RAPE LAWS: HAVE THEY CHANGED?

DID THE WOMEN'S MOVEMENT HELP?

By

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ABSTRACT

Rape Laws: Have they changed? Did the Women's Movement help?

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The increase in all crimes of violence is second only to political scandals. The subject of this thesis, forcible rape, is an act of violence having one of the highest rates of increase.

The increase in reported rapes has brought many of society's institutions face-to-face with themselves—and the look has not been satisfactory. Women everywhere have begun to live a recurring nightmare.

Of growing recent importance is the large number of rapes which go unreported. The reasons behind the hesitancy of victims to report rape has brought protests from women's groups universally. What are these reasons? How long have they existed? Are they being eliminated? Who's doing what? To help? To hurt?

These are some of the questions I have attempted to deal with here. Whether successful or not, you may of course judge for yourself. I would rather you see what I did right or wrong and then check it out for yourself. Because "WE" need help.

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INTRODUCTION

At one time it was drugs; now the "popular" topic is rape. Nearly every major (and minor) magazine has written on some aspect of the crime, cities are becoming increasingly aware of the shortcomings of their institutions for handling rape cases, and women everywhere are learning of the precarious position in which they are placed by a society designed for their protection.

Rape is no respector of age, class, marital status, occupation, or any of the other measuring sticks generally applied by society to divide peoples. Every woman is a potential victim! I, as a black woman, have become increasingly aware of my own unprotected position and of the society which perpetuates it. All of the recent writing and films on the subject of rape have generally focused on the postrape traumas, who rapes, who gets raped, how to avoid it, and what to do if you can't. Hardly anyone has dealt with the reason(s) for the increased incidence of the crime. And it is to this point that my interest is turned. What happened after 1969? What made more women report rape then as opposed to earlier? I believe that if we can learn what caused this upsurge, then perhaps we can use that catalyst (or some similar force) again to bring more victims to the point of reporting rape. Each time we can discover a valid hypothesis as to why one woman reports the crime and another does not, then we get that much closer to changing an unreported rape into a reported one.
In discovering causes for change, we cultivate and use them to their full potential.

Between 1960 and 1969, the number of reported rapes increased at approximately the same rate as other crimes. In 1969, however, the incidence of rape surpassed other crimes against person. During the first six months of 1972, as other crimes against person and property either increased or decreased (giving an overall Crime Index figure of one per cent increase), rape reports increased by 14 per cent (See Chart Next Page). 3

In a recent law journal article, three explanations were posed for this increased reporting: 1) reports increase when women can report to a sympathetic investigator (i.e., the hiring of more female investigators and the creation of more facilities to handle rape victims); 2) changing attitudes brought on by the concern shown by the women's movement has reduced the stigma attached to the crime and the shame of the victim; and 3) the newfound freedom granted to women has produced hostility and led to violent crimes against them by men (i.e., to gain female subordination). 4

While not wishing to rule out any of the above possibilities to the greater glory of another, it is with the plausibility of the second argument that this thesis is concerned. I believe that the rise in reported rapes, while due in part to an increase in the crime itself, may also be attributed significantly to the pride in womanhood instilled through the
FORCIBLE RAPE
1968-1973

PERCENT CHANGE OVER 1968

- NUMBER OF OFFENSES UP 62 PERCENT
- RATE PER 100,000 INHABITANTS UP 55 PERCENT
women's movement and less directly to the pressure applied by women's groups to local and federal institutions to create new and/or better facilities for rape victims in accordance with the changing status of women in society. It is therefore my belief that explanations (1) and (2)—rather than being two divisible causes for the same phenomenon—are themselves related through a common connective.

In writing this thesis, I am not attempting to prove my beliefs, since I do not believe they can be proved. Individuals do not live within a vacuum, as such, there is no way to attribute any result to any one cause. And there is no known method of defining and cataloguing (in descending order of importance) all the many reasons why some women report rapes and others do not. If, however, one believes that rape is "...probably one of the most underreported crimes due primarily to fear and/or embarrassment on the part of the victim (emphasis added)", then might not an elimination of this sense of shame, guilt, and fear—to be replaced by a healthier sense of worth and pride, as espoused by the women's movement—reasonably lead to more reporting of rape by women victims? And if the consciousness-raising of the women's movement is indeed been a strong factor in the rise of reported rapes, then the movement should be made aware of this, so that they might continue and increase their help. Law enforcement agencies should understand this, so that they can work with and encourage this type of assistance; and women everywhere should be aware of who's making it better.
Whenever you do something, although you might think its worthwhile, there's nothing quite like hearing it from someone else. This thesis is my way of saying thank you to the women's movement and to please keep up the good work--our lives depend on it!

Most of my research came from personal interviews and reading books, magazine, and newspaper articles. I also got a chance to watch a couple of television specials on rape. I am eternally grateful to Lenore Martin, Anna Laszlo, and Sgt. Charles Deary for taking the time for the interviews.

