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Norman S. Goldner

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## RAPE AS A HEINOUS BUT UNDERSTUDIED OFFENSE

NORMAN S. GOLDNER\*

Law enforcement personnel generally form their opinions about sex offenders and their victims on the basis of their experiences in the field.<sup>1</sup> Realistically, neither police officers, their supervisors nor the court can be expected to search the social science literature and collate the available information about the many types of sex offenders. The purpose of this paper is to present, to those who most frequently deal with it, a cross section of the available literature on forcible rape (hereafter also referred to as rape). This paper will summarize some of the available data concerning the frequency, time, place and methods of forcible rape as well as that concerning the personality characteristics of both the rapist and his victim. It will also indicate certain questions about rape which have been given scant attention in criminological publications.

### *Legalistic Definitions of Rape*

Perhaps the most inclusive legalistic definition of rape was given by the English jurist and legal historian, Sir William Blackstone: "Rape in the first degree . . . includes cases in which intercourse was had without conscious and voluntary consent, when the woman was unable to give consent, or when resistance was prevented by stupor, intoxication, narcotics, etc."<sup>2</sup> Refinements of this definition have been offered. One includes the stipulation of violence and states that "Rape means to sieze against the wishes of the female and by means of physical force."<sup>3</sup> Another elaborates on the means by which the deed can be accomplished: "Rape is

unlawful carnal knowledge . . . without her consent either by force, fear or fraud (fraud vitiates consent)."<sup>4</sup>

The specific language of present laws dealing with rape varies but two types of rape are generally recognized: 1) rape by force or various kinds of deceit; and 2) statutory rape, intercourse with someone below statutorily stipulated age.<sup>5</sup> For example section 213.1 of the Model Penal Code provides in part:

(1) Rape. A male who has sexual intercourse with a female not his wife is guilty of rape if:

(a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

(b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(c) the female is unconscious; or

(d) the female is less than 10 years old.<sup>6</sup>

### *Frequency*

The paucity of studies on rape may be explained by the facts that ". . . the number of forcible attacks on women and children represents but a small fraction of all sex offenses"<sup>7</sup> and that statutory rapes far outnumber forcible rapes.<sup>8</sup> For example, in New York between 1930 and 1939 there were 2,366 convictions for rape; 82 percent were statutory.<sup>9</sup>

According to the Federal Bureau of Investigation Uniform Crime Reports (hereinafter referred to as UCR) "crime clocks" only murder occurs less frequently than forcible rape. However, over the nine year period from 1960-1969, forcible rapes

<sup>4</sup> *Id.*

<sup>5</sup> Bornstein, *Investigation of Rape; Medicolegal Problems*, 9 MED. TRIAL TECH. Q. 61 (March 1963). In statutory rape, age is the salient criterion; force is not a primary issue even when it accompanies the act.

<sup>6</sup> AMERICAN LAW INSTITUTE, MODEL PENAL CODE (Proposed Draft 1962).

<sup>7</sup> SEX HABITS OF AMERICAN MEN: A SYMPOSIUM ON THE KINSEY REPORT 25 (A. Deutsch ed. 1948).

<sup>8</sup> KARPMAN at 12, 27.

<sup>9</sup> *Id.* at 12.

\* Assistant Professor of Sociology, Wayne State University.

<sup>1</sup> The way in which the public, through its attitudes and actions, influences the treatment and punishment afforded sex offenders was discussed in Falk, *The Public Image of the Sex Offender*, 48 MENTAL HYGIENE 612 (1964). Falk concludes that the urban middle-class is most influential in disseminating attitudes toward sex offenders; that mass communication purveys these attitudes; that fear and hysteria surround sexual issues in the United States; that sex criminality is exaggerated; that the laws which attempt to regulate sexual conduct fail to do so; that a gradual trend is evident from punishment to treatment.

