines who the expert is’.³ These investigative and adjudicative processes are further contextualized by culture and norms, or what Robert Cover termed *nomos* in his iconic essay on the ways in which law is informed by interpretive commitments and narrative forms.⁴ The law constructs and is dependent upon ‘shifting terrains of knowledge at particular moments in time’.⁵ In this chapter, we draw out the ways in which forensic expertise that is brought to bear on sexual assault cases is embedded within norms and cultural conventions, what we term the *nomos* of sexual violence. We argue that legal understandings of sexual violence rely heavily on

¹ Heather R. Hlavka and Sameena Mulla have contributed equally to this work.

² Deborah White and Lesley McMillan, ‘Statutory Response to Sexual Violence’ in N. Lombard (ed.), *The Routledge Handbook of Gender and Violence* (Routledge 2018).

³ Pratiksha Baxi, ‘The Medicalisation of Consent and Falsity: The Figure of the *Habitué* in Indian Rape Law’ in K. Kannabiran (ed.), *The Violence of Normal Times: Essays on Women’s Lived Realities* (Women Unlimited 2005) [267].

⁴ Robert Cover, ‘The Supreme Court 1982 Term: *Nomos* and Narrative’ (1983) 97 *Harvard Law Review* 4.

⁵ Tobias Kelly, Ian Harper and Akshay Khanna, 2015. ‘Introduction’ in Ian Harper, Tobias Kelly and Akshay Khanna (eds), *The Clinic and the Court: Law, Medicine and Anthropology* (Cambridge University Press 2015) [3].

medical knowledge, expertise and technique. Our research sites span the forensic interview,⁶ the medico-legal sexual assault forensic examination,⁷ and the use of these interventions in sexual assault adjudication.^{8 9} This range of ‘forensic’ interventions in investigating and prosecuting sexual violence is present in jurisdictions across many nations. The forensic interviewer, a specialist with training in strategies for producing reliable statements from crime victims, particularly children, may be a social worker, a counselor, or even a police officer or detective. Nurses and doctors engage in the work of medico-legal sexual assault examination, meeting with victims of crimes when they report to hospitals or police, collecting evidence such as DNA or body fluid samples, photographing wounds and offering therapeutic treatment. Both the forensic interviewer and the forensic nurse (or medical professional) might be called upon to participate as witnesses in adjudicative processes. Science and law offer sexual assault intervention distinct, but deeply intertwined histories and procedures.¹⁰ ‘Clinical categories are not simply abstract disembodied forms of regulation’, but rather have ‘a social life of their own’.¹¹ Research on sexual violence must, therefore, be informed by the *nomos* of sexual violence: the cultural contexts of rape and sexual assault as epistemological objects embedded within interpretive commitments that privilege legal interpretations that are intertwined with medicalized harm.

In the first section, we argue that criminal justice investigation demonstrates how sexual violence is understood through cultural norms that imagine violence occurring between

⁶ Heather Hlavka, ‘Child Sexual Abuse and Embodiment’ in H. Johnson (ed.), *Children and Youth Speak for Themselves* (Emerald Group Publishing 2010).

⁷ Sameena Mulla, ‘There is No Place Like Home: The Body as the Scene of the Crime in Sexual Assault Intervention’ (2008) 5 *Home Cultures* 301.

⁸ Amber Powell, Heather Hlavka and Sameena Mulla, ‘Intersectionality and Credibility in Child Sexual Assault Trials’ (2017) 31 *Gender and Society* 457.

⁹ Heather Hlavka and Sameena Mulla ‘“That’s How She Talks”: Animating Text Message Evidence in the Sexual Assault Trial’ (2018) 52 *Law and Society Review* 401.

¹⁰ Sheila Jasanoff, *Science at the Bar: Law, Science, and Technology in America* (Harvard University Press 1995).

¹¹ Tobias Kelly, Ian Harper and Akshay Khanna (n 5).

strangers. What researchers term ‘rape myths’ are a subset of these cultural norms, referring specifically to ‘the culturally pervasive tales of proper intergender sexual behavior that affect the crafting of courtroom and rape narratives at trials’.¹² This cultural narrative of the threatening stranger persists despite ample studies that verify sexual assault is regularly perpetrated by someone who has an existing relationship with the victim, most often within the same kin group or community.¹³ Both perpetrators and victims are treated within institutional spaces as archetypes of gender, sexuality, age, ability and race,¹⁴ and these archetypes are rooted in particular histories.¹⁵

In the second section, we argue that the *nomos* of sexual violence manifests within sexual assault adjudication and that courts are sites of social reproduction of this *nomos*. Furthermore, even as they reproduce culture, adjudication is firmly embedded within cultural norms. In the third section, we examine forensic intervention as both imagined and foundational to adjudication, demonstrating that clinical processes and relationships are themselves constituted by a *nomos* of sexual violence. Forensic expertise produced through intervention further anticipates the form evidence and narrative must take in the court of law. Thus, both legal and clinical institutional sites of sexual assault intervention are shaped by similar norms. Throughout the essay, we examine the methodological insights of intersectionality as researchers consider the evolving role of evidential and victim credibility in relation to forensic technology and expertise. Credibility itself is constantly reframed within a particular cultural context, one that now depends on expectations surrounding the availability and perceived reliability of forensic evidence and

¹² Andrew Taslitz, *Rape and the Culture of the Courtroom* (New York University Press 1999) [19].

¹³ T.R. Miller, M.A. Cohen and B. Wiersema, *Victim costs and consequences: A new look* (US Department of Justice, Office of Justice Programs, National Institute of Justice 1996) <<https://www.ncjrs.gov/pdffiles/victcost.pdf>> accessed October 2018.

¹⁴ Janice Du Mont, K. Miller, T.L. Myhr, ‘The Role of “Real Rape” and “Real Victim” Stereotypes in the Police Reporting Practices of Sexually Assaulted Women’ (2003) 9 *Violence Against Women* 466.

¹⁵ Diane Sommerville, *Rape and Race in the Nineteenth Century South* (UNC Press 2005).

the cultural location of victims and perpetrators of violence. In short, an approach that is both feminist and intersectional situates questions of credibility within a broader cultural *nomos* that is brought to bear on the medico-legal approach to sexual violence. Thinking about sexual violence as a research object that benefits from focusing on the intersecting logics of law and medicine also reveals the limits and boundaries of medicine and law as knowledge-making and culture-producing practices. When we consider the way that law and medicine have made sexual violence legible within various institutional contexts, we do not assert that these systems exhaustively capture the burden of sexual violence for all of those whose lives are marked by such violence. Rather, we understand law and medicine as both subject-making and subjectifying forces and thus approach our projects on the *nomos* of sexual violence with particular sensitivity to the tensions between the force of law and medicine and subjects' experiences of these forces.

Prior to the 1990s, medico-legal and forensic evidence played a minor role in the court's representation of a case's facts and did not merit analysis within scholarship on rape trial discourse.^{16 17} As new policies and sexual assault investigative practices have emerged during the past two decades, researchers should consider how they approach medico-legal and forensic evidence in sexual assault cases, investigating the ways in which such evidence reanimates or challenges cultural narratives of sexual assault.

The *Nomos* of Sexual Violence, Law and Medicine

¹⁶ Susan Ehrlich, *Representing Rape: Language and Sexual Consent* (Routledge 2001).

¹⁷ Dawn R. Flood, *Rape in Chicago: Race, Myth and the Courts* (University of Illinois Press 2012).

Perhaps the most persistent myth attached to sexual assault is that it occurs between strangers and leaves unmistakable signs of damage on the body and the psyche.¹⁸ Its very location in the cultural imaginary as an act performed by a dangerous and monstrous stranger, not unlike Foucault's 'dangerous individual',¹⁹ belies the reality that for many young people sexual violence is in fact expected and normalized.²⁰ Sociologist Nancy Whittier documented the absence of children in the vast literature on sexual abuse and rape, calling for a careful consideration of the role of intimacy in the victimization of young people.²¹ The very absence of children suggests the imagination of the victim of sexual violence to be an adult, even when this does not account for statistical patterns that demonstrate high rates of child victimization.²² In her research on young girls' descriptions of sexual violence, Hlavka analyzed transcripts of forensic interviews with children and youth at a Child Advocacy Center. Hlavka demonstrated that rather than describe the sexual violence as highly evented, traumatic, or spectacular, children often spoke of violence through tropes of the normal, anticipated and everyday. When commonplace discourses of harm do not account for strength and resilience, survivors of sexual assault may question experiences that do not easily correspond with the public discourse of rape. Shame, particularly sexual shame, is heavily associated with sexual assault and victims of violence who express other emotional responses, such as confusion, anger or betrayal, do not conform to commonplace social expectations.²³ What is more, shame is highly gendered, with

¹⁸ Amber Powell, Heather Hlavka and Sameena Mulla (n 8) [458].

¹⁹ Michel Foucault, 'About the Concept of the "Dangerous Individual" in 19th-Century Legal Psychiatry' in Alain Baudot and Jane Couchman (trs) (1978) 1 *International Journal of Law and Psychiatry* 1.

²⁰ Heather Hlavka, 'Normalizing Sexual Violence: Young Women Account for Harassment and Abuse' (2014) 28 *Gender and Society* 337.

²¹ Nancy Whittier, 'Where Are the Children?: Theorizing the Missing Piece in Gendered Sexual Violence' (2015) 30 *Gender and Society* 95.

²² Dean Kilpatrick, Benjamin Saunders and Daniel Smith, *NIJ Research in Brief: Youth Victimization: Prevalence and Implications* (US Department of Justice, Office of Justice Programs, National Institute of Justice 2003).

