

- Q: You don't remember what happened in your dorm room?
- Q: But, you are positive that you did not consent to having sex with him?
- Q: You don't remember how your pants got off?
- Q: But, you are positive that you did not take your pants off?
- Q: You don't remember how your bra was removed?
- Q: But, you are positive that you did not take your bra off?
- Q: You don't remember how your underwear were removed?
- Q: But, you are positive that you did not take your underwear off?
- Q: You don't remember what type of sex occurred?
- Q: But, you are positive that you did not perform oral sex on him?

**Point: Bolstering the victim's memory.**

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- Q: You clearly remember my client harassing you at the club?
- Q: You have a vivid memory of walking out of the club?
- Q: You clearly remember walking down those stairs?
- Q: You have a vivid memory of walking to the car?
- Q: You have a vivid memory of the ride to your dorm?
- Q: You have a clear memory of what you talked about on the way to the dorm?
- Q: But you don't remember \_\_\_\_\_?
- Q: But you don't remember \_\_\_\_\_?

**Point: Victim remembers sex but nothing leading up to it.**

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- Q: Now, let's talk about what happened when you got to the room.
- Q: You were in the room alone?
- Q: You do not recall kissing the accused?
- Q: You do not recall making out on your bed?
- Q: You do not recall taking off your clothes?
- Q: You do not recall touching the accused?
- Q: You do not recall him kissing your breasts?
- Q: The next thing you remember is the accused on top of you?

Q: Having sex with you?

Q: After that point, you can remember what happened?

Q: You remember what you did?

Q: You claim you pushed him?

Q: You claim you fought him?

Q: You remember what you said?

Q: You claim you said, "no?"

Q: You claim you screamed, "stop?"

Q: You remember telling the accused that you did not want sex?

Q: You remember telling the accused to leave your room?

**Point: The victim claims she does not know how the accused got into her room.**

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Q: How did the accused get into your dorm room?

A: I don't know.

Q: You didn't let him in?

A: I did not let him in.

Q: You are positive that you did not open the door for him?

A: I would not have done that.

Q: You are positive that you did not invite him into the room?

A: Yes.

Q: Let's talk about how he could have gotten in?

A: Okay.

Q: He did not have a key, did he?

A: Not that I know of.

Q: You did not give him a key?

A: No.

Q: You never saw him with a key?

A: No.

Q: You only have one key to your door?

A: I guess.

Q: That key was on your keychain all night long?

A: I don't know.

Q: The only way into your room is the front door?

A: Yes.

Q: There is only one door?

A: Yes.

Q: The door has a lock that locks automatically?

A: Yes.

Q: When the door closes, it locks?

A: Yes.

Q: You don't have to turn the lock to lock it?

A: No.

Q: It locks even if you don't try to lock it?

A: Yes.

Q: It also has a dead bolt?

A: Yes.

Q: The dead bolt allows you to dead bolt the door from the inside?

A: Yes.

Q: Did he kick the door open?

A: I don't know.

Q: Did you hear anyone kicking the door?

A: No.

Q: You have been in the same dorm room since the alleged assault?

A: Yes.

Q: You have not noticed any damage to the door?

A: Not really.

Q: You have not noticed any damage to the door?

A: I didn't look?

Q: You have not noticed any damage to the door?

A: No.

Q: You have not noticed any damage to the doorframe?

A: No.

Q: You have not noticed any damage to the lock?

A: No.

Q: You have not noticed any damage to the door handle?

A: No.

Q: The police did not notice damage to the door?

A: I don't know.

Q: You didn't tell the police that you thought someone kicked your door in?

A: No.

Q: You didn't report any damage to the door?

A: No.

Q: He could not have climbed through the window?

A: I'm not sure. Anything is possible.

Q: It is possible that you opened the door and invited him in?

A: No, that didn't happen.

Q: Your room is on the 5<sup>th</sup> floor of the building?

A: Yeah.

Q: There is no balcony?

A: No.

Q: Unless he is Spider-Man, he did not come through the window?

A: I don't know?

Q: Your window was locked?

A: I don't remember.

Q: The window was not broken?

A: No.

Q: Have you ever witnessed anyone climb through one of these 5<sup>th</sup> floor windows?

A: No.

Q: Have you ever climbed out your window?

A: No.

Q: It is a 50 foot drop to the ground, from your window?

A: I don't know. I'm not good with numbers.

Q: You think you could jump out your window and survive the fall?

A: Never tried.

Q: You didn't report any damage to the window?

A: No.

Q: He could have walked through the wall, like a ghost?

A: I don't think so.

Q: Or, you could have let him in?

A: I didn't let him in?

## **CLOTHING REMOVAL**

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While an adult can be undressed while sleeping, and without waking up, it is unlikely unless the victim is drugged or heavily intoxicated. In some cases, the victim undresses herself or assists the accused in taking off her clothing. Then, consensual sexual activity occurs. Later, the victim claims the clothing was removed without consent, while she remained asleep. If the defense is *consent*, the cross examiner must question the victim about the type and fit of the clothing worn, and demonstrate that it is improbable she slept through the removal of all of her clothing, only to wake up as the sex was underway.

### **Point: Victim undressed while sleeping, but did not wake up.**

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Q: You testified that you went to bed fully clothed?

Q: When you woke up, you were undressed?

Q: You have no idea how your clothes were removed?

Q: You went to bed wearing skintight jeans?

Q: Skinny jeans they are called?

Q: The jeans went from your waist to your ankles?

Q: They were tight?

Q: They are skintight?

Q: They take a few minutes to put on?

Q: Even if you are perfectly sober, the jeans take time to put on?

Q: Because they are so tight?

Q: You cannot just slip off the jeans?

Q: When you are removing them, it takes effort?