<sup>2</sup> B. KARPMAN, *THE SEXUAL OFFENDER AND HIS OFFENSES* 12 (1954) [hereinafter cited as KARPMAN].

<sup>3</sup> *Id.*

increased from 16,860 to 36,470, or 116 percent.<sup>10</sup> However, it is unclear whether forcible rape is increasing disproportionately to population increases. There is some evidence it is not. For instance, between 1960 and 1969 the number of rapists arrested under the age of eighteen increased 86 percent, those eighteen years and over, about 51 percent (UCR). This increase is consistent with an increasingly youthful population. However, numerous variables affect such measurements. Changes in arrest rates are influenced by changes in laws, in reporting procedures by the police to the federal authorities, and in police efficiency. Furthermore, the publicizing of a dramatic incident of rape often leads to an increase in reports of rape for a time thereafter.<sup>11</sup> And in any event, reporting a rape has such unpleasant ramifications for the victim—both because of her “reputation” and the necessary caution of the police in accepting these charges—that rapes frequently go unreported.

#### *Time, Place, Method*

According to UCR, it has been true for decades that forcible rape is most prevalent from May through October, reaching its peak in August. Little data has been collected to indicate more precisely the times during which rapes most frequently occur, however. Amir, studying 646 cases of rape in Philadelphia during 1958 and 1960, found that Saturday was the peak day for this offense and that the highest risk hours were between 8:00 P.M. and 2:00 A.M.<sup>12</sup>

The UCR reveal that forcible rape as a “known offense” is most frequent in the city, least frequent in rural areas. Low rates also characterize suburban areas. The rate tends to increase with the increasing size of the city, though between 1968 and 1969 the largest percent increase in forcible rape (20.7 percent) was in 451 cities with populations between 25,000 and 50,000. No locale showed a decreased rate between 1968 and 1969 as had been the case in some previous years. No explanation of these rates is readily available in criminological literature.

<sup>10</sup> All UCR “serious” crimes except murder and aggravated assault showed a greater relative increase during the same period.

<sup>11</sup> This may be similar to the phenomenon that citizens reported more prowlers than usual when a mysterious “gasser” was believed to be at large. Johnson, *The “Phantom Anesthetist” of Mattoon: A Field Study of Mass Hysteria*, 40 *ABNORMAL & SOCIAL PSYCHOLOGY* 175 (1945).

<sup>12</sup> Amir, *Forcible Rape* in *DEVIANCE* 67, 69 (S. Dinitz R. Dynes, A. Clarke eds. 1969).

Only limited evidence exists correlating place and rape, and it was collected in two of our largest cities. A survey in 1940 by the Homicide Bureau in Chicago revealed that there was a substantial relationship between place of the offense and the residence of the sex offenders. Eighty-two percent of male sex offenders committed their crimes within their own neighborhoods.<sup>13</sup> The next most prevalent area of offense was in a district adjacent to their area of residence.<sup>14</sup> A similar pattern was discovered by Amir: “In the majority of cases (82 percent) offenders and victims lived in the same area, while in 68 percent a ‘neighborhood triangle’ was observed, i.e., offenders lived in the vicinity of victim and offense.”<sup>15</sup> He found that rapist and victim most often met on the street and in the residence of either the victim or the offender.<sup>16</sup> The offense usually took place at the site of the initial meeting with a tendency for the crime scene to move from outdoors to inside.<sup>17</sup>

Only Amir seems to have published data relevant to the techniques or methods utilized for rape.<sup>18</sup> He noted that the most dangerous meeting place was the street, and found that most of the rapes were planned, and that most of those planned were intraracial when they took place in one of the participants’ homes or when it was a group rape.<sup>19</sup> Non-physical methods to accomplish the rape included verbal threat, intimidating physical gestures and the menacing use of some types of weapon in 87 percent of the cases.<sup>20</sup> Violent practices accompanying the rape included roughness (29 percent), nonbrutal beatings (20 percent) and choking (12 percent). Extreme violence was significantly associated with intraracial Negro rapes or when the offender was Negro and the victim was white. Force and multiple rape, that is, rape by more than one offender, were also correlated, especially when the event took place out of doors.<sup>21</sup> Sexual humiliation through the use of practices usually referred to as sexually deviant occurred in a quarter of the cases (27 percent).<sup>22</sup>

<sup>13</sup> Erlanson, *Scene of a Sex Offense as Related to the Residence of the Offender*, 31 *J. CRIM. L. & C.* 339 (1940).