²³ Amanda Konradi, *Taking the Stand: Rape Survivors and the Prosecution of Rapists* (Praeger 2007).

masculine and feminine expressions of shame also differing in relation to relative youth and maturity.²⁴ Relying on such cultural discourses and social expectations that victims of sexual violence are overwhelmed by trauma and shame, institutions paradoxically demonstrate little patience with the social phenomenon of delayed disclosure. The paradox lies within the expectation that victims should feel overwhelmed by their emotions of fear and shame, but still must rush to report their experience of sexual assault to friends, family and criminal justice professionals.

Delayed disclosures of sexual violence to friends, family, community, healthcare personnel and law enforcement are common.²⁵ Inevitably, criminal justice personnel often question the veracity of victims of violence who take time to come forward, be it a matter of hours, days, months or even years.^{26 27 28} When violence occurs within communities or even households, the ability of victims to recognize coercion and sexual violence and not favoring disclosure over other social and economic interests may contribute to delays in coming forward.^{29 30 31} Indeed, large-scale studies unanimously concur that most sexual assault survivors do not make formal reports to legal authorities of any kind and are often hesitant to disclose to

²⁴ Heather Hlavka, 'Speaking of Stigma and the Silence of Shame' (2017) 20 *Men and Masculinities* 482.

²⁵ Margaret-Ellen Pipe, Michael Lamb, Yael Orbach and Ann-Christin Cederborg (eds) *Child Sexual Abuse: Disclosure, Delay and Denial* (Lawrence Erlbaum 2007).

²⁶ Janice Du Mont K. Miller, T. L. Myhr (n 14).

²⁷ Lisa Frohmann, 'Discrediting Victims' Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections' (1991) 38 *Social Problems* 213.

²⁸ Cassia Spohn and K. Tellis, 'The Criminal Justice System's Response to Sexual Violence' (2012) 18 *Violence Against Women* 169.

²⁹ David Finkelhor and Janis Wolak, 'Reporting Assaults against Juveniles to the Police: Barriers and Catalysts' (2003) 18 *Journal of Interpersonal Violence* 103.

³⁰ Heather Hlavka, 'Normalizing Sexual Violence: Young Women Account for Harassment and Abuse' (2014) 28 *Gender and Society* 337.

³¹ Sarah Ullman, Sarah, 'Correlates and Consequences of Adult Sexual Assault Disclosure' (1996) 11 *Journal of Interpersonal Violence* 554.

friends and family because they anticipate negative responses.^{32 33 34 35} Legal institutions, aware of the reality that sexual violence occurs between individuals known to one another, nevertheless seek to reconcile the public imagination of rape with the cases they process.

Before any prosecution, a victim of a crime must report to a policing authority, police must complete an investigation, the victim must work with police to identify a perpetrator, attorneys must lay charges against the perpetrator and then the case may move towards prosecution within a legal system.^{36 37 38} As with other types of violent crime, sexual assault cases that reach the trial phase must often meet distinguishable criteria and thus represent only a fraction of those reported to authorities.^{39 40} In studies of case processing, researchers question whether case attrition is impacted by the degree to which reporting details conform to cultural norms and rape myths. Some scholars argue that cases perceived as adhering to stereotypical rape myths have greater success in reaching the trial stage and securing guilty convictions.^{41 42} Absent a clear correlation between such cultural conformity and case attrition, qualitative researchers have demonstrated that legal personnel are deeply aware of the challenge of moving

³² Y. Chen and S.E. Ullman, 'Women's Reporting of Sexual and Physical Assaults to Police in the National Violence Against Women Survey' (2010) 16 *Violence Against Women* 262.

³³ David Finkelhor, *Childhood Victimization: Violence, Crime, and Abuse in the Lives of Young People* (Oxford UP 2008).

³⁴ Dean Kilpatrick, A.E. Seymour and C.N Edmonds, *Rape in America: A Report to the Nation* (National Crime Victims Center 1992).

³⁵ Sarah Ullman, Sarah, 'Social Reactions to Child Sexual Abuse Disclosures: A Critical Review' (2003) 12 *Journal of Child Sexual Abuse* 889.

³⁶ Amanda Konradi (n 23).

³⁷ Sameena Mulla, *The Violence of Care: Rape Victims, Forensic Nurses, and Sexual Assault Intervention* (New York UP 2014).

³⁸ Debra Patterson, 'The Impact of Detectives' Manner of Questioning on Rape Victims' Disclosure' (2011) 17 *Violence Against Women* 1349.

³⁹ Susan Estrich, *Real Rape* (Harvard UP 1987)

⁴⁰ Amanda Konradi (n 23).

⁴¹ Martha Burt and Rochelle S. Albin, 'Rape Myths, Rape Definition, and Probability of Conviction' (1981) 11 *Journal of Applied Social Psychology* 212.

⁴² Eliana Suarez and Tahany M. Gadalla, 'Stop Blaming the Victim: A Meta-Analysis of Rape Myths' (2010) 25 *Journal of Interpersonal Violence* 2010.

forward with cases that do not fit the ideal.⁴³ These ideals are not universal and careful research takes into account the specific contexts in which police practices lead to case attrition, examining variables such as the point at which a case is deemed closed or whether police refuse to take a formal report in the first place.^{44 45} A complex examination of the cultural contexts in which sexual violence takes place illuminates the criteria and norms for medico-legal and forensic evidence in cases that escalate to trial and thereby rise to public prominence. Many scholars have explored the persistence of rape myths as dominant cultural narratives within legal settings.^{46 47}
^{48 49} This persistence is attributed both to case selection in that cases are prosecuted because they conform to accepted cultural narratives and also to the use of rape myths in legal narratives about cases that may not conform to the *nomos* of sexual violence. For example, the literature also recognizes courtroom practices that reinforce rape myths by producing evidence and preparing witnesses to adhere to stereotypes such as dressing victims in clothing that conveys particular notions of respectability and instructing testifying complainants not to express anger lest they appear vindictive in the courtroom.^{50 51}

While the court may claim that scientific evidence speaks for itself, close examination of rape myths within the medico-legal setting demonstrates how entanglements of science,

⁴³ Lisa Frohmann (n 27).

⁴⁴ Rebecca Campbell, *The Neurobiology of Sexual Assault: Implications for First Responders in Law Enforcement, Prosecution, and Victim Advocacy*. (NIJ Research for the Real World Seminar 2012) <<http://nij.gov/multimedia/presenter/presenter-campbell/Pages/welcome.aspx>> accessed **October 2018**.

⁴⁵ Dee Smythe, *Rape Unresolved: Policing Sexual Offenses in South Africa* (U of Cape Town Press 2015).

⁴⁶ Dawn Beichner and Cassia Spohn, 'Prosecutorial Charging Decisions in Sexual Assault Cases: Examining the Impact of a Specialized Prosecution Unit' (2005) 16 *Criminal Justice Policy Review* 461.

⁴⁷ Micaela Di Leonardo, 'Black Myths, White Lies: Rape, Race and the Black Underclass' (Sept. 1992) *Village Voice*.

⁴⁸ Cassia Spohn and Julie Horney, 'Rape Law Reform and the Effect of Victim Characteristics on Case Processing' (1993) 9 *Journal of Quantitative Criminology* 383.

⁴⁹ Patricia A. Tetreault and Mark A. Barnett, 'Reactions to Stranger and Acquaintance Rape' (1987) 11 *Psychology of Women Quarterly* 353.

⁵⁰ Amanda Konradi (n 23).

⁵¹ Peggy Reeves Sanday, *A Woman Scorned: Acquaintance Rape on Trial* (Doubleday 1996).

technology and the law evolve to incorporate new technologies and modes of expertise. The requirement that the sexual assault victim appear guileless and innocent also permeates the forensic examination. Indeed, forensic nurses have similarly adhered to stereotypical images of sexual victimization in the production of photographic evidence, reinforcing the compulsory ‘sad’ demeanor expected of a sexual assault victim.⁵² In her research, Mulla demonstrates how cultural inscriptions of a norm for composing the face into a smile plays a part in the forensic encounter. Essentially, the cultural norm of smiling for a photograph must often be overcome in order to produce a legal object that conforms to stereotypes about victimhood. In her ethnographic study, Mulla observed interactions between forensic nurses and their patients, documenting the ways in which this norm emerged in the forensic encounter. In the same way, ethnographic research on sexual assault adjudication can track how medico-legal forensic evidence is included in rape trials, while developing a focus on how evidence is used to produce and sustain rape myths and other cultural narratives. For example, one common rape myth, that sexual violence injuries are always highly visible with obvious forms of wounding, is reinforced by relying on evidence to prove excessive use of force or to emphasize visible signs of physical injury. Of course, witnesses also testify to the pain and suffering they have experienced, but the use of forensic expertise to produce evidentiary artifacts reifies the mistrust of testimony, particularly the testimony of women.⁵³

Research on the ‘CSI effect’ has begun to examine the impact of cultural expectations about scientific expertise on legal and adjudicative processes. The ‘CSI effect’ is a sociological phenomenon that posits juries have expectations about the nature of legal evidence based on

⁵² Sameena Mulla, ‘Facing Victims: Forensics, Visual Technologies, and Sexual Assault Victims’ (2011) 30 *Medical Anthropology* 271.

