

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 5, 1977

The meeting was called to order at 8:11 a.m. Senator Close was in the chair.

PRESENT: Senator Close  
Senator Bryan  
Senator Ashworth  
Senator Dodge  
Senator Gojack  
Senator Foote  
Senator Sheerin

ABSENT: None

SB 286 Senator Close stated that he needed a motion to kill this as they need a new bill.

Senator Dodge moved "do kill."  
Seconded by Senator Gojack.  
Motion passed unanimously. Senators Ashworth and Foote were absent from vote.

SB 412 REPLACES RAPE AND OTHER SEX-RELATED CRIMES WITH OFFENSE OF SEXUAL ASSULT.

Florence McClure, Director of Community Action Against Rape, serving the metropolitan area of Clark County submitted her testimony in writing (see Attachment A), as well as a paper on rape by A. Nicholas Groth and Ann Wolbert Burgess (see Attachment B). She wanted to bring out a recent case that was not in the testimony.

She said that she got a call from Karen Good asking her to meet a woman at the hospital. This woman was the mother of 8 children and made her livelihood working in an apartment building and cleaning rooms for new tenants. A man had gotten into the room where she was cleaning and had raped her. She was very traumatic and there was no way she could have paid that bill. Now they feel bad when they can't pay the bill. I would like to see us keep this one victim's assistance bill that was brought out in the last session. She would like the language changed where it states "if the county has an ordinance providing for the payment of such costs." She would like this language to be made mandatory in the bill. That is the only problem she has with this bill.

SENATE JUDICIARY COMMITTEE  
MINUTES OF MEETING  
APRIL 5, 1977

PAGE TWO

Daisy Talavite, representing the League of Women Voters in Nevada stated that she would like to make a brief statement. The League has not studied all of the details of rape laws, therefore, her testimony was confined to one specific area. That is the need to redefine and eliminate the old laws with references to carnal knowledge of a woman or to any reference that confines it to one sex. She has had personal knowledge where young men and young boys were subjected to what she would call sexual assault. It is just as traumatic for the families, the young men and boys, that are being attacked. Therefore, the League requests that any redefinition of sexual assault would make certain that there is protection for both sexes under the law.

Tom Beatty stated that this is another attempt to revise Nevada law as to sexual acts. When we attempt to change laws that have existed for hundreds of years, common law or otherwise, it gets to be rather complex. He feels this is a good bill, but needs a few minor changes. One thing that is very good that he would like to mention briefly, is where they amended sections 200.501 to 508 at the last session and defined child abuse to include sexual abuse, and then defined sexual abuse to include incest, rape, infamous crime, etc. Apparently nobody caught this because those definitions apply in 200.501 to 508 and 200.508 says child abuse is a gross misdemeanor.

Well, it was just previously defined to include sexual abuse. So competent defense counsel, without a clause such as is found in section 10 could argue that the Legislature has impliedly repealed all of those sex acts where committed by a person having the custody or control of the minor on whom the act was perpetrated. He said that we desperately need that section because it will be strong evidence that the intent of the Legislature was not to repeal that section. Let's now look at the problems. In this bill whether you intended or not turns out to be a gay rights bill. All sexual acts between consenting adults is legalized; all consensual sodomy between adults, fellatio, cunnilingus. He didn't have any suggested language here; where it is in the bill is the last line, page 9, lines 37 to 38 and it repeals NRS 201.190 which is the former infamous crime against nature statute.

It says that any infamous crime against nature by force, or on a minor under 18 is punishable by life, otherwise its 1 to 6. And, it includes bestiality, consenting adults

and all the rest of it. He said that the USSC, in the last year, ruled in *Dover vs. Commonwealth City of Richmond*, in a one word opinion, affirmed, binding upon all courts in this country as an interpretation of the U.S. Constitution. Under *Hicks vs. Miranda*, it upheld a Virginia statute prohibiting consenting adults in a case where a homosexual male, who sought to have the statute declared unconstitutional because it invaded his right of privacy. The 3 judge, lower court said simply, nuts, there is no right of privacy and there is nothing involved here. This is not a marital relationship and there is no significant interest for adult persons to commit acts of sodomy in private. So, if a state desires, they may prohibit such acts. That is a policy question, but in acting on this bill, I think you should be aware that the present act is repealed.

Senator Gojack said she would like to have it cleared up in Section 28, NRS 201.190 would repeal these statutes that Nevada has on its books prohibiting private sexual acts?

Mr. Beatty stated that we do not have a present statute prohibiting of the garden variety. We have a statute prohibiting homosexual acts between consenting adults; that is 201.190, subsection 2 and, otherwise, is the clause that prohibits it. That would be repealed by this act.

Senator Ashworth said if we repeal 201.190, are we in conflict with the rest of the bill? Mr. Beatty stated that if we do not repeal it, then we would be in conflict.

Senator Bryan stated that his understanding was that if we repeal this then we would affect the heterosexual relationship as well. Under the present law, infamous crime against nature could be successfully prosecuted presumably. Mr. Beatty stated that it could be successfully prosecuted per se if it is not in the marital relationship until the State Supreme Court rules otherwise. Some previous cases handed down indicated that they might so rule in a proper case, but that was before the United States Supreme Court determination. In the marital relationship, no, it could not be prosecuted successfully.

Senator Gojack asked what the difference was then; wouldn't they have to go through the same kind of evidence for a homosexual relationship? And, if so, why? Mr. Beatty stated that he would not like to make a state-

SENATE JUDICIARY COMMITTEE  
MINUTES OF MEETING  
APRIL 5, 1977

PAGE FOUR

ment on that but there are a lot of people in the State that are concerned. Some are based on ideas of religion, some based on what is proper and what is a so-called natural act. His only purpose here is to spell out what this bill would do. The evidenciary procedure would be the same. Now, secondly, the bill in the same section would also legalize bestiality. Perhaps, you could clear this up by only repealing 201.190 (1a) and then leave out, by redrafting the definition of the statutory sexual assault. The last bad point is that in Wallin vs. State, decided January 19, this year: "after they engaged in sexual intercourse, Jessie Wallin, appelantant forceably raised his wife's legs and inserted his clenched fist into her rectum. Despite her pain and pleading he kept it there for several minutes until he finally released her. With the assistance of her children, she was taken to the hospital where she was treated for extensive injuries in the rectal area." She charged him with battery; he went to trial on battery with substantial bodily harm; he was convicted and the Supreme Court upheld the conviction.