My biggest problem I had was the writing. Once I started, I realized all the things which should have been there that I had not even researched. So on to my best!
FOOTNOTES

1. "FBI statistics show that 51 percent of the arrested rapists were White, and 47 percent were Black. Another study showed that in 77 percent of the surveyed cases both the offender and the victim were Black; in 16 percent both were White. In 4 percent the offender was White and the victim Black, and in 3 percent the offender was Black and the victim White. All statistics point to the fact that Black women get raped more often than the White woman." (Tolbert, Janette C., "Black Women: The Silent Victims of Rape", Encore American & Worldwide News (February 17, 1975)p.21).

2. Rape Crisis Center, "Rape: Medical and Legal Information", Boston, Mass. (1973)p.5.


5. "Rape" as dealt with here is forcible rape, the rape victims are women, and the stigmas are those concerning women.

Fowler, Glenn, "16% Rise in Rape Reports Tied to Gains in City Plan," New York Times (June 14,1973)p.35.
CHAPTER I

THE SOCIAL AND LEGAL HISTORY OF RAPE
A man who handles a lady vigorously and with some force (against her will) is plainly guilty of an assault—of an indecent assault. But he does not have an intent to commit rape if his expectations are taken in the hope or expectation of thereby awakening desire, and with the further intention of desisting if his approach does not arouse desire or lead to acquiescence but rather encounters continued resistance.

When a defendant intends to use the kind of "force" that is enough in his mind to test the existence or persistence of complaint's true intentions, but not enough to achieve sexual intercourse if she "really" rejects him, there is no intent to commit rape. (United States v. Bryant, 137 U.S. App. D.C. 124, 131, 420 F.2d. 1327, 1334 (1969).)
It has been argued that rape laws are largely based on traditional attitudes about social roles and sexual mores. Rather than protecting the victim, they may actually act as a disability since they reinforce those traditional attitudes about social and sexual roles. The attitudes of society and its institutions has shaped the present construction of laws governing rape: and this construction has reinforced the attitudes upon those who come after. And it is this construction-reinforcement syndrome which has produced a socialization pattern which in turn relegates women to a passive role—making them prime targets for rape:

"Much of the traditional female socialization process primes us to be almost perfect rape victims. We are taught that we should be submissive to men in thought and action. We are taught that our femininity depends on mastering the ability to 'give in'. We are told that men are strong, and women are weak. The sexual values many of us inherit say 'a little force is all right'. A woman whose attitudes have been molded by these views will almost automatically submit to even an unarmed attacker." (Betnette Golden, "The Ugly Crime of Rape", Essence (June 1975) p. 72).

Yet, the woman who becomes a rape victim is expected to fight to the death to stave off a would-be-attacker.

In a case involving rape in Wisconsin, State v. Hoffman (1938), the Superior Court of that state ruled against the rape victim on the grounds that she did not pass the "utmost resistance" test—a subjective measure applied to gauge the resistance an alleged victim had put up to avoid the attack. The court felt the amount of resistance would indicate whether the complainant was telling the truth or not. If she
had done everything in her power to ward off the attack then there would be a conviction, otherwise, not. The court thought that this would ward off arbitrary allegations by women against men. In 1968, State v. Muhammad, the same court reaffirmed the decision rendered in Hoffman on the same grounds. Using some of the wording from Hoffman, the Wisconsin courts stated:

"It therefore clearly appears that 'the fear' which renders the utmost resistance unnecessary is a 'fear of death or great bodily injury', 'a fear of great personal injury', or 'serious personal injury', a fear that so overpowers her that she dares not resist, 'a fear and terror so extremely as to preclude resistance', a fear which renders her mind 'well nigh incapable of continuing her resistance to repel him'. The fear therefore must not only be real but so great as to terrify her and render her practically incapable of resistance." (State v. Hoffman (1938), 228 Wis. 235, 244, 280 N.W. 357).

The court of 1968 felt that in applying the facts of the present case to the similar situation of Hoffman, they had little choice but to find as the previous court had:

'From the testimony of the complaining witness, it appears that she was fully cognizant of everything that was going on, fully able to relate every detail thereof, and that she was in no reasonable sense dominated by that fear which excused the 'utmost resistance' within her power.' (State v. Muhammad (1968), 41 Wis.2d 12, 21, 22, 162 N.W.2d 567).

Since the conviction of a rapist generally depends on the sole testimony of the victim (except in the very rare instances where there is a witness), it seems the height of absurdity that the rape victim in the above case was not believed because she could "relate every detail". It appears that as far as recall was concerned, a woman was damned if she did and
damned if she didn't! And it is with this and other instances of conflicting "justice" in rape cases that this thesis is concerned.

As you can see, rape is treated differently from all other crimes. The Victorian anachronisms surrounding the concept of rape and its victims has been and still is a giant cause for the underreporting of rape cases. The Victorian ideas on what separates a "good" woman from a "bad" one has carried over to separate treatment by members of society and their institutions. The general attitude seems to be that "nice girls don't get raped and bad girls shouldn't complain". In many states, the past moral character of the victim (and not that of the assailant) may be used against her, on the throwback to the belief that prior experience is "reasonable evidence of possible misconduct or 'provocation' on the part of an unmarried victim." Under such circumstances, a prostitute who makes a rape charge has to have masochistic tendencies!