⁵³ Lynn Hecht Schafran, ‘Credibility in the Courts: Why is There a Gender Gap?’ (1995) 34 *The Judges’ Journal* 40.

media representations of evidence, particularly the popular police procedural television genre. To date, scholars continue to learn about the impact of such media depictions on actual behavior and debate the many ways in which such effects might be observed and measured.^{54 55 56} The majority of studies on the CSI effect rely on simulated jury experiments or public surveys, although it is worth noting Mariana Valverde's assertion that processes of science and law are readily observable through ethnographic methods that can offer critical insights unobtainable through other techniques.⁵⁷ Ethnographic observation of jurors and interviews following closed-door proceedings may yield different insights about the norms that capture juries' imaginations. Beyond the legal context, DNA captures the public's imagination through the advertising and popularity of DNA testing services that claim to provide information about one's ancestry, igniting the public's investment in the soundness of DNA analysis, and reifying the problematic scientific fallacy of race as genetically encoded.⁵⁸ Identifying discourses around forensic evidence may not demonstrate the existence or non-existence of a CSI effect, but descriptive data can show how scientific evidence is presented in ways that are continuous with their representation on popular television shows. Alternately, courtroom trial observations suggest that attorneys also work to disabuse jurors of the notion that television trials reflect legal reality. For example, research on sexual assault prosecution in Milwaukee County demonstrates that

⁵⁴ Simon Cole and Rachel Diosa-Villa, 'CSI and Its Effects: Media, Juries, and the Burden of Proof' (2007) 41 *New England Law Review* 435.

⁵⁵ N.J. Schweitzer and Michael Saks, 'CSI Effect: Popular Fiction About Forensic Science Affects the Public's Expectations about Real Forensic Science' (2006) 47 *Jurimetrics* 357.

⁵⁶ Donald E. Shelton, Young S. Kim and Gregg Barak, 'Study of Juror Expectations and Demands Concerning Scientific Evidence: Does the CSI Effect Exist' (2006) 9 *Vanderbilt Journal of Entertainment and Technology* 331.

⁵⁷ Mariana Valverde, 'Pragmatist and Non-pragmatist Knowledge Practices in American Law' (2003) 2 *PoLAR* 86.

⁵⁸ Alondra Nelson, *The Social Life of DNA: Race, Reparations and Reconciliation After the Genome* (Beacon Press 2016).

prosecutors frequently urged potential jurors to set aside their expectations that trials and evidence would be anything like the television shows that jurors admitted to watching.^{59 60}

If television depictions of forensic expertise in police procedurals and forensic dramas influence participants' expectations of the role of scientific evidence at trial, they also impact the rhetorical style and speech patterns that lay people expect to hear from courtroom personnel. Scholars have applied intense scrutiny to the modes of speech that characterize institutional interactions in preparing and prosecuting cases of sexual assault.^{61 62 63} These studies have analyzed language use in sexual assault adjudication and the production of narratives on the part of defendants, courtroom personnel and prosecutorial witnesses. For example, research demonstrates that certain modes of speech engaged by the accused⁶⁴ and by complainants^{65 66 67} imply agency or non-agency. These findings have major implications for defendants, who are often represented by attorneys who use passive voice to speak of the event of sexual violence so as not to ascribe their clients with fault.⁶⁸ Extending these linguistic analyses to the role of science and technology in the courts will contribute to scholarly understanding of the ways in which contemporary adjudication addresses the question of consent in sexual assault prosecution.⁶⁹ Understanding general linguistic conventions about sexuality, gender, agency and

⁵⁹ Amber Powell, Heather Hlavka and Sameena Mulla (n 8).

⁶⁰ Heather Hlavka and Sameena Mulla (n 9).

⁶¹ Susan Ehrlich (n 16).

⁶² Gregory Matoesian, *Reproducing Rape: Domination Through Talk in the Courtroom* (U of Chicago Press 1993).

⁶³ Shonna Trinch, *Latinas' Narratives of Domestic Abuse: Discrepant Versions of Violence* (John Benjamins 2003).

⁶⁴ Susan Ehrlich (n 16) [41].

⁶⁵ *Ibid* [96].

⁶⁶ Gerd Bohner, 'Writing About Rape: Use of the Passive Voice and Other Distracting Features as an Expression of Perceived Responsibility of the Victim' (2001) 409 *British Journal of Social Psychology* 515.

⁶⁷ Heather Hlavka (n 6).

⁶⁸ Susan Ehrlich (n 16).

⁶⁹ Heather Hlavka and Sameena Mulla (n 9).

consent give the *nomos* of sexual assault more context once adjudication is underway.^{70 71} For example, during the trial, participants may use talk to transform sexual assault into consensual sex⁷² and this talk is sequenced in a particular manner so that the attorneys maintain linguistic and persuasive control of the complainant's narrative, a process that Matoesian termed *legal domination*.⁷³ By examining the social, historical and cultural location of sexual violence within a particular milieu, researchers can move towards a deeper understanding of adjudication.

Sexual Assault Adjudication

The norms and mythologies around sexual violence we discussed in the previous section take on legal and cultural significance when they enter the courtroom. Our own research on the adjudication of sexual assault in Milwaukee decenters the outcomes of adjudication and focuses on processes to reveal the significance of cultural norms in the courts.^{74 75} The courtroom is one of the most rigorously analyzed spaces within the literature on sexual assault.^{76 77 78 79 80 81} As 'an interpretive practice reflecting normative commitments', trials provide a vital window into the cultural narratives of sexual assault adjudication.⁸² While reaching the trial stage is an exception for sexual assault cases within criminal justice processes, the trial itself is an important

⁷⁰ Nicola Gavey, *Just Sex? The Cultural Scaffolding of Rape* (Routledge 2005).

⁷¹ Celia Kitzinger and Hannah Frith, 'Just Say No? The Use of Conversation Analysis in Developing a Feminist Perspective on Sexual Refusal' (1999) 10 *Discourse and Society* 293.

⁷² Nicola Gavey (n 70).

⁷³ Gregory Matoesian (n 62).

⁷⁴ Amber Powell, Heather Hlavka and Sameena Mulla (n 8).

⁷⁵ Heather Hlavka and Sameena Mulla (n 9).

⁷⁶ Susan Ehrlich (n 16).

⁷⁷ Amanda Konradi (n 23).

⁷⁸ Gregory Matoesian (n 62).

⁷⁹ Peggy Reeves Sanday (n 51).

⁸⁰ Olivia Smith, *Rape Trials in England and Wales: Observing Justice and Rethinking Rape Myths* (Palgrave Macmillan 2018).

⁸¹ Andrew Taslitz (n 12).

⁸² Robert Burns, Marianne Constable, Justin Richland and Winnifred Sullivan, 'Analyzing the Trial: Interdisciplinary Methods' (2008) 31 *Political and Legal Anthropology Review* 303 [301].

ethnographic event during which broader cultural narratives are recorded as a matter of historical public record.^{83 84} As such, researchers studying the trial must not only focus on the legal processes unfolding in the course of adjudication but on the cultural practices and norms around race, place, gender and class that structure the trial even as the trial reproduces these norms. As much socio-legal research has centered other sources of data such as case law, archival records, interviews and jury simulations, it is important to adopt the use of ethnography of daily adjudicative practices to capture the reality of law. While these moments are not captured in appellate level cases as they conform to precedent, they should not be deemed heterogeneous. It is the day-to-day functioning of the courts and the reiteration of their ‘normal’ that constitutes and reproduces *nomos* itself. Additionally, we must conceive of all adjudicative practice as culturally specific. For example, scholar Sara Deer wrote that the Anglo-American system of adversarial law is itself culturally bound and does not reflect the cultural mores of many Native North American tribal authorities. She argued that the adjudication of rapes of Native peoples must be decolonized and wrested away from federal courts.⁸⁵

Adjudication is always shaped by statutory definitions although these statutes may take oral or written form. In the US, criminal statutes defining sexual assault and rape vary state-by-state. They can also vary across other jurisdictional divides and national boundaries. Regarding research context, understanding the statutory definitions that operate is key to interpreting how medical knowledge will be operationalized in service to criminal justice priorities. For example, Hlavka and Mulla’s research site in Wisconsin dictates four degrees of sexual assault, a common

⁸³ Robert Burns, *A Theory of the Trial* (Princeton UP 1999).

⁸⁴ Andrew Taslitz (n 12).

⁸⁵ Sarah Deer, ‘Decolonizing Rape Law: A Native Feminist Synthesis of Safety and Sovereignty’ (2009) 24 *Wicazo Sa Review* 149.

statutory structure also modeled within US federal guidelines.⁸⁶ Like many statutory definitions of sexual violence, Wisconsin's definition includes the criteria of non-consensual sex with varying degrees of force used against the victim.^{87 88 89} The law's ability to discern between degrees of force facilitates particular medico-legal approaches to documenting the harm of assault. Unlike many other jurisdictions, however, Wisconsin's statutes include both verbal and non-verbal expressions of consent, including both 'word and overt action'.⁹⁰ By including the complainant's overt action as an indication of consent or lack of consent, Wisconsin expands sexual assault investigation beyond merely documenting and evidencing a set of verbal transactions to include gestures and acts that may communicate consent. Ethnographic methods are an ideal way to document these sets of legal commitments, such as when attorneys connect verbal and non-verbal acts of consent by corroborating the testimony of fact witnesses with material evidence and the testimony of expert witnesses.^{91 92} Investigating how state standards of consent are evidenced during formal legal proceedings, particularly in the various research that explores how medico-legal and forensic evidence addresses the question of consent during sexual assault trials,⁹³ provides a basis for comparison between and within jurisdictions on questions of medico-legal process, interventions and procedure.

While it is simple to compare the statutory language defining consent within a particular legal jurisdiction, the way that ideas about race impact our interpretation of consent or sexual

⁸⁶ Heather Hlavka and Sameena Mulla (n 9).

⁸⁷ Donald A. Dripps, 'Beyond Rape: An Essay on the Difference Between the Presence of Force and the Absence of Consent' (1992) 92 Columbia Law Review 1780.

⁸⁸ Donald A. Dripps, 'After Rape Law: Will the Turn to Consent Normalize the Prosecution of Sexual Assault' (2008) 41 Akron Law Review 957.

⁸⁹ H.M. Malm, 'The Ontological Status of Consent and its Implications for the Law on Rape' (1996) 2 Legal Theory 147.

⁹⁰ Amanda Konradi (n 23) [179].

⁹¹ Heather Hlavka and Sameena Mulla (n 9).