Now, this bill over-rules this possibility. Remember this is a husband on wife, and it is a forcible act. By looking at the first definition of sexual penetration, in this bill, it means "fellatio, cunninlingus, or any intrusion, however slight, of any part of a person's body, into the genital or anal openings." So, that is precisely what we have, so we, therefore, have a sexual assault and it now says in section 6, page 3, line 23: "a person may not be convicted of a sexual assault upon his spouse unless he is an accomplice or an accessory." So, the relative small punishment of gross misdemeanor could be gotten in this circumstance. In other words, the husband would not be liable for forcible infamous crime in this particular case.

The other things are comparatively simple, but there is no savings clause in this particular act. So, I would feel a lot better by having a general savings clause as to acts committed or prosecutions begun prior to the effective date of this act.

One thing that was brought up in 201.190, subsection 2 regarding "accomplice", "no person who is compelled by another through physical force or the immediate threat of such force to participate in the infamous crime against nature is thereby guilty of any public offense." This was taken out and we feel that it should be left it. There is still some problem in the sexual conduct of young

SENATE JUDICIARY COMMITTEE  
MINUTES OF MEETING  
APRIL 5, 1977

PAGE FIVE

persons. In dealing with the statutory sexual assault primarily, we are now saying that it is a crime for any person over the age of 18, with any person under the age of 16 for any intrusion. Now, let us assume that we have an 18 or 19 year old dating a 15 year old and you have heavy petting which is now 1 to 10. At the present time it is not a crime.

Senator Bryan asked what changes he suggested the Committee make? Mr. Beatty stated he wasn't sure, as in the past we had separate statutes to deal with certain conduct and now we are trying to put them together. In doing so, we make it even more encompassing. In response to Senator Bryan's question of redefinition of statutory rape, he felt that we could make it more restrictive. Now, the changes are under present circumstances, infamous crime against nature with force is a mandatory life sentence, although probation is possible. Under sexual assault with force it is 5 to life. Infamous crime against nature on a person under 18 is life by the present statute. Now, sexual assault under 16, it is 1 to 10. If it is forcible it would still be 5 to life.

Senator Close stated that he felt they should go through the bill to make policy decisions and decide what they want to do with it. On the consenting rights of the bill, we have eliminated the consenting rights, do we want to put it back in to preclude certain sex acts between adults. On this bill, certain acts between consenting adults has been legalized and there are now two questions: one, should consenting adults homosexual acts be legalized or, two, should consenting acts be heterosexual or married individuals.

Senator Dodge stated that on the homosexual thing, my vote is no. The committee agreed except for Senator Gojack.

Senator Close stated that then we have to decide on the heterosexual sexual acts. The committee's decision was that they should have this in the law.

Senator Dodge stated that in the definition of sexual penetration, are we going any further with this definition as far as the things we are calling a felony then we do in the law presently? Mr. Beatty stated that we were, but he felt they were all salutary changes; cunnilingus, fellatio, in those things that are already covered.

Senator Dodge stated he understood about the person mentally or physically incapable of resisting. What is the nature of understanding his conduct? Mr. Beatty said that there is a whole volume of case laws that are built up to define rape by mistake, consent by mistake, consent by fraud and a whole series of rather bizzare circumstances, but which could develop a pretty good law. Presumably, the intent of this section is not to change existing case law, but merely to continue it.

Senator Dodge asked if bodily harm contemplates mental impact? Mr. Beatty stated it does not at the present time. Substantial bodily harm is defined in chapter 193, one of the definitive sections, as "prolonged impairment of a limb or other bodily organ that protracted pain. Senator Dodge said that his question is what about the person who does not really suffer bodily harm, but is mentally deranged as a result of this? Are we going to let this guy go? Mr. Beatty stated that we are not really letting him go, but this bill will provide a slightly different penalty. He could still get 5 to life instead of mandatory life, because he would still be meeting the criteria of "against her will."

Mr. Beatty stated he just wanted to point these things out to the Committee because when you have a general law and it is covered in another section specifically, then that section can be repealed because if it is not specific, then the courts will conclude that because it was not stated, the intent was not there.

SB 368

REVISES PROVISIONS RELATING TO ALIMONY AND DISPOSITION OF COMMUNITY PROPERTY IN DIVORCE ACTIONS.

Senator Young stated that this bill came about because of a gentleman who got a divorce and was paying a great deal of alimony. His ex-wife moved to Hawaii and went through a marriage ceremony, however, she did not have the benefit of a license. So, the husband is still bearing the burden. That is why the bill was introduced-- to cover situations such as these.

Senator Dodge stated he didn't like the first part of the bill, but perhaps there could be some attention given to subsection 5 to give the person in this situation some relief to get him into court. What about the idea of putting 30 days in one calendar year.

SENATE JUDICIARY COMMITTEE  
MINUTES OF MEETING  
APRIL 5, 1977

PAGE SEVEN

Senator Bryan stated that this was not an isolated case anymore. There should be something in the law about cohabitation of the spouse with a time limit set that could get the settlement into court for review.

Senator Dodge asked if there could be something about a subsequent course of conduct?

SB 417

LIMITS ADVERTISING AND SALE OF CERTAIN WEAPONS BY UNLICENSED PERSONS.

Senator Schofield testified that the original thrust of this bill is to control the illegal sale and movement of hand guns, sub-machine guns, sawed-off shotguns and silencers. However, this last weekend he received numerous phone calls from collectors, etc., and it now seems to him that there is no way to put a control on this without restricting all of the gun lovers and sportsmen.

