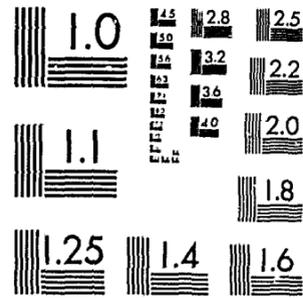


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11/14/83

# RAPE STUDY

## Research Reports

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### Volume 2

# RAPE STUDY

## VOL. 2

# RESEARCH REPORTS

U.S. Department of Justice  
National Institute of Justice

90477

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DEPARTMENT OF JUSTICE  
WELLINGTON NEW ZEALAND  
MAY 1983

## PREFACE

In March 1982 the Minister of Justice directed the Department of Justice in collaboration with the Institute of Criminology, Victoria University of Wellington, to study the experience of the rape victim in relation to the law, official procedures and support services. The study was directed by Dr Warren Young, Director, Institute of Criminology and Mr Mel Smith, Deputy Secretary, Department of Internal Affairs, (formerly Director, Planning and Development Division, Department of Justice). The terms of reference for the study are attached as an appendix.

Volume 1, Rape Study : A Discussion of Law and Practice, by Warren Young, discusses and relates the findings of the research reports presented in this volume to law and practice in New Zealand and to rape law reform in some jurisdictions overseas.

This second and concluding volume consists of four research reports. The first report is based on interviews with victims and with individuals working with victim support groups.

The second report is of a study of the police processing of rape complaints during 1981.

The third report is of a study of every High Court file where indictments had been laid for rape in 1980 and 1981.

The fourth report is of a survey of the views of the judiciary and a number of Crown Prosecutors and defence counsel on the trial process and the substantive and evidential law.

In addition, the researchers had available to them a large number of letters and submissions received in response to a request from the Minister of Justice as well as the papers presented to the National Symposium on Rape held in September 1982. The Symposium was arranged by the Mental Health Foundation, the Advisory Committee on Women's Affairs, the Institute of Criminology and the Department of Justice.

It is not possible to name all who have assisted with this study nor to thank adequately those, especially victims, whose contribution was made at some cost. However the study will have achieved its purpose and all those who took part rewarded, if what victims and others have said is heard and change follows.

G.L. Simpson  
Chief Executive Officer  
Planning and Development Division  
Department of Justice

May 1983

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ONE      The Victim Survey  
          by Joan Stone, Rosemary Barrington, Colin Bevan

TWO      Rape Complaints and the Police  
          by Michael Stace

THREE    1980 and 1981 Court Files  
          by Angela Lee

FOUR     Results of Questionnaires to the Judiciary and Lawyers  
          by Prue Oxley

APPENDIX    Terms of Reference

## FOREWORD AND ACKNOWLEDGEMENTS

The interviews upon which this research is based, were conducted by Joan Stone and Rosemary Barrington from May to October of 1982.

Parts One, Two, Three and Four were written in draft form by Rosemary Barrington (Institute of Criminology) and in final form by Colin Bevan (Department of Justice). Rosemary Barrington has been out of the country since November 1982 and has not had the opportunity to participate in the final drafts of these sections. Parts Five, Six, Seven, Eight, Nine and Ten were written or compiled by Joan Stone.

The authors acknowledge with gratitude, the assistance of Rape Crisis Centres, Women's Refuge Workers and the social workers and doctors who responded to this study. We wish to especially thank Rosemary Ash, Doris Church, Judy McKenzie, Pat Reid, Brenda Cheyne, Denese Black, Mary Martin, Sue Blencoe, Margaret Sparrow and Miriam Saphira for their help in assisting with interviews, information and discussions. We regret if we have omitted to mention any person whom Rosemary may have acknowledged had she been here.

We also wish to thank the Librarians at the Department of Justice (in particular Jocelyn Fergusson for her efforts on our behalf) and at Victoria University of Wellington; Paul Couchman for his preliminary work on rape; and Margaret Long, Mary Morel, Joanne Stocker and Ray Jones for their help and support.

We thank Janice White, Marie Takarangi and other typists for their patience and expertise.

Our chief debt and our thanks are due to the fifty women whose courage in sharing their experiences with us made this study possible and whose hope was that they might help other women.

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## PART ONE: INTRODUCTION

As researchers we are not in a position to judge whether the women we interviewed were actually raped or sexually assaulted. We have throughout this study referred to the women as victims, not alleged victims, to assailants, not alleged assailants and to rape, not alleged rape. This move can be seen as keeping faith with the women we interviewed. All the women believed they had been the victim of a forced sexual experience, though its nature - for example, anal rape and marital rape - may preclude it from the legal definition of rape. It is possible (though unlikely) that some of the women may have mistaken the nature of the act, or re-defined it at a later date. But it would be ridiculous to suggest that any of the women gave the interview out of any of the reasons said to characterise some false complaints. This then is the basic premise behind this section: the woman's belief that she was a victim was sufficient for us to treat her as a victim.

### 1. The Victims

We interviewed a total of 50 women who were contacted as follows:

- 9 from Rape Crisis Centres, Wellington and Auckland
- 1 from HELP Sexual Assault Centre, Auckland
- 2 from Refuge Centres
- 1 social worker referral
- 2 doctor referrals
- 10 police referrals
- 8 from court files
- 2 from our personal attendance at rape trials
- 1 from our personal attendance at a neighbourhood meeting on rape
- 3 from visits to Department of Justice institutions
- 5 from newspaper publicity
- 6 from personal contacts, friends of friends, etc.

—  
50 women

In the case of those women contacted via an organisation (Rape Crisis Centres, HELP, Refuge Centres and the police), a member of that organisation approached the victim and sought her consent to be interviewed. In this way the victim was initially approached by a person who already knew of her rape experience. The same process occurred with those women referred to us by the social worker and doctors. We did, however, contact other women without going through an intermediary, that is, by attending court trials, by going to community meetings on rape, or by locating women through court files. Five women who saw the newspaper coverage of our research contacted us.

As can be seen from this brief description, the way in which the victims were selected was never intended to give us a representative 'sample' of the rape victim population in general. It fails on the criteria of random selection and sufficient numbers. Because of this, statements made by and about the women interviewed cannot be projected as true about rape victims in general. While this is a casualty of the qualitative approach that we have taken, it is, in our opinion, justified by the depth of information contained in the case histories and the impact of the victims' experiences on the reader.

## 2. The Interviewing Methods

If possible, women were interviewed in their own homes by two researchers - one to conduct the interview, the other recording the responses. Whenever this proved impossible we sought to interview the victim in a place where she felt most comfortable - at court, in our offices, a coffee bar, a friend's house or her work place. Three interviews were conducted over the telephone. The interviews lasted between one and a half hours to two and a half hours, and were largely unstructured with the researcher posing questions from a standardised guide sheet when they fell naturally into the victim's narration of her rape experience. Clearly, a fine line was trodden between maintaining the victim's confidence towards the interviewing team and prompting the replies.

Initially, we hoped to standardise the length of time between the rape and our interview, so that all women were approached between 4 to 12 months after the rape. This was not an objective we could maintain - fortuitously so, as it turned out: it allowed us to interview women who had been raped several years earlier and to see the long-lasting effect the rape had had on their lives.

The length of time between the rape incidents and the interviews was as follows:

- 3 - less than 3 months
- 7 - 3 to under 6 months
- 6 - 6 to under 9 months
- 6 - 9 to under 12 months
- 11 - one to under 2 years
- 7 - two to under 5 years
- 14 - five or more years

—  
54 rape events

We interviewed 50 women, four of whom had been raped at least twice by different persons, thus providing us with information on 54 rape events.

## PART TWO: CIRCUMSTANCES UNDER WHICH THE RAPES OCCURRED AND CHARACTERISTICS OF THE VICTIM

### 1. A Typology of Rape

This section is based on a modified version of Wilson's typology of rape (Wilson, 1978, pp.34-43). This author considers a typology (which is simply a rendering of the diversity of all victims' experiences into certain common 'types' of experience) useful both as a means to illustrate what he calls the 'multidimensional nature of the crime' (ibid, p.34) and as a means to pick out more clearly the common threads of rape victims' experiences. His typology contains eight 'types' of rape:

- (a) Random Blitz Rape: rapist and victim are strangers; rapist will have selected victim at random but may have planned attack carefully; elements of surprise and swiftness; rape occurs generally outdoors.
- (b) Specific Blitz Rape: same as above except assailant has observed pre-selected victim, usually for some time.
- (c) White Collar Rape: victim and assailant at least acquainted, may even be colleagues or friends; assailant usually from professional occupation and may use his position of trust (when, for instance, the victim is his client) to put the woman off her guard; may use business-related matter as pretext to meet woman alone.
- (d) Power with Trickery Rape: victim and assailant usually known to each other; victim may "consent" because she is either unable to resist the assailant (emotionally and/or physically) or because she is in some way dependent on the assailant for emotional or financial support; includes child rape involving monetary rewards or abuse of position of authority.
- (e) Family Rape: occurs between members of a family, therefore includes incest and spousal rape; differs from (d) in that force is used instead of bribery or trickery.
- (f) Ceremonial Rape: rape occurs as part of ritual or initiation process (for assailant(s) or victim(s)); group pressure exerted, sometimes with violence, to force the woman to submit. Wilson gives as examples gang rapes by "bikies" and rapes of conscripts to black magic cults.
- (g) Friendship Rape: similar to 'family rape' in that victim and assailant usually well known to each other and that force is used; typical examples are the boyfriend who rapes the girlfriend after petting and the man who rapes the woman after going out to dinner.

- (h) Situational Rape : involves careful planning on assailant's part to arrange a meeting in which the victim is placed in a vulnerable position; collusion of mutual acquaintances, sometimes unknowingly, common feature of this 'type'.

To these eight types we found it necessary to add two more : the 'brief acquaintance rape' and the 'pick-up rape'. So to complete the typology :

- (i) Brief Acquaintance Rape : victim and assailant have met briefly in normal social setting, e.g., in a pub, at a party, but could not be described as friends; assailant may offer victim lift home or in other ways exploit any vulnerability.
- (j) Pick-Up Rape : assailant may offer victim lift or, less frequently, victim may be hitchhiking; differs from above in that victim often caught between danger of walking alone (especially at night) and danger of accepting lift from stranger.

## 2. Examples of the 'Types' in our Case Histories

Due to the small number of victims interviewed, it would be misleading to place too much weight on the numbers of women whose cases roughly fitted each type. We simply cannot say from our data that one type of rape occurs more frequently in New Zealand society than another type. But it is salient to note that in all but one type - Power with Trickery Rape - there were clear examples in our case histories of Wilson's types, thus suggesting that common threads do exist between the rape experiences of New Zealand victims and the experiences of Australian victims, upon whom Wilson's research is based. The examples chosen to illustrate each type are, then, intended to ground the type in the reality of a particular victimisation experience and, through this, to illuminate (to repeat Wilson's phrase) the 'multidimensional nature of the crime'.

### (a) Random Blitz Rape

I was at home that day because I had only arrived in New Zealand about seven weeks previously and I had not yet got a job .... I was expecting a tradesman to come to the house that day to repair a broken window, so when the offender came to the door I opened it straight away. He pushed his way in, pushed me on to the bed and made it quite obvious what he wanted. I was a virgin .... I started to scream. He said "it would be a bit silly to scream if you don't want to get hurt" .... I decided not to resist. I felt he would not hesitate to use violence had I resisted. I just froze .... Wondered why it had to happen to me. There must be something wrong with me.

This rape took place in a busy suburb at midday. The victim, a 19 year-old woman, did not report it as she had no family support at the time and was uncertain of the police response. She could give no reason why she had been selected by the assailant.

A second case history revealed a similar pattern of attack :

The man was a complete stranger .... I was walking to the car after this dinner function [about 11.30 p.m.]. I was not conscious of anyone behind me at first and then I thought it was [a friend]. As soon as I started to

turn around he grabbed me and pushed me to the ground. He was solidly built. The music drowned my yelling out .... There was no-one else around .... He told me if I didn't shut up he'd kill me .... He raped me .... We found out [later] that he had gone up to another girl and had propositioned her. He may have thought it was her when I left and he followed me.

In cases such as these the woman was in the wrong place at the wrong time. Random blitz rape is the closest of Wilson's types to the classic 'stranger leaps out of a dark alley' rape.

### (b) Specific Blitz Rape

The feature which distinguished this type from the above is that the victim has been observed for some time and her moves noted. The assailant may have a particular reason for selecting the victim but this reason is often not apparent to the victim. For example, a 19 year-old woman we spoke with was totally unaware that she had been under the assailant's surveillance for several months. He had listened at windows and had actually entered her house while no-one was at home, prior to the rape. He had waited until the woman was alone in the house before making his move :

I locked the house up, went to bed and read until about 1.30 a.m. My dog started barking. I heard footsteps outside on the path and the door handle and windows being tried. I found myself petrified. I heard a crash. He came through the bathroom window and straight into the bedroom. I said 'who is it?' and he said [her boyfriend's name]. He jumped onto the bed and we had a wrestling match on the bed .... He knew my mother's name. He knew she was in Australia. He knew my boyfriend's name .... He knew a great deal about me .... I was calm and kept very cool .... I tried to get him to pick up a glass (for fingerprints). I must have eventually pushed him too far. In the end he just raped me.

The assailant was arrested two months later after coming back to the house twice more, during which time the victim slept with a spray can beside her bed and her mother with a knife beside hers.

This was the clearest case we heard of a specific blitz rape but there may have been others among those appearing to belong to the random blitz category in which the assailant did plan the rape, did select and observe his victim, but these facts were not revealed. This is especially likely in those cases which did not reach the High Court.

Combining the two categories - random and specific blitz rape - we found that, of the 50 women we interviewed, 22 had been raped by strangers. Seven of these 22 women were raped by assailants who broke into their houses.

### (c) White Collar Rape

One case history exemplified this type. A 19 year-old secretary was raped at the assailant's home after he had taken her out to dinner :

I met this guy in the building where we both work. We had often said "Hi" to each other. He asked me out to dinner, we had a pleasant time. He asked me if I'd like to go back to his place to play backgammon. He

made us Irish coffees .... At about 1.30 I said I must go home now. And that's when he started talking - about my body, his fantasies. He said "I want you to stay the night. I need you." He got very strong, not violent. I started to resist but he was stronger. I did fear he would get really violent .... He said "I was waiting for you to stay". He had prepared it all. He had set it up. Like the towels in the bathroom it was all planned .... It was as if he was doing me a favour .... He raped me.

The woman did not report the rape to the police saying that she 'tried to forget it' and that she tried to convince herself it was not rape, without success.

(d) Power with Trickery Rape

None of the rapes described to us fell easily into this category, though one element of this 'type' - abuse of position of authority or trust - features in several other rapes which we assigned to other categories.

(e) Family Rape

A 37 year-old widow, who was raped by her cousin's husband, related to us :

I woke up in my bed and saw a light shining. There was a man standing in the doorway. I thought I was dreaming. I said "Who is it?" He said he had come to see us. I put on my nightgown and we started talking about his wife. I never thought he was one of those bad fellows. He started talking like he was a relation of ours. He said he was looking for his wife, but he said I was better for him.

Seven of the nine cases we identified as family rape were marital rape. Two of these seven cases involved a single rape incident, the other five involved repeated acts of physical and sexual abuse over a number of years. This violence was witnessed in all five cases by the children of the marriage. Unlike other types of rape, marital rape frequently involves multiple episodes by a single assailant (the husband) to whom the victim is legally and often financially bound.

(f) Ceremonial Rape

In this type of rape there are, almost invariably, more than one assailant involved. Without talking to the assailant(s) it is hard to know if any of the nine multiple-assailant rapes in our case histories were of this type. But in one gang rape of a 32 year-old nurse by eight men, the idea of initiation did occur to her :

I lived in a large house .... with some other young people. It was a temporary place. Some of my flatmates were punk rockers and there was rivalry between them and gangs. I didn't realise how serious the rivalry was or how close the danger of violence was to me. One night the gang attacked the house. There was only one of my flatmates at home but the gang held a pistol on him. I was downstairs asleep but was woken by the sound of a door being broken. I opened the door to see what was happening and the gang filed past me armed with a variety of weapons. I was told to stay in my room and I'd be alright. I tried to bar

the door by pushing things against it but the gang just pushed their way in. I didn't immediately feel the threat of rape but I did sense violence. I became very calm and when the intention of rape became apparent I didn't resist. I thought at first there would be only one guy. I didn't think gang rape would happen to me .... The whole thing lasted about half an hour. I think about eight gang members were involved. I wasn't physically harmed but I think they were just waiting to beat me up; waiting for an opportunity to do so .... I have heard since that rape is one part of an initiation process for earning patches and that there is extra merit in going to jail for rape. There is a badge for this. One of the gang members present had patches, the rest not.

This woman called the police, although she declined to press charges, giving as one of her reasons that she did not want the gang members to get 'extra merit' for what they had done to her.

(g) Friendship Rape

The clearest case illustrating this type that we interviewed, was of a woman who was raped by her ex-boyfriend :

He came to the flat I was staying at, and we talked outside on the footpath. He tried to persuade me to go and visit his friends but I told him that I didn't want to. I remember he got really wild and hit me - slapped me on the face. I started crying .... He calmed down and said that I should bring my flatmate if I was worried. Eventually we went in his car, met his friends and had a cup of tea. He came into the lounge where we were sitting and said he wanted to talk to me. I obediently followed (I knew I'd get hit if I didn't) and went to the bedroom ....

There, she was slapped, beaten and raped. The ex-boyfriend clearly exploited their familiarity with each other to set up the rape. The woman reported the offence to the police. The assailant was arrested and was later found guilty in the High Court and sentenced to two years imprisonment.

(h) Situational Rape

This is where the assailant(s), perhaps with the help of others, sets up the victim. This appears to be what happened to a 22 year-old woman who was raped by six gang members :

I went to a girlfriend's place .... and for some reason I had to go out to my car to get something .... When I got to the car I found the tyres had been slashed by the gang members and most of them were standing about. Most of the gang I'd known for quite a while, some of them used to go out with my girlfriend. I realised then I'd been set up by my girlfriend for them.

(i) Brief Acquaintance Rape

A 42 year-old woman recalls the circumstances leading up to the rape :

I had been to a party, and this chap there had asked if anybody wanted a ride home, and several of us did so he took us home and I was the last one to be dropped off. So I asked him in for a cup of coffee. He had just

been a guy in a group at the party - hadn't hardly said six words to him till he offered a ride home. He was a perfect gentleman until we got inside my house. There must have been something that was said. He'd had a bit to drink, but I mean he was still able to drive the car. He was so much bigger than I was. You can only go on struggling for so long.

The woman, who became pregnant and had an abortion, never reported the rape.

(j) Pick-Up Rape :

I'd been out and was trying to get home. I had to go to [another suburb] to catch a bus to [her home suburb]. I went to a phone box to ring my friends. The phones weren't working. A Maori guy walked past and crossed over the road. He started talking to me about the buses. He said he was waiting for a bus at first and then asked if I wanted a lift home. I said no, I wasn't interested. I was worried about getting home. If I'd been thinking properly I would have realised he wasn't waiting for a bus. In the end I thought at least I'd get home. I accepted a lift. We were driving along and he started talking about Maoris and Polynesians. He said if a Polynesian attacks a girl, people blame Maoris. I should really have panicked then. He went past my place and he grabbed my hair and pushed me down. He said 'I've got you now you sucker. I'm going to teach a nice girl like you to accept rides.

The woman managed to dissuade the assailant from raping her and later made her escape. He was later charged and convicted of attempted rape and assault in this case, and of rape of another woman in a related case.

3. Circumstances under which the Rapes Occurred

None of the information included in this or the following sections can be construed as describing the reality of rape victimisation in general. The data set out here merely describe the experiences of the victims we interviewed in a numerical form. Similarly, comparisons between the victims' study data and police files data (contained in Research Report 2) cannot be pursued too rigorously and they most certainly cannot be subjected to statistical tests intended to reveal 'significant' differences because (a) some of the cases appearing in the victims' study data also appeared in police files data and (b) the victim group was not selected to be representative of the general population of rape victims. In everyday language this means that because of the methods used in our study we cannot say whether rapes are more likely to occur in a certain place, at a certain time and to a certain woman.

(a) The Place where the Rapes Occurred

	<u>No.</u>
Victim's home	10
Assailant's home	7
Home of both	7
Other home	9
In a car	6
In other public place	14
Other	1
	—
	54
	(rape events)

(b) The Time at which the Rapes Occurred

	<u>No.</u>
6.00 p.m. - 9.00 p.m.	2
9.00 p.m. - Midnight	13
Midnight - 3.00 a.m.	20
3.00 a.m. - 6.00 a.m.	7
6.00 a.m. - 9.00 a.m.	-
9.00 a.m. - Noon	-
Noon - 3.00 p.m.	-
Unknown	4
Various	3
	—
	54

(c) Number of Assailants Involved per Rape Incident

40 rapes	-	one assailant
6 rapes	-	two assailants
1 rape	-	three assailants
1 rape	-	four assailants
1 rape	-	five assailants
3 rapes	-	six assailants
1 rape	-	eight assailants
1 rape	-	ten assailants
54 rapes		

10.

4. Characteristics of the Victim's Relationship with Assailant

This table relates to all assailants, that is, it includes all those involved in multiple-assailant rapes.

	<u>No.</u>	
Stranger	50	
Acquaintance	34	
Friend (non-sexual)	3	
Ex-lover/boyfriend	1	
Boyfriend	2	
Date	1	
Husband	7	
Other relative	2	
	—	
	100	(Assailants)

5. Characteristics of the Victims

(a) Age

This is taken at time rape(s) took place.

	<u>No.</u>
Up to 16	9
17 - 20	18
21 - 25	10
26 - 30	8
31 - 40	6
41 - 50	2
51 +	-
Unknown	1
	—
	54

(b) Marital Status

	<u>No.</u>
Single	39
De facto	1
Married	9
Separated	1
Divorced	2
Widowed	2
	—
	54

11.

(c) Race

	<u>No.</u>
Caucasian	45
Maori	7
Pacific Islander	2
	—
	54

(d) Occupation

	<u>No.</u>
Schoolgirl	7
Tertiary student	2
Unemployed	8
Unskilled	10
Skilled	5
Professional	5
Housewife/solo mother	13
Unknown	4
	—
	54

## PART THREE: REASONS FOR NOT REPORTING RAPE

1. Introduction

The reasons why women choose not to report the rape are many and varied. The number of women in our study who did not report it, is small (19 women and 23 rape events). It is therefore impossible to say whether their reasons for not reporting apply to the large unknown quantity of unreported rapes. So, as a preface to a discussion of the findings of the present study, we found it worthwhile to review briefly the findings of several other major studies in relation both to the numbers who do not report and their reasons for not reporting.

(a) How Many Rapes are Reported?

It is commonly argued in the literature on rape that only a small proportion of rapes are reported to the police. But how small the proportion is, is difficult to establish and may vary according to the perspective and knowledge of the person asked and the source from which the information is obtained. For instance, in Canada a reporting rate of 10% has been quoted by Crown Attorneys and others in the judicial process, while a Toronto psychiatrist whose clients include a large number of rape victims quotes a figure of 4% (Clark and Lewis, 1977, p.61). A more frequently accepted range in Canada is that between 10% and 25% of rapes are reported. American studies also illustrate differences: Switzer's 1975 study quotes 10%, De Crow in 1974 33%, and Medea and Thompson's 1974 research data obtained from questionnaires published in several underground papers and distributed at various rape conferences suggested 30%. The American National Victimization study conducted in 1967 for the President's Crime Commission suggested a ratio of between three and four rapes for each one reported (20% - 25% reporting). The 1978 U.S. Bureau of Justice Statistics' Victimization Survey found that 48.8% of cases of rape were reported to the police, with cases involving strangers being reported slightly more frequently than cases involving non-strangers (U.S. Bureau of Justice Statistics, 1980, pp.72-73). As both this survey and that of the President's Crime Commission were very comprehensive and identical in format, then it seems reasonable to suggest that the reporting rate for rape in the United States has increased in the last decade.

Opinion polls in English newspapers suggest higher rates of reporting from women when asked the hypothetical question: "what would you do if you were raped?" than if asked a more direct question such as "were you raped? - if so, did you report?". A 1977 teenage magazine showed that 52% of women aged between 18 and 26 would

go to the police if raped (Mitra, 1982, p.169). The British newspaper, the Sunday Times, conducted an opinion poll in January 1982 and found that only 21% of the women questioned were unlikely to report the rape to the police. However, nearly all the women questioned said that the report would be made with little conviction that justice would be done, and 79% believed that a man accused of rape had a good chance of getting away with it.

In New Zealand the only data we have are from the two surveys conducted by the Woman's Weekly in 1976 and 1981, the first involving 100 returned questionnaires, the second involving 223 returned questionnaires. In both cases these surveys asked women who had been raped to respond to a series of questions rather than asking women what they would do in a hypothetical situation. These two readership surveys found reporting rates of 21% and 23% respectively. While the 1981 survey focussed more on sexual assault generally rather than rape specifically, the consistency between the two results does suggest that a reporting rate of approximately one in five may be a reasonable estimate - at least amongst readers of the Woman's Weekly prepared to answer the questionnaire. This estimate is substantiated also by the short experience of the HELP Sexual Assault Centre in Auckland, which reported that approximately one in five of their clients report the crime of rape to the police and in cases of child molestation even fewer (Swan, 1982, p.2).

However, there is very little overseas research and certainly no published New Zealand research on whether unreported rapes have the same characteristics as reported rapes.

2. Reasons for not Reporting: The Findings of Other Studies

The major reasons cited by Wilson (1978, pp. 58-65), based on his research in Australia of 70 victims who did not report the rape are:

- victim's expectation of an antagonistic response from society at large, especially fear of social hostility and ostracism;
- her fear that society at large would punish her for becoming a rape victim;
- her fear of the reaction of relatives, e.g., wife afraid of husband's reaction or young woman afraid of parent's reaction;
- her desire to push the whole experience from her memory;
- her belief or resigned acceptance that there was not sufficient evidence for the police to prosecute;
- her fear of police hostility.

A later study by Binder (1981) based on a questionnaire survey of a group of women students and faculty members of a school on a university campus in America, incorporated 24 women who were victims of 81 incidents of unreported rape. Binder also found that the strongest barriers to reporting rape were psychological

with 39% of the non-reporting victims surveyed giving 'guilt about the experience' as one of their reasons. Other reasons (multiple responses possible) were embarrassment (35%), fear of the assailant's reprisal (23%), and a belief that reporting would 'do no good' (16%). Binder believed from his study that even though external social factors may change, such as law reform, the internal psychological barriers to reporting may remain.

Another Australian researcher, Lee Henry (1980) reported that, for 57 victims who visited the Sexual Assault Referral Centre in Perth, the most commonly given reasons for not reporting to the police were :

- a family-related concern (44%), e.g., that parents would think it was the girl's fault ;
- a police-related concern (33%), e.g., that the police would not believe them, or they anticipated harsh treatment by the police ;
- a court-related concern (28%), e.g., fear of going through cross-examination before a jury, or having to go over their experience several times (multiple responses possible).

Of those who did not report because of anxieties about police and court procedures, many mentioned that they thought there was a low conviction rate for rape.

The 1978 U.S. Bureau of Justice Statistics' Victimization Survey found that of those who did not report the rape 19.4% gave as their reason 'Nothing could be done/lack of proof'; 13.2% said the offence was 'not important enough'; 16.2% said it was a 'private or personal matter'; 10.2% said 'fear of reprisal'; 9.1% said they 'reported to someone else' and 4.2% believed police would not 'want to be bothered'.

In the rapes involving strangers which were not reported 29.4% of the victims cited 'Nothing could be done/lack of proof' as their main reason, compared to 2.3% of victims of rapes involving non-strangers who gave this reason. In rapes involving non-strangers which were not reported 22.3% of the victims gave as their main reason 'private or personal matter', compared to 12.6% of cases involving strangers who gave this reason (U.S. Bureau of Justice Statistics, 1980, pp.80-81).

The New South Wales Health Commission (1982) attempted to evaluate the first three years of operation of the sexual assault centres (set up in New South Wales in July 1978). Victims were either referred to the centres by the police, or went there directly themselves, or were taken there by their friends or families. Of a total of 1,211 victims (that is including those who had already reported the rape to the police and had been referred to the centre) 38% said they would take no further action over the assault. When asked their reasons, 65% of this group replied they were anxious about police and court procedures, 23% thought further action futile and 17% said they wanted to forget the whole incident (multiple responses). Other reasons given less frequently included :

- fear of people not believing their story ;
- fear of reprisal from the assailant ;
- fear of rejection by parents or partners ;
- community stigma of being a rape victim ;
- wish to protect character of assailant.
- fear of rejection by friends.

Smith and Nelson (1976) took a more systematic approach and tried to identify the variables involved in the victim's decision to report or not. Specifically, they looked at (a) the immediate circumstances of the rape and (b) the personal and social characteristics of the victim and assailant. They found that there was a greater likelihood of the victim reporting the rape:

- (i) if she was put in considerable physical danger, e.g., violence or a weapon was used, or another crime was committed at the same time ;
- (ii) if there was a considerable social distance between victim and offender (this is broadly the difference in social class incorporating any differences in occupational and educational levels, social status and race) ;
- (iii) if the victim reckoned on receiving support from "significant others", e.g., a partner, the mother, a close friend ; and
- (iv) if the victim did not know her assailant.

The only New Zealand data we have come from two questionnaires which appeared in the New Zealand Woman's Weekly in 1976 and 1981. The first questionnaire did not actually ask victims why they did not report the rape to the police but many stated why nevertheless (Saphira, 1982) with the main reasons appearing to be :

- social stigma
- fear of police attitudes
- afraid of relation's reaction
- too frightened of assailant
- too personally degrading
- assailant was her husband.

Twenty-nine of the 100 questionnaires returned to the magazine were filled out by rape victims under 16 years of age. This large proportion would affect the overall replies : younger victims are generally more easily subdued into thinking they should not make a fuss by reporting the assault. They are also generally more easily frightened.

The later 1981 Woman's Weekly questionnaire was analysed by the Auckland Rape Crisis Centre (1982). In that postal study the definition of rape was left up to the individual respondent, but as there was sexual intercourse in only 64% of the 223 replies, the study is more on rape and sexual abuse generally, than rape as legally defined. Again a very large proportion of those who replied (over 50%) had been sexually abused before they turned 15, thus affecting the range and frequency of reasons why the rape was not reported. The reasons given were :

- afraid of people's reactions (41%)
  - blamed herself (20%)
  - unsure of how to report (16%)
  - unsure of getting 'justice' (14%)
  - no support (12%)
  - afraid, unspecified (10%)
- (multiple responses possible).

### 3. Reasons for not Reporting : The Findings of the Present Study

Although the number of women in our sample who did not report the rape is small (19), most of the reasons given in the overseas and Woman's Weekly studies were also given by the women we interviewed. As no weight can be given to the numbers who gave particular responses, the following categorisation is merely intended to illustrate their range. Reasons given for not reporting fell basically into six categories :

- (a) apprehension or fear of the police response ;
- (b) victims' feelings of guilt, shame or embarrassment ;
- (c) fear of negative reaction from family and friends ;
- (d) apprehension about the judicial/legal/court procedures beyond the police process ;
- (e) the social context of the rape ;
- (f) rape by husband  
(multiple responses possible).

#### (a) Apprehension or Fear of the Police Response

Aspects of the anticipated police response which victims said contributed to the non-reporting of the rape include : not expecting to be believed, frightened of the police, did not see the police as sympathetic, not having (in their eyes) sufficient evidence to convince the police, and uncertainty as to how the police would respond. For example, one woman, who was raped in her own flat by a man who had given her a lift home from a party, said :

I was married for 20 years to a policeman and I've got so many friends in the police force. There was no point in going to the police, I knew what their attitude would be. Basically there would be scepticism from any man you might talk to about what happened. I would not want any of the police to know. It was an unfortunate series of events that led to my being raped .... The majority of police are not even trained in human relationships.

Another woman who was raped by a close friend mentioned the difference between her perception and the police perception of what constitutes 'rape', as a reason for not reporting :

How many of the police would call that rape? I had flattered with a policeman for eight months, and I knew it would just not be worthwhile. My picture of the rape wasn't going to be the same picture the police had.

Another woman gave 'uncertainty about police response' (coupled with lack of family support) as reasons for not reporting, while one woman's previous experience of the police played a major part in her decision not to report :

I had been involved in witnessing an assault case on the street in [a large New Zealand town]. I saw how the police reacted when taking statements and the police process first hand. I didn't want to go through that .... My image of the police was not that of a friendly bobby on the beat. I didn't see them as being sympathetic, more like fascist pigs.

One woman was 'frightened of the police full stop'. She considered it not advisable to go to the police - 'they'll laugh at you'. Another woman similarly anticipated a disbelieving police reaction :

I had a flimsy case. It was my word against his. I didn't think I could stand up to the police. It was just going to be my word. I didn't have any cuts, abrasions. I saw no point in going to the police. A woman would need to be awfully strong to go to the police. She would need a lot of support from her family and friends. I didn't think the police would pay much heed to me. They would say I was a silly little thing to let it happen.

Another woman had 'bad feelings about the police'. She did not believe the police treated rape victims 'properly'.

#### (b) The Victims' Feelings of Guilt, Shame and Embarrassment

A number of women commented that they did not report the rape because they 'didn't want other people to know' because they felt 'dirty' or 'ashamed'. One woman, who was forced to have sex with her boyfriend when she was 17, said :

I didn't tell anybody at all about it, not even parents or friends. I felt I would be made responsible for having got myself into that situation.

One woman's guilt feelings that she might have unintentionally colluded in her own rape, at the age of 13, prevented her from reporting it :

I thought it was all my own fault. I thought this would be the natural reaction from anyone I might have approached.

Another woman put not reporting down to 'embarrassment' :

I just couldn't have reported it.

And another woman said :

I felt guilty about it happening in a friend's house. Sometimes I wished I could say more to a friend's family, but not able to.

One woman "bottled it all up inside" but when she started having nightmares she had to tell her flatmate. The woman had been raped by a complete stranger in her own home when she was 19. Another woman, also raped by a stranger when she was 16 years old, did not tell anyone for three years, she just (in her own words) 'went numb and blocked it out'.

In another case a woman who was raped 16 years ago by her boyfriend when she was 17 related how she felt at the time and the long-term effect of her guilt feelings about the rape on her life :

It was assumed then that the girl had allowed herself to get into that sort of situation, and she shouldn't have. A girl musn't allow herself to get into compromising situations - ultimately it's all up to the woman. And 16 years ago if a girl became pregnant (although I didn't) it was her fault anyway. I didn't tell anybody. Felt neither my mother nor father would understand. I had no true friends at the time. I think if I had been able to tell somebody it would have been much easier. If I could have told somebody I wouldn't have had the problems I have had. It put a great strain on my second marriage because I couldn't tell my husband about it. I was afraid how he would react.

(c) Fear of Negative Reaction of Family and Friends

Some victims did not report the rape out of fear that her family or friends would reject, disbelieve or blame them. One woman, who was anally raped by her boyfriend, said :

I had considerable anxiety about my mother and my peer group finding out I was not a virgin, because I had always said I was.

Some victims did not want the family to become involved or to be troubled by the fuss likely to come out of reporting the rape to the police :

My sister would have come to hear about it and as she was looking after me I didn't want to get her in'o trouble and make me feel guilty about what had happened to me.

and :

I couldn't go to the police because this would involve my parents and I was scared.

(d) Apprehension about the Judicial, Legal and Court Procedures

A few women seemed to have weighed up the chance of getting their assailant convicted before deciding not to report. They appeared to be aware of the difficulties they might face under the legal spotlight. For example, one woman raped by a stranger in her own bedroom commented :

I decided that I wouldn't prosecute because I knew how hard this was. I looked at the situation and examined it .... I was a solo mother living in a house with a group of punks. I couldn't recognise most of the men and I wore glasses. I decided that this was not a good case and there was no use reporting it. Now I'm even more convinced that this decision was the right one.

Another woman put forward her reason for not reporting as 'It was a flimsy case. It was my word against his.' Believing she did not have the evidence to prosecute successfully, one woman said :

I wouldn't have been able to identify the three guys. It was dark outside.

A 13 year-old raped by two strangers in an alley-way felt a more specific deterrent :

I'd learnt about rape cases where women had been ridiculed in court. Words and feelings are not understood in court.

Having to relate the incident in detail to a number of strangers also deterred some women from reporting the rape, with one woman saying she was too embarrassed 'to be crying and upset in front of people I didn't know.'

(e) The Social Context of the Rape

For some victims the attitude of those in her immediate social group was crucial to her decision to report or not. One woman who was raped by two acquaintances (gang members), recalls her initial feelings and those of the people around her :

The people I was with made me feel it wasn't such a big deal and wasn't worth going to the police about - that I would be making a big fuss about nothing. Being put on the block wasn't something those men who raped me - and some of the other people - called rape. They didn't think of it as rape .... Also I don't really think I thought about it properly though I remember thinking at the time that someone should call the police. But some of them including the guys who raped me would belong to the criminal classes anyway. It was only later when I returned home that I could trust my own feelings about what had happened to me. I wanted to get back at them but it was too late.

For some groups, where sporadic violence is the norm, sexual violence directed against women may be acceptable. Women within such groups must, to some extent, be influenced by peer group pressure not to report when reporting means the involvement of outsiders (the police) in what the group regards as its own affairs. Two women did not at first define what had happened as 'rape'. In both instances the victims were very young (12 and 13) at the time and ignorant of sexual matters.

(f) The Marital Rape Exemption

The current legislation of New Zealand provides for an exemption to the charge of rape for husbands who rape their wives under s.128(3) of the Crimes Act 1961 while they are cohabiting, although the husband may be charged with indecent assault. It has been frequently assumed that women raped by their husbands do not report it because of this exemption. Not one of the seven women we interviewed who were raped by their husbands gave this exemption as the main consideration for not reporting. Fear of the husband and (usually in the early years of the marriage) a desire to keep the relationship going 'for the sake of the children' emerge as these women's primary concerns. Five of the women were repeatedly beaten as well as raped thus giving them considerable justification for prosecuting the husband for assault as well as for indecent assault. To have prosecuted the husband for any offence would have meant (a) bringing out into public the woman's situation (which many victims found shameful) and (b) putting the marriage into jeopardy. All these

five women eventually did seek help but none went to the police. One went to the local Battered Women's Support Group; one went to the local Women's Refuge and then to the Rape Crisis Centre; and the other three all went to their solicitors (with help from their family) to get separation and non-molestation orders. One of the other women tried to report to the police after her husband beat and raped her while she was 4-5 months pregnant:

I called the police, they came around, but I didn't have the courage to tell them what had happened. I couldn't tell them what he had done to me. They came, classed it as a domestic dispute I think - which they couldn't do anything about. They knew my husband was drunk at the time. The police are not sufficiently aware of what is going on in a domestic dispute.

As was the case with single women, one of the main reasons which deterred some married women from reporting the rape was a feeling of guilt, shame or embarrassment.

It was a pride thing too. I was ashamed and trapped and I didn't know where to go for support. Looking back and thinking about my father leaving my mother and my feelings about that, I think there's a whole guilt thing involved for women in that situation - and in their reasons for staying. Why do we stay in those situations? I stayed for 5-6 years.

The married women we interviewed, however, differed from single women in that in addition to feelings of guilt about the rapes and beatings, they also felt guilty about breaking up the home. As one woman said: 'Although I felt it was stuffed, I felt it was my duty to try and keep the marriage going'.

#### 4. Why do Women Report the Rape?

Considering the strength of the obstacles most of the victims perceived to lie in the way of reporting, it may seem surprising that 31 of the 50 women we interviewed did report the rape. But on closer examination of the case histories we found that only eight of the 50 women actually went to the police of their own free will. Of the 30 cases reported to the police in New Zealand, 22 were reported on the initiative of a friend of the victim, a member of the victim's family or a total stranger. Several of these 22 women literally ran into the police while escaping; two women were reported missing and were found later by the police. Thus it seems that for many victims reporting occurred not by their design, but by chance. Two women explicitly stated that if they had had the choice they would not have gone to the police. We must remember, however, that many of the victims were distraught or in a state of shock and some may not have considered whether to report the rape or not. Some of them may have personally contacted the police when they recovered, if parents or friends had not already done so. We also put to the women whose cases were reported, the question: 'Would you recommend others to report to the police?' Eleven said 'yes'; five said 'it depends on the woman and the circumstances of the rape'; four said 'no'; and seven responses were unclear or unavailable.

A range of reasons was expressed by those who did recommend others to report to the police. For example:

I would have been prepared to go to court. I mean I didn't even know the guy. I had nothing to be ashamed of. I wasn't responsible for what happened.

and

If she [the hypothetical victim] thought going through the court process was going to help her in any way I'd say 'yes'.

and

Yes, because it [raping] is not the right thing to do.

and

I would report it again because there are other women .... He said he would do it again to someone else, and I thought he might.

Several women gave a qualified answer - 'it depends'. In most cases the qualification was the mental and emotional capacity of the woman to see the case to its legal end:

Not if a woman felt she couldn't cope with the situation and its aftermath. It brings things back. A woman would have to feel strong within herself.

One woman thought reporting to the police depended on the circumstances of the rape:

I really don't know. If you don't know the guy - yes definitely but if you know him consider your options carefully.

One woman was adamant that should she be so unfortunate as to be raped again she would not compound her misery by going to the police:

If it happened to me again I'd never go to the police - like, for example, the court case being put off all the time. I was in a real state. By the time I got to court I was a nervous wreck. At one stage I wanted to forget the whole thing. The police came around and said he'd get four years and you might be saving him from doing it to someone else, so I thought 'OK I'll be a big hero'.

The assailant was found not guilty of rape, but guilty of attempted rape, and was imprisoned for one year.

#### 5. Summary and Discussion

It is clear that the reasons identified in other studies why women do not report the rape also applied to the group of women we interviewed. Fear of police hostility or disbelief, apprehension or ignorance of what was going to happen if they reported, victim's feeling that there was not sufficient proof, feelings of shame, guilt and embarrassment, not wishing to involve family or friends, not defining the situation as 'rape' - all these factors were cited in other studies as well as in this one. In most cases the victim gave more than one reason why she did not report, which suggests that if only one remedy is pursued (e.g., improving the police image) then this may not have a very marked effect on reporting rates because other factors may also be at work - such as feelings of shame or not wishing to involve the family.

Three issues emerge from this section which warrant closer attention. These are :

- (a) The probable impact of law reform and changes to police procedure on reporting rates ;
- (b) The family, society and sex ;
- (c) The marital rape exemption.

(a) Law Reform, Reform of Police Procedures and Rates of Reporting Rape

Several of the main reasons put forward by both the victims we interviewed and those interviewed in other major studies relate to the psychological state of the victim, in particular, feelings of guilt and shame. As such, these reasons had little to do with fear of police, court or legal processes and more to do with basic social attitudes (as perceived by the victim). If we assume that these reasons also apply to a significant proportion of the general non-reporting rape victim population, then we must ask ourselves - is it realistic to expect that legal and procedural reform will achieve a major increase in reporting? We must also ask ourselves - if an increase in reporting rates comes about through changes in social attitudes, and police and legal processes have not changed, then has the situation improved when more women are being put through what is seen as a humiliating experience?

Duncan Chappell (1982) isolated what he considers to be the two main objectives of rape law reform :

1. To increase the number of men convicted of sexual offences.
2. To improve the treatment of victims in the police and court processes.

There are two ways of achieving an increase in numbers convicted :

- (i) to increase the proportion of reported rapes resulting in conviction (improve the conviction rate) ; and
- (ii) to increase the number of rapes reported, without necessarily increasing the conviction rate (improve the reporting rate).

Rape law reform may have some impact on conviction rates, though there is the danger that the pool of sex offenders prosecuted by the police will simply be re-labelled (see Loh, 1981 and Chappell, 1982). But rape law reform will probably have even less impact on reporting rates chiefly because:

- (a) legal reforms tend not to be well understood by the general public (this is probably more a fault of the legal jargon used and of inadequate publicity) ;
- (b) legal reform will probably do little, at first anyway, to change the social stigma of being a rape victim ; and
- (c) legal reform would hardly be a consideration for a victim to report or not if she is distraught or in a state of shock or after the rape.

This last point needs developing. As has come out of the case histories, the woman's decision to report the rape or not is often taken out of her hands - sometimes to the victim's regret. If this pattern continues, then law reform will be in many instances largely irrelevant to the victim's decision to report. Another point to make here is that women who have suffered such a traumatic experience are hardly likely to sit down calmly, review recent legal reforms and then decide to report or not. The more likely reaction would be an instinctive one - to go home, to have a wash, to go to friends or parents, and in some cases to go to the police.

Reform of police procedure accompanied by extensive publicity may encourage more rape victims to report to the police because, as several of the victims' comments suggest, some victims did anticipate a hostile or disbelieving police response. But, we must remember that, at the point of trauma, some victims' decision to report to the police may be governed by (a) her past experiences of the police and (b) her general attitude to the police. If the victim believes she has been mishandled by the police on a previous occasion, then her most likely reaction (if she has the choice) is not to go to the police. If this is true, then major and well-publicised moves to improve police procedure in complaints of rape may not initially have much success in increasing reporting rates, if they are not made in conjunction with similar moves to improve the police image generally and to improve police-public relations.

To make it quite clear, these are not arguments against rape law reform or reform of police procedure, more a plea that we pursue such reform for the right reasons. That is, we should not expect law or procedural reform to bring about an immediate increase in reporting of rape as there is no consistent or necessary connection between the two. We should concentrate on achieving what Chappell saw as the second objective of rape law reform: to improve the treatment of victims in the court and police processes. If through doing this more women report the rape, then that should be considered an added bonus.

(b) The Family, Society and Sex

In many cases victims spoke of their 'shame' and 'guilt' in the context of the family or friends finding out about the rape. For example:

I didn't tell anybody at all about it, not even parents or friends. I felt I would be made responsible for having got myself into that situation.

and:

I had considerable anxiety about my mother and my peer group finding out I was not a virgin, because I had always said I was.

and:

My sister would have come to hear about it and as she was looking after me I didn't want her to get her into trouble and make me feel guilty about what had happened to me.

For many people, any activity connected with sex (whether engaged in willingly or not) is tinged with a feeling of shame. Some rape victims seemed to express their 'shame' as a fear of being discovered doing something 'wrong', where the victim's estimation of what is right and wrong depends largely on her perceptions of the values and opinions of family and friends. This was especially noticeable among.

the younger victims. In order to reduce the pain of the anticipated moral censure or rejection by family and friends, the victim does not report the offence. Non-reporting is in these cases a pain-avoidance mechanism. The victim hides her 'shame' away and the risk of going down in the estimation of others is avoided. Unfortunately, as some previous examples have suggested, this suppression can cause long-lasting mental stress. In several cases the woman had nightmares and in one case the woman's ability to successfully maintain a relationship with her second husband was impaired.

For some victims their 'shame' is mixed with another, quite different feeling which can best be described as the victim's wish to protect those whom she cares for - family and friends - from the taint of 'rape'. She may feel isolated and believe that the rape is something that only she can deal with. She may feel that there is no point in others suffering her shame as well. There is sometimes a sub-conscious doubt that she may have unintentionally encouraged the rape and therefore feel partially responsible for it. As one victim put it: 'I thought it was all my fault.'

If we extend this argument to the courtroom, and extrapolate the family to the larger unit - society - then we begin to see and hopefully understand the ordeal some women go through when they do report. Together with, at times, gross sensationalism by the media, the court experience must constitute a form of washing dirty linen in public. Again, some victims anticipating the pain of such exposure may take the easier way out by not reporting the rape.

The Evidence Amendment Act 1977 which restricts reference to or inquiries into the complainant's previous sexual history except with the judge's leave, must help alleviate some of the later traumas of the legal process. But it cannot help the victim at the point of her decision to report or not, because few victims would be aware of the existence of the Evidence Amendment Act, and because the chief deterrents to reporting do not, it seems, lie in this area anyway. No victim we interviewed specifically said fear of cross-examination deterred her from reporting. It is the mere fact of admitting to being raped, which for some women amounts to a public revelation of shame, that emerges from the victims' comments as a more significant reason for not reporting. Only considerable and well-publicised changes to the entire way rape cases are handled - less formality, more privacy, more sensitivity - will have any effect on this particular barrier to reporting, and even then improvements will take time.

(c) The Marital Rape Exemption

All the women we interviewed who were subjected to rape by their husbands wanted the exemption removed. While it seems that such a move would not have necessarily prompted the women to report the rape to the police (other considerations predominated) it is clear that the women felt that the exemption closed off another avenue of justice. If law reform in this area should proceed, then it should not do so on the expectation that once the exemption is removed, women will flood to report marital rape (some would see such an increase as good, others would fear it). There is no evidence to substantiate such an expectation. All the available evidence (admittedly scant) suggests that women endure physical

and sexual abuse from their husbands because they cannot find the courage or the resources to walk out of the home, because they feel guilty or ashamed, because they have no one to talk to or because they think that staying is for the benefit of the children.

If law reform is to proceed in this area, it should proceed on the basis that this move opens up another channel of justice for women, that it will demonstrate that in the eyes of the law married and unmarried women are equal (de facto husbands can be prosecuted for rape) and that no husband would be able to rape his wife without fear of legal consequences.

#### PART FOUR : THE VICTIMS' EXPERIENCES AND PERCEPTIONS OF THE POLICE AND THE MEDICAL EXAMINATION

##### 1. Introduction

Of the 50 women we interviewed, 31 reported the rape to the police. However, one woman was raped in the U.S.A. and reported to the police there. This case was removed from this section as her comments did not relate to the New Zealand police.