⁹² Deborah White and Lesley McMillan (n 2).

⁹³ Heather Hlavka and Sameena Mulla (n 9).

assault are far murkier. Adjudication of sexual assault in the US, particularly within the criminal courts, mirrors racial characteristics of criminal prosecution nationally. Over the years, racial profiling, the racialization of drug statutes and the rise of mandatory sentencing have contributed to a criminal justice system that inordinately polices and incarcerates African-Americans and Latinos.⁹⁴ In her study of criminal courts in Cook County, Illinois, Nicole Gonzalez Van Cleve argued that the courts' daily routines are public spectacles of 'racial degradation ceremonies'.⁹⁵ Beth Richie identified the problem of 'gender entrapment' to explain black women's interplay of loyalty and racial identity. The loyalty trap addresses the difficulty victimized black women face when confronted with a racially biased criminal justice system that penalizes them for not exposing perpetrators, often family members, to the violence of the carceral state.⁹⁶ Kimberlé Crenshaw described the difficulties faced by black women navigating criminal justice systems as they sought assistance in cases of domestic violence and sexual assault. Crenshaw characterized the experience of oppression of black sexual assault victims as irrefutably intersectional in that the oppressive matrix in which black women are caught devalues them as racialized and gendered subjects.⁹⁷ Our own research has sought to take an intersectional approach to these subject-making practices within the courts, examining, for example, the ways in which children who take the stand are understood and interpreted as racialized, gendered and sexed subjects.⁹⁸ These dynamics must be taken into consideration as they are part of the *nomos* of sexual violence, in which bodies are always already racialized and gendered and do not traverse the

⁹⁴ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New Press 2010).

⁹⁵ Nicole Gonzalez Van Cleve, *Cook County: Racism and Injustice in American's Largest Criminal Court* (Stanford UP 2016).

⁹⁶ Beth Richie, *Arrested Justice: Black Women, Violence, and America's Prison Nation* (New York UP 2012).

⁹⁷ Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1991) 43 *Stanford Law Review* 1241.

⁹⁸ Amber Powell, Heather Hlavka and Sameena Mulla (n 8).

criminal justice process as legally or culturally neutral subjects. As Gonzalez Van Cleve⁹⁹ and Michelle Alexander¹⁰⁰ demonstrate, court systems in the US are spaces in which the force of law is disproportionately brought to bear both against and in the name of black and brown people. The contours of race and criminal justice intervention will vary greatly depending on the particular ethno-national politics in which sexual assault is adjudicated, whether that site is post-apartheid South Africa¹⁰¹ or post-partition India and Pakistan.¹⁰²

In addition, legal evidence is always spoken into existence through witnesses and mediated through the cultural norms surrounding victimhood. Whether the victim is a Muslim child in a highly polarized sectarian society within a post-colonial sectarian legal setting,¹⁰³ or a Muslim woman within a secular legal system,¹⁰⁴ these extra-legal attributes become relevant in shaping the experiences of those participating in the legal milieu. Thinking through the various state-contexts in which sexual violence is adjudicated, either formally or through other forms of truthmaking, such as Truth and Reconciliation Commissions, suggests that sexual violence is a highly symbolic cultural event within most social milieus. Its inordinate use against feminized subjects suggests that the *nomos* of sexual assault is embedded in distinctive forms of sexual citizenship. Fiona Ross documented, for example, the processes by which women participating in the South African Truth and Reconciliation Commission often found their testimony about the harms they experienced under apartheid reduced to narratives of sexual assault, such that the official record would include only a complaint of rape and none of the other experiences of

⁹⁹ Nicole Gonzalez Van Cleve (n 95).

¹⁰⁰ Michelle Alexander (n 94).

¹⁰¹ Dee Smythe (n 45).

¹⁰² Veena Das, 'National Honour and Practical Kinship: Unwanted Women and Children' in F. Ginsburg and R. Rapp (eds), *Conceiving the New World Order: The Global Politics of Reproduction* (UC Press 1995).

¹⁰³ Pratiksha Baxi, 'Sexual Violence and Its Discontents' (2014) 43 *Annual Review of Anthropology* 139.

¹⁰⁴ Lori Chambers and Hen Roth, 'Prejudice Unveiled: The Niqab in Court' (2014) 29 *Canadian Journal of Law and Society* 381.

violence that characterized the totality of their testimony.¹⁰⁵ The partition of India and Pakistan is another instance in which large scale sexual violence also resulted in state-apparatuses for addressing the legal ramifications of mass rape, while failing to attend to the cultural and social consequences of gendered violence.¹⁰⁶

Practices relating to racialization or racial degradation may take place in health care, advocacy or even legal institutional sites. For example, Shonna Trinch examined the process through which domestic violence complaints are transformed into legal documents in jurisdictions primarily serving Latina complainants. Following the nuances of an interpreter who translates Spanish-language testimony into English-language documents, she highlights the very ways in which documentary fields and legal conventions mediate the narrative of domestic abuse and sexual assault.¹⁰⁷ In her detailed study of the protective order interview, Trinch demonstrates the ways in which Latina victims' narratives of domestic violence are transformed by legal professionals in the process of report writing. While the written documents conform closely to the legal requirements for granting protective orders, the changes rendered by the interview and transcription process make victims of violence vulnerable to allegations that they changed their stories. Even as paralegal professionals render victims' accounts into powerful affidavits, they 'neutralize' the client's emotions as well as her evaluations of herself and the alleged abuser.¹⁰⁸

Linguistic processes intersect with ethnic identity and scholars have documented the ways in which racializing discourses cast victims and the accused as credible or non-credible in relation to their racial identity—such as Laura Bunt's study of indigenous identity in rape

¹⁰⁵ Fiona Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (Pluto Press 2003).

¹⁰⁶ Veena Das (n 102).

¹⁰⁷ Shonna Trinch (n 63).

¹⁰⁸ Shonna Trinch, 'Disappearing Discourse: Performative Texts and Identity in Legal Contexts' (2010) 7 *Critical Inquiry in Language Studies* 209 [207].

prosecutions in Peru.¹⁰⁹ Our recent work on the use of text message evidence during sexual assault trials highlights the ways in which the ‘animation’ by different witnesses called to read the text messages on the stand plays a role in how the court interprets these utterances. Race and class are both part of the interpretive frameworks through which text messages paint the witnesses as credible or non-credible and create a sense of the relationships between the witnesses before, during and following the event of sexual violence.¹¹⁰ Such extra-legal factors seep into adjudicative processes in many different settings.¹¹¹ International human rights courts, for example, have operated with different ontological conditions defining the subject of the legal victim.¹¹² Where criminal cases rarely question the complaining witness’s capacity to remember the crime based on neurobiological theories of trauma, the 1995 International War Crimes Tribunal for the former Yugoslavia included extensive deliberation about the reliability of witnesses allegedly suffering from post-traumatic stress disorder.¹¹³ With questions of memory, wellness and the medicalization of the sexually assaulted body at stake, it is important to consider adjudication in relation to the adjacent sites in which forensic investigation emerges.

Contexts of the Forensic

In order to understand the work of forensic evidence and expertise within the trial, scholars must also move beyond the courtroom to examine the other sites of intervention and production of knowledge about rape, law and medicine. By the time the spectacle of the forensically examined body emerges in the court, many processes have already taken place (see,

¹⁰⁹ Laura Bunt, ‘A Quest for Justice in Cuzco, Peru: Race and Evidence in the Case of Mercedes Ccorimanya Lavilla’ (2008) 31 *Political and Legal Anthropology Review* 286.

¹¹⁰ Heather Hlavka and Sameena Mulla (n 9).

¹¹¹ Andrew Taslitz (n 12).

¹¹² Kirsten Campbell, ‘Legal Memories: Sexual Assault, Memory, and International Humanitarian Law’ (2002) 28 *Signs* 149.

¹¹³ *Ibid* [150].

for example, the chapter on autopsies by Moore and Singh, this volume). Sexual assault intervention is interdisciplinary and requires coordination between law enforcement, social services, health care systems and civilian scientists. Well-established inter-agency collaboration increases the likelihood of medico-legal evidence collection as well as awareness by various institutional stakeholders of the existence and potential uses of such evidence.^{114 115} It is important to note that forensic science is not governed by standard universal practice, with national agencies having varying levels of involvement within local police practices and even adopting different approaches to analysis and calculation.^{116 117} Researchers in the courtroom must be aware of how forensic evidence is handled within that particular jurisdiction. The inclusion or exclusion of medico-legal and forensic evidence during the trial as well as narratives used to explicate such evidence and determine its impact may be attributed to a range of causes. Researchers must be prepared to explore (a) inter-agency collaboration,¹¹⁸ (b) technical limitations and technical expertise,¹¹⁹ (c) local, state or national policy and regulation,¹²⁰ (d) judicial and prosecutorial discretion and preference, (e) resources allocated, and/or (f) particular events that create an impetus to change the practices surrounding forensic evidence.

¹¹⁴ Patricia Martin, *Rape Work: Victims, Gender, and Emotions in Organization and Community Context* (Routledge 2005).

¹¹⁵ M. Elaine Nugent-Burakove, Patricia Fanflik, David Troutman, Bicole Johnson, Ann Burgess and Annie O'Connor, *Testing the Efficacy of SANE/SART Programs: Do They Make a Difference in Sexual Assault Arrest and Prosecution Outcomes? Final Report* (US Department of Justice 2006).

¹¹⁶ Corinna Kruse, *The Social Life of Forensic Evidence* (UC Press 2016).

¹¹⁷ Andrea Quinlan, *The Technoscientific Witness of Rape: Contentious Histories of Law, Feminism and Forensic Science* (U of Toronto Press 2017).

¹¹⁸ Patricia Martin (n 114).

¹¹⁹ Corinna Kruse (n 116).

