J Forensic Sci, Oct. 1978, Vol. 23, No. 4

A. F. Schiff,[1] *M.D.*

Rape in the United States

Although a great percentage of the population in the United States is unaware of the full extent of the crime of rape, police authorities know the crime is definitely increasing. In the four-year period ending in 1976, the Federal Bureau of Investigation (FBI) [*1*] reported a 21% increase (Fig. 1). In the last reported year, 1976, there was an estimated total of 56 730 forcible rapes. This was a 1% increase over 1975. Stated more succinctly, in 1976, of every 100 000 females in this country, 52 were rape victims; one rape was occurring every 9 min. In 1974, the rate was one rape every 10 min and in 1972, it was one every 11 min.

Most law enforcement officials readily acknowledge that the offense is one of the most underreported crimes and that the published numbers do not reflect the entire problem. Although the FBI does not and cannot publish statistics on the unreported rapes, some authors quote various anonymous "authorities" that anywhere from five to ten times the number of reported cases are unreported. This author acknowledges that numerous cases are, in fact, unreported, but will not attempt to estimate the frequency. There are many reasons for this conduct on the part of rape victims. A victim may be terrified by an assailant who promises to return and kill her if she goes to the police; she may be frightened by the stories about the trial she hears from other women; she may fear rejection by a husband, a boyfriend, or even neighbors; she may feel that even if she does report the crime, nothing will be done and she will have suffered embarrassment and frustration to no avail.

In quoting the above statistics, this author cannot refrain from making the following aside: if one wishes to learn anything about crime in the United States, all he has to do is to

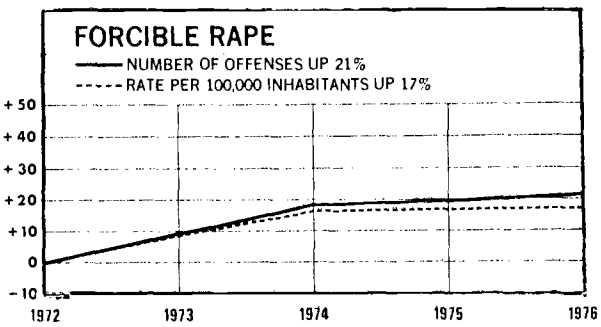

FIG. 1—*Increase in the incidence of rape offenses, 1972 through 1976. (Reprinted by permission from Ref* 1.)

Received for publication 3 Nov. 1977; revised manuscript received 15 Dec. 1977; accepted for publication 11 Jan. 1978.

[1]Deputy medical examiner, Dade County, Fla.

request at the nearest library reference desk a copy of the latest *Crime in the United States, Uniform Crime Reports*, published annually by the FBI. In this 304-page report (1976), one can find practically any type of statistic for which he is searching, ranging from "Crime in the States," "Crime in Rural Counties," and "Crime Rates by Population Groups," to "Assaults on Law Enforcement Officers by Geographical Divisions and Population Groups." Contrariwise, officials in many foreign countries, notably Greece, Italy, and Spain, are extremely reluctant to release any statistical information about crime, especially about rape.

Many people, including police and legal authorities, biosociologists, psychologists, psychiatrists, and sociologists, have long sought the reason and, with it, possibly a solution to the increase in the crime of rape. In quest of an answer, social workers have had long, in-depth interviews with sex offenders. Some believe the cause to be the widespread sexual permissiveness that pervades every stratum of American society and the radical change in women's dress. At least one jurist [*2*] professed these beliefs last May when he let off a 15-year-old Madison, Wisconsin defendant with simple probation, declaring it was a young boy's "normal reaction" to sexual permissiveness and provocative clothing.

Some believe the laws to be lax to the point of protecting the offender rather than the victim. This laxity was demonstrated quite graphically in New York City where the intended victim drove off her would-be assailant with a long hatpin. The offender was released, but the woman was charged with assault and battery. Some believe that rape has been swept up in the general intensification of all crimes in the United States. As there has been an upsurge in homicides, aggravated assaults, robberies, burglaries, car theft, and shoplifting, so there has been a similar rise in the crime of rape.

Some believe the downgrading of the penalties for the crime to be the answer. In Florida, rape formerly was a capital crime, with death in the electric chair as the ultimate penalty at the discretion of the judge or jury. Today, it is a capital crime only if perpetrated on a child under the age of 11.