Meanwhile, the so called "good woman" doesn't report the crime because of the shame and fear she will have to suffer for the damage to her reputation. And if her socialization has worked very well, then she is even more embarrassed by what she has 'let happen' to herself. If, over the pleas of family and friends, the rape victim still decides to complain, then once she gets to the police station and answers questions for about three hours trying to convince them that she's telling the truth, and once they believe her, she is told she has to repeat it all in court and then the chances for conviction
are so slim that the assailant may go free in spite of it all--well, if she still goes through with it she is one in a million. Most victims back away long before the end and an even larger number never make it to the front door of the police station.

If the victim happens to be black, then there is no dividing line between good and bad, since a relatively large number of law officials still believe that all blacks do is 'eat and screw'. The history of racism in this country has provided added fuel for this belief:

"There was an irrebuttable presumption...that a black woman could not be raped by a white man and an almost irrebuttable presumption that no white woman would consent to intercourse with a black man." Consequently, these attitudes (presumptions) were carried over into the law. As a result, of the 455 men executed for rape between 1930 and 1968, 405 (89%) were black. 1200 persons (nearly all black) were lynched between 1872-1951. Though no longer a matter of written law, acts of covert racism are still practiced today. In the courts, for example, intra-racial rapes among blacks get smaller sentences than the same among whites because of the low status of black women; while inter-racial (with black assailant) get heavier penalties than inter-racial with white assailant. All of which supports the suggestion that the black woman gets the raw end of the stick every time--first the rapist and then the court.

These inequities in law has engendered a strong liberal reaction to protect the rights of black men accused of the
rape of white women, but, interestingly enough, this liberalism has not carried over to the protection of black women who are victims of unprosecuted rape. As a result, black and white males are provided "with a pool of women who are fair game for sexual imperialism". So the black woman becomes the largest victim of rape by all males, and the least likely to obtain a conviction in court. Consequently, being only too aware of their low status, they are the least likely to report a rape offense. When blues singer Billie Holiday was ten years old, she was taken off to a local whorehouse and raped by a neighbor. Her mother called the police and she was raken to the local station crying and bleeding:

"When we got there, instead of treating me and mom like somebody who had called the cops for help, they treated me like I'd killed somebody....I guess they had me figured for having enticed this old goat into the whorehouse....All I know for sure is they threw me in a cell...a fat matron...saw I was still bleeding, she felt sorry for me and gave me and gave me a couple glasses of milk. But nobody else did anything except give me filthy looks and snickers. After a couple of days in a cell, they dragged me into a court. Mr. Dick got sentenced to five years. They sentenced me to a Catholic institution."

(Billie Holiday, Lady Sings the Blues, p.32-33).

The historical beliefs which have separated women into those who get raped and those who do not has left on the minds of the female population feelings of shame and embarrassment, coupled with a general acceptance of unpunishable rape, has led to gross underreporting of the crime. The images of woman as liar, someone not to be believed because she would not hesitate to accuse an unsuspecting male: the wanton black woman who is 'use to' such treatment (and gets it often); the fri-
gid woman who secretly desires rape; and the 'loose' woman who 'asked for it'--are all put through the same rigamarole by society, police, hospitals, and courts. By their actions, these institutions have helped to reinforce the attitudes and images of and about women which are prevalent today.

We have just looked at rape from a historical respect, as partial explanation for the underreporting of the crime. In the next chapter, we shall look at the handling of rape cases by our institutions as another partial explanation. In looking at the stages in a rape case--from police and hospital to court--we shall witness the changes (if any) within these institutions concerning the treatment accorded rape victims, and if possible, discern the cause for such change. The third chapter will deal with the women's movement and how it has effected changes within our society and its institutions in their attitudes towards rape. The fourth chapter will deal with policy areas still in need of change, who is working on them, and the strategies being used. By conclusion time, I hope the reader is at least partially convinced of my original hypothesis.
FOOTNOTES


3. Task Force on Rape, p. 5.

4. Tolbert, p. 21.


6. A recent article by Bernette Golden, "The Ugly Crime of Rape" (June, 1975), gave information to the contrary; but I feel that Ms. Golden failed to note that while not having the rape market "cornered", there is a higher incidence of it among black women than white and that this would account for a higher reporting figure.
CHAPTER II
THE VICTIM'S SECOND RAPE
Rape is the only crime in which the victim is doubly violated, first by the attacker, and then by society. It is the only crime in which social, religious, and cultural core attitudes of society turn upon the victim. In rape, society tends to blame or accuse the woman.

