

JUSTICE FOR WHOM? RAPE VICTIMS ASSESS THE LEGAL-JUDICIAL SYSTEM

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INTRODUCTION Legally, rape is a criminal offense in which a man forces some form of non-consensual sex relations on a woman. Federal Bureau of Investigation statistics indicate 67,000 officially reported rape victims in the United States in 1978. Since rape is under-reported at about one quarter of the actual incidents, we may assume some 268,000 victims in 1978. In the last decade increased attention was directed to the rape problem, partly due to the adoption of rape as a feminist cause, but it coincides with a growing sense of cynicism about the legal-judicial system. After the decade of the 1960's, replete with social conscience and social activism, came the revelation of the Water-gate crimes, which alarmed social critics and substantiated the questions on the pragmatic reality of "equal treatment under the law." Perhaps more than any other crime, rape confronts us with the dilemma of inequality, both racial and sexual. As to racial inequality, there is ample evidence that the accusation of rape has served as a tool of racial oppression to keep minority males, and particularly black males in "their place" (Brownmiller 1975; Mann & Selva 1978; Williams 1979). Literature from the women's movement concentrates on sexual inequality where rape is viewed as a means of social control to keep women in "their place" subordinate to all men (Griffin 1971; Weis & Borges 1973; Medea & Thompson 1974; Reynolds 1974).

Beyond these theoretical perspectives on inequality lies the stereotypical view of the rape victim and the treatment she receives from police officers, attorneys and judges. The media have presented a sensational scenario to stress the negative aspects of legal-judicial handling of a rape victim's complaint. Whether this inspires advocacy toward change or simply frightens women so that they hesitate to report a rape is unknown.

Here, I present the victim's perception of law enforcement and legal-judicial personnel.

METHOD The data derive from in-depth interviews presented from a consumer's perspective on service delivery: 1) How do victims rate the quality of services which law enforcement and legal-judicial personnel provide? 2) How do victims perceive the treatment received from these officials? 3) What dispositions were made in cases where prosecution was sought by victims?

An accidental sample of 61 rape victims was obtained through two rape crisis programs in Texas. The time lag from the rape to the interview ranged from 1 to 30 months, and averaged 10 months. The interview schedule included demographic characteristics, details of the assaults, the impact of the rape experience, and personal and institutional support systems. Only findings related to institutional support systems involving police and legal-judicial personnel are reported here. Items which specify the victims' dealings with police, prosecutors and judges included a forced-choice rating of the quality of services of each official, an open-ended reflection on the attitudes of these persons, and the current status of the victim's case.

THE SAMPLE Of the 61 victims, there were 11 black, 18 Mexican, and 32 white Americans. Their age averaged 27 with a range of 15 to 67 years, with a median age of 23 years. They averaged 12 years of education, and 46 percent were employed. Forty three percent were never married; 36 percent were divorced or separated, 18 percent were married, and 3 percent were widowed. Annual family income was widely dispersed, from \$1200 to \$22,000, with a mean of \$6567.

Selected aspects of the assaults provide a framework to analyze

findings on the victims' interactions with police and legal officials. While 74 percent were raped by a lone assailant, 26 percent reported being raped by two or more men. Victims and assailants were ethnically similar in almost two-thirds of the cases. The rape occurred in the victim's home in 36 percent of the cases, in an alley, park, or vacant building (33%), in a vehicle (16%), in the assailant's home (10%), and other locations (5%). Most victims (72%) said they did not know and had never seen their assailant prior to the rape; the other 28 percent knew the assailant by sight, and had just met him earlier in the day, or described him as a friend, relative, or acquaintance of their family or friends. When asked about their initial contact, 36 percent reported that the assailant forcibly broke into their homes, and 33 percent said that they were accosted with a weapon or physically attacked and threatened without warning. Twenty-one percent described the first contact as a social situation, and 10 percent said they accepted a ride with him. A weapon, usually a knife, was used in nearly half of the assaults. Virtually all victims (87%) were overtly threatened, either verbally or physically, and 67 percent suffered some injury, ranging from cuts and bruises to wounds requiring surgery, concussions, and broken bones.

VICTIM VIEW OF SERVICE DELIVERY

. On a scale of 1 to 4, for poor, fair, good, and excellent, 85 percent of the victims rated reporting police and detectives at 3.0 and 2.9. Other ratings were: crisis counselors 3.8 (79% responses); attending physicians 3.6 (49%); nurses 3.0 (82% responses). The district attorney was rated 1.5 by the 16 percent who could respond, even though the victim is the key witness for the prosecution.