¹²⁰ Rose Corrigan, *Up Against a Wall: Rape Reform and the Failure of Success* (New York UP 2013).

In sexual assault cases, forensic evidence is frequently collected and produced by nurse examiners working in clinical spaces.^{121 122 123 124 125 126 127} As a highly gendered form of labor, the professional standing of nurses is itself culturally specific.¹²⁸ Sexual assault nurse examiner programs now number over 450 in the US.¹²⁹ Nurses collect evidence from complainant bodies including: (a) human tissue and fluid such as blood, semen, saliva and hair, (b) proof of bodily and ano-genital injury to the victim, such as photographs of wounds,^{130 131 132 133} and (c) trace evidence from the location of the attack such as carpet fibers, gravel or plant material. Police and crime scene investigators are responsible for collecting material and bodily evidence from the crime scene itself. As many as three or four individuals may testify to the collection, testing and storage of any of these materials to establish chain of custody and to account for the time lapse between reporting of an incident and the many months to trial.

¹²¹ Courtney Ahrens, Rebecca Campbell, Sharon Wasco, Gloria Aponte, Lori Grubstein and William Davidson, 'Sexual Assault Nurse Examiner (SANE) Programs: An Alternative Approach to Medical Service Delivery for Rape Victims' (2000) 15 *Journal of Interpersonal Violence* 921.

¹²² Linda Ledra and Sherry Arndt, 'Examining the Sexual Assault Victim: A New Model for Nursing Care' (1994) 32 *Journal of Psychosocial Nursing and Mental Health Services* 7.

¹²³ Patricia Martin (n 114).

¹²⁴ Sameena Mulla (n 37).

¹²⁵ Deborah Parnis and Janice Du Mont, 'Examining the Standardized Application of Rape Kits: An Exploratory Study of Post-Sexual Assault Professional Practices' (2002) 23 *Health Care for Women International* 846.

¹²⁶ Bonnie Price, 'Receiving a Forensic Medical Exam Without Participating in the Criminal Justice Process What Will it Mean?' (2010) 6 *Journal of Forensic Nursing* 74.

¹²⁷ Linda Regan, Jo Lovett and Liz Kelly, *Forensic Nursing: An Option for Improving Responses to Reported Rape and Sexual Assault* (Research, Development and Statistics Office, UK 2004).

¹²⁸ Sameena Mulla (n 37).

¹²⁹ International Association of Forensic Nurses, *Summary of IAFN's International Initiative and Next Steps for Moving Forward Internationally* (White Paper 2007).

¹³⁰ Sameena Mulla (n 52).

¹³¹ Gethin Rees, 'Constructing Incontrovertible Evidence: How Forensic Medical Examiners Disseminate, Constrain and Sustain Shared Visions and Practices' (Society for the Social Studies of Science conference, Washington D.C. October 2009).

¹³² M.S. Sommers, B.S. Fisher and H. Karjane, 'Using colposcopy in the rape exam: Healthcare, forensic, and criminal justice issues' (2005) 1 *Journal of Forensic Nursing* 28.

¹³³ Deborah White and Janice Du Mont, 'Visualising sexual assault: An Exploration of the Use of Optical Technologies in the Medico-Legal Context' (2009) 68 *Social Science and Medicine* 1.

Studies of sexual assault response must consider the range of institutional locations for forensic intervention. Hlavka and Mulla's research on sexual assault adjudication in Milwaukee, Wisconsin led to exploration of the Milwaukee's Sexual Assault Treatment Center (SATC). Background research revealed that Milwaukee's center has served as a study site for evaluation of victim care and services.^{134 135 136} Such studies take on socio-legal significance by revealing what evaluation criteria are applied to sexual assault intervention, demonstrating the metrics by which such programs are deemed successful. Metrics, as anthropologist Sally Engle Merry explains, organize and simplify knowledge, describing social phenomena in countable and commensurable terms and organizing the 'participants, organizations and communities of expertise' involved in the management of sexual violence.¹³⁷ In North America and Europe, the role of the sexual assault nurse examiner has developed as the primary point of contact between a sexual assault complainant and the services they access. Like many similar rape crisis response and health-oriented sexual assault centers, the SATC it is staffed by forensic nurses, some of whom Hlavka and Mulla saw testify in the Milwaukee courts. The role of forensic nurses in producing evidence and participating in the legal process is an emergent field of study.^{138 139 140} Careful consideration of the professional roles relating to sexual assault care and investigation, such as that of the forensic nurse, as well as the skills considered necessary to constitute this

¹³⁴ J.L. Bushnell, M.J. Burke, M. Amsdorf and PD Steele, 'Evaluation of a Sexual Assault Treatment Center' (1980) 4 *Nursing Administration Quarterly* 61.

¹³⁵ Jacqueline Hatlevig, 'Children's Life Transition Following Sexual Abuse' (2006) 2 *Journal of Forensic Nursing* 165.

¹³⁶ M. Putz, B.K. Thomas and K.V. Cowles, 'Sexual Assault Victims' Compliance with Follow-Up Care at One Sexual Assault Treatment Center' (1996) 22 *Journal of Emergency Nursing* 560.

¹³⁷ Sally Engle Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (U of Chicago Press 2016) [24].

¹³⁸ Janice Du Mont and Deborah Parnis, 'Forensic Nursing in the Context of Sexual Assault: Comparing the Opinions and Practices of Nurse Examiners and Nurses' (2003) 16 *Applied Nursing Research* 173.

¹³⁹ Shana Maier, 'Sexual Assault Nurse Examiners' Perceptions of Their Relationship with Doctors, Rape Victim Advocates, Police and Prosecutors' (2012) 27 *Journal of Interpersonal Violence* 1314.

¹⁴⁰ Gethin Rees, *The Role and Work of Forensic Nurses: An International Comparative Approach* (University of Edinburgh and Economic and Social Research Council 2011).

expertise reveal the underlying *nomos* of sexual violence as a condition warranting both therapeutic concern as well as legal intervention.^{141 142}

‘Medical practitioners who are involved in the post-rape assault intervention [...] find themselves in the peculiar position of being required to meet the normative standards of both medicine and law’¹⁴³ in a way that exceeds the framework of medical competence and malpractice.¹⁴⁴ While the search for evidence plays a large role in the professional responsibility of forensic nurses, researchers have also demonstrated that the desire to establish oneself as a professional may result in forensic nurses documenting evidence that undermines victim credibility even as it shores up nurses’ own professional reputation.^{145 146 147} Gethin Rees cites an example in which nurses record the location of tattoos on a victim’s body so as to cast themselves as ‘neutral reporters’ who simply document everything they see on the patient’s body. While the tattoos themselves are not directly relevant to the evidentiary examination, they can portray the victim as lascivious or wanton when they are placed provocatively on the victim’s body, particularly in cases with the colloquially named ‘tramp stamp’ tattoo, referring to any tattoo centered on a woman’s lower back just above her waistline.

First person accounts of medico-legal intervention identify the potential and actual harm besetting patients/victims who experience it,¹⁴⁸ in part because practitioners prioritize the state’s

¹⁴¹ Sameena Mulla (n 37).

¹⁴² Andrea Quinlan (n 117).

¹⁴³ Gethin Rees, ‘Contentious Roommates? Spatial Constructions of the Therapeutic-Evidential Spectrum in Medicolegal Work’ in I. Harper, T. Kelly and A. Khanna (eds) *The Clinic and the Court: Law, Medicine and Anthropology* (Cambridge UP 2015) [141].

¹⁴⁴ Mary-Jo Del Vecchio Good, *American Medicine: The Quest for Competence* (UC Press 1995).

¹⁴⁵ Rose Corrigan, ‘The New Trial By Ordeal: Rape Kits, Police Practices and the Unintended Effects of Policy Innovation’ (2013) 38 *Law and Social Inquiry* 920.

¹⁴⁶ Sameena Mulla (n 37).

¹⁴⁷ Gethin Rees, ‘Whose Credibility Is It Anyway? professional authority and relevance in forensic nurse examinations of sexual assault survivors’ (2012) 4 *Review of European Studies* 110.

¹⁴⁸ Cathy Winkler, *One Night: Realities of Rape* (Altamira Press 2002).

interests over the patient's.¹⁴⁹ Considerations of the import and significance of forensic evidence and expertise must also account for sites beyond the institutional as the forensic carries weight and meaning for communities. One common cultural narrative about forensic intervention is the popular discourse of the 'rape kit backlog'. Though sexual assault investigation and intervention can be a localized affair,^{150 151} federal policy and national media attention have brought forensic examination to the forefront emphasizing the sexual assault evidentiary examinations that have not been analyzed or processed.¹⁵³ These backlogs exist despite legislative efforts at the local, state and national level, but they also belie a reality in which analysis of such evidence is imagined to always yield a positive legal outcome. The public demand for forensic testing increases as more states pass legislation addressing highly publicized processing delays and as DNA evidence exonerating wrongly-convicted defendants garners a high profile.¹⁵⁴ While the public imagination is preoccupied with the use of medico-legal and forensic evidence in sexual assault cases, the primary utility of such evidence lies in identifying a suspect—a matter which is generally not at issue as most assaults occur at the hands of a perpetrator known to the victim. For example, in the US an estimated 70 per cent of sexual assault victims know the perpetrator.¹⁵⁵ Reviewed in more depth below, research aimed at investigating the link between medico-legal and forensic evidence and legal outcomes in sexual assault trials at the jurisdictional level has produced varying results. Querying the use of forensic and medico-legal evidence provides insight into local discretionary practices pertaining to (a) the specific uses of

¹⁴⁹ Jane Doe, 'Who Benefits from the Sexual Assault Evidence Kit?' in E. Sheehy (ed.) *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa UP 2012).

¹⁵⁰ Rose Corrigan (n 120).