Pittsburgh Police Supt. Robert Colville
November 5, 1971

For some women, a call to the police station has provided quick and needed protection. For many others, however, the police questioning and subsequent legal proceedings have made them feel like they have been raped twice, first by a violent assailant, and second, by a system of justice that is supposed to offer support and protection but offers instead unsympathetic policemen and attorneys who make implicit or explicit accusations that she invited the rape and got what she deserved.

"Rape: Medical and Legal Information"
Rape Crisis Center (1973)
Boston, Mass.
Although the number of reported rapes has increased tremendously since 1969, there still remains an even larger number which go unreported. A recent Encore article\(^1\) cited this underreporting anywhere from 10 to 50 percent more than the number actually reported. In an earlier article in the \textit{Boston Globe},\(^2\) an FBI statistic listed the unreported figure as high as 84 percent. Whichever figure one chooses to believe, it remains high—and to many, a puzzle. Why do many women still hesitate? What is it in our society which impels a woman not to report one of the most violent crimes one person may commit upon another?

The reasons are as valid and as varied as the women themselves. All too often, the woman who becomes a rape victim 'is treated at best as an object, a piece of evidence, and made to relive the experience, must face the incredulity of the police, the impersonality of the hospital, and then must defend herself in court'.\(^3\)

Perhaps the oldest and most common reason for not reporting rape is that many women simply feel that they will not be believed. Now, granted that some charges are falsely made—does not the heavy burden of proof required by law and the changes the victim must go through act themselves as deterrents to large scale lying. A woman realizes, or she quickly finds out, that once she makes a complaint, her life-style, reputation, and character are subject to the strictest scrutiny. Many women feel that the postrape ordeal is simply not worth what they "lose" in reporting it in the first place.
FBI statistics have determined that an average 15 percent of all forcible rapes reported to police were determined by investigation to be unfounded. This statistic points out another of the attitudinal deterrents to the reporting of rape. The victim may have known the rapist prior to the attack (either as friends or dating). The victim may have been under the influence of drugs or intoxicants when the rape occurred. A significant amount of time may have elapsed between the attack and the reporting. There may be no physical evidence to support the rape allegation. Because these are the things which weaken the chances of obtaining a conviction, any of them may be cited as cause for viewing the victim's testimony with skepticism. In some jurisdictions, these factors alone are a basis for declaring a rape charge to be unfounded.

Perhaps, too, there exist another category (included in the FBI statistic, but not mentioned as an official reason for dismissal) of victims who are "turned around" by the police investigator because he doesn't feel that she stands a chance in court (perhaps because he doesn't believe her himself). In the past, judges and prosecutors generally accepted as fact that if a woman consented to sexual intercourse outside of marriage once, she would do so again. Some judges instructed juries to this point:

'View the complaining witness' testimony with caution, because once she has consented to sexual intercourse in the past she is likely to consent again. So think about this when considering whether or not she is falsely accusing someone of raping her.'
And the fact that even today, the past sexual history of the victim (whether involving the defendant or not) may be used to impute her stability, while the defendant's background cannot be used against him, has made it nearly impossible to obtain a conviction for "our less upstanding citizens". Given this direct reinforcement of the past it becomes difficult to note any attitudinal differences between judges and prosecutors in Victorian times and those of today. Either day, it doesn't profit a prostitute to cry rape!

In Boston, prior to the passage of the so called "Rotenberg laws", rape cases coming into the Boston Police Dept. were handled like any other crime against person—by a regular detective. More than likely, many, if not all, of the myths and stigmas stressed earlier were also present. The first bill presented by Rep. Jon Rotenberg (D—Brookline)* was an amendment to the Massachusetts law defining rape. It would bring under the rape laws unnatural acts and homosexual rape. It would also bring under the laws rape in which the attacker forces the victim to submit by threat of bodily injury. The second bill called for the creation of rape investigating units in all police departments and a training program for all rape investigators (See next page). The main purpose of the training program is to teach the rape investigators crisis intervention—a study of the psychological reactions of rape victims and the do's and don'ts of postrape treatment. The purpose of which being that once the officer understands something of what the victim is going through emotionally, then
their par value. Indebtedness incurred hereunder shall, except as herein provided, be subject to chapter thirty-five of the General Laws.

Approved July 22, 1974.

CRIMES—RAPE—REPORTING AND PROSECUTION—
COUNSELLING OF VICTIMS

CHAPTER 581.

An Act establishing a method of reporting and prosecuting the crime of rape and counselling of victims of rape.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 118 of chapter 6 of the General Laws, as appearing in section 2 of chapter 564 of the acts of 1964, is hereby amended by adding the following sentence:

No municipal police training school shall be approved unless it provides for training members of the rape prevention and prosecution unit established by section ninety-seven B of chapter forty-one.

SECTION 2. The second sentence of the third paragraph of section 156 of said chapter 6, as most recently amended by section 2 of chapter 1021 of the acts of 1973, is hereby further amended by inserting after the word “states”, in line 15, the words:—; and shall encourage the effective training of rape prevention and prosecution units in the cities and towns of the commonwealth.