<sup>14</sup> *Id.*

<sup>15</sup> Amir, *supra* note 12, at 69.

<sup>16</sup> *Id.* at 71.

<sup>17</sup> *Id.*

<sup>18</sup> Amir identifies five phases in the process and characteristics of the rape situation. *Id.* at 70.

<sup>19</sup> *Id.* at 71.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 71-72.

Forty-three percent of the rapes studied by Amir were multiple. The initial interaction and the rape usually took place outside; both were usually planned as opposed to "explosive." Multiple rapes were accomplished more often by intimidation and nonbrutal beatings than by the extreme violence and brutality which characterized single offender rapes.<sup>23</sup>

Only 4 percent of the rapes coincided with other felonies such as burglary or robbery, and in these cases the offender was often at least ten years younger than the victim.<sup>24</sup> In 48 percent of the rapes, the offender and the victim already knew one another, and in these cases, the closer the prior relationship the greater the degree of force used. As is the pattern with murder, neighbors and acquaintances, though not relatives, most often committed brutal rapes.<sup>25</sup> Multiple rape more often took place between strangers. So-called victim-precipitated rapes occurred in only 19 percent of the rapes Amir studied.<sup>26</sup>

#### *The Offender: Vital Statistics*

Arrest statistics for 1969 show that eighteen year olds commit the greatest number of rapes; nineteen year olds follow closely as principal offenders. Considering five year age spans, the range from 15-19 years contains the largest number of offenders with high but steadily decreasing rates exhibited as the intervals proceed from 20-24, 25-29 and 30-34 years. These UCR figures are consistent with previous ones showing a gradual increase in rape with increasing age from ten to a peak at eighteen whereafter the rates gradually decline past the 35-39 age bracket. They are supported by studies through time in specific locales. For example, a study in New York showed that rape was committed mainly by those under thirty-one;<sup>27</sup> later findings in Los Angeles gave the average age of rapists as 23.<sup>28</sup>

UCR figures for 1969, consistent with previous years, indicate that the rapist population is composed primarily of whites and Negroes, with the former in far greater proportion than the latter. However, Amir's Philadelphia study found that

<sup>23</sup> *Id.* at 72-73.

<sup>24</sup> *Id.* at 73.

<sup>25</sup> KARPMAN at 39, maintains that sex offenses involving force are more prominent among youthful offenders, especially during rape.

<sup>26</sup> Amir, *supra* note 12, at 73-74.

<sup>27</sup> New York Mayor's Committee Reports on the Study of Sex Offenses (1943).

<sup>28</sup> Guttmacher & Weihofer, *Sex Offenses*, 43 J. CRIM. L.C. & P.S. 78 (1953).

"Negroes exceed whites . . . among offenders in absolute numbers as well as in terms of their proportion in the general population. . . . The proportion of Negro offenders was four times greater than their proportion in the general population. . . ." <sup>29</sup> Substantially more Negroes than whites have been executed for rape (375 Negroes, 41 whites), the vast majority of these executions taking place in the South.<sup>30</sup>

Data concerning the religion of offenders is scanty. Karpman<sup>31</sup> has indicated that 53 percent of all sex offenders are Roman Catholic, but provided no specific figures for rapists. The same lack of information exists for educational, occupational and social class levels. We do know that sex offenders are usually single, unskilled workers from low education and income groups.<sup>32</sup>