Senator Ashworth moved to indefinitely postpone. Senator Dodge seconded the motion. Motion carried with Senator Gojack voting nay.

SB 416

PROHIBITS CERTAIN ACTS INVOLVING PERSONAL PROPERTY FROM WHICH IDENTIFICATION NUMBER IS REMOVED.

Senator Bryan stated that this was brought about when the Washoe County Sheriff's Office came in on an Assembly Bill which made it a misdemeanor to deface or remove the serial number from personal property and, at that time, they elected to postpone the bill, on the basis, he thought, that it was unworkable. He said it is very difficult to establish that the person ever took the serial number off. There aren't too many times you would have a witness that would be available to testify. He had a call from the pawnshop people who stated that under the language here, that if he defaulted on the pledge at the time of sale, the pawnbroker would be liable as well.

Senator Dodge stated that his concern would be to what extent do you want to make an accomplice to this type of crime? The guy that really should be prosecuted is the person who steals it; maybe, in the first instance removes it and I don't have any sympathy with him. Even if the guy sees that it is defaced and maybe has some knowledge that it has been stolen, I don't know the extent to which we should pursue this.

SENATE JUDICIARY COMMITTEE  
MINUTES OF MEETING  
APRIL 5, 1977

PAGE EIGHT

Senator Ashworth stated that his brother was a pawnbroker, but he thought the committee ought to make it very tough on the pawnbroker who takes any kind of a defaced thing. He said he had problems with the bill.

Senator Close asked that assuming one had an article that had the serial number defaced for some reason, like a gun for instance, and he legitimately wanted to buy that weapon, what would happen. For instance the police department has auctions of stolen guns and the serial number has been obliterated and someone wants to buy that gun. According to this bill, it would be committing a crime.

Senator Sheerin asked if subsection 2 didn't take care of that?

Senator Gojack thought that would be covered under the established practice of ordinary course of business? Senator Close stated that they wouldn't have changed it. Senator Ashworth asked why you couldn't have something in the bill of sale stating that you purchased it without a serial number on it.

Senator Sheerin stated that if you passed this bill, it would have a reverse affect. Right now possession for stolen goods is a felony. What you are going to do here is have a lesser included crime. You are going to go in front of a jury and the defense counsel is going to get this guy off with a misdemeanor.

Senator Bryan stated that perhaps we should have Tom Beatty and Larry Hicks take a look at this.

AJR 1

Senator Ashworth stated he didn't feel they should take the county clerks out, but feels we should wait awhile to see how this unified court system works.

Senator Ashworth moved "indefinite postponement." He said that he didn't want to move with this type of amendment to the constitution until we have a better handle on how we are going to finance the court system. Senator Dodge seconded the motion.

Senators Ashworth, Dodge and Foote voted "aye."

Senators Close, Bryan and Sheerin voted "nay."

Senator Gojack was absent from vote, therefore it was a tie and did not pass.



SENATE JUDICIARY COMMITTEE  
MINUTES OF MEETING  
APRIL 5, 1977

PAGE NINE

Senator Bryan stated that he was in support of this bill mainly because of the confusion of the court calendars. It used to be when it was set, everyone got notified, then the courts decided that the mailing costs were to great. Now the situation is a night mare. All the time there are motions in court, where nobody has been notified. ..You would have a default against your client; you would go back over there and talk with the judge and explain what had occured and 9 out of 10 times the court would simply vacate the default on the basis that nobody had any notice. The system the court clerk devised was that every attorney practicing in the district had a little file folder and they would slip a copy of the notice in that and presumably the runners from the law offices would go over and pick these things up.

Senator Dodge opposed it because we have a nagging problem in the counties now about financing courts. The concern of the counties is as long as they are going to be responsible for the financing, they don't want to cut loose of these kinds of things and hand to the court system what they feel is an uncontrolled autonomy about the staffing of these kinds of positions and the salaries. Until we solve the problem of how we are going to finance the courts, and whatever balances budgetwise we are going to put on them, I don't think we even ought to proceed with this amendment.

Senator Ashworth stated he was opposed because he feels that the county clerks can and do a good job and will be able to provide the services that the judiciary wants if they, the judiciary, can just get their act together and tell the county clerks what they want in terms of statistics. Until the state takes over the judiciary and sets some guidelines down, nothing will improve and this is just premature.

Senator Gojack stated she basically liked the bill and perhaps it could be amended to exclude the small counties or some similar idea.

Senator Ashworth moved indefinite postponement.

Senator Dodge seconded the motion.

Motion did not pass with Senators Ashworth, Dodge and Foote voting "aye" and Senators Close, Bryan, Sheerin and Gojack voting "nay."

SENATE JUDICIARY COMMITTEE  
MINUTES OF MEETING  
APRIL 5, 1977

PAGE TEN

Senator Close requested a motion to pass it.

Senator Gojack moved "do pass."

Senator Bryan seconded the motion.

Motion carried with Senators Close, Bryan, Sheerin and Gojack voting "aye" and Senators Ashworth, Dodge and Foote voting "nay."

SB 263

Senator Close stated we have worked on this considerably and modified it several times (see minutes of March 25).

Senator Ashworth moved "indefinite postponement."

Senator Dodge seconded the motion.

Motion did not carry because of a tie vote with Senators Ashworth, Dodge and Sheerin voting "aye" and Senators Close, Bryan and Foote voting "nay." Senator Gojack was absent from vote.

Amendments to SB 263 were gone over by the Committee. as follows:

1. Page 1, line 16--striking \$300 and putting it at \$250.
2. Page 2--take out lines 1 through 4.
3. Page 2, section 4, line 48--put a bracket after witness, and by so doing will leave in existing laws provisions regarding attorney fees.
4. Page 3, line 6--take out the bracket.
5. Page 3--delete lines 29 and 30.
6. Page 3--delete section 9.
7. Page 5, Section 11--delete section 11 in its entirety.
8. There was some discussion on Section 13, as to the liens and who actually is entitled to the papers, etc. The Committee decided to leave this section in but add on line 2 "after payment of the fees."