SECTION 3. Chapter 41 of the General Laws is hereby amended by inserting after section 97A the following three sections:

Section 97B. There shall be within the police department of every city and town, or grouping of cities and towns with the approval of the secretary of the executive office of public safety, a rape reporting and prosecution unit which shall be designed to improve the quality of rape reporting, counselling, and prosecution. Said units shall consist of police investigators who shall have completed a course of training in the counselling of victims of rape and the prosecution of alleged perpetrators of the crime of rape which shall be approved and funded by the Massachusetts criminal justice training council established by section one hundred and sixteen of chapter six. Each department shall make efforts to employ women police officers to serve in said units. Each unit shall in addition make use of such counselors, attorneys, and medical personnel as are necessary to provide a broad range of therapeutic services for victims of rape.

Section 97C. Each rape reporting and prosecution unit shall, in addition to the services provided in section ninety-seven B, establish a special telephone exchange for the reporting of rape which may be utilized at any hour of day or night and shall widely publicize this number and information concerning the activities of the unit throughout the city or town.

Section 97D. All reports of rape and sexual assault or attempts to commit such offenses and all conversations between police officers and victims of said offenses shall not be public reports and shall be maintained by the police departments in a manner which will assure their confidentiality. Whoever violates any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both.
he can better decide a 'best' route for obtaining the required
information without unnecessary stress for the victim. One
of the counselors at the Boston College Health Services, Ms.
Anna Laszlo, who also works with the Boston City Hospital,
says that she has "been hearing good things" about the treat-
ment of the officers from victims she has talked with since
the unit began. She is also pleased by the cooperation be-
tween the investigating unit and the counseling programs. The
police are good about referring victims to the service or call-
ing a counselor in when a case is reported to them directly.

In an interview with Sgt. Charles A. Deary, head of the
rape investigating unit down at the Boston Police Department,
I mentioned that I wanted to see Rep. Rotenberg in order to
find out why he had sponsored the new rape legislation. He
said,

"Why go see him? I can tell you why--the women
In the 60's it was drugs; now the topic is rape.
And who's putting the pressure on about rape--the
women. Rotenberg is a politician. He just beat the
other guys to it!"

Despite these changes, there are still a great many vic-
tims who receive less than maximum consideration from the po-
lice:

'I didn't want to call the police--like, what
can they do. But I did, and when they offered to
come to my apartment I said that was fine but to
please not make a lot of noise to call attention
to the neighbors. The first car that arrived was OK
--it was unmarked and made no noise. But before we
could drive away another one arrived with its siren
blaring. Then I had to sit in the police cruiser for
about an hour while several other cars arrived and
they decided what to do--whose precinct I belonged
to. Then I wanted to go to one hospital but they said that was a different district. So they took me to a police station and about 15 officers were standing around—it was like standing in the foyer of the Sheraton. I kept telling my story over and over and I didn't think anyone was listening: they'd keep turning away. Then in the police car I had to keep answering questions to the back of their heads. It was just awful. I was so glad to get to the hospital.'

Several weeks later the same victim said, 'I guess I am torn between what they did and what they have to do and my own feelings and needs at the time'. Now although her treatment at this later point was much more positive than previously—it merely serves to illustrate the need to give this same type of positive treatment at the initial encounter. It is immediately following the rape when the victim is most sensitive to harsh treatment and most in need of sympathy and understanding. It is also, the time when the rape victim is most unsure of herself and of what to do. For this reason, a lot of counselors will advise the victim to go to the hospital first.

The hospital maybe preferred for three reasons: 1) You get the needed medical attention, in terms of having any bruises and lacerations looked after, pregnancy check, VD testing, pelvic exam, etc.; 2) The hospital will notify the police or you may have a friend call while you are being looked after; 3) And lastly, going to the hospital first will give you time to calm down, collect your thoughts (since you will need all the details you can remember to answer police questions), and to decide if you wish to report the rape.
Although hospital facilities may have increased and some doctors, nurses, and attendants may be more sympathetic—a rape victim should expect to have nothing more than her physical needs looked after. Hospital personnel may not recognize, or even deny, that the victim is upset and needs emotional support. Here, too, the victim runs the risk of not being believed. The rape victim may also not expect preferential treatment on her arrival. Rape victims are admitted through regular emergency procedures. As such, there may be something of a waiting period—long or short depending on what priority the victim is relative to other emergency patients. Unless otherwise noted, the victim should expect to pay for any tests she receives, whether it be for her personal information or as later testimony for the police. Many doctors prefer not to treat rape victims because of the risk of having to go to court as a witness. Some doctors go so far as to falsify medical reports for courts, in order to avoid testifying, no matter the damage to the complainant's case. Damage may also be done to the victim's case by the language used by the reporting physician:

"The prevailing attitudes in society are not on the side of the victim. Many myths exist which view and interpret rape solely in sexual terms rather than in violence terms. Staff may show their bias and ambivalence about rape victims through such statements as, 'The woman is just faking' or 'This isn't a real rape case' or 'I don't believe half the stories I hear'.