This section summarises and illustrates these 30 victims' experiences and perceptions of how the police treated them and their complaint of rape. It relates primarily to contacts between the victims and the police until the beginning of the preliminary hearing (where the police located a suspect and prosecuted him) or until the present state of the case (where no arrest ensued). The questions put to the women on their contacts with the police are appended to this section in the full questionnaire (see Appendix One). Although a total of 30 cases is a small number, and impossible to generalise from, we did begin to identify in the victims' responses something of a recognisable pattern of police procedure in cases of rape, though police officers' attitudes seemed to vary a great deal. This part of our research is the first attempt in New Zealand to question raped women about how they were treated by the police. All but four of the women had contact with the police within the last two years, so their comments are relevant to current police practice if not to current police policy.

Ten of the 30 cases reported to the police ended with no arrest being made; in 14 cases a suspect was arrested and he either pleaded guilty or was found guilty in the High Court; in the six remaining cases a suspect was arrested but he was either found not guilty, or the case was dismissed in the High Court.

In three of the 20 cases in which a suspect was arrested, the woman did not have to appear in any court as the assailant pleaded guilty before the preliminary hearing began. Of the ten cases where no arrest was made, five cases lapsed because the police were unable to locate a suspect; two cases lapsed because the victims would not have been able to identify their assailants. In three cases the police did not act on the complaint, these involved a prostitute, a woman with a lengthy history of psychiatric illness who laid the complaint four days after the rape and a woman who was drunk at the time of the rape.

In only eight of the 30 cases did the woman herself contact the police. In the other 22 cases someone else made the initial contact, sometimes after discussing it with the woman, but often totally on their own initiative. These people were often members of the victim's family, family of friends, employers and occasionally strangers. In most cases the police were contacted as soon as the victim reached

help, or within an hour of reaching help. Those women who did not report the rape immediately (three cases) talked over the event with girl friends shortly after the rape and in two of the cases the victim finally decided to tell her parents who then contacted the police. One woman did not report the rape until four days later because of disorientation.

##### 2. Police Procedure Relating to the Victim

There emerged from the interviews of the 30 women who went to the police a reasonably distinct pattern of events involving the victim. The following compressed description of these events takes into account only those practices which the victim undergoes, or has contact with, and is not a description of the total police procedure in dealing with complaints of rape. Because of the variety of circumstances under which the rapes occurred, and because of fluctuating patterns of police manpower (according to different times of the day and week, and the size of the police district) the pattern set out below may not necessarily describe what each or any particular victim experiences when she goes to the police.

When the first contact was made by telephone then the woman was asked not to change her clothes or wash but to wait where she was. The police (sometimes from uniformed branch, sometimes from the C.I.B.) went to the address and interviewed her. In some cases she was interviewed in her own home, in others she was taken to the police station. Occasionally the police had already been out searching for her as she had been reported missing. During the initial interview the woman was usually asked to describe the assailant, how he got away, what kind of car he had, if he might have left fingerprints anywhere, whether he was an acquaintance or not. Some women did not have the opportunity to bring clean clothes with them to the police station; others were able to change before going to the police. Sometimes the woman was then taken back to where the rape had occurred so that the police could verify the location and make a search of the area. Sometimes, this search took place towards the end of the initial questioning. When the woman got to the police station she was in almost every case required to make a detailed statement of everything that had happened to her. This was typed up while she was in the station and given back to her to sign. Three to four hours may have elapsed now since she reported the rape to the police. In some cases a friend or relative had been present at the police station. Many women were supplied with coffee, tea and cigarettes, and one woman was given fish and chips by the police.

If the police proceeded with her case, the woman was medically examined (usually by a police surgeon). Depending on when the woman reached the police station, and how busy the doctor was, the woman would have been examined before, during or after she had made her statement. Most examinations took place in the police station itself, some at the doctor's surgery. Often a doctor's nurse or a policewoman was present at the examination. Some women then took the opportunity to change their clothes and have a shower (the clothes in which she was raped would be taken away as evidence by the police). A few women had a choice of doctors for the medical examination. The details of this examination, and the women's views of it, are discussed later. For most of the women the procedure up until this point had taken seven to eight hours, often starting at near midnight or in the early hours of the morning. Some women had not slept for 24 hours by the end of the police questioning.

In some cases the police visited the victim at home the next day to follow up details and to collect further evidence. Occasionally, this visit was made by police officers she had not met before. Many women were required to return to the station at a later date to identify the assailant, or to look through photographs, or (in one case) to listen to voice recordings. In those cases where their complaint proceeded through to the preliminary hearing and then to the High Court most of the women had continuing contact with the police, usually with the officer in charge of the case. This officer may follow it all the way through the court process, or he may (at any time) assign another officer to the case.

### 3. The Victims' Impressions of the Police Officers' Behaviour and Attitudes

We asked the women what their impressions of the police officers' actions and attitudes were for the whole time they had contact with them. As might be expected, their impressions varied a great deal from glowing to severely critical. We classified their responses into four broad categories:

- (a) Predominantly positive (10 women)
- (b) Neutral (6 women)
- (c) Mixed evenly between positive and negative (12 women)
- (d) Predominantly negative (2 women)

#### (a) Predominantly Positive Responses

This category includes not only those women who had unqualified praise and admiration for the way the police handled their case, but also those who felt they got generally 'a good deal' (as one woman put it) from them, though this may have been marred by a single incident or comment. For example, one woman said:

The police were excellent. I greatly admired them. I was lucky they were there otherwise I don't know what I would have done.

This same woman, however, added later:

I was very upset at the newspaper reports. The details must have come from the detective [this was before the preliminary hearing] and I wasn't told that anything would be published.

Another woman told us:

[A woman detective] took statement. Only the two of us in the room together. She apparently went outside the room early on in my statement and said this one was genuine. Usually the police are quite 'iffy' about rape complaints, but they weren't with me. Police all being very nice to me, brought me coffee and lunch.

This woman continued to have contact with the woman detective handling her case and they became good friends. Another woman observed:

The one who was interviewing me was very very nice, made me feel a lot better. .... [the detective] did say they do often clamp down on women who report

rape. I didn't feel I was disbelieved [the detective] said as far as he was concerned he believed me. The police did ask me a couple of times about how I felt and included that in his statement. But I was beginning to feel like a pawn in the police hands for them to win their case, rather than the person to whom it had all happened.

One woman also recorded faltering police belief in her complaint:

They were good. They were kind and supportive. They brought me tea and waited if I got upset. I felt they believed me. At first they asked me 'did it really happen?' When I said 'it did' they believed me.

She added:

I knew before leaving the police station they had made an arrest and would proceed. [The detective] said they would throw the book at him [the assailant] because he had also hit a cop over the head with a piece of 4 x 2.

This woman was particularly impressed with the follow-up service she received:

[The detective] kept in touch with me. He told me what was happening, when the court cases would be held and what I would have to do. He was very good .... He explained that the defence would probably ask me some awkward and embarrassing questions.

#### (b) Neutral Responses

These were defined as overall impressions of police attitudes which were either non-committal or too abbreviated to gauge accurately. A frequent sentiment expressed in this category was that the police have a job to do:

At the beginning I felt I had to convince the police it had happened .... Dad reassured me that the police really did believe me. The police do have to warn you that you must tell the truth and that you can be prosecuted for making a false complaint.

Another woman recorded her experience with the police more in terms of what happened than in terms of her impressions:

Two policemen [taking her statement] talked with me. I was there seven or eight hours. It was all right at the police station then, but I wouldn't want to go back.

#### (c) Mixed Responses

This category includes those responses which contain a fairly even balance of comments of both a positive and negative nature. In some cases the woman found initial police scepticism hard to take, but as she 'won them over', her impressions of the police became more favourable. There are several instances of this. For example one woman said:

Interviewed by men. Don't feel intimidated by them. Met one policewoman, uniformed - who didn't really believe me .... [A detective] put his feet up on

the desk, looked down at me and began 'Now you know there's such a thing as lying'. I hit the roof. Then he said 'Well, we have to be very sure'. Out of the ten hours with the police that was the only bad experience .... Felt the police were totally on my side. Didn't take the police very long to believe me. But I don't know why they have to talk down to you and make you feel so terrible all the time.

A similar experience was recounted by another woman :

The police were very heavy to begin with. They said 'we wanted to know whether you would hold up in court and whether the statement was true. A lot of women make up stories - that is why we have to be heavy with you'. By the end the police were pretty good to me.

Other women found the police initially sympathetic and helpful, but either through changes in personnel on the case, or changes in attitudes (on either the victim's or police's part) this good rapport deteriorated. For example, one woman commented :

They [the police] were nice. They gave me cigarettes and made me tea. They were concerned with factual information, not with feelings. I wouldn't have expected this anyway .... I think they believed me. At first they were awfully nice. Only later it was not so good and now after two months they say they are too busy. I feel they have been stuffing around and their attitude has been a bit off. The first ones were kind enough. But later I was made to feel uncomfortable .... I wouldn't call myself cheap but the police eventually made me feel like this. This upset my boyfriend who gave me a hiding ....

Another woman told us :

At the police station [my husband] and I cried and this embarrassed my parents. But the police understood. They said it was like mourning .... The police were good except the case was all over the paper ....

One woman had a good initial impression of the police but as her case progressed she grew more and more apprehensive, especially over the police line of questioning :

I found I could relate to him [the officer taking her statement] because I felt he was doing his job properly. He wanted facts and I told him. I didn't want to discuss my feelings. I found this an easier way to cope with the situation. At that point they were trying to verify what they had been told. Later, I found out that the police didn't believe me. They asked me if there was any reason to make up a story. What were things like between me and my mother? Was there any reason to hide things from her? They asked me about my boyfriend and other things. The police didn't believe my story until they found out that the neighbours had heard screams and came out. The bad thing is that they look at you as if you are guilty - that you are making up a story and wasting their time .... I felt I was being used because I had a good attitude .... How much notice would they have taken of me if I had been drunk or at a party?

This woman also remembered that a police officer gave unsolicited comments about what he thought should be done to rapists (castration) and prostitutes (something similar) which upset the woman at the time.

In some cases a wrongly interpreted, or wrongly diagnosed laboratory result soured what promised to be a good police-victim rapport :

[The police officer taking the statement] was very good. At the time I felt totally confused. I don't think the police took this state of shock into consideration .... My clothing had been sent to DSIR. It was found that the sperm on my pants was different. I was questioned about this and on some other matters. They told me they were testing me to see how I would react. It turned out that the result was wrong. I don't really hate them - I realised they were doing their job but it didn't help me or make me feel better to be made to appear dishonest.

(d) Predominantly Negative Responses

In a few cases the woman felt things had started badly with the police and, despite some brighter moments, had generally worsened. For example, one woman said :

The police who interviewed me were a couple of bastards. They gave me a hard time. They may have been C.I.B. I definitely got the impression they didn't believe me. They said a lot of girls cry rape after quarrelling with their boyfriends. They asked me about my boyfriend and my personal life ....

Later she was interviewed by a detective and a policewoman both of whom she describes as 'nice' and adds :

She believed me. By this time the bruises were starting to come out.

But from this point on her rapport with the police grew (in her eyes) markedly worse :

While I was asleep, the police had gone to our place .... and fingerdusted the place. They read my letters which were very personal. Some of them were from [a girlfriend]. They gave [this friend] a hard time over this and I haven't heard from her since .... The Police never explained why they went through my drawers and personal belongings.

The police also visited the factory where this woman (and her mother) were working, which she found upsetting :

They were so obvious and questioned people in the panel beater's shop underneath. People stared at me and my mother was not happy.

Another woman was interviewed by a detective whom she called 'not very nice' :

He didn't believe me. They took me back to do a search of the scene, and I couldn't show them the exact spot - the policeman didn't believe me. It was his attitude - he said 'Oh well, if you can't show me the exact spot' .... If they've got policemen who aren't going to believe a woman in the first place, then they shouldn't be put on the case. The police attitude was 'you were too busy enjoying yourself in the first place to take notice. That I should drop it all together as they tried to suggest I was imagining it and that it all happened tomorrow.'

#### 4. Victims' Impressions of Police Procedures

The previous section dealt with (amongst other things) the victims' perceptions of the actions of certain members of the police in dealing with the complaint of rape. 'Procedure' differs from 'actions' in that it is an activity carried out routinely by the police officers, though it may not be part of official police policy. Four distinct issues relating to police procedure emerged from the interviews. These were:

- (a) Police disclosure of information on rape to the media without consultation with or permission of the woman.
- (b) Instructions to the victim not to change her clothes or wash.
- (c) Male police officers conducting interviews and taking statements.
- (d) Preparation of the victim for her role as witness and the amount of information and advice given on what to expect at the preliminary hearing and the High Court Trial.

##### (a) Police Disclosure of Rape to Media

Several women complained that the police had disclosed details of their case to newspaper and television reporters without notifying them or seeking the woman's permission. In some instances a wholly positive police-victim relationship was soured (in the victim's eyes) by this disclosure, in other cases it became what the victim saw as another example of police insensitivity. For example, one woman said:

The police were good except the case was all over the paper. [Our street] was mentioned and you could identify the house. They also showed it on the TV news. I thought the police would have told me it would be on.

A second woman was more upset and angry:

.... they [the police] were quite good really. The only exception was that I didn't get a chance to tell my parents before it all came out in the newspapers .... I said to the police is there any way it'll get out. They said 'no', but it did - from the police .... It was plastered all over Truth. I didn't want it plastered over everywhere. The Evening Post and Truth went into all sorts of details. Can't see why they are allowed to do that. And because of my occupation a lot of people around here knew who it was straight away. The police told the newspapers straight away before I had a chance to tell my parents .... I didn't like that.

Police disclosure to the media of details concerning the victim, such that she believes she may be identified by others, is similar in its effect on the victim to the police turning up unexpectedly at the victim's house or workplace. It is probably connected with the victim's feelings of guilt and her fear of being labelled a 'rape victim'. It is easy to see the necessity of the police giving out details about the alleged assailant to the media, so that the public may assist in locating him, but disclosure of details about the victim seems to serve little other purpose than to furnish the newspapers and television with titillating news.

In one interview the woman described the way the police had come around to her flat and finding that she was out, had asked after her at another flat next door saying that 'they'd come to see me about the rape'. The woman commented that her neighbours knew nothing at all about the rape.

She then added:

At this stage [shortly after reporting to the police] I didn't want anybody else to know. I didn't want my brothers [or] sister to know. My brother found out through the newspapers. It had quite a bit of newspaper coverage, and my brother found out that way. Why didn't I want people to know? I can't tell you why. If I'd been mugged I'd been prepared to tell people. It took me a good 5-6 months before telling people about it; but now its easier.

Yet another woman found the media publicity of the rape hard to take on top of everything else:

It was on the radio and in the newspapers. There was a photo of the actual place where it had taken place. I was terribly embarrassed because I knew that people would know who it was. It was embarrassing at work, though actually the staff were quite good. It was a strange experience actually having yourself discussed. It was in the newspapers on the front page. I didn't like it. I had a big scratch down my leg and thought everybody would know.

In all the above cases details would almost certainly have been disclosed by the police: disclosure occurred before the preliminary hearing began, when court reporters could have obtained details of the case.

##### (b) Instructions to the Victim not to Change her Clothes or Wash

In many of the 30 cases the women had clothing ripped, muddied or stained with blood or semen in the assault. Where the woman had been abducted and afterwards reached help or was found by the police, she often went straight to the police station, without changing or washing, to make her statement. Many women in this position commented on how they felt about this. For example, one woman said:

I wanted to bathe and disinfect myself but I couldn't. I wasn't even supposed to go to the toilet.

Expressions like 'exhausted', 'tired', 'dirty', 'smelly' were used by the women to describe how they felt. One woman put like this:

"You feel very, very dirty. You've got the smell of him all over. It's a pity there's nowhere you can have a shower. It's the smell of him that worried me."

In one case the woman was advised by her mother not to change so that the police could 'see me as I was, covered in dirt and blood with my hair all messed up'. She changed nevertheless.

One woman recalled:

I made my way back to the club where my friend was. My clothing was ripped, my dress grass-stained, the crutch of my pants and pantyhose torn out. Someone rang the police .... It was in the early hours of the morning when they arrived to question me. They kept me sitting in those clothes until the doctor arrived.

It is at present unclear whether instructions not to change or wash are made on the grounds of preserving the evidence in a state closest to its state at the time of the offence, or whether the dictates of police procedure are such that police officers feel they cannot afford to wait to interview the victim in more pleasant surroundings, if they are to catch the assailant.

(c) Presence of Male Police Officers during Interview

Several women responded that they were not unduly upset that the person taking their statement or questioning them was a male, even though they had often only just been raped by a male. One woman who had favourable impressions of the police noted:

I don't think it would have made much difference if a policewoman had been present at the questioning. I didn't want to talk about it with anybody.

But for others the presence of a male was disturbing. One woman found it 'very embarrassing' to talk to a male police officer; another thought the ordeal would have been 'easier if a policewoman was there to talk to'. A third woman managed to strike up a rapport with a woman detective handling her case and they became friends. Another victim, who had met a 'lady policeman', felt that 'relating to a woman on this matter was good'.

One woman found the experience of male police officers questioning her hard to endure:

There was a man with a typewriter taking down the statement. That was pretty awful. I had to talk to him about how the rapist removed a tampon. I was so shocked at the time of the rape - it was absolutely awful. Now I would insist on speaking to a woman police officer .... The police were all right. I think they were shocked .... [they] were generally very sympathetic .... But the worst thing was having to tell a man everything .... It was just as bad as going through it all again. It is absolutely essential that a woman takes the major part of the evidence.

And she added:

I don't think we should expect police to fulfil emotional support for raped women. But police should be given the training to be sympathetic. If older people are used that's better: I don't think young men are the best to talk to about sexual assaults ....

A few women commented that they found upsetting the fact that they were interviewed by several police officers at the same time, or that different police officers entered and left the room while the statement was being taken.

(d) Preparation of Victim for Preliminary Hearing and High Court Trial

Of the 30 women who reported the rape to the police, 17 saw their case reach at least to the preliminary hearings stage. Of these 17, 14 proceeded to the High Court. None of the women, it seems, had prior experience of either court. We asked them how much help, advice or information the police gave them prior to the preliminary hearing, and throughout their case if it went further, for their role as witness.

As with most of the other questions, the victims' responses showed a great variety, ranging from victims who felt the police had given them no assistance at all, to those who spoke of an extensive police follow-up service. The comments cited are intended to show this range.

One woman commented:

The police told me nothing about the police system or criminal justice system. I don't understand [the preliminary hearing]. I didn't have a clue .... There was no preparation as a witness.

Another woman found police help hard to pin down:

[A detective] said 'You can get in touch with me whenever you like'. But when I did he was never there .... I went to the police station just before [the preliminary hearing] and they showed me my statement.

And a third woman felt that:

.... the most annoying thing was the chopping and changing of personnel. It was very badly handled. I got given names and then when I rang up they weren't there. I didn't know who to deal with. It's important at that stage [preparing for the preliminary hearing] to deal with someone you know. I would have liked a follow-up service I could rely on.

Some women were warned of what to expect in the High Court trial, with one detective saying that the trial would be 'gruelling' and that:

his defence would probably try and bring out personal things, that he would try and do everything to win his case.

Another detective warned the victim that the assailant's defence counsel would probably ask some 'awkward and embarrassing questions'. This particular officer kept in close contact with the woman, informing her of how her case was proceeding, when to appear in court and what to expect - all of which, the victim appreciated. One officer made it his business to be approachable:

One guy who saw most of the case through said 'Got any problems. Come and see me'. I went to see him half a dozen times.

Two women were given a detailed strategy on how to be an effective witness; one recalled:

He advised me how to act in court, e.g., if the case went to the High Court don't cry; at the Depositions cry. He advised me to count to 10 before answering any questions - or to ask the defence to repeat questions.

The other woman was told to 'look at the prosecutor straight in the face, don't look at the defendants'.

In four cases the victims visited a court to see what it was like before the preliminary hearing and the High Court trial.

Several women commented that they were told what to expect at the preliminary hearing and in the High Court, but were in such a state of shock or so confused at the time that they did not absorb what was said to them. One woman made the specific recommendation that if some explanation could have been written down detailing what certain court procedures and terms meant, what was expected of her and so forth, then she would have been able to read it later and absorb the information in her own time. And, we might add, such a brochure would provide the victim with specific details with which to question the police further.

#### 5. Resumés of Five Case Histories

Five women gave us such detailed accounts of their experiences and perceptions of the police that they deserve to be quoted more fully. Their accounts, moreover, give the reader a better idea of the whole picture of a victim's experience with the police. Some parts of their accounts have been quoted previously, but these have kept to a minimum to avoid duplication. The names of people, places, police officers and businesses have been replaced by a generic term (itself placed in square brackets) to preserve the anonymity of the victim as far as possible.

#### Case History 1

Victim A, a 22 year-old woman, was gang-raped by six men. She resisted strongly and as a result, she believes, was quite badly beaten. As soon as she got free she ran a mile to the police station:

By the time I got to the police station my eyes were all swollen and I looked like a dead bird. I was so sore I couldn't sit down .... Statement taken by one policeman from the C.I.B. Mum wasn't present. It would have been harder if she had been in the room with me. I know she would have been hurt .... Got a good deal from the police. A second police officer said 'Are you telling the truth?' Then the police found one of the guys who made a statement which agreed with mine. Generally police were very supportive. There was one rough patch when a second policeman came in after talking to the lady whose house it was at - because she said I went willingly. What he did is to be expected .... When Mum arrived at the police station a police officer explained everything that I would have to go through. He said 'You've got to be really sure'. He explained everything to us: doctor, lower court, High Court. 'You've got to remember there are six of them and one of you. If they get together and make a story it'll be your word against their's' ... It was horrible having to stay in your own clothes all this time [4 a.m. till midday] without a bath. It would have been better to have seen the doctor first, had a bath, and then given the statement .... Officer in charge of the case kept in touch with me. One guy who saw most of the case through said 'Got any problems. Come and see me'. I went to see him about half a dozen times .... Given some

preparation by police [for the preliminary hearing and final trial] - 'Remember they can ask you anything they like. Don't back down. Just tell them the truth straight out. The best thing they can do is to try and make you unsure of yourself. They'll try and drag you through the mud in court. You're already emotionally unstable because of what has happened - it's the worst thing to put you off your case. Just look at the prosecutor straight in the face, don't look at the defendants.

Her case went through to the High Court, and five of the six men were convicted and imprisoned.

#### Case History 2

Victim B, a 35 year-old, was raped by a male in his mid 20s whom she knew. Having just been raped and beaten up she managed to escape from her assailant in her car:

At the bottom of the hill I saw a police car. I stopped and they saw my face was bleeding. They took me to hospital. I stayed there a week .... The police asked if I was going to press charges against him. I had a strong conviction that I couldn't when I had asked God to forgive him. The following day a detective came in and said there had been previous offences by this fellow and they would have to charge him. But at least I felt at peace with my conscience .... The police took details at my bedside. They took photographs of me and he [the assailant] admitted it .... I never went to the Police Station except to get my clothes back later .... The police were excellent. I greatly admired them. I was lucky they were there otherwise I don't know what I would have done. [A detective] took my clothes and had them laundered .... It didn't really upset me speaking to a male except for the question about intercourse. When he used this term I didn't even know what he was talking about - but that's my ignorance. I would have been embarrassed if I had been asked by a woman. The detective was so good and kind .... The police told me that he would be charged when I was in hospital. I didn't have anything more to do with it. I think there was a court case. That was the end of it. I don't know whether the police told me about the outcome. I may have heard through the papers or my friends what happened .... I was very upset at the newspaper reports. The details must have come from the detective and I wasn't told anything would be published. There were all sorts of details, plus the fact that I was in pyjamas and I think that was unnecessary. I suppose it would look bad but I had just been woken up ... There have been other times when I have done the same thing in an emergency.

The assailant pleaded guilty and was imprisoned. The woman had severe lacerations and bruising. She was offered plastic surgery for a deep cut on her forehead, about which she commented "the scar on my forehead was evident for a long time. It is not so bad, not so noticeable, now".

Case History 3

Victim C, a 20 year-old, was the victim of an attempted rape by a stranger whose offer of a lift she had accepted. She dissuaded him from raping her and she was not physically assaulted though shaken up. After the incident the victim discussed what had happened with her friends, who suspected something was up and one of her friends contacted the victim's father who then contacted the police:

He rang the police and they came in the morning. Two policemen had gone to my work and two around to where I was staying with [my friend's] mother-in-law. The C.I.B. were very casual. They took me to the [local] police station .... I was pissed off. They took me to a dingy cell with cigarette butts all over the floor. They shut me in and didn't tell me what was going on and what would happen. I stayed there for ages. A young cop took my statement. He was too cocky, too smart. I was upset. I told him to piss off at one stage. He added smart comments to the statement. It took three hours .... I believe that cop believed I was crying rape and he didn't believe me. He could tell that something had happened to me but didn't seem to care. I should have had a policewoman. I was really angry about that young cop .... that's why I'm talking today. His attitude annoyed me. I asked him if he believed me and I burst into tears. He said 'this happens all the time - women cry rape'. I was having to convince him so I told him to bugger off. When they found out I was a [criminal justice official's] daughter they whipped me out of that dirty room. There were a number of policemen involved in the case. One detective was really nice - the one who put the whole case together. The first hour and the first person you talk to is really important. You don't want to listen to criticism at this stage. I had to have my fingerprints taken. I didn't like this but they explained why they were taking them. The police were trying to rush me along. I was in shock and I was trying to remember. I felt I couldn't ask the policeman politely to stop. I had to yell. They asked only factual questions. My faith in the police has really dropped .... It would have helped me if a policewoman was there. I think that they are more sensitive. It would have been better talking to a woman, especially at the initial stages. Oh, and when I got my clothes back I asked [the young policeman who took the original statement] for my raincoat. He said, 'Oh, I'll find it'. He took ages to return it. At the time he called I had a chain on the door and he said 'You're a bit nervous aren't you?' I thought 'You thick head!' .... Looking back I think if it had been [the detective later assigned to the case] I had dealt with things would have been different. A policewoman would have been better but this man was good. The young cop was too young and cocky.

This woman revealed that her father did not wish her to do the interview but that she 'had to' because she felt the police didn't handle the interview properly. Her assailant was tried for attempted rape against Victim C and the rape of another woman. He was sentenced to 7 years imprisonment to which the victim said 'Is he getting the treatment he needs or will he come out and rape again? But if the woman was one of my friends, I think I would be in a better position to talk to her than a policeman.'

Case History 4

Victim D, a 26 year old widow was raped twice by the same man. He was a complete stranger to her. She had stopped in her car to answer a question he had made and he got into her car without her permission. She made several attempts to escape from him from which she received several grazes and bruises. He finally left her bedraggled and she made her way to a girlfriend's house. The girlfriend's father rang the police:

I didn't really want to go to the police. I was worried about the children .... The police were very good to me. About five of them, non-uniformed, came to my friend's parents' home .... My friend's mother came with me. I wanted to bath and disinfect myself but I couldn't. I wasn't even supposed to go to the toilet. They took me to [the scene of the second rape] first to work out where I had been for the dogs to pick up the scent. I desperately wanted to go to the toilet and couldn't hang on so we had to go back to [the police station]. From there they took me to the doctor's .... I was worried that the police wouldn't believe me but they did - they were nice and sympathetic. I was interviewed by males but I didn't mind. They were really good. After it was all over, I wrote to the [police station] to thank them. They explained the questioning. They said the night before they had had a married woman crying rape. They got to a doctor and she confessed that it was a false complaint. They said the set procedures followed protected those involved - the victim, the police and the person accused. In taking the statement they worked in shifts, writing and preparing it. They said I was one of the best rape victims to interview. I was so angry I was rational. I felt like a time bomb .... But there were some bad moments. I feel angry about the police in [the district where she was first raped]. I had had no sleep for 24 hours. The police picked me up at 8.30 a.m. [in the] morning. The identikit picture was prepared. I was getting on well with the police in [the district where the second rape occurred] but then a big guy came in .... Questions were fired at me in all directions. Three cops all asking questions. At one point I stopped them and told them to tear up the complaint. The questions were because of a report from [the first district] which said that the clothes found were all in a neat and tidy pile. I said my clothes were torn - I heard them rip. The rapist was a meticulous guy and I explained this to them. He tidied things, never spilt ash and always used the ashtray in the car. I said my clothes were ripped. I felt I didn't have to justify myself. They were testing me. I said if they didn't believe me I would stop the case. They went back to [the police in the first district] - sent a message - asked [police in first district] to check out the underclothes to see whether they were ripped. [The police there] came back and confirmed that I was telling the truth and admitted that they had not checked the clothing properly.

The police explained to the victim that she must have a medical examination and that she had a choice of which doctor to go to. The officer assigned to her case also briefed her on what to expect at the preliminary hearing, but this proved unnecessary as her assailant pleaded guilty before this hearing began and was sentenced to four years imprisonment in the High Court. The police suggested that she make a claim to the Accident Compensation Commission 'for expenses'. The police provided a covering note for her application. She added: 'After two years I can make another claim'.

Case History 5

Victim E, a 21 year-old woman, was raped at knife point by a stranger who had broken into her house. As soon as he left she contacted the police:

When I rang the police I said I had been raped. The policeman kept me talking. They arrived quickly and closed off the street - it seemed only about five minutes after I rang. The police said I should have rung sooner but my own phone was not working - the cord had been cut. I also really didn't know what I was doing when I went to the neighbour's place, but I knew I had to do something. Two detectives came. They asked me for a description of the rapist. One of the police got clothes from the flat and took me to the police station. I changed my clothes before going to the doctors .... I was taken to the doctor's first .... [The detective] was understanding and patient. He was really good. He put me at ease. He said he'd got a wife and knew how embarrassing her position was. He was patient when I got upset. There was no female officer present during the interview. Having a female could have been useful - for example, when I went to the loo [the detective] went with me and waited for me. I felt physically dirty and smelly. I couldn't have a shower at the police station as there are no facilities there. Even to go to the toilets meant going through the police officer's bar. I think the police believed me. It was only at the end of the interview that I was hassled. When [the detective] was interviewing me, as each page was finished it was taken out to somebody else. [Another detective] came in. He was quite stern and told me that I could be had up for making false statements. I replied that he knew the window had been forced. He said 'strange things have happened'. This made me really upset. I realise that the police have to check on information given but I think the circumstances were obvious with the window forced. They could warn people in a better way than this. They could even have pointed out in a low-key way at the interview, after explaining why, that people should realise the consequences of making false statements. I realised later that [the second detective's] approach may have been influenced by his being used to interviewing criminals. I was at the police station for 3-4 hours .... Afterwards I was exhausted .... Five policemen came in while I was being interviewed. I was not asked if this was acceptable to me. They asked questions. One other man asked permission to sit in but he went out when personal questions were being asked.

The victim had only limited contact with the police. She found her main contact, the first detective in the above narrative, only so-so. The offender was not apprehended for this rape. The victim heard he was arrested for theft two months later and convicted of this charge, but not of the rape. She had been unable to be positive in her identification of the assailant.

6. Summary and Discussion

Even with only 30 interviews the amount of useful information relating to the victims' impressions of police behaviour, attitudes and procedures is still daunting. To select objectively from this welter of information 'the main points' is even more difficult. Nevertheless, several issues arise from the victims' responses which need to be brought together and explored. These relate to:

- (a) the qualities the victims appreciated in a police officer;
- (b) the victims' perception of the initial disbelief, or testing by police officers;
- (c) the police role in complaints of rape.

(a) Qualities the Victims Appreciated in a Police Officer

Generally, victims seemed to appreciate certain qualities in the police officers they dealt with. Positive comments the victims made include 'very, very nice'; 'kind and supportive .... waited if I got upset'; 'very supportive'; 'excellent, I greatly admired them'; 'so good and kind'; 'nice and sympathetic .... really good'; and 'understanding and patient .... really good, he put me at ease .... he was patient when I got upset'. Generous or thoughtful touches - such as arranging for the victims clothing to be laundered, or providing her with cigarettes, tea, etc. - were also appreciated. Some women commented favourably on an officer's ability to do his job properly. When police officers took the time and trouble to explain what was going to happen to the victim (routine matters for the police but alien and daunting for the victim) then this too was frequently appreciated. By explaining court, police and legal procedures to the victim and by taking the victims' feelings into account in those procedures, the police officer, whether he knows it or not, is making the victim feel that she is not just a cog in the criminal justice machine.

Nils Christie (1977) calls the process, whereby a personal conflict between two parties - in this case the rape victim and the rapist - is 'taken over' and converted into a legal issue, the 'theft' of the conflict by the state. In a similar vein Hulsman (1981 and 1982) has argued that the criminal justice machine has to transform 'problematic situations' into pre-ordained legal packages in order for the machine to digest and process the complaint. Both criminologists call for greater involvement of the victim in the criminal justice process and as the police officer is in the 'front-line' it is seen as imperative that the police encourage the fullest involvement of the victim. One victim felt that 'her' rape was rapidly becoming the 'police's' rape:

The police did ask me a couple of times about how I felt and included that in his statement. But I was beginning to feel like I was a pawn in the police hands for them to win their case, rather than the person to whom it had all happened.

(b) Victims' Perception of Initial Disbelief or Testing by Police Officers

Several victims recalled what they felt to be the initial disbelief and scepticism of police officers and many found this one of the most upsetting features of their encounter with the police. In some cases victims remarked that this was the initial reaction of the police officer. It would thus seem to be based solely on such factors as the personal appearance and credibility of the victim, rather than on a corresponding assessment of the suspect or an assessment of forensic evidence.

Several victims also commented that they felt as if the police were testing them to see if their complaint was genuine. Techniques for testing genuineness cited by the victims included:

- (a) oblique statements or questions such as '[the detective] did say they do often clamp down on women who report rape' and 'Now, you know there's such a thing as lying?';
- (b) direct questions such as 'did it really happen?' and 'Are you telling the truth?';
- (c) certain lines of police questioning, especially directed towards the victim's personal life and any anomalies in her story.

In one case a mistake in a laboratory result provoked an immediate testing of the victim's story, and in another case where, it seems, a different police district failed to check adequately the woman's clothing, the woman was subjected to an immediate barrage of questions. In both incidents the woman involved was upset. In another case the police appear to have used the 'sweet and sour' approach:

It was only at the end of the interview that I was hassled. When [the detective] was interviewing, as each page was finished it was taken out to somebody else. [Another detective] came in. He was quite stern and told me I could be had up for making false statements. I replied that he knew the window had been forced. He said 'strange things have happened'. This made me really upset.

One woman related the police officer's justification for testing:

The police were very heavy to begin with. They said 'we wanted to know whether you would hold up in court and whether the statement was true. A lot of women make up stories - that is why we have to be heavy with you'.

The officer concerned here may have wished to ensure the genuineness of her case in order that court and police time was not wasted with an easily-rebutted complaint. His reported statement also points to another common observation of the victims (so common that there is some evidence to suggest that it may be a routine part of police procedure) and that is the police officer's warning to the victim that she can be prosecuted for making a false statement. This in itself can be seen as a way of testing the genuineness of the complaint.

Sometimes testing is hard to distinguish from genuine advice or information. This is evident when police officers inform complainants of what to expect in the court process. Statements by police officers such as 'You've got to be sure of yourself' and 'His defence will ask you awkward and embarrassing questions' are probably well-intentioned attempts to brace the victim for the court ordeal. But if such comments are made at the initial police interview with the victim, then we may wonder whether the police officer is testing the determination of the woman to see her case through. Very few victims we spoke to received a detailed description of court and legal procedures at the first interview with the police, and in these cases this did not deter her from proceeding with the complaint.

The danger of police testing seems to lie in the fact that it often sours (in the victim's eyes) what promises to be a good police-victim rapport. The victim naturally interprets the testing as disbelief - it may only be intended to substantiate the weaker points of the evidence - and she may lose some faith in the police. In this way the benefits to the police of establishing whether a particular case will result in conviction or not conflict with the victim's need to be believed and comforted.

### (c) The Police Role in Complaints of Rape

Many victims commented on police disbelief and police testing - what significance do their perceptions have for the manner in which the police handle rape complaints?

Several victims thought it was necessary to convince the police - to prove the genuineness of their case - before the police would proceed with the complaint:

At the beginning I felt I had to convince the police it had happened.

and:

I was having to convince him [the police officer] so I told him to bugger off.

and:

The bad thing is that they [the police] look at you as if you are guilty - that you are making up a story and wasting their time.

The victim frequently found the necessity to convince the police upsetting on top of what had already happened.

It may help to review briefly the role of the police in rape complaints up to the High Court trial. Generally, the prosecutor representing the Crown at the preliminary hearing is an officer of the Police Prosecutions Section. This officer might have conferred with the police officer in charge of the case but, it seems, he would normally have very little contact with the complainant. In rare cases a Crown Prosecutor would represent the Crown at both the preliminary hearing and the final trial, should it proceed that far. In cases which do proceed the police prosecutor hands over the case to the Crown prosecutor after the preliminary hearing. The Crown Prosecutor usually does not have any personal contact with the Police Prosecutor but he will usually consult the officer in charge of the case. Only rarely does he hold an interview with the complainant. Often the Crown Prosecutor meets the complainant (who is not his client - she is only a witness) only minutes before the High Court trial starts. The only official channel of detailed advice open to the victim before the final trial would appear to be the police officer in charge of the case. The police involvement in a rape complaint (as with all serious complaints) is then, extensive and three-fold:

- (1) to collect relevant evidence, to locate suspects and to take statements;
- (2) to ensure that prosecution witnesses arrive at the trial; and
- (3) to argue that this case is indeed 'prima facie' worthy of proceeding to the High Court.

The final decision whether a case should proceed or not to final trial is usually made by two Justices of the Peace.

As noted earlier, the victim's comments tend to suggest that the police felt obliged to establish the credibility of the complainant. The credibility of the complainant is especially critical when consent is the central issue in the High Court trial, as often it is the woman's word against the man's. Police testing of her credibility can be seen, then, as anticipating the court proceedings.

Some would argue that, considering the extent of police time and manpower involved in a rape complaint, it is only natural and sensible that the police proceed only with cases they deem strong enough, or where they consider the woman is strong enough. Others (e.g. Wilson, 1978, p.66) argue that the police act as 'unnecessary filters' in complaints, that they take over the role of the criminal court and act as judge and jury by deciding (sometimes before all the evidence is available) that a complaint is unfounded.

The issue here is not whether the police in New Zealand do operate as an unnecessary filter in rape complaints (this is in part the subject of Research Report 2), but that victims perceive they do.

This brings us to what is probably the essential problem concerning the police and the rape victim and that is, the conflict between the police requirement to act as officers of the court and the victim's need to be believed, reassured, and supported at a time often of personal trauma. This conflict, as can be seen from the victims' comments, manifests itself in a variety of ways: for example, when the policewoman attends a medical examination; when a woman is instructed not to wash before the medical examination; when the police require the complainant to make a lengthy statement straight away; when the police feel obliged to test a complainant to see whether she is telling the 'truth' or whether her case is likely to result in a conviction in the High Court trial.

#### 7. The Victims' Impressions of the Medical Examination

A distinct but integral part of the police procedure in respect of complaints of rape is the medical examination. Of the 30 women who reported the rape to the police only three women were not medically examined as part of the police procedure. In two of these three cases the police officer called out made an early decision not to proceed with the case - one involved a prostitute, the other involved a woman who had been gang-raped but who did not wish to press charges (both women went to their own doctor for V.D. and medical examinations). The third case was one of attempted rape and the circumstances were such that no medical examination was called for. One woman who was hospitalised was not sure if she had been medically examined. The remaining 26 women (whose comments we have drawn upon for this section) were required to be medically examined for evidence of bruising, cuts, broken bones, etc., and for evidence of penetration - anal, oral and vaginal. The latter evidence is collected and sent to the DSIR for analysis. The doctor's evidence is critical then in the two major areas of legal contention in complaints of rape - to collect the samples for DSIR analysis which will determine whether intercourse took place, and to describe the injuries, if any, of the women. Both the doctor and the DSIR scientist are likely to be called up as witnesses for the prosecution in a rape trial. The DSIR in conjunction with senior police surgeons

have developed a 'Sexual Assault Kit', which helps to ensure that medical examinations are done systematically and the appropriate evidence is collected in every case.

During the medical examination the woman's whole body is examined, and she is then given an internal vaginal examination with a speculum. The sexual assault kit contains four envelopes and two bottles for the collection of different evidence. The woman will have to give blood and saliva samples (the latter by chewing on a piece of gum). If the woman was menstruating, a sample of menstrual blood will be necessary. Hair samples will be plucked out from both her head and pubic region to ensure a sample of hair roots. Fingernail scrapings may help to link the victim to the assailant, and to the scene of the crime. Vaginal, anal or oral swabs will be taken to test later if sperm is present, and these swabs may provide evidence to assist with the identification of the suspect.

Once the doctor has collected this evidence, it will be given to the police to deliver to the DSIR for analysis. The usual police procedure is to use police surgeons to conduct this examination, as they have some training in forensic medicine. They know how the sexual assault kit is to be used, and they will usually be readily available to appear in court at a later date. Nearly all the 26 women we interviewed, who were examined, were examined by police surgeons. This may have been because we only interviewed women from the three main centres - where police surgeons are more readily available. Two women were examined by women doctors, the rest by men. In 10 cases the examination took place in the doctor's surgery, in 10 cases in the police station (which meant in a police cell, if the station had no medical room). The remaining six gave replies which did not allow us to say where the examination was held.

As with the victims' impressions of the police, their perceptions and experiences of the medical examination, and the doctor who conducted it, vary a great deal. The responses were broken down in the following fashion:

- (a) predominantly positive
- (b) neutral or unclear
- (c) mixed fairly evenly between positive and negative
- (d) predominantly negative

#### (a) Predominantly Positive Responses

Comments which fell into this category included:

[he was] a really nice doctor ... Fingernail scrapings, hair, chewing gum all this was explained to me.

and

Doctor really nice. He asked me if I wanted somebody with me. Doctor told me what was required in the examination and he kept relaxing me all the time.

and

The medical examination was pretty thorough. Mind you they've got to try and prove it, so it's got to be done. The doctor was very good.

(b) Neutral Responses

Examples of more neutral responses tended (like those directed towards the police) to emphasise that the doctor had a job to do :

It's not a very pleasant thing at any time to have a vaginal examination. It was just a very business-like arrangement for the police surgeon.

Others were more non-committal :

When I saw him walk in, I did think 'Oh-oh' - a male doctor, but then the examination wasn't too bad. I was scared about the medical examination beforehand but it wasn't so bad.

One woman stated she was 'hardly in a state to think or feel much', while another woman thought the police surgeon was 'alright' - but not as good as her own doctor.

(c) Mixed Responses

As with a number of responses to the police, some women had mixed feelings regarding the medical examination. In most of these cases, one aspect of the examination ruined an otherwise bearable experience. In some cases this one aspect was the presence of a policewoman at the examination :

[The doctor] was very good. But there was a policewoman there. She put me off. I felt she didn't want to be there. I felt put off and nearly in tears.

and Lady police went with me. Embarrassing the police lady was there peering at me.

and He [the doctor] was OK. I was nervous and embarrassed. I didn't really want to go to him .... He didn't say much. I felt embarrassed enough and even more so with the presence of a policewoman. She just stood there.

In one case the doctor's methods had unintentional side-effects :

[The doctor] was excellent, the only thing was that he examined me on my back which brought the memories flooding back. I feel rape victims should if possible be examined while on their sides.

(d) Predominantly Negative Responses

A number of the women critical of the doctor who conducted the examination cited lack of sympathy or sensitivity as their main cause of complaint. For example, one woman called the doctor 'standoffish' and said :

He was the only one who made me feel dirty .... he made me feel it was my fault. The police said he [the doctor] couldn't understand how women get themselves into that situation [rape].

She believed her own doctor would have been more understanding.

Another woman called the doctor 'horrible' and said :

The medical exam[ination] was worse than the rape. To be raped by a guy and then about half an hour later to be examined by a guy .... The doctor didn't explain what the sexual kit was. He gave no explanations whatsoever. I had to chew some gum but he never told me why .... He was arrogant, brutal and unthinking. If he had only let me calm down and relax first .... He just said 'take your clothes off and get up on the couch'. He was looking for bruises. He tried to insert a speculum into my vagina. I just contracted and wouldn't let it in. He got wild. I kept moving about. He said turn on your side. He used a gloved finger.

This woman also commented on the embarrassing presence of a policewoman during the examination.

One woman thought the doctor and nurse doing the examination treated the whole affair with too much levity:

They joked about it a bit and I got the impression that they didn't really want to take the specimens. They didn't treat it very seriously.

Another woman described the doctor as 'very impersonal ....cold and unsympathetic' - 'you could tell he had done this about a thousand times before'. She added: 'I have never felt so degraded in all my life'.

For one woman the whole experience was 'awful', while another had a more specific complaint :

... [the doctor] just started doing things without telling me anything. I had to ask what he was doing things for. He was rough and not very caring. He could have been a bit more sympathetic. The way he didn't explain anything about it. I had to keep asking him questions. Why?

She then commented (as did a previous victim) that the internal examination with the speculum was 'almost worse' than being raped.

Two women were examined by women doctors, neither were impressed with their treatment. One woman said :

Given no choice as to which doctor I went to. Medical examination not that bad. But the woman was not at all sympathetic. I felt more like I was being treated as if I had done something wrong.

The other woman was taken aback by the doctor's attitudes :

I got the impression that she didn't actually believe in rape. She did a vaginal examination for bruising and signs of injury .... I thought the use of the speculum was painful and I commented on this. [The doctor] seemed surprised and she said 'Was he big?'. This seemed to me such a weird comment. I didn't think she was very supportive. Later when I contacted her about V.D., I thought she was laughing at me.

(e) Summary and Discussion

The doctors the victims seemed to appreciate most were those who took the trouble to explain what they were going to do and why, and were those who treated the victim with sympathy, care, professionalism and (as one woman's comment suggests) without moralising. In the collective experience of the victims the sex of the doctor appears to be less critical than the doctor's attitudes. It may seem surprising that only three of the 24 women examined by male doctors found this particular aspect distressing. The most likely explanation is that the women were used to being examined by male doctors either for non-gynaecological complaints or as part of routine tests such as for cervical cancer. In sum, we can deduce from the victims' comments that the 'ideal' doctor (if such a being exists) would be a sympathetic and professional woman doctor.

One routine procedure which several women found particularly upsetting was the presence of a policewoman during the examination. One of her functions is to ensure that the doctor follows the correct examining procedures and to collect the evidence and ensure it reaches the DSIR. Yet, if a doctor wished to concoct, destroy or tamper with the evidence he could almost certainly do so without an untrained police officer (of either sex) discovering the deed. And if the policewoman is there merely to act as a go-between, then what necessity is there for her presence in the room? She could wait outside equally well.

In some cases no policewoman was present during the examination, which suggests that her presence is not absolutely essential. The policewoman's presence may serve another function, similar to that of a nurse during a gynaecological examination, that is (a) to ensure no further physical or sexual abuse of the woman occurs during the examination and (b) to protect the doctor from false complaints of molestation. If this is so, then these are reasons we must certainly question because, as far as many of the victims were concerned, her presence was an annoying irrelevancy. Many women who are examined in an intimate fashion by general practitioners or specialists are given the option of whether they wish to have a nurse present during the examination. It might be worthwhile for police surgeons to consider giving rape victims a similar choice.

## PART FIVE: THE VICTIM IN THE COURT PROCESS

1. Court Process Data

As indicated at the beginning of this survey, a total of 50 victims were interviewed, of whom 31 reported the alleged rape to the police. No arrest was made in 11 cases, thus leaving 20 cases which were the subject of prosecution. Six defendants pleaded guilty, three before the preliminary hearing and three before the High Court trial. The remaining 14 cases proceeded to trial by jury in the High Court. In seven of these 14 cases the defendant was found guilty; five were acquitted and the case against one other was dismissed by the judge. One case was still undecided after two trials and was to go to a third. Appeals were lodged in three cases and all were dismissed by the Court of Appeal.

2. The Preliminary Hearing

Preliminary hearings are held in a District Court before a District Court Judge or, more usually, two Justices of the Peace. Justices of the Peace (J.P.s) have no formal legal training and they are not provided with any specialist assistance in court. (See Research Report 3 for a discussion of the role of J.P.s and preliminary hearings).

The primary purpose of the preliminary hearing or taking of depositions is to hear the allegations made against an accused person and to determine whether there is sufficient evidence to put him on trial. Its other purpose, which is not "expressly stated in law" (Stone, 1982) is to give an accused person and his lawyer some indication of the evidence against him.

It is not always necessary for all witnesses to attend this hearing in person if both prosecution and defence lawyers agree and present a signed statement to that effect to the Court (1976 Amendment, s.173A (2)(c) Summary Proceedings Act 1957). Witnesses whose evidence is more formal and less contentious may be accommodated in this way. On the other hand, defence counsel will usually require witnesses, whose credibility is at issue or whose evidence is contentious, to give evidence in person at the preliminary hearing. It is rare for the complainant in a rape case not to have to attend. She is usually cross-examined, since this is an important occasion for defence counsel to test the strength of prosecution evidence and assess the victim as principal witness for the prosecution. The preliminary hearing will thus usually be the first occasion at which she is required to give evidence in a court.

All but one of our 17 cases which proceeded to the court stage were heard before two J.P.s - the other before a District Court Judge. In all but two cases (where Crown Counsel appeared), a police officer conducted the prosecution. Only one of these 17 victim/witnesses we interviewed whose case proceeded through a preliminary hearing did not have to appear in person.

With one exception, where the accused dismissed his counsel and refused to be represented, defendants were represented by lawyers either at their own expense or through legal aid. One defendant was represented by two counsel - one of whom was a Queen's Counsel. In three cases there were a number of defendants facing charges concerning a single victim. In one of these, two offenders were represented by one lawyer and his associate at the preliminary hearing, and in the High Court were represented separately with the associate still in attendance; in another, five defendants were represented by two counsel; in the third, the five defendants were separately represented. Thus, the great majority of defendants had full legal representation whereas the police officers conducting the prosecution and the J.P.s presiding over the cases are not usually qualified in law.