Our knowledge about the general criminality of convicted rapists is inadequate and somewhat contradictory.<sup>33</sup> Karpman, though, has concluded that "rapists appear to have a greater tendency toward criminal records of nonsexual crimes than do other sex offenders."<sup>34</sup>

There is virtual unanimity among those who study rapists that they possess a below-average I.Q. Gillin found this to be the case for a Wisconsin State Prison population in which rapists had a lower I.Q. than sodomists.<sup>35</sup> Caldwell administered a revised Army Beta Intelligence Test to inmates of various Alabama prisons and correctional camps and found both whites and blacks convicted of rape to have below-average scores for that inmate population.<sup>36</sup>

#### *The Offender: Psychopathology and Other Causal Factors*

Psychoanalysts, psychiatrists and other clinicians have written at length about the psychopath-

<sup>29</sup> Amir, *supra* note 12, at 68.

<sup>30</sup> FEDERAL BUREAU OF PRISONS, NATIONAL PRISON STATISTICS No. 20 (1959).

<sup>31</sup> KARPMAN at 33.

<sup>32</sup> *Id.* at 33-34.

<sup>33</sup> See Rothenberg & Steffens, *Rape Victim*, 73 AM. MERCURY 78 (1951).

<sup>34</sup> KARPMAN at 28.

<sup>35</sup> Gillin, *Social Backgrounds of Sex Offenders and Murderers*, 14 SOCIAL FORCES 288 (1935).

<sup>36</sup> Caldwell, *Personality Trends in the Youthful Male Offender*, 49 J. CRIM. L.C. & P.S. 413 (1959).

Prison populations generally fall within the normal range on I.Q. tests, although federal prison populations are an exception because of the select nature of the inmates. Federal inmates tend to have higher than average I.Q.'s. However, since I.Q. tests in general are affected by superficial factors in the testing situation and suffer from other problems of meaning and interpretation, I.Q. scores may be of limited use in understanding the rapist.

ology of sex offenders. The following interpretations of sex offenders' behavior are a sample of available psychodynamic and psychostructural explanations. The sample demonstrates that no agreement has been reached on whether the motivation of rapists is different from that of other offenders in degree, kind or pattern.

A study by the University of Minnesota Medical School of prisoners in Sing Sing Prison led to the conclusion that none of the sex offenders had a normal personality while 70 percent had symptoms of schizophrenia.<sup>37</sup> Another study of convicted sex offenders at the State of New Jersey Diagnostic Center concluded that high rates of disturbed behavior were "found among those convicted of forcible rape and exhibitory acts. . . . Underlying or overt hostility was particularly evident in those convicted of sexual assault, forcible rape, and incestuous relationships."<sup>38</sup> Hammer and Glueck conducted a five year study of the psychodynamic patterns of 200 sex offenders and found that other inmates were differentiated in the degree but not the kind of their mental processes.<sup>39</sup>

A number of behavior explanations and personality descriptions have been offered for rapists, as distinguished from sex offenders generally. Hammer and Glueck found rapists to have less intense feelings of castration than other sex offenders. They suggested ". . . that the rapists' castration feelings are not overwhelmingly incapacitating which allows them to employ the mechanism of overcompensation and diminution under a cloak of overassertive and aggressive virility."<sup>40</sup> They also suggested that, "The rapist, feeling rejected by his mother, feels he cannot be wanted or desired by any woman; hence he attempts to command a woman physically."<sup>41</sup>

Karpman reports a study by Manfred Guttmacher in which he concluded on the basis of Rorschach tests that rapists show ". . . conflict, inner disharmony, and social isolation."<sup>42</sup> Also using the Rorschach, Pascal and Herzberg compared rapists with a control group but found that the two were indistinguishable from one another;

<sup>37</sup> The study is summarized at 42 SCIENCE DIGEST 22 (Sept. 1957).