At this time, no one factor has been determined to be the principal reason for the increase in the crime. Very probably, it is a complex combination of many factors, sociocultural and socioeconomic, including a transient shifting population, ever-weakening laws, and a general trend toward lawlessness together with a contemptuous disregard for legally constituted authority.

Attitude Toward Victim

Within the past seven years, there has been a complete turn about in society's attitude toward the victim. The pendulum of public opinion has swung the wide arc from the time rape was hushed-up, to be hidden deep in the closet, to today's viewpoint related in numerous articles on the subject both in professional [*3*] and lay publications [*4–6*]. In 1974, opening the closet door fully, NBC [*7*] exhibited a 2-h movie-for-TV as a strong argument for a closer and more penetrating look at existing statutes on rape and the need to change them. At the same time, another channel (station WTVJ) was depicting a series on "The Sex Offender" during prime-time news. The days are past when a desk sergeant can look down suspiciously on a victim and say, "You claim you were raped. I don't see any bruises." No longer is the cover-up being maintained.

In 1970, public awareness of the rape victim's plight and problems was stimulated by the establishment of the Center for Rape Concern at the Philadelphia General Hospital. This was one of the first official acknowledgments that the rape victim had undergone a harrowing experience and was in need of some understanding, counseling, and possibly, psychiatric care. The following year saw a "speak-out" on rape in New York City sponsored by radical feminists. Women who had been raped stood up and, some almost in tears, related their personal experiences. In June 1972, in Washington, D.C., a Rape Crisis

Center was opened. It was to become the prototype for many more centers throughout the nation. In Chicago, the South Side Rape Action Project was formed; in Madison, Wisconsin, the Women's Coalition for Rape Prevention became a reality; in Boston, Massachusetts, the Boston Victim Counseling Program was formed. Less than nine months later, the National Organization for Women (NOW) created a National Task Force on Rape. In the same year, the New York City Police Department established the first Sex Crimes Analysis Unit, placing a woman in charge. Other police departments in Chicago, Denver, Indianapolis, Miami, and Washington, D.C. started assigning women officers to rape cases on the theory that a rape victim would feel more at ease and talk more freely to another woman. The author applauded this move, believing one woman (officer) may indicate to another woman (alleged victim) that her story is not convincing (if such is the case) without being labeled a "male chauvinist." Male officers attended "sensitivity" classes to better understand the crime, the victim, and their own conduct in the investigation of the crime. In Philadelphia, male relatives and friends of victims initiated a new group, Men Organized Against Rape, which gave counsel to husbands, fathers, and boyfriends of rape victims.

Spin-offs from Crisis Centers included lobbying groups that have been instrumental in changing archaic and stringent laws such as the corroboration requirement. Corroborating evidence refers to the discovery of seminal fluid, physical signs of an assault such as contusions, lacerations, or scratches, an eyewitness, or any other findings that can substantiate the victim's allegation that she had been sexually assaulted. At this writing, more than 36 states have passed legislation eliminating the need for corroborating testimony. Although such testimony is desirable, it is not necessary in the prosecution of an alleged rapist.

Privately, many believe the solicitude and sympathy lavished on rape victims is almost a form of overkill. Originally, women advocates demanded the same attention for the rape victim as for the victim of a brutal assault on the street or of a vehicular accident. If a man was beaten up and bloodied in some dark alley, he would be rushed to the nearest hospital for emergency treatment. A rape victim, however, would be passed off from one hospital to another until she reached a city or county hospital that could not refuse her. Today, when the victim is taken to a hospital such as one with which the author had been affiliated, she is attended to promptly and afforded the privacy very much needed after such an ordeal. A nurse notifies a physician who responds immediately, a crisis worker who counsels the victim, and the police who are courteous and well-versed in the techniques of questioning. Unlike most of the other patients at the emergency department, she is not presented a bill at the conclusion of treatment.

Florida Attorney General Robert L. Shevin and his Governor's Crime Prevention Committee in 1974 established a "Model Rape Investigation Guideline" for law enforcement officers. It stressed the attitude of the first policeman on the scene when talking with a rape victim and gave a list of questions to be avoided as being potentially embarrassing and which could trigger hostility toward the investigator. Additionally, Attorney General Shevin strongly urged[2] "that all agencies discontinue the use of a polygraph test as a standard policy on rape victims." He also stated, "I am hopeful that in the future the polygraph will only be used when absolutely necessary."