Although precise dates were not available from victims in some instances, the usual length of time between the rape event and the preliminary hearings was a little over two months.

### 3. The Reactions of Victims to the Preliminary Hearing

All victims said they found the court experience difficult. Their reactions ranged from finding it extremely unpleasant to an ordeal they were loathe to repeat. All found it embarrassing and upsetting. One victim whose case proceeded only to the preliminary hearing stage because the defendant pleaded guilty before the High Court trial, said, "It was horrible. I wouldn't want to go through that again". All but one of the victim/witnesses whose cases proceeded to the High Court nevertheless rated the preliminary hearing as the lesser ordeal.

There were a number of issues which victims raised about this stage of the court process.

- \* Having to face or look at the defendant while giving evidence.
- \* The presence of the defendant's family or friends in the witness room.
- \* The presence of members of the public and the rapist's friends or family in the courtroom.
- \* Discontent about not having met the prosecutor before the hearing.
- \* Being made to feel as if they were on trial.
- \* The feeling of physical and emotional isolation as witnesses; lack of feed-back, protection or support from the prosecutor.
- \* The language used in the court.
- \* Being made to stand for long periods at a time.
- \* Having to give her name, address and/or work address in open court.

- \* Having to speak above and at the speed of a noisy typewriter.
- \* The disparity between the legal expertise available to the complainant and defendant.
- \* The conduct of defence counsel.

Five victims reported instances of harassment by the defendants or their friends and family. One of these instances - a series of telephone calls - occurred prior to the preliminary hearing and the other four during the preliminary hearing or between this hearing and the High Court trial.

1. While I was in the washroom during the depositions hearing, the defendant's sister was there and she told me 'If anything happens to my brother we're going to get you'. (Case 46)
2. My friends ... had strange things happen. People were coming to the door and running away. There were obscene phone calls. They moved away. (Case 32). (This victim had lived with the friends she refers to.)
3. I had to get all psyched up to go to the depositions and then the accused's mates hassled me between the depositions and the High Court hearing, coming to my work place and making it difficult. (Case 22)
4. At one stage before the High Court other members of the gang came to my work and parked outside in a car. There was a shot gun lying in the back seat and they threatened me while not actually referring to the gun. (Case 26)

Other victims said that they were already afraid but felt more vulnerable after having to give their names and addresses in open court as part of their evidence.

### 4. The High Court Trial

Of the fourteen cases which proceeded to the High Court, none lapsed as a result of victim withdrawal or refusal to comply with Court requirements. For most of the women interviewed there was about a 5-6 month time span between the date of the rape and appearance in the High Court. A few trials took place in a shorter period and one took longer (seven months). All but one of the 14 victims met the Crown Prosecutor just before the trial.

### 5. Victims' Reactions to the Physical Layout and Organisation of the High Court

All of the victim/witnesses, without exception, found the High Court trial an extremely difficult and deeply humiliating experience. There was an obvious difference in the intensity of the experience as between the preliminary hearing and the High Court trial. The majority of victims vigorously expressed the view that the High Court experience was far worse - more demanding, personally demoralising and destructive. Three victims rated the court experience as worse than the rape itself.

One victim said:

I thought I was going to be killed when I was raped. If I had, I would have been spared this - it was worse than the rape itself. If that's justice, I'd never report another rape.

Others repeated this theme in different words.

(a) The Courtroom

Most of the victims found the atmosphere of the High Court intimidating and bewildering both in respect of its physical layout and the formality of the proceedings. Some complained specifically about the use of legal language they could not understand.

There is something quite intimidating about the court process - the formality, the wigs, the language. Why can't lots of words be simplified? (Case 2)

This woman and others mentioned the isolation of the witness box and having to stand often for hours. The woman quoted above asked for a chair because she had a painful varicose condition in one of her legs. She said that her request was not treated sympathetically. Another victim complained:

I had to stand all the time. My legs got really tired. I found the court situation all rather overpowering. (Case 19)

(b) The Public Nature of the Proceedings

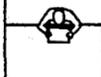
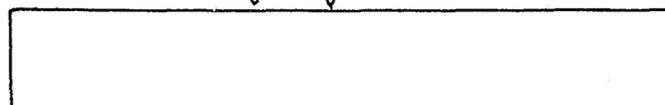
The courtroom is open to the public.

In order to assess the criticisms the victims had made about aspects of the court process, the researchers attended a number of Court hearings at various stages and followed one case through to its conclusion. At the preliminary hearing members of the public present in the small District Courtroom consisted of three members of the accused's family and friends; two friends of the complainant; three researchers and several policemen (one of whom said they were not connected with the case) whose numbers varied during the day. There would have been room for another four people. In addition, two members of the press were seated at the bench provided for them. At the High Court hearing for this case, it was difficult over the three days to obtain and to keep a seat in the public area. In addition to the three researchers and another of their number, the accused's friends and the complainant's friends, there were other members of the public, some of whom stayed throughout the trial (one of these was an Australian visitor who wished to see our Courts in operation). There was also a large party of students most of whom attended the trial throughout. Other people came and went. Extra seats had to be placed in the public area. They were not sufficient and those people caught outside the door waited patiently until someone left the area and thus made a seat available. (See diagrams for general layout of a District and a High Court and positioning of seating for the public).

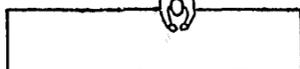
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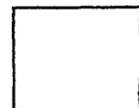
OR DISTRICT COURT JUDGE



COURT CLERK

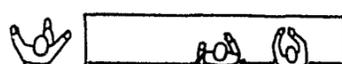


WITNESS BOX



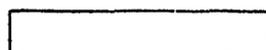
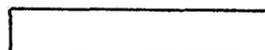
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COUNSEL & DEFENDANT  
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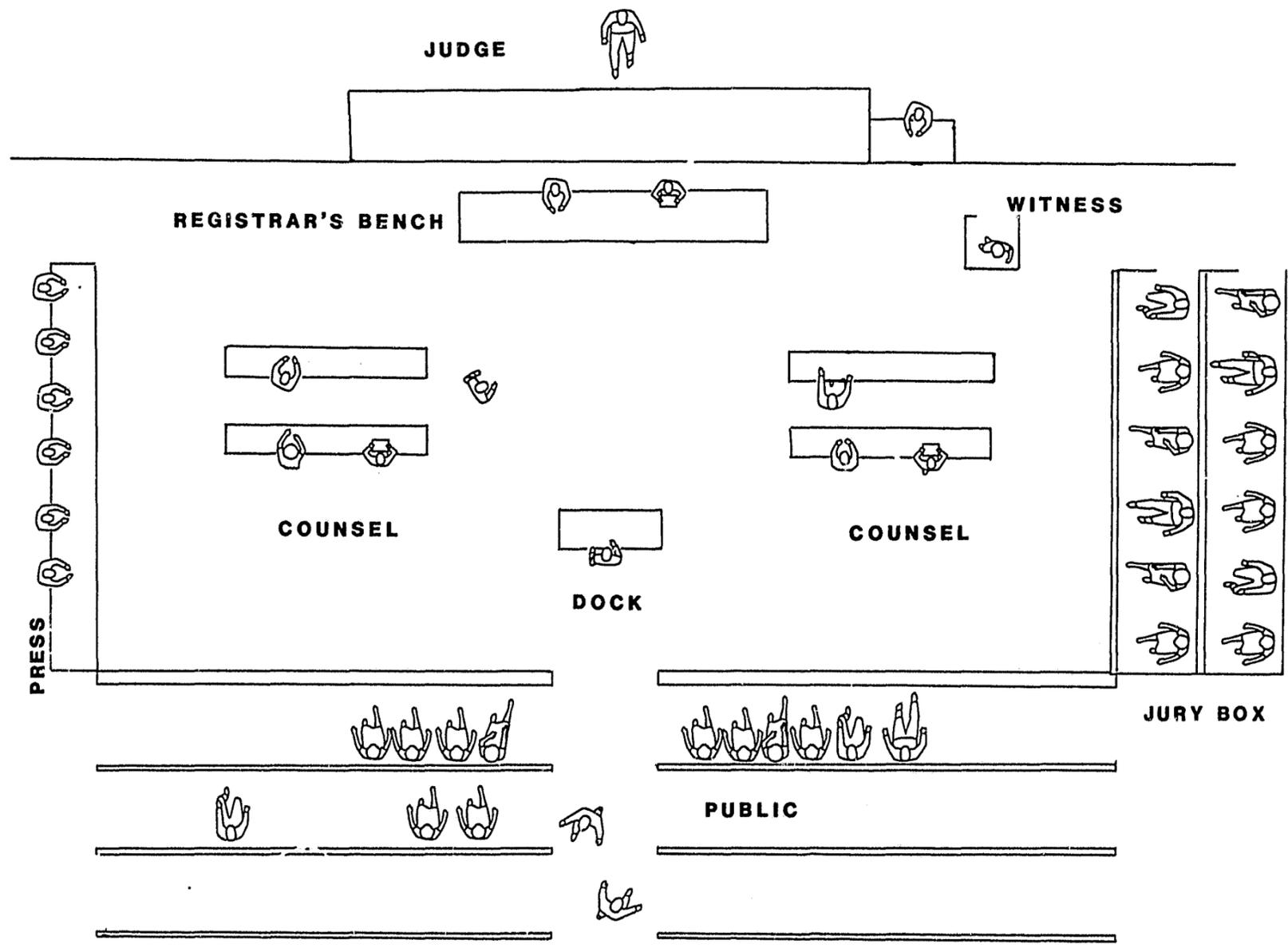
PROSECUTING COUNSEL



PUBLIC GALLERY



DISTRICT COURT:



HIGH COURT:

Nearly all of the victims mentioned their discomfort and embarrassment at reciting the rape event in detail before a large number of people. Seven believed that at least during their testimony the court should be closed to the public. Two others (Polynesian) said that the presence of large numbers of strangers in the court made it very difficult for them to relate the embarrassing details of the rape experience and to endure the imputations made by defence counsel. They found the experience shaming. None of the victims was aware that provision already exists for a judge to restrict public access to a trial where he considers it in the interest of justice or the parties concerned (see Research Report 3).

The court is open to the press and special facilities are provided for them. They may report all matters presented in open court unless specifically forbidden by law or by the judge. Five victims were considerably distressed and embarrassed by newspaper coverage of their experiences. These and other victims were also upset by details of trial coverage and believed that tighter controls needed to be exercised - or guidelines provided for the exercise of self-restraint and sensitive reporting. Two believed there should be no press coverage of rape trials.

The following are some of the comments made about the public aspect of the court process:

Just having to get up there and tell a room full of people in detail about what happened - his relatives, typists, his two lawyers, two reporters and others. The room was full of people. It's not a nice thing to have to talk about - being forced to have sex in front of a whole lot of people. (Case 35; Deps only).

It was the High Court that was the worst. There were loads of people there. What right have they got to know what's going on? I didn't want anybody to know I had been raped. I didn't want it plastered round the neighbourhood. (Case 17).

I was really scared. I thought there would be just Mum and Dad there. I didn't think there would be lots of other people. (Case 19).

I didn't like people coming in and out of the court all the time. People came in and just had their lunch there. Other people were there who had been at the party. I didn't like that. (Case 20).

The courtroom was packed with the family of the defendants and other local people. I found giving evidence in front of everybody an ordeal. I didn't like the friends of the defendants staring at me while I was giving evidence. (Case 26).

(c) The Location of the Defendant

The complainant is required to give her evidence in the presence of the defendant/s and to identify him/them. There is usually a considerable distance between complainant and accused but the victim generally has him in her line of sight as she speaks. In both hearings of the case which we attended the accused were directly in front of the complainant when she was giving evidence.

Five women objected to having to look at, or in the direction of, the defendant/defendants while they were giving evidence. Another preferred the defendant kept in view as long as he was at a distance.

I found testifying difficult. I was scared. When I was in the stand I had to look at those men. (Case 44).

I got the rough end of the rape and then in the courtroom as well. It was harder because the accused was there in the courtroom but I suppose he has to be there. I didn't like having to look at him. But it was preferable to have him somewhere I could see him, keep an eye on him, than somewhere behind me. (Case 35).

The thing I didn't like was that the rapist was behind me. I would rather he was in front of me and a long way away. (Case 45).

One witness said this aspect of the trial did not worry her:

I didn't feel intimidated by them at all, just hate. I just wanted them to be put away. (Case 12).

(d) Waiting Areas

Three victims (one of whom said she was threatened during the court process by a relative of the defendant) felt that there should be a separate waiting room and facilities for defence witnesses and the defendant's friends, and another for witnesses for the prosecution.

I didn't like the waiting room. All the rapist's mates were sitting there. I knew some of the people ... and I found having to share the waiting room really an ordeal. The accused came in and said hullo to them all. It was really awkward and embarrassing. (Case 22).

(e) Recording Facilities

One of the most trying aspects about the court process for some victims was:

... trying to talk to a typewriter. [The typist] would have to keep saying 'pardon', 'sorry', 'repeat'. (Case 22).

When you were talking and giving evidence it is very hard to slow down all the time for the typist. (Case 20).

Another horrible thing was that the typist kept asking me to repeat things because she couldn't keep up with me. I had to stop and it was hard to keep the thread of one's thoughts. It seems a silly system. (Case 32).

Others expressed the same difficulty and were critical of a system of recording which they felt to be distracting and outdated.

(f) Use of Interpreters

The two Polynesian victims, mentioned above, criticised the changes of interpreter between the preliminary hearing and the High Court trial. As well as lack of

continuity, they were critical of certain aspects of this service. Both women were happy with the interpreter provided for the preliminary hearing; both were dissatisfied with the service provided for the High Court.

The victims said they could not always understand the questions asked of them and were confused. One said she had a disagreement with her interpreter:

The interpreter wanted me to say I forgave the man. I felt this interpreter was not always saying what I was saying. I blame him [for the acquittal]. (Case 28).

The other woman believed that the court had been left with the impression that the defendant was her boyfriend. She said she had tried to deny this. (Case 37).

Both victims made the point that it was important that the same interpreter be used at both hearings and that victims should be asked whether they are satisfied and understand the questions asked of them. The younger woman said she would have been even more bewildered had it not been for the initial help of a Polynesian policeman who explained the court proceedings to her.

(g) Being Left Alone

The majority of victims expressed dissatisfaction at their physical and emotional isolation as witnesses and especially at being left without company during the breaks in the court sitting. A Polynesian woman said:

I felt very lonely in court. The police did not introduce the two [Polynesian] welfare ladies in the court to me. (Case 28).

One of two young victims whose mothers were witnesses said:

I found the court scary. I was left alone during the breaks when I was giving evidence. Mum couldn't be with me. (Case 19).

In another case, a woman who received considerable support from Rape Crisis Centre representatives and court staff, was critical of the fact that, in the process of what she said was a long and aggressive cross-examination during which she was trying to retain her composure, she was isolated from these people. She said nobody met her need for company and encouragement. A further victim who had burst into tears was also left alone during a subsequent adjournment. (Case 12).

Most of the other victims felt the need for proper feed-back and reassurance at this time and did not receive it. However three young complainants did express appreciation of the level of support and feed-back obtained, especially from policewomen in the court. One of them said:

Sergeant \_\_\_ and the police were really good to me. She talked to me in the breaks and said I was doing well. (Case 44).

6. Victims' Reactions to the Court Process(a) Defence Counsel Strategies

The majority of victims perceived that the major line of defence was consent. Additional defence strategies mentioned were: an attack on the character, reliability or credibility of the witness; strategies aimed at confusing her by pressing for details of events or locations and by the repetition of questions; blame; and pressing home points in areas where the witness was obviously uncomfortable or reluctant to elaborate.

(b) The Defence of Consent

In 12 instances, witnesses identified the main defence as being consent. In two other cases they were uncertain but thought the defence was consent. One victim said, 'The defence lawyer was trying to persuade the court that I was leading him on'; (Case 18) another victim said it was suggested that 'I possibly knew him' (Case 17). In one of the cases where the victim had said consent was the main defence, she was also confused by the different approaches taken by five defence counsel:

There were five lawyers. One would start on one subject and then another would go off on another subject. They each picked out bits that they wanted to follow up. I'd answer the questions from one lawyer and then the other would follow on ... I was asked questions about where I worked, questions going back to my childhood. They asked me a lot of questions about my boyfriend because he rides motor bikes and suggested that he might be part of the gang. (Case 26).

Victims reacted strongly to the suggestions made that they consented. They were also angered by the way questions were asked or repeated. A 16 year old girl who was threatened with a knife, punched, smacked and had her mouth stretched to stop her screaming, said: "They tried to make out that I got over the fence and into the loft on my own. I found this the hardest thing to take". (Case 45).

A 15 year-old victim who had been raped by five men, said that one of the defence counsel "suggested that I got into the car by myself and that I was to blame" (Case 44). A similar defence was referred to by another victim who had been punched in the face by one of the two men charged. She objected to the suggestions of the two defence lawyers that she had gone with them of her 'own free will'; when she had tried to explain that she had acted out of fear of the presence of two men and further physical violence. (Case 12).

A widow with four children whose husband had not long been dead, said:

They tried to make me mad and angry. They tried to suggest ... that I was willing and wanted the man. They tried to suggest that I was jealous of his wife. I got a very bad feeling. (Case 28).

Another witness said she was accused of lying (Case 17) and in fact most victims said they felt that defence counsel attempted by various means to suggest that they were either untruthful or twisting the facts to suit their own story.

(c) Attention Seeking

Attention seeking was another defence strategy adopted in two cases to suggest consent or compliance. In one of these the victim said the defence counsel suggested that she was depressed and piqued at not receiving sufficient attention from her friends and that she willingly entered the car and assisted the men in other ways. In another case it was suggested that loneliness and the impending separation of her parents contributed to a desire for attention.

The defence lawyer suggested I was very lonely and wanted attention. [He] kept asking questions which made me mad like: 'Did I know that my mother was moving out of the house'. He was suggesting that I went out to get attention because of my parents and that I really wanted to be raped. (Case 31).

In the latter case this young victim had given us some detail about this line of questioning. Her account was vivid and convincing. We were able to check the appropriate file which confirmed what she had said. The defence counsel, as she said, spent a great deal of time questioning her about the relationship between her parents and how she felt about this - returning always to the theme of loneliness.

Q I suggest to you that you were lonely and unhappy that Sunday afternoon?  
A Why should I be? We had just had friends over. They stayed the weekend. I wasn't lonely.

Q I suggest to you that you were particularly unhappy because of the situation between your parents?  
A The situation between my parents had nothing to do with it ...

Q I suggest to you that it is quite wrong for you to say you didn't care less ...  
A I suggest to you that you are wrong ...

Q You were happy with Mr - who was prepared to talk to you and listen to your problems.  
A I had no problems to talk about. I was happy ...

Q You wanted Mr - as your boyfriend didn't you?  
A No.

Q You went into the bush with him knowing you would have sexual intercourse with him and wanting sexual intercourse with him didn't you?  
A No.

Q Afterwards, when he wouldn't be your boyfriend, when he wouldn't come home and meet your parents you got angry?  
A I didn't ask him to be my boyfriend and I certainly didn't want him to meet my parents.

Q This is when you invented this entirely malicious story of rape?  
A When I invented this malicious story of rape as you call it was when he went into the bush. Would I bring it this far if it was just a load of rubbish?

The defence counsel also made suggestions which she found humiliating. For example:

Q What did he do then?  
A Sucked my nipple.

Q For how long.  
A I don't know, a few minutes.

Q How did this make you feel?  
A Not very nice.

Q Made you want to have sexual intercourse with him didn't it?  
A No it did not.

Q Not even a little bit?

She said, "I was not prepared for the nastiness, the horribleness of the defence lawyer's questions".

(d) Imputations as to Character or Behaviour

This victim's report of defence counsel's attempt, as she saw it, to confuse her and twist her story, accorded with the complaints of other victims. Everyday happenings, including confidence and trust in other people, could in circumstances such as this be made to look as if the complainant lacked the most elementary commonsense or was inviting what happened.

Q It is fairly clear if you hadn't believed him you wouldn't have gone with him?  
A Yes.

Q You saw yourself as that someone who was going to talk to him?  
A I didn't see myself as anyone in particular. I am myself, I can't help that ...

Q So you were prepared to go with him and talk to him?  
A I was prepared to listen to him. If I had known what he wanted I wouldn't have gone with him. I wouldn't even have stopped in the street when he called out 'Excuse me'.

Q Do you normally go for a walk with strangers?  
A No, normally not.

Q Do you normally buy things for strangers in shops?  
A I don't normally meet that many strangers, I usually go round with other people, but if someone happened to ask me to do something while I was there, yes, I would do it. (Case 31).

This victim resented these imputations for, as she said: "If no-one ever talked to a stranger, there would be no friendships and what kind of place would the world be?"

In a further case, a victim was asked if, on the night of the rape, she was wearing a bra, how she usually wore her long hair and how she was wearing it that night. She said she was also asked: "As a mother and a married woman, would you say the

[accused] was an experienced lover?". She was asked how much she had to drink that night, where she had sat at the party and whom she had talked to. She felt that the defence counsel was attempting to build up the picture of a woman who, while being a married woman and a mother, acted inappropriately and provocatively and then pretended she did not have anything to do with the man who she later claimed had raped her while at the party. She said:

They were making out that things mattered which didn't really matter. They were so petty. I shouldn't have to be asked whether I was sexually attractive at all. You don't walk out of the house thinking you're going to be attacked. (Case 2).

Another woman said that the defence counsel attempted to establish that she was an unfit mother as a way of undermining her character and credibility. Other women were asked about their relationship with boyfriends. In two cases their relationship with a previous friend or acquaintance was the subject of persistent questioning. In one of these cases where there were multiple offenders, a victim described the attempt made to suggest a consenting relationship and added:

They asked me about my previous association with one of the gang ... and [defence counsel] continually suggested things about me. They asked about knowing gang people. They made out because of this, I wasn't a good person ... a couple of the gang made remarks about me. (Case 44).

In another case, where an interpreter was used in court, the victim said that defence counsel made continuing attempts to suggest that the defendant was her boyfriend. She was unsure whether he had been successful in leaving this impression in the minds of the jury. She said she had seen her attacker only once before and then very briefly at a youth club meeting and had not spoken to him.

(e) Imputations of Unreliability - The Time Factor

Many witnesses complained about the insistent questions concerning details - particularly of time. They claimed that discrepancies, however slight, between one court hearing and the next were made to appear as deliberate attempts at falsification on their part or as indicating that they were unreliable witnesses.

The worst and most difficult thing about it [experience as a witness] was his lawyer's questions. I was asked how could I remember things now when I couldn't remember at depositions. I suppose there were things I couldn't or didn't want to remember. But I'd remember later, mostly in bed when it would keep coming back to me. The lawyer asked me about differences in time and I remember saying to him, "When you've got a knife at your throat you don't look at your watch". (Case 45).

By this time the rape was six months earlier, and I couldn't remember every exact word that had happened and the defence lawyer therefore said it didn't happen. (Case 31).

The tension between the personal need to forget such detail and the demand to remember was also a common and allied complaint. The delays between the rape event, the preliminary hearing and the High Court trial (for most up to 6 months) meant that it was increasingly difficult to remember detail. Many victims felt that they were not only expected to, but blamed for not being able to, recall details with sufficient accuracy to meet the requirements of the court process.

I got accused of lying. It was so long to try and remember every single detail. I was trying to forget it all psychologically and having to remember it too. (Case 7).

Unlike defence counsel victim/witnesses were not given access to transcripts of depositions. Although some victims mentioned that they were able to see their original statements to the police, no victim said she was able to see the transcripts. Two victims were told by the police that they could not see these.

I was not allowed to look at the deposition statement before the High Court [trial]. You're not allowed to see it. (Case 12).

(f) Examination of Victim Reactions

Many victims complained that another defence strategy was to criticise them for not screaming, not escaping, not struggling or not calling into nearby houses after the rape. For example:

Q I suggest the reason you didn't look is because you weren't too concerned. You just sat there and waited in the grass next to the garage and waited for them to come back.

A No.

Q I put this to you, that you had plenty of time to escape if you wanted to. Is that correct?

A I had hidden in the side of the garage where you can't see. (Case 12).

Victims have provided us with descriptions of how they felt at the time of the rape and thereafter. All the victims felt that what they did or did not do at a time when they were shocked and distressed became a matter for close questioning by defence counsel. They saw this as a line of attack aimed at either blaming or criticising them, which they found objectionable.

Another victim was angered by the assumptions made by the defence lawyer. In the course of cross-examination he said:

I put it to you that if you had a man holding on to you, making obscene suggestions, threatening to kill you, fear would register instantly. A scream reaction would come out instantly?

She answered: Rubbish. (Case 2).

This victim was also upset at what she saw as defence counsel's attempt to trivialise her experience and comment adversely on her responses. She said she was not physically injured but had explained to the court the fear she felt - "I felt still inside with fear". She was asked if any physical force had been applied by the accused and answered 'Yes, I consider being raped as violence'. When asked again if the accused had used force, she said he had 'held me there'. The defence counsel had appeared to express surprise and said: 'That was the only physical force?'. She had replied: 'You're trying to minimise it'.

The victim's reaction to fearful and stressful situations is also related to her perceptions of the consequences of resistance. The following is an example of one victim's perception:

I struggled and screamed and bit his hand. He held a knife at my throat. I was terrified - not so much about the rape. I thought, I really thought, I was going to lose my life. At first smothering and then the knife. I felt if I had some control over him, I would be safer. I assured him I wouldn't scream. I could have screamed later but I would have been dead before anyone got to me. It was a matter of self-preservation - of looking after myself. I tried to evade the sexual act but you can't be too successful. You've got to expect the worst. (Case 29).

Many victims believed that this consideration - vital to their own well-being - was often totally ignored and that in the legal context, expectations and notions of how women should behave in situations where their 'honour' rather than their life is at stake became major issues. The fact that they apparently did not live up to other people's expectations caused them some anxiety later on - after the victims have survived an experience they described as either life threatening or dangerous.

Another victim perceived that her struggles increased the violence and aggressiveness of the man's behaviour. She said she attempted to calm herself with the result that he became less threatening, but she later reproached herself for not having resisted more strongly. The matter of her resistance was the subject of questioning when she reported the rape. She said: 'Afterwards I found out through the police that I was lucky I hadn't continued to struggle. He was a former [lightweight \_\_\_ champion]'. (Case 42). This complainant did not eventually have to appear in court but many victims who did were in similar situations. The self-blame or guilt they suffered was later reinforced in the court situations by the attempts of defence counsel to imply (as seen in examples given earlier) that their lack of strong physical resistance showed consent of compliance. Defence strategies based upon such an interpretation of victim behaviour run counter to what many victims see as commonsense and also to what they know of a comprehensive body of medical and psychological knowledge about shock reactions.

A victim who had become a Rape Crisis Centre counsellor, commented on this aspect of the police reporting process and the way victims are questioned both there and in the court.

They don't recognise the states of shock and the ways in which different women react ... The problem is how you also bring in evidence of a psychological nature which is extremely important to the victim. [Case 1]

In the last example the accused, having dismissed his lawyer, conducted his own case. The following questions (supplied by the victim) were part of this.

She said he tried to base his defence of consent on her alleged lack of resistance and therefore apparent compliance. She found this offensive and was particularly upset at being questioned by the man she had accused of raping her.

Q Now you said that I put my penis in your vagina.  
A Yes that's true.

Q And you're quite sure.  
A I am very sure.

- Q Did the defendant at any time help you to take your clothes off.  
 A No he didn't.
- Q Were you willing to take them off.  
 A No. I was not willing to take them off.
- Q But you took them off.  
 A Yes, I took my clothes off because I thought I was going to get killed. I had already been threatened with physical violence if I didn't take them off.

She explained at the interview:

I was too scared to fight as he had hit me once already ... I had been thinking 'I'm really going to get killed' especially when he picked up a beer bottle and started waving it about. (Case 22).

As a result of her experience in court she felt that victims should not be able to be cross-examined by defendants.

(g) Eliciting Information about Sexual Background

Not all victims were aware of the provisions or purpose of the Evidence Amendment Act 1977. However, a number of victims claimed that their sexual background was explored. One victim said, "I remember telling them I was a virgin"; (Case 46) another said, "I was asked: 'was sexual intercourse in the normal way'? (Case 12). She interpreted this as an attempt to elicit information about her sexual experience. By the development of questions - including one about whether the victim was on the pill - or emphasis on their moral character, victims maintained that the court was given some idea about their sexual experience and relationships. It was also evident to some victims as a result of comment by the police, that it was often accepted that defence counsel would try to find some way around the restrictions imposed on this line of questioning. A victim who had had the Evidence Amendment Act explained to her was also told by the police that 'the defence lawyer would probably be able to get around it and put some more questions in'. (Case 35).

(h) Conduct and General Approach of Defence Counsel

Finally, victims were critical of personal stratagems used by defence lawyers.

The worst thing was the defence counsel's coughings, moving around, his mannerisms. I coped by removing myself. I stood there and just stared right through him. I just pretended he wasn't there. (Case 12).

Another witness mentioned her resentment and anger at the behaviour of the defence counsel - leaning towards her and gesticulating. It was behaviour she thought unbecoming to anyone and should not have been countenanced in court. She said she lost patience and reprimanded him - an action she felt might not have been well received by the jury. (Case 2).

At the trial the researchers attended, the defence counsel employed various mannerisms which included coughing, slamming his papers on the desk when expressing dissatisfaction, turning away from the witness towards the public gallery, fingers in his waistcoat pockets, before turning back to her and using calculated pauses, tonal variation and verbal asides. The preliminary hearing was held on a particularly blustery day; this made hearing difficult but when invited to move nearer the witness he refused and demanded that she speak up. At the High Court trial after the jury had retired, this defence counsel announced in the hearing of people in the public gallery that the complainant was "just a silly little girl" who was asking for trouble. The man sitting next to one of the researchers was her father and he protested at this remark.

Many witnesses were critical of the advantage that defence counsel took of their nervousness and ignorance of court procedure. They found the level of aggression displayed by some defence counsel and, in their view, tolerated by the court system both disturbing and unacceptable. In addition to their other comments about the trial, and its effects on them, nine victims criticised defence counsel conduct and questioning. One witness found the conduct of the defence lawyer 'objectionable'. She said, 'You'll never change them ...'. (Case 34). Another referred to the 'nastiness' of defence counsel's questions, (Case 31) and a third claimed that defence questions were aimed at 'reducing and humiliating' victims. (Case 18). These victims wanted tighter controls on the scope and content of defence counsel questioning and on the conduct of counsel.

Some victims appeared to perceive their ordeal in court as resulting mainly from their experience of cross-examination. In one case a young victim also felt the adversary system discouraged a fair adjudication of the issues before the court by encouraging a 'him versus me' situation in which the victim was disadvantaged by what seemed to her as the desire of defence counsel particularly to win at all costs. (Case 31). The strategies pursued by defence counsel thus engendered reservations on the part of many victims about the nature of the justice and legal system. The negative reactions of victims were not always related to the outcome of the trial.

If that's justice ... I'd never report another rape case. (Case 34).

I wouldn't ring the police again ... I'd get my revenge back somehow. (Case 20).

They blame it on me - and the guy got away. It's like crucifying me. (Case 28).

These and allied issues form one of the main bases for calls for greater protection of the victim in the court situation.

(i) The Crown Prosecutor

By the time they had been through the preliminary hearing, most victims had some idea of their role as witnesses in the High Court trial. In cases where the victims had been briefed by the police they had, as we have mentioned earlier, also been given an idea of the kind of questions they could expect. In some cases this preparation had involved an explanation of what was expected of them as witnesses regarding the truthfulness, accuracy and relevance of their testimony. Some

victims were not briefed at all by the police and as a result two of them went to the Rape Crisis Centre for assistance. In three cases victims were not satisfied with, or were unsure about, their role as witnesses. One victim asked for her own lawyer and was told this was not possible and why. Two others consulted lawyers before the trial to obtain information and briefing.

Prior to the trial, some victims believed that the prosecutor had a special obligation to them without being exactly 'their' lawyer. In several instances, however, it appeared that victims believed that the Crown Prosecutor would speak for them much as defence counsel spoke for the accused. (Cases 17 and 34). From the remarks they made later, it seemed that victims expected: some preparation as witnesses; a fair and competent presentation of their case; protection from unfair and unreasonable cross-examination; an understanding of how they felt as rape victims and witnesses; and encouragement and reassurance during their testimony.

On the whole the complaints made by victims suggested that these expectations were not met. Most criticism centred around the issues of preparation, protection and the way the victim's case was presented. Ultimately some of the criticism devolved around what the victims saw as the disadvantages in their position as witnesses for the prosecution compared with the way in which the defendant's case was represented. In fairness also to some individual Crown Prosecutors, it should be said that the disenchantment of many victims centred upon the way the criminal justice system itself operated. Nevertheless, it appeared that many complainants were dissatisfied with matters they felt were within the purview of the Crown Prosecutor.

Most victims met the Crown Prosecutor briefly just before the commencement of the trial. They did not receive any instruction or explanation from him about the approach to be taken nor was there time for this. This lack of briefing had practical disadvantages for some victims. One complainant said she was asked, "What do you mean by intercourse?". She went on:

"I didn't know what to say. He didn't explain to me the reason for the question was for me to say penetration had taken place". (Case 12).

She said she had no warning about the question on oral sex and could not reply. The judge asked her if she preferred to write the reply. This helped her to regain her composure. This victim was also not told until the morning of the High Court trial that there would be two defence lawyers. Most victims felt that they were under enough stress and embarrassment without having to cope with bewilderment and feelings of inadequacy. Accordingly, many victims said that more thorough preparation for the High Court trial was needed.

Although a few victim/witnesses said the Crown Prosecutor objected to some of the objectionable or irrelevant questions asked of them by defence counsel, no victim expressed herself as satisfied with the level of protection he afforded although it was from the Prosecutor that they expected such protection. All of them were unhappy with the cross-examination and the control exercised over it. They felt there were many questions that were irrelevant and designed merely to increase their discomfort. They compared their situation unfavourably with the safeguards afforded the defendant. In one case the victim felt that the prosecutor was almost

a token presence as far as protection went. She was upset that the prosecutor neither objected strenuously nor appeared to present any opposition to the exclusion of a key witness.

I was bitterly disappointed ... I was relying totally on him. I felt totally isolated ... That made me feel "What's the point". (Case 34).

In another case, a young victim whose family affairs had been given what she felt was undue prominence, also felt inadequately protected. She complained that the Prosecutor had called a policeman who obviously did not believe her as a Crown witness. She also found it offensive that, during cross-examination by a defence counsel she had called 'nasty', the Crown Prosecutor and this lawyer should seem on such good terms. She said:

It is not fair that the defence counsel and Crown prosecutor were talking to each other in court like that. It shouldn't be allowed - but they are mates and all. (Case 31).

As mentioned earlier, another major criticism was the lack of support or encouragement shown the victim particularly during the court breaks. Witnesses came to appreciate the importance of their testimony to the prosecution case. This fact imposed its own stresses and generated anxieties about their performance - hence the need they expressed for reassurance and feedback. Victims felt it was part of the Crown Prosecutor's duties not only to take their feelings into account but also to acknowledge their connection with the case in terms of briefing, participation or consultation - including their perspective on the rape incident. In the matter of consultation and the preparation of the Crown case, one victim said that she received a letter from the accused saying how sorry he was. She said that this letter was not brought up as evidence and the reasons for this omission were not explained to her. She remarked that she was left with the feeling that the best case had not been put forward on her behalf. (Case 17). Consequently, a number of victims stressed the need for meeting the prosecutor well before the trial and for adequate preparation.

In some cases the witness wanted to answer a question put by the prosecutor more fully than with a yes or no reply but didn't feel she could. Some witnesses said they wanted to say how they felt as the prosecution account of their experiences seemed to be a version of events stripped of its essential meaning to them.

There were a number of questions that I wanted to answer more fully than 'Yes' or 'No' but I didn't feel I could. There were some things that I wanted to say more fully about how I felt. (Case 12).

Some victims expressed the feeling that the recital of embarrassing and humiliating details in public made them feel like objects again - and they felt manipulated. An example of what other victims said about this point is summed up by a victim whose case did not go to court. She said, 'I felt I was being used because I had a good attitude'. (Case 21). Another said she felt 'like a pawn'. (Case 35).

In all but one case victims met the Crown Prosecutor for the first time just before the trial. They said they did not like having to cope with yet another stranger in these circumstances, particularly one so important to the success of their cases.

They [the police] told me there would be another person in the High Court asking questions. I would have liked to have met him beforehand. It's rather mean to be asked questions by someone you don't even know at all. (Case 35).

For most victims the brevity of the meeting also appeared to them to show lack of interest which affected their confidence in both the prosecutor and themselves. Victims felt the need for some rapport with the person presenting their case. One young complainant made this point when she spoke of the woman police prosecutor at the preliminary hearing:

She was really nice. Having met her at depositions, I knew her and could relate to her rather than to another stranger. (Case 26).

Consequently, the majority of victims expressed a preference for there being one prosecutor who would appear at both trials.

Few of the victims felt satisfied that the Crown Prosecutor had fulfilled all their expectations of him. On the other hand, two young witnesses, in particular, were pleased with the support they received from the Crown Prosecutor and the police; the latter had also briefed them well and given them some confidence. One of these victims went through two High Court trials. She said:

The prosecutor told me I was doing well and the police and court staff were really good to me. (Case 45).

Most felt ill-prepared, isolated and lacking an acceptable level of protection during cross-examination. Not all the witnesses saw the Crown Prosecutor as their lawyer but those that did see him at least as the equivalent of this - or who felt he was their only source of support - were deeply dissatisfied. "Blooming hopeless my lawyer or whoever he was". (Case 17).

Whereas some complainants had been aware of the imbalance at the preliminary hearing between the level of legal expertise of the presiding Justices of the Peace and police prosecutor on the one hand and the defence counsel on the other, at the High Court this was no longer the case. However, many witnesses made the point that a more even balance of legal expertise did not always benefit them. They became aware that as witnesses they were only an element, albeit a major one, in the Crown case.

These victims were not satisfied with their role as witnesses. They not only felt dissatisfied with the Crown Prosecutor's performance on their behalf but believed that the Crown's interest and theirs did not coincide. One victim felt that rape should be 'made a crime against the person', rather than against the state, 'thus entitling the victim to be represented by [her own] legal counsel not just a ... prosecutor'. Two others, dissatisfied with the role of witness as it had been explained to them, wanted independent legal advice and had requested independent legal representation. One remained particularly dissatisfied and believed that she had suffered as a result. She came to the conclusion after the trial, as another victim had beforehand, that her interest was not the same as the Crown's interest. Some women therefore felt that at least there should be a representative - legal or otherwise - who spoke for the victim and protected her interests.

#### (j) The Judge

Victim reaction to the judge was mixed. Not many complainants referred to him directly except as a central figure in the formality and strangeness of the court. Other reactions seemed to depend on how active a role he was seen to play in the trial.

In one case where the judge intervened to suggest a witness write what she found too embarrassing to say, and saw that she was offered a drink of water, he was seen as thoughtful and considerate. In another case where a young victim could not and would not repeat aloud the offensive threats that had been made to her by the defendant - and neither the prosecutor nor the judge came to her rescue - the judge was seen as part of a hostile court environment. She considered that her case virtually collapsed from that point on because she just "clammed up". (Case 19). In other cases the judge was often seen as affording witnesses some protection when the prosecutor failed to intervene on their behalf. One witness observed that the judge disallowed many questions from a defence lawyer because they were not correctly put. (Case 12). In another case a young victim who did not understand what the defence lawyer was getting at with his question said:

But the Judge intervened to stop some lines of questioning by saying 'No - you cannot suggest anything like that' to the defence lawyers. (Case 31).

She nevertheless felt that the protection offered her by both judge and prosecutor was insufficient.

On the other hand the judge was seen in several cases as hostile and unsympathetic. In one case, the judge had allowed defence objections to a vital witness taking the stand (a girl who the victim alleged had been 'propositioned' by the man who later attacked her). She said that neither the judge nor Crown Prosecutor intervened to assist or protect her. She saw the conduct of the case as being a denial of justice. She commented:

I felt the judge's attitude was bad. He made me feel like the defendant and gave the impression that he had no interest in the case. I thought 'where is the justice?'. (Case 34).

Few complainants stayed throughout the court proceedings though one victim said she was prevented from doing so by the police. Few therefore personally heard the corroborative warning given by the judge to the jury at the end of the trial. Others who had been given explanations about it did not understand the reason for it and interpreted it as an invitation for the jury to disbelieve them.

Some victims also believed that the judge, in summing up, made remarks about them which they interpreted as attaching blame to them for the circumstances in which the rape occurred or for their conduct. (Case 22). This feeling was sometimes confirmed in the victim's eyes by the sentences handed down.

It wasn't worth it for a year's jail. It was just a waste of time as far as I was concerned. (Case 17).

Four and a half years. I think it is appalling. I think he got off quite lightly. (Case 35).

It seemed to many complainants that the sentences did not relate to or have any bearing on their own pain and the continuing disabilities that the rape experience had brought to their lives. Indeed to some victims, it appeared that this aspect had been ignored throughout the court process. Nevertheless, those victims who had not been threatened by the defendant's family or friends, expressed relief that imprisonment had given them a reprieve from fear and other women a measure of safety. Despite this, they also expressed dissatisfaction that there seemed to be no effective programme or treatment provided for rapists and they feared that when a rapist was discharged from prison he would either seek revenge or rape some other woman.

Sentencing made me feel terrible in a way, but it was the only way I could go. It was either that or not press charges. If I didn't press charges they might do it again to someone else. I'm glad they are in prison because another girl is safe while they're away but prison is not going to do them any good. (Case 26).

Imprisonment was thus regarded as the only available punishment but not a satisfactory response to the problem of rape either from the woman's point of view or, in the longer term, in modifying the man's behaviour and attitudes. One young victim said:

I am worried that he might get me when he gets out - he is serving a sentence for another rape. My big fear is what is going to happen when he gets out? (Case 19).

Another said:

I will always have a fear of seeing \_\_\_ again ... But how can prisons ever help people like \_\_\_ anyway? (Case 46).

It is for this reason - and also because of the difficulties they experienced as victims - that so many of the women believed government and other agencies should give urgent attention to programmes aimed at changing attitudes to rape and violence against women.

#### (k) The Jury

In the 14 cases which proceeded to the High Court, victims were asked about the composition of the jury. The position as they reported it was as follows:

<u>Victims</u>	<u>Jury Composition</u>
3	not sure, could not remember
*3 (+1)	'mostly men'
1	all male
1	10 men, 2 women
4	8 men, 4 women
1	7 men, 5 women
*1 (+1)	no information

\* In two cases where women went through two trials, one said the jury in the second trial was mostly men; for the other there was no information.

Three women commented specifically and adversely on the number of men on the jury. One victim facing an all male jury said, "They just seemed so biased". Another, commenting on the preponderance of men, said she felt uncomfortable when giving evidence;

I found the court situation all rather overpowering. There should have been more ladies in the court. The jurors were mostly men. (Case 19).

A third victim felt that, from jury choice to defence counsel's line of attack, the system was not geared to a fair hearing for the complainant. (Case 2).

Four women commented spontaneously on the racial composition of the jury. In one case a Polynesian victim who could not otherwise remember the composition of the jury by gender, said there were Indian, Maori and Paakeha jurors serving on her case. One other said there were two Maori jurors; another said of the eight men, four were Maori, and the last victim said of the four women jurors, two were Maori.

Some victims expressed feelings of anxiety about the presence of the jury. Some felt, as they had done with the judge, that the jury was just another part of a court environment that was overawing - a block of people listening blank-faced to the embarrassing details of their experience. (Cases 26, 44, 28). A victim said she was "too scared to look at the jury" (Case 2); three felt an element of disbelief or curiosity.

The first time I felt the jury didn't believe me and they gave me dirty looks. But they found them [the defendants] guilty. The second time I also felt they thought I was lying. They kept looking and staring at me. (Case 44).

They all looked me up and down as if I was something out of this world. (Case 20).

#### 7. Victims' Criticisms of the Judicial Process

Of the various issues raised by victims concerning the preliminary hearing and the High Court trial, a number were seen as largely avoidable defects of what could be called 'court management' - but nevertheless defects which resulted in discomfort and stress. Others they regarded as more fundamentally entrenched aspects and procedures of the judicial system, including those that made them feel on trial, which they defined largely as biases or prejudices in the judicial process.

##### (a) Perceived Defects in Court Management

It seemed to the victims that the judicial process they experienced made great demands on them as the chief prosecution witness without a sufficient corresponding responsibility being exercised by those who required their adherence to the court system and its procedures. The following summarises the defects they perceived in court management and support services, and for which they thought remedies were not difficult to implement.

\* In both Court appearances, necessary for all but one of the victims, their names and addresses and sometimes work places were required to be given in open court and therefore in the hearing of the family and friends of the defendants. Most victims thought this requirement placed them in danger and that it was unnecessary.

- \* Victims also objected to the placement of the defendant within their line of vision in the courtroom and several recounted the 'dirty looks' given them by defendants or the giggling, smirking or smiling at parts of their evidence. They felt it was easy to rectify this lack of sensitivity by locating him elsewhere in the court
- \* Victims were concerned and felt embarrassed and humiliated by the public, as well as formal, nature of the court hearings. Many (7) felt they should be closed; some felt a more private and informal approach would be more appropriate. Many were concerned also at the nature of press coverage and thought there should be tighter control of this.
- \* In both court appearances, recording procedures increased their difficulties as witnesses. Victims felt the system intrusive, outdated and needing replacement.
- \* Victims requiring interpreters were critical that they were changed from the preliminary hearing to the High Court trial; they thought the same interpreter should be used. They were also unhappy with aspects of the interpreting and felt victims should be asked if they were satisfied with this and understood questions put to them.
- \* Shared waiting rooms for witnesses caused embarrassment to some victims and increased the risk of harassment. They felt that it was possible to rectify this by the provision of separate areas.
- \* Witnesses were required to stand throughout their testimony, often for hours. Again, they thought they should be allowed to sit.
- \* In the preliminary hearing they were required to continue standing in full view of those in the courtroom while the evidence was read back to them - with a further repetition of their addresses. The point was made by one witness who said this process took nearly an hour in her case, that after a lengthy ordeal as a witness she was tired and lacked concentration. She felt unable to summon the energy or mental alertness necessary to pick up errors or omissions and was unaware of the use to which the statement would later be put in the High Court.
- \* For each appearance a different prosecutor appeared for the Crown. Victims felt that this was an imposition which was unnecessary and that one prosecutor should cover both trials.
- \* They also felt they should be thoroughly briefed by the prosecutor, particularly prior to the High Court trial.
- \* The point was made by nearly all the witnesses that a time span of 4-7 months from reporting reduced their ability to recall events with the accuracy which the court nevertheless demanded. Little assistance was given them to surmount this difficulty. They were not given transcripts of the preliminary hearing nor was there any provision for expediting court hearings. Victims thus felt that defence counsel used difficulty of recall to discredit them, and that this situation was inherently unfair and avoidable.
- \* Doubt was cast on the necessity of having two court cases at all. One court case would, in the view of a number of victims, overcome some of the difficulties, including that of time, two different prosecutors, and the trauma of a double appearance.

(b) Perceived Biases in the Judicial Process

All fourteen victims whose cases went to the High Court (and the three whose cases went only to the preliminary hearing stage) objected to the sustained pressure on their credibility and complained that they found the court procedure unfair irrespective of the outcome. It seemed to many of them that insufficient controls were exercised on their behalf and that protection of the rights of the accused was the foremost consideration. No victim doubted the right of an accused person to a fair trial but it was widely felt that the accused was protected at the expense of the victim - and hence that additional safeguards were needed for the complainant. Nine victims stated that they were made to feel they themselves were on trial.

I felt I was a criminal. (Case 18).

I felt I was on trial. (Case 2).

The witness shouldn't be on trial. (Case 44).

This feeling of unfairness stemmed from what the victims saw as the remarkable degree of disbelief, sometimes hostility which they encountered and which they felt was reflected in the court process. The issue is not necessarily whether there are inherent biases or prejudices in this process but that victims perceive that there are. They isolated several factors. The conduct of the trial under existing rape law and rules of evidence seemed to them to allow an undue concentration on their character and credibility. Some victims complained that they came under humiliating attack during cross-examination which did not have to be substantiated and from which they felt unprotected. They were critical of the lack of intervention on their behalf in these circumstances which seemed to indicate that this kind of cross-examination, including things said about them, was acceptable. At the same time some victims complained that they were unable to speak more fully about how they felt. The result was that most victims saw the court process as unfair and prejudiced against them and some rejected it totally. One victim said:

I would like to see the whole court process changed. (Case 2).

Another said:

I now believe that the effect of the two court cases combined on me was worse than the rape itself ... (Case 46).

(i) Imputations and Remarks by Defence Counsel

One of the more significant areas where victims saw prejudice against them was in the imputations contained in questions put to them or remarks made about them by defence counsel. Examples of matters raised in this way were:

- talking to strangers. (Case 31).
- accepting lifts from strangers. (Cases 22, 32).
- dressing unsuitably, wearing tight trousers or dresses, not wearing bras, wearing their hair down. (Cases 2, 12).
- going to a pub or a party unaccompanied by a husband. (Case 2).