Senator Gojack moved "amend and do pass."

Senator Foote seconded the motion.

Motion carried with Senators Gojack, Foote, Close, and Bryan voting "aye" and Senators Sheerin and Ashworth voting "nay". Senator Dodge was absent from vote.

SENATE JUDICIARY COMMITTEE  
MINUTES OF MEETING  
APRIL 5, 1977

PAGE ELEVEN

Because time permitted no further testimony, the meeting was adjourned.

Respectfully submitted,

Virginia L. Letts  
Virginia Letts, Secretary

APPROVED BY:

Senator Melvin D. Close, Chairman

SENATE JUDICIARY HEARING ON SB 412 - APRIL 5, 1977

I am Mrs. Florence McClure, Director of Community Action Against Rape, serving the Metro Area of Clark County. The primary goal has always been to help the victims of sexual assault crimes. The organization, as many of you know, came into existence in September 1973 because of the anger and fear that developed in the community as the result of the rape of young school girls on their way home from school; there was already concern because of the high crime rate in the area of sexual assault but the attack on children brought together people who wanted action.

In 1973 most of the laws relative to rape and other sexual assaults were over 100 years old. It is still a wonder to me that the plight of the victims of these crimes were never given serious consideration until the late 60's. Defendants were being given all kinds of consideration by the U.S. Supreme Court, sociologists, etc. We are now paying the price for some of this imbalance. I am strongly in favor of retaining all Constitutional rights for defendants but I want rights for victims of crimes of violence -- violating a person's self is a most horrendous act and payment should be exacted for commission.

The Nevada Legislature in 1975 made great inroads in correcting the imbalance I have spoken of and SB 412 will define the crime in its true light -- a crime of violence not sex. When I came before this body in 1975, only two states had redefined the crime in this manner -- Florida and Michigan. I received information recently that 22 states have now done so. Many state legislatures have such a bill before them now.

A true definition of rape is:

An act of violence - in which force is used or implied - committed by one person against another without that person's consent, violating that person's self, including the right of sexual privacy.

Myths are hard to kill -- it takes a lot of re-education and even then some do not want to part with them; this is one of the main reasons that prosecutors have trouble with juries -- they bring ~~them~~ <sup>myths</sup> with them in the courtroom even though they are cautioned again and again to stick to the facts and points of law that are brought out during the course of the trial. The film industry, both television and movie, have not always portrayed rape properly and thereby perpetuate~~x~~ the myths. For instance:

Myth: Rapes involve almost exclusively young, attractive, fashion-conscious women. Truth: All women are vulnerable to attack, regardless of age, physical appearance, marital status, etc. Counselors with our organization have worked with victims from the age of 4 to 72. The film industry is not about to portray a rape of a 4-year-old girl or a 72-year-old arthritic woman.

Susan Brownmiller in her best-selling book, AGAINST OUR WILL: MEN, WOMEN AND RAPE, states:

"Like assault, rape is an act of physical damage to another person, and like robbery it is also an act of acquiring property: the intent is to "have" the female body in the acquisitory meaning of the term. A woman is perceived by the rapist both as hated person and desired property. Hostility against her and possession of her may be simultaneous motivations, and the hatred for her is expressed in the same act

that is the attempt to "take" her against her will. In one violent crime, rape is an act against person and property."

When I started working with the Center in 1973, I chose the area of law reform as I knew I would have trouble looking a victim in the eye and urge her to prosecute. I could not tell her the law is just and she would be treated fairly. However, I could urge a victim to go forward with prosecution so he could not claim another victim and could also say, "We are working for changes in the law to obtain more rights for the victim." It was easier working with victims after the '75 Legislature, as I could enumerate the number of changes made to help and protect victims -- also said that we were working toward a redefinition of the crime as one of violence instead of sex.

We are anxious to see the best possible laws passed to protect the victim as we wish to devote more time to education of the public, where selection of juries are made, and to the prevention of rape, sexual assault and sexual abuse of children. The Clark County Attorney's Wives have earmarked \$700 for a publication we have put together on prevention of sexual assault and what to do if the person becomes a victim; there will also be a page containing a summary of the law. I have been holding this in abeyance for action of the legislature so the material would not be outdated. Besides being given out to junior high and high school students, as well as other organizations, copies will be sent to a number of people

around the country who are working in the area of sexual assault -- I hope to take some to the 2nd Annual Western Conference on Sexual Assault to be held in Salt Lake City over Memorial Day weekend.

Rape is the highest recidivist crime with 77% committed by chronic offenders, where homicide has 71%, robberies 70%, aggravated assault 69%, burglaries 66%, larcenies 64% and auto thefts 51%. These figures are from Ray Cromley's syndicated column in the Review-Journal for September 22, 1976. Mr. Cromley said that we should view these with a ray of hope as it appears they are being committed by just a handful of our citizenry. Mr. Cromley has a point -- recently a 17-year-old Western High School athlete was arrested and certified to stand trial as an adult -- the police say that he has committed a great many and I know that our counselors have been working with 3 of his victims -- he did great bodily harm to these women -- this shows that it is a crime of violence -- he had everything going for him -- even a scholarship to the University of Nebraska.

Metro shows a decrease in the crime but what it is is a decrease in reporting. North Las Vegas had a large increase -- they went from 26 (18 rapes and 8 attempted) in 1975 to 46 (25 rapes and 21 attempted) in 1976. Henderson says they had 5 rapes (1 of which was statutory) but I know that a school counselor in the city is working with 5 girls raped last summer who did not report to authorities. It was this counselor's need for help that brought forth the conference on rape, child

molestation and incest that we conducted with the university for professional people -- teachers, counselors, law enforcement, etc. last February; it was a great success and the auditorium at EPA was filled. Many words of thanks have come in -- the main speakers and authorities on the subject were from Massachusetts and Connecticut.