On the grounds that male examining physicians are callous, insensitive, unsympathetic, and incapable of understanding what the victim has endured, some of the bolder feminists have even called for all examining doctors to be female. This is one request that has been unfulfilled since there would not be sufficient female gynecologists to meet all the requirements.

Society's public view of the rape victim in America has changed drastically from almost

[2]Personal communication, 4 July 1974.

complete apathy to deep concern and responsibility for the victim's physical and mental welfare.

Attitude Toward the Rapist

The attitude toward the rapist varies widely depending upon the role of the individual. For example, often the victim's father, husband, or boyfriend would like nothing better than to see the offender drawn and quartered or, at the minimum, castrated or emasculated. At the opposite end of the spectrum are those men who probably would be labeled "male chauvinist pigs" by feminist groups. They proffer sympathy not to the victim but to the rapist when they say, "No wonder he raped her; look how she was dressed!" or "She was asking for it going up to his apartment at two o'clock in the morning. What did she expect?" Some of these people probably sat on a Massachusetts Superior Court jury which found a twice-convicted man innocent of rape after a couple in the adjoining apartment testified they heard a woman screaming for 20 min [*8*].

Generally, however, the middle-of-the-spectrum members of the population look down upon the rapist with a mixture of disdain and repugnance. Even in prison, the rapist is shunned and considered to be the lowest of the low.

Officially, the attitude is dichotomous. On the one hand, the view is that the rapist has committed a crime, much the same as a bank robber, an auto thief, or a murderer, and must be punished. He should be imprisoned for punishment as well as to remove him from society and prevent him from committing more crimes of the same nature. On the other hand, the rapist is viewed as a mentally ill person with an urgent need for psychiatric care. Cavallin [*9*], a staff psychiatrist at Topeka State Hospital, Kansas, believes the rapist is motivated by "a defective ego which allows for the discharge of sexual and aggressive drives with neither recognition of nor concern for the external object he uses as a sexual partner." Noel [*10*] states "the rapist seems mainly motivated by aggressiveness and hostility toward women with concomitant subjugation, humiliation, and even murder." In any event, there is a tendency to group all individuals committing crimes with any sexual connotation into a single category of criminals called "sexual psychopaths."

The trend in this decade has been to counsel and treat the sex offender. The antiandrogen drug, medroxyprogesterone acetate, has been used to lower testosterone levels and raise the threshold for erotic imagery and sexual drives. However, after a particularly brutal crime has aroused a community, castration may be proposed. In 1973, a Baltimore, Maryland grand jury recommended castration as "the only effective deterrent for repeat offenders" and concluded that "short-term prison sentences and limited psychiatric care are rarely helpful." A year later, a bill was introduced in the Georgia Senate stating that "a person convicted of rape and not sentenced to death also would be sentenced to be castrated." The bill was voted down 33 to 19. If such a bill is ever passed into law, it is certain to be challenged by the American Civil Liberties Union and other civil rights groups. Other techniques such as covert desensitization and biofeedback are being employed. In a fashion, government is recognizing its responsibility toward the rapist other than to imprison him. Grants are now being sponsored by the Center for the Prevention and Control of Rape, U.S. Department of Health, Education and Welfare for the treatment of rapists, potential rapists, and child molesters. In general, however, society leans more toward punishment rather than treatment. Punishment has ranged from incarceration for a period of 2 years up to a 1500-year prison term.

Rape and the Law

In virtually all 50 states, the laws governing the crime of rape have their roots in English common law. Many states have introduced their own modifications. For example, old

English law specifies that a boy under the age of 14 is incapable of rape. This is a fallacious concept. Florida has made specific note in its statutes that a boy of 14 or a few years younger may be capable of the crime and, indeed, sexually mature 12-year-olds have been found quite capable.

Traditionally, rape has been defined in medicolegal texts as "the unlawful carnal knowledge of a woman by force and against her will" [*11*] or "the unlawful carnal knowledge of a woman by a man forcibly and against her will" [*12*]. There are four components to the crime of rape. First, the victim is a female, child or adult, and not the wife of the assailant. Centuries ago, Lord Hale [*13*] made the latter clear in declaring "the husband cannot be guilty of a rape committed by himself upon his lawful wife for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract." There are, however, instances where a husband can be charged with the rape of his wife. For example, if a husband holds his wife down while a friend rapes her, the law views him as an accessory to the crime. In many states, an accessory to such a crime faces the same charge as the principal.