- associating with undesirable people (e.g. gang members) through relations or friends. (Cases 26, 44, 46).
- leading an unsuitable lifestyle, e.g. solo mother. (Case 18).
- failing to scream, resist sufficiently or escape at the first opportunity. (Cases 12, 31).
- failing to tell somebody about the rape immediately afterwards (calling into houses or stopping cars). (Case 12).
- denying that they were enjoying the sexual experience. (Case 31).
- denying that they really wanted sexual intercourse because of loneliness, a desire for attention or jealousy. (Cases 28, 37).
- overstating the harm done to them as they had soon returned to work or assumed a semblance of normality. (Case 17).
- exaggerating physical violence. (Cases 12, 45).
- denying their association with the accused. (Cases 17, 18, 26, 37, 44).
- leading men on and then complaining. (Cases 12, 18).

As a result of these imputations many victims perceived: firstly, that they were being blamed for creating a situation in which rape was likely or inevitable; secondly, that they were being criticised for the way they reacted when the alleged rape occurred; thirdly, that they were being accused of fabricating elements of the complaint. Underlying these, victims perceived that there were judgments being made about them.

#### (ii) Legal and Procedural Disadvantages

As indicated earlier, none of the victims questioned the rights of an accused person or the principle of his being deemed innocent until proved guilty. However, the presumption of innocence in most of the rape trials surveyed, required the absence of consent to be proved by the prosecution. In this situation the victims perceived their role as changing from that of principal witness to that of accused - but without the prerogatives accorded to a formally accused person. For example:

I felt guilty until proven innocent, whereas he is innocent until proven guilty. (Case 31).

I felt the court was geared more for criminals than for witnesses. (Case 2).

To illustrate the point, victims contrasted their situations with that of the defendant in several ways. Firstly, they were particularly concerned about the consequences of the defendant not being required to testify. His account of events, including any remarks made about the complainant in statements to the police and later promoted by defence counsel, is thus not subject to cross-examination and therefore cannot be adequately challenged. By the same token, neither can facts relating to his background, his mode of behaviour or his general character and credibility be adduced before the court. Six victims thought that it should be

obligatory for the defendant to take the witness stand where his credibility, could be tested and especially any remarks about the complainant he may have made, could be tested. As some victims said:

I thought it was unfair that he never had to go into the witness box. My credibility was under examination, not his. (Case 17).

A couple of those fellows made remarks about me. I reckon they should have to testify. At first I thought this would happen but Detective said they don't have to - only if they want to. (Case 44).

I had to get up there and defend myself but the rapist never had to say anything. (Case 2).

Secondly, although the victim, as witness, is required to testify and is consequently subjected to such detailed cross-examination, she does not have the right to personal legal representation by legal counsel. Thirdly, without access to the transcript of the preliminary hearing, she had to recall details of events that had taken place several months earlier while defence counsel, with the assistance of the transcript, could attack any discrepancies in her statements.

Another major complaint of many victims concerned the emphasis placed on corroborative evidence taken with the need to prove absence of consent. Documented references have been made earlier to this, especially in the context of whether the victims screamed, resisted strongly, tried to escape or immediately afterwards told someone what had happened. As one victim said:

You've got to be practically beaten to death and have two witnesses to be believed. (Case 2).

An important and unusual instance of the weight given to corroborative evidence is the mandatory rule requiring a judge to conclude his summary to the jury with the warning that it is dangerous to convict on the uncorroborated evidence of the complainant.

#### 8. Summary and Discussion

The survey of rape victim/witnesses clearly elicited that for all of them the court process was a serious and barely tolerable ordeal. Although our sample was relatively small, the unanimity of their view is supported by a judge, crown prosecutor and defence counsel who presented papers at the National Symposium on Rape held in 1982: each also characterised the victim's experience at a rape trial as an ordeal [Jeffries, 1982; Stone, 1982; Buckton, 1982]. It is the opinion, too, of one of New Zealand's most experienced defence lawyers who has publicly doubted whether he could advise his daughter to make a rape complaint [Interview with M. Bungay, *Dominion*, 22 Dec. 1981]. Published findings overseas provide strong endorsement of this view [see, for example, the detailed account of a survey in Boston, U.S.A., in Holmstrom and Burgess, 1978, especially Ch.7, 'The Rape Victim's Reaction to Court', but also Australian experience, as in Newby's 'Rape Victims in Court - the Western Australian Example', in Scutt, 1980].

To elucidate the special problems encountered and perceived by rape victims with regard to the court process, and ways in which these may be alleviated in light of the victims' perspective, this discussion again focuses on two main areas: first,

organisational or 'managerial' matters which the victims clearly identified, most of which relate to administrative or procedural practice; and, secondly, some of the more fundamental legal issues which emerge from their perception of aspects of the trials which put them at a severe disadvantage. With regard to both areas, most matters occurring at the preliminary hearing also arise in the High Court trial and so will be dealt with in that context. However, there are some significant questions that relate only to preliminary hearings and these are therefore outlined separately.

(a) The preliminary hearing

The victims surveyed felt oppressed by the need for two stages in the trial and hence having twice to go through their evidence in detail, twice facing cross-examination. More specifically, a number complained about there being different prosecutors at the preliminary hearing and the High Court trial. Crown Prosecutor Stone concedes that the difficulties for the complainant in a rape case are 'exaggerated by the need ... to face the ordeal on more than one occasion'. However, he adds that, although with the agreement of both prosecution and defence, witnesses may generally provide written statements and do not have to appear, this is not so for those whose evidence is contentious or whose credibility is at issue, invariably including complainants in rape cases [Stone, 1982 : 9-10]. It appears this is not the rule everywhere. In some overseas jurisdictions, even in rape cases, 'hand-up briefs' (written declarations) are accepted from complainants and their attendance thus avoided [Newby, in Scutt, 1980 : 117 and note 7]. Greater use of this course could be further explored in the light of overseas experience of the practice.

If, on the other hand, the victim/witness is to continue to be obliged to appear in person at the preliminary hearing, the complaint about coping with two prosecutors could be met by having Crown counsel prosecute at that stage. It should be noted in this respect that Stone is strongly critical of the manner in which preliminary hearings are conducted by Justices of the Peace whom he describes as conscientious but legally inept. If J.P.'s are to continue to preside, he has maintained that Crown counsel rather than police prosecutors should act, among other reasons so they can more effectively deal with legal argument and protect complainants from 'unfair questioning or comment by the defence' [Stone, 1982 : 10-11]. The adoption of questionable practices by defence counsel at preliminary hearings was recently criticised by the Minister of Justice when, addressing a provincial conference of J.P.'s, he referred to lawyers embarking on a 'fishing expedition', using the hearings 'to search for a line of defence' [Report of address by Mr McLay, Dominion, 3 Nov. 1982]. Buckton, in his National Symposium paper, appeared to regard trying out lines of defence as legitimate practice at preliminary hearings, and also testing out complainants as witnesses [Buckton 1980 : 4]. The latter practice was also favoured by an experienced defence lawyer in a West Australian survey but, according to Scutt, the House of Lords had explicitly held that committal proceedings should not be used for that purpose in any case, including rape [R. v Epping and Harlow Justices, ex parte Massara [1973] All E.R. 1011; see also Newby and editorial note in Scutt, 1980 : 117].

If the preliminary hearing is to be retained, it would be in the interests of fairness to the victim if her evidence were accepted in written form, the prosecution were conducted by Crown Counsel, and the hearing were presided over by a District Court Judge.

(b) The High Court Organisational or 'Managerial' Matters

(1) Practical defects affecting the Victim

In the course of the survey all the victim/witnesses criticised what they regarded as practical defects in the court process which unnecessarily exacerbated their ordeal. These were mainly practical matters of organisation and court 'management' capable, they believed, of relatively simple remedy. Examples included: not having their address and/or workplace read out aloud; being allowed to sit in the witness box, rather than stand, especially during lengthy periods of testimony and cross-examination; locating the defendant out of their immediate line of sight; introducing an improved method of recording evidence; using the same interpreters at both stages of the case and checking witnesses' satisfaction with them; and providing separate waiting rooms for witnesses for the prosecution and defence. Given the intrinsic difficulties of the trial itself for victims, their criticism in matters of this nature is understandable, and their feeling that steps taken mainly at an administrative level could help bring about a more sensitive court environment.

(2) Isolation of the Victim

A related and important issue raised by the victim/witnesses concerned their feeling of emotional, as well as physical, isolation throughout the court process, the feeling of non-involvement and participation in 'their' case and, for most of them, their being left without knowledge of trial procedure and of the line the prosecution was to take. Aspects of this problem go to the heart of the court process and are dealt with below. Two points might be commented upon here. The first concerns their isolation: many complained that they were left alone during the trial, without support, encouragement or feedback. Stone has proposed that some formal arrangement be investigated to enable a complainant to be looked after in a better way during adjournments and while waiting to give evidence; and he has suggested that, at least as a step towards easing her burden, the former practice of having at least one policewoman present at trials of this nature should be re-instituted [Stone 1982: 6-7]. One or two instances of this practice were mentioned by complainants in the survey, but the need appears to be greater. Rape Crisis Centres, dealt with elsewhere in this study, see activity of this kind as an important aspect of their work. Any more formalised support arrangements could effectively involve counsellors from these centres.

(3) Briefing of the Victim

The second point concerns the briefing of complainants prior to the High Court trial. Some victim/witnesses reported that sympathetic police officers were very helpful in this way, and expressed their appreciation of this, but all complained that if they saw Crown counsel at all before proceedings began in the High Court, it was only for a very brief meeting perhaps minutes before. Stone concedes that 'some complainants, quite naturally, have some apprehension of being asked a series of questions in court by a person of whose existence they are scarcely aware and upon whom they do not set eyes until they are standing in the witness box'. However, he adds only that 'it is often useful ... to have a very short, informal discussion with the complainant and the police officer in charge on the day of the trial to discuss the matter in a general way and in particular to outline the procedure which is to be

**CONTINUED**

**1 OF 6**

adopted in the courtroom'. He says that practice can differ between prosecutors and between cases, but Crown counsel's instructions generally come from the police file and discussions with the police; it is unusual, and might be 'outside his province' to interview the complainant about her evidence [Stone, 1982: 7-8].

Were Crown counsel to prosecute at the preliminary hearing, this could result in changes in the procedure described above and lead to a situation in which complainants are satisfactorily briefed and feel less isolated from the preparation and conduct of the prosecution case. A change of this kind would clearly be fairer to the victim. However, if the practice of different prosecutors remains, the pronounced feelings of victim/witnesses that their plight is worsened by existing practice would appear to justify their earlier and fuller briefing by Crown counsel.

#### (4) Effects of Delays on the Victim

A further issue that may appropriately be included here is the complaint made by many of the victim/witnesses concerning the delays of up to seven months before rape trials commence at the High Court. The nature and extent of the trauma they suffer are outlined in another part of this study, but it would seem clearly in the interest of a victim's mental health and recovery for cases to be brought on much sooner than so often occurs. Consideration should therefore be given to according a higher priority to the hearing of rape cases.

There was, as well, a specific grievance arising from these delays which was expressed by many of the victim/witnesses. They complained strongly about being subjected to pressing cross-examination on details of an event that had occurred so long before; and they felt it unjust that their credibility should be impugned for failing to display a capacity for recall which was expected of no-one else. On the face of it, there would appear to be a strong argument for allowing victim/witnesses the access to transcripts accorded to both prosecuting and defence counsel, and for ensuring a minimum of delay between preliminary hearings and High Court trials.

#### (c) The High Court: Legal Issues

The major grievance expressed by victim/witnesses about the court process was undoubtedly that they were given the overwhelming feeling it was they who were on trial. In this respect, the results of our survey coincided remarkably closely with those of the Boston research project referred to earlier [Holmstrom and Burgess, 1978]; and the aspects of the trial that gave rise to this reaction were the same in both the Boston and West Australian surveys [Newby, in Scutt, 1980] as in that conducted here.

The feeling of the victims that they were themselves on trial can be partly attributed to the operation of the adversary system in a case in which so much turns on the relative credibility of the complainant and the accused, each presenting a different version of what took place. The requirement that the prosecution establish an absence of consent, and the rules on corroborative evidence focusses attention on the victim. As Judge Jeffries has commented, 'in no other crime are the actions of someone other than the accused so critical to the issue of whether an offence has been committed or not' [Jeffries, 1982: 12].

#### (1) Societal Attitudes affecting the Victim in Rape Laws

Before alluding further to these legal issues, it is important to note that the attitudes victims complained were expressed about them, including the concentration on the victim - her attitude of mind at the time of the alleged rape and her reactions to it, her general character, mode of behaviour, sexual history and so on - reflects beliefs and attitudes found in society at large. The origins and historical development of these beliefs and attitudes concerning rape have been studied [see especially Brownmiller, 1975 and Warner 1980] and their significance in more recent times, when they have been more readily recognised as prejudice and mythology, has been subjected to close analysis in an increasing body of literature. Neither the making of laws nor the judicial process occurs in a vacuum. Thus, research studies have found that jurors and judges, no less than other groups, make assumptions and judgments about the behaviour of victims and assailants in rape cases that relate closely to widely shared attitudes towards sex roles [Kalven and Zeisel, 1966; Bohmer, 1974, in Chappell, Geis and Geis, 1977: 161-169; Scutt, 1980: 89-114; Schwendinger and Schwendinger 1980; for a wider survey on the 'social definition of rape', see also Klemmack and Klemmack in Walker and Brodsky, 1976: 135-147]. The same attitudes have entered into legal and criminological texts in which malice, deviousness, masochism and fantasy have all been cited as reasons for false rape complaints [Wigmore, 1940, 1970, Rosenblatt, 1971, 'Note' in Columbia Law Review, 1967: 1137-38; cited in Wood, 1973; Hibey, 1973 in Schultz, 1975: 194-217. See also Edwards, 1981]. One of the more widely held societal preconceptions about women's behaviour was given credence in research which gave rise to the theory of 'victim precipitated rape' [Amir, 1971]. Known otherwise as 'assumption of risk' or 'contributory negligence', this sought to categorise situations in which it could be said that 'she asked for it'.

Many victims believed that these attitudes are manifest in the laws concerning some sexual offences, including rape, and fortify the safeguards normally accorded the defendant by the judicial system. Rape is the only serious crime in which it is necessary to prove consent, and one of the very few instances where such emphasis is given to corroboration. But, as the victim/witnesses complained, they were seriously disadvantaged as a result of this situation. Certainly the assumption in these laws, as in the attitudes they reflect, is that rape complainants are more likely to be liars or subject to fantasy.

#### (2) Corroborative Warnings

The origins of the evidentiary rule requiring a corroborative warning to the jury in rape (and other sexual) cases goes back to the seventeenth century, and Hale's dictum that rape was an accusation easily made, hard to be proved, but harder to defend against even when the accused is innocent. Although still quoted, this assessment is an obvious distortion of the court experience of victims; it also may be contrasted with Binyay's assertion that rape is 'one of the easiest crimes to defend' [The Dominion, 22 Dec. 1981]. Yet, while it has become a 'rigid rule of law' in New Zealand [Jeffries, 1980: 22], the corroboration warning has been repealed in a growing number of common law jurisdictions, particularly in the United States and Australia.

When introducing legislation to repeal the corroboration rule in New South Wales in 1981, the Attorney-General remarked:

Any ... class of persons, such as Protestants, redheads or lawyers would be ... upset at a special practice of judges warning juries that members of such-and-such a group are inclined to be liars.

[Quoted in Jeffries, 1982 : 40, footnote 50]

### (3) Other Evidentiary Rules and Practices

It would be consistent with the repeal of the corroboration warning requirement if certain other disabilities suffered by victims in rape trials could also be removed. One such instance is the need to face cross-examination on whether or not she made an early complaint following the alleged rape. There are various reasons for a victim not acting in that way which have no evidentiary relevance. Similarly, a victim's resistance to her assailant is often the subject of vigorous cross-examination. Yet advice to women differs on this point and police warn that resistance can be dangerous; victims themselves are often only too aware of this, not resisting out of fear of the consequences. Again, although the Evidence Amendment Act 1977 restricted the areas of cross-examination of a victim/witness with regard to her sexual experience and reputation, in practice victims have found that the Amendment can be circumvented, so that they are harassed and humiliated by defence counsel. The result of such practices is unnecessarily to widen the scope of cross-examination of the victim/witness and thereby intensify her ordeal. Judge Jeffries has commented on some of these matters in New Zealand, and rape law reform in the United States and Australia has gone some distance in rationalising evidentiary rules in ways which reverse the former situation where attention was artificially and unjustifiably focused on the victim rather than the accused.

### (4) The issue of consent

Of all the elements in the court process which serve to focus attention on the victim instead of the accused, and thereby cause the victim to feel it is she who is on trial, much the most significant is the requirement, arising from the substantive law, for the prosecution to prove beyond doubt the absence of consent.

It is the issue of consent in rape trials, unique in serious criminal cases, that underlies the evidentiary rules referred to above and so many of the complaints of victims outlined in this paper. It is the prime factor in what the victims see as the unfair and humiliating use made by defence lawyers of cross-examination, to attack their character and reputation, their attitudes, and their actions (or lack of them) before, during and after an alleged rape; and hence their emphasis on the need for greater protection by judges and prosecuting counsel from the excesses of cross-examination. They take a similar view of accusations and imputations made against them by defendants in their statements read out in court with the intention of bolstering their claim that consent occurred or they believed that it had; hence their wish that, especially when such accusations are made, defendants should be required to enter the witness box where they can themselves be cross-examined. Related to these questions is the further belief expressed by victim/witnesses that they should be entitled to personal legal representation.

Overseas literature on rape, including works cited earlier in this part of the paper, show that these matters are central to discussion of the court process and legal reform in many parts of the English-speaking world. Even in the eyes of lawyers involved, victim/witnesses in New Zealand are not without cause in their

complaints. On the basis of experience as Crown counsel over a number of years, Stone says that 'cross-examinations are not always responsible', and he questions whether it is 'responsible ... for defence counsel to attack the complainant without calling his client to support the allegations made in his cross-examination of her'. He adds that 'there may well be a case for a harder line to be taken' on irrelevant or unfair questions [Stone, 1982 : 4-5; see also Hibey (1973): 178-183 in Schultz, 1975]. From the perspective of a defence counsel, Buckton concedes that, despite the desirability of avoiding 'questions which without reason prolong that ordeal [of the victim/witness] or exacerbate it by being unnecessary or irrelevant ... counsel's function, to obtain an acquittal, requires him to cross-examine fearlessly about all relevant matters ... in the end result the accused's interests must override sympathy for the complainant' [Buckton, 1982 : 2; see also Bungay, The Dominion, 22 Dec. 1981].

The problem posed by the victims in our survey and briefly discussed here have been dealt with in the United States and Australia partly by repealing or modifying some of the evidentiary rules, such as those relating to corroboration, early complaint and resistance, leaving it to the jury to decide on the credibility as between complainant and accused. This has occurred in some cases, notably New South Wales, where the crime of rape has been subsumed in a wider law covering gradations of sexual assault, and Michigan where the nature of force or coercion is spelt out. In New South Wales, where actual injury to the complainant occurs, it is not necessary for the Crown to prove absence of consent. In Michigan (and some other American state jurisdictions), this requirement on the prosecution has been removed altogether. Consent remains as an affirmative defence, but places the onus of proof on the accused [see Nordby in Scutt, 1980 : 3-34 especially 11-13; BenDor in Walker and Brodsky, 1979 : 149-160; Lee and David, 1982 : 18-21].

The victims surveyed had no wish to deny the defendant the right to a fair trial; they wished only that the trial should be fair for them also. Stripped of preconceptions and unfounded assumptions, which have made the rape trial such an ordeal for victims, the retention of traditional safeguards with a reformed substantive law would appear to accord a more equal share of justice to both sides.

However, from the victim's point of view, it needs to be emphasised that the efficacy of any reform of the law on rape and related procedures, will be affected by the attitudes of the various people involved in the judicial process - judges, lawyers, court officials, police. In order to gauge whether changes have their desired effect, the system should be monitored and evaluated at appropriate intervals. With a view to longer term and more far reaching effect, it would be essential to the success of reform for there to be a programme to provide changes in societal attitudes - a recommendation made by a majority of victims and discussed in other chapters.

PART SIX : THE EFFECTS OF RAPE ON THE VICTIM AND THE VICTIMS' RESPONSES

Some beasts called at my house  
 Male statues  
 No feeling  
 No love  
 Hate of killers  
 They looked human  
 But were hunters of man  
 I met them face to face  
 I felt the coldness of their death  
 Humans rape  
 We are all the same species  
 I am human  
 They touched my heart but only briefly  
 My heart felt cold  
 My heart stopped beating for a minute  
 They scarred my soul

(Case 1)

1. Introduction

Some indication has already been given of the way victims felt about the rape. Words like degraded, humiliated, dirty, unclean and disgusted occur throughout the interviews and in quotations from them. Some victims did not tell anybody about the rape; some sought help and assistance where they felt most comfortable; some few reported the assault to the police. In other cases another person or persons took this initiative on their behalf. For those women whose cases came to the notice of the police and proceeded to court, what they had done following the rape was important. So too was the way they behaved and responded at the time they were questioned since the statement they made then provided the basis of the Crown case. It was a cause of anxiety among some victims that they could not always clearly recall what happened at the time or that they had trouble controlling themselves or concentrating while trying to assist the police. Of the court case, some victims said the rape incident described and argued about in the courtroom bore little resemblance to the totality of their own experience and especially the way they had felt or reacted. Their state of mind at the time of the rape and thereafter is clearly significant both to the victim and to those who assist them.

The descriptions given by women of their reactions vary widely. Some women said they were surprised at their own responses. Not all of the victims were able to distinguish between their immediate feelings at the time and their later reactions. Some said they found these feelings very difficult to describe while for others trying to remember the incident in detail was a deeply upsetting experience. Other victims did, however, distinguish between an immediate response to a dangerous situation and their feelings following the rape.

2. Reactions to Rape

Nearly all the victims recounted the feeling of total disbelief that rape had actually happened to them. They found coping with the realisation that it had happened very difficult. Some coped by blocking it out or attempting to deny it had happened. All the victims said they were scared or terrified. Twenty-two women believed they were going to die. Most women said they were in a state of shock after the realisation that they were being attacked. Some were taken by surprise in an attack from behind. In some cases they described a state of numbness, a "blob reaction" until it was over. Others said they got hysterical; they wept or pleaded. Still others described states of unnatural calm in which they talked to their attacker, bargained or tried to persuade him out of the attack. One victim succeeded in this by asking her assailant what he would feel if someone did such a thing to his mother or his sister. Still others attempted resistance but were either overpowered or threatened with physical violence; some were punched, smacked or kicked while others were threatened with knives, bottles - and in one instance, with a piece of wood. In some cases the number of attackers was such that resistance was not related to warding off the attacks but rather a gesture of protest and non-compliance on the part of the victim. In other cases injuries resulted from attempts at resistance. Sheer terror prevented some victims from putting up any kind of opposition or, alternatively, led them to a belief that resistance would make matters worse. In some instances, this latter reaction was not only a cause of self-blame but was also used by defence counsel to imply consent.

The following quotations provide examples of the way in which victims described their feelings and reactions to the rape attack. These are deliberately quoted at some length.

(a) Feelings at the time of the rape

I tried to bar the door by pushing things against it but the gang just pushed their way in. I didn't immediately feel the threat of rape but I did sense violence. I became very calm and when the intention to rape became apparent I didn't resist after they had threatened harm to my small son. I thought at first there would be one guy. I didn't think gang rape would happen to me.

I became terribly calm ... I was aware that this was a life-threatening experience; that my life was on the line or a severe beating ... Cutting off and remaining calm worked. Any crying or relaxation of this calm made them violent and threatening. My son was asleep in the same room. He remained asleep while all this was happening and the house was being smashed up. The whole thing lasted about an hour.

I think about eight gang members were involved. I wasn't physically harmed but I think they were waiting to beat me up; waiting for an opportunity to do so. I sensed this and remained calm and I kept talking to them throughout. I got very little response. I asked them if they had a girlfriend. Some said no. I told them that I wasn't enjoying the experience and that I believed that making love should be an enjoyable and intimate experience. (Case 1)

I went into a state of shock. I couldn't believe this was happening. Its hard to describe the state of shock I was in - almost breathtaking - a total disbelief. I went kind of slow. I must have blacked out. [When he tried to take off my jeans] my reaction was a blob reaction - it didn't give him any energy. (Case 7)

I have never felt so awful in my life. I was shocked. (Case 38)

It's not easy to describe this. I must have been in a state of shock or fear. I was calm then hysterical. (Case 42)

I just froze. (Case 4)

I felt panic - I went totally numb. (Case 14)

I can't remember very clearly now. I was shocked that he was doing this to me as he was my friend. I really couldn't believe it. I was scared. I tried to cut myself off from the situation. As I couldn't physically resist, I somehow tried to mentally. (Case 46)

I felt frightened, scared. (Case 35)

I was terrified, shaking and crying. I really thought he would kill me. (Case 45)

I was fearful of my life. I didn't know whether he had a knife and I couldn't breathe. When I stopped resisting, I didn't feel better but I thought I might live. (Case 34)

I thought I was going to be killed. (Case 17)

I felt strange. I can't describe the feelings. I kept worrying about my children. I thought of my husband who had been killed the year before and I didn't want my children to be motherless as well ... (Case 15)

It bugs me that I couldn't do anything - that I seemed to be so ineffective. I was terrified and panicky and disgusted and afraid for the baby if something happened to me. (Case 30)

I knew I was being raped at the time and experienced conflicting emotions. But I was most concerned about saving my life. I couldn't believe it was happening to me. (Case 29)

I was scared, crying. My friend was hallucinating. (Case 8)

I felt helpless. I was so afraid. (Case 11)

I thought I was going to die. I went into a state of shock. (Case 6)

I was just shaking and shaking. (Case 3)

At the time I was angry that some-one could overpower me. I also thought I should be able to fight. I'm physically fairly strong. But I was angry that I couldn't resist him. He was very strong. (Case 41)

(b) Feelings after the attack

Following the attack, victim accounts revealed a variety of emotions and reactions from the dazed and numb to anger and outrage. Being physically sick - vomiting - was quite a common reaction.

Afterwards I was in a state of shock. I cuddled my son so that I could feel human warmth and tenderness. I went to the phone but the cord was cut. I didn't cry. I was in a daze. I hunted for a friend's letter and for the photo of another friend. I read the letter over and over. I thought, so this is rape. I've been raped. I know I was attacked but I didn't feel guilt ... My feeling in the next few days was as if the earth had been taken from beneath my feet. I thought the gang would be coming back. I hid and then went to friends. (Case 1)

I just sat there and didn't know what to do. When you're scared you don't do anything, your reactions are slow. I blocked it off. I didn't think of taking off immediately and I was scared of them catching me. I couldn't believe I'd been raped - that fact only occurred to me some time after. (Case 9)

I lay there for a good hour after he left then got up and had a shower. I stayed under it for about half an hour, then started to prepare myself for everybody else in the house who was going to come home. I didn't feel angry. I felt some sort of pity towards him. I wondered why it had happened to me. There must be something wrong with me. (Case 4)

I was afraid to come back home. I felt angry with him. (Case 37)

My first reaction was to get away and come home and just be by myself. (Case 35)

Afterwards I was in a state of shock. I slowly moved myself. My clothes were torn and almost off. I felt myself to see the extent of the damage. I thought he might still be there. I stayed for a while. I didn't know what to do. I'd read about rape but didn't think it would happen to me. It is slightly downhill to the beach. I took a while to get up the hill and make sure he wasn't there. I was scared. I got off the beach onto the street. There were lots of houses around. I went to the nearest one and I was sobbing. I didn't care about the way I looked - all I wanted to do was to get help. I banged at the door of the house. A light went on and a woman came to the door. She stood and looked at me and asked me what I wanted. I tried to tell her what had happened. She didn't seem to understand. (Case 6)

When I took off from the party, I felt really scared. [I thought] shall I drown myself? All those stupid things entered my head. (Case 20)

I'm not very emotional but when the police got there, I really did break down - they let me. (Case 17)

I was surprised to get out alive - I was hysterical, totally humiliated. (Case 26)

I was calm, then hysterical ... I didn't know what to do. (Case 42)

Afterwards I felt shame. I felt dirty. (Case 45)

Afterwards I felt ashamed. I didn't want to say anything or talk to anybody about it. I felt funny. I wanted to forget it and didn't want people to know. But I didn't blame myself. (Case 44)

The only thing I felt guilty about was that when I got to N\_\_\_, the fight went out of me. (Case 15)

I was physically shocked, physically sick. I felt dirty, used, degraded. I felt very guilty. I was afraid my father would find out. (Case 33)

I thought it was my fault. (Case 25)

I felt dirty and whorish. I hated him for what he did. I felt guilty, it was my fault for being there ... I kept having 3-4 showers a day. I felt unclean. I could have gone down to Vivian Street and made \$100 and felt better about what I did. (Case 24)

The next morning I was violently sick. (Case 5)

I vomited and was retching. I walked home and just sat down. There was nobody home. I wasn't going to tell anybody. I almost decided that it hadn't happened. I didn't think or talk about it consciously. I went numb and blocked it out. (Rape 1. Case 23)

I started being physically sick. Later I was furious. It outraged me completely. It was totally unacceptable. I found it hard to believe it had happened. How could it happen to me. It was worse than the first time because I trusted him. (Rape 2. Case 23)

I felt humiliated and angry because at the same time he said he was in love with me, but he could do this to me. (Case 10)

I was more angry with myself - that I'd been so stupid. I hated it but when you are concerned for a person, you can't hate them. (Case 36)

I never expected that kind of thing. I felt resentful, had quite murderous feelings towards this person. I would have killed him if I had found him. To think that somebody would treat another person like that. (Case 38)

I felt I could have got a gun and shot him. (Case 11)

I could have shot them, killed them. (Case 8)

I was shocked and hurt, physically and mentally ... I felt shame but not guilt because my body had been degraded ... I could have killed them. (Case 13)

(c) Shock

At the time of the rape, victim reactions revealed that:

Few women resisted beyond a commonsense appreciation of the danger they were in. One woman who bit her attacker was beaten.

- Few were able to scream because their attacker covered their mouth with his hands or a garment. Those who did scream stopped when they were hit.
- Only two women sought help from strangers or people nearby.
- Many women did nothing for some time.
- Many women told someone or reported only under pressure from another person.
- Some were afraid to return home or tell their families.
- Some went to or rang friends.
- Some women told nobody about the attack made upon them.
- Few women reported the attack to police themselves.
- Some women showered or washed compulsively

When they looked back victims themselves recognised that their behaviour was not normal during and following the rape attack. They made judgements, on hindsight, about the way they believed they should have coped. At the time, however, they had to contend with their own reactions and the demands made upon them to make decisions or cope with the reporting process. One victim said:

I am sure that he would have used the knife. I'm even more sure of this now after hearing about the \_\_\_ case. But I feel guilty about not having resisted him ... I have tried to push back the guilt feelings and I've tried to rationalise my feelings but this doesn't help.

Afterwards I didn't know what to do. I knocked on the wall partitioning of the flats and then walked about a bit. I went to the house next door but there was no-one home so I went to the house opposite ... The police said I should have rung earlier but my own phone was not working - the cord had been cut. I also didn't really know what I was doing when I went to the neighbour's place.

After the police interview she said:

I was given a copy of my statement. Reading it I realised that I had been denying the rape to myself. (Case 3)

Another victim who said she was 'quite surprised' at her resourcefulness during some stages of the attack (including an attempt to get the attacker to pick up a glass and thus leave fingerprints), nevertheless said of her actions afterwards:

I didn't know what to do. I rang my brother - there was no answer. I rang \_\_\_\_\_. The phone was engaged. I rang my girlfriend. (Case 42)

She said she was also 'told off' by the police for not calling earlier. Both of these women said they were not believed initially and found the interview difficult and both said the desire to wash was uppermost in their minds.

Yet another victim said:

I resisted him initially which is when he beat me up and I realised he was much stronger than me. I have never been so scared in all my life. I couldn't even think straight at the time. It was not the rape but the violence that he could do to me afterwards which was most frightening then. I felt my life was in danger ... I just sat there. My first reaction was to get away and come home and be by myself. (Case 35)

The reactions described above and the feelings victims expressed - fear, guilt, shame etc. - are indicative of severe emotional shock. They are described in a number of research studies in the context of the traumatic impact of rape on victims. The state of shock following rape is variously known as the rape trauma syndrome, rape trauma, or rape reaction. Burgess and Holmstrom (1974) described a two-phase reaction during the first of which - the acute stage - the victim suffers from disorganisation, noticeable physical symptoms and an over-riding fear accompanied by other feelings. The ways in which the victims in our study behaved in this acute stage are common reactions following an attack. The shock is said to be similar to the emotional or crisis states experienced by people who have been suddenly bereaved or have suffered serious injury.

This initial or acute phase has particular relevance to victims who report rape and who have to contend with the evidential requirements of the criminal justice process. They are at a disadvantage during police questioning if those who interview them are not aware of the effects of shock. In some cases victims experience sudden swings of mood; they may laugh, be unnaturally calm or be seen to behave inappropriately. Decision-making is difficult and victims can be extremely susceptible to pressure or authority. Their demeanour and their ability to recall events, or be consistent, may often be misjudged and invite disbelief.

The following stages of trauma within the re-organisation phase, describe the reactions that follow the initial heightened responses. In many respects the adjustment phase is an intermediate stage in which the severe initial symptoms become less obvious but may nevertheless be prolonged or remain unresolved. During this stage, victims who have reported rape are usually involved in the Court process. Outward signs often indicate that the victim is learning to cope with her experience while at the same time she may want to change her mind about proceeding with the complaint, find difficulty in co-operating with officials or attempt to play down or deny the rape experience, indicating that she has not, in fact, come to terms with it.

The longer term integration phase which, as its name implies, is one in which the rape experience is accommodated, integrated or absorbed into the life of the victim. The healing process is dependent upon many factors including the quality of support available, the personality and other qualities of the victim, her circumstances and the pressures to which she is subjected. The process may take years. Some victims are not able to come to terms with the experience or its effects upon their lives.

The description of rape trauma detailed in the literature and its significance in the interrogation and counselling context tallies with the experience of Rape Crisis Centre and Women's Refuge Workers, as related to us. The view of many such workers is that there is a need for wider official recognition, in the police and court process, of the trauma victims suffer. Special recognition is needed of the initial state of shock victims are in after the rape and a greater appreciation of the longer-term effect rape has on victims.

### 3. The Effects of Rape upon the Lives of Victims

Rape victims ranged in age from 44 at the time of the attack to as young as eight years old at the time of the first experience of a sexual assault. Two women we interviewed were raped when they were 13. One other was raped as a 12 year old and again later as a married woman. Two further victims were sexually assaulted as children - one continuously from the age of 8 to 15. We interviewed one 15 year-old who had recently been raped and three 16 year old victims. Several of the women who were assaulted when young have had long term problems. One of them admits she is still coping with these 15 years later. No victim, however, came through the rape problem free from problems or without a combination of short and long term effects.

The following is a list of the effects of rape on them mentioned by victims:

- Nightmares
  - Emotional upset, crying, tearful
  - Feelings of withdrawal
  - Feelings of anger
  - Guilt feelings
  - Shame
  - Loss of self-esteem
  - Loss of confidence
  - Loss of freedom
  - Fear - of being in a house at night
  - of going out alone
  - of retaliation and revenge on part of rapist or his family
  - general diffuse fear
  - Restricted lifestyle/change of personal style - dress/clothing
  - Affected friendships
  - Affected current relationships with boyfriends
  - Affected marriages
  - Affected attitudes towards men - anti-men or impaired trust in men
  - Affected sex life or sexual feelings
  - Affected view of those in authority - police, lawyers, law and legal process
  - Affected job performance/ability to earn living
  - Depression
  - Suicidal feelings - suicide attempts
  - Needed psychiatric help
  - Prejudice against Island/Maori men
- The changes victims made included these:

Four women got dogs.

Three women got other people to stay with them.

Twelve women moved house/flat and five moved back to their parents' place.

Two women began to carry weapons.

One woman bought a car to avoid having to use public transport.

Two women installed alarms.

Different combinations of fears and other effects were described by victims, but the element of fear and loss of confidence was a constant theme. The rape was a dominant influence on the lives of many victims. One victim said, "It's almost as if I have a pre-rape and a post-rape life" (Case 21), and this sums up the pervasiveness of the experience felt and expressed by most rape victims. Some idea of the comprehensiveness of the effects is given in the following examples.

One victim gave a succinct list of the effects of the rape experience.

1. She had to buy a car to get about at night so she didn't have to walk in the street or use public transport.
2. She nevertheless felt 'paranoid' about driving home at night.
3. She became prejudiced against Polynesians.
4. She could not sleep at night.
5. She suffered from nightmares.
6. The rape experience 'wrecked' her sex life (Case 22).

Her fears and difficulties are still unresolved. She said that these were compounded by her experience with the police, the medical examination and the court process. Her view of the way rape victims are treated within the criminal justice system has affected her attitudes towards those involved and diminished her confidence in the protection afforded women.

A second woman told us:

It amazes me that I still work [there]. I went back to work soon afterwards. I felt everybody knew. If they were nice to me, I felt they pitied me. If they were nasty, I felt they thought I was a horrible girl. I was suspicious of everybody. For a time I had funny ideas - I almost wanted to step out into the traffic but I never did. Straight afterwards - I felt I didn't want to die but was tempted and then I felt life was worth living. I went from one extreme to the other. Not long afterwards I woke up and saw someone standing in the room. Everyone thinks I was hallucinating. A similar thing happened to the girl next door but they didn't report it. I was always scared that someone would come in and went on at them about security. I couldn't study at night and stayed up at nights to be on the alert. Dad didn't want anyone to know - though there's no shame to

the woman. I was going out with a guy - we were going to get engaged. He just wanted to get the guy who raped me and he didn't want anyone to know. I think he felt I was soiled. I felt rejected then. For some time I couldn't cope with a relationship with a man. I felt I needed some professional help. I wanted to be with people that cared and to have people around me. I was scared to be on my own. Once when Mum left the door open when she hung the washing out, I went berserk. I thought: he would come and get me. I didn't sleep well for ages and tried sleeping tablets. (Case 29)

A third woman commented:

I thought about suicide and I didn't want to live. I lost a stone in weight. Now I wake up easily and I take sleeping pills so that I can sleep. I don't know how I coped for the first few nights at the flat after the rape. I don't like being alone. I moved as a result of the rape - early in the morning. I'm still afraid because the rapist knows where I work. I feel bitter about not being able to live alone. I had thought my home was secure. The windows were really difficult to open.

I'm angry that my life-style has changed so much. I've changed my hair - it used to be long before; I didn't want people to recognise me. I feel physically sick and I don't want to eat; I don't feel like eating. The rapist said I had big boobs so I took off weight. I feel unhappy at work but I'm still there because I don't know what else to do. I haven't got any new friends, certainly not men friends. Men are capable of rape. I can't envisage any sexual relations with a man. (Case 3)

Two other women said they attempted suicide - one twice. The latter woman who was raped in two separate incidents said:

There is a fear that lives within you - and the hurt. I feel very sort of emotional. It didn't help becoming pregnant. I have tried to commit suicide twice - once when I found I was pregnant. This and the medical remedies [including psychiatric treatment] seemed enough to have wrecked my life. (Case 11)

Six sought psychiatric help and another counselling. Four others felt they needed help but had not sought it. One woman who had received some help felt that she and her husband needed further assistance.

(a) Fears

I can't spend the night alone in a house by myself. I'm more scared in a house than on the street. I can't stand being closed in on. I know it could happen to me again. (Case 23)

It frightens me. I stopped going to the Youth Club. I was frightened going and coming to work. (Case 37)

I won't walk about at night. I am suspicious even of friends - e.g., when a friend took me a different way home - a way I didn't know. I don't like people walking behind me. When I see a Maori [man] I am afraid but I am not nervous with men I know and trust. At night sometimes I get panicky even with a locked door. My sense of security has been invaded. It is really

important to me that men keep their hands to themselves. My friends are very security conscious now. (Case 32)

I was scared to do anything or go anywhere. I had to go past his house on the bus on the way home from school ... (Case 31)

I am afraid at night now when I am home by myself with my children. I am frightened and embarrassed at how the children might see me at the time of the rape. So my sister lives with me for company. (Case 28)

Whenever I was put on the afternoon shift I felt terrible about getting home. I was pretty nervous about walking about. For years I didn't go out my myself, certainly not to a strange place. (Case 38)

My daughter likes jogging but I'm instilling my fears into her - and my son. I haven't told my children about the rape. They are still getting over their father's death and I didn't think they could handle it. I told them I got into a fight with a man and would be going to court about it. (Case 15)

(b) Fear of the rapist returning and of retaliation

I live in fear of the rapist moving around the place. I was terrified to walk outside the house after it happened. I got an obscene phone call ... (Case 2)

Before this I never minded being in the house alone. Now I can't stand being alone. They said he wouldn't come back and he did and I wasn't taking any chances ... My mother is still living in the house though she is nervous. For the first three months I slept with a spray can beside the bed and my mother with a knife beside her. (Case 42)

He was convicted ... but after that what happens? He knows some people I know and he can inquire about me and then where am I? The police say rapists don't usually come back, but knowing my luck, I may be a case where a rapist does come back. (Case 15)

I just wanted to forget it all - just wanted to be on my own for a while. I didn't want to see anybody. I wouldn't go down the shops at all. I am worried he might get me when he gets out. My big fear is what is going to happen when he gets out. (Case 19)

There are lots of places in town I can't go - like a night club I used to go to. I have to go out with a lot of friends. I can't drive through - by myself ... in case their friends get me. I get a lot of hassles from friends of the group who raped me. I can't go to places where I know their friends might be. I feel I'm in hiding a bit. (Case 26)

I'm a little paranoid now because of threats of revenge and I dread meeting his sisters. Even nearly a year later, I still think of it nearly every day ... I will always have a fear of seeing [him] again. (Case 46)

(c) Loss of confidence

Before I was so confident and it annoys me now that I'm not. I now know that men are physically stronger than women. I've lost my confidence in [my] strength. (Case 41)

Rape has increased my paranoia and restrained my freedom ... I feel scared all the time and angry about this ... It shakes one's confidence. It rips shit out of your confidence. I had to be forced to take a job. I couldn't make the effort and I was afraid. Men don't realise this. (Case 7)

(d) Changes in lifestyle and dress

Many victims commented on changes in their life-style due to fear, loss of trust and confidence. Many also changed their style of dress. Some victims effected changes that seemed designed to make them as different as possible from their former selves and as insignificant as possible. A victim already quoted changed her appearance radically. Another said 'no more black tights now'. An element of spontaneity and flair went out of the women's lives in this respect. One woman reappraised her footwear:

I had on very heavy shoes with thick soles. They were very difficult to run away in. It made me think of what kind of footwear I wore after that. To return to the stiletto heels now is entirely a return to helplessness. (Case 38)

Other victims resented both their change in lifestyle and their loss of independence. One victim who did not get on with her parents said:

I had to go back and live with my parents after the rape. The police insisted that I go back home. (Case 20)

(e) Existing relationships

In six cases the rape experience affected an existing relationship. In three other cases the boyfriend was the attacker. In two of the six cases the boyfriend responded in ways which the victims felt were negative or inappropriate; in the other four cases the relationship deteriorated as a result of the inability of the victims to cope with any sort of close male relationship following the rape:

It broke up the relationship with my boyfriend. I couldn't let him touch me. There was no way I was going to let another guy touch me. (Case 13)

I think it affected my relationship with my boyfriend. I could see it going down. That's why I feel the need to talk about it. (Case 45)

I was going out with a fella at the time but this broke up. I didn't want to talk to him about it and he wanted to go out and get them. (Case 44)

Another young victim who was a virgin at the time, said she could not handle her family's reaction to the rape and 'out of guilt' married the man who raped her. The marriage was troubled and lasted only three years but the rape experience also affected her second marriage. She sought counselling at this stage for help in coming to terms with the earlier rape experience. (Case 33). In two other cases the marriages of victims were placed under great strain; and in one case a formerly satisfactory de facto relationship suffered.

In another case a victim mourned the loss of a close friend who became involved in her case as a witness. She said:

While I was asleep, the police had gone to our place ... and fingerdusted the place. They read my letters which were very personal. Some of these were from \_\_\_\_\_. They gave [her] a hard time over this and I haven't heard from her since. (Case 42)

Other instances were given of strained relationships with friends who could not cope adequately or comfortably with the fact of rape and with the victim's reactions or needs.

(f) Relationships with men

Some victims said that they were totally unable to have a satisfactory sexual relationship with a man. This was particularly so in the cases of two of the women who had been assaulted as children. In other cases women expressed fears that the rape experience would affect their sexual feelings or future relationships with men. In one case a woman feared male reaction to her status as a victim. She had been badly injured, and in discussing the restrictions now placed on her own lifestyle - including her love of walking - she said:

I have always cherished virginity and I lost it. I have, I think naturally, longed for marriage but this would probably be harder now that I am not a virgin. It has often been on my mind. (Case 36)

In the following views a major element is loss of trust:

Now, I don't trust men - not even my boyfriend. I suppose after this you can't easily trust another man. I'm thankful I'm alive. (Case 6)

My relationship with men was no good. (Case 8)

I haven't really thought of fellows since and don't really care much about them. (Case 44)

My faith in guys went down. Now, I keep a meat skewer in my handbag. (Case 32)

There was no way I was going to let another guy touch me. I was suspicious of men and have been with only one guy since. (Case 13)

I don't think even now [15 years later] I really trust men in a sexual relationship ... (Case 25)

The rape has affected me in that I've become a lot more anti-male. I don't trust men as much. So many of them are not real. They talk a whole lot of bullshit and put up a big front. If I see anything on TV or I've met guys that are typical rugby-playing cocksure people, it irritates me and even now reminds me of the rape. I used to use sarcasm and embarrassment in these situations. Now I've stopped that. But I feel men are picking me up when they want to talk. I don't know whether they regard me as a person. (Case 9)

(g) Changes of personality and behaviour

Women said that fears and the emotional impact of the rape drove them inward upon themselves. Many became less trusting and confident. Others commented on more marked changes in their personality and attitudes, and mental health. Again, these changes were marked in those who had been child victims. One woman felt great sadness about the effect of fear and mental ill-health on her personality over the years. She was fearful also for her daughters. Another woman who was a young victim said:

After the rape I experienced a long period of promiscuous behaviour - looking for affection I suppose. I don't think I had a good self-image. The more I went to bed with guys, the worse I felt. I drank a lot also. I'm still struggling with feelings about self-worth and about my self-image ... I feel I am slowly getting somewhere. It is difficult to know what influences are responsible for this ... The sexuality and gender thing is very important. I couldn't work out my own needs and desires ... Women need to know that the ultimate isn't going to bed with someone and that men don't have all the guns. Women should take the initiative in this as in other things. (Case 25)

Other women said that the rape experience changed them.

People say I've changed. I'm a lot more selfish now. There are few people I trust. The person next to me can look after themselves. (Case 26)

One victim said she used to be a "goody-goody" and is conscious now of a threatening world in which women, in particular, have to look after themselves and defend themselves. Another young woman said she was likewise more conscious of threats and had become single-minded about her own well-being. Only one victim felt she had benefitted from her changed outlook as a result of psychiatric help. She felt more open about her feelings and more able to discuss them. In many cases women felt that their lives had been profoundly changed. Coming to terms with this fact had brought fundamental changes in the outlook, attitudes, values and behaviour of many women.

(h) Feelings of anger

Many women, including those already quoted, experienced feelings of anger, hatred and revenge. Some victims saw this as a phase in which they were asserting their own feelings. In other cases, particularly where the court process had resulted in an acquittal of the accused person or where the suspect had not been apprehended, anger, resentment and bitterness were part of a situation which victims regarded as unresolved and unjust.

I've never hated anyone in my life before. It is awful now to actually hate somebody. I see him as sub-human. That's how I cope with him. I really want to track him down and kill him. I think he's some kind of animal. To actually want someone to die [is terrible] - I don't know why he did it. It's unresolved because he isn't being punished. (Case 2)

Many women found these emotions difficult to deal with or dissipate and in some cases admitted that their rage and grief were vented upon some close family member. One victim said, "I take it all out on my husband". This reaction also caused them to feel ashamed and guilty and helpless since they saw their response as essentially unjust.

The anger of some women was eased by conviction of the offender. One commented:

If the guy had got acquitted I think I would do him some damage. (Case 42)

There were other women who did not express anger or who did not admit to it. Some felt pity and others, including some of the victims, already quoted, who had spoken of their vengeful feelings, expressed the view that punishment in itself was an inadequate response to the problems of the rapist and the protection of women.

(i) Reaction to violence in the media

Mention has already been made of the distress caused to some victims by the publicity in newspapers and on TV. In some cases which went to court, there was further publicity to which victims took exception. In addition, victims mentioned that they would often be reminded of their own experience by items or programmes in the newspaper and on TV or radio.

About two weeks ago I saw the rapist on a TV programme. I was by myself and thought I would watch an item on rape to see if I could learn something. To my surprise I saw the man who raped me on TV. I was very upset. He was giving his version. He made out he had known me for years. He was a total stranger ... I would like an opportunity to let the TV people know what I feel after seeing him on screen. I knew it was him. (Case 15)

Other victims reported that they could not tolerate seeing any form of violence.

I can't stand seeing violence. I couldn't watch a person hit anyone on TV - it would make me cry. Also if I see any sort of bedroom scene I'd feel uncomfortable. (Case 46)

Some victims also mentioned their heightened sensitivity towards aggressive physical and verbal behaviour among strangers, acquaintances or friends.

(j) Expenses incurred as a result of the rape

The cost of the rape experience also extended to the financial area. Expense was incurred as a result of moving to another house or flat. Some victims moved again after the court hearings because of the requirement to give their address in open court. Two victims took time off work. Both lived on their savings.