Any attitude that 'blames the victim' will serve only to thwart any therapeutic relationship before it has a chance to develop."
Because of the questionable treatment, many women got together and started counseling services for rape victims. Initially a small thing, many major hospitals now have counseling services have counselors on 24 hour call. Generally, when a counselor is called, she will meet the victim either at the hospital or the police station within a matter of 30 minutes. The counselor then provides support, as well as knowledge about what happens next, any cost you will have to be responsible for, and will refer you to a therapist if necessary.

Now to complete the "second rape" triangle, the victim must face the ordeal of the courtroom. Many rape victims go into the legal process believing that they will only have to go to court once. There is no consistent method of relating that the trial is a long drawn-out process involving many steps, delays, and postponements. Even so, the victim is expected to show up for each scheduled trial, since she never knows when her case might be called. And after the waiting, the psychic and monetary costs, the rape victim still runs the high risk of walking into court one day only to find that her case has been dismissed for lack of evidence (or some other "good" reason).

Usually the rape victim has to give her testimony before the general public in open court. Many such "spectators" bear no relation to the complainant and have come merely to witness the "show". One such person was heard saying, "Hey--this is where the rape case is going to be tried. That ought
to be really good; let's not miss it."10 And through it all, the victim must prepare herself for the defense attorney. Since a conviction rests on her testimony alone, then the defense attorney's business becomes breaking down her credulity:

"He does this by focusing on the following issues: (1) Did the woman consent to sex or did she not consent? (2) Did the woman struggle or did she not struggle? (3) What is the woman's sexual reputation? (4) What is the woman's general character? (5) What was the woman's emotional state at the time of the incident? (7) Is the woman claiming rape to avoid punishment by parents or husband? (8) Is the woman spiteful? (9) Is her statement that sex occurred accurate?"

To obtain a conviction, the defense attorney also counts on (and generally gets) certain jurors' attitudes being against the rape victim and a reluctance on the part of jurors to convict in rape cases.12 Indeed, many judges, following the words of Sir Matthew Hale, a 17th century jurist, who wrote that "rape is a despicable crime... but it must be remembered, that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, the ever so innocent"13—will give "cautionary instructions" to the same effect to juries in rape cases today.14

Another defense tactic is that although the character of the defendant may not be introduced as evidence against him, many jurors will make a determination of character on the basis of appearances. Jurors expect a rapist to "look like" a rapist. When he does not, but insists upon looking like an average clean citizen, they hesitate to convict. Many judges aid this method of obtaining justice by character determina-
tion rather than the "preponderance of the evidence" by their instructions to the jury:

"...the character of the defendant alone may be enough to create a doubt sufficient for acquittal." 15

This character judgement on the basis of appearances serves to reinforce covert racism. There always exist the real danger that a black defendant's character will be misjudged simply because he is black:

"One Atlanta assistant district attorney reported that black-on-white rape cases were the easiest convictions to obtain. The Yale Law Journal points out that cases involving black defendants and white victims are an exception to the extreme difficulty of obtaining a rape conviction....'in cases not involving inter-racial situations the issue of consent may be and frequently is very real, but that issue 'is much less likely to be present in cases in which white women have been attacked by Negro men.'" 16

Indeed, many politically conscious women will not report rape because they know "that imprisonment will not help the rapist and that American prisons are racist, sexist, politically repressive schools of violence." 17

While never making their assistance conditional upon prosecution or reporting the crime to the police, rape counselors generally urge rape victims to seriously weigh the ordeal of the police and courts against the "equally strong considerations for preventing the rapist from attacking other women, getting psychological help for him, or even protecting yourself against a greater threat of repeated attacks if you don't take action." 18
Rape is a crime punishable by anything from three years to life. The maximum is incurred when the rapist has a prior conviction of rape or killed his victim. Generally, if the rapist knew the victim prior and this is his first offense, he'll get the minimum. The chances of getting a long sentence are like those of getting a conviction at all—slim! (See next page)
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NUMBER OR REPORTED RAPES IN BOSTON

(as of Apr '75)


3. Mathias, introduction of a bill to establish a Nat'l Center for the Prevention and Control of Rape, *Senate Congressional Record* (September 17, 1973) s16610.

4. Jon Rotenberg is no longer a representative. He ran for another office and lost. I could not locate him within the Boston area.


12. Rape and the Treatment of Rape Victims in Georgia: A Study by The Georgia Commission on the Status of Women.


15. Rape and the Treatment of Rape Victims in Georgia: A Study by The Georgia Commission on the Status of Women.

16. Ibid.

17. Schwendinger & Schwendinger.
18. Rape Crisis Center, p. 5.
CHAPTER III

DID THE WOMEN'S MOVEMENT HELP?
The Women's Movement was one of the several by-product movements (incl. Welfare Rights and Gay Liberation) coming out of the Civil Rights Movement. The Women's movement did not start as any well-formed, well-defined organization. It was the name given to the universal phenomena of women (either singly or in groups) challenging the mistreatment of their sex by institutions supposedly protecting them. Many of the social service and counseling centers for women in existence today started off as a group of women getting together to discuss common problems, suggesting alternatives, and implementing them themselves. One such organization is W.A.R. -- Women Against Rape. These were a group of women who had been raped or knew someone who had been raped. Their first project was the opening of a Rape Crisis Center for the Boston Area which has a 24 hour emergency service and follow-up counseling for rape victims. Besides its supportive functions, the center also serves as a means of confronting the police, hospitals, prosecutors, etc., with criticisms and demands for improvement. It is a method of challenging lawmakers to remove inequities in the law, while simultaneously raising the public consciousness to the fact that such inadequacies and inequities do exist.