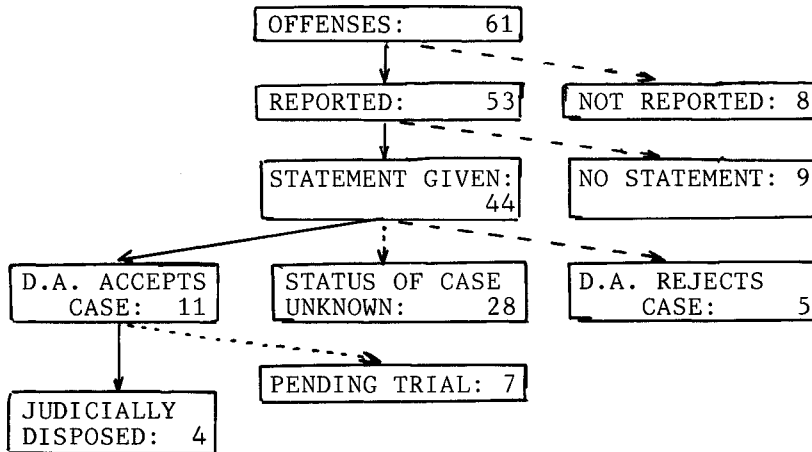
. Asked if officials treated them badly or disrespectfully, 38 percent said yes. Of these 23 victims

6 black women, 7 Mexican-American women, and 10 white women reported poor treatment. Thirteen complaints involved the reporting officer or detective, 3 involved the prosecutor, 6 involved medical personnel, and 1 referred to a defense attorney. Complaints centered on judgmental attitudes and a sense of ineffectiveness of these officials. One black victim in her 40's, raped more than 2 years earlier said the reporting officer "... seemed to think it was my own fault even though I was asleep in my own home and (the rapist) broke in the back door." Another black woman in her early 20's overheard the patrol officer say to his partner: "This girl claims she was raped. I don't know how true that is." Determined to follow through with a formal complaint, this victim described going to the police station to give her statement. As she waited outside the detective's office, she heard them in another room laughing about other cases. She left, and never filed charges. The dominant theme among white women was that the police were simply not very effective in taking action on cases. A victim said, "They listened to me, but they never did anything. They never called. They never tried to get the guy." The Mexican-American women felt that their needs were ignored. One in her early 20's said the reporting officer did not believe she had been raped, and refused to take her to the hospital for medical attention. Another victim in her 30's described the detectives as "... very impatient. They asked a lot of questions when they knew I was in no shape to answer them." A fourth of the victims reported poor service or disrespectful treatment from law enforcement or legal personnel.

STATUS OF CASES: FUNNEL EFFECT

. The term funnel effect refers to the heavy attrition of rape cases as they are processed through the legal-judicial system. Cases may be "lost" at several points in the

FIGURE 1: CASE ATTRITION IN LEGAL-JUDICIAL PROCESS



processing of a rape complaint, because the victim does not follow through, or the status of the case is not known, or the charges are rejected or dismissed, as shown in Figure 1. From the time of the offense to successful closure in a court trial, there are problem points. The first and most obvious is the initial report of the offense to law enforcement authorities. Eight victims chose not to make this initial report. Each stated the belief that "It wouldn't do any good."

. Of the 53 who made the initial report, 83% followed through with their complaint by making a formal statement to the detectives. The 9 victims who did not pursue prosecution beyond the initial report cited various reasons. Some felt they could not identify the assailant. Some could not cope with a trial and the publicity. Some also felt that "It wouldn't do any good," and one victim was told to "forget it" by the reporting officer. And 28 victims who gave statements to detectives did not know the status of their case. Some had made an identification from photos in police files, but had heard nothing. Some said the police notified them that an arrest had been made, or that the alleged assailant was in jail or on bond. Even in these cases, victims had not been informed

about possible indictment of the assailant, court appearances or trial dates. Most victims had heard nothing from the police or district attorney's office.

. Five victims made the initial report, the formal statement, and identified the suspect, but the district attorney dismissed their cases. A frequently cited problem was "insufficient evidence." Four victims were dissuaded from prosecution due to the quality of the evidence. Of the 11 cases accepted by the district attorney's office, 7 were pending indictment or trial date. Two victims were subpoenaed for trial 3 times each, only to have postponements granted at the request of defense attorneys. Of the 4 cases reaching trial, there was 1 felony conviction and incarceration of the assailant; 1 misdemeanor conviction and fine, resulting from plea bargaining where the charge was reduced to simple assault in exchange for a guilty plea; 1 juvenile was released to his parents and remanded to the juvenile court. One man was committed to the state mental hospital in lieu of prosecution. Though commitment to the state mental hospital does not constitute judicial action, in this case it resulted from an informal plea bargain arrangement. The victim was encouraged to "go along" with a guaranteed psychiatric

commitment rather than face the uncertain outcome of the trial.

DISCUSSION Ratings of service delivery suggest no serious neglect by reporting officers or detectives but the relative difference between the ratings of rape crisis centers and law enforcement personnel may point to a critical but seldom noted distinction. There may be a basic difference between simply adequate and essentially humanitarian service delivery, as experienced by rape victims. For victims who wish to pursue prosecution, the police must become involved, and one can only hope that their services will be humanely as well as competently delivered. In contrast, rape crisis centers may be a luxury which depends on the size of the city, the level of community support, and consistently available crisis center staff and volunteers. While there are obvious differences in the roles and functions of law enforcement personnel and rape crisis counselors, the differences in ratings emphasize the need for specialized crisis counselors who should be available to rape victims soon after the assault. Despite the positive overall ratings of law enforcement personnel, complaints of bad or disrespectful treatment were directed toward the police. Minority victims were especially likely to report such treatment. Minority women are too often ascribed a questionable reputation and credibility and their complaints are often labeled unfounded by police.