¹⁵¹ Patricia Martin (n 114).

¹⁵³ Sarah Tofte Testing Justice: The Rape Kit Backlog in Los Angeles City and County. Human Rights Watch, March 21, 2009. 9 <https://www.hrw.org/report/2009/03/31/testing-justice/rape-kit-backlog-los-angeles-city-and-county>. Accessed October 9, 2019.

¹⁵⁴ Aviva Orenstein, 'Special Issues Raised by Rape Trials' (2007) 76 *Fordham Law Review* 1585.

¹⁵⁵ Department of Justice, *National Crime Victimization Survey* (Bureau of Justice Statistics 2015).

evidence in the sexual assault trial, (b) the types of evidence which figure most centrally in legal proceedings, (c) the modes of expert presentation and (d) the effect of evidence framing relative to other forms of legal argument such as witness testimony. While public scrutiny has focused on rape kit processing and scholarship has questioned the efficacy of rape kit evidence, research has demonstrated that the impact of medico-legal and forensic evidence largely manifests through courtroom proceedings rather than case outcomes.¹⁵⁶ ¹⁵⁷ Research has also demonstrated that forensic intervention is both jurisdictionally and historically contingent and that statutory contexts, such as colonial rule, inform the standardization of forensic practice.¹⁵⁸ Baxi's research demonstrates how understandings of class, particularly around colonial laborers, deemed workers more durable and less prone to injury as a result of sexual violence, a misconception that endured in forensic textbooks for centuries before it was abandoned.¹⁵⁹

In most settings, the documentation of a sexual assault intervention is standardized, with a particular administrative routine that nurses, social workers, police officers, crime lab analysts and attorneys adhere to as the case moves through the system. The design and delimitations of the documents associated with intervention often reveal the existing normative structure through which sexual violence is understood. For example, the emphasis on identification in the paperwork once again recalls the myth of stranger rape though in reality, most sexual assault victims are able to identify the perpetrators who assaulted them. The gendered and feminized body of the sexual assault survivor is also reflected in paperwork regimes that are not gender-neutral, such as nurse's inability to indicate that vaginal swabs have not been collected because

¹⁵⁶ Heather Hlavka and Sameena Mulla (n 9).

¹⁵⁷ Amber Powell, Heather Hlavka and Sameena Mulla (n 8).

¹⁵⁸ Pratiksha Baxi (n 103).

¹⁵⁹ Pratiksha Baxi, *The Public Secret of Law: Rape Trials in India* (Oxford India Press 2013).

they are not relevant to the rape victim who does not have a vagina.¹⁶⁰ The focus of the exam, as well as the apparatus of the examination suite also reveal assumptions about disability, as mobility is taken for granted in the average forensic clinical configuration. Finally, the emphasis on penetration of the vagina by a penis also suggests the heteronormative bias of the *nomos* of sexual violence, as well as its imaginaries of sex acts that constitute sexual violence.¹⁶¹

Documents can also reveal interpretive dynamism, creativity and independence, as in the case of the domestic violence documentation analyzed by Rashmee Singh, who argues that in-take forms used by grassroots workers in Toronto's specialized domestic violence programs are crucial to the ways in which actors respond to the harm of domestic violence, creating mundane categories for recording the administrative details of violence that prove more effective in creating legal response than the formal criteria laid out by legal statutes.¹⁶²

Gynecology and obstetric medicine form the basis of one set of expertise and technique cultivated by forensic nurses in sexual assault intervention. Here, the cultural practices of the medical specialty, for example norms about the draping of the patient during pelvic examination,¹⁶³ are brought into forensic practice. Indeed, while some patients do prefer to be draped in the course of the forensic examination, others find themselves compelled to pull away the drape and expose their bodies to themselves and the nurses who are examining them, perhaps in the interest of investigation and transparency.¹⁶⁴ The historical roots of gynecology and obstetric medicine in US chattel slavery themselves are relevant to the discursive formation of

¹⁶⁰ Sameena Mulla (n 37).

¹⁶¹ Ibid.

¹⁶² Rashmee Singh, "“Please Check the Appropriate Box”: Documents and the Governance of Domestic Violence" (2017) 42 *Law and Social Inquiry* 509.

¹⁶³ James Henslin and Mae Biggs, 'Dramaturgical Desexualisation: The Sociology of the Vaginal Examination' in J. Henslin and E. Sagarin (eds) *The Sociology of Sex: An Introductory Reader* (Schocken Books 1978).

¹⁶⁴ Sameena Mulla (n 37).

the patient in these medical practices.¹⁶⁵ J. Marion Sims, often credited with the development of the speculum and techniques of obstetric examination and intervention, carried out his experiments on enslaved African-American women.¹⁶⁶ ¹⁶⁷ The exploitation of enslaved women and their inability to consent should be considered in approaching the modern formations of the idealized compliant subject of the forensic gaze. The subject of the raped woman as an extension of the obstetric patient cannot be evacuated of its racialized positionality. Such dynamics also intersect with histories of settler colonialism, dictating whose body can become a spectacle in the courts. In 2011, Cree murder victim Cindy Gladue's pelvis was displayed during the trial of the man accused (and then acquitted) for sexually brutalizing and then murdering her.¹⁶⁸ ¹⁶⁹ The trial focused on Gladue's involvement in a transactional sexual act, producing a narrative of contract and consent that Razack argued was predicated on the gendered disposability of Native women.

Even as clinical practices bear the weight of their historical origins, the clinical treatment and investigation of the raped body is also a site of cultural production. Statutory structures that privilege visual forms prioritize the forensic examiner's approach to collecting and documenting evidence and creating a sensory modality that conflates a patient's voicing and experience of pain into a written record.¹⁷⁰ An emphasis on the use of force and the sustaining of injury, for example, while not explicitly calling for visual evidence, compels the use of images of wounds, or body maps when injury is not visible. These sensory modalities are often affective as well, capturing the harm and emotional weight of experiencing the violence of crime. For example, in

¹⁶⁵ Deirdre Cooper Owens, *Medical Bondage: Race, Gender and the Origins of American Gynecology* (U of Georgia Press 2017).

¹⁶⁶ Terri Kapsalis, *Public Privates: Performing Gynecology from Both Ends of the Speculum* (Duke UP 1997).

¹⁶⁷ Deirdre Cooper Owens (n 165).

¹⁶⁸ Moore and Singh, this volume

¹⁶⁹ Sherene Razack, 'Gendering Disposability' (2016) 28 *Canadian Journal of Women and the Law* 285.

¹⁷⁰ Sameena Mulla, 'Sensing Sexual Assault: Evidencing Truth Claims in the Forensic Sensorium' in S. Hamilton, D. Majury, D. Moore, N. Sargent and C. Wilke (eds) *Sensing Law*, (Routledge 2016).

a study of domestic violence prosecution in Canada, prosecutors demonstrate a preference for images of domestic violence victims, termed ‘data doubles’, and courts seem more emotionally moved by these images as compared to flesh and blood victims.¹⁷¹ Even as clinical practices and legal investigation come to a close, political contexts do not necessarily support the ability of the truth to be revealed. Communities may find the results of the forensic investigation to be complicit in obfuscation of the truth and in the continued inability of the community to heal. Stephanie Kane’s ethnographic study of a forensic investigation of an Argentinian youth’s death demonstrates the role of power in truth-seeking.¹⁷² Kane shows that when the very state officials who likely murdered the boy take control of the forensic investigation of his death and declare it a suicide, they deny his family and peers public recourse to the truth.¹⁷³

Power always inflects the forensic. Within clinical spaces, biological evidence can be found, collected and tested to create a DNA profile of the offender.¹⁷⁴ Utilized in criminal investigations since the mid-1980s, the admissibility of DNA profiling in US courts was seriously challenged for the first time in *People v. Castro*.¹⁷⁵ The New York Supreme Court examined issues related to the reliability and validity of DNA evidence and held that DNA identification theory, practice and techniques are generally accepted among the scientific community. Further, discovery requirements could assist future proceedings and pretrial hearings could determine whether the testing laboratory produced reliable results for jury consideration.¹⁷⁶

¹⁷¹ Dawn Moore and Rashmee Singh, ‘Seeing Crime, Feeling Crime: Visual Evidence, Emotions, and the Prosecution of Domestic Violence’ (2018) 22 *Theoretical Criminology* 116.

¹⁷² Stephanie Kane, ‘The Art of Torture and the Place of Execution: A Forensic Narrative’ (2012) 35 *Political and Legal Anthropology Review* 53.

¹⁷³ *Ibid.*

¹⁷⁴ Butler, John M. Butler, *Forensic DNA Typing: Biology and Technology Behind STR Markers* (Academic Press 2001).

¹⁷⁵ *People v. Castro* 1989. 545 N.Y.S.2d 965 (Sup. Ct. 1989)

¹⁷⁶ Thomas Lundregan, Neal Miller and Tom McEwen, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial* (National Institute of Justice 1996).

Despite early controversies and challenges to the collection of evidence, DNA testing, properly applied, is generally accepted. As a result of the development of DNA testing, biological evidence recovered from the crime scene or materials derived from the human body have taken on new significance. Analysis of saliva, skin tissue, blood and semen can now be used to link criminals to crimes and has become an established part of criminal justice procedure. The linking of a suspect to a crime vis-à-vis DNA, however, still does not address questions of force or consent. Police, prosecutors, defense counsel and courts in the US widely use DNA technology and more than 200 published court opinions support its use.¹⁷⁷ When compared internationally, admissibility standards for forensic evidence demonstrate that different standards lead to similar practices, indicating a need to examine trial practices.¹⁷⁸

Most research on evidence in sexual assault cases has focused on collection by forensic nurses and its resultant impact on case progression through the criminal justice system. In the clinical setting, forensic nurses rely on a range of skills to identify, locate and describe the evidence they record, focusing on the appearance of the evidence with and without visual aids, the presence of pain as an indicator of injury, or smells as signs of putrescence or disease.¹⁸⁰ These techniques rely heavily on expert sensory attunement to locating, recovering and describing forensic evidence. Forensic nurses often testify to their collection on the stand. In addition, forensic investigators carry out their own victim interview independent from the police

¹⁷⁷ Ibid.