Q: You did not feel anyone removing your pants?

Q: No tugging on them?

Q: No pulling on them?

Q: You claim that you were asleep while these jeans were being removed from your body?

Q: You were also wearing a shirt?

Q: You clearly remember wearing a shirt when you went to bed?

Q: It was long-sleeved?

Q: It was a tight sweater?

Q: When you woke up, you claim you were naked?

Q: You were wearing nothing?

Q: No pants?

Q: No shirt?

Q: No bra?

Q: No underwear?

Q: At the time of the alleged assault, you were 5' 7"?

Q: You weighed about 185 pounds?

# CHAPTER 3: CROSS EXAMINING THE SEXUAL ASSAULT FORENSIC EXAMINER

## GENERAL PURPOSE OF THE SEXUAL ASSAULT FORENSIC EXAM

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This series of questions establishes the purpose of the sexual assault exam and the examiner's responsibilities.

**Point: You carefully look for evidence so that it can be used by law enforcement?**

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Q: The purpose of the sexual assault exam is to collect evidence?

Q: The exam takes a few hours?

Q: The exam is deliberate?

Q: You carefully examine the entire body?

Q: You carefully record what you see?

Q: You carefully document evidence?

Q: If you see injuries, you take photos of the injuries?

Q: You preserve evidence so that it can be used by law enforcement?

## COLLECTION AND PRESERVATION OF EVIDENCE

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This series of questions establishes the examiner's duty to properly document and collect evidence to be used in a criminal trial.

**Point: The sexual assault examiner is a vital link in the collection of evidence for the crime laboratory.**

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Q: Crime laboratories analyze evidence collected in sexual assault cases?

Q: Crime laboratories rely on medical examiners to collect and preserve evidence in sexual assault cases?

Q: Law enforcement rely on medical examiners to collect and preserve evidence in sexual assault cases?

Q: If evidence is not collected, then it cannot be examined?

Q: If evidence is not preserved, then it cannot be examined?

Q: As a sexual assault examiner, you play a vital role in the collection and preservation of evidence?

Q: The collection of evidence is one of your primary roles as a sexual assault forensics examiner?

## **EVIDENCE COLLECTION**

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In a sexual assault case, it is vital that sexual assault examiners recognize and properly collect evidence, whether the evidence is inculpatory or exculpatory. When cross-examining a sexual assault forensic examiner, the lawyer must highlight that it is crucial for the examiner to properly identify and collect evidence. The jury must understand that the failure to identify and collect evidence can make or break a case, and can cause serious doubt about what actually happened in the case.

**Point: It is vital that examiners recognize and properly collect evidence.**

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Q: Sex assault examiners must know how to recognize potential evidence?

Q: Sex assault examiners must know how to collect evidence?

Q: Sex assault examiners must know how to preserve evidence?

Q: The evidence you collect may be sent to a forensics laboratory?

Q: The evidence you collect may be used in a criminal case?

Q: The proper collection of evidence is critical in a criminal case?

Q: The preservation of evidence is critical in a criminal case?



## **COLLECTION OF EVIDENCE: TIME FRAME GUIDELINES**

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In sexual assault cases, evidence should be collected and preserved as soon as possible; physical and forensic evidence is lost and degraded over time. The cross examiner must highlight these facts to the fact finder.

**Point: Evidence is lost from the body over time; it is important to collect evidence in a timely manner.**

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Q: Now I want to talk to you about evidence in sexual assault cases?

Q: In a sexual assault case, evidence is lost from the body over time?

Q: Evidence is lost from clothing over time?

Q: It is important to collect evidence properly?

Q: It is important to collect evidence in a timely manner?

Q: Evidence should be collected as soon as possible to prevent it from being lost?

Q: Evidence should be collected as soon as possible to prevent it from being degraded?

## **DOCUMENTATION OF PHYSICAL INJURIES**

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In sexual assault cases where bleeding is noted, the examiner should document the source of the bleeding in their report. This fact is critical at trial; the source of the bleeding can help prove the guilt or innocence of the accused. Often, however, the examiner will note the presence of blood, but will not indicate the source. This can be misleading or confusing to the jury, who may associate the blood with an injury inflicted during the alleged crime, even if no injury exists. Blood can be attributed to a variety of sources that include, among other things, injury from consensual or non-consensual sex, a past or current menstruation, and certain methods of birth control.

**Point: Source of vaginal bleeding should be documented.**

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Q: In your exam, you noted vaginal bleeding/spotting?

Q: In your report, it does not say what caused the bleeding?

Q: According to your training, when vaginal bleeding is found, the examiner should document the source of the bleeding?

Q: In this case, you were unable to determine the source of the bleeding?

Q: You did not see any cuts?

Q: You did not see any tears?

Q: You did not see any rips?

Q: If you had seen the source of the bleeding, you would have documented it?

**Point: Vaginal bleeding/spotting can be caused by multiple sources.**

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Q: In your exam, you noted vaginal bleeding/spotting?

Q: In your report, it does not say what caused the bleeding?

Q: Blood can be attributed to a variety of sources?

Q: Blood can be attributed to an injury?

Q: Blood can be attributed to an injury caused by consensual sex?

Q: Blood can be attributed to an injury caused by non-consensual sex?

Q: Blood can be attributed to certain methods of birth control?

Q: Blood can be attributed to a current menstruation?

Q: Blood can be attributed to a past menstruation?

**FORCED ORAL SODOMY CASES**

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In a sexual assault case involving an alleged forced oral sodomy, the examiner should carefully look for and document any injuries to the mouth. In violent oral sodomy cases, the mouth is commonly injured. If an alleged victim describes a violent oral assault, then the lack of injuries to the mouth are noteworthy, depending on the time elapsed from the assault to the examination.