I took three months off work and lived on savings. (Case 35)

I was injured too. I was on crutches for two weeks. I had a cracked ankle bone and a cracked bone in my other foot ... (Case 17)

Because of the type of work they did, their jobs (and hence their incomes) were also affected by their more cautious attitude to male customers. Several women quit their jobs and one girl left school after being unable to cope with the School Certificate examination following the rape. Many victims found concentration and the demands of their work difficult but were not able to take time off work. One victim said:

I was scared. I got into debt. I couldn't move very far because I was not financial. I found it difficult to support myself. (Case 6)

Two women installed alarm systems and others paid more attention to security. Four women bought dogs. One woman bought a car and then found she was still frightened driving at night; others paid more for safe transport. Three women made arrangements to accommodate other people in their homes as extra protection. The father of one victim came from overseas to be with his daughter and attend the court case. A number of women bought new types of clothing. Victims also paid for professional counselling and additional medical costs. One victim - a widow with young children - who needed counselling help had contacted a Rape Crisis Centre in the city where she had been interviewed by police and on her return to a country centre maintained contact with the counsellor by phone.

The upheaval following the rape experience thus caused some financial strain and in one case hardship. In this latter case a married woman with a young child was raped in her home. An expensive alarm system was bought but after some trouble with the landlord the family moved. A rent increase from \$50 to \$90 per week added to other financial burdens at a stressful time in their lives. The woman needed psychiatric assistance. The husband admitted his own need for counselling both for himself and to enable him to give more adequate support to his wife. He felt he could not afford this. As a result of the rape he had to find employment that enabled him to work more regular hours. Bedding was also taken for testing and was unusable afterwards. The victim did not really want this back in the circumstances but replacements cost extra money they could not afford. Both felt the consequent strain on their marriage was a sufficient handicap without the financial problems which also resulted from the rape. This victim said:

The police didn't tell me about accident compensation. I had no help with the psychological support I needed. This was expensive and we were short of money. We needed help badly. (Case 30)

In other cases, all victims whose complaints were processed or proceeded to the court stage also incurred some expense as a result. Where clothing, bedding or linen was taken for testing by forensic experts, these were made unusable because of cutting and sampling. Other clothing not so used but required as exhibits was sometimes retrieved months after the event and sometimes as a result of prompting.

It also took two months to get back the things taken from the flat - including the dressing gown which wasn't worn at the time of the rape. I got really angry and eventually rang about this. (Case 3)

Some victims burnt clothing because of its association with the rape experience. In addition, victims, their spouses and family members took time off work or arranged child-minding facilities in order to attend court sittings. In this respect they were in the same position as the accused but, as the above account shows, as victims they faced additional financial and emotional stress.

All of this does not take into account the cost to the victims of the emotional damage done to them or the personal cost of the constricted lifestyle complained of. Many gave up pleasurable experiences, outings and pursuits - often for years. Many felt bitter about the loss of their independence, particularly those victims who moved back to family homes. No victim received compensation for the expenses she incurred or for psychological damage or other disability resulting from the rape.

As far as we know, with one exception, victims were not told by any of the people they dealt with that they should make inquiries or applications with the Accident Compensation Commission. We believe that, at least those victims who report rape could be assisted if police, doctors or court officials, as well as Rape Crisis Centre workers, were to advise them of their rights in this respect.

(k) Coping or not coping

In the longer term the ability of women to cope with the effects of the rape experience depended to some extent on personality, state of health and especially on the immediacy and appropriateness of the early support they received. The following two cases illustrate this:

- (1) My friends minded my child while I moved some of my things. I went to a healer and felt much better afterwards. I had pain in the lower abdomen which went after this. At night fear hit me and this often resulted in total paranoia. I had wanted my child to be with me even in the bathroom. I walked a lot and became extremely sensitive to males and very sensitive to aggressiveness of any kind. I just couldn't be alone.

When I stayed in the house I started reliving the whole thing. I was with my son and a friend. Any sound triggered off the experience. I screamed and relived the rape the way I wanted to feel at the time and I cried. I couldn't bear males touching me. I got these feelings out but shock and fear remained with me. The fear was related also to potential violence. This was the acute stage.

I'd read that once a woman was raped by a gang she was marked. I was advised to leave - but I was determined not to disrupt my life, especially so soon after moving here. I visited a nearby local black power gang with my son and explained to them what had happened and asked whether they thought it was safe to stay. They were shocked. The leader said I'd be OK and that it was safe. I moved back into the house. That was my only contact with a gang. But once when I was coming out of the house to go to my car, I saw some gang members in a car parked outside. I thought they were the ones who had come into the house. I forced myself to keep going and to keep calm. I kept my cool and walked to the car. They didn't follow.

I decided to stay in the house until the fear had gone. This took about 3-4 months. Probably about the second week I started writing. I wrote what happened and did a tape. Later I did a talk-back ... and this was really constructive. I wrote poems and called the rapists robots. I see them in this way. It is one year now since I was raped. I'm pretty well over it but I sleep with the light on. (Case 1)

- (2) After being raped, the fact that men are wanting sex, planning it and talking about it, really freaked me out. Even my husband's needs do. He is my second husband ... so I'm not naive or inexperienced. I know I need psychological help but my psychologist hasn't helped me with my sexual problems. I haven't talked to her about this as much as I have with you. It has taken me months to work out what is hurting me.

I felt bitter towards my husband for not giving up his night job and leaving me alone. I hated being left alone. I felt our marriage could go. We did nothing but scream at one another. There was a terrific strain on our marriage. Sexually, I am still up tight and I don't know where to go. We had to shift and as a consequence faced additional financial difficulties. I thought sometimes of doing something bad to myself. It has taken 9-10 months for me to believe he won't come back. I changed my clothing and style of dress. There's no more black tights now.

You have to come to terms with the fact that there is no justice. If he had gone free [my husband] said he would have shot him. His reaction is that a stranger has invaded his privacy. We both need psychiatric help. Our parents were no help. They can't face the fact of rape. It would be helpful if a social worker saw parents and could make them understand.

Things started coming right between us when [my husband] changed jobs and we moved. I was still being clingy though and this must be very difficult for him.

You gradually get over the feeling you don't want anyone to know and feeling like a walking freak. We used to go to my parents for dinner on Sundays. I don't want to go now. My parents ... didn't help and they didn't try to understand. I find this hard to accept. (Case 30)

In some cases women became involved in activities which helped them to come to terms with their feelings. One victim who was raped twice - the first time 12 years ago - became very involved in psychodrama which she said enabled her 'to see it all and act it out'. Despite this she said the process of coming to terms with the rape experience had been 'a very long haul'. (Case 21). In another instance, a victim went back to school. She has also written about her experience and has found these outlets constructive. Some victims joined Rape Crisis Centres - one pointed out that this was not for therapeutic reasons - and some of these women have become involved in the educational activities of the centres because of their conviction that changing attitudes to rape and violence is the major preventative priority.

Other victims said they have not felt able or ready to look outward or take part in outside activities and many have not been able to talk about rape as a personal trauma or as a social phenomenon with acquaintances or friends. One victim has struggled with 10 years of mental ill-health and has also had a drinking problem. Only recently has she felt that she is making some progress with her life. In describing this process she said:

It is fear that is difficult ... Getting close to people is difficult lest the same thing happens again ... My self-esteem was lost. (Case 11)

Other women who did not seek help or who could not find support have continued to cope with the effects of the rape experience which they state has affected their social behaviour and emotional responses years later. Some women have been unable to have any satisfactory relationships with men; others have had problems with second marriages and a few are coping tentatively with de facto relationships. A number of the women who spoke of these said their fears were always close to the surface. A few other women have turned to women for sexual and emotional support. Two young women - both raped as children (12 and 13) and one again later - said they could not face any further 'hassles' from males and felt they could not trust them.

#### 4. How Victims Interpreted the Rape

In their accounts all the victims described the violence of the attacks made upon them whether these were surprise, gang or abuse-of-authority attacks. Analysis revealed that the types of coercion exercised were:

emotional pressure	6 victims
physical strength (plus the element of surprise in 3 cases)	22
physical strength and numbers	7
physical strength plus verbal threats to kill or harm	2
physical strength plus physical violence - beating, kicking, slapping, punching	10
physical strength plus weapon - knife, bottle, piece of wood, air pistol, gun	6

one victim was doped and in the presence of 7 men, three of whom had sex with her

(50 victims, 54 rape incidents).

Twenty-two women expressed their views about the nature of rape and attempted to come to grips with defining an act that had both sexual and violent connotations. They saw it primarily in terms of aggression, violence and power though slightly different emphases emerged.

It was an assault, a violent assault. I think that when women think about it like that it is easier to talk about it and deal with it - as little different from having a physical hurt on the body. (Case 1)

For me, it was aggression. He wanted power over me and I had always refused him both power and sex. (Case 46)

For the rape itself - I felt it was a violent power relationship. I couldn't resist. (Case 45)

This man tried to do something to me against my will. (Case 32)

Rape is somebody wanting to have sex with you when you don't want it - a violent act. (Case 20)

Basically violent I guess, especially the oral intercourse. (Case 17)

It really was a rape. It was not predominantly sexual. He was a violent man, he had power over me. It was a violent act. (Case 2)

It was a violent attack but is also a sexual form of attack. I don't think he intended to be violent. (Case 42)

The thing of being overpowered by somebody else, and that they have the right to your body. It's to do with strength. (Case 41)

They were violating my person. I didn't have marks but it was still a violation of my person. (Case 39)

It's based on violence and terror. The only way that man could come was to have a woman terrified of him. The crime is so personal and you are so vulnerable. (Case 30)

I don't think it was primarily a sexual act ... He told me he had to do it. He had friends in Black Power but he was not in it. (Case 29)

There is no respect for women. I was just used. (Case 11)

I don't think they were satisfied sexually. They came across me this time. I don't think they care who it is. How can you get satisfaction when you have it like that. It's an attack. It's connected with boasting. They do it for kicks. One chap said if I didn't let him in he would get mashed or shamed by the others. I think it is still part of their initiation. They don't want to lose pride. (Case 8)

You don't have to have sexual intercourse to be raped. Touching and violence when you don't want what they want to do is rape - and all the other kinds of things men do to you. No man has the right to force you to do anything. It's immaterial whether you are a prostitute or who you are. (Case 6)

When those two guys jumped me they used me. I wasn't a human being. I didn't have feelings. This is the hard part now. I still feel real tensed about it. Rape is a violent attack with sexual humiliation. I think the blokes do it for kicks. They may have had some bad relationships with a woman and want to hurt all women. (Case 13)

The whole act has so much contempt and disgust for you personally, that each time you talk about it you feel lower yourself. Further, you blame yourself for getting into that position or [you feel] the rapist hated you - but why? (Case 23)

I don't know what made them do it - that's what they're like. I don't think they thought I'd tell. They just take what they want and you're nothing ... They had no rights to me. (Case 44)

The rapist was not a rough. He used his penis as a weapon. The power thing was so obvious. It was not just sex he was after but power. And he was not getting any sexual satisfaction. (Case 7)

## 5. Summary and Discussion

### (a) The Victim's view of Rape

The view about rape which emerges from these quotations and the comments of other victims is that it is a violent and aggressive act in which the attacker uses sex as a humiliating means of expressing both power over the woman and contempt for her. It is significant that none of the victims who made comments about the nature of rape mentioned the physical beatings or other violence that had accompanied it. The violence of the act of forced sexual intercourse - rape - and its mental and emotional consequences was the issue they chose to address. Rape for these victims is then primarily a crime of violence and aggression. For many it is about the abuse of power. Its significance for them as a special crime against women lies in the sexual means and nature of the attack. Additional force does not alter the essential violence of the act of rape. Several victims commented that beatings and bruising assist the Crown to prove rape by diminishing the plausibility of consent as a defence. They have complained that emphasis on physical symptoms and harm diverts attention from the violence of the act itself, and that the legal process makes this act not only hard to prove but that it also tends to focus attention on other issues. One victim who was familiar with some of the legal changes overseas commented:

Grading rape according to injury is nonsense because all victims have the same feelings when they have been raped. Scars and beatings don't alter that. (Case 3)

The women we surveyed saw the sexual connotations of rape as especially humiliating and degrading since it invaded their deepest sense of privacy and involved a mental and emotional anguish which persisted long after any physical effects had faded. Rape as a violent act has a special significance and impact for them. For most it was a perversion of an act which has generative possibilities and is normally associated with tenderness, shared intimacy and mutual respect. In our study two victims became pregnant as a result of rape - one of them attempted suicide. Other victims commented on the shattering effects on them of a sexual act associated only with violence and contempt for them as people. Most victims admitted that they had thought little about rape prior to their own experience and then as a phenomenon that happened to someone else. Their analysis was therefore not based on a thought-out or ideological perspective but on a very personal reaction.

The link between the act of forced intercourse and violence has long been established. In his 1971 study Amir, for example, concluded, 'Rape is a deviant act, not because of the sexual act per se, but rather in the mode of the act, which implies aggression, whereby the sexual factor supplies the motive'. He suggested that rapists were a danger to the community because they were violent and aggressive not because they were compulsive sexual aberrants. Wilson (1978) indicated, on the basis of his Brisbane study of unreported rape, that much rape is an expression of contempt, rebellion and revenge. Selkin (1973 cited in Hilberman 1976) suggested that the purpose of rape was to humiliate and debase the victim and that the sexual nature of the act was secondary. Another view, reached by using psychological measures, is that 'the act of rape is an expression of hostility by a male who feels weak, inadequate and dependent' (Fisher and Revlin, 1971 cited in Chappell, Geis and Geis 1977: 26-27). Rape is seen to be associated in a cultural context (the subculture of violence) with masculinity and aggressiveness evident, for example, in group rape where the group condones the use of force in achieving its goals (Amir 1971, Brownmiller, 1975); a ritual of power (Le Vine, 1959) or an 'insurrectionary act' (Cleaver 1962 cited in Schultz, 1975) among others.

A very important element, however, was the way women reacted to rape in terms of their own backgrounds. The upbringing of many of the victims and the way they said sexual information was taught - or not taught - emphasised the very private and often taboo nature of sex and the sexual act. The very name frequently used for genitalia - private parts - further illustrates this point as does the difficulty some victims had in finding suitable language for the description of acts or parts of the body. Many women commented on the inadequacy of their sexual knowledge and their lack of any skill in handling situations which involved a threat to their physical and emotional integrity, especially by persons known to them. Further, some women (particularly those who had been sexually assaulted as children) later felt they were disarmed by an upbringing which instilled a respect for and obedience to family and other authority figures on the one hand, while cultivating sexual ignorance on the other. Some women, for example, mentioned these matters directly or in passing with reference to their own experience. Others made suggestions drawing attention to the need for changes in the education and socialisation of children ("including assisting girl children and women to develop a sense of their own integrity in personal and sexual terms"). When they were assaulted by relatives or respected family friends, and when some were not believed, it was they who felt ashamed, guilty and powerless. In some gang rapes, the rape was also public - other gang members watched.

The experience for victims was thus humiliating, degrading, shaming and disgusting. The mental images remaining in the minds of women as a result were both powerful and long lasting. In one of the case studies contributed by the Wellington Women's Refuge, a woman victim draws attention to this point. She commented that rape is an act which 'goes on in the mind'. The long term effects described by victims bears this out. While the sexual nature of rape gives it a special character, it is the mental and emotional consequences of the act which are its most destructive and crippling features. This most essential element of rape is ignored in the court process - as some victims complained.

### (b) Victims' views concerning the definition of rape

Twelve out of the 16 women who discussed matters relating to changes in the law wished to see the definition of rape widened to include penetration by objects and other parts of the attacker's body in addition to the penis. Two women wished also to include those actions which are termed sexual harassment - the touching of bodily parts, clothing etc. All of these women felt that the variety of behaviours now covered separately in the Crimes Act (sodomy, oral sex, insertion of objects and other bodily parts), should be included in any definition of rape since these were seen by victims as rape or as essentially part of a rape attack. Some victims found these practices particularly repugnant.

It's more degrading to be entered anally ... (Case 10)

Oral sex, I didn't like this. I hated it, I hated him more than the other bloke. (Case 13)

The accompanying diagram illustrates the point that many victims make about the oddity of the present legal concentration on one behaviour out of the many they see as rape.

BEHAVIOURAL ACTS THAT COULD CONSTITUTE RAPE

OFFENDER

		Male			Female	
		Penis	Hand or other part of body	Foreign object	Hand or other part of body	Foreign object
VICTIM	Male	Mouth				
		Anus				
	Female	Vagina	Legal Rape *			
		Mouth				
		Anus				

\* Not if offender and victim are married and living together.

(from Paul Couchman, "Research Rape in New Zealand: A Victim-oriented Approach", unpublished research outline, 1981).

The views of victims about the present restricted definition of what constitutes the crime of rape accords with the views of legal, medical and sociological writers who maintain that the thinking embodied in the laws is locked into outmoded social and anatomical concepts; and that review and updating is necessary to bring it into line with current knowledge and attitudes. (Chappell 1980). Definitional changes have taken place in many jurisdictions overseas as part of such a review.

No victim recommended changing the name rape. While one victim thought rape should be seen simply as an assault, two victims in discussing the relationship between violence and the sexual nature of the attack, doubted whether the term assault was sufficiently comprehensive. One other victim felt that the term sexual assault was neither an adequate nor accurate enough description of rape.

In this respect victims who expressed such opinions appeared to be resisting trends and changes that have been effected overseas and canvassed in New Zealand. There is, however, an approach in which Gilbert Geis (1977), for example, sees merit. He cautions against down-playing the sexual component of rape in the current haste to accentuate the violent nature of the behaviour exemplified by rape. Duncan Chappell (1980) joins him in drawing attention to the lack of evaluation following major changes of this kind in the rape laws overseas. They both point out that little is known about whether changes to the name of the offence - to reduce the stigma of rape - have succeeded in increasing reporting or conviction rates or in making the lot of the victim easier within the Criminal Justice System and outside it. Commentators Lagen (1979) and Chappell, (1980) also point out that feminist opinion, especially in America, sees the stigma of the name rape and the crime gradually taking on new connotations as more women realise the significance of rape as a special crime against women and as a continuing rallying point for change.

A further point arises from the issues victims raised. Bearing in mind the emphasis that many victims placed upon the view that the act of rape - forced sexual intercourse - constituted the essential element of aggression or violence, the inference is that any additional violence, injury, harm or threats suffered by the victim prior to or in the course of rape, should be dealt with in a separate charge(s). Thus injury should not qualify the act or the rape charge - it should not be argued that a rape assault was more, or less, serious by reason of the presence or absence of other harm inflicted while subduing the victim; nor should this kind of injury be the significant factor it is now seen to be in lending credence to a victim's complaint.

Basically, in the matter of any legal change, including the definition of rape, the victims who expressed opinions want changes which recognise and incorporate a victim perspective. Victims generally wished to see changes made over a range of issues and their suggestions are included together at the end of this report.

(c) The victim's views on why men rape

The victims who expressed opinions, felt that the rapists themselves derived little or no sexual pleasure or satisfaction from the act of rape. Some women speculated on why men did rape. Many victims, as the quotations make clear, said they felt they could never feel completely safe or trusting again. The question of why rape occurs and who rapes was, for a number of them, an important indication of the general fearfulness they experienced as one of the effects of rape. Some felt that

the act of terrorising a woman provided the essential elements of satisfaction. Some felt that it was engendered by a hatred and contempt for women in general. Others felt that many men regarded women as objects for their own sources of satisfaction and that, as immature and imperfectly socialised creatures, they raped or brutalised women 'for kicks'; or because they felt it was their right; or because they lacked the social skills and self-discipline to cope with relationships or frustration. Others felt that there were combinations of these factors which, together with those that sanctioned male power or dominance, enabled some men felt free to exercise power capriciously and cruelly, and that there were aspects of women's aspirations also with which they were not able to cope. One woman in particular expressed a point of view which summed up the comments made by a number of other victims. She said this about the feelings she experienced following the rape:

There was a definite paranoia there and that is what I will never forgive him - or rapists - for. I mean men who threaten women. I felt the whole feminist line was as clear as a bell. It is true that all men are potential rapists. I had a good father and brother and good relationships with them and men but I know what is meant. You don't know who the rapists are ... The rape sharpened my attitudes towards men for a while. I've never really thought all men were bastards but as a result of travelling and being hassled by men, I see their reaction as a direct result of women becoming stronger. Men are having to examine their own position and many don't like it.

I see rape as an extreme action. There are degrees of rape from coercion to sexual acts, male assumptions and sexual dominance. It doesn't surprise me that this happens. Rape is a symbolic dominance. Even if society doesn't condone it, it is an obvious symbolic act and the use of the penis as a weapon. When it comes down to body level it is so basic. Changing attitudes is the answer. This will be a hard lesson to learn. I can understand the lashing out trauma of this act. We must realise that all men have this in them. Violence is what it is about. (Case 7)

Some women mentioned the basic animal function and dominance. Others felt that society did condone rape and that there was considerable hypocrisy about this and the differing standards of behaviour - particularly sexual behaviour which allowed men greater freedom and imposed undue responsibilities and restrictions on women. These issues, coupled with the belief that there is widespread ambivalence to sexuality and violence in a society which also idealises many family and nurturing functions, led many of the victims to stress there should be a reassessment of the ways in which adults and children are socialised in respect of roles and relationships. As a result of their experiences with family members, friends and agencies, many victims also believed that there is no real acceptance of the problem of rape so that victims themselves are continuing to bear the blame and guilt of their own victimisation. An essentially political view of rape and the exercise of power emerges from the comments of some victims.

There is a diversity of research which elucidates the various points of view expressed by many victims, much of it stemming from the impact of the women's movement and the emergence of victimology as a discipline. Only a hint of the scope and breadth of this literature can be conveyed here. A fairly large body of research has addressed itself to the social problems arising from the way society is organised and controlled (Gil, 1978 in Eekelaar & Katz, 1978) including the disabilities of women in the legal, economic and social spheres and as victims (Brownmiller, 1975, Griffin, 1975, Chappell, Schultz 1975).

Weis and Borges (1973) propose that in our society, social inequalities and other culturally determined standards make women the 'legitimate victims' of male violence. Various kinds of violence and aggression stem from learned values developed and transmitted through the different institutions in society, including the family. Appropriate sex roles are taught. Generally girls learn passive accepting behaviour and males aggressive, competitive behaviour in which exploitative attitudes to women are generally conceived of as normal or condoned (Amir, 1971). Violence, including sexual violence is seen to become deviant when it is noticed to pass the bounds of what is held to be acceptable. There is often a wide disparity between the male and female perceptions (and within the sexes) of what is deviant and what is the standard of acceptability (Klemack and Klemack 1976). One victim who discussed this point said:

Those people I was with made me feel it [the rape] wasn't such a big deal and wasn't worth going to the police about - that I would be making a big fuss about nothing. Being put on the block wasn't something those men who raped me - and some of the other people-called rape. They didn't think of it as rape. I was made to feel it was partly my fault ... It was only later when I returned that I could trust my own feelings about what had happened to me. I wanted to get back at them but it was too late. (Case 9)

Similarly, there is disparity between the views held about deviance (and female responsibility for deviance) within the community and those expressed in law (Forcible Rape, 1978:7 Weis and Borges, 1973). These latter researchers point out that some verification of this is seen in prisons where rapists, unlike other sexual offenders, rate high in the male prison hierarchy (also Hobson, 1982 - personal discussion).

In contradistinction to the socio-biological view - that rape is a manifestation of the violence and aggression which are inbuilt, innate male tendencies (Lorenz, 1966) - there is another research orientation which supports the above research views and the belief of many victims that attitudes can change. By means of cross-cultural analysis, some researchers have sought to explore the social and cultural context, particularly of human sexual behaviour and violence (Chappell, 1976; Sanday 1981, Le Vine, 1959). Sanday's conclusions indicate that human sexual behaviour is expressed in cultural terms, that rape is not universal, nor is it an unavoidable fact of 'human nature'. It is learned social behaviour.

In other studies anthropological information is supplemented by information from western cultures (Schiff, 1973 cited in Geis 1977:31, Chappell, Geis and Geis, 1977). Such a research approach provides complementary insights to other research which focuses on individual behaviour on the one hand and the methods by which human behaviour is shaped by the socialisation process on the other. It is an approach which has appeared widely in other studies (e.g. Wilson 1978, Koerper, 1980 in Warner, 1980).

#### (d) Victims' views of the rapist

A view of rapists emerges from victim observations as men who take what they want when they want it; as men who treat women as objects who have no feelings and whose own integrity and needs are of no importance. Other comments made by victims about their attackers included remarks about race which show racial prejudice and fear. The men who raped or assaulted the victims we interviewed.

were: a father, a cousin, a guardian, husbands, boyfriends, acquaintances, friends, gang members, shearing gang members, party goers, an older man with a family, men in de facto relationships, young men; Europeans, Polynesians (both Islands and Maori); Negroes - or American blacks.

A number of the victims said their attackers were Polynesian. As a consequence of the attacks made upon them some women voiced their fear of black men. We cannot do more than note this for, as we explain below, no inference can be drawn that throws light on offending patterns. There are, however, several points that should be made in view of the significance that is often attached to statistics relating to minority group offending and in order to place victim reaction in context - without, in any way, apologising on their behalf, for the views they expressed. Given the extreme sensitivity of the questions of sexual assault and racism, we are concerned that the victims we have interviewed do not get caught up in the game of blame and counter-blame that often follows discussion of such issues.

Issues relating to minority offending are complex and, if overseas experience is any guide, are complicated by a variety of factors, including the way in which the criminal justice and other systems operate (Wolfe and Baker in Warner 1980). Issues concerning race and racial prejudice are also complex. The victims' response must first, we suggest, be seen in the context of a violent attack against them as women. Secondly, it can be seen in terms of the diversity of opinion and the varying degrees of commitment that exist in our society with regard to a number of ideals, including among others, the eradication of racial and sexual prejudice.

In the circumstances of a rape experience and the anger and blaming reactions that follow it - and to which victims are entitled - it is natural that they should express fear and some degree of prejudice against their attackers. In some cases the victim's experience led her to extend her prejudice to men generally and she sometimes rationalised this by an analysis of power inequalities; in other cases there was a universalised prejudice against a particular class of men. Some women were conscious of the implications of their initial reactions and one of them deliberately sought counselling help about her fears lest they harden into a generalised prejudice. She was unusual in this respect. It would be unreasonable to expect victims generally to have acted in this way when they had been subjected to a form of attack they see as fundamentally and degradingly sexist.

It must also be remembered that rape is also a problem for Maori and Pacific Island women raped by men of their own race as well as by European men. The two New Zealand Women's Weekly surveys - of 1977 and 1981 - found that European offenders were in the majority. Due to the limitation of these surveys and our present study, we are simply not in a position to say whether certain groups of people offend in certain ways more often than other groups. This would only be possible if a much more comprehensive victim survey was conducted or if the inherent problems of a biased sample in an offender survey could be resolved.

What is clear is that in New Zealand an unknown - possibly a large number - of men have raped or sexually assaulted a woman or girl during their lifetime. Although we cannot know the true level of sexual abuse in this country, we can see from the available evidence that men convicted of rape form the tip of a very large sexual abuse iceberg which consists of unreported rapes, unreported attempted rapes, unreported marital rape, unreported indecent assault and unreported incest. In

addition to the direct victims of this abuse, many women become indirect victims of a diffuse fear of being raped which restricts their life-style, working patterns and leisure time pursuits. Yet rape and sexual assault in general, is a male problem and essentially males must take responsibility for it. Rape should not remain 'something that happens to women' but should be seen as 'something that men do' - an act which can hurt, emotionally cripple or destroy the victim.

In respect of the rapist, the considerable volume of overseas studies tends to show that it is difficult to obtain any clear idea of 'the rapist'. In his comprehensive 1978 study, Henn (cited by Wolfe and Baker in Warner 1980) found that the rapist appeared to be a young, violent man, little different from other offenders involved in robbery, assault and burglary. Reconviction of these rapists tended to be for an offence other than rape - with burglary and assault being the most common offences. Rather than isolating a distinctive type of person who commits rape, the results suggested a fairly typical offender, who in certain circumstances, rapes.

In other studies as Schram (1978) points out, rapists have been described as antisocial or psychopathic (Henn et al, 1976); autistic and depressive (Takakiwa et al, 1971), less intelligent than other convicted felons (Ruff & Templer, 1976); average or above in intelligence (Courier & Siebert, 1969; Perdine and Lester, 1972); good treatment prospects (Pacht, 1976). Other writers suggest that it is a myth that rapists share common characteristics. Pacht and Cowden (1974) suggest that the lack of uniformity among sexual offenders points to more similarities between rapists and the general population than differences.

One of the problems in research of this kind is the problem of reporting. The majority of rapes are unreported and the data is therefore limited to the relatively small numbers of suspects that are arrested, charged and convicted. The Battelle Study (1977) estimates that less than 3 percent of rape reports are disposed as rape convictions. The studies generally refer to a small group that is clearly not representative of the general class of rapists. In our own case the data problems inherent in carrying out any comprehensive research on rapists, apart from time and resources, was a principal reason that a decision was made against undertaking such a study.

Four months have passed  
I walk upstairs  
Pause a while and remember  
The footsteps of those rapists  
They walked these stairs.

It's over now and past  
A new found strength is in me  
I see the complete male  
I have a new sensitivity to them.

It's their arrogance, their sneer,  
their cold laughing eyes,  
their lack of love  
their fear of female  
All those qualities make up a rapist.

I feel I can recognise them  
I know when I am safe  
I feel secure again  
I know about Rape  
I know what men can do.

(Case 1)

PART SEVEN : FORMS OF SUPPORT FOR RAPE VICTIMS AND THEIR IMPRESSIONS OF THEM

Victims reported that they coped with the rape experience in a variety of ways depending on the kind of support and assistance afforded them. As a preliminary to discussion, the forms of support victims identified are set out in skeletal form below to give an overview. There is some overlapping of the categories since victims often sought and received help outside the main source identified. Some victims said they received no support or assistance of any kind.

Major Sources of Support:

(i) Families:

Rape victims 50; Rape events [54]

12 women identified this source as the main one.

Of these:

- 4 said the mother was the main support
- 2 said the father was the main support
- 3 said the whole family was highly supportive
- 2 said the additional support of their boyfriends was important
- 1 receive strong support from a policewoman (not the case indicated below)

Other relative

Husband

Friend's Family

Friends

- 2
- 1 (strong support also from Rape Crisis Centre, (R.C.C.))
- 2 (one with strong support from R.C.C. & boyfriend)
- 6 (2 with strong support from R.C.C.)

(ii) Sole Source

Flatmates	1
Gang	1
Policewoman	1
Family Planning	2
Social Worker	1
HELP	1
R.C.C.	1
Hospital Staff	1
Psychologist	1
Battered Women's Support Group	2

(iii) Major Effective Source in Conjunction With Some Other

Boyfriends	4
Workmates	1
Another Victim	1
Rape Crisis Centre	16
Women's Refuge	1
Church Fellowship	2
Psychiatrist	1
Healer	1
Police	4
<u>Inappropriate Support</u>	2
<u>No Support</u>	10
<u>No Information</u>	1

2. Positive Perceptions of Family Support

The families of 12 victims provided support that the victims felt met their immediate and continuing needs. In the case of the majority of women in this group, few felt the need to contact outside agencies though many also had the support of friends. Only one of this group mentioned a major source of assistance outside the family group and boyfriend. This case involved a policewoman whose understanding and appreciation of the needs of the victim impressed her greatly. It provided a different but complementary source of psychological support since the victim could talk about some of the details of the case which were not easy to discuss with those close to her. She rated the support she received from her family as "great". At the time of the rape she said, "my father came up and gave me a big hug - that's all I wanted then". She felt she was fortunate in the quality of the support she continued to receive from both her family and friends. (Case 41)

Another victim said of her family:

I've got a terrific family - zany and wonderful. I don't think I would have bottled things up. If I hadn't had this kind of support I would probably have gone to the Rape Crisis Centre. I needed to talk about it after a while". (Case 42)

This victim also commented on the quality of the support she received at the police station. The total effect of family and police support was to reinforce her own belief that the rape wasn't her fault. Although she mentioned a number of long term effects as a consequence of the rape - and some harrassment from threatening phone calls - she felt she was able to cope. She did not, however, have to go through the court process. In two other cases where very young women relied mainly on their families, police support supplemented this and enabled them to cope with the additional pressures of the court process. One said:

Mum was really good to me. Most of my relatives were too - also a lot of girls I didn't really get on well with before were good to me. They asked Mum if I needed anything. Detective \_\_\_ was very good and Sergeant \_\_\_ and the police were really good to me. (Case 44)

In some cases not all members of the family were equally supportive. Three women reported that they could not talk about the rape with their fathers. In one case the father reacted violently; in another her father and brother reacted angrily. She said:

I was able to talk with my family - not Dad but to Mum and my sisters. Mum told me to go to the Rape Crisis Centre ... She was sad I had to go through that. My brother and father were angry and that was not much use. (Case 12)

Another said:

I got support from my boyfriend ... and my family, especially my mother. I could talk with her but not with Dad. My mother came with me to court too. (Case 35)

In yet another case where the victim had previously enjoyed a warm and easy relationship with her father, she found she avoided any discussion in front of him in order not to cause him distress. Her mother responded positively to her need to talk about the rape experience. As a result, they also talked over a rape attempt on her mother some years earlier and an attack on a neighbour.

Two women found that their fathers were the main sources of support within their families. One of these women was the victim of marital rape; the other a 16 year old victim whose mother had left the home.

Boyfriends were mentioned as a significant additional source of family support by three women and by another woman who received assistance from the family of a friend. One woman said she was at first anxious and apprehensive about her boyfriend's reaction to the rape - "I thought he wouldn't want me after the rape but I had no reason to think this" (Case 34). She later married him. Another woman expressed similar feelings of anxiety:

When the police said --- was there at the Police Station, initially I didn't want to see him. But then I wanted - needed - to see what his reaction was. He was no different. He cuddled me and gave me support and encouragement. (Case 15)

Both women said a negative reaction would have shaken them badly.

### 3. Negative Perceptions of Family Response

A large number of victims looked outside their immediate families for support. In three cases this was a matter of necessity since the women were overseas when they were raped. Two victims were visiting New Zealand and one was raped in the United States. They would have confided in their families had they been able to do so. One young victim felt the absence of her own family keenly although she did receive help from her friend's family and from R.C.C. She said:

Much later I contacted Rape Crisis Centre and talking through it with them was very helpful. I think the victim needs a lot more support than she is given; and people around her need support too. I'm living with a friend and her family. It's not my mother. I haven't got the basic support of a mother here ... It's better to say something straight away than bottling it up ... I was

frightened of what might happen. I didn't tell anybody about it for several weeks, and then the longer I left it the less it seemed worthwhile ... Everything seemed a bit bigger as a problem because I didn't have my family around me. I only told the friend I'm living with after I started having nightmares and woke her up as we share the same room.

I felt guilty about it happening in a friend's house. (Case 40)

Another received understanding and support from workmates in the absence of support from a relative in New Zealand. She said:

The after-effects were bad, particularly in a strange country. I cried a lot. It has left its mark ... It made me want to go back home to \_\_\_\_\_. I would have felt more at home and got more support. I even felt ashamed and at one stage didn't want [the case] to go on. I tried to push it out of my mind. I found my workmates more understanding and helpful than my family, particularly my cousin ... She was not at all understanding ... She is a woman about the same age as me. I was at the police station until 4 a.m. I came home, had a fight with my boyfriend and woke up feeling depressed ... She saw that I was upset and didn't help. When she heard about it she said that anyone who goes out and gets herself drunk deserves it. (Case 39)

The third victim relied on the support of a friend while overseas and on her family and friends and R.C.C. after her return to New Zealand.

In other cases a variety of reasons were advanced for the decision to seek other forms of support. These included: a perceived lack of empathy; an inability to cope with the rape; blame; or a past negative reaction to a crisis situation. Fear, lack of communication and a wish to protect parents were other reasons.

#### (a) Blame or disbelief:

One victim felt that her mother blamed her for the rape. She said she was asked a lot of questions including why she didn't scream or resist. "My mother said I was foolish to go back to his place". The circumstances of the rape and her mother's reaction made this woman feel extremely guilty and ashamed. She said:

I was brought up to think that rape was [something that happened] when you were walking down the street and somebody jumped out at you. Now I know it's not true. (Case 24)

I didn't know what to do. I spoke to my mother - I rang her up. She blamed me. She knew I was involved with strip clubs and I think she suspected I was prostituting. I thought I could talk to my mother because she is my mother and she's a woman. I thought she might understand. Perhaps it's because she's not my real mother. My father might have understood if I could have told him but he wasn't there - and it's no good by phone. (Case 6)

The family of another woman - a widow - resented her reporting the rape. She relied on the support of a relative by marriage in another city. In several other cases, past experience of blame or a perceived lack of sympathy led victims to ignore family members.

A woman who had earlier been raped at the age of 12 by a relative felt she had been blamed for the occurrence and received virtually no support or assistance. She described this experience thus:

I got hysterical and started to cry. My cousin got a neighbour to come in and try and calm me down. Mother came back from her party briefly to try and settle me ... The cousin spoke to her and she said something to me about 'wet dreams'. The next morning I was violently sick. I got a lecture from my mother about 'If I wasn't there in the first place it wouldn't have happened'. She did not totally believe me but kept the two families apart so I didn't see my cousin again. I had had totally inadequate sexual information from my mother and really did not know what sexual intercourse actually involved. (Case 5)

When she said she was later raped by her husband she turned to sources of support outside her family.

(b) Lack of Rapport, Communication; and Fear of Parents

One victim who described the kind of support she received after the rape and during the court process, said:

I received support from my girlfriend's Mum. My parents kept right out of it. I was never close to my Mum and wouldn't have gone to her for help. (Case 20)

The following is a case of a woman who was raped 16 years ago at the age of 17.

I didn't tell anybody. I felt neither my mother nor father would understand. I had no true friends at the time. If I could have told somebody I wouldn't have had the problems I have had.

She explained her feelings of guilt in this way:

It was assumed then that [a] girl had allowed herself to get into that sort of situation and she shouldn't have. A girl mustn't allow herself to get into compromising situations. Ultimately it's all up to the girl. And 16 years ago, if a girl became pregnant (although I didn't) it was her fault anyway. (Case 33)

Another woman was raped on two consecutive days at the age of 13. She did not go to the police because that would involve her parents. She said she was also scared of the police.

I didn't talk about it or talk through it because I didn't really understand and I was scared.

I was brought up in a Christian evangelical family ... I was not good at relationships and there was little or no communication at home. My upbringing was oppressive. I didn't know anything about sex and had not been told. I had been given a book about hamsters as a guideline towards the subject. To meet a nice guy and marry and have children was the kind of ambition that was passed on to me and to [girls of my age] ... In the circumstances I couldn't talk about rape ... I didn't really understand its significance myself ... I didn't have anyone [to tell] who knew how to deal with it. The biggest thing at the time was that I was frightened of my parents and concerned about my friends. (Case 25)

Another victim said she had been sexually abused by her father between the ages of 8-15. She had told nobody about this until she was 14 because she said her father had told her 'don't tell or I'll kill you' and she lived in a constant state of fear. She said she had been unable to tell her mother about the incest or to talk about sexual matters with her. Her mother had given her no sexual education at all.

At the age of 14 she had run away from home several times and come in contact with the police. On one of these occasions she said she had told the police about her father's behaviour but said they had not believed her. She finally left home at the age of 16 to get away from her father. She said she later learnt from a younger sister that her father had sexual intercourse with her, although much less often. Some years later, when her mother learned of this, she went to the police but mother-daughter contact was not maintained. This victim was later raped by six members of a shearing gang. (Case 14)

In some of these cases there appears to be an intimate link between guilt and self blame and an upbringing that stressed standards of appropriate behaviour in women that victims felt to be oppressive and unreal. Many women expressed bitterness about the responsibility placed upon them as girls and women.

The responsibility is always on the woman whether she is abused sexually, emotionally or physically. It's always on the woman to fix it, not the man ... (Case 5)

Another woman, who had been sexually assaulted by her guardian at the age of 15, and was later the victim of an attempted rape spoke of the difficulties women had in coping with sexual ignorance and unwanted 'male advances'. She said:

Young girls have got to be taught not to trust men or at least 99 percent of men ... You say 'No, no, no' all the time but [it isn't enough]. Women have got to be stronger and less vulnerable ... Little boys need to be taught that it's O.K. to be gentle, it's O.K. to have feelings. (Case 40)

Some felt that they were continuing to be blamed during the court process.

(c) Victim Choice: Security Versus Control

Some victims could not actually bring themselves to talk about the rape, nor express to parents and relatives the revulsion, sense of violation and vulnerability they felt. Some rebuffed the desire of their families to give support. Not all explained the reasons for this.

I didn't want my family at the interview. My brother rang my father and he came to the flat. I didn't want to see him then or at the interview or afterwards. I felt so dirty and ashamed and worried about what the family would think. My mother came and they let her in but I told her to go.

I still feel bad. My mother wanted to help. Two months after the rape she tried to find me a flat. I told her to leave me alone. She wants to help but I feel she's taking control. I can't talk to them but I can talk to my older sister. (Case 3)

This woman's father went to the R.C.C. to see how he could best help and support his daughter. He was not able to obtain written material at the time but, as a consequence of his request and the R.C.C.'s own realisation of the importance of supporting family members, the situation has been rectified.

The mention above of the fear of losing control is echoed by other victims especially in the court situations. Victims expressed their difficulties in coping with feelings of vulnerability and their need both for security and control over their lives. In some circumstances one or other of these needs - or a mixture of them - influenced their choice of a supportive network. In other cases it led to a rejection of available support and a search for alternative assistance.

In an unreported case concerning a young pregnant woman who was raped by two strangers and who lost her baby as a result, the desire to protect her family and also to remain independent of them led her to seek support elsewhere.

B\_\_\_ was very understanding but I couldn't have him touch me ... I wouldn't go out of the house for a long time and shifted back to my mother's place. I couldn't talk to her - it was too fresh in my mind - though me and my mother are very close. My mother took me to Dr\_\_\_. He couldn't understand what had happened and put me on medication for nervousness. I stayed with Mum for about six months and then got a flat and a job. She knew there was something wrong but I got sick of my mother and the doctor asking questions.

I was sorry for the way I treated B\_\_\_. I should have opened up more but I couldn't. I was very close to my grandfather (the one who had given me advice about how to deal with situations like rape) but I couldn't tell him either ... The first person I told was my foster-sister who had been beaten up. I needed understanding but I didn't want to hurt my family and I think they would have smothered me. I turned to strangers to get support and companionship ... I got mixed up with gangs ... and felt secure. They didn't know about me.

Two girls stayed in the flat and I got into lesbian relationships. I wasn't pressured by the gang to have sexual relationships ... [and they] accepted my lesbian relationships - that's what I liked about them ... I got pretty good with the knife and could hold my own.

It would have helped to see those guys inside but justice isn't fair. Courts don't understand. Words and feelings are not understood in court. It doesn't matter who you talk to you always remember it. Learning how to defend yourself helps. I feel confident now about confronting men. (Case 13)

#### (d) Desire to Protect Parents/Family

Protecting one or other parent from hurt by not telling about the rape was also a choice made by some victims. In one such example a victim felt she could not tell her parents because 'my mother would be very upset if she knew about the rape'. (Case 2). She received support from her husband, sister and the R.C.C. As a consequence, however, she felt that her husband bore an undue share of the burden of her frustration and anger about the rape experience and its aftermath when the trial resulted in an acquittal.

Accepting responsibility for protecting a family unit was a choice made by another victim who had been assaulted by her guardian. She explained why she had never talked to anybody about this:

I felt that I was holding the family together and that it would break up the marriage if I reported it. I was weak and insecure at the time and not able to mention it. We lived in a small town at the time - everybody would know about it and this family would [have been] broken up. (Case 40)

In two other cases involving marital rape, victims did not wish to involve their families. In one case the woman had eloped with the man against the wishes of her family; in the other, the victim's mother had gone through the trauma of a broken marriage and she lived in another city.

#### (e) Other Pressures

The parents of some victims tried to persuade their daughters not to go through the court process and could not themselves cope with this. In one case this reaction caused the victim to seek support largely outside her family and friends.

My mother didn't really want me to go through court. I went to a psychiatrist ... I had most help from a female police officer and we have become friends. My friends didn't know how to help me. (Case 12)

In another case where the mother could not bring herself to attend the court, she was otherwise supportive. In a third instance, the mother of a victim supported her in court where her father could not.

#### 4. Friends

In a number of cases friends supplemented basic family support. In other cases they provided a main and continuing source of support. One victim in the latter position said:

Everything I wanted to or needed to say I could say to --- or my [other] friend. S--- is like me. She wasn't over sympathetic but seemed to know what I needed. These two friends did all the right things and helped me. (Case 32)

Some victims said they were initially hesitant about talking to friends because of the fear they would be blamed. Several commented, however, that in discussing the rape they found that friends had had similar experiences that they had not spoken about so that talking about these was a mutually supportive experience. One woman said:

Old friends - women friends and a teacher - were really good. Other women have said they have had similar experiences, often stowed away. Some of them I have talked to have been raped when young and haven't talked about it and still have nightmares. I feel as if I'm better off having talked about it. I haven't got over it but feel better. My only worry about talking about the rape was the fear that I would be blamed. (Case 9)

The need of many victims to talk about the rape experience was common. One said:

I'm really aware of rape now and I often mention it to see if other women feel like I do. (Case 32)

There was, however, often a mixed reaction to this need. One woman said:

I talked about the rape with my friends. Some were very good, some not. I know a couple of people who felt I was the kind of girl who asked for it. (Case 42)

I talk and talk about rape and these consequences [guilt, loss of confidence etc] and this has got it out. A psychologist friend of mine got angry. He said I was becoming bigotted. (Case 7)

B\_\_\_ is really screwed up when I talk about the rape. He gets really angry. He thinks you are getting at him. He called me names and used the rape against me. He resented me dealing with it by going to the Rape Crisis Centre. (Case 9)

In other cases victims discovered that their friends reacted negatively, were embarrassed or avoided them. One victim said that a friend had lacked sympathy and understanding until she was frightened by a prowler:

One of my friends expressed negative feelings about my experience but she rang me when she had a prowler outside her house before she rang the police. She has a different view now. (Case 3)

Other victims said:

Some old family friends said I was inviting it - that rape was a reality of life that you can't take chances with. (Case 7)

Nobody knew exactly how to treat you or what to do. They felt awkward. I was fearful of what people would say. (Case 27)

Some of my friends find it difficult to accept me now. (Case 12)

Women whose boyfriends reacted negatively to their rape experience said this was hard to bear. One woman who was a visitor to New Zealand and who lacked family support described her boyfriend's response:

The police told my boyfriend and his reactions were not nice ... [the rape] plays on his mind. He brings it up every now and again and insinuates that I encouraged them. (Case 39)

Another victim, whose boyfriend was present at the time she was raped said:

At the rape, I think \_\_\_ was frightened and he didn't know what to do ... I think the reason why he didn't put a stop to it before was because he was jealous. He blamed me and was aggressive towards me. He took the attitude that I was asking for it and it was my fault what was happening ... When they raped me he didn't ring the police. (Case 9)

##### 5. Workmates and Acquaintances

In one case where the victim's home was overseas, the people with whom she worked were a source of support and comfort in the absence of her family. They also directed her to HELP. Despite this, she said she felt so insecure after the rape that 'I even wonder how what my workmates are thinking'. (Case 39)

In another case a victim said of her situation:

Nobody knows how it feels. People around me at work or elsewhere often went quiet - they didn't know what to do or say to me. Others were insensitive or critical. One guy said 'I heard you got into his car'. I had a good bawl last night because it's still there ... Someone else said to me 'You silly bitch why did you do it!'. (Case 32)

##### 6. Inappropriate Responses

It has been pointed out that there is considerable overlap in victim response to various forms of support. Decisions were sometimes made on the basis of the victim's own needs and/or her perception of family reaction. While some women were not criticised or blamed they felt that family responses were inappropriate. Their difficulties were compounded by what they saw as the inadequacies of alternative or complementary sources of support. Two victims said this was the situation in their cases. Another victim had unexpected difficulty with a medical agency.

A young married woman with a 10 month old child was raped in her own home. The rape was reported by her husband. She was in a highly distressed state. She found the police supportive and understanding at the time of the rape and cited a particularly sensitive police response when, at the police station, she and her husband broke down and cried. Her parents were embarrassed but the policeman present explained that the process was 'like mourning' and involved both shock and great distress. However, details of the rape were given to the press and T.V. Identification of the house and the knowledge that other people knew increased her distress and fear and lowered her confidence in police support. She felt also that her parents lacked understanding of what was happening to her; that they misread her outward ability to cope with her child and her need for activity as signs that the rape had had little effect upon her. She felt she did not want to stay with them but was continually fearful when her husband had to work at nights. His inability at the time to obtain day work was a source of friction between them. There was no place she could go for respite or protection. Her husband acknowledged his own difficulty in dealing with emotional and financial pressures and his inability to provide adequate support for her. Police personnel changed and she found difficulty in establishing satisfactory contact with the police. She rang the Rape Crisis Centre but felt she obtained the wrong kind of advice for her situation. Mention of the possibility of the rapist returning increased her fears. She went to a psychologist who dealt with her basic fears but the sexual problems arising from the rape remained largely unresolved - partly, she acknowledged, because she found difficulty in discussing what the problems were. There were financial stresses which were exacerbated by her fears and her need for increased security. A change of house at increased rental and counselling expenses added to these. No-one suggested any avenues of financial assistance - she said she was tempted to commit suicide.

She was later hospitalised for an infection associated with the rape and recounted an experience in hospital when a medical consultant doing the rounds with his students, stopped at her bedside and announced loudly: "In this case of rape, the woman should have been given the morning after pill". She felt angered by this lack of sensitivity. She commented "It is people's handling of knowledge that gets me".

She said the unavailability of effective help and support was her main problem. She said "You really need someone who can talk sense to you at the beginning" and spoke of her difficulty in coping, not only with her life and feelings, but with practical problems:

At the time of the rape, I would have appreciated some help to clean the walls after fingerprinting powder messed them up. It was everywhere. Everthing upsets you at the time.