¹⁷⁸ Gary Edmond, Simon Cole, Emma Cunliffe and Andrew Roberts, 'Admissibility Compared: The Reception of Incriminating Expert Opinion (i.e. Forensic Science) Evidence in Four Adversarial Jurisdiction' (2014) 3 University of Denver Criminal Law Review 31.

¹⁸⁰ Sameena Mulla (n 37).

interview,¹⁸¹ which is often recorded in the forensic documentation.^{182 183 184} Research must look beyond the collection of testimonial and medico-legal evidence and focus on what counts as evidence and how it is put to use. Much of the scholarship we have discussed here focuses on the wide array of what comes to be constituted as legal evidence and its role in reproducing the *nomos* of sexual violence regardless of the outcome of the case. For every locality, what may count as evidence will vary and will play a distinctive role in the reproduction of local mores around sexuality, race, gender and law.

The role of medico-legal and forensic evidence in the legal resolution of sexual assault cases is an active area of research. Some case studies suggest that expert testimony and forensic evidence provided by sexual assault response programs increases conviction rates such as Kristen Littel and Colleen O'Brien have observed.^{185 186} Findings from a recent study of 400 sexual assault reports in Sussex, England illustrate that while many resources are invested in forensic investigation and forensic data collection, it plays a minor role in sexual assault trials and is rarely entered into court evidence.¹⁸⁷ Similarly, a meta-analysis of 13 studies evaluating the relationship between medico-legal evidence and legal outcomes did not establish a positive correlation between ano-genital injury and charging or prosecution in sexual assault cases, with

¹⁸¹ Heather Hlavka, S.D. Olinger and J. Lashley "The Use of Anatomical Dolls as a Demonstration Aid in Child Sexual Abuse Interviews: A Study of Forensic Interviewers' Perspectives," (2010) 19 *Journal of Child Sexual Abuse* 519.

¹⁸² Heather Hlavka. "Legal Subjectivity Among Youth Victims of Sexual Abuse," (2013) 39 *Law and Social Inquiry* 31.

¹⁸³ Sameena Mulla (n 7).

¹⁸⁴ Sameena Mulla, 'In Mother's Lap: Forging Care and Kinship in Documentary Protocols of Sexual Assault Intervention' (2011) 7 *Law, Culture and Humanities* 413.

¹⁸⁵ Kristen Littel, 'Sexual Assault Nurse Examiner Programs: Improving the Community Response to Sexual Assault Victims' (2001) 4 *Office for Victims of Crime Bulletin* 1.

¹⁸⁶ Colleen O'Brien, 'Sexual Assault Nurse Examiner Program Coordinator' (1996) 22 *Emergency Nurses Association* 532.

¹⁸⁷ Lesley McMillan, 'Police Officers' Perceptions of False Allegations of Rape' (2018) 27 *Journal of Gender Studies* 9.

the sole exception of a jurisdiction in the state of Washington.¹⁸⁸ Janice Du Mont and Deborah Parnis found that neither forensic evidence nor documentation of clinically observed injuries predicted an arrest and charge, while extralegal factors such as the victim's age and relationship to the offender shaped the criminal justice system's response.¹⁸⁹ ¹⁹⁰ On the other hand, some studies found forensic evidence to be a significant predictor of case progression through the justice system¹⁹¹ and clinically documented injury as positively related to both filing of charges and conviction.¹⁹² Another comparative study conducted in New Jersey, Kansas and Massachusetts jurisdictions found a greater likelihood of charging and arrest where forensic nurses and coordinated sexual assault response interagency networks existed, but still concluded that DNA and rape kit evidence were weak predictors of rape trial outcomes.¹⁹³ Contradictory findings regarding impact of medico-legal and forensic data suggest the possibility of a jurisdictional discretionary effect: researchers must be attuned to the potential of jurisdiction-specific discretion for purposes of case-by-case and inter-jurisdictional comparisons. While it could prove challenging to negotiate access to data that may reveal a discretionary effect, patience and long-term commitments can result in a large volume of data—ethnographic and/or

¹⁸⁸ Janice Du Mont and Deborah White *The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases: A Global Review* (WHO Press 2007) [19-25].

¹⁸⁹ Janice Du Mont and Deborah Parnis (n 138).

¹⁹⁰ See also:

Ira Sommers and Deborah Baskin 'Influence of Forensic Evidence on the Case Outcomes of Rape Incidents' (2011) 32 *Justice System Journal* 314.

Cassia Spohn, Dawn Beichner and Erika Davis-Frenzel, 'Prosecutorial Justifications for Sexual Assault Case Rejection: Guarding the Gateway to Justice' (2001) 48 *Social Problems* 206.

Cassia Spohn and Jeffrey Spears 'The Effect of Offender and Victim Characteristics on Sexual Assault Case Processing Decisions' (1996) 13 *Justice Quarterly* 649.

¹⁹¹ Rebecca Campbell, Debra Patterson, Deborah Bybee and Emily R. Dworkin, 'Predicting Sexual Assault Prosecution Outcomes: The Role of Medical Forensic Evidence Collected by Sexual Assault Nurse Examiners' (2009) 36 *Criminal Justice and Behavior* 712.

¹⁹² Margaret McGregor, Janice Du Mont and Terri Myhr, 'Sexual Assault Forensic Medical Examination: Is Evidence Related to Successful Prosecution?' (2002) 39 *Annals of Emergency Medicine* 639.

¹⁹³ M. Elaine Nugent-Burakove, Patricia Fanflik, et. al. (n 115).

quantitative. Developing complex comparisons of similar cases allows researchers to identify likely impacts of judicial discretion.

Even as laboratories across the US continue to face substantial increases in the number of requests for forensic testing in sexual assault cases, the impact and usefulness of such testing is widely debated. To date, little socio-legal scholarship addresses what makes or unmakes forensic evidence in the courtroom,¹⁹⁴ and limited evidence exists to support claims that forensic evidence or testimony by medical experts in sexual assault trials affects the rate of conviction. In a review of Canadian cases, Georgina Feldberg found that medical evidence obtained by expert medical examinations made few positive contributions to the criminal case.¹⁹⁵ Medico-legal evidence can also circumvent rape shield statutes by introducing complainants' personal information through their medical charts.¹⁹⁶ Feldberg further argues that testimony from family and friends rather than from experts was compelling to judges and juries despite limited forensic and material evidence. While some scholars have questioned the value of uncritically continuing to collect medical forensic evidence,¹⁹⁷ especially as it bears upon the question of consent and 'corroboration',¹⁹⁸ others call for systematic studies of courtroom procedures and practices within local contexts.¹⁹⁹

The importance of forensic evidence in sexual assault adjudication calls into question the use of expertise in investigating and prosecuting sexual violence. As an anthropological figure, the expert reveals 'socialization practices such as training and apprenticeship; cultural processes

¹⁹⁴ Sheila Jasanoff (n 10).

¹⁹⁵ Georgina Feldberg, 'Defining the Facts of Rape: The Uses of Medical Evidence in Sexual Assault Trials' (1997) 9 *Canadian Journal of Women and Law* 89.

¹⁹⁶ Lise Gottell, 'When Privacy is Not Enough: Sexual Assault Complainants, Sexual History Evidence and Confidential Records' (2006) 43 *Alberta Law Review* 743.

¹⁹⁷ Janice Du Mont and Deborah Parnis (n 138).

¹⁹⁸ Georgina Feldberg (n 195) [114].

¹⁹⁹ Rebecca Campbell, Debra Patterson, Deborah Bybee and Emily R. Dworkin (n 191).

of evaluation, validation and authentication; the institutionalization of ways of seeing and speaking into authorized and authorizing domains; and the naturalization of specified activities as specialized knowledge'.²⁰¹ By considering the court of law as an authorizing domain, investigators can examine the socialization practices and normative structures of evaluation and validation by the expert. The authoritative institutions and voices through which law exercises discipline over its subjects has encompassed both legal and non-legal institutional authority, intersecting with the world of medicine, statistics and scientific specialization.^{202 203 204 205} The use of medico-legal and forensic evidence in sexual assault trials reflects the rule of medical and scientific knowledge animating the discipline of sex and the sexed body within the court of law.^{206 207 208} Researchers can consult these literatures in order to generate frameworks for exploring the processes that render evidence from a series of findings or statements into signs of either consensual or non-consensual sex acts during the trial, producing cultural narratives through legal practices. Rose Corrigan's article exploring the approaches of law enforcement agencies to complainants' participation in forensic intervention found that the most significant use of the 'rape kit' was to earn the complainant good will by demonstrating her commitment to the investigative process by submitting to invasive procedures. Corrigan termed this phenomenon, 'the new trial by ordeal'.²⁰⁹ Mulla found that this same expectation also applied to the treatment regimens of forensic intervention; she argued that notions of patient compliance seep into stereotypes about 'good' and 'bad' victims, showing that institutional actors were less

²⁰¹ Summerson Carr, 'Enactments of Expertise,' (2010) *Annual Review of Anthropology* 17 [18].

²⁰² Michel Foucault, *Power/Knowledge: Selected Interviews and Writings* Harvester, 1980 [93]

²⁰³ Michel Foucault (n 19).

²⁰⁴ Sheila Jasanoff (n 10).

²⁰⁵ Carol A. Jones, *Expert Witness: Science, Medicine, and the Practice of Law*. 1994 Clarendon Press

²⁰⁶ Pratiksha Baxi (n 3).