As a result of the pressure put on law enforcement agencies, many states have organized rape squads or rape units with specially trained investigators for hearing rape cases. In Boston, this pressure resulted in the establishment (by law) of rape reporting units in every police department. Such
units are created in the hopes of lessening the traumas and indignities that the rape victim suffers during the investigation and in court. Thereby encouraging more women to report rape offenses:

"As the victims of the crime come to realize that they will not be re-victimized by the criminal justice system,...,we will first see an increase in the number of rapes which previously would have gone unreported are brought to police attention."¹

The fact that attention is now focused on the victim—her feelings and reasons for reporting and not reporting—represent a substantial change from the days when the only concern was "catching the crook", even at the further expense of the victim. Did the women help? Before the Boston rape units became law, there was a question of whether the proposed training programs would be funded. "Rep. Rotenberg maintained public pressure would induce both groups to fund the bill if it were endorsed by the legislature."² Now, if there was enough "public pressure" to get the funding, then might not it also be sufficient and at work to get someone like Rotenberg to introduce just such a bill in the first place? Sgt. Deary thinks so—he gave 'the women' full credit.

As a result of public exposure of problems relating to the treatment of rape victims, some hospitals are now providing special waiting rooms for rape victims, training personnel to talk to them, making provisions for them to shower and receive needed clothing, and the hospitals are working more
closely with the police in taking and preserving the kind of evidence needed for trial. 3

In Boston, prior to June, 1972, there were few counseling services in the communities; but, none in the hospitals. Again (remember W.A.R.), it was a group of women who got together and found that no such service was available. This group started a nurse-to-nurse referral system called the Victim Counseling Program. The hospital staff and the volunteers worked out a system whereby a volunteer was called whenever a rape victim was admitted into the hospital. As the program expanded, they started getting referrals from the police, the District Attorney's office, and other hospitals. The Victim Counseling Program began in Boston City Hospital; since then, Beth Israel, Boston University, Tufts Univ., Boston College, etc.—all have at least one of their medical facilities (either the health services and/or the mental health unit) on call for either emergency or counseling services.

Did the women help?

"Colleges and universities are responding to the problem of rape.... Many times these services have been organized by women's groups on campus... women's groups have been instrumental in organizing courses in self-defense to be taught under the sponsorship of the university."

All across the nation, women are talking and doing: men and their institutions are being forced to watch and listen:

"...the rising degree of public concern and attention focused on the rape problem and its victims has placed this crime in the national spotlight. Much has been generated by organizations
identified with or sympathetic to the women's movement, which is generally critical of the manner in which rape victims are treated by the criminal justice and medical establishments. These criticisms, given broad exposure by the media, have created a climate of dissatisfaction with current criminal justice practices....Other examples of the increased public awareness and focus on the crime of rape include the establishment of task forces on rape by many large-city chapters of the National Organization for Women (NOW)....

At the present, the Boston chapter of NOW is working for the passage of a bill concerning the admissibility of evidence on sexual conduct during rape cases. (See next page):

"...it became evident that many victims were fearful of the trial procedure in court. In every real way they are forced to relive the degradation they suffered. Then to compound their agony they expose themselves to a relentless public examination of their very private prior sexual life. In the vast majority of cases the victim's prior sexual life had nothing to do with the instant case. Yet, most rape victims who have testified in court can relate examples of defense tactics concerned with their prior sexual life. Clearly, the trial judge should force the defense to cite the necessity for such tactics prior to the use."

The women did help and are continuing to help. Women's movements have found that they can provide effective support for rape victims. But until there are basic, radical changes in our institutions and a lessening of the myths surrounding women and rape, women everywhere will continue to be raped by the rapist, the police, the hospital, and the courts.
THE LEGISLATION. This bill would limit, in rape proceedings, the areas of admissible evidence. Reputation evidence of a victim's sexual conduct would not be admitted in any action—or—proceeding.

Specific instances of a victim's past sexual conduct would be limited to evidence of (a) the victim's sexual conduct with the defendant and/or (b) the source or origin of semen, pregnancy, or disease found present in the victim.

This legislation would necessitate an in camera hearing to weigh the prejudicial impact of the above-mentioned evidence against its probative value in the context of the total evidence before the jury.