She added:

A woman really needs help to get her life back together. The police are not trained to be social workers to that extent and they are not rehabilitative agents ... It is a cop-out to turn it all onto the police or blame them. Everybody should be involved.

I think a readily available contact is necessary at police stations. There is a need also for a social worker as an intermediary whose prime job is to help the victim. If this had been available our baby would probably not be so affected. What if I had had older children who kept crying all the time? How do you tell them? Social Welfare can get people to help with sick people and care for children. This assistance should be available to rape victims. Even if people can mind children for the afternoon it would help. There may also be a need for women to have somewhere to go at night with the kids - or by themselves if they have no children - like a Halfway House or a safe home for battered women.

There is a need for help for husbands, boyfriends and parents of rape victims. They need to be helped and they need to know how to give help and to understand what is happening. The community needs to become involved with the problem of rape and preventative aspects. (Case 30)

The other case concerned a victim who was raped by a stranger when walking home from a late night job. She said she could not cope with family or relatives at the time of the police interview. She appreciated the business-like and factual approach of the police because she did not want to discuss her feelings about the rape. She acknowledged that she might be unusual in this respect. She did, however, resent the disbelief she sensed from the police response to her account of the rape. She and her mother had some contact with the Rape Crisis Centre at the suggestion of the police but felt the contact and approach was unhelpful. (She was one of three women to be dissatisfied in this respect).

I was getting support that was not needed. My family was good but they didn't understand. For example, when I got home from the police station after the rape and went to sleep, I woke to hear my mother talking telling the neighbours about it and asking why they hadn't come out to help. I liked to talk about it when I was ready but Mum kept bringing it up.

Her father left her alone but she talked to her brother. She also tried to talk to friends:

... but they didn't want to know. Either they got quite upset and I felt awful or they were embarrassed. I think there was a general lack of support. I was angry - not so much with the rapist - but with everybody because there was such a lack of understanding.

I marched into social security and said that I should be reimbursed. I was on holiday and was told I wasn't entitled to any help. I didn't know I had any entitlement to A.C.C. ... I felt I needed a break from the whole thing and went to --- to see my boyfriend. This didn't help. (Case 29)

In one other case, a woman who had been gang raped by eight men did not report the attack but went to a V.D. Clinic for a disease check. She found this experience deeply upsetting.

I went to the V.D. Clinic about two days after the rape. It was a horrible experience. I had to deal with an unbelieving woman. She didn't believe my story about rape and she wouldn't help me. When I asked for urgency she told me that males had to be examined first. I got hysterical. I was told by this woman that I had to have two examinations but this was not so. When I was eventually checked, the woman asked me for an apology. (Case 1)

Some of the women who had been raped by their husbands made similar comments about the absence of available and effective forms of support outside family networks and assistance of last resort such as women's refuges.

## 7. Other Sources of Support

Other women who were unable to talk to their families or friends sought help from a variety of services or people. The two women who received what they considered was inadequate or inappropriate assistance were coping at the time of the interview as best they could. One, however, said she had recently heard of HELP and was intending to call.

### (a) Rape Crisis Centre

Of those victims who knew about the Rape Crisis Centre, 12 were told of it and advised to make contact. Four were told by doctors, six by police, one by the victim's mother and another by a flatmate. Some victims who eventually did ring or contact rape crisis centres said they couldn't remember how they came to know of the service. It is possible, by reference to their other contacts, that a greater number of referrals were made - by police for example - than is indicated. Two women given the R.C.C. number by a policeman and a doctor were also encouraged by their mothers to make appointments.

Of the 12 women told about R.C.C.'s, six did not make contact because they felt they had sufficient support or because they didn't want to talk about the rape with strangers. Several of these women appeared reluctant to discuss the rape further with any more strangers following the court case. One victim, who had complained about having to give evidence in public said she "just wanted to forget about it".

Examples of the reasons given for not following up the contacts given them were:

A detective gave me the Rape Crisis Centre number but I didn't contact them. I couldn't talk to anybody about it like that - not a stranger. (Case 20 no family support)

The police suggested the Rape Crisis Centre but I chose not to contact them. I didn't want to talk to strangers at the time either and I had family support. (Case 26)

I thought about the Rape Crisis Centre but I didn't want to talk about it with anyone else and not on the telephone. Detective \_\_\_ suggested the Rape Crisis Centre. He said that was what they were there for and Mum wanted me to to and see them. (Case 44)

My own doctor gave me the Rape Crisis Centre number but I didn't feel the need to involve anyone at that stage. (Case 34 supportive family)

When I went to the hospital the doctor told me about the Rape Crisis Centre. I didn't make contact - I didn't like talking about it. (Case 17 support from friend)

Three others decided not to maintain the contact and they explained why. One woman 'didn't like the voice of the person who answered' and decided she didn't want to talk to a stranger. Another, who admitted she was almost paralysed by her own fears, said the counsellor told her in the course of a conversation about security, that in a percentage of cases rapists returned to the homes of their victims. This information upset her further and she decided not to continue discussion of her case. The third woman did not like the tone and content of the information left for her by a R.C.C. worker. She felt that issues other than those designed to bolster her own ability to cope with the rape experience were unhelpful and stressful. The latter two women were those who felt that help offered or available to them was inappropriate to their needs. Three other women did make the contact suggested by a doctor, mother and flatmate.

Eleven other women contacted the R.C.C. either on their initiative or through unremembered sources. All these women spoke highly of the support they received. Two said they could not have coped, especially with the court process and its aftermath, without the support given by R.C.C. workers. One said:

It took me a few days to contact the Rape Crisis Centre. I was just a neurotic mess with nightmares [and] flashbacks. I received considerable support and counselling help from the Rape Crisis Centre ... I also had support and advice from them during the trial. (Case 2)

Some women who said they were struggling with feelings of self-blame, guilt or anger were able to put the rape into a non-personal perspective which they said helped them to get on with a healing process.

The support given by the Rape Crisis Centre was good. The fact that you're talking to other women who have been through the same thing helps. It has helped me to sort out my feelings and look at rape in a social context. At first I didn't want to go to the Rape Crisis Centre ... because with strangers in a strange place you feel vulnerable ... but I knew it would be good for me ...

Things generally are better now. I'm lucky that I did have some good people to talk to but thinking about it is hard because you start feeling and re-experiencing it. Little things trigger it off. (Case 9)

Another woman who spoke about feeling 'very guilty' said:

The Rape Crisis Centre in [the USA] was very good. The woman on the phone was very supportive. I went to the Centre and was put on to a ... counsellor. (Case 7)

Many women said they found it very difficult to talk about the rape for a variety of reasons. One victim who eventually contacted the Rape Crisis Centre explained her feelings:

At that stage [immediately afterwards] I didn't want anybody else to know. I didn't want my brothers and sisters to know. My brother found out through the newspapers ... Why didn't I want people to know? I can't tell you why. If I'd been mugged I'd be prepared to tell people. It took me a good five to six months before telling people about it but now it's easier.

About five months after the rape I contacted the Rape Crisis Centre. The main thing that was bothering me was why I wasn't able to talk to people about it. The Rape Crisis Centre did help and put my mind at ease. It was useful talking to them. (Case 41)

Another victim who was first referred to a medical centre said:

There was a male therapist there so that's why I looked up the Rape Crisis Centre in \_\_\_\_\_. The girl there was very good. (Case 11)

A number of victims joined Rape Crisis Centres as a result of the positive assistance received. One such victim said:

I want to help there. I'm going out to schools with them. I think change will come and my family don't believe myths any more. (Case 3)

In Wellington a number of victims with whom this study had been discussed by counsellors agreed to participate. We record here our thanks to these women and to the R.C.C.

It is, we think, worth recording here some observations about the support women were able to give one another. Two of the most striking features of the interviews were, firstly the willingness of the victims to share their experiences in order to help others and secondly the support victims said they received from other women - especially in the longer term. A number of older, mature and articulate victims, commenting on their own problems in coming to terms with the rape experience, said they would not like such a thing to happen to other women, particularly very young women and girls.

I wouldn't like this to happen to my daughters or to other young women. (Case 39)

I really don't know how young girls recover. (Case 30)

These women, and others, spoke of their need to talk over the rape experience - some admitted that they did this almost compulsively - and many mentioned the

therapeutic benefits for themselves and for the women they talked to since it often brought to light the suppressed experience of their confidants. One woman said:

I have been able to resolve some of my problems by association with other women. It is important and necessary for women to share their feelings. (Case 50)

Many women said that they had not previously given much thought to rape but had subsequently become very conscious of it as a problem. Consequently many women had become involved in supportive or preventative activities by talking to other women, joining Rape Crisis Centres and Women's Refuges and by involvement in the organisation of and discussion at public meetings. One woman said:

There has to be more women involved ... In meetings like we had in our area the community also got together - both men and women. It is good that women have got involved out of a sense of outrage and frustration. We've recommended more buses and street lights but this doesn't get to the heart of the problem or change attitudes. (Case 7)

Women - as friends, relatives, workmates, as counsellors and Rape Crisis Centre and Refuge workers - were therefore a major source of assistance and healing.

(b) HELP

Two women mentioned HELP. One said that this was her main source of support. She was impressed by the comprehensiveness of the assistance and the supportiveness of the counsellor. She said:

I found [her] nice - in fact wonderful. She has given me a lot of help. (Case 39)

(c) Family Planning Clinic

In two cases the Family Planning Clinic was the major source of assistance. In some other cases also victims were referred to or consulted the service because of infection or other problems arising from the rape experience. One victim commented:

For the first six weeks I didn't speak to anybody about [the rape]. When I went to the Family Planning Clinic was the first time ... I went [there] because of something I saw in the Woman's Weekly. I didn't want to go to a male doctor. I can't speak highly enough of the Family Planning and Parkview Clinic ... It's the first time I've had contact with women who are so supportive of other women. (Case 16)

There were no cases in which doctors were reported as a major source of support. In a number of cases, however, women were given information about R.C.C. (4) and women's refuges (2) by doctors.

(d) Police

It is apparent that the police assistance provided was very effective where it coincided with other forms of satisfactory assistance. As mentioned, some victims were able to cope better with the non-personal aspects of rape, including the court procedure when they understood what was to happen to them and they were shown the court. Police support was even more effective in those cases where personal rapport was built up over this period. One young victim said:

I was able to cope because of my family and because the police were so good. They were kind and supportive; Detective \_\_\_ especially. When he was posted to \_\_\_, he came round to say goodbye ...

In one case a policewoman provided the major source of support to a victim; in another a policewoman was an effective source of additional assistance and confidence. Where police liaison with victims was patchy or ineffective victims felt less able to cope with the official aspects of the attack and this sometimes coloured an initial positive or negative introduction to police personnel and procedures. While the lack of a determined community response possibly placed an unfair burden on the police - as one victim already quoted pointed out - many women felt more adequate assistance was needed; especially since family members or friends, rape crisis centre workers or other counsellors are not permitted to be present at interviews. The burden of personal support at this time, during the subsequent briefing, and attendance at court rests with police officers. The views of many victims showed that they are extremely sensitive to the quality of this support.

8. Some Victim Responses to Support Systems

There was a group of women, including three young Maori women who, when asked if they had contacted the Rape Crisis Centre or other support service, indicated that they were not aware of these avenues of assistance or had not thought of them at the time or didn't want to use any service. The exception was a woman who had heard of Youthline. They indicated that they were loathe to confide in strangers (and in some cases family) partly because of the way they felt about the rape experience and partly because of the way they believed strangers would react to their lifestyles. One was a prostitute whose mother had not offered support; another felt her gang connections would invite disapproval.

[I didn't go to anyone] after I'd rung my mother. It didn't occur to me to go to the Rape Crisis Centre or anywhere else at the time. I knew there was a Youth Centre or Youthline or something like that but I didn't think of that and I wouldn't want to go there.

Girls in my situation need a place to go where they feel safe and they can talk to someone who has the same background. I wouldn't want to go to these other places - [these] people wouldn't know what it feels like. I'd be ashamed - not about the rape, but about myself and my life. That's why girls like me need someone who understands them. (Case 6)

I don't think I would have gone to a Rape Crisis Centre or anywhere else. I might have if I wasn't at that place [her flat] and involved with gangs. Maybe if I was straight. (Case 8)

Neither of these women felt the police could or would help them. One feared that she might get 'done' for a work offence when the stranger who picked her up after the rape contacted the police.

One of the Samoan victims, a widow with young children, who was at odds with her family, found some difficulty in coping. She received some assistance from her church in addition to the support of a relative. She said she did not know of any of the services available.

While Maori women experienced a variety of difficulties both within their own families and communities and with respect to European agencies, their preconceptions about the backgrounds of supportive agency workers was shared by some European women. These women also seemed to have difficulty envisaging an accepting and non-judgmental reception yet not all of them appeared to be aware of alternative sources of help. A few voiced their diffidence about confiding in strangers in either a face to face situation or by telephone. Some said they just didn't want to talk about the rape at the time and wanted as few people to know as possible. It is possible that unemployment and the attendant difficulties in obtaining assistance, together with the lack of sympathy they said they experienced when reporting the rape, may have contributed to the reservations of at least some of the victims about the quality of other support available or to dismiss these alternatives.

Some women therefore appear to have special needs which are not being met. Economic, social and cultural factors pose problems additional to the difficulties of access and assistance experienced by all victims whose confidence is demonstrably shaken after rape. The criticisms and suggestions made by many of these victims also revealed that they believed rape and violence are crimes against which society and its agencies are insufficiently mobilised in terms of prevention and victim support. This situation is compounded by financial constraints which prevent victim services from delivering a more comprehensive range of support and from advertising more widely in the community.

For some victims of marital rape, knowing where to seek help was a difficulty. In two cases where doctors advised them to contact refuges, there was difficulty in being able to take advantage of the assistance offered. In three cases, however, women eventually sought and received positive assistance; two from the Battered Women's Support Group and another from both a women's refuge and rape crisis centre. This last victim said:

There is a gap in support services as far as I am concerned. I didn't know until a month ago that a Rape Crisis Centre existed ... You need to talk to people who have experienced similar things to get in touch with how you feel. (Case 43)

#### 9. Victims who lacked support

Ten women said they lacked any support at all in either a previous sexual assault or a once-only rape incident. For a variety of reasons, some of which have already been mentioned under other headings, they felt they could not tell anybody or seek help. Child victims (2) said they met disbelief or feared blame and disbelief. Other women feared family reactions or accepted responsibility for what had happened to them because of the notions they said they had absorbed about appropriate female behaviour. One woman did not tell anyone about the rape for 16 years. Others kept the incident to themselves for varying amounts of time. Some of these women said:

I did not have many friends really and the response was not good when I talked about it. [Later] I started a support group with other women in the same situation. (Case 49)

I didn't tell anybody about it for 15 years. (Case 33)

I was unable to tell anyone until years later. (Case 14)

I couldn't talk to anybody about it, especially family and friends. (Case 10)

Some said they coped by attempting to block out the experience. All spoke of the unresolved problems resulting from the rape. One woman said she was still coping with these 15 years later. A woman who was raped by six men said:

I probably coped with the emotional effects of the rape better than most teenagers because of the long history of sexual abuse by my father ... I coped by blocking off. I denied that it ever happened. (Case 14)

That this blocking off protective mechanism is only temporarily effective was admitted by victims who denied or suppressed the experience. They recounted the emergence of a complexity of problems and the persistence of long term effects including continuing fears, lack of self-esteem, confidence and trust and, for some, an inability to form any meaningful relationship with a man.

There were other victims who did tell someone but as a consequence of either an adverse reaction or lack of sympathy felt unable to risk a further rebuff. This group included two women whose mothers had not been supportive. Neither sought any more effective form of assistance although one of them said: "I need help but I've got to do it myself ... I feel as if I've let down so many people". (Case 24)

This group would effectively be larger if those victims were included who obtained peripheral, inappropriate or inadequate support. A number of victims admitted that they had been helped only marginally and though it was often a relief to tell someone of their experience, many were conscious that their basic problems had not been resolved. Again, some admitted their need for professional help but said had not obtained this.

#### 10. Summary and discussion

The quality of response by family members and significant other people appeared to have an important bearing on the ability of victims to cope with the rape experience. Positive responses from people close to rape victims also enabled them to take advantage of other assistance available. Where family support was lacking or where negative responses were apparent, victims were forced to look elsewhere for help or to keep the experience to themselves.

(a) Positive Responses

The initial preference of most victims was for personal support, first from families or, failing this from friends or other personal contacts. Many victims who did not approach their families gave specific reasons and few went to supporting agencies as a first choice.

In discussing the kind of positive responses they received from family members, victims mentioned directly or by inference, the following qualities: acceptance of them, of the fact of the rape and their feelings about it; acceptance and appreciation of their need at times to talk or not talk, to withdraw, to cry, to express anger; warmth, encouragement to consult others; willingness to support them in court; the support of both parents. The same attitudes were appreciated in their friends.

In addition many women indicated a need to understand and explore why rape had happened to them and why it happens generally; and at some stage to discuss and seek assurances about their own attitudes and behaviour. Many victims preferred especially to talk to a person who had experienced rape. One said:

You need to talk to people who have experienced similar things to get in touch with how you feel. (Case 43)

Thus most of the women who contacted rape crisis centres or refuges obtained the support they felt they needed. Indeed, women in general, as parents, friends or counsellors, formed the largest group from which victims received positive support.

(b) Negative Responses

The negative aspects of family responses identified were: lack of communication or inability to discuss the fact of rape and the victim's feelings; inability to discuss intimate or sexual matters; disbelief, blame, recrimination, criticism of the victim's behaviour and responsibility as a woman; overprotectiveness or taking control, lack of protection, unwillingness to support them in court. These responses also applied to friends.

There was also a large group of victims who said they couldn't or didn't want to talk about the rape. This group included women who could find no appropriate support at the time but found some outlet later - in some cases after many years. Their reasons included: perceptions of negative family attitudes and previous experience of rebuffs or lack of support; negative experiences resulting from the reporting and court process and publicity with and respect to support agencies, a consequent reluctance to talk to any more strangers; personal inhibitions resulting from upbringing, sexual ignorance or lifestyle; the lack of any appropriate person; a wish for privacy and an unreadiness to confront or accept the rape; acceptance of responsibility for the rape because of guilt or self-blame; to avoid upsetting family members; fear of blame; ignorance of appropriate alternatives to personal support or rejection of those available.

(c) Special Groups

There were two groups (apart from women raped by their husbands) who seemed to have special difficulties over and above those experienced by all victims.

The first group comprised seven Polynesian victims (five Maori and two Pacific Islands Polynesian). In all but one case the rapes were reported. Two resulted in convictions, two in acquittals and in two no arrests were made. In the two cases which resulted in convictions the women received support from their families and from the police. The rest of the women received marginal or no personal support and in two cases language difficulties increased their sense of isolation.

In addition, some of the Maori women, especially those with gang connections who were raped by Maori men appeared to face difficulty in asserting their perception of a rape situation among some members of their personal networks as well as with the police. It would also appear that their attitude about what constitutes rape also differs from the perception of some of their attackers. Consequently, they faced problems in obtaining personal support that assisted them to affirm their own perceptions and to deal with their feelings about rape. They also believed that their life styles, associations and activities precluded sympathetic treatment by the police and by predominantly European support groups. They therefore expressed a general reluctance to resort to such groups and suggested that other forms of support were needed by people in their situation.

We do not know enough about male-female attitudes to rape within the community either generally or with regard to ethnic group perceptions. It is a subject which obviously warrants further exploration.

The other group of women comprised those who were raped when young or as children. Some of these women were, in retrospect, critical of the disbelief they met or feared they would meet if they told about the attacks on them. They were also critical of their lack of sexual knowledge and the kind of upbringing that precluded, as one put it, "the development of a sense of their own integrity in personal and sexual terms" as well as in terms of their abilities. They were critical of the responsibilities they felt were thrust upon them for behaviour about which they were ignorant or which resulted from threats of violence or other duress. None of these victims was able to obtain support or protection. As a result of their experiences, these women placed special importance on education for change, including sexual education and the way children are socialised.

(d) Resolution of the Rape Experience

In addition to the need to seek out some person or persons (the 'generalised someone' mentioned in Williams and Holmes, 1981) there also appeared to be an equal need on the part of some victims to achieve some resolution of particular aspects of the rape experience in a way that made sense to them.\* In the case of those who reported rape, it was usually the apprehension and conviction of their attackers. In the case of those who did not report rape it appeared to be settling worries about their own behaviour, a need to understand why rape occurs or acceptance of therapeutic strategies. There was a range of coping measures some victims adopted to assist resolution of their feelings and problems.

\* See Williams and Holmes, 1981 for a discussion of this concept and the medical model of rape as crisis.

Victim comments, however, reveal that some of them experienced difficulties in overcoming problems connected with the way their experiences were dealt with. Some victims isolated such factors as the inappropriateness or inadequacy of the support offered them in the official context. These victims were critical of what they perceived to be a general lack of understanding of the pressures on victims and the demands of the reporting and court process. Other victims saw the court process itself as prolonging the period of initial distress and interrupting the healing process. One victim said:

I have finally heard from the Court of Appeal that a retrial will not occur ... So nearly a year later [this part] is all over. (Case 46)

Others felt that going through the court process wasn't worth the cost to themselves resulting from the treatment they received or in terms of the treatment they received or in terms of the treatment handed down. Some women whose cases ended in an acquittal were unwilling to accept what they believed to be major injustices which also resulted in an escalation of their negative feelings about the rape and themselves. One woman said:

It's unresolved because he isn't being punished. (Case 2)

Some victims (not all of whose cases resulted in acquittals) turned away from opportunities to obtain counselling, partly because they could not see a resolution to the cynicism they felt about the way rape is dealt with and partly because they could not tolerate the intervention of any more strangers in their lives. Some women who had refused to accept blame and guilt for the rape incident felt that these were forced upon them by the processes of the judicial system. The strength of victim reaction in this respect suggests that it is possible that some women find it easier to accept and ultimately to cope with the capriciousness of an act of rape more easily than they can tolerate what they see as a more deliberate and calculated process of victimisation following rape. There are, therefore, difficulties in assisting some women to find acceptable and alternative ways of resolving their feelings of continuing anger and distress when their perception of what is appropriate and just differs substantially from the generally accepted legal process.

Another negative factor distinguished by many victims as militating against the support and recording process concerned general attitudes to rape and the victims of rape among their personal and acquaintance networks. The majority of victims were consistently aware and highly sensitive to the importance and power of attitudes expressed by others to their self-esteem following the rape. As has been shown some victims often had great difficulty in seeking out people whose responses and attitudes were supportive. In discussing the responses they encountered victims spoke of a variety of attitudes, including blame and recrimination, notions about women's behaviour and responsibility for rape or in preventing rape, and reactions that ranged from awkwardness to ridicule.

It is because of these perceptions that so many victims placed such emphasis on the need for changes in attitudes to rape and the victims of rape as the primary requisite for dealing with the causes rather than the symptoms of rape and violence. While many victims believed that immediate changes, including some legal and other changes, would alleviate some negative aspects of the victims experience in the legal process and with regard to support services, they believed

that these were essentially stop gap measures and that a real commitment necessitated longer-term preventative measures aimed at changing more fundamental attitudes to women.

The magnitude of what is proposed by victims may well lead some observers to dismiss their judgments and suggestions as unattainable, naive or nebulous. However, many victims are, themselves, now involved in working for changes that influence community attitudes and outlook. As interviewers we have heard and seen a range of feelings and opinions expressed by victims about what it is like to be the victim of rape. To witness this, is to recognise their collective depth and intensity and in many cases it is also to be privy to a reservoir of unresolved pain and anger. For the majority of these women, it is of the utmost importance that their experience has meaning and relevance for other women and that real improvements are made that lessen the incidence of rape and violence.

#### Findings of other Studies

##### (a) Public Attitudes

Research studies overseas bear out the experiences of victims in our survey concerning the effects of positive supportive and negative non-supportive attitudes on recovery and support levels; and also on their feelings that societal attitudes and perceptions are of fundamental importance to the way rape, and consequently rape victims, are dealt with by formal processes and within personal networks.

Though research itself is beginning to illuminate the 'spiralling cost of rape' (Kilpatrick, Resick and Veronen, 1981), this knowledge has not noticeably affected the way rape is perceived in the community. Despite the well established need for prompt support following rape (Burgess & Holmstrom 1974), victims as members of particular communities must often exist in a fairly hostile social climate with which they must contend in the home, in work and leisure places and among many of the professionals upon whom they have to rely for assistance (Williams and Holmes 1981). The effectiveness of family and other potential support networks in particular is often diminished by their limited and distorted understanding of rape, its effect on the victim and the victim's needs.

Examples of two studies, one American, the other Australian, illustrate this point by showing how rape is perceived within the community and the consequences of the attitudes expressed about it, for the victim of rape in terms of sympathy and support.

In their research on social definitions of rape in the U.S.A., Klemack & Klemack (1976) explored the different attitudes to and definitions of rape that existed within the general population represented by their sample and within the legal system. These are based on the way deviance is defined and labelled on the one hand, and the way judgments are made about the appropriateness of male and female behaviour on the other. In most respects the researchers found that legal and social definitions did not coincide (see also Hubert Feild, 1977.). In this situation, there are difficulties for the rape victim in asserting her perception of rape.

In his 1978 study of unreported rape in Australia, Wilson found that despite some differences between age groups, social classes and males and females, fairly consistent views emerged concerning female behaviour and responsibility for rape. Rape was defined as deviant only when it met socially defined or cultural conceptions of what actually constitutes a crime (for example, when the offender

was a stranger, when the victim was raped in her house). With regard to sex roles and characteristics, he found polarised views on what constituted masculinity (toughness, strength, virility), femininity (weakness, passivity etc) and the sexual needs of men (high sex drive, low control) and women (sexually passive, high degree of control). As a result of widely shared attitudes to rape and sexuality, based on traditional sex roles, the perception of what actually constitutes rape is extremely limited.

Both sexes internalise the consequent prevailing but often contradictory myths surrounding rape. These include cultural propositions that rape is impossible, that women like to be raped, that men are unable to control their sexual desires, that women like to be treated with violence and that society takes rape seriously. It is the internalisation of such misconceptions which, Wilson argues, is one of the main reasons why victims do not report - or readily discuss - violations against them. Victims, he says, are aware that society will condemn them for being raped.

Although Wilson feels pessimistic about the outlook for change, there is however a growing amount of literature aimed at improving protection for the victim, changing attitudes by way of community education programmes as well as literature on legal and political reform (Koerper 1980 and Niyazi 1980, Williams and Holmes 1981). Other strategies include the use of films, television programmes, assistance for the programmes carried out by rape crisis centre and womens groups and health and community groups.

(b) Victim support

The benefit of positive family or personal support received by some of the victims in our study is confirmed by research such as that undertaken by Burgess and Holmstrom (1976). They noted that victims who received assistance from their family and social network cope and adapt more quickly and that this kind of support should be encouraged in counselling follow-up sessions with victims. They believe that recovery from a rape trauma is a social process and that it is most successfully handled when it is shared with others. Warner (1980) suggests that the family and friends of victims are often overlooked during initial crisis counselling and that they are often in need of assistance themselves. She points out that family structures are often stressed at a time when the victim is heavily dependent upon them. Her findings show that 50-80 percent of rape victims lose their husbands or boyfriends following a rape attack. Specific counselling procedures and skills are discussed in detail by Burgess and Holmstrom (1974) and the appropriateness of different approaches for different rape victims - older victims, child victims.

In our study there were victims who were sexually abused as children and other victims whose families, for a variety of reasons, were either incapable of providing the support they needed or condemned their behaviour. The social attitudes prevalent in the community and described in Wilson's study have much to do with family response. These and other factors, including stresses within the family often affect its ability to socialise, nurture, protect and support children adequately.

There is now a large body of literature relating to the family, its ability to handle crisis situations and, in particular, the dangers within it for children. Research in New Zealand has been undertaken by Miriam Saphira (1981) who points out that incest and the sexual abuse of children is a serious problem the full extent of which is yet unknown. Overseas, in addition to individual studies, there is an increasing number of volumes of the collected papers presented at international and national conferences (Eekelaar and Katz (eds) 1978; Scutt, (ed, 1980). Now that the problem of sexual abuse has been established attention is being given to intervention and management techniques (Gottlieb 1980 and Abarnol 1980 in Warner).

The role and development of rape crisis centres, victim advocacy services and mental health services established to assist victims in communities is comprehensively discussed in such studies as Brodyaga (1975), Largen (1979).

PART EIGHT : EXPERIENCES AND PERCEPTIONS OF VICTIMS RAPED BY HUSBANDS

1. Introduction:

As we have mentioned, in New Zealand rape in marriage, from a legal point of view, does not exist. Under section 128(3) of the Crimes Act 1961:

... no man shall be convicted of rape in respect of his intercourse with his wife, unless at the time of the intercourse -

- (a) there was in force in respect of the marriage a decree nisi of divorce or nullity, and the parties had not, since the making of the decree, resumed cohabitation as man and wife with the free consent of the wife; or
- (b) there was in force in respect of the marriage a decree of judicial separation or a separation order.

It should be noted here that husbands have no immunity from prosecution for indecent assault (s.135 of Crimes Act), or for sodomy (s.142 of Crimes Act), and a husband can be prosecuted for 'indecent assault' if he has forced sexual intercourse with his wife. The maximum penalty for this offence is seven years imprisonment, compared to a maximum of fourteen years imprisonment for rape.

The reason for the marital rape exemption lies in English common law. Its formulation as a rule during the seventeenth century stems from the statement of the jurist Sir Mathew Hale who said:

The husband cannot be guilty of rape committed by himself on his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract.

Changes have occurred in other aspects of this contract but the force of this exemption still applies to legally married cohabiting men and women. The Family Proceedings Act 1980 amended s.128(3) of the Crimes Act to provide for conviction of a husband in the circumstances mentioned above.

Given the existing situation a section on rape in marriage ought not technically to be included in this study. However, a strictly legal view overlooks two things - a heightened awareness of the problems of violence, including sexual violence, and differences of perception between women and the law of what constitutes rape.

We interviewed seven women who said they had been the victims of forced sexual experiences by their husbands and they defined what had happened to them as rape.\*

All seven victims were at the time of interviewing either separated or divorced. Three of the seven cases of marital rape we will discuss here were not accompanied by beatings or what could be termed excessive physical force aimed at subduing the woman before the rape took place, nor was violence a characteristic of the relationship. In making this distinction, however, we recognise that physical force is but one variety of coercion available. In the other four cases severe beatings accompanied the sexual assaults and were a continuing feature of the relationships. The case studies therefore fall into two groups - non-violent and violent. They have been personalised because of the small numbers and for convenience but fictional names have been used.

2. The Victims' Definition of her Situation

(a) Non-violent cases

(1) In the first case, Penelope explained the rape situation in this way:

He was very angry at the time and wanted to have sex. I had a lot of bruising and I bled. It was very painful. I didn't go to a doctor or report it to anybody. How could that rape ever be proved? It would have been my word against his.

At the time I was in psychiatric care. My son was ten months old. I just sat on a cushion and drank coffee all day. The house was in a terrible mess. My husband's view was that we hadn't had sex for a long time. He thought I was frustrated and decided that a good screw would fix me up. And the therapist ... told me I wasn't really being a very good wife because I wasn't having sex with him. Our sex life had never been very good anyway. Sex with him was always a bit rough - the roughness was part of the sex. (Case 1/5\*\*)

(2) Andrea described the rape attack on her as a "final act of retribution" when she had announced her decision to leave her husband and marriage of five years.

After that there was only one thing that he could do which could hurt me and that was to force me to have sex with him. It was his way of getting at me.

I was surprised and shocked; it was so sudden that I was quite overtaken. I didn't really have time to think of resisting. I didn't fight or attack him or struggle. You don't if it's your husband. But it was definitely a rape. I wasn't consenting. He said "Don't make too much noise or the kids will hear". He knew it was rape too. It had a devastating effect on me for a long time afterwards. (Case 2/21)

\* See Finkelhor and Yllo, 1981:462, for discussion of force and use of terms 'forced sex' etc., in the context of marital rape; also Curtis in Walker and Brodsky, 1976.

\*\* The second number in each case indicates the victims place in the overall study of 50 victims.

While repetition of a violent sexual assault is characteristic of most of our other cases and of marital rape generally, these two cases were exceptions in that the one above was the only such act in the marriage. In our first case, while it is probable that Penelope had been pressured at other times, this was the instance that she related to us as a rape.

(3) In the last of these three cases, Susan said:

There were two main times when the rapes occurred. Firstly they occurred very frequently at tea times. Whenever he came home from the pub - or wherever he had been drinking - he would have a need for instant sex. He would give me no warning ... just pull down my clothing and push me onto the floor. That happened mainly in the kitchen. I wasn't interested because I was cooking at the time. His response was "I want sex now, tea can wait". If I said anything at all, he didn't physically beat me, but he forced me onto the floor and tore my clothes off me.

The other times when I was raped were in the middle of the night. If I was asleep he would wake me up and I would find he was on top of me.

It happened a few times before I realised it was rape. It was always accompanied with a lot of verbal violence.

The fact that you've been forced to do something against your will is what makes it rape. You feel as if you have no rights. ... You feel humiliated, so degraded.

His attitude was ... "If a man can't have sex with his wife there must be something wrong". But to me it was violence. (Case 3/43)

(b) Violent cases

The other four cases were characterised by particularly brutal and sustained violence, both physical and verbal, over a number of years.

(1) Helen described her situation:

My husband was always at me - at the sink, in the kitchen, anywhere. He wanted sex all the time. Then he would beat me and want sex. I couldn't give it freely or without a feeling or revulsion. I would be crying out and he wouldn't take any notice. "If I want, I take what I want," he would say if I objected or tried to reason with him. I had no rights as far as he was concerned. They think once you are married to them they can do whatever they like. It was degrading.

He demanded oral sex only sometimes but this was enough. It took me a long time to discuss this. He was always rough - everything was sore. I was never satisfied - it was brutal sex. The humiliation of rape is the main thing that was hard to bear and to remember. (Case 4/47)

(2) In the case of Prue, the level of sexual violence increased after the birth of her fourth, and last, child. Following this birth her husband demanded sex.

I refused. Apart from other things, when he couldn't get what he wanted he would stay awake all night and keep me awake.

He started on about oral sex. I wouldn't co-operate and he'd slap me across the breasts and screw my breasts. ... He smoked and he threatened to burn my breasts. I knew he wouldn't because this would leave marks. Instead he set the sheet on fire. I didn't care.

He wanted sex all the time, morning noon and night. He would come to bed with bottles. He put something on me once that stung. It seemed like pepper and burnt me. He wanted threesome sex too. After a party he suggested someone else go to bed too. If I didn't co-operate he'd belt me. ... This happened on three or four occasions. He became really perverted ... Towards the last 18 months this [sexual abuse] went on regularly. (Case 4/48)

Prue's definition of what happened to her was: "Rape is rape".

(3) Cassandra's situation was not unlike Prue's except that the violence was not quite so calculated but it lasted over a period of many years.

He frequently beat me and then had sexual intercourse. He would punch me and knock me out and then have sexual intercourse.

In the last years of the marriage we slept in separate beds and then in separate rooms but he would come, start hitting me and have intercourse.

Quite often this occurred during the daytime and even when there were visitors. He would wait until I went to the bathroom or toilet and then assault me. There's not much you can do in these circumstances especially when there are people in the house.

During pregnancy the violence was particularly bad. He tried to get into bed with me in the maternity hospital and attempted to rape me. He persuaded the doctor to allow me out and raped me in the car. (Case 6/49)

(4) Finally Sarah said:

Michael started a business and things went wrong. I tried to support him in this venture but it didn't thrive ... there were debts and financial hassles. The violence started then. He started hitting me when I was pregnant and then the beatings started.

When the rapes first occurred is not clear. My first child was about three years old and he [my husband] was keen to have another baby. I wasn't keen. ... I was not strong over this period. He was determined. ... After the birth, the child was sick and I had real problems. ... I turned off him sexually.

My most vivid memory of rape was once after there had been violence. He used to flare up. On this occasion he locked all the doors and windows and took the phone off the hook. All avenues of escape were shut off. His appearance changed. At these times his eyes widened, his breathing was different. I had got into the spare bed. He pulled me out by the hair. He raped me by using his fingers. He said "this is what it feels like. I'll give you something you will feel". It was very painful. Sexual intercourse followed.

I don't know whether he knew it was rape. But I was so confused and terrified at the time and I didn't see it clearly. I thought 'this is marriage'. I couldn't discuss it with him in a sane way. I just tried to avoid anything that would create a violent situation. It was almost womb-like.

There were other times when sexual intercourse happened when I didn't want it but this particular incident sticks in my mind. He showed remorse after violence but it still happened again - and I think my passiveness frustrated him. I don't know how else I could have coped.

She said of the rapes "the rapes were an extension of the whole violence thing - 'You are my possession, I can do what I want'. (Case 7/50)

For the women, the essential characteristics of what they described as rape was lack of consent - 'I wasn't consenting'; 'being forced ... against your will' and violence. One described the act as brutal sex and all associated it with force and violence - 'to me it was violence'. In one case the act was retaliatory, a punishment; in another for the woman's own good and in a third the man regarded it as a legitimate way of meeting his own needs. In the other four instances also women saw the acts as being linked with a denial of their own personal rights, with dominance, and with being owned - with being a 'possession'. Not all the women saw forced sex as rape at the time it was happening.

The vital distinction between rape as it was experienced by the other main group of rape victims and rape in the case of the married women (except for one) was its repeated occurrence and, in the case of four women, the level of other kinds of violence in their lives. As married women with children the victims felt that their options were limited by a range of pressures on them which affected their responses and the way they were able to deal with rape and associated problems. Before discussing these we will discuss the kinds of coercion women said were exercised.

### 3. Force and Resistance

The amount of actual physical force varied. In those cases where physical violence did not usually characterise the relationship, women mentioned verbal violence superior physical strength, weight and surprise as the main elements.

When I tried to fight him, which I did most often, I found the weight of his body on me too much. Several hours later I would find my wrists sore and my muscles all sore. (Case 3/43)

In one case it did not occur to the woman to physically resist her husband.

In the cases where high levels of violence were usual, women did not often resist physically lest they invite further massive violence. They resorted to other means in an attempt to reduce the level of violence - or to avoid it.

I would try to go to bed by myself or in another room but he would drag me out by the hair. I tried to talk to him but that didn't work. He said he was the boss and that was that. He used to go to bed at 10 o'clock and I had to. One night I didn't and he turned the lights and power off. Eventually I didn't have the strength to resist. (Case 4/47)

Realising the strength and determination of her husband (he was over six feet tall) Prue resorted to breathing exercises and relaxation so that she would not feel the pain and also to make forced intercourse more difficult. She also resorted to running away for short periods when escape was possible.

I used to put blankets and a pillow outside and sleep in the hen house. I would jump out of the window and just run. I've run down the street and slept in an old barn near by. I would have to come home for the children's sake. He never hit the children though. (Case 5/48)

In her case, Cassie said:

I knew that if I didn't allow a certain amount of sex he would become more violent. I would often submit to avoid violence - but violence would often occur afterwards because I didn't respond to his satisfaction. (Case 6/48)

### 4. Background to Rape : the Quality of the Marriages

It is difficult for women who are raped by their husbands to improve their situation without actually abandoning the marriage. This is often the case when the woman has additional pressures on her such as the care of children, or where beatings or sexual abuse have rendered meaningful communication between the partners virtually impossible.

In the case of the four battered women sexual violence became a part of a general climate of physical abuse. Though rape incidents were vivid for most of these women, they were invariably preceded, accompanied or followed by physical violence. It is therefore difficult to discuss rape apart from the context of more general violence and, as the women mentioned, the oppressiveness of the authority their husbands exercised over them. The cases of Helen and Cassandra demonstrate this.

In all seven cases, rapes had occurred when the relationships were seriously impaired and the women had become so alienated that they desired an end to their marriages. In one case, however, it was rape that precipitated this desire. In some cases the marriages continued for some years after this stage had been reached.

- (1) In one case, the single instance of rape had occurred when the woman insisted on a separation after five years of marriage and after her husband had told her that she could not keep the children.
- (2) In another, the relationship had deteriorated because the woman felt that it was so unequal that she felt stifled and trapped. "He had all the power, financial [and] physical. He insisted that our relationship was equal but it wasn't true". She nevertheless felt it was her duty to keep the marriage going. The rape occurred when her child was 10 months old and she was mentally ill. Her husband felt that sexual intercourse would "fix [her] up".
- (3) Susan said her marriage had broken down about three and a half years before her recent separation and before the birth of her child. The principal reasons had been her husband's attitude to sex and his drinking. The rapes had begun two years after the marriage and occurred about once a week with non-rape sex occurring as well. They stopped for almost a year when a boarder was in the house and began again when the boarder left and when she was pregnant.

She felt her husband's attitude to sex was negative and unloving. Sex for him was "something you did but didn't talk about". She said he felt it was his right whatever she was doing or however she was feeling; she felt it was usually something that was forced upon her. Before her separation she confronted him with an accusation of rape. He denied this and said he knew what he was doing even when he was drunk. Susan said that if the law had permitted she would have 'charged him with rape' on at least two occasions - following a rape when she was 4-5 months pregnant and when the baby was very young and he was drinking heavily. She said of her situation:

When you are in a situation of being raped on a regular basis you can not let out your feelings - you feel so dirty and angry. You feel absolute revulsion. If I had let out my feelings I would have been accused of being mental. You just put up with it until you can do so no longer. You grow to hate yourself because you allowed it to happen to yourself ... It got to the point when I couldn't stand being in the same room as him and whenever he was around I had constant diarrhoea - food would pass right through me. (Case 3/43)

- (4) Helen was married for over seven and a half years and left her husband two and a half years ago. She said the marriage was good in the beginning with tasks and pleasures shared. She did not understand why her husband changed. Violence really started after her last child was born. There were complications and she was transferred to another hospital. He ordered her to get out of the hospital and demanded sex straight away. "He wanted sex every night of the week, apart from other times - it didn't matter how tired I was. I couldn't take it."

He became increasingly possessive and demanding. When the children were older and I wanted other interests he objected. He took the view that my place was in the home and that I should be home all the time. I could never be late with the tea or be late home. This was a terrible strain in itself. I couldn't even go out with my own family without scenes and without him checking up on me. He used to ring me four times a day and I had to be there.

He expected me to help him with the heavy work in the garden and drop everything else I was doing. If I didn't, or I couldn't manage to lift or shift something too heavy, I'd get a beating. If we were going out I would have to get the children and myself ready by the time he was ready or there'd be trouble. One day he wanted to go out then and there. I was busy ironing and asked if he would wait until I was finished. He wouldn't. The ironing board was flung across the room and he laid into me.

He never helped me with the dishes or in the house. He said he had done a day's work. The children were my responsibility. I had to visit the school and see about their progress by myself and be home when he was home. He didn't see this as a joint responsibility. He maintained that his wages - and all his money - were his money and I was only the housekeeper.

He was a good worker both at work and in the garden at home but he was fanatical - everything would have to be done his way and in his time. But he was violent at work too - not only to me. He nearly killed a guy at work. We would be lucky if we went out together twice in a year. Yet he said he was the perfect husband. I must say he was good about money and clothes - that sort of thing. About anything else I couldn't get through to him. He was boss - had to be - and that was that.

With beatings you can't give love or affection. When he hit me I would sit in a corner hunched up like a child - and like a little girl I didn't know what I was doing. (Case 4/47)

- (5) In Prue's case, her husband's violent behaviour was not evident at first but after her marriage she discovered that he was a "depressive" who required psychological help and treatment for impotence. Children came quickly. At one stage, when she had three children under four years of age, she called the police when her husband would not allow her to attend a crying child. There were violent episodes when furniture was broken.

He began hitting her when she was pregnant with the third child. She ignored this because of his health. Violence escalated when she was pregnant with the fourth and last child. Their financial situation was bad and money was owed on the mortgage. Her husband was by then a sickness beneficiary. Her feelings about the marriage crystallised when she was in the hospital with the fourth child. "I knew there was no love left. When he started hitting me something happened. You can't respond sexually and emotionally if you've been hit."

After this birth he demanded sexual intercourse. She was assaulted and kept awake. There was pressure for oral sex and refusal or non-co-operation invited bizarre forms of retaliation and violence. Prue referred to what she described as increasingly perverted sexual desires and practices. Towards the last 18 months of the marriage these and the violence were a regular occurrence. She found his control of her life oppressive and particularly his desire to know what she had said to anyone - "my opinions had to be the same as his".

I had no money. I felt terror, shame and helplessness. (Case 5/48)

- (6) Early in her marriage Cassie felt trapped. She had two children and, as there was then no Domestic Purposes Benefit, she did not have the financial means to enable her to leave and support her children. She also feared that her husband would kill her if she left. In the marriage violence escalated during her pregnancy and rape events followed. Five years before the eventual separation Cassie had left her husband but found she was pregnant again. She had begun studying to prepare herself for financial independence.

He did everything he could to try and stop me. He placed more and greater burdens on me in the way of household tasks and gardening. He beat me up more frequently during those years of studying because he knew I would probably leave him. It was just sheer determination that made me continue. I often went to work with black eyes and bruises. I persevered but it was hell.

The episodes of violence used to cover whole week-ends or went on for days on end during which she would be kept awake and attacked. "The last week-end he stayed awake from Friday night to Sunday night". Cassie said it was remarkable how little she really knew about her husband before the marriage. "They find out all about you but you don't find out much about them."

The marriage lasted for 14 years. (Case 6/49)

- (7) Sarah was 17 when she first met her future husband and 20 when she married him. He started hitting her when she was pregnant with the first child shortly after marriage. She attributed this to business and financial worries. She was pressured to have another child when the first was three years old. The beatings had continued meanwhile and the rapes she described.

I felt powerless, helpless, isolated, terrified and ashamed. I was also sometimes too ill to resist, too confused and sick to know what to do.

The marriage lasted nearly six years before she was able to leave. (Case 7/50)

## 5. Feelings, Responses

The victims expressed a range of feelings about the rape, their situation within the marriage and their responses to violence.

### (a) Personal Feelings

Being raped by one's own husband is shameful and hard to talk about. (Helen, Case 4/47)

My anger reaches a point where I want to harm him in some way and then ... I start crying. I'm often weepy. There are times when I wish he was dead. I have a great need to get rid of him. Sometimes I feel so angry towards him that I think I might pick up a knife and stab him. (Susan, Case 3/43)

### (b) The Marriage Situation

The responsibility is always on the woman, whether she is abused sexually, emotionally or physically. It is always on the woman to fix it, not the man. Men don't listen to women. (Penelope, Case 2/21)

In these situations women are terribly vulnerable. Difficulties at work are taken out on women at home. ... My health was in a bad state and I felt I had few avenues of support. It was a pride thing too. I was ashamed and trapped and I didn't know where to go. Looking back ... I think there's a whole guilt thing involved for women in that situation - and in their reasons for staying. Why do we stay in these situation? I stayed for 5-6 years. (Sarah, Case 7/50)

### (c) Violence

I experienced terror. There would be a knot in my stomach. I used to cry myself to sleep. I knew nobody was out there to help. I was trapped and the sheer aloneness of it was terrible. I felt nobody would believe me. (Cassie 6/48)

At about 4.30 - 5 p.m. each day I used to feel sick. I knew it would happen, no matter what I did. Something very small would start him off. ... I couldn't see where I provoked him and other people would ask me whether I did. ... It was always my fault that all this was happening and that the marriage was going wrong. (Helen 4/47)

All but one of the victim accounts stressed feelings of helplessness and isolation. The victims of violence, however, felt a special sense of powerlessness in the face of the capriciousness of the attacks upon them which continued no matter how they tried to modify their behaviour or avoid situations which would trigger another attack.

In the other rape cases in our study which proceeded to court considerable emphasis was placed by both the police and defence counsel upon the actions victims took to avoid or escape from dangerous situations. Married women are in a different situation in this respect. Nevertheless the question is often asked why women who are in dangerous domestic situations, and especially in situations where they have been sexually assaulted, do not report these matters to the police or leave their husbands. The reasons already mentioned by the victims in the extracts quoted were that they:

- felt trapped
- feared retaliation
- were closely watched
- were pregnant
- lacked money and any kind of financial assistance
- could not support herself and her children
- lacked support
- wouldn't be believed
- would be blamed

## 6. Attempts to Find Avenues of Assistance

Nevertheless, all but one of the women had attempted to seek help - some over a number of years. In their search for assistance the women found difficulty: firstly, in being able to acknowledge and discuss frankly what had happened to them; secondly, in discovering appropriate forms of support; and thirdly, in being able to take advantage of assistance.

The following two examples contain a mixture of these difficulties.

You're very ashamed to talk about violence. I would be bruised on my face and neck and body. My head used to be banged against the wall. I had black eyes and a swollen nose. It was noticeable and I'd try to hide it. I used to be too scared to go out because of my appearance and because he kept checking up on me. I hid it until my sister noticed and my neighbour said she saw bruises. ...

I went to Marriage Guidance and the doctor talked to him. He didn't take any notice. It didn't help going to those people ...

You don't know about a lot of things because you are kept in ignorance - like living in a shell. I couldn't go anywhere much at all. I wasn't allowed to go out at night. Even at night school he would take me there and bring me home. I was cut off from other people. He was the leader. I couldn't do anything he disagreed with. I didn't know what I was doing wrong and I couldn't avoid situations that precipitated beatings. People tend to blame you. I was asked if I provoked him and a doctor suggested I must be having an affair. I couldn't have - even if I'd wanted to. There wasn't any opportunity. I became like a little girl - powerless and frightened. (Helen, Case 4/47)

The sexual abuse went on. I couldn't talk to anyone about it. ... I had no money. I had tried to get help. One [agency] person said I wasn't trying hard enough. I rang the Women's Refuge but couldn't get away - I couldn't manage to pack the things necessary for four children when he was in the house all the time. ... I felt I would have to leave without the kids. I had tried to tell the next door neighbours but I felt I couldn't tell my parents. I had eloped to marry him. ... I was exhausted and terrified and I think somewhat unbalanced myself at times. It was difficult to make decisions and to see how I could carry them out.