The second component is nonconsent: the female does not give her consent to the act of coitus freely with no equivocation or mental reservation. To give lawful consent, she must be conscious and in full possession of her senses, not asleep, intoxicated, under the influence of drugs, insane, or feeble-minded.

The third component is force necessary to overcome the victim's will to resist. Professor Glaister [*14*] made the point that the woman must maintain her resistance to the last, surrendering only when overcome by "unconsciousness, complete exhaustion, brute force, or fear of death." He emphasized that she must have resisted "to her utmost." Some evidence of this resistance such as bleeding, bruises, or lacerations was expected to be found. Recently, the law has become more lenient in many states, including Florida. No hands or instruments of force may be laid upon the victim, yet she can be so intimidated by an "array of physical force" [*15*] that she dare not resist. A Georgia court states very concisely "though a man lay no hands on a woman, yet if by an array of physical force he so overpowers her mind that she dare not resist, he is guilty of rape by having the unlawful intercourse."

The last element is penetration. Legally, the degree of penetration is of little consequence so long at it has occurred. Nor is the emission of seminal fluid a necessary ingredient. Nevertheless, the discovery of seminal fluid in any portion of the vagina is corroborating evidence that can be introduced into court.

Within the past four years, however, much of the above has become academic in some states. Florida [*16*] and Michigan [*17*] have become the leaders, scrapping the old laws relevant to rape and starting anew with concepts, objectives, and principles more in keeping with the changing times. The laws of both states studiously avoid any reference to the word "rape." Instead, Florida employs the phrase "involuntary sexual battery" and Michigan, "criminal sexual conduct." It almost appears that a single committee has hammered out the two different laws. The Florida bill was filed 3 June 1974, becoming law 1 Oct. 1974. A month later, the Michigan bill became law. Florida has attempted to redefine sex crimes and to unify the sex crime laws. For example, the forcible sodomy law [*18*] ruled unconstitutional in 1971 by the Florida Supreme Court found a niche for itself in the new law's definition of "sexual battery." By definition, the law does not apply to consenting adults. Fellatio and cunnilingus have been transmuted from "any unnatural and lascivious act with another person" [*19*] to the more understandable "oral, anal, or vaginal penetration by or union with the sexual organs of another" [*16*].

A major difference from the old law and from the traditional definition of rape is that involuntary sexual battery can be committed upon either a male or a female. This is emphasized in the definition of "victim," which means "the person alleging to have been the object of a sexual offense." There can be no misunderstanding the phrase "due to

any other act committed upon that person without his or her consent." In no uncertain terms, protection is extended to the sexually assaulted male as well as the female, and the new law takes the place of the eliminated sodomy statutes.

Another important change from the ancient statutes is in the complete definition of "sexual battery," to wit "oral, anal, or vaginal penetration by or union with the sexual organs of another; or the anal or vaginal penetration of another by any other object, provided, however, sexual battery shall not include acts done for bona fide medical purposes." In addition to carnal knowledge or sexual intercourse, that is, vaginal penetration by "the sexual organs of another," the lawmakers took into consideration digital manipulation and insertion of any object such as a bottle, a flashlight, or branches. They have carefully pointed out that the insertion of a speculum into the vagina, a cystoscope into the urethra, or a sigmoidoscope into the anus for "bona fide medical purposes" is specifically exempt from this law.

Emission of semen is not a condition of sexual battery. This detail is made quite clear in the Michigan law [*17*] and, by its omission, is understood in the Florida statute.

Portions of the old law have been retained in the new law. One example is "the common law rule 'that a boy under fourteen years of age [*15*] is conclusively presumed to be incapable of committing the crime of rape' shall not be in force in this state" [*20*]. The capability of an individual to achieve an erection and to penetrate is a question for either the judge or the jury. In the new law, however, neither an erection or penetration is necessary. If a 14-year-old boy or one of lesser years forcefully puts his fingers, not even his penis, into the vagina or the anus against the victim's wishes, he can be charged with involuntary sexual battery.

Retained also is the section concerning the unlawfulness of allowing the victim's name, address, or "other identifying fact or information" to be publicly exposed [*21*]. This provision is to spare the victim any needless embarrassment. Other states do not have similar provisions. Recently a newspaper publisher announced [*22*] that the northern Virginia *Sun* will begin printing the names of rape victims "in the interest of justice." Virginia law does not require that rape victims get special treatment from the news media.