²⁰⁷ Michel Foucault (n 19).

²⁰⁸ Thomas Lacquer, *Making Sex: Body and Gender from the Greeks to Freud*. 1990 Harvard UP.

²⁰⁹ Rose Corrigan (n 145).

likely to think well of patients who did not accept all of the recommended therapeutic regimens they were offered, including emergency contraception.²¹⁰

The presentation of evidence by expert witnesses reflects particular mores of discourse that convey the expert status of the speaker.^{211 212} For example, forensic medical examiners in Scotland present only ‘neutral reports’ of their findings, eschewing interpretation of the injuries and materials discovered during forensic examination of sexual assault victims.²¹³ Self-presentation techniques to communicate expert status may include use of specialized language, reference to or demonstration of professional experience, training or education, or strategies that invoke neutrality/objectivity on the part of the expert.²¹⁴ Opposing parties may challenge these same criteria through presenting their own expert witness or by cross-examination,²¹⁵ although the ability to challenge forensic evidence may be tied to the availability of resources.^{216 217}

In a US criminal trial, the trier of fact, whether judge or jury, must come to a verdict that meets the standard of ‘beyond a reasonable doubt’.²¹⁸ Thus, the testimony of both expert and fact witnesses constitutes the truth-making practices through which the trier of fact can attach a level

²¹⁰ Sameena Mulla (n 37).

²¹¹ Thomas Gieryn, *Cultural Boundaries of Science: Credibility on the Line*. 1999 University of Chicago Press

²¹² Michael Saks and David Faigman, “Expert Evidence After Daubert,” 2005 Annual Review of Law and Social Science, 1: 105.

²¹³ Gethin Rees, ‘Constructing Incontrovertible Evidence: How Forensic Medical Examiners Disseminate, Constrain and Sustain Shared Visions and Practices’ (Society for the Social Studies of Science conference, Washington D.C. October 2009).

Gethin Rees, *The Role and Work of Forensic Nurses: An International Comparative Approach* (University of Edinburgh and Economic and Social Research Council 2011).

²¹⁴ Carr 2010 (n 201).

²¹⁵ Mark Findlay and Julia Grix, “Challenging Forensic Evidence—Observations on the Use of DNA in Certain Criminal Trials,” (2003) Current Issues in Criminal Justice 14: 269.

²¹⁶ Keith A. Findley, “Innocents at Risk: Adversary Imbalance, Forensic Science, and the Search for Truth,” (2008) Seton Hall Law Review. 38: 893.

²¹⁷ Saul Halfon, “Collecting, Testing, Convincing: Forensic DNA Experts in the Courts,” (1998) Social Studies of Science 28: 801.

²¹⁸ Robert Burns, Marianne Constable, Justin Richland and Winnifred Sullivan (n 82).

of certainty or uncertainty to the accounts presented by the prosecution and the defense.^{219 220} Whether the witness is compelling or persuasive depends as much on the content of the testimony as on its form.²²¹ Expert witnesses' competence can be evaluated on their ability to communicate in a manner that generates the appropriate affect—whether it be to bring about certainty or doubt.²²² For example, forensic nurses and prosecutors debate the value of using photographic images of genital injury in court, finding the visceral nature of the images often alienates juries.²²³ Even as they seek to establish a particular set of facts before the court, court personnel are aware that they must balance information in a way that is suitable to the jury and which will engender the desired response, for example belief or disbelief rather than disgust.²²⁴ ²²⁵ Just as prosecutors coach complainants to convey the appropriate affective demeanor, namely avoiding anger,^{226 227} expert witnesses presenting or evaluating forensic evidence must engage the appropriate range of affective or emotive qualities conveying knowledge, authority, objectivity and reason. These qualities are cultivated by expert witnesses within the time and space of the courtroom and engage with theories of emotional labor, understanding emotional labor not only as the way in which experts manage their own emotional and affective composure, but also how they contribute to particular affective sensibilities in the course of their

²¹⁹ Robert Burns (n 83).

²²⁰ Tom Baker, Alon Harel, and Tamar Kugler, 'The Virtues of Uncertainty in Law: An Experimental Approach,' (2004) *Iowa Law Review* 89: 443.

²²¹ John William Strong, 'Language and Logic in Expert Testimony: Limiting Expert Testimony by Restrictions of Function, Reliability and Form,' (1992) *Oregon Law Review* 71: 349.

²²² James F. Voss and Julie A. Van Dyke, 'Narrative Structure, Information Certainty, Emotional Content, and Gender as Factors in a Pseudo Jury Decision-Making Task,' (2001) *Discourse Processes* 32: 215.

²²³ Sameena Mulla (n 52).

²²⁴ Roger Giner-Sorolla and Pascale Russell, "Anger, Disgust and Sex Crimes," in *Rape: Challenging Contemporary Thinking*. M. Horvath and J. Brown eds. (2009) Willan Publishing, 46-73.

²²⁵ Sameena Mulla (n 37).

²²⁶ Amanda Konradi (n 23).

²²⁷ Peggy Reeves Sanday (n 51).

participation.²²⁸ It is worth considering the differing gender conventions related to nursing and medical fields and their affects as they testify on the stand. Like the juridical, research on the clinical components of sexual assault intervention benefit from nuanced consideration of the *nomos* of sexual assault.

Conclusion

It is imperative that research on sexual assault take into account the *nomos* of sexual violence which can be achieved by interrogating the role of medico-legal evidence in contemporary sexual assault trials and exploring the constitution of sexual assault cases through nuanced institutional ethnography that bridges both juridical and clinical spaces. Treating forensic practices as they unfold along a ‘therapeutic-evidentiary spectrum’ tied to a particular spatial-temporal regime accounts for the specificity of the cultural setting in which these practices take place.²²⁹ Taking the courtroom as one institutional site in which the ‘cultural scaffolding of rape’ is manifest,²³⁰ socio-legal research can track the institutionalization of cultural narratives of sexual violence.

Research that considers the legal and therapeutic components of the *nomos* of sexual violence will play a considerable role in establishing innovative approaches to examining rape and sexual assault. Moving forward, researchers must think creatively about the courts and beyond as law assesses new technologies and contributes to the discursive practices around these technologies. Examining these processes must be done with a critical eye towards ways in which

²²⁸ Arlie Hochschild, *The Managed Heart: Commercialization of Human Feeling* (1983) University of California Press.

²²⁹ Gethin Rees (n 143) [156].

²³⁰ Nicola Gavey (n 70).

technologies may re-inscribe existing norms and standards.^{231 232 233} Gendered and racialized identities are always in operation in sexual assault intervention and scholars must highlight these practices explicitly rather than taking them for granted. Disability, citizenship status and queer identity are other important frontiers to probe in exploring the *nomos* of sexual violence. As researchers find themselves at the early stages of their research, identifying the object of analysis and building a process-oriented approach to querying the intersection of law, medicine and science in establishing or undermining claims about the object of analysis provides a critical lens for potential insight.²³⁴

One approach is to focus on medical knowledge and evidence and to follow what legal anthropologist Deborah Poole has called the ‘visual economy’ or ‘circulation’ of artifacts as they are forged and formed through various practices and in anticipation of particular uses and audiences.²³⁵ Such approaches balance the material contingencies of practice with theoretical insights, particularly within the growing literature on theories of sexual violence.^{236 237 238} Weighing the *nomos* of sexual violence carefully and producing a detailed understanding of the ways in which law and medicine constitute sexual assault within a particular cultural milieu may reveal how legal resources in cases of sexual assault inform social priorities and norms. For those scholars who take an active role in policy debates, a carefully considered research project that

²³¹ Louise Ellison and Vanessa E. Munro ‘Of “Normal Sex” and “Real Rape”’: Exploring the Use of Socio-Sexual Scripts in (Mock) Jury Deliberation’ (2009) 18 *Social and Legal Studies* 291.

²³² R.P. McDermott and D.R. Roth, ‘The Social Organization of Behavior: Interactional Approaches’ (1978) 7 *Annual Review of Anthropology* 3215.

²³³ Dorothy Smith, *Institutional Ethnography: A Sociology for People*. (2005) Altamira Press.

²³⁴ Alain Pottage, ‘The Socio-Legal Implications of the New Biotechnologies,’ (2007) 3 *Annual Review of Law and Social Science* 321.

²³⁵ Deborah Poole, *Vision, Race and Modernity: A Visual Economy of the Andean Image World* (Princeton UP 1997).

²³⁶ Renée Heberle and Victoria Grace, *Theorizing Sexual Violence*. (2009) Routledge.

²³⁷ Miranda Horvath and Jennifer Brown, *Rape: Challenging Contemporary Thinking* (2009) Willan Press.

²³⁸ Carine Mardorossian, “Towards a New Feminist Theory of Rape,” 2002 *Signs: A Journal of Women in Culture and Society* 27: 743

understands the roles that legal and therapeutic practices play in the *nomos* of sexual violence will lead to more effective and realistic policy innovations. Such studies can also ultimately reveal aspects of the state that are invested in sexual violence adjudication and medicalized intervention as part of a larger normative apparatus that reproduces carceral regimes, gender and racial inequality.

The *nomos* of sexual violence is also typified by silence and shame. While it is often difficult for the public to engage the topic openly, scholars also face the difficulty of producing research that invites readers to the discussion in a frank and open way. Broadening the focus of our research to encompass not only the event of sexual assault, but the entire institutional and social system through which we respond to sexual violence, gives readers diverse points of entry into this important conversation. These points of entry may encompass general cultural attitudes to sexual violence and rape, the intricacies of adjudication or the particular mores governing medico-legal sexual assault intervention. It is this relentless creativity and willingness to reinvent our ways of understanding sexual assault, rape and rape response that help researchers carve out new territory and language with which to rigorously research sexual violence and its *nomos*.