One of the speakers was Dr. Nicholas Groth who has worked with over 600 rapists in Massachusetts and is now Chief Psychologist at Whiting Forensic Mental Institute in Connecticut -- doing the same thing. He and Dr. Ann Burgess, who works with victims, state over and over that their years of research indicate that rape is not a sex crime -- it is a crime of violence: #1 for power, #2 for anger and #3 is sex in a small number of cases. I am giving/a copy of the presentation made by these doctors before the American Psychological Association at its annual meeting last September, setting forth the research that proves the crime to be one of violence.

Det. Karen Good told me she had 8 adult male rapes in 1976, the first time such a large figure had appeared; the 8 males were raped by other males -- 4 cases of one against one and the other 4 were gang rapes. Of 115 female victims, 81 rape victims were also victims of infamous crimes against nature; 31 were attempted rapes and 3 were fellatio only.



ANALYSIS OF SB 412 - Sexual Assault

I am very pleased with the bill as it sets forth the redefinition of the crime of sexual penetration, as it includes those that have previously been classified as "infamous crimes against nature."

I do note that "sexual contact," which <sup>was</sup> recommended by the Council of State Governments and is a part of the redefinition in 11 states, ~~is not~~ has been excluded. I realize that this provision scares a number of people as they are afraid that someone in a spirit of 'fun' can commit and be charged. I called Det. Karen Good yesterday to see if she has cases where this charge would be appropriate -- she said she would be guessing it would come to about 10 a year -- some are having to be charged with "open and gross lewdness," for want of a better one. The states that have included, along with the redefinition for sexual penetration, are: Alaska, Colorado, Connecticut, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, Ohio and Wisconsin. Ohio requires corroboration for this section only and New Hampshire that it be accomplished by threat or force.

The next reference I have is to Line 46 on Page 7 and goes through Line 4 on Page 9 -- this all pertains to initial medical treatment for a victim at the hospital, when she has signed the police officer's complaint, and treatment for injuries sustained during the commission of the crime, up to the amount of \$1,000. Then there is the section on counseling for the victim or spouse; during the past two years, Las Vegas Mental . 13

Health has been able to help those who had very traumatic conditions. There would never be very many cases in this category. It was passed under AB 664 at the last legislative session but was never implemented by the county -- the wordage was the county "may" provide.

What I am mainly interested in is the provision for the care of the victim when she is taken to the emergency room of the county hospital right after the crime was committed -- she is often in a stupor because of the trauma. At the last legislative session a statute came out that said the "victim would not be charged directly or indirectly" for the initial treatment. That provision is not in this bill. In some instances, Line 5 through 9, you have "shall be charged to and paid by the county" and the last phrase says, "if the county has an ordinance providing for the payment of such costs." We have taken a step backwards in victim assistance and it will be duly noted around the country by people working in this field; Batelle <sup>has</sup> <sup>present</sup> compiled and will keep a listing of all states/and future laws. If we do not keep the law, which statute came out of SB 222 during the last session, we are regressing. AB 664 which passed the last legislature but was of no use because the county never passed such an ordinance, had a similar provision and I understand there is a conflict because of same.

PAPER: A SEXUAL DEVIATION

by

A. Nicholas Groth and Ann Wolbert Burgess

Dr. Groth is Chief Psychologist at Whiting Forensic Mental Health Institute, Middletown, Conn.

Dr. Burgess is Professor of Nursing, Graduate School of Arts and Science, Boston College, Chestnut Hill, Mass. 02167.

This paper was presented at the American Psychological Association Annual Meeting, September 5, 1976, Washington, D.C.

The authors wish to express their appreciation to Lynda Lytle Holmstrom, Ph.D. for her comments and suggestions on this paper.

## RAPE: A SEXUAL DEVIATION

Clinicians talk of two types of crisis: the internal or maturational crisis of the life cycle, and the external or situational crisis. According to crisis theorist Gerald Caplan, a crisis is associated with a rise in inner tension, signs of unpleasant emotional feeling, and disorganization of functioning.<sup>5</sup> In maturational crises, as conceptualized by Erik Erikson, ego qualities emerge from mastery of eight critical periods of development.<sup>7</sup> Analysis of longitudinal case studies of children by Lois Murphy and colleagues, documents the biological, physiological and interpersonal processes involved in the development of children's coping skills.<sup>17</sup> In a recent publication, Murphy and Moriarity identify two major concepts of their 13-year study as: coping I -- the capacity to cope with opportunities, challenges, frustrations, and threat in the environment; and coping II -- capacity to manage one's relation to the environment.<sup>18</sup>

There is an increasing body of research being reported on the crisis response by victims to the act of rape.<sup>1,12</sup> Research on rape victims indicates that the assault triggers an acute disruption of the person's physiological, psychological, social and sexual life style as evidenced by somatic problems and interrupted sleeping and eating patterns and development of minor mood swings and fears specific to the circumstances of the assault.<sup>3</sup> There may be difficulty over issues of telling family, friends and employees about the rape;<sup>2</sup> and there often is interruption in male-female relationships.<sup>13</sup>

This paper reports comparative data to suggest the rape assault is symptomatic of a state of developmental internal crisis in the offender which, in turn, precipitates a state of external crisis to victim.

The rape behavior may either (1) reflect a transient reaction to extra-ordinary stresses that temporarily overwhelm the individual's psychological resources which under ordinary circumstances are usually sufficient to negotiate his life demands. Or (2) the rape behavior may result from a more endogenous state of affairs in which the offender's psychological resources are developmentally insufficient to cope with the successive demands of life and the crisis is precipitated when the individual advances to an age where he becomes personally responsible for managing his life. The former individual has conflict free areas of psychological functioning, whereas the latter individual has few or no conflict free areas of functioning. Rape then becomes the symptom-equivalent of his psychological distress.

#### Sample

During the years 1972-1973 the authors were independently at work collecting data on offenders and victims. Dr. Groth saw all sexual offenders admitted to the Massachusetts Treatment Center for the Diagnosis and Treatment of Sexually Dangerous Persons (Bridgewater, Mass.) for diagnostic evaluation, Drs. Burgess and Holmstrom saw all rape victims admitted to Boston City Hospital for emergency services. Data\* were obtained on 133 offenders of adult victims and 92 adult rape victims which constitute the clinical sample for this paper.