<sup>38</sup> Brancale, *Psychiatric and Psychological Investigations of Convicted Sex Offenders: A Summary Report*, 109 AM. J. PSYCHIATRY 13 (1952).

<sup>39</sup> Hammer & Glueck, *Psychodynamic Patterns in Sex Offenders: A Four-Factor Theory*, 31 PSYCHIATRIC Q. 327 (1957).

<sup>40</sup> *Id.* at 329.

<sup>41</sup> *Id.* at 337. A similar interpretation is set forth in Roth, *Factors in the Motivation of Sexual Offenders*, 42 J. CRIM. L.C. & P.S. (1952).

<sup>42</sup> KARPMAN at 38.

"If we take heterosexual behavior between adults as our standard, then it is difficult to see how the rapists differ from the controls in sexual behavior."<sup>43</sup>

According to Karpman, the probable motivation for rape is that for some men, only the resistance of the woman makes them potent: "In many cases, rape may be related unconsciously to early incestuous desires and the fury aroused by the Oedipus complex. . . . The victim may be a substitute for the criminal's mother who would naturally resist the attack by her son."<sup>44</sup>

A few studies have been made of the wives and mothers of rapists. In the first study of its kind, Palm and Abrahmsen analyzed the wives of eight rapists by use of the Rorschach.<sup>45</sup> They found these women remarkably alike in that they had an image of the father figure as threatening and sexually aggressive and responded in a masochistic way; they had latent homosexual inclinations; their husbands—then in Sing Sing—complained about their wives' lack of sexual spontaneity.<sup>46</sup> Checking case histories, Palm and Abrahmsen found that these same rapists had been overstimulated sexually in their childhood by their mothers: "In most cases, seductive behavior by the mother alternated with cruelty and harshness. . . ." <sup>47</sup> Gillin also found difficulties in the rapists' family situations and suggested that the homes of sex offenders in general seem to have "an outstanding lack of emotional tone."<sup>48</sup>

### *The Victim*

An area of inquiry which has received even less attention than those already reviewed concerns the rapist's victim. Both men and women are the victims of rape, though judging from the UCR, males are very seldom raped. Karpman points out that

Indecent assault by an adult woman on a small boy is more common than is thought. In 1842 The Court of Assizes of the Seine convicted a girl of rape on two children. A case has been reported where several women seized a young man. Such cases are rare. The mores of the community

<sup>43</sup> Pascal & Harzberg, *The Detection of Deviant Sexual Practice from Performance on the Rorschach Test*, 16 J. PROJECTIVE TECHNIQUES 370 (1962).

<sup>44</sup> KARPMAN at 347.

<sup>45</sup> Palm & Abrahmsen, *A Rorschach Study of the Wives of Sex Offenders* 119 J. MENTAL DISORDER 167 (1954).

<sup>46</sup> *Id.* at 168-70.

<sup>47</sup> *Id.* at 170-71.

<sup>48</sup> Gillin, *supra* note 35.

... define sexual deviation as acts committed by males....<sup>49</sup>

Female victims of rape ordinarily do not wish to cooperate in studies of their own behavior. This may be due largely to the shame involved in being a victim. Furthermore, the issue of victim-precipitated rape is often raised. Did the victim appear to agree but then retract consent before intercourse was "forced," or did she place herself in a situation which implicitly invited a sexual encounter?<sup>50</sup>

Clinical literature contains numerous psychiatric studies of rape victims, but these tend to be both unsystematic and individualistic<sup>51</sup> and plagued by problems of police and victim non-cooperation. One study partly circumvented these problems by focusing upon seventy-three girls from the ages of four to sixteen who were the victims of adult sex offenders.<sup>52</sup> In those cases in which the girls were "participant," as opposed to "accidental," victims, three factors were discovered: 1) deprivation and rejection of the child by the mother along with inconsistent attitudes toward the child; 2) intense sexual stimulation of the child by the parent; 3) conflict within one parent or disagreement between them over the child's expression of her sexual impulses.<sup>53</sup> It should be noted that the above traits were also considered important etiological factors in the motivation of the rapist.<sup>54</sup>

<sup>49</sup> KARPMAN at 37. Other accounts of female rape offenders are given in *JUVENILE OFFENDERS FOR A THOUSAND YEARS* (W. Sanders ed. 1970), and Gebhard & Gagnon, *Male Sex Offenders Against Very Young Children*, 121 AM. J. PSYCHIATRY 576 (1964).

