

#### 4.4 SWAB SAMPLE

This is a criminal sexual assault prosecution. The defendant is accused of sexually assaulting Phyllis Moore on September 20, [-1], at the U.S. Naval Training Center at Great Lakes, Illinois.

After the alleged assault, Moore was treated and examined by a naval doctor, Dr. Ralph Tucker. Dr. Tucker took a vaginal swab of the victim. He then placed the specimen in a preservative tube and personally delivered it to nearby St. Mary's Hospital. He handed it to hospital laboratory technician Robert Jacobs.

Jacobs prepared and placed on the tube a label that contained Dr. Tucker's name, Phyllis Moore's name, and the entry: "9/20/[-1] — vaginal smear." Jacobs then dated and initialed the label and placed the tube in the hospital's locked vault.

One week later, Jacobs removed the tube from the vault and delivered it to Dr. Allan Jones, the laboratory pathologist. Dr. Jones's tests indicated the presence of semen in the specimen. Dr. Jones had not seen the specimen before September 27. He dated and initialed it when he received it from Jacobs. It was sealed when he received it.

After breaking the seal and testing the specimen, Dr. Jones kept it and the tube in his laboratory until today's date.

Two weeks before this trial began, technician Robert Jacobs died of a heart attack. No other technician saw the tube in question.

Assume Dr. Tucker has testified to preparing the vaginal swab and taking it to St. Mary's Hospital on September 20. He says he left it with a technician whose name he does not know. He made no notation on the tube of its contents. He does not know what the technician did with the tube.

There are no other documents concerning this tube and the specimen.

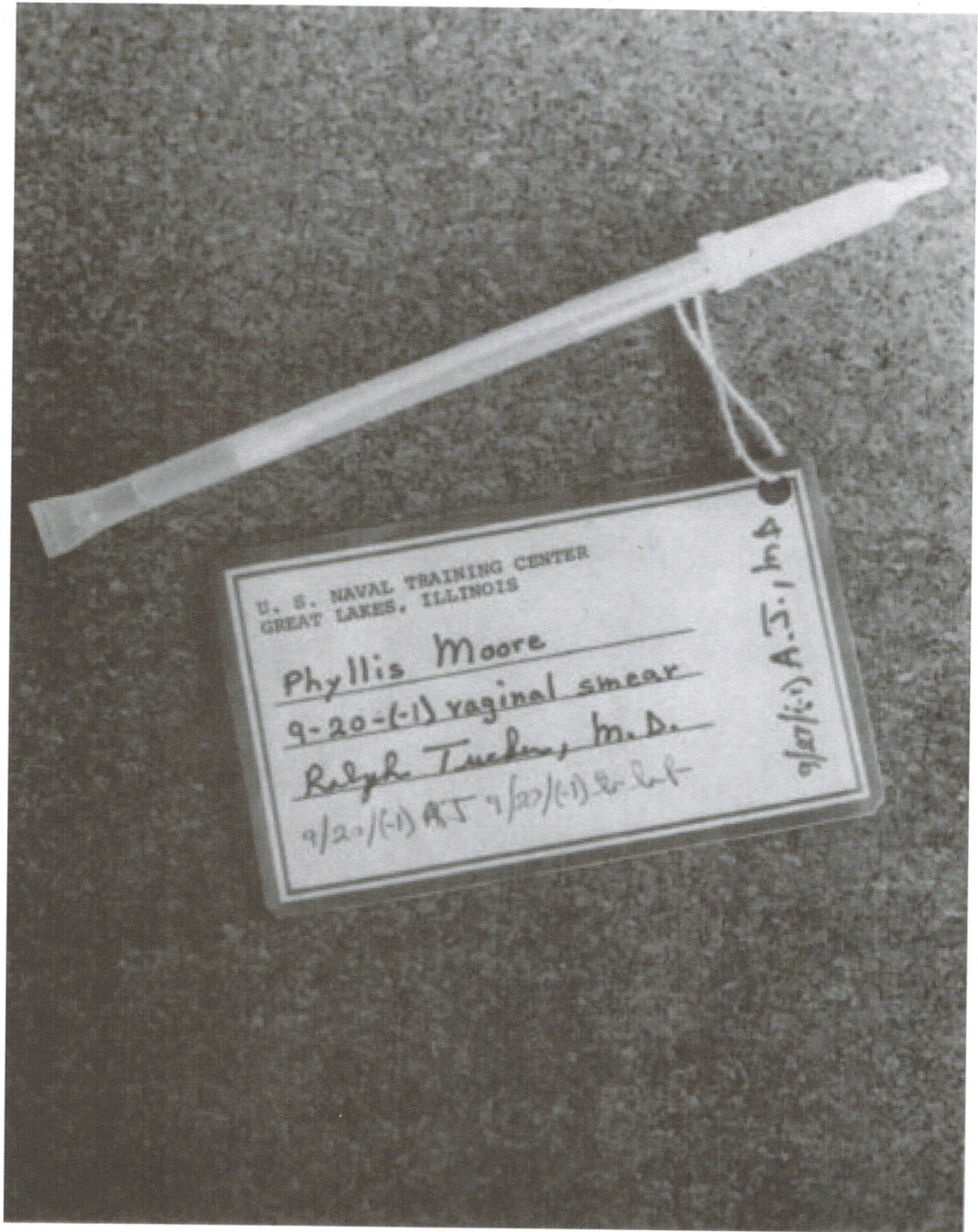
The case is now on trial. Phyllis Moore has already testified. The witness is Dr. Jones.

1. For the prosecution, get the tube in evidence, assuming Dr. Tucker testified he sealed the tube and recognized the broken seal as the one he placed on

the Moore specimen tube September 20. (Prepare and bring an appropriate exhibit to class.)

2. For the prosecution, get the tube in evidence, assuming Dr. Tucker did not seal the tube, but that Dr. Jones knows it was hospital practice to seal and label such tubes when brought in for testing.

3. For the defense, oppose the offer.



U. S. NAVAL TRAINING CENTER  
GREAT LAKES, ILLINOIS

Phyllis Moore

9-20-(-1) vaginal smear

Ralph Tucker, M.D.

9/20/(-1) AT 9/22/(-1) L.L.L.

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