To examine these observations more closely, we analyzed data both on

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\*Some of these data were part of a larger demographic survey jointly developed by A. Nicholas Groth, Ph.D. and Murray L. Cohen, Ph.D. with regard to the dangerous sexual offender; and by Ann W. Burgess, D.N.Sc. and Lynda Lytle Holmstrom, Ph.D. with regard to the victims of sexual assault.

convicted offenders directly and on unconvicted offenders indirectly through the victim sample in regard to physiological, behavioral, psychological and legal issues which might be understood as indices of stress.

Behavioral Factors

Rape is a complex, multidimensional behavior. What seems so markedly important is that the study of the convicted offenders indicated that the men rarely appeared to make any initial efforts to negotiate a sexual relationship with their victim. They did not exhibit any serious effort at engagement or seduction. Their approach was one of either intimidation and/or assault.

The crisis component in the offender behavior is reflected in his either planning or impulsively committing a non-consenting sexual act. Rape refers to sexual relations with another person obtained through physical force, threat or intimidation. Although the statutes differ among States in regard to its legal definition, rape usually refers to sexual intercourse against the will of the victim. Some States have broadened its meaning to include any form of penetration: oral, anal or vaginal.

In no case in the offender sample did the man have to rape for the purpose of sexual gratification. Even excluding the solitary act of masturbation, about one-third of the offenders were married and engaging in regular sexual intercourse with their wives and of those that were not married, the majority were engaged in active sexual relations with a woman and/or had access to prostitutes or other sexual outlets (e.g., homosexual).

Table 1 Offender Marital Status	
Married . . . . .	30.6%
Separated . . . . .	9.7%
Divorced . . . . .	13.4%
Single . . . . .	46.3%

Incidence of Force. The use of force by an offender is an essential component of rape to examine. Force is made by verbal threat, intimidation with a weapon, physical strength, or physical assault.

Verbal threat . . . . .	9.7%
Intimidation with weapon. .	17.9%
Minimum physical force. . .	17.9%
Moderate physical force . .	20.9%
Severe physical force . . .	28.4%
No data available . . . . .	5.2%

Not only did the majority of convicted offenders use physical force, but the compulsive nature of rape behavior was reflected in the discovery that over half (52.8%) of the offenders had at least one previous conviction for rape. In addition, a good many of these offenders admitted to a number of previous assaults even though this offense was their first conviction. Over half of the recidivists (63%) showed an increase in force over time.

The use of force during rape in the victim sample was documented on the hospital record.<sup>4</sup> Medical data revealed a high incidence of general physical signs. Sixty-three percent of victims had at least one sign of trauma -- bruise or laceration -- on some part of their body. In analyzing gynecological traumas, 43% of the adult victims had at least one sign on pelvic examination.

	With one or more signs	Signs observed	% of victims
General body trauma	57	184	63
Gynecological trauma	37	82	43

\*Sign is defined as objective evidence of injury that was seen and recorded by a physician on the victim's hospital chart.

Physiological Factors

The crisis component of the physiological reaction in offender is reflected by the incidence of sexual dysfunction at the time of the assault. The data show that approximately 40% of the offenders, or almost 2 out of 5, showed clear evidence of some type of sexual dysfunction at the time of the assault, either impotence, retarded ejaculation, or much less frequently, premature ejaculation.

Table 4  
Incidence of Sexual Dysfunction During Assault Reported by Offender

Impotence . . . . .	22 (16.5%)
Premature ejaculation . . . . .	5 ( 3.8%)
Retarded ejaculation . . . . .	23 (17.3%)
Interrupted assault . . . . .	14 (10.5%)
victim successfully resists:	7
other person intervenes . . . . .	7
Coitus not attempted . . . . .	11 ( 8.3%)
No sexual dysfunction . . . . .	39 (29.3%)
No data available . . . . .	19 (14.3%)

Approximately 30% showed clear evidence of no sexual dysfunction occurring during the assault. The incidence of sexual dysfunction is enhanced by the fact that in about 10% of the assaults, coitus was not the aim of the offender. Even if we assume that those assaults which were interrupted and those for which no data was available would not have revealed any incidence of sexual sexual dysfunction, the incidence of sexual dysfunction would still remain at approximately 40%.

Out of the offender sample of 133 rapists, 23 experienced difficulty achieving orgasm (retarded ejaculation), 22 experienced difficulty in achieving erection (impotency) and 5 experienced premature ejaculation. It is interesting to note in the professional literature Katchadourian and Lunde report the impotency among males under age 35 as one out of 100. Retarded ejaculation is stated by the physician-authors to be "very rare and affects no more than one in 700 men of all ages."<sup>15</sup>



McCary cites as psychogenic factors underlying sexual dysfunction: feelings of inferiority and inadequacy; conscious or unconscious disgust; anger or hostility; unconscious incestuous wishes; heterodexual anxiety; and latent homosexuality.<sup>16</sup> These are all consistent with the psychodynamics of rape as well.

Victim data regarding sexual functioning was gathered through analysis of victim statements and the hospital record which reported the laboratory test for the presence or absense of sperm. It is also important to separate the statistics on those women who were victims of multiple assailants to see data on sexual dysfunction.

Table 5 Evidence of Ejaculation Documented on 92 Hospital Records	
Sperm present . . . . .	32 (35%)
No sperm present . . . . .	45 (49%)
Premature ejaculation :	4
Interrupted assault :	6
Offender masturbated :	2
Victim douched :	2
No data available . . . . .	15 (16%)
No chart :	9
Exam past 48 hours :	3
Profuse bleeding :	2
No exam :	1

Analysis of the hospital records indicated that the majority of laboratory tests were negative for the presence of sperm either when the victim had been attacked by a single rapist or by multiple rapists. Thirty-two (35%) of the adult victims in the sample were confronted with more than one assailant. Of the 92 assailants who were present during the assault, 75 participated in some sexual aspect of the rape. Laboratory testing revealed that half of the 23 victims (N=12) who were raped by more than one man had negative lab reports.