PURPOSES OF THE LEGISLATION

This bill would eliminate the unnecessary fear of intimidation and humiliation experienced by rape victims in the courtroom, and thus curb the high rate of rape cases that are not reported and/or not prosecuted.

While safeguarding the victim's rights of privacy, it would maintain all present protections for the accused which support the presumption of "innocent until proven guilty beyond a reasonable doubt."
FOOTNOTES


2. "Local Police Departments Would have Rape Units", New England Newsclip (June 20, 1974) p. 9, 13.


6. Milton, Bernard R., letter written in support of bill "2124 --which relieves the women rape victims of having their past brought up. (February 25, 1975)."
CHAPTER IV

POLICY IMPLICATIONS: WHAT'S LEFT?
Everyone is trying, but are we moving? No matter what the women do, it always seems to be 'a drop in the bucket' compared to what is left to be done. Besides general changes in attitudes on the part of police, hospitals, and courts—leading to an increased sensitivity to the plight of the victim; there are some specific changes required also.

**Police:** 1) **Unfounded rapes**—rapes which have been determined by the investigating officer to be unprosecutable for the following reasons: inaccurate reports; victim too young, embarrassed or upset to cooperate; intoxication of victim; relationship between victim and offender, etc. (See p. ). The role of the police in the criminal justice system is to gather the facts of the case. Using their discretion to declare a charge unfounded, only increases the risk that some cases will be declared so on the basis of personal prejudices. Such decisions should be properly left to the prosecutor or some other alternate whose function in the criminal justice encompasses such a determination.

**Hospital:** 1) **Medical reports**—only what the physician does and the findings should be written—no personal opinions or conclusions about the validity of the victim's charge should be included.

2) **Testifying**—all institutions should stress the importance of the physician's testimony and encourage his or her cooperation. If possible, alternate arrangements should be made, so that the physician's physical ap-
appearance in court is not necessary.

3) **Cost**—where possible, a plan should be set up for covering the cost of treatment so the victim will not have added stresses when she receives a bill in the mail. Victim should not be charged for tests done for the police.

Legal System: 1) a. **Prosecutor**—there should be sufficient time given for meetings between the victim and the prosecutor prior to court sessions. At which time, the victim should be reminded of what is ahead and cautioned against what words and actions will gain negative responses from the jury.

   b. All efforts should be made to retain the same prosecutor for the victim through all trial proceedings.

2) **Judge**—should be cautioned against giving "cautionary instructions" which will prejudice the facts and give way for verdicts determined on other than the facts.

3) **Court**—sessions should be private if the victim desires it so. Courtroom should include only the necessary witnesses and any friends the victim wants.

4) **Law**—only evidence involving that of the defendant should be brought out in the sexual history of the victim.
CHAPTER V

CONCLUSIONS
Most, if not all, of the myths which have surrounded rape in the past are still present today. If not as overtly, then definitely covertly in the use of "unfounded" rapes and judges' "cautionary instructions" to juries. That the sexual history of a rape victim is relevant in legal proceedings today is another way of saying that once a woman has had sex outside of marriage, she'll more than likely do it again. Socialization has produced many of these myths. The divisions created by society has found its way into the criminal justice system--such that people otherwise equal are accorded unequal treatment by the institutions designed for the protection of all. Rape has served as another means to practice covert racism.

The medical and criminal justice systems have reinforced much of the past through their treatment of rape victims. Presently these institutions are trying to correct their failings. The increased facilities for handling rape cases has been significant in comparison. But the comparison is between what we have now and not having anything--like comparing "1" to "0". Of course "1" is better and more significant; but, when you have to go to "10", you haven't started!

Sure the women's movement has helped! Their protests have brought to the open many of the facts obscured by official crime reports. And their efforts to change things has made us all aware of the deep roots sustaining the attitudes in our society regarding rape victims, rapists, and when, where, and why rape occurs.
But the women's movement can not do it all! Help is needed from rape victims to report the crime and from the criminal justice system to make that reporting as painless and as profitable as possible. Society must be made fully aware of the adverse effects they, themselves, produce by the attitudes they have about rape victims and rapists. The institutions can only change as much as the people running them. Society's attitudes about women and men, the dividing line between them, and their assigned and expected roles in society must be re-defined. Women are not sex objects whose only function is pleasing men; nor are men big, rough beasts who can't ever show weakness and must take all they can't get with the asking.

If you were to divide by some means the women who are likely to get raped or have been already from those who will not be or have not been—then you would have 99% of the female population in the class of the former.

"For every man there is always someone lower on the social scale on whom he can take out his aggressions. And that is any woman alive." (Susan Griffin, "Rape: The All-American Crime", p.34)
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BOOKS:


ARTICLES:


7. "Local Police Department Would Have Rape Units", New England Newsclip (June 29, 1974).

8. Mathias, Introduction of a bill to establish a National Center for the Prevention and Control of Rape, Senate Congressional Record (September 17, 1973) s16610.

9. Milton, Bernard R., letter written in support of bill "2124"--which relieves the women rape victims of having their past brought up. (February 25, 1975).


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