I rang the family doctor. He didn't come out. I think he was too scared. (Prue, Case 5/48)

In Penelope's case, a therapist had criticised her for not being a good wife thus contributing to her self-blame and to her sense of duty to keep a marriage going which she felt to be unresponsive and intolerable. Up to the time of her separation, Susan went to no less than six agencies plus lawyers and doctors. Some of these were very supportive, others not. Cassie's only support was her father. In another case Sarah's mother wrote to the husband's father after being informed by a clergyman of the beatings he had heard from his downstairs flat. Sarah's father-in-law had visited the home and seen her bruises but she said his reply was in her words 'not supportive'.

The families of the victims provided some support in only two of the six cases (in the seventh, the marriage ended at the time of the rape) but it was not effective in changing the situation - possibly because the women were not completely frank with family members. In two cases the victims did not approach their families; in the other two, one of the victims wished to avoid burdening her mother and the other hid knowledge of the rape from her father.

My mothers dead. I don't want my father to know I've been raped because of what [he] would do to my husband. (Susan, Case 3/43)

... the other members of my family didn't want to know me. ... They actually sided with my husband and colluded with him ... In the end I realised that you can't depend on anyone but yourself. This is the thing that keeps you going and the fact that you have children to look after. (Cassie 6/49)

Victims knew they had no legal redress for what they termed rape but they did not give this as the main reason for not taking further action by reporting the assaults to the police. None of the three women who had been indecently assaulted or technically raped (as in the threesome rape) thought of reporting these instances. Reasons given for not reporting were again their inability to discuss sexual abuse, fear of retaliation and further violence, and their conviction that they would not be believed. The lack of any legal standing for their complaints was, however, important to some of them in the sense that they felt they lacked both legal and moral support and hence needed extra courage to take any action. Previous experience with the police also deterred two women. After one rape experience Susan said:

I remember once when I was about 4-5 months pregnant, I called the police. They came around but I didn't have the courage to tell them what happened - I couldn't tell them what he had done to me. They came - classed it as a domestic dispute I think, which they couldn't do anything about. They knew my husband was drunk at the time. The police are not sufficiently aware of what is going on in a domestic dispute.

When asked why she felt she couldn't report the sexual abuse, Susan replied:

I thought I wouldn't be believed. The things that have gone on in this relationship are the kind of things that go on in horror movies - they don't happen to real people. Even my sister couldn't really believe it. It's a big step for a woman to go to the police. When a woman says to the police she's been raped, she should be believed because it takes so much courage just to do that. (Case 3/43)

She did not attempt to report the next rape incident. Susan did not come from a continuously violent marriage.

Prue called the police for the first time when her husband would not allow her to attend to a crying child. Her husband got angry "because I had over-ruled his authority". She said the police came out several more times 'when there was a row and furniture was broken up'. She felt humiliated by these episodes and said she couldn't talk about the nature of the sexual assaults. The other five women had no contact with the police until, in the case of three of them, they left the marriage and sued for separation or non-molestation orders.

## 7. The Husbands

The occupational categories of the husbands were:

Group I - (non-violent) - white collar professional, businessman, clerk.

Group II - (violent) - tradesman, sickness beneficiary (formerly tradesman), teacher, business consultant.

Some information was also volunteered about the non-work background of the husbands. In the first group there is information for only one of the husbands. He was said to be an alcoholic.

In the second group:

- \* One suffered from intermittent psychiatric disorders and had an alcohol problem. He had a father who beat his wife. He later assaulted his mother.
- \* One suffered from acute work stress and financial worry.
- \* One had a brother who treated his wife in the same way as did the husband of the woman we interviewed.
- \* One man was violent both in the home and outside it.

In the majority of cases in this group the women said their husbands behaved with restraint and courtesy to people outside their immediate family, and none of the men beat their children though two were said to be inconsistent and capricious with discipline. Nevertheless most were regarded by their wives as authoritarian and tyrannical, maintaining sole personal control over financial matters, and expecting prompt and comprehensive domestic service. Of equal, and in some case more, importance to the women than these impositions was the fact that all these men were sexually demanding, brutal or rough, and impervious to each woman's needs. Consequently, whatever the individual problems associated with their husbands' backgrounds, most of the women felt that their husbands believed they had a right to do virtually as they wished in their marriages.

The types of pressures and coercion the women said they were subjected to can be summarised as follows:

- the unequal relationship stemming from the husband's economic, physical and, ultimately, psychological dominance.
- verbal violence and threats.
- notions and feelings of duty.
- the impact of societal expectations of women in marriage.
- social isolation.
- agency disregard or disapproval and isolation from the effective protection of the law.

These pressures kept women in the marriage situations long after they had perceived it was emotionally sterile or dangerous.

## 8. Types of Abuse

- Case 1: - some physical force to effect the sexual assault.  
 - emotional and financial pressure.  
 - rape.

- Case 2: - emotional pressure; threat that she couldn't keep children.  
 - rape as final act.
- Case 3: - physical force "stronger than me".  
 - emotional pressure - "it is your duty".  
 - rape.
- Case 4: - Physical force/violence; beatings to body, head, face; head banged against wall.  
 - psychological pressure and attempts to engender feelings of worthlessness, self-blame and failure; terror.  
 - attempts at isolation; continuous checking.  
 - rape.  
 - forced oral sex.
- Case 5: - physical force/violence; beatings.  
 - threatened with cigarette burns, bottles.  
 - threatened with weapons; air pistol, knife.  
 - indiscriminate undirected violence; broke up furniture, smashed doors, cupboards.  
 - bullet holes in walls, ceilings, doors.  
 - financial and emotional pressure; terror.  
 - rape, oral sex; forced sex with strangers.
- Case 6: - physical force, violence; beatings.  
 - psychological pressure - being kept awake for long periods.  
 - financial pressure.  
 - rape.
- Case 7: - physical force/violence; beatings.  
 - threat with weapon - gun forced down throat.  
 - financial pressures.  
 - emotional and psychological pressure and ridicule.  
 - rape.

## 9. How the Women left their Marriages

Despite the destructive nature of their marriages, it took some of these women a considerable time to leave their husbands after they had diagnosed their situations as untenable for reasons already outlined. In the case of the battered women a particularly violent episode precipitated their departure.

### Group I: Cases 1-3

In Andrea's case, already mentioned, rape followed her decision to leave. In Penelope's case, her own feelings about the relationship were exacerbated by the rape and her illness. She left but was denied the custody of her children. In Susan's case, the rapes and her husband's alcoholism caused an end to the marriage. An attempt was made to have him committed under the Mental Health Act and he was required to have treatment for alcoholism. During this period, however, Susan went to a Woman's Refuge for five weeks to prevent her husband getting near her.

Group II: Cases 4-7

Helen:

The violence was particularly bad for the last three months. It took place nearly every night. I knew the children were upset - he would do it in front of the children. My daughter was aged three years. The last day, I cried all day. I went to the doctor and showed him all the bruises. He suggested I would be best to leave and gave me the number of a ... woman's group. When he rang back to check I was in tears.

Helen rang the support group and spoke to the counsellor. She was advised to pack her bags and to go to the Police Station where she would be met.

It was about 4 p.m. by this time. I was desperate and terrified. I kept watching to see if he was there. It was surprising the things I forgot in my panic - my son's favourite pillow without which he wouldn't go to sleep; my shoes and things to go to court in. When I arrived at the Police Station, a policeman asked me what I was doing there. I said I was waiting for the ... counsellor. I was in such a bad state that I don't remember what else I said. (Case 4/47)

Prue:

There was a terrible row in which he smashed furniture - the lounge couch and chairs, the bed and doors. I sat in a corner crouched up. He had to go to the shops to get some smokes - he never went without things himself. We all had to go with him. I put slippers, knickers, a toothbrush and other things in the push-chair carrier bag.

When we came back, he went up the drive. I sent the children after him. I unhooked the bag and ran - how I ran - down the road, across the park and bridge to the bus stop. I got on the bus and went to a girl-friend's place ... I was a mess. I was exhausted and thin and I had an ulcerated mouth. I slept on the couch.

Prue rang her father who contacted a solicitor but she said, "I only told him about the last row and getting hit and about things going bad financially." The solicitor advised her to return, tell her husband what was happening and take a witness. She was assaulted. Eventually the police told her husband to leave. She returned for the children and went to her friend's place. "I didn't care where I went or what it was like". A woman's support group gave her assistance. (Case 5/48)

Cassie's experience was somewhat similar. Her departure followed a week-end of sustained violence. (Case 6/49)

Sarah's departure followed an incident after a family gathering in which her husband refused to participate. He went drinking instead.

I was terribly thin and had been hospitalised. ... My husband arrived home just after I did that night. I had had only one glass of wine but because of my weight it had affected me. I was a bit tipsy. A fight developed over my going out. A gun was lying on the bed and he picked this up. I thought this was the

end. He forced it down my throat. I was hallucinating - quite out of touch with reality. He panicked ... and rang [a relative]. He came straight over and took me out of the house. I had to leave the children. It was awful that my eldest child suffered so. [My husband] didn't ever hit them but they saw all this. I collected the children next day. [My relative] took me to a doctor so he could see the cuts around my mouth - and for a check up.

I related my final experience to the \_\_\_ case. It took something as strong as this to escape. (Case 7/50)

This last section has been dealt with in some detail to illustrate, from the victims point of view, how difficult it is to cope with a dangerous situation and to get out of it - and also what is involved in terms of organisation and emotional effort. As with other rape victims the support mechanisms available - or not available - are very important. They are made even more so because of the effort victims have to make to recover from the physical and sexual abuse they have suffered. Women's Refuges (referred to in Part Nine of this Report) are the main source of support for women in this situation.

#### 10. The Path towards the Legal Termination of the Marriage

Once they had left the family home, the women had to use the civil court process for the purposes of obtaining non-molestation orders, initiation of access and custody arrangements, and separation proceedings.

We have detailed information only on how four of the women perceived and coped with the court system.

The Family Court process (and previously that of the Magistrates Court) is not a criminal justice process but a civil one, and it is therefore strictly speaking outside our terms of reference. The court appearances were not technically trials, and the procedures are designed to be quite different to a criminal trial. However, the women we interviewed raised some issues about this process and their reaction to it that closely parallel the reactions of rape victims to the criminal justice process. What they said has therefore been included in this paper.

In three cases the women were given comprehensive assistance by women's support groups whose counsellors put them in touch with lawyers and the Social Welfare Department. Like other rape victims they were in varying states of shock and emotional disarray. In addition they were almost destitute and possessed only the most basic - and often ill-assorted - necessities. In Helen's case, she had brought only the barest essentials for the children and had forgotten clothing for herself. The psychological and emotional state of women in this situation has been well documented by those involved with Women's Refuges here in New Zealand.

None of the four women whose cases are best documented, coped easily with the court process. Their criticisms address nine separate issues:

1. All felt the disadvantages stemming from their economic situation. Their husbands could afford lawyers; they went through the legal aid process as a means of obtaining legal advice and representation.

## 2. All felt at an emotional and psychological disadvantage:

In Court you feel as if you are being blackmailed with shame. I was embarrassed and at a disadvantage in not knowing the law to get what I wanted. I had no resources to spare.

There should be other ways of doing things. You can't get back to any sort of recovery while under the pressure of court procedures and requirements. I had to come out of a marriage that was hell and then fight other battles. There's a lot of insensitivity to one's needs. (Prue, Case 5/48)

## 3. They felt they were fighting unequal battles in an alien system where they believed unfair tactics were used.

The hassles were interminable. He and his lawyer tried every legal trick in the book. He tried to have the non-molestation order put aside and to stop me getting back into the house. He contested custody, wanted a different sort of access and asked for counselling - all designed to tie up the system. (Cassie, Case 6/49)

Two other women felt that the counselling procedures and their requirements were used to prolong the legal process and to intimidate and humiliate them.

## 4. Sometimes court procedures and requirements were not adequately explained; delays caused distress and insecurity for the women and their children. In particular three women were critical of counselling requirements.

With the new Family Law legislation we are back to the old system of delays - it has become worse and counselling delays proceedings without helping women in violent situations. (Cassie, Case 5/49)

## 5. They were critical of procedures that were often not capable of responding at a sufficient speed to afford them protection and where follow-up action by police was often inadequate.

They won't really take women's complaints seriously and won't interfere in domestic disputes. For non-molestation orders they are hopeless. They demand witnesses. In the end I went to the Inspector and made a complaint about the Police Station. He sent a copy of the non-molestation order and they had to act. It took two and a half weeks to get the order actioned ... (Prue, Case 5/48)

Even after I separated, the terror was still there. It got to the stage ... about three years after the separation where he kept on terrorising me and I was just shaking and shaking and couldn't stop shaking. He had been in the house. I went down to the Police Station and sat on the floor. It was the safest place [to be] ... (Cassie, Case 6/49)

In another case, however, over which there were later protracted legal difficulties, the non-molestation order was filed at 9 a.m., the woman was in the magistrate's chambers by 11 a.m. and an ex-parte order acquired. She waited until it was served later in the day before returning to the house.

## 6. Some of the women felt they were often disbelieved, possibly because it was difficult for others to understand the degree of violence against them and the more bizarre examples of sexual assault. It was also difficult for them to admit and explain the nature and extent of the assaults upon them in the court in an almost totally male, formal environment. Some found difficulty in discussing some aspects of their cases with their lawyers:

I found it hard talking about oral sex to my lawyer. He was very good, sympathetic and understanding but it is difficult to talk to a man about these things. I found court terrifying. I had never been to court before. I felt sick. It was embarrassing to talk about my sex life especially in front of men and hard to talk about oral sex. Moreover, my husband's lawyer asked me how I was going to cope.

I think it must be hard for young rape victims and victims of incest to discuss sexual relationships in [a court] situation. (Helen, Case 4/47)

Before leaving my marriage, I had been physically assaulted and sexually assaulted. There's no way you can tell a male about this. (Cassie, Case 5/49)

## 7. Three women said they felt they were on trial.

I felt I was on trial and without protection. There was no intervention. I felt completely exposed. I was made to feel that the situation was my fault - that I must have done something to bring it about. (Cassie, Case 5/49)

I feel angry and bitter about the court case. Things may be a bit different now in the way things are handled. Michael hired a young lawyer. I went on legal aid and got a lawyer. My [family] came from [different parts of the country] for the court case. It was like a criminal case. My [relative] was a witness and so was the doctor. There was a psychiatrist and a social worker from family counselling and other friends.

I spent a long time on the stand. I was astounded at the lengths that were gone to to prove I was an unfit mother. Michael brought up [a relative's problem] and tried to establish that I was an epileptic - a referral to the results of drugs taken when I was hospitalised. I was also deemed unfit because I wasn't interested in my husband's hobby. I found these issues irrelevant to the case but the magistrate let them go. The violent assaults on me and the use of the gun seemed to mean nothing. The psychiatrist said he didn't feel that violence towards me meant that my husband wasn't a good father or a better parent than me. They contested separation and custody. (Sarah, Case 7/50)

## 8. In all cases there were difficulties over the question of access. The women recognised that they had some responsibility to the children and their husbands but found it hard to cope where access was used as a means to make life difficult. In two cases it was used as a way of gaining access to the house. One woman was attacked and raped. The children of another woman refused to assist her in complying with the terms of access. "My children were supposed to see him regularly but won't go with him. They are frightened of

him". One woman said that unreasonable conditions were set by the court in another case that prevented her from re-establishing herself. She was required to live in the same town as her husband and was thus denied the support of her family.

9. These woman had to start their lives again - in all but one case - without work skills and on a benefit. In one instance the husband had used the period when they were absent from the home, to remove items needed for a household where there were young children. Helen suspected some of these things were sold.

It took two and a half weeks to get the [non-molestation] order achieved and get back into the house. In the meantime my husband had taken a lot of things, bedding (all the fairy-down quilts); linen, my personal clothing; [my son's] Christmas present, [my daughter's] doll; the T.V., washing and drying machines and other things - and he had locked the garage. The policeman refused to get the key from him even though I had exclusive possession. (Case 4/47)

Even with these and other difficulties, and though she said she found the court experience 'terrifying' and embarrassing, Helen's experience was perhaps the least embittering:

The doctor supplied a certificate for the court and the non-molestation order. I didn't come back to the house until the order was granted. Through [the women's support group] I got a good lawyer on legal aid. The legal separation and custody hearing was in October. However - my husband objected and said the marriage wasn't foundering and he wanted marriage guidance counselling again. I went back to marriage guidance and got the same lady I had consulted previously. I told her I wasn't going back. She noticed the difference in me - for one thing, I wasn't scared out of my wits.

I went back in March for a separation order. Counselling was needed for the children. I was asked about my eldest son and I said I didn't want to put pressure on him to come with me if he didn't want to. On the day of the final court appearance my husband changed his mind about fighting. He knew everything would be brought up again.

I went to court twice, the third time I didn't have to appear ... or take the stand.

### 11. Effects of the Women's Experiences

In discussing the effects of their experiences on their lives, the women did not refer only to their feelings about the rape incidents, despite the intensity of their reaction to this. For all of them, it was an incident - or a continuing aspect of the marriage which itself had other unacceptable qualities and therefore repercussions. For those women in violent relationships particularly, sexual violence was a particularly humiliating and painful part of the more general violence that dominated their lives and affected their relationship with their children - and their ability to fulfil an acceptable parenting role. Their comments made it clear that for them marriage became - as an institution and as a means of personal fulfilment - devoid of meaning and a threatening arena in which they

were deprived of protection and adequate support. Their analysis of the exercise of power within it enabled them to draw conclusions about other situations and issues. They became extremely sensitive to the disabilities of other women. Three joined women's refuge support groups. One joined a rape crisis centre and also did other voluntary work with women. And another sought work with a union where women's issues were a priority.

The following effects and repercussions were mentioned:

- fear: about their own safety after separation; fears about other situations - being alone with men singly or in large groups; walking at night; being alone in a house.
- nightmares: these and disturbed sleep patterns were a continuing feature for varying lengths of time after the marriage ended.
- bitterness and anger.
- trust impaired: they found difficulty in establishing trusting and confident relationships generally and especially so with men. One woman also found difficulty in trusting people in authority - e.g. policemen.
- loss of confidence - in themselves, their abilities; difficulties in coping especially where they had been denied the opportunity to manage any of the family resources and finances.
- emotional upset and feelings of guilt/depression: In some cases (4), women expressed concern about the effects of the violence on their children; in another case the woman feared for the safety of her daughter. In other cases where children had been split between the partners, or where custody had been negotiated later, there were continuing feelings of loss and guilt expressed. One woman said she was still endeavouring to come to terms with these feelings eight years later. Others, having analysed what had happened to them, were fighting feelings of self-blame and impatience with themselves for enduring what they saw in hindsight as a perversion of an idealised relationship. At the same time they were aware that an unfair responsibility had been placed on them to make the marriage work and that, when they needed it, assistance was not available.
- recovery time: all but one woman (who is still not far enough away from her marriage situation) mentioned varying lengths of time before any sort of 'calmness' was felt in their lives. Eighteen months was the shortest period.
- financial difficulties: nearly all experienced economic difficulties. In one case it was extreme. The woman faced repayments of debts which she knew her husband could not or would not meet. Few had saleable work skills. In two cases the women undertook study to equip them for a career.
- acute reaction to violence:

For a long time if anyone moved suddenly I would flinch. I still feel physically sick when I see violence. (Sarah, Case 7/50)

(a) Effects on Relationships

For all the women, their experiences had made the re-establishment of personal relationships with men difficult.

## (1) Helen - violent background:

It affected my relationship and view of men. I thought "no more men". I felt I could never have a good relationship. I thought all men were the same - beating, taking ones self-respect away, taking what they wanted, demanding.

## (2) Penelope - not a continuously violent background.

Penelope was younger when the marriage ended and did not get custody of her child. She had been raped as a child and said her account of the incident had not been believed. Following the separation she found extreme difficulty in forming relationships in which she did not feel threatened. She felt that most men are on the take -

... if they take me out for a drink or a meal they expect that this gives them access to my body. Men grow up believing that the world is there for them to conquer. (Penelope, Case 2/21)

Another woman felt that it would take her a long time to overcome a similar distrust; she had enough to do re-establishing her own confidence and interests and wished to avoid similar pressures.

(b) Effects upon Children

In four cases the children witnessed almost continuous violence and were said to be nervous and upset - some were more seriously affected. None of the children were themselves beaten. One woman said that when there was any danger of this she stood in front of her children to protect them and often had to resort to covering up for them if they had done something she felt might have violent repercussions. She said she was able to maintain a good relationship with her children and never made any secret of what was happening as they saw much of this anyway.

In two cases the older children were described as being disturbed and difficult before the end of the marriage. One was lighting fires inside the house. In another case one of the women said she had found great difficulty in coping with violence and realised she was taking out her frustrations on the children.

In a situation like that you start getting angry and impatient with the children and take it out on them. There's no way you can help it - and this made things worse. The effect of all this on the children was bad. You don't fully realise how bad until you get out of it. John's schoolwork went down and after I left I had to take the children to [obtain counselling] to help them. (Helen, Case 4/47)

For this reason she felt a telephone service for children was an excellent idea because "there are situations in which children have got to have help". In one case (in the non-violent group) the woman said she got so angry and upset that she sometimes feared she might harm her child. She would leave the room when she felt she couldn't cope. Worry about the children increased feelings of anxiety, guilt and helplessness.

The children from violent backgrounds had problems which required patient attention and in one case professional help. In the latter case the children slept with their mother for six months. It was 'a long time' after that before they would sleep without the light on at night.

The women said they felt they needed to make a special effort to inculcate non-violent attitudes and to assist the children to regain lost confidence and school performance.

12. Summary and Discussion1. Comparisons with other Victims:

On the basis of the way the married women described their reactions to rape by their husbands, their experiences were similar in a number of respects to those of the other victims we interviewed, in particular the victims who were raped by men known to them - family members, friends and acquaintances. There were similarities in terms of: their feelings and responses to rape - descriptions were studded with the same words ('dirty', 'degrading', 'shame', etc.); the effects upon them (fears, nightmares, etc.); and the effects upon relationships (loss of trust, suspicion, etc.). The way they defined rape was also similar to that of other victims in that they isolated violence, their own lack of consent and the humiliation of sexual assault. All of them associated rape with power and five linked power with dominance.

Despite the differences between the Criminal and Civil Court process (as for rape in the one and separation or divorce proceedings in the other) and the associated differences in the role of the women as witnesses, there were nevertheless similarities, too, in the reactions of the women to their court cases. Criticisms in common related to the emotional and psychological disadvantage the women felt in the formal male environment of the courts; the tactics employed by opposing lawyers; and the embarrassment of having to disclose sexual details, especially to males.

The basic differences between these women and the other victims stemmed from the fact that they were married to their attackers, and from the consequences of this different social and legal status as between victim and attacker. As wives of their attackers they were almost all subjected to continual sexual - and in most cases other - violence; escape for them was more difficult and, in all but one case, their options were severely restricted by their economic dependence on their attacker. In addition, should they have chosen to lodge a complaint, the attacker could be charged only with the lesser offence of indecent assault, not rape. Even that, however, was not a real option given the manner in which these women perceived their situation.

2. Reasons for not taking Legal Action

The factors which inhibited the women from seeking recourse to the law stemmed from how they perceived their situation in regard both to their marriage and consequently to the legal process. As one victim said:

Women don't often see rape as a crime because it is not so in law and is not viewed as a crime by the public. Women don't discuss it and don't readily acknowledge that they have been raped. (Case 5/49)

As shown earlier, the reasons given by the women for feeling unable to leave their marriages when they wanted to, included fear of retaliation, economic dependence, pregnancy, and lack of support elsewhere. Other reasons given reflected notions of marital duty and fear of being blamed for the break-up by family or friends. All these reasons played a part also in deterring the women from going to the police. In addition, most feared that they would not be believed by the police, either about rape or other kinds of assault they had endured, and, in any case, they felt too ashamed and embarrassed to report these matters. It took a long time for most of the women finally to leave their marriage and none reported the incidents of sexual abuse to the police.

In view of the emphasis which most of the women gave to their conviction that they would not be believed by the police, it is pertinent to note the view expressed by one of the women who had since become a refuge worker. On the basis of several years' experience in that position she said:

Attitudes to women have to change. There have been cases where women have gone to complain and ... they have come away and achieved nothing. Women have got to be believed and their complaints taken seriously. Because we are women their attitudes are different ... Women witnesses are not taken seriously. A policeman told us we needed men as witnesses if we wanted to make an impact. (Case 5/49)

This element of disbelief, as shown in other parts of our report, was a factor common to the concerns of most of the rape victims interviewed.

### 3. The Extent of the Problem of Rape in Marriage

A major difficulty in confronting the problems associated with rape or forced sex in marriage is that the real extent of it is not known. Furthermore, as has been noted, few women define themselves as being raped, primarily because of cultural and legal assumptions (see Gelles 1972, 1979) and this has problems for research. However, various surveys (Russell 1980, Finkelhor and Yllo 1981, and Chappell in Scutt 1980b) together with testimonies from battered women (Giles-Sims and Pagelow 1980 cited in Finkelhor and Yllo 1981) indicate the high vulnerability of such victims to rape and other sexual assaults as well. Russell's San Francisco study and Finkelhor and Yllo's Boston study revealed that women reported more sexual assaults by husbands than by strangers. The conclusions these researchers have reached indicate that forced sex in marriage is a frequent, if not the most frequent, kind of assault. These findings confirm the belief of many refuge workers in New Zealand that rape or forced sex is a common element in the battering situation. (See Appendix 3 for Data on Women's Refuges and Marital Rape).

### 4. Marital Rape as Part of the Wider Problem of Domestic Violence

The issue is complicated by problems surrounding the whole area of domestic violence and the law, in which the difficulty of dealing with marital rape and other sexual abuse is an integral part. Rape in marriage is as Sallman states, 'clearly the tip of a far larger problem ...' (Sallman in Scutt, 1980 b: 84). The difficulty is manifest in the first instance in the attitude taken by the police because, by the nature of their job, they are in the front line of the legal process. Thus, as another of the victims interviewed stated: "they won't really take women's complaints seriously and won't interfere in domestic disputes".

A major aspect of the problem of dealing with domestic violence, including marital rape and other sexual abuse, is the great difficulty that has been experienced in reconciling, on the one hand, reluctance to have the State interfere in what have been considered private and family matters and, on the other, an increasing concern that a woman's marital status should not derogate from her civil rights as an individual - in particular the right to equal and effective protection by the law (see Freeman, Maidment, Parnas, McFayden in Eekelaar & Katz 1978, Temkin, 1982, and Mitra, 1979, 1982).

Although only a limited amount of research has so far been undertaken in New Zealand (see Inglis, 1977; Church and Church, 1981, 1978, and the forthcoming Womens Refuge Collective Study 'A Socio-Economic Assessment of New Zealand Women's Refuges'), overseas reports and research indicate that the incidence of domestic problems and the difficulties in dealing with them are serious and widespread. Thus, in its Letter of Transmittal of a report on 'Battered Women and the Administration of Justice' (1982), the United States Commission on Civil Rights stated:

Although wife beating is a crime in every state, the law has often failed to protect these victims. The Commission's report reveals that at each stage of the criminal justice system a significant number of abused wives are turned away, with the result that few ever obtain relief. Police officers, prosecutors, and judges often fail to take appropriate action, treating spouse abuse not as a crime against society but as a private family matter.\*

The propensity to treat domestic violence in this way shows up also in the evidence given by the British Association of Chief Police Officers to the House of Commons Select Committee on Violence in Marriage:

Whilst such problems take up considerable police time ... in the majority of cases the role of the police is a negative one. We are, after all, dealing with persons 'bound in marriage', and it is important, for a host of reasons, to maintain the unity of the spouses. Precipitate action by the police could aggravate the position to such an extent as to create a worse situation than the one they were summoned to deal with (quoted in Freeman, in Eekelaar and Katz, 1978: 83-84).

The Association favoured the provision of refuges but emphasised, 'every effort should be made to reunite the family'. (See also Bowker, 1982).

However, a serious drawback of this emphasis on reconciliation and reunion is that, whilst it may be appropriate in some cases, in others it overlooks the existence of much brutal behaviour in unsatisfactory marriages (Freeman (1978), U.S. Commission on Civil Rights (1982), Binney, Harkell, Nixon, (1981), Dobash and Dobash, 1979). It leaves the victims with the choice of remaining in marriages that are characterised by a high level of physical and sexual violence or, despite practical and other difficulties, of leaving. This is how the women we interviewed saw their situation and they all ultimately chose separation and divorce - five after seeking advice or counselling that was ineffective in alleviating the sexual and/or physical violence they suffered.

\* The Commission added 'The report also finds that a woman who must flee her home to escape assault often has complex financial and emotional needs, served by inadequately supported social service programmes, including shelters'.

### 5. The Women's Views on Legal and Related Remedies

Whilst divorce thus became the ultimate solution to situations which the women interviewed found they could no longer accept, it did nothing to resolve two major issues which underlay the suggestions they put forward. Firstly, they criticised the inconsistency of the law in making only the lesser wrong of indecent assault a criminal offence - which had the further consequence of the law denying them equality with victims who were raped by men other than their husbands. Secondly, they criticised this situation as, in effect, condoning sexual abuse by their husbands who were thereby encouraged to believe that within the marriage they were beyond the law. As one victim put it: "they think that once you are married to them they can do whatever they like".

For these reasons all but one of the women interviewed felt strongly that the immunity from prosecution for rape presently accorded to husbands in relation to their wives should be abolished. They took this view despite the fact that they were aware of the difficulties other women faced in establishing proof in rape trials. However, they also wanted changes in police practice which they thought would be all the more necessary if the change in the law they advocated were to be effective. They believed, for example, that the police should be instructed to adopt a stronger approach to complaints. Related to this, they recognised that greater involvement of the police would require specific training for dealing with domestic violence and they proposed that this should be implemented. They also proposed that there be established comprehensive and subsidised support services to assist women in the situations that would result from lodging a complaint. It should be noted that, in respect of domestic violence generally, both the British House of Commons Select Committee and the U.S. Commission on Civil Rights recommended a more vigorous prosecution policy. In addition, the Commission placed particular emphasis on establishing comprehensive services which would not only provide the support victims needed but also ensure that they are able to take advantage of legal remedies available to them.

The abolition of the immunity for husbands in respect of their wives was removed in Sweden in 1965 and this is also the situation in Denmark, Norway, the Soviet Union, Czechoslovakia and Poland. In the states of New Jersey and Oregon (U.S.A.) legislation has been passed abolishing the exemption (Freeman, 1981). Although there has been considerable reform of rape laws in more recent years in a number of countries, these have included the abolition of the immunity for husbands only in the State of South Australia. There, after much debate, this occurred in 1976 and in a form which, in effect, restricted the offence to 'aggravated rape' (Sallman in Scutt, 1980 a). It appears that not a great deal of research concerning the results has been undertaken and we have had access only to a report on South Australia three years after the change (Chappell in Scutt 1980: 137-144). Contrary to earlier speculation that the reform would lead to a spate of complaints, there had been only two cases brought under this legislation.

## PART NINE: VICTIM SUPPORT SERVICES

### 1. Introduction

Many of the victims we interviewed sought assistance in dealing with the rape experience from a number of sources whose quality varied. Some women were fortunate in the quality of the support they received; some not. Some victims did not seek support. It is also evident that rape was a problem that not only affected the victim but also the family, friends and other people with whom she associated. Victims who sought assistance from recognised support services comprised 40 percent of those surveyed.

It has been increasingly demonstrated that prompt assistance lessens the long-term impact of rape upon the victim (Burgess & Holmstrom, 1974, 1979; Ellis 1980). It would seem to be a cause for concern that, for a variety of reasons, many victims and their associates are not obtaining the assistance which, in some cases, they admit they needed. We cannot know, on the basis of our survey, how many other victims and their families, might be in this situation. Despite the increasing pressure on Rape Crisis Centres, they may be dealing with only a small percentage of victim need. The extent of this problem, like our knowledge of the incidence of rape itself, is hidden. The situation in respect of victim response to existing services is likely to be complicated by factors such as the geographic spread and availability of services, victim confidence and willingness to approach these, prevailing attitudes in the community to rape and the priority that is seen to attach to provision of services. Other factors are knowledge within the community of what services are available and uncertainty on the part of many victims of what kind of service is offered.

In the historical context, it has been women who have identified rape as a crisis problem and who have provided the basis for a wider movement of support for rape victims. The initial impetus for the growth of such a movement arose from feminist reaction in America to a 62% rise in the rate of rape between 1967 to 1972. Following the 'speak outs' on rape, rape crisis centres were established in 1972 in Los Angeles, Washington DC and Australia. These were regarded as models for the development of rape assistance and prevention programmes in other communities. Since the early 1970's the movement has spread across America and into rural areas.

The purpose of the rape crisis centres, staffed in part by victims, was to provide sympathetic support by telephone counselling services and escort services and to sensitise medical, social and criminal justice personnel to the disabilities and needs of rape victims. They also sought changes in procedures for dealing with victims.

A variety of crisis assistance programmes have since grown up which offer comprehensive victim care. Some of these are centred on hospitals; other schemes link police, hospital and counselling services; others are stand-alone services which provide medical attention, immediate counselling and aftercare services. Increasingly sophisticated handbooks and training programmes have been devised for counsellors, police and other officials with whom victims come into contact.

There are however three developments which have placed stresses upon the movement to provide more comprehensive and efficient crisis programmes. These may contain a caution for services in New Zealand.

1. Overseas a growing body of research, much of it medically related, is catching up with the growth of victim support services and is resulting in increasing refinement of the techniques of intervention and management. Recent studies for example stress the importance of extended counselling for up to 12 months or longer. With the growth of the interest of health professionals in victim counselling a debate has been waging in America about the merits of peer counselling as against the need for purely professional assistance. Many of the professionals maintain that the effects of rape are too serious to be left to volunteers. This has engendered resentment among many women's groups who remain sceptical about some psychiatric counselling which they maintain reinforces oppressive sex roles.
2. With the growth in research and community involvement stimulated by the women's movement - and the consequent competition for funds - the victim of rape is being overlooked. "The goal of self-determination for victims is being lost in the trend to determine the victim's needs for her" (Largen, 1976 in Walker & Brodsky 1979).
3. Funding is now proving to be an increasing problem. Many programmes are experiencing difficulty in maintaining their level of victim support and in carrying out research to make these more effective.

In New Zealand also, the history of victim services parallels the growth of the Rape Crisis Centre movement overseas. Women's Refuges have also followed a similar growth pattern. Since taking root, Rape Crisis Centres have developed their own style of operation in response to local needs and resources. Until recently there were not many other services designed for rape victims. Some hospitals provide emergency treatment in their casualty departments, psychiatric counselling and follow-up care through social workers, but these are largely ad hoc, not special services. The Family Planning Clinics have provided victim care among their other services. The latest special service to emerge is the HELP Sexual Assault Centre in Auckland which offers comprehensive medical and counselling to victims and which has established a close working relationship with the police.

There is also a movement, limited by funding, among some Rape Crisis Centres to expand their services. Some also wish to provide under-one-roof assistance to victims. Women's Refuges similarly wish to provide more comprehensive counselling services which would assist marital rape and child abuse victims. Largely as a result of rape crisis centre effort, there is a growing realisation that closer co-operation between agencies dealing with rape victims is necessary. Where the victim who reports a rape to the police receives prompt assistance and support she is also likely to cope with the requirements of the criminal justice process with less difficulty.

There may well be a growing number of people - doctors, social workers and others - who provide sympathetic service on an individual level. In other respects, however, the development of an awareness of the needs of the victim of rape or other sexual assault among professionals and institutional personnel, seems to be slow. As far as we know there is no special provision for victims in hospitals; no comprehensive crisis management teaching in medical or nursing courses and no special training for police surgeons. (We are aware, however, that hospital personnel have become sensitised to child abuse and, in some hospital casualty departments, to wife battering. There is little opportunity, however, for follow up or community education).

Despite the growth of victim services generally, rural areas are not well provided for. As one doctor we interviewed said, there is a special need here, and indeed in most hospitals, for hospital and police personnel to receive some training in crisis management. She was not in favour of the development of large sexual assault units attached, for example, to hospitals for the reason that expertise would be concentrated in relatively few places with the result that large areas of need - for services and training - would go unserved. This is an issue which Dr Bill Daniels of HELP has addressed in his paper to the Symposium on Rape (Wellington, September 1982).

Rape Crisis Centres have made special efforts to increase public awareness of the problems of rape and related violence. There is, however, little evidence that victim support services are receiving the assistance they require to provide an adequate victim support programme. Rape Crisis Centres and Refuges remain the major providers of assistance to rape victims and their relatives.

## 2. A Description of the Role and Operation of Rape Crisis Centres

Each Rape Crisis Centre (there are nine operating in New Zealand at the time of writing) is an autonomous organisation, serving local needs and reflecting local influences. Each Centre's operation is, then, unique in detail. We received detailed information on the organisation and operations of the Wellington Rape Crisis Centre and the Auckland Rape Crisis Centre, so we have drawn heavily (but not exclusively) on this material for the following description.

At present, Rape Crisis Centres are, with the exception of HELP Centre in Auckland, the main agencies that provide personal support and counselling specifically catering for victims of sexual assault. They provide this service not only to victims of a recent attack, but also to victims who may have been attacked months or even years previous to coming to the Centre. Though not organised specifically to deal with victims of sexual assault, the Women's Refuges report that they do, in fact, handle a number of such cases, especially women raped by their husbands (see Appendix 3).

Several general principles characterise Rape Crisis Centre organisation:

- all centres are staffed almost entirely by volunteers, many of whom are rape victims.
- management of the centre is based on the collective principle.

(a) The Auckland Rape Crisis Centre

The following description is an abbreviated version of a paper given by the Auckland Rape Crisis Centre at the recent Symposium on Rape held in Wellington in September 1982.

The Auckland Rape Crisis Centre Collective is made up of 24 women, 19 of whom are actively involved and 5 of whom are temporarily on leave. All of us are volunteers. The Centre has employed paid workers in the past on Government temporary work schemes, and at the time of writing is awaiting the approval of two more such jobs on the Job Creation in the Voluntary Sector Scheme. Collective members' jobs include teachers, secondary and tertiary students, a psychologist, social workers, waitress, lawn-mowing contractor, policewoman, bookshop manager and clerk. Several women in the collective have children, ranging from four years to adult. We are aged from 17 to 50. One woman in the group is Polynesian, the rest are Pakeha. Our length of time on the collective ranges from three months to four years, with the average being 1-1/2 years. Rape Crisis work is emotionally very draining and we feel this continuity is a mark of the commitment of individual women and the support we give each other. Because of the experience that comes from this length of time doing Rape Crisis work, and our varied backgrounds and life experiences, we feel that as a group we have a lot in common with most women and can empathise with their experiences of rape, sexual harassment, battering and attempted rape.

The collective meets once a week. We rotate positions of responsibility within the group, so that everyone learns the skills involved in minute-taking, public speaking, making media statements and facilitating our meetings so they run smoothly. We aim for equal participation in the collective.

Women join the collective after a training weekend and about ten follow-up meetings. We share the Rape Crisis phone roster, from 6pm to 6am every day. Calls are taken by roster women at their homes. The Crisis phone is linked to an answering service, which filters the many hoax or abusive calls and rings collective members at work or at home to answer daytime crisis calls if we have no paid workers in the office.

Auckland RCC receives about six new rape calls a week, as well as follow-up calls from raped women. We see raped women face-to-face at least twice a week. We are available to accompany women to a doctor, to the police, to court and we can support them in confronting their rapist. We often give the names of sympathetic woman doctors and lawyers, and refer many women to women's refuges, self-defence classes and assertiveness training groups. We are in the process of setting up raped women's support groups, for women raped as adults, and women raped by male relatives when they were children.

The Centre received more than a dozen calls for information - medical, legal, statistical, facts for the media, other support groups, etc - and for public speaking. We speak to community groups about the reality of rape an average of three times a week. This is an essential part of our work, because a change in public attitudes is one of the things necessary to stop rape. The groups include school and tertiary students, Plunket mothers, service clubs, community houses, Social Welfare home staff and residents, Government social workers, women doctors, Church groups, hospital staff, practise nurses and others. We also hire out our film 'Rape Culture'.

In our speaking engagements we find that many people share misconceptions about rape - for instance, that the woman provokes it or secretly wants it; that only a certain type of man rapes; or a certain type of woman gets raped; that men get so sexually frustrated they can't help themselves, etc. Women often believe these myths for their own peace of mind - if they stay away from that type of man or those kinds of places, then they think they'll be safe. Many women are scared to tell those close to them about a rape because they fear they won't be believed. Those who do tell others are often rejected or distrusted. There is still very little active support for raped women in New Zealand society.

We protest some of the pro-rapist, sexist or racist comments in the media, by writing letters, making press statements or appearing on television. But the general acceptance of such attitudes overwhelms the protest that one group can make effectively.

We support other Rape Crisis groups and in the last year or so have participated in the training of or shared information with the Hamilton, Wellington, Palmerston North, Hastings, Rotorua and New Plymouth groups, as well as the Auckland HELP Centre. Last year we organised the first national rape crisis workers' gathering in November in Auckland, and as a follow-up to that we have been compiling and printing the monthly N.Z. Rape Crisis Workers' newsletter.

In 1981 we drew up and had published a detailed questionnaire on rape, the results of which are the subject of another paper at this Symposium. This information will be used in our public education in drawing up future submissions on rape law and for fundraising. One of our aims is to initiate and support research into rape, and widely publicise the results of these and other studies. The Centre has already made two submissions on rape law - one in 1976 and one in 1980. Our third paper on rape law is being circulated separately.

The Rape Crisis Centre has tried to influence the police procedures in Auckland so they are less traumatic for raped women, and we have been pleased to see recent positive changes in Auckland police procedure.

(b) The Wellington Rape Crisis Centre

The following description of the operation of this centre is based on an appendix to the paper put forward by the centre collective to the Rape Symposium, September 1982.

The Centre has been operating since May 1977. It was established by a group of former rape victims. They had found little direct support in dealing with their crisis and felt there was a strong need within the community for a specific counselling/helping agency. The Centre is fully incorporated and a registered charitable organisation. We have a good membership and a working collective. However, because of the voluntary nature of the working committee, the members and their commitment fluctuates dramatically - the result being inefficiency, ineffectiveness and discontinuity of the Centre's work. This committee is responsible for overall organisation in our major areas of concern - counselling, public relations, education and fundraising. In addition we have a support network of people who provide back-up help in specialised areas e.g. lawyers, psychologists, police, social workers.

Aims of the Centre

- (a) To reach as many people as possible who have been sexually abused;
- (b) To provide an emergency contact service for people as a result of rape or any form of sexual assault;
- (c) To provide face-to-face counselling for any persons that are in need of intensive support;
- (d) To liaise for persons in need of expert advice or treatment with persons providing the necessary skills;
- (e) To inform and educate the public in order to ensure that victims are able to rely on the wider community for support, and to promote awareness of attitudes surrounding rape with a view to preventing its incidence;
- (f) To research and gather information and statistics about sexual violence with a long term view of reforming the law related to them.

Who Uses our Service?

On average, we deal with two emergency crisis calls a week most of which require ongoing counselling. Those seeking help range from children to adolescents through to married women and pensioners. Our callers cross all social, economic and ethnic barriers. Over the past year our records show that most victims were acquainted with the rapist, many very well e.g. workmate, father, brother, husband, friend. Most attackers were pakeha. Most of the attacks occurred at either the victim's or rapist's home.

Crisis Counselling

We provide two forms of counselling:

1. Telephone Counselling

This is a 24 hour seven-days-a-week service rostered by our trained volunteer counsellors. Sometimes callers wish to remain anonymous or they use this service as a forerunner to intensive face-to-face counselling.

2. Face-to-Face Counselling

The Centre is open 8am - 5pm each weekday so that a person can just come in and arrange a counselling session; usually the appointment is made for the same day. Most callers prefer this more personalised form of support. This year we have been able to extend the second due to the employment of two fulltime trained counsellors (both former rape victims) through a Government employment scheme. All volunteer counsellors go through an intensive sequential training programme organised through the centre.

People who have been victims vary in their coping abilities and reactions but most go through an initial psychological (e.g. shock, self-denigration, nightmares, phobias) and physiological (e.g. shaking, fidgeting, nervous tics, constant chatter) traumatised state lasting between a few days or couple of weeks. Our counselling emphasises the establishment of a good self-image, non-blame and the ability to cope. Follow-up support and "ring-ins" are encouraged. Often the above support is not forthcoming among close friends or family as they themselves are unable to cope with the crisis let alone the reactions of the victim.

We provide counselling for close relatives, friends or family trying to cope with the crisis. Through experience we have found that 'support counselling' enables them to deal more adequately with the stress and provides a more supportive environment for the victim.

Many of the Centre's staff have been victims of sexual abuse so they are able to draw on their own experience and immediately identify with the victim's needs. Many clients prefer to talk to a counsellor who has undergone a similar experience. We feel too, that seeing a woman who has experienced sexual violence and resolved it provides a very influential role model.

Information and Public Relations

The Centre liaises and works with various agencies in the community which may at some point deal with rape victims e.g. police, social welfare, hospital. Referrals are received from them and we are prepared to train their personnel in dealing with recipients of sexual violence. The Centre acts as an information agency. Professional advice is readily available on police, medical and legal procedures.

In addition, we will accompany a rape victim to the police station and be there for support. We also provide a 'court service', that is, we will prepare and accompany them through all court proceedings. Police have encouraged this role and victims appreciate this service as a good personal back-up to the trauma of the court hearing.

Education

One of the Centre's primary objectives is educating people about the existence and reality of rape/sexual assault. As part of this educative role, we have devised a programme for secondary schools.

This programme involves the dissemination of basic information e.g. (rape laws, police interviewing) plus an analysis of opposite sex communication and sex-role stereotyping. It is our belief that rape is a learned behaviour rather than an innate inclination of the male sex, and that social role and expectations placed on both sexes provide the cues for sexual violence.

The programme has been widely accepted and next year it is hoped all schools will participate in it. We also have increased our public speaking engagements - requests range from business clubs to plunket mothers. We believe this work is important to increase the Centre's public profile and act as a catalyst for changes in attitudes towards sexual violence.

As an offshoot [of our work], a man is to be employed (under a government scheme) to co-ordinate a programme to involve concerned men within the community in giving support to the centre and setting up suburban groups to look at male attitudes and behaviour.

#### Fundraising

As already outlined in the main body of our paper, lack of secure finance is the constant drain on energy and inhibitor of much of our work. Our organisation is continuously hampered by fundraising and it would help us tremendously if our basic expenses and some fulltime workers were funded by a state/local government subsidy.

Rape crisis centres are not going to disappear due to shortage of demand - they provide much needed personal and practical support. However their continuity and effectiveness without state help will always remain severely limited.

#### (c) Rape Crisis Centres : Their Response to a Call

Generally, a woman who has been raped or sexually assaulted will herself contact the centre by telephone. She may have been raped recently and this might be her first attempt to tell someone about the rape. She may have been to the police and feel in need of support to face the criminal justice process. She may have already been to a trial yet still require help and advice to come to terms with the rape. In some cases, the woman may have been raped months or even years previously.

The caller may be deeply embarrassed at talking to a stranger about what had happened. She may be distraught or sobbing; she may be very angry and need to focus her anger. She may not reveal what exactly is troubling her at the first contact and may 'sound out' the counsellor for what she feels is an appropriate response, before giving further details. She may only want advice and information or she may want to talk to someone person-to-person, in which case the counsellor will arrange a meeting at a suitable place. At such a meeting the woman will be encouraged to talk through the incident and clarify what she wants to do.

If requested, the counsellor will give the caller the phone numbers of sympathetic women doctors and sympathetic lawyers.

If requested, the counsellor will accompany the woman to any court proceeding to help her become familiar with the setting and court procedures, to explain what is required of her, to help the woman with transport and other day-to-day problems and to ensure she is informed of the intended date of any hearing.

Counsellor techniques vary, of course, from person to person, and from centre to centre. The Wellington Rape Crisis Centre Handbook encourages counsellors to be resourceful, to accept and not judge the victim, to help the woman clearly recall the details of the rape, to follow her case up as far as possible (which sometimes means calling the victim even months after the rape or court case), to provide the caller with relevant information and contacts and to assure the woman that she is not the only woman that has been raped and that she need not be alone with her experience.

This handbook also sets out a suggested 'Reminder Sheet for Immediate Crisis Calls':

When a woman calls immediately after being raped, it is crucial for you to keep your head: to help you in this situation you can devise a series of reminder questions and information which can be placed beside the phone for easy reference. The following is such a guideline:

1. ARE YOU IN A SAFE PLACE?  
If not, where are you? We can arrange to pick you up or call the police. I will stay on the line till someone comes.
2. ARE YOU HURT? HOW DO YOU FEEL?
3. EXPLAIN WHAT WE CAN DO. FIND OUT WHAT SHE WANTS.
4. MEDICAL HELP  
Encourage her to have medical treatment straight away for injury and possible prosecution. Give outline of medical procedure, and emphasise the importance of VD and pregnancy tests later. IF she doesn't want you to go with her to the doctor/hospital, find out if she has a sympathetic friend to go with her. Refer her to a sympathetic doctor and make an appointment for her. TELL HER NOT TO WASH AND NOT TO TAKE ANY DRUGS OR ALCOHOL.
5. DOES SHE WANT TO REPORT TO THE POLICE?  
IF SO, offer to go with her, or else suggest that she go with a friend. Explain police and court procedures, evidence needed etc.
6. THE RAPE CRISIS CENTRE  
Tell her about the services the centre offers, e.g. counselling, referral service to medical, legal, emergency accommodation, books about rape and where to buy them.
7. ONGOING SUPPORT  
Ask if it's O.K. for you to call her in a few days to find out how she's doing. Make sure she feels free to call back and talk - tell her when you are next on roster. Emphasise that we are here to help her.