Two victims in the sample reported that the rapist had difficulty having an erection. The following victim account from a referral case illustrates

721  
B7

sexual dysfunction with two of the three assailants in a gang rape and robbery.

Yellow shirt took me into the closet and closed the door and told me to spread my legs. I was shaking with terror and said, "I can't." He began to choke me and knocked the wind out of me and said, "Do you want to fuck or die?" . . . He unzipped his pants and pulled out his penis but it wasn't hard. That infuriated him and he said "If you won't fuck here, I'll throw you on the bed and we'll all have you." . . . So the tall one was now in the position to prove his toughness to his friends and he said he would take me first. He unzipped his pants . . . he wasn't on top of me for long. He got up in disgust and said, "I can't get anything off on this stupid white cunt." He zipped up his pants and walked off to the hallway . . . Yellow shirt had his penis out but it wasn't hard . . . told me to put it in my mouth. The third guy got on me, ordered me to suck yellow shirt and to keep my eyes shut. He was on and off in a short time and they all laughed at how fast he was. Yellow shirt told the others to leave and ordered me to manually stimulate him. Then he got off. The others came back and inspected my body. Yellow shirt took a knife and threatened to cut off a breast . . . I was so frightened and really can't remember all that happened after the rape except they tied me up and put a pillow case over my head . . .

These three young men, all in their late teens, were apprehended one month after the crime. They all had additional warrants for other crimes and "yellow shirt" was one of the offender's in our victim sample. The three men were convicted and each sentenced to three life sentences with "yellow shirt" receiving an additional sentence for the charge of unnatural acts.

#### Psychological Factors

Rape is the sexual expression of needs which basically are not sexual but which, in some cases, have become eroticized. It is sexuality in the service of anger and power.<sup>9</sup> Rape always signifies a failure at self-control in regard to the management of one's impulses. Rape being non-consenting makes it a legal offense; that it stems from hostile motives and primarily serves purposes other than sexual pleasure makes it a deviation.

The fact that rape is not motivated primarily by sexual desire became apparent from our work with convicted rapists and victims of sexual assault. A number of observations began to emerge which simply did not appear to be consistent with the understanding of rape as the result simply of sexual arousal and/or frustration. When we examined the offenses committed by the offenders and the offenses described by victims we found that they could be dichotomized into two categories on the basis of whether or not the predominant underlying motive was anger or power. The anger rape was characterized by major physical assault on the victim in which far more force was used than was necessary simply to overpower her. The predominant affect was one of conscious anger, hatred and contempt toward his victim which he expressed through insults, swearing and forcing his victim to perform additional degrading acts. Although typically unpremeditated the rape became an expression of revenge and retaliation for what the offender perceived to be rejection and hurts inflicted on him by women in his life. Sexuality was clearly in the service of anger and aggression with the purpose of the sexual assault being humiliation, abuse and degradation of the victim.

The power rape, in contrast, was a premeditated, planned assault in which the offender would go over in his mind the details of the sexual offense and fantasize how it would occur prior to its commission. He would go out stalking a victim with the clear intention of sexual conquest. Frequently, he fantasized that the victim would in fact welcome the sexual encounter. This offender generally reported feelings of excitement, erotic arousal or anxiety. Yet, sexual relations would have to be achieved by overpowering his victim. Typically he would threaten or intimidate his victim with a weapon rather than physically brutalize her, and it was in this sense of having control of her, putting her in a helpless position

where she could not refuse or reject him that gave this offender a pleasurable and reassuring sense of strength and power. Sexuality was clearly in the service of power and control with the purpose of the sexual assault being domination and conquest of his victim.

Although we may describe rapes as being primarily either anger or power assaults, in fact, each has characteristics of the other. In addition to serving to express anger and asserting control, the rape assault also serves to help the offender deny his fears of women and homosexual impulses, to compensate for feelings of inadequacy and to assert his identity.

Both issues, power and anger, become cast in the sexual arena perhaps because it is the sexual relationship more clearly and acutely than anywhere else that these men themselves feel victimized and confronted with their own inadequacies. They find no alternatives for sexual gratification -- they need women to gratify this need -- yet they do not know how to relate (except sexually) to them. In this regard they are dependent and helpless and they resent women being able to refuse or reject them. The result is either revenge and retaliation for such rejection or capture and control to make refusal impossible.

Table 6  
Type of Rape Reported by Offender and Victim

<u>Type of Rape</u>	<u>Offender Sample*</u>	<u>Adult Victim Sample**</u>
Power	72 (54.1%)	74 (30.4%)
Anger	61 (45.9%)	18 (19.6%)

\*For those convicted offenders who also had a co-defendent (N=21 or 16%), the rape is categorized in terms of each offender.

\*\*For those victims raped by more than one assailant (N=23 or 24%) the rape is categorized for the lead assailant.

## Legal Factors

Failure to comply with societal rules exposes one to possible encounters with the criminal justice system. In reviewing the adolescent histories of the offenders, one notices how frequently these offenders did come to the attention of certain professional groups: police, lawyers, judges, prison staff. As we see in Table 7, at least half of the convictions were juvenile offenses.

Table 7  
Criminal History of Offenders

None . . . . .	29 (21.8%)
One prior conviction . . .	14 (10.5%)
Two-four convictions . . .	32 (24.1%)
Five or more convictions .	58 (43.6%)

The type of conviction included: misdemeanors 37.3% (N=50); misdemeanors and felonies 29.1% (N=39) and felonies 13.4% (N=27).

In comparing the number of offenders of the victim sample who come to the attention of any group, we find a marked contrast, especially in those who come to attention of mental health clinicians. After four years of attrition at varying levels in the criminal justice system,<sup>14</sup> 20% (N=18) of the 92 cases have completed the court process. There were 7 not guilty verdicts; 4 cases in which charges were reduced to assault and battery at the district court level; 4 cases in which the defendants pleaded guilty; 2 conviction by jury and 1 case still pending. Only one convicted offender from the victim sample was sent to the Treatment Center for examination.