Although the victim's prior sexual activity cannot be entered into evidence, a key provision of the new law in Florida allows the victim to be questioned outside the presence of the jury concerning prior consent "to establish a pattern of conduct or behavior on the part of the victim which is relevant to the issue of consent." The testimony would then be admitted as evidence or denied at the discretion of the court.

Although the corroboration rule has not been in effect in Florida for years, it is specifically mentioned in the new law [*23*]: "The testimony of the victim need not be corroborated in prosecutions under section 794.021. However, the court may instruct the jury with respect to the weight and quality of the evidence."

New York progressed a giant step when its legislature eliminated its corroborating testimony rule. Prior to that, most authorities complained it was next to impossible to obtain a conviction. In 1975, Ohio reevaluated its rape laws and made them more meaningful and effective [*24*]. Instead of using the Elizabethan phrase "carnal knowledge" which so many states employ, the phrase "sexual conduct" was substituted and defined as "vaginal intercourse between a male and a female and anal intercourse, fellatio, and cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal or anal intercourse." Important in the definition is recognition of the fact that a male receives the same protection of the law as does the female. What Lord Hale had decreed, "not the spouse of the offender," is emphasized several times. Only under extraordinary circumstances can the victim's prior sexual activity be introduced into evidence. The law [*24*] also provides for medical examination of the victim at no cost to her or to him.

Summary

The Bird of Time has but a little way
To flutter—and the Bird is on the Wing

Omar Khayyam, *Rubaiyat*, 5th ed.
Stanza 7, 1889

References

[1] Kelley, C. M., *Crime in the United States—Uniform Crime Reports,* U.S. Government Printing Office, Washington, D.C., 1976.
[2] "Rape and Culture," *Time*, Vol. 110, 12 Sept. 1977, p. 41.
[3] "Rape is an Ugly Word," *Emergency Medicine*, Vol. 3, Oct. 1971, pp. 23-27.
[4] Lake, A., "Rape: The Unmentionable Crime," *Good Housekeeping*, Oct. 1971, p. 105.
[5] Rowan, C. T. and Mazie, D. M., "The Terrible Trauma of Rape," *Reader's Digest,* Vol. 104, March 1974, pp. 198-204.
[6] Calvert, C., "Is Rape What Women Really Want?" *Mademoiselle*, March 1974, p. 134.
[7] *A Case of Rape*, NBC, 20 Feb. 1974.
[8] "Boston Judge Denounces Jury for Acquittal of Rape Suspect," *Miami Herald,* Sunday, 19 May 1974, p. 16A.
[9] Cavallin, H., quoted by Henley, A., "The Mind of the Victim," *Physician's World,* Vol. 1, Aug. 1973, pp. 51-54.
[10] Noel, E., "Rape and Its Consequences," *Medical Aspects of Human Sex,* Vol. 6, 1972, pp. 12-31.
[11] Taylor, A. S., *Principles and Practice of Medical Jurisprudence,* 12th ed., K. Simpson, Ed., J & H Churchill, Ltd., London, 1965, p. 51.
[12] Black, H. C., *Black's Law Dictionary*, 4th ed., West Publishing, St. Paul, Minn., 1951.
[13] Hale, M., *History of Pleas of the Crown,* Vol. 1, Robert H. Small, Publisher, London, 1778.
[14] Glaister, J., *Medical Jurisprudence and Toxicology,* 11th ed., Livingston, Edinburgh, Scotland, 1962, p. 403.
[15] Fla. Stat. § 794.01 Note 7 (1868).
[16] Fla. Stat. § 794.011(f) (1974).
[17] Mich. Crim. Law Annotated § 750. 520a(h) (1974).
[18] Fla. Stat. § 800.02 (1972).
[19] Fla. Stat. § 794.011 (1974).
[20] Fla. Stat. § 794.02 (1901).
[21] Fla. Stat. § 794.011 3 (1974).
[22] "Newspaper to Identify Rape Cases," *Miami Herald*, 31 Dec. 1977, p. 2A.
[23] Fla. Stat. § 794.011 5 (1974).
[24] Ohio Rev. Code and Rules Service, Vol. 3, Chap. 2907 (1975).

Address requests for reprints or additional information to
A. F. Schiff, M.D.
3200 Kirk St.
Miami, Fla. 33133