. Findings on the prosecution phase of rape cases are problematic. 1) Most victims could not make an evaluation because their cases never reached that point in the system. 2) Victims whose cases did reach this point had only limited contacts for making evaluations. The 10 victims who could evaluate rated their prosecutors fair to poor.

. The police have been the target of feminist pressure groups about their handling of rape complaints. However, in many areas they have

tried to improve their public image and their service delivery.

Some have developed substantive and attitudinal rape modules for cadet training. Many have hired female personnel to work solely on rape cases. In many communities, the police have engaged more actively in public education to emphasize their concern about the rape problem and rape prevention. In stark contrast prosecutors have tended to remain detached and aloof both from the problem and from any change in efforts to prosecute.

. These findings suggest a need to reassess the priority which prosecutors give rape cases, and a strident need for them to communicate directly with victims on the status of their cases. There is little evidence that the prosecutor is accountable to victims or to the general public regarding their handling of rape cases. From a consumer view, it has been more productive to direct pressure and lobbying tactics toward the police since they are more visible and their work is better understood. In contrast, the work of the prosecutor is shrouded by the enigmas of legal statutes and judicial process. Advocates for rape victims, and the victims themselves, must become well informed to be more satisfied consumers of prosecutors' services.

. On the attrition phenomenon, we should not conclude that only 7 percent of the rape complaints reached trial. Some were quite recent, and one month is too short for the pretrial process. But only 7 additional cases were likely to reach trial, for a total of 18 percent. These cases are simply the few that survived the funnel effect of legal-judicial processing to the point of official closure. The exact nature of that closure -- felony versus misdemeanor conviction, prison versus probation; extra-legal disposition via voluntary commitment for psychiatric treatment; or acquittal are not addressed.

. There is not enough reliable data on rape victims to say

whether the 61 victims in this study represent the population, but existing data suggest that high attrition rates - from reporting to judicial disposition - do exist on rape cases (Brownmiller 1975 174; Holmstrom & Burgess 1978 237; Schram 1978 47). Often, legal-judicial officials cite reasons for the high attrition rate. 1) The case was legally weak, and could not be won in a jury trial. 2) The victim was unwilling to endure embarrassment and humiliation in a trial, and dropped the charges. While few would deny that rape cases are hard to prosecute successfully, I question whether the probability of conviction should be the deciding factor on conscientious prosecution. And while the victim who elects to drop charges must be allowed the choice, it should be an informed decision, not a decision by default.

. The victim must be given the full benefit of the prosecutor's knowledge and expertise, not only regarding the legal merits of the case, but as regards knowledge of the defendant, the defense attorney, the judge, and the prevailing community attitudes as reflected by the jury. The consumer approach to the to prosecutor services requires time and effort, but it seems a realistic expectation. If the prosecutor represented the victim in the same way that the defense attorney represents the accused, it might reduce the heavy attrition in rape cases.

. The rape adjudication data in this study challenge the probability of conviction style of reasoning. By objective criteria used to assess the legal merits of a case, these 61 rape assaults as a group were "good" cases, and are likely to be viewed as real in meeting legal definitional criteria.

. On the second point, that victims are often unwilling to follow through with prosecution, some interviewed here said they dropped charges because they could not cope with a trial. This decision typically came between the initial report and before providing a

formal statement. In no case did the victim drop charges after the district attorney accepted the case. Of the 44 victims who pursued prosecution through the formal statement, by far the most common case status was unknown. More cases are lost by default or neglect than by victim's inability to cope. If legal recourse represents the only socially acceptable means of resolving the rape experience - the only "justice" for the victim - then for these 61 women, as for so many others, the legal-judicial response appears to be a continuance of the rape rather than an effective means of closure.

REFERENCES

- .Brownmiller Susan 1975 *Against Our Will: Men, Women, & Rape*. New York Simon Schuster
- .Griffin, Susan 1971 *Rape: the all-American crime*. Ramparts 10 26-35
- .Holmstrom Linda L, Ann W Burgess 1978 *The Victim of Rape: Institutional Reactions*. New York Wiley
- .LeGrand Camille 1973 *Rape & rape laws: sexism in society & law*. California Law Review 61 919-941
- .Mann Coramae, Lance Selva 1978 *Sexualized racism: impact, myth of black sexuality*. Southwestern Sociological Assn paper
- .Medea Andra, Kathleen Thompson 1974 *Against Rape*. New York Farrar Straus & Giroux
- .Reynolds Janice M 1974 *Rape as social control*. Catalyst 8 62-67 Winter
- .Schram Donna 1978 *Forcible rape*. Proj Rpt 75-N1-99-0015. Wash DC Law Enforcement Assistance Admin
- .Weis Kurt, Sandra S Borges 1973 *Victimology & rape: the case of the legitimate victim*. Issues in Criminology 8 71-115
- .Williams Joyce E 1979 *Sex-role stereotypes, women's liberation and rape: a cross-cultural analysis of attitudes*. Sociological Symposium 25 61-97 Winter