## DISCUSSION

Rape is forcible sexual assault. That it is forcible -- non-consenting -- makes it a sexual offense. It is illegal behavior and proscribed in the criminal code of every state in the union. It is a crime punishable to extremely severe penalties.

Rape is clearly recognized as a sexual offense, but it has yet to be

clearly regarded as a sexual deviation. In the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DMH-II) and in the World Health Organization's International Classification of Diseases (ICD-3) rape is not included in the various types of sexual deviation.

In the realm of sexual behavior the concepts of "offense" and "deviation" overlap but they are not synonymous. Not all illegal sexual behavior is abnormal (e.g. fornication, adultery, fellatio, etc.). Nor is all abnormal sexual behavior illegal (e.g. fetishism, masochism, etc.). Rape clearly is illegal, but due probably to the confusion surrounding the concept of deviation and the lack of clinical data pertaining to the psychology of rape, the rationale for its inclusion under the concept of sexual deviation has not been apparent. It is ironical that there is an abundance of psychological literature pertaining to what essentially is unconventional but consenting sexual behavior and a paucity of information about those forms of sexual behavior which jeopardized the safety of others.

Traditionally the concept of sexual deviation has referred to any persistent departure from genital intercourse with a single partner of approximately the same age and opposite sex. Deviations have generally been defined in regard to a number of variables: the sexual object (e.g. pedophilia); the mode of gratification (e.g. exhibitionism); the intensity of the drive and the frequency of its gratification (e.g. nymphomania); and the context within which the drive is aroused and gratified (e.g. group sex). The concept of deviation has become practically synonymous with the concepts of abnormal and pathological behavior. Yet clearly what is sexually deviant descriptively is not necessarily psychologically aberrant. The human being is an adaptive individual capable of a variety

of means of sexual expression and gratification.

We propose a different conceptualization of sexual deviation, one based not on the object, mode, frequency, or context of gratification, but based on the primary motive or psychological dynamic underlying the sexual behavior. We define sexual deviation as assaultive sexual behavior in the service of non-sexual needs. When sexuality is used to express needs or wishes which are not primarily or essentially sexual in nature and which is dangerous, we propose to use the term sexual variation or preference for the former and sexual deviation for the latter.

The purpose of human sexuality remains a theoretical issue, given our state of knowledge regarding this area of human behavior. We tend to lean towards the explanation that sexuality is engaged in because it is pleasurable. This is its primary goal. Such gratification can be achieved through consent or negotiation. Common sense tells us that there are a number of outlets and a variety of ways in which sexual needs can be satisfied in our society. Where it is obtained through force or intimidation it indicates that other needs beyond sexual are operating. We view rape as a pseudosexual act in which the primary motive is not one of physical gratification. This is somewhat of a departure from other writers on the subject of rape who, while noting various other motivations, goals or aims, believe that sexual desire is one of the primary reasons for rape. Guttmacher and Weihofen describe a type of rapist "whose assault is the explosive expression of a pent-up sexual impulse."<sup>11</sup> Gebhard et al. imply that coitus is the goal of one type of offender,<sup>3</sup> and Cohen et al. believe that in some instances "the sexual impulse is the dominating motive and the aggressive aspects of the assault are primarily in the service of the sexual aim."<sup>6</sup> We disagree. In our view, rape is more a hostile than a sexual act, and although sexuality plays an important

part, it is not the primary objective of the offender.

#### Summary

Research with rape victims indicates that victims experience an acute physical disruption, may develop minor mood swings and transitory fears specific to the circumstances of the rape, find it difficult in telling family, friends and employers of the situation, and often report an interruption in sexual relationships. The rape, in this context, represents an external or situational crisis inflicted on the victim.

Research with convicted aggressive sexual offenders indicates that the act of rape may represent a symptom of developmental defect: a failure to achieve an adequate sense of self-identity, the consequences of which become especially acute in adolescence. These defects in regard to the male's identity or sense of self are exhibited in the frustration he experiences in his efforts to achieve an adequate masculine image, the stereotype image he has or what it means to be a man, and the conflicts and pressures he cannot tolerate in his desire to gain mastery over his life in an active and assertive way. Forcible rape, in this context, represents an internal or developmental crisis in the offender.

When viewing the crisis components of rape, we thus see the rapist behaving in response to an internal effect (failure in biopsychosocial control) and the victim experiencing the assault as an external effect (loss of physical control in the situation).

Rapists rarely come to the attention of mental health clinicians. One reason for this is that rather than seeking professional help, the rapist acts out his emotional problems. Self-referral to a mental health agency is uncharacteristic of the rapist since he feels compelled to discharge the emotional turmoil he is caught up in behaviorally. If the offender is apprehended, he is processed through the criminal justice

728B14



system and is sent to a correctional institution. For these reasons then, little has been known about rape as a form of sexual psychopathy. A serious irony has evolved: By going to prison the rapist's psychological problems are not treated and he continues to constitute a risk to the community when he is released; at the same time, by going to prison he does not come to the attention of mental health professionals and, therefore, they do not have the opportunity to develop an expertise in regard to the diagnosis and treatment of such individuals. Lacking such skills, mental health practitioners are then reluctant to accept professional responsibility for the rapist and are content to allow him to be dealt with by other agencies. In regarding the rapist as a felon rather than as a patient, punishment rather than treatment occurs. The result is that the rapist returns to the community (unless he serves a life sentence or dies in prison) ill-equipped to manage the emotional demands of his life differently than he did when he committed his offense. Imprisonment has done nothing to lessen the danger he constitutes to society. It will not deter him from repeating his offense and it will only prevent him from coming to the attention of those professionals who specialize in the detection and amelioration of psychological disturbance.<sup>10</sup>

## FOOTNOTES

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