<sup>50</sup> Amir, *supra* note 12, at 74, classified 19 per cent of the cases he studied as victim-precipitated. It should be noted that the literature on forensic medicine is much concerned with techniques whereby the truth of an alleged rape can be determined.

<sup>51</sup> See, e.g., Factor, *A Woman's Psychological Reaction to Attempted Rape*, 23 PSYCHOANALYTIC Q. 243 (1954).

<sup>52</sup> Weiss, *A Study of Girl Sex Victims*, 29 PSYCHOLOGICAL Q. 1 (1955).

<sup>53</sup> *Id.* at 25-27.

<sup>54</sup> It may well be that information derived from cross-cultural studies can assist our understanding of rape in America. Suggestive hypotheses have come from Robert LeVine's anthropological study of the Gusii in southwest Kenya. Rape rates in that culture were relatively high: 4,712 per 100,000 population between 1955 and 1956. (In the U.S. for this same period the ratio was 13.85 per 100,000 urban and 13.1 per 100,000 rural residents.) LeVine suggested that "four factors should be regarded as necessary but not sufficient for rapes:"

1. Severe formal restrictions on the non-marital sexual relations of females;
2. Moderately strong sexual inhibitions on the part of females;

### Concluding Observations

If rape is regarded as such a serious offense by the victim, society and its legal enforcement agencies, why is our knowledge of it so incomplete and why has so little formal study been devoted to it? At least a partial explanation is provided by the following observations:

- 1) Statistical representations of rape are subject to all of the well-known limitations of garnering valid and reliable data about crime in general.
- 2) Statistically, rape is a relatively infrequent offense. Of those acts regarded as major offenses, only "murder" and "non-negligent manslaughter" occur less often.
- 3) Rape is a highly personal and unorganized offense. There is little likelihood of gathering participant observation data<sup>55</sup> or acquiring information from active participants, informers or "plants" as has been the case with organized crime, the drug culture, and many kinds of property offenses.
- 4) The legalistic definitions of "forcible" and "statutory" often make it difficult to determine which kind of rape has occurred or whether rape has occurred at all.<sup>56</sup>
- 5) Rapists as well as their victims are reluctant to discuss the act, especially when it has not already been officially reported. Even known rapes may go unprosecuted because of the victim's reluctance to press charges and bear witness.
- 6) Rapists sometimes plead guilty to a lesser offense such as simple assault, or otherwise evade the charge. It is possible and perhaps likely that rape is less frequently reported to the police than some other types of crime. The effect is for known crimes, arrests, prosecutions, numbers, convictions and penalties to be lower for rape than for crimes compar-

3. Barriers to marriage prolonging the bachelorhood of some males into their late twenties;

4. Absence of physical segregation of the sexes.

Notably absent from these factors are the psychological concerns so prominent in the U.S. literature. LeVine, *Gusii Sex Offenses: A Study in Social Control*, 61 AM. ANTHROPOLOGIST 965 (1959).

<sup>55</sup> An exception is Connell, *Notes from the Diary of a Rapist* in MIRROR OF MAN 58-64 (J. Dabaghian ed. 1970).

<sup>56</sup> This is also true in other Western societies. In 1911 Thoinat estimated that in France, from 60 to 80 percent of the accusations of sex crimes were recognized as unfounded. For every real case of rape brought to trial in England there were at least twelve false accusations. KARPMAN at 211.