#### 3. A Description of the Role and Operation of the HELP Sexual Assault Unit, Auckland

The following description of the assistance provided by the HELP Centre is drawn from a paper presented to the Symposium on Rape, September 1982, by the Centre's Co-ordinator.

The HELP Centre for victims of sexual assault opened on 1 June 1982. While the broad definition of sexual assault includes incest, rape, sodomy and indecent assault, HELP caters for anyone who considers they have been sexually assaulted.

The aim of HELP is to provide a comprehensive psychological and medical service for victims of sexual assault. Recognising the crucial role counselling can play in the recovery of persons who have experienced sexual assaults, the Centre provides immediate crisis counselling to victims. As an integral part of victim recovery, HELP also provides counselling and support to the families, partners and close friends of the victim.

HELP occupies rooms which offer a medical examination room, a shower, kitchen, lounge and counselling rooms. A service is provided from 9 a.m. to 5 p.m. by staff on the premises. A 24 hour telephone answering service relays calls outside these hours to a rostered duty counsellor. The HELP Centre is administered by a 7 member Trust drawn from a wide community background. At present, the counselling co-ordinator is the only full-time staff member. Nine counsellors are available for both roster work and face to face counselling.

HELP clients are acquired in three ways

1. Direct self-referrals.
2. Referrals from other agencies, e.g. Social Welfare agencies, doctors, Family Planning Clinics, Industrial Health Clinics, Family Law Courts, Citizens Advice Bureaux, Women's Refuges and Halfway Houses to name a few.
3. All Police cases from the Auckland Central Area and some from other areas within the greater Auckland region.

To date the Centre's clients range in age from under three years to 82 years and are about 92 percent female. Rape complaints vary from recent or immediate rapes to those committed weeks, months or years previously. Some clients have been victims of repeated sexual abuse as children, domestic violence and rape or one of these only. Only a proportion - approximately one in five - of HELP's clients report the crime of rape to the police. Considerably fewer report cases of child molestation. Clients who contact the Centre are not obliged to report to the police. The decision to do so is their own.

When a victim of rape or sexual assault reports to the police the following procedure is observed.

1. The officer in charge of the investigation notifies the Duty Police Surgeon, usually female, of the complaint. The police surgeon in turn contacts the HELP counsellor on call.
2. The investigating officer obtains sufficient details of the offence to enable initial enquiries to be made.
3. A policewoman, if available, (or a policeman) accompanies the victim to the HELP Centre to meet the Police Surgeon and Counsellor.
4. There the counsellor and doctor introduce themselves and explain the procedures. Time is taken to allow the victim to become familiar with the Centre and understand what is happening and why.
5. A full medical examination is carried out and clothing worn by the victim is obtained. The medical evidence and clothing are handed to the police for forensic examination. A shower is then available, also fresh clothing. Advice is given on the possibility of pregnancy and venereal disease, prophylactic treatment prescribed if necessary.

6. A preliminary counselling session is carried out, usually brief. Arrangements are made for follow-up contact with the counsellor and the victim is given a take-home booklet containing relevant information and telephone numbers.
7. On completion of the counselling, the accompanying police member will convey the complainant to the Central Police Station to make a full written statement. Occasionally this may be postponed until a later hour if the victim is particularly distraught or excessively tired. By now the victim's personal support group may be available to convey her home, or alternative arrangements can be made.

Follow-up counselling is mutually agreed upon by the victim and counsellor.

#### 4. A Description of the Role and Operation of the Women's Refuges

The following description of the history, role and general organisation of the Women's Refuge movement is taken from a report to the Annual General Meeting of the National Collective of Independent Women's Refuges Inc. on 7th August 1982.

As has already been mentioned, the Refuges were formed in response to the wider problem of domestic violence, of which rape in marriage and rape in a de facto relationship is a part.

##### The Refuge Movement

###### The Past

In 1974 and 1975, as part of the women's movement, the first Women's Refuges opened in New Zealand in Christchurch and Auckland. Public support at that time was almost non-existent.

From the mid-1970's the rapid establishment of further refuges by local women's groups was in direct response to growing awareness of the desperate plight of victims of domestic violence. Refuges were established in Dunedin, Nelson, Hastings, Christchurch, Blenheim, Palmerston North, Upper Hutt, Wanganui, Wellington, Auckland, Tauranga, Rotorua and Lower Hutt.

The support of the Mental Health Foundation during this period further contributed to the development of Refuge in New Zealand. The Foundation provided much needed financial assistance for Refuges establishment/operating costs, brought Erin Pizzy to New Zealand on a speaking tour and organised and made available finance for the first National Meeting of Refuge workers. There was growing public recognition of the problem.

###### The Present

Today there are 21 Women's Refuge Centres situated throughout New Zealand. They are:

Bay of Plenty Women's Refuge Inc.  
 Christchurch Battered Women's Support Group Inc.  
 Christchurch Women's Refuge Inc. (2 centres)  
 Dunedin Women's Refuge Inc.  
 Gisborne Women's Refuge  
 Halfway House Inc. (Auckland)  
 Hastings Women's Emergency Centre Inc.  
 Lower Hutt Family Refuge Inc.  
 Marlborough Emergency Refuge Inc.  
 Napier Women's Emergency Centre Inc.  
 Nelson Women's Emergency Refuge Inc.  
 Palmerston North Women's Emergency Trust Inc. (2 centres)  
 Porirua Refuge Inc.  
 Rotorua Women's Refuge Inc.  
 South Auckland Family Refuge Inc.  
 Upper Hutt Family Refuge Inc.  
 Wanganui Women's Emergency Centre Inc.  
 Wellington Women's Refuge Group Inc.  
 Western Auckland Refuge Society Inc.

Further Refuges are currently being established in Auckland, Whangarei, Invercargill, Gore and Hamilton.

#### Service Provided

Women's Refuges offer specific support to women and children who are victims of mental physical and sexual abuse. The groups are largely volunteer organised. They raise finances, operate 24 hour telephone and roster coverage, administer/organise accommodation, help with welfare and other agencies, police, court, personnel and children. They also provide preventative/rehabilitative programmes for women and children, follow-up services and ongoing practical support for women and families, as resources allow.

#### Organisation of Refuges

There is considerable variation in the way groups organise, but for a Refuge to affiliate to the National Body they must subscribe to the basic aims of the National Collective - be an incorporated society and independent of any other group.

#### The National Collective

The first national meeting of refuge workers was held in May 1979. Since that time women involved in Refuge from throughout New Zealand have continued to meet nationally every six months to share information, ideas, problems find common solutions and plan for the future. The necessity for an official national body to receive and distribute funds, investigate and negotiate permanent funding, provide a resource for information and a central focal point for contact with other organisations and for national representation for Refuges led to the incorporation of the National Collective in May 1981.

The aims and object of the Collective are:

- (i) To provide an administrative body to organise and allocate grants, loans and other financial aid to Incorporated Women's Refuge Societies throughout New Zealand.

- (ii) To provide grants and other assistance financial or otherwise to committees and sub-committees set up from time to time by Women's Refuge Societies for the purpose of:
  - (a) Increasing public awareness of the works of Women's Refuges throughout New Zealand.
  - (b) Effecting changes in the law intended to benefit women whose domestic situation is no longer tolerable to themselves.
  - (c) Any other purpose intended to further the aims and objects of Women's Refuges and women seeking the assistance of such Refuges.
- (iii) To provide for salaries, wages and expenses of persons employed by the Society to implement and further its aims and objects.
- (iv) To hold purchase acquire by gift devise bequest or otherwise any property real or personal in the name of the Society which shall be deemed expedient for the purposes of the Society and to sell exchange mortgage and pledge any such property.

#### Management Meetings

The Management Committee have met eight times over the past year. Meetings were held as often as funds would permit and the Committee have worked hard to administer Collective business within the restraints imposed by the lack of funds for travel to Management meetings. There is a need for regular monthly meetings and it is worth noting here that the work-load of the Management Committee will further increase as the number of Refuges increase.

#### The General Funding Situation

In the present economic climate, Refuges, along with many other voluntary organisations are experiencing difficulties obtaining sufficient finance. Individual Refuges canvassing for funds are having similar difficulties at local level. This is of real concern to us ... For both the National Body and individual Refuges, the uncertainty of not having an adequate and guaranteed income to administer a busy and developing organisation, plus the sheer time and energy expended on seeking finance is disheartening and time consuming for already pressured refuge workers.

#### (a) Women's Refuge : Their Response to a Call

A Women's Refuge differs from a Rape Crisis Centre in that it caters for victims of domestic violence (which may include sexual abuse) and it provides temporary accommodation for the victim.

Like the Rape Crisis Centre, the Refuge is usually organised along the lines of rostered personnel connected to an automatic answering service.

Upon checking in for her roster, a volunteer would inform the answering service that she was ready to take calls and confirm the number to ring. She would also contact the Refuge itself to see what accommodation is available if she is not able to take her duty at the Refuge.

The number and type of calls varies immensely from night to night. In some cases, the volunteer will just relay messages onto other Refuge personnel. In other cases, the caller may only want advice or information such as phone numbers of lawyers. The volunteer may receive obscene or abusive calls, usually from husbands of women the Refuge has helped, or is helping.

The volunteer may receive a call from a woman who has left [the home] because of violence or sexual abuse. Often the woman calling has no money, nowhere to go (or is too ashamed or fearful of going to parents or relatives); she may be emotionally upset or frightened in case the husband finds her. Usually, she has children with her and they may be her chief concern. In such cases, the volunteer will arrange to meet the woman and go there in her own car. If there is the possibility of danger, the volunteer may take another person along or contact the police.

Returning to the Refuge with the woman and children, the volunteer usually considers whether the woman has sufficient food and clothing for herself and her children. If not, then she may buy some food and lend her some clothing.

At the Refuge, the woman will be encouraged to talk about her situation and what she wants to do next. She will be given a cup of tea and something to eat. She will usually stay there for the night.

The volunteer may help her to get into contact with Social Welfare (e.g. for benefits or financial assistance), with a doctor (e.g. for treatment of personal injury) with a lawyer (e.g. for advice or a non-molestation order), with other social agencies.

The volunteer will record details of the woman's case for statistical purposes. If the woman has decided to leave her partner, she might stay in the Refuge for several weeks. Often until a court order comes through, she will have no possessions, except the clothes she stands up in.

Often if the woman has been sexually assaulted she will not reveal this at the first meeting, but she may decide to talk about this later.

The volunteer may also receive calls referred on from other service agencies such as Youthline, Samaritans or Nightshelters.

#### (b) The Refuge Response to the Victim Study

The National Collective welcomed the opportunity to participate in the rape study - Refuge representatives unanimously supported a motion to take part in the study - since, as it mentioned, rape and sexual abuse were areas of particular concern.

The following information comes from a short checklist of questions sent by the researchers to each Refuge through the National Collective. We were not sure whether the Refuges had any data on the subject of rape or forced sexual intercourse in marriage and were hesitant in pressing for information that individual refuges were ill-equipped to supply. There was confirmation that many refuges do not keep routine information from women about the incidence of sexual assault - partly because it is an intrusion on the victim at a time of great emotional stress and partly because volunteers and refuge workers have so little time for information collection and refinement. In addition the National Collective was

then in the process of data collection for a major research project on domestic violence and could not supply information on a national basis. Individual Refuges were also under pressure because of time constraints and commitment to their own research project. However, four refuge groups did respond. These were Marlborough, Wellington, Nelson and the Battered Women's Support Group, Christchurch. One Refuge also supplied us with six case studies.

The information contained in this section was mostly written towards late 1982. By the time the full Rape Study is published much of the material will be at least 6 months out of date.

Some of the points the Refuges made are summarised below:

- these refuges indicate that the information they obtain cannot be regarded as indicative of the true incidence of rape in marriage since women are not always asked about sexual abuse and are often reluctant to discuss it. They sometimes do not see forced sexual intercourse as rape but as part of the general climate of violence or physical abuse. Even with the difficulties of definition and data collection, present indications of the incidence of rape/sexual abuse in marriage reveal that it is a serious problem.
- legal action is rarely taken by women in respect to sexual assault and violence. Legal, social and police attitudes make it difficult for women to consider pressing charges or seeking compensation for the injuries they receive.
- women greatly understate the extent of the harm done to them in both domestic violence and sexual abuse.
- refuges detail a range of attacks made upon women and emphasise the severity of the effects of physical, sexual and emotional abuse.
- all the refuges had similar problems in catering for the needs of abused women. Chief among these were: lack of money to meet these needs, lack of trained staff and volunteers and society's negative attitudes to the plight of women and children.
- the refuges believed that the exemption of husbands from prosecution for rape should be removed and that the definition of rape should include other acts of sexual abuse.

The full responses to the checklist are set out in Appendix 3. See also Appendix 4 for the six case studies supplied.

#### 5. Other Support Services

##### (a) Medical Practitioners

Our purpose in approaching medical practitioners was to gain some idea of the numbers of rape victims seeking medical assistance, the extent of the problem of rape as the practitioners found it, and the effects of rape on the women the practitioners saw. We also sought their comments regarding changes or improvements in care procedures or assistance. Considering the small number of replies we received in time for the study - 7 - this purpose could hardly be termed satisfied.

Nevertheless, the information we did receive merits attention.

**CONTINUED**

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Since it was impossible to determine which doctors had experience in caring for rape victims, the New Zealand Medical Association (NZMA) and the General Practitioners (G.P.) Society were approached for assistance to bring the study to the attention of their members. A notice inviting the contribution of practitioners who had the relevant experience or interest was placed in the respective journals. The NZMA and the G.P. Society were also invited to contribute. Three practitioners replied. In order to obtain a greater response, letters containing a similar invitation were sent to doctors in group practices in Wellington and to a few other doctors outside this centre. Letters were also sent to those psychiatrists who could be identified through telephone listings. A questionnaire was then sent to those who responded. A further four replies came in. Five respondents were from the Wellington area, one from Auckland and one from Christchurch. Twelve other doctors stated a preference for discussion and interview. Unfortunately there was not sufficient time to undertake these. The full questionnaire and answers to each question are set out in Appendix 5.

Some of the points the practitioners made are summarised below:

- emphasis in replies were on psychological 'damage' to the victim due to the rape and the long-lasting and severe effects of the incident on the victim's self-confidence and social ease.
- recovery time takes longer if the victim has no, or unsatisfactory, support.
- most of the practitioners canvassed referred victims of sexual assault to the local Rape Crisis Centre.
- most respondents thought the police take no account of the victim's frequent state of shock or trauma when handling a rape complaint.
- some practitioners commented that medical and legal definitions of entities such as "penetration", "trauma", and "distress" frequently do not coincide.
- all but one of the respondents said there was a definite need for a special sexual assault unit offering comprehensive medical, counselling and other services.

(b) Social Workers

Approval was sought from the Auckland, Wellington and Canterbury Hospital Boards to approach social workers and other hospital personnel who might deal with rape victims. It was unfortunately not possible to follow up all the contacts made. Of the social workers contacted in the Wellington area and Christchurch, none had had rape victims referred to them by hospital staff or by other means. They mentioned, however, as some doctors did, that a rape, incest or other sexual assault experience was sometimes discussed in connection with the ostensible reason for consultation. Social workers recognised the lasting impact such experiences had on the victims. Youthline and Samaritan counsellors said that they had few contacts from rape victims over the past two years, but that it could not be discounted that some calls from distressed people resulted from unresolved stress connected with assaults of some kind. Replies were not received from a number of other services approached.

(c) The Advisory Committee on Women

The rape study was discussed with members of the Advisory Committee on Women. Rape is part of an area of violence against women to which the Advisory Committee is giving priority. Our study was criticised by some members of the Committee for its lack of a study of offenders. While it was accepted that the primary emphasis should rightfully be on a victim orientation given the time and resources available, the committee saw the victim and related surveys as part of a much larger study of the issues involved. Members of the committee wished to see a continuing commitment to research on rape and violence against women.

PART TEN : SUGGESTIONS FOR CHANGE PUT FORWARD BY RAPE VICTIMS

General Attitudes

1. That there is a commitment to a thorough-going educational and socialising process designed to change attitudes to rape and violence especially violence against woman.
2. That attitudes should get away from emphasis on malicious or false complaints, fabrications and rape fantasies.
3. That girls be taught to be independent and not trust men and that men be taught to respect women.
4. That a wide discussion of the issues surrounding rape be encouraged.
5. That more attention to be given to preventing rape.
6. That the community becomes more involved in the problem of rape and preventative aspects.

The Substantive Law

1. That the definition of rape include other forms of penetration including oral and anal penetration and penetration by objects.
2. That the immunity of husbands from prosecution for rape be removed.
3. That a minimum, not maximum sentence be set.

The Police and the Medical Examination.

1. That new procedures be introduced for the police processing of rape cases and that special training be instituted for police personnel dealing with sexual assault cases and domestic violence.
2. That the police take the complainant's statement after the woman has been medically examined and has had a chance to wash and change her clothes.
3. That only policewomen deal with the victim and that there should be a special unit to cater for this.
4. That there be more women in the police force who are trained to handle sexual assaults and that they be given some training in psychology.

5. That a separate sexual assault unit be set up to remove reporting rape from police station.
6. That police attitudes towards rape change and that police be more sympathetic toward victims.
7. That facilities at police stations be improved and that there be a readily available list of contacts for the victim to consult.
8. That adequate and continuing police contact following the rape and explanation of the criminal justice process and procedure with salient details in writing be provided.
9. That victims be allowed a friend of their own choosing to be present at police interviews and to accompany them to the medical examination.
10. That greater numbers of women police surgeons be employed.
11. That there be a full examination of the investigative processes and a requirement that the complainant's consent to the medical examination is obtained and that she be given the choice of being examined by a police surgeon or private practitioner.
12. That the police take the victim's statement in her own home.

The Legal Process

1. That rape be not regarded as a crime against the State but as a crime against the victim thereby entitling the victim to be represented by counsel of her own choosing.
2. That in the case of acquittal the victim has the right of appeal.
3. That judges be required to state their reasons fully when, by the exercise of their discretion, a case is dismissed.
4. That there be only one court hearing and that this be held at the earliest possible date after a complaint of rape has been lodged and actioned.
5. That court hearings be closed to the public.
6. That an accused person be required to testify and that when he has made some remark, accusation or imputation against a complainant he be required to defend this. In such cases any previous history of sexual assault on the part of the defendant should be mentioned.
7. That the entire court procedure and process be changed and that legal procedures, rules and conventions that contribute to the present treatment, position and discomfort of the victim be reviewed and modified.
8. That the corroborative requirements for rape complaints not exceed those for other assaults.
9. That the rules relating to cross-examination of the complainant witness be revised.

10. That the language used in court be simplified and the formality of the court be modified.
11. That one prosecutor attend both court hearings.
12. That, when interpreters are provided, the same interpreter attend both court hearings and that a check be made with the complainant that the service is satisfactory and acceptable.
13. That the Crown Prosecutor be required to undertake adequate briefing to explain his line of questioning and to ensure that the victim's needs are taken into account in the preparation of the case.
14. That the Crown Prosecutor provide adequate protection of the complainant witness during cross-examination.
15. That no complainant be asked to supply her home or work address verbally and that any requirement for the purpose of identity be kept confidential.
16. That adequate support be provided during the court hearing for the complainant to ensure (a) that the complainant is not left alone and (b) that she is not threatened or harrassed.
17. That defendants be placed in a part of the court away from the complainant and out of her direct line of sight when she is giving evidence.
18. That separate waiting room facilities be provided for the complainant and witnesses associated with her case and for the defendant and witnesses associated with the defence.
19. That procedures for the recording of court proceedings be changed and that a method that is silent, unobtrusive and capable of operating to accommodate a normal speaking speed be introduced.
20. That an alternative method for reading back and checking evidence in court be instituted.
21. That there be greater sensitivity in the handling and display of exhibits at rape trials.
22. That tighter controls be exercised over the publication of the details of a rape case and that no details be published which could identify the victim or further embarrass her. That the police be answerable for any details released to the press.
23. That there be no press or T.V. coverage of rape cases or trials.
24. That sentences be calculated in terms of the effect of rape on the life of the victim.
25. That there be greater numbers of women officers of the court and more women on juries and more women involved throughout the investigative process.
26. That the question of the admissibility of evidence relating to the psychological state of the victim after making the complaint be considered.

27. That the woman should not be required to prove her innocence and that the burden of proof shift from the complainant to the defendant.
28. That victims be adequately compensated for injury, counselling, loss of earnings, damage to clothing and property resulting from a rape attack.
29. That information on avenues of assistance be given to all rape victims who report a rape and that written details of agencies, support systems be provided.
30. That women victims of violence be afforded greater protection by the law and its agencies.
31. That victims of violence receive prompt and adequate compensation for injury and psychological damage and that they be made aware of such assistance.
32. That there be programmes and assistance designed to modify a defendant's behaviour during a sentence of imprisonment.
33. That friends and relatives of the victims be given a handbook explaining police and court procedures.

#### Support Services

1. That there be effective and widespread publicity concerning avenues of support by Rape Crisis Centres, Womens Refuges and other helping agencies, and that in the meantime there be a commitment to the funding of support groups and agencies assisting adult and child victims of violence.
2. That there be a centre where the needs of the victim can be discussed and where she can receive basic information about police, court and legal procedures in an informal setting.
3. That support systems foster public and personal acceptance of victim's needs and stress the benefits of talking about the rape.
4. That there is a need for victim support schemes as alternatives to Rape Crisis Centres and Refuges.

#### Miscellaneous Suggestions

1. That the media report rape trials accurately and sensibly.
2. That victims have a safe place to go.
3. That social workers receive training in handling rape victims and that they should work alongside police.
4. That the victim be assisted in looking after her children if she suffer depression or stress due to the rape.

## APPENDIX 1: QUESTIONNAIRE/CHECKLIST FOR RAPE VICTIMS

Name :

Interviewers :

Date :

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 Brief Summary
 

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1. Date of Rape
2. Age
3. Marital Status
4. Race
5. Occupation
6. Relationship with Offender
7. Offender : Age, Occupation, Race
8. Did sexual intercourse take place such that it would be within the legal definition of rape? If not would it be within the legal definition of another sexual offence?
9. Any other forms of penetration?
10. Number of Offenders?
11. Place
12. Time
13. Anybody else present?
14. Was she persuaded into the situation? How?

15. Was force used against her? What type of force/weapon?
16. Any attempt to resist?
17. Feeling, response?
18. Victim's self definition of the events?
19. The rape itself?
20. Possibility of becoming pregnant?
21. Possibility of V.D.?

POLICE

1. Did she contact the police?
2. If no, reasons why not?
3. When first contacted the police?
4. Did an arrest result?
5. Who interviewed by?  
Names
6. Attitudes of police?
7. How much told by police of criminal justice process?
8. Would she recommend others to report to police?
9. When told by police that prosecution would or would not follow?
10. If police decided not to prosecute, reasons given to her?
11. Contact with police between event, and Depositions/High Court?
12. Possibility of own representation?
13. Preparation as a witness. Was she given any preparation? Who by?

MEDICAL EXAMINATION

1. Who by?
2. Where?
3. When?
4. Attitude of the medical examiner?
5. What questions was she asked?
6. Feelings about medical examination?

COURT PROCESS

1. Date of Rape
2. Date of Deposition
3. Date of High Court
4. Time in between hearings

DEPOSITIONS

5. Before a Judge or J.P.s
6. Name of Prosecutor (Detective or Crown Counsel?)
7. When first met prosecution counsel
8. Name of Defence Lawyer
9. Required to give evidence
10. This experience. WHAT WAS DIFFICULT ABOUT COURT PROCESS. (Fact of questions, presence of people in public gallery, cross examination, etc.)
11. Did prosecutor object to any of the Defence Counsel's questions?

HIGH COURT TRIAL

1. Name of Prosecuting Counsel?
2. What information was provided about the court procedure?
3. Was Evidence Amendment Act, 1977, explained?
4. Where any questions asked which would have elicited information on sexual history/activity/expertise? e.g.
5. Where any questions asked, totally unrelated to rape, which would have elicited information about her general character? e.g.
6. Did prosecuting counsel object to any of the defence counsel's questions?
7. What defence did offender offer?
8. Experience as a witness
9. Jury composition
10. Outcome of trial, and sentence
11. Any support during this process
12. Effect on life

RAPE CRISIS CENTRE

1. When contacted?
2. What advice given?
3. What support given?

## APPENDIX 2 : COMMENTS OF NON-REPORTING VICTIMS REGARDING THE POLICE

Nineteen of the 50 women we interviewed did not report the rape to the police. This does not mean they knew nothing of police procedure or that their comments on the police are worthless. They may have known other rape victims who went to the police, they may have been involved in a rape crisis centre or similar organisation. A selection of their comments regarding the police are presented below :

1. The police often misinterpret the state the victim is in - for example, in the case where the victim is in a state of supernatural calmness. They don't recognise states of shock and the ways in which different women react. If there is sensitive support available, people can go through with reporting rape to the police. In Melbourne, the trauma is recognised, time is taken with the woman and after the medical a shower is available. There are four doctors on call. But in New Zealand things are different. A long statement is required and women are not able to shower. The need for a shower is a common reaction.
2. It is difficult to report a rape to the police for many women. To assist them and possibly encourage reporting I think we should get away from the police station. A separate sexual assault unit or similar facility is a good idea. This would take away the offence/crime aura for the victim. I wouldn't advocate that rape victims be dealt with solely by women however I think there is a need for caring competent males. At present changes are needed in the police interview system in respect of technique, approach, personnel and training.
3. [Police] attitudes to women have got to change. There have been cases where women have gone to complain and the police have hummed and haaed. They have come away and achieved nothing. Women have got to be believed and their complaints taken seriously ... Women witnesses are not taken seriously. A policeman told us [the victim and her lawyer] we needed men as witnesses if we wanted to make an impact.
4. I would like to see only policewomen dealing with women so you don't get stuck with a guy. They should have a special unit. I feel sure that the majority of women who are raped won't talk to a man. There should be women doctors. I don't like men doctors - women don't like having swabs and other things done by them. I don't think women want to talk to men - I don't know why.
5. More women in the Police Force who are trained to handle such events - give them some training in psychology. They should have a better understanding of what the woman is going through than male police officers.

## APPENDIX 3: CHECKLIST FOR WOMEN'S REFUGES AND REPLIES

1. View of the extent of the problem - data from records etcReplies:Refuge A:

Of 112 admittances (23 were re-admittances), 32 women experienced rape in their relationship; 68 did not experience, or did not admit to any sexual abuse.\* Of the 32 women sexually abused, in eight cases their children were also sexually abused. (The majority were female children but our records show male-child sexual abuse also).

Refuge B:

Extent difficult to detect specifically. Statistics November 1981 - November 1982.

Number of women through refuge	63
Rape by partner	50
Women abused as children	10
Sexually abused children	15

13 Women either did not experience rape or did not admit to it.\*

Refuge C:

In 1982, 39 women seen in the refuge; six women told us of actual rape or sexual abuse.\*

Refuge D: No detailed breakdown of information available in the time required.

We deal with approximately 140 cases a year in which the woman is frightened of her husband or de facto and in which a proportion of the sexual interaction takes the form of rape. We realise that criminal rape (as defined by the Crimes Act) cannot, by definition, occur within marriage. Nevertheless, the fact remains that sexual intercourse against the victims with and coerced by threat of assault is common in the violent relationships that we deal with.

\* Note: The refuges caution that women were not always asked about sexual abuse, especially in earlier records, hence the figures of 68, 13 and 6 may not be a true record of the extent of the problem. Refuge C says that data for previous years was even rougher but appears to show similar trends.

2. Do victims see this as a special trauma apart from the more general problem of violence in their lives?

Refuge A:

In our experience, women do not often differentiate between the trauma caused by physical or sexual abuse. To begin with, some of the women are not altogether aware they've been sexually abused, and have accepted it as the norm (or the lot of a wife). Others know they can get no help from the law.

Because of guilt and shame, the women initially find it difficult to talk about the beatings and violence and with sexual abuse, the guilt and shame are even greater. (This is where the roster women's comfort/discomfort and experience in the area is important).

Refuge B:

Not all volunteers/workers feel comfortable about approaching the subject of rape within marriage. The woman therefore senses that again it must be "normal" or, if not, then unique to them, as nobody wants to talk about it or experiences it.

Woman often doesn't recognise forced intercourse as rape, and even when there is definite violence - aggression she may have experienced this as a "normal" part of sex. (see reply to section 9 for how this arises). Usually once the sexual area is discussed openly (this does not always happen quickly) women together will come to the realisation of rape within their relationship and talk about what they would prefer and could relate to in "love-making".

Unfortunately in our society there are too few opportunities for women to experience this consciousness raising process.

In cases where women recognise that they have been sexually abused they do see it as a special problem - as is shown in case studies (see Appendix 4) e.g. "I'd rather be beaten black and blue than be raped, as rape destroys my very being".

Refuge C:

- (a) Some women do not mention rape until they have been at the refuge for some time and/or feel good about [talking to] a volunteer. It is difficult enough to talk about the violence and emotional abuse they experience, let alone rape.
- (b) The problem depends on how a woman may define rape. It seems from our records, for a woman to identify rape it must have been violent and very traumatic. Rape is seen as part of a total problem in itself and is most difficult to talk about.
- (c) Many of the women we see have not enjoyed or been satisfied with their sexual relationship. (Of the 30 or so actual abuse cases in 1982, I don't recall any of the women saying they felt really comfortable and fulfilled with their sexual relationship).

- (d) It seems that if the rape(s) are serious the women more readily talk about it. It's like they 'really' have evidence that it did happen instead of some confused and vague dissatisfaction or injustice.

Refuge D:

Battered women do not normally volunteer information regarding the sexual assaults which they have received, so the majority of women passing through a refuge will not present as victims of sexual assault ... Many battered women do not view intercourse without consent as 'rape'. However, when they do so, they see rape or forced sexual intercourse as one of the traumas to which they are forced to submit. Some leave the violent relationship previously in order to terminate the rapes.

3. (a) Any cases where violence clearly associated with sexual relationship:

Refuge A:

Yes - of 32 women sexually abused only four were without physical violence. (Verbal violence was associated with these four).

Refuge B:

Often - refer case studies. "My husband would either rape me or beat me up, usually both at once".

It is common for women to be beaten into submission and then raped.

"He would hit me when I didn't want sex!"

Refuge C:

From what I could gather we have about six cases a year where violence is clearly associated with the sexual relationship.

Refuge D:

The sexual assaults are simply one aspect of the general pattern of coercion which emerges in all violent relationships. We have many cases on our files of women who have been so brutally raped by their husbands that corrective surgery has been required to repair the damage.

3. (b) Any cases where legal action has been taken as a result of injury related to sexual assault?

Refuge A:

None - there are few women who enter the Refuge who lay charges for any form of violence against them, whether physical or sexual. Most of the women are married and have no recourse to the law in the case of sexual abuse.

Refuge B:

As the law now stands, this is impossible for married women. Police attitudes to domestic violence are generally appalling, and even when there are physical signs of bleeding and bruising, assault charges will often not be taken by the Police. There are lots of incidents when the Police will try to convince victims of domestic violence not to press charges, with such comments as "Think how angry he'll be when he gets out", and "Things will be better in the morning".

Also the myths surrounding male/female roles in a sexual relationship make it very difficult for women to consider pursuing rape charges - see section 9.

Refuge C:

Only one case in six years, from our records, that court action has been taken due to sexual assault/rape. Not sure of the outcome of this.

Refuge D:

Women do not take any legal action following sexual assaults within marriage because there is no legal action they can take. The assault which they have experience is not defined as a crime.

4. Any recommendations for changeRefuge A:

1. We see rape as a crime of violence, an act of aggression, an attack or assault on the person rather than a purely sexual crime.
2. We recommend the definition of rape be widened, with all forms of sexual violence included.
3. The law should focus on the intent of the accused rather than the victim of a sexual assault who should not have to carry the burden of proof in the question of consent. Any new law must remove the narrow focus of consent.
4. The most vital change we see as being necessary ... is that the offence of rape within marriage be recognised in law.
5. As children are dependent ... we believe the law should more adequately deal with the area of incest and sexual abuse. Children must be protected.
6. We agree in principle with the New South Wales legislation where four categories of sexual assault have been defined recognising the degree of violence involved. Because we also find sexual harassment a common occurrence ... we believe a further category should be included - that of sexual harassment e.g. verbal or physical worrying or pestering in the workplace, cinema etc.
7. We believe there is a need for improved protection for victims of rape during the legal process.

Refuge B:

1. We recommend that rape is defined more broadly and include all forms of sexual violence.
2. The law should focus on the intent of the accused rather than the consent of the victim.
3. Rape within marriage be included in any new legislation.
4. Children who are victims of rape/sexual abuse both inside and outside the family, should have greater recourse through the law.

Refuge C:

It seems very obvious that rape happens in marriage and relationships and this must be accepted as a fact.

1. Rape should be illegal in marriages and defacto relationships regarded as marriages. For the law to change the situation, however, some essential concepts must be addressed. These include: the right of a woman to say No; women don't like to be raped. A woman knows whether she has been raped. At present she is having to prove that she is worth listening to.
2. A woman who has been raped should not be required or led into mentioning previous sexual experiences as a means of proving her integrity.
3. The emphasis should be on the offender and the actual offence.
4. Women don't only see rape as it is legally defined. Other forms of sexual assault are just as damaging and should be included in a definition of rape.
5. There needs to be more women working with raped women, including women police, squads, doctors, companions and counsellors.
6. Women should be compensated for injury and suffering.

Refuge D:

The change which is required is removal of the husbands privilege to rape his wife.

5. Any ideas on how legal problems of proof/consent can be overcome?

Refuge A:

The intent of the accused should be the focus of the law. In cases of rape within marriage, the breakdown of the marriage and very often the parent/child relationship has already occurred, so changes in the law will not encourage the breakdown of marriage. What it will do is give the victim recourse to justice and may very well work towards the repairing of those involved and their relationships.

Refuge B:

The intent of the act used should be the focus.

Refuge C:

Apparently evidence is the difficulty in rape, and most of all in rape in marriage and relationships. Not sure what to do about this one apart from accepting that there may not be any obvious physical damage in some cases. Yet the emotional trauma is the worst. (The women at Refuge always tell me it's not so much the actual hit or kick but the fear of what it might do, when will it happen, how long etc).

Refuge D:

The problem of proof remains largely insurmountable - especially in the case of marital rape. This means that the great majority of marital rapes will never be reported. (But the great majority of physical assaults by husbands are never reported either). This should not deter us from recommending that the husband's privilege to rape his wife should be abolished. Equal rights under the law should be the objective. This in itself will function to raise the status of women and hence reduce to some extent the incidence of sexual assault.

6. Any evidence that women falsify complaints?Refuge A:

In our experience, the women we work with greatly understate the extent of the problem - in both domestic violence and sexual abuse.

The charge as often made, that women falsify or maliciously accuse their husbands of rape/sexual assault should be refuted. Why should wives be thought to be any more malicious than anyone else? If someone goes to the police complaining of being assaulted on the street, the police do not investigate as to whether it is justified or malicious, so why make any exception of wives, and rape.

Because of the guilt and fear women presently have in the area of sexual abuse they are unlikely to lay charges let alone falsify them.

Refuge B:

In our experience - NO. Because of the social conditioning of the sexes in our society most women feel guilt, shame and disgust, and often blame themselves for rape within marriage and defacto relationships. They are therefore unlikely to lay charges, let alone falsify them.

Refuge C:

We have had no cases of false complaints.

Refuge D:

It has been our experience, and this is based on more than 750 cases, that battered women almost always understate the degree of abuse which they have suffered. When it comes to sexual assault, they not only understate, they often leave out the information altogether. Shame and embarrassment, not to mention fear of disbelief, see to that. So the female reality is exactly the opposite of the male's perception of it.

7. Estimate of personal injury/suffering in cases dealt with

The refuges listed the following:

Injury has included vaginal and body bruising, cuts and abrasions, black eyes, unwanted pregnancies; head injuries from banging head against a concrete wall, kicks to head, knife cuts; broken teeth and cheek bones, perforated ear-drums, strangulation, cuts to nose, hands, head, bruised ribs and spine; cigarette burns to body and partial disablement as a result of a knee being twisted in a door.

Women were attacked with shot-guns, knives, hockey sticks, softball bats, jug cords, steel rods, chains, boots, spades, straps, pots and pans, bottles, belts.

Personal suffering has led to loss of self-esteem, feelings of fear, guilt and shame, mental breakdown, depression, stress; distrust of and loss of confidence in men and recognised avenues of help - e.g. police, church, lawyers, doctors, marriage guidance etc. The fears mentioned also include, fear for life or serious injury, fear for children (2 very violent cases mentioned where women were raped in front of their children) and fears that custody decisions might go against them.

Reference was also made to the case studies in Listen to Me, Please! (John & Doris Church, 1981) for an estimate of the suffering involved.

8. What are the chief difficulties faced by women's refuges in carrying out support/counselling role?

(The difficulties listed were much the same in each case).

- (a) Lack of finance.
- (b) Lack of paid, trained staff.
- (c) Personnel and volunteer numbers, the time volunteers can give to refuge work.
- (d) The time and energy spent by volunteers/workers on fund-raising.
- (e) The need for comprehensive training (in one case).
- (f) The need for a broader, more comprehensive service.
- (g) Society's attitudes and lack of support for women and children in particular, and refuges in general.

9. Any view of offending males?Refuge A:

We believe that the attitudes of society are the main cause of rape (i.e. the roles males and females are given). The rigid view of males as head of household; entitled to conjugal rights; wife and children regarded as chattels etc. obviously creates this problem. Women are seen as sexual objects, and males as the vanquishers.

Moralistic attitudes towards sex and sexuality aggravate the problem. Many of the cases we have dealt with, have shown some males to indeed be inadequate and dangerous people.

Refuge B:

Credibility is given to societal attitudes by myths, some with a Freudian or psychological basis, which sustain a view of women as socially and sexually inferior - for example - women are inferior because they lack the procreative power of semen. Such attitudes are absorbed by women and thus serve to perpetuate their disabilities, including rape and assault within marriage. Examples are:

'She asked for it, or provided it by clothes, words or the look on her face'.

'Men can't help getting turned on. They have a strong sexual drive which must be satisfied - it is the wife's duty to attend to this'.

Men really enjoy sex; they are naturally strong, forceful, violent, noisy'.

'Women don't enjoy sex much; they are weak, passive, gentle, quiet'.

The male sex drive is mythologised and perpetuated because it is related to sex, genetics and hormones instead of to power and responsibility. Thus if a wife does not please her husband, meet his demands, there are plenty of other women who will. He will naturally have other sexual relationships, as he is naturally 'driven' to meet his supposed needs. The fault is the woman's - she wasn't capable of satisfying him.

Because of the dynamics within heterosexual relationships men invariably have the power, financial and physical, and this is supported by societal attitudes like 'a man's home is his castle'. The majority of relationships in New Zealand, we think, have an unequal power structure favouring men. It is this very power that enables men to rape women.

Refuge C:

Men who have inadequate skills to deal with anger, disagreements, desires. They need to have power over another person to feel they are any good. They do not take responsibility for their own anger or actions that take away other's rights. They have not learned to take responsibility for themselves as their mothers or their wives have filled this responsibility.

Refuge D:

It is similar in many respects to the inadequate personality often found among rapists. The personality of the wife assaulter is best described as 'poorly socialised', 'explosive', or 'personality disordered' (see Groth and Birnbaum, Men who Rape. The Psychology of the Offender, Plenum, 1979). Basically what you have is a person who lacks the social skills which are necessary in order to maintain an intimate relationship without constantly resorting to coercion.

10. Compensation for injury - approaches to A.C.C.?Refuge A:

None of the women who entered our refuge have approached the Accident Compensation Corporation for injury.

Refuge B:

No woman has received compensation. The only case we know of concerned the boyfriend of a woman who came to the refuge. When he beat her up, he stuck his hand through a wall and made a claim to the A.C.C. as he couldn't work. He received compensation for injury.

Refuge C:

None.

Refuge D: \_\_\_\_\_11. Other comments/suggestions (including any special needs/services to women)?

The following comments were made:

- (a) If punishment is regarded as a deterrent, the penalties ought to be more realistic in cases of domestic violence and rape and the penalties must be seen to be enforced.
- (b) More awareness of women's status as 'victim' whose complaints should be taken seriously at all levels of involvement - by police, doctors, marriage guidance, church etc. At present she is treated in a similar manner to an accused person who is not believed and who must prove her story.
- (c) Develop awareness among women that it is important and valid to lay charges for rape or sexual assault.
- (d) Comprehensive education of the public about rape and what it means.
- (e) It is particularly important that positive definitions about family and marriage are encouraged in society - definitions that do not include sex-role stereotyping and power imbalances. As society slowly accepts these and as inappropriate bases for relationship cease to be regarded as healthy or desirable - there will be less disruption of marriages and families, fewer demands or need for legal change.
- (f) Changes to the law to include rape within marriage would be a focus for a consciousness raising process for all women and men. It would provide a clear statement in support of equal, loving relationships because it would make clear that: women have the right to say no; marriage does not give husbands rights over the bodies of their wives; sex should be consensual; and that when sex is demanded or forced it is about power - it is rape.
- (g) Adequate on-going funding to Refuges and Rape Crisis Centres to enable follow-up care for the survivors of rape - those who do not go to the police and courts and those who do.

Attached as Appendix 4 are six case studies contributed by one Refuge as a result of interviews.

## APPENDIX 4: WELLINGTON WOMEN'S REFUGE INTERVIEWS

CASE STUDY 1

Yvonne: - age 22, Pakeha, married for six years, husband manager of a company.

My husband would force me to have sex with him. I'd give in as I couldn't be bothered with the hassle, or being beaten. He doesn't drink though.

I've been beaten for six years. I'd seen my mother beaten, so I'd just accepted it. I didn't lay charges against him as I couldn't go through the hassle, and I didn't bruise easily. Also, then I cared for him, and I didn't want his name dragged down because of his business. He'd only be fined, but not go inside - so it wasn't worth the trouble of going to court. Also, I didn't want to be hospitalised, which is what would have happened if I laid charges.

The law doesn't protect women, as a lot of men get off or are only fined. Just because a woman marries a man, it doesn't mean she's his property. It's a violation of someone's rights if a man doesn't pay for raping or beating his wife. I'd like to see changes in the law - an eye for an eye.

CASE STUDY 2

Jasmine: - age 33, married for six years, husband and her own business.

Everytime I got a hiding he raped me. Rape is violence itself, it's an act of power. Rape is worse than being beaten - I don't feel right about it - it hurts, it's not normal. I never wanted it.

I sleep in the childrens' room. He still beats me, even in the kids' room. The kids know he beats me but not that he rapes me, as I leave their room. If I didn't, he'd force me to have it in front of the kids - he did once. The kids get hidings from him, and have seen me hit with with a softball bat, and a hockey stick.

He'd hit me when I didn't want sex. I never thought it was his right to beat and rape me, or his right to force me. It really shocked me. What type of man could hit a woman and then want sex? After it happens he's very sorry.

I called the Police one time. They came and just warned him and said to me that I couldn't do anything about it as I'm living with him in the same house. After the Police left he raped me. I've been beaten and raped for six years. I would like to see changes in the law.

Alcohol is not the problem. I'm back with my husband, and I know I'll never trust him again.

CASE STUDY 3

Julie: - age 40, Pakeha, married for 18 years, husband owns business.

I was physically beaten and sexually beaten and raped for 15 years of my marriage.

I was first sexually assaulted by my cousin when I was 12 (this went on for 4 years). We would see our cousins once a fortnight. I didn't want to, but was always made to. Once I tried to cut him with a knife when he attacked me.

It wasn't until I got married that my husband raped me. He'd say that I was his property and "there's no such thing as rape in marriage". I never uttered a word as the kids would hear. I used to always make excuses for marks on my legs when I played tennis or basketball. I'd say I did it with the rotary hoe.

We moved in with my mother and she didn't want to know he was beating me. His actions weren't spontaneous, as when my mother went out on Friday nights to play cards, he would beat me.

I did bloody nothing to provoke him but I used to feel very guilty. Once when I was late from a squash game and three months pregnant, he beat the shit out of me. This was the only time I ran. He never hit me in the face, usually in parts of my body that were covered up.

If I opened my mouth he would hit me - I wasn't allowed to have a mind. He believed it was his right to do what he wanted. I would agree with him all the time as I couldn't stand the beatings.

I dropped down even more when I was raped. I felt degraded, humiliated, depersonalised. I built up coping measures - outlet in sports to get my angry feelings out on a tennis court or basketball court. Trying to keep things cool. Staying up late until he went to bed. Sleeping on the sofa. Becoming a work-aholic.

I don't hate him. He appals me. He's an empty shell. How did I ever get involved with him?

When he hit and raped me, he never said sorry - he said I deserved it. It never occurred to me to call the cops as he would have beaten me more. He would have got to the phone first, and ripped it out of the wall. Then I would have got a hiding.

CASE STUDY 4

Mary: - age 29, Samoan, married for three years; husband unemployed.

Everytime I got beaten he'd rape me. If I'd refuse, then he'd beat me then force it. I felt sick, disgusted and used; I would rather be beaten up than raped as it destroys your whole self, not just the outside. I would hide my child in the bedroom as my husband would beat him up too if he came out of the bedroom. My son was scared stiff of his father.

Alcohol was not the problem.

I didn't take any legal action as my husband would have beaten me up even more, and probably kill me.

I think you should be able to prosecute husbands. I don't see women as making falsified complaints. You can't say something that is not true. For three years I felt panic. I felt guilty as we are taught we deserved it. I felt intense fear of the unexpected, fear of another assault. He beat me up frequently for three years.

#### CASE STUDY 5

Joan: - age 29, Pakeha, married for 8 years; husband a wholesaler.

My husband would either rape me or beat me up (usually both at once). I had no choice. I've had broken ribs, black eyes, split head (6 stitches) and bruises.

Alcohol was a problem.

Rape is worse than a hiding as it takes away everything you've got left. A beating is on the outside, and will end. Rape goes on in your head all the time and destroys a part of yourself. I found I had no loving emotion left. What made him do that if he really loved me? I found that I covered up as I didn't want to admit what was going on. It was too humiliating. I accepted being beaten, as my mother had been too.

I mistrust most men. Rape has put me off. I generally feel that men must all be the same. I can't take people for what they are any more.

I didn't take legal action as it would have been too hard to prove. I thought the police would be patronising. And it's not a thing I'd like to tell a male cop. So what other alternatives are there?

I'd like to see changes in the law. It should be recognised that women aren't objects and that women are raped every night by men they know. Change the myth on rape. I should be able to prosecute my husband for rape and be believed.

#### CASE STUDY 6

Margaret: - age 29, Maori, lived with a man for 8 months.

I was too scared to put up a fight as he would get "aggro" if I didn't give in. He would say "You know what will happen if I don't get it". Either he'd go with some other women or I'd get beaten. I always gave in. I had to go to bed when he wanted to.

It turned me off "making love" as it's his satisfaction not mine. He comes home from pub, says get to bed, fucks me, then is asleep. I kept quiet as neighbours will hear. I felt that the sooner it's done, the sooner it's over.

I felt sickened. I felt I was being used.

I never laid charges of assault as I gave in to him even though I didn't want it, as he threatens me.

#### APPENDIX 5 : QUESTIONNAIRE FOR MEDICAL PRACTITIONERS AND REPLIES

We wish to know something about the incidence of rape in the community (including forced sexual intercourse in marriage and long-term de facto relationships) and the situation of rape victims with regard to services and support systems.

We would also like to know of any problems doctors face in providing medical and psychological assistance to rape victims and as specialist witnesses in the court situation.

This questionnaire raises some of the issues. There may be others. We would welcome additional comment. All information received will be treated confidentially.

#### 1. Town in which you practice?

- |                 |               |
|-----------------|---------------|
| 1. Auckland     | 5. Wellington |
| 2. Christchurch | 6. Wellington |
| 3. Wellington   | 7. Wellington |
| 4. Lower Hutt   |               |

#### 2. Extent of the problem - data from records as to frequency (cases per year etc).

1. As G.P., 5-10 cases per year of sexual assault.  
As police doctor - about 20 per year.
2. Approximately 4 a year.
3. 4-6 a year.
4. Since March 1982 : rape 9, attempted rape 1, statutory rape 1, indecent acts 2.
5. One in past 2 years.
6. Nil seen.
7. In overseas practice as G.P. - 1 rape, 1 indecent assault, 1 gang rape, 2 cases of incest.

#### 3. How do cases usually come to your notice?

- self-reporting
- Police
- other

1. In general practice most self or family reporting.
2. Other - arise when patient comes with psychological problems - failing to cope with life.
3. Police.
4. Police and other - referred to me, not reported.
5. Self-reporting.
6. -
7. Self-reporting and police.

4. If you are also a police surgeon, what percentage of rape cases you deal with result from these duties?
1. 60 - 70%.
  2. -
  3. All.
  4. All but one case, i.e. one out of 13.
  5. Have seen several cases of gang rape.
  6. -
  7. -
5. Is physical injury (apart from the rape) often apparent?
1. No, usually injury other than light scratches or abrasion occurs in 10 - 20% cases.
  2. Yes, bruising face, marks on neck from strangulation attempt.
  3. Approximately two-thirds.
  4. Usually minor - bruises, scratches. No injury had required treatment.
  5. -
  6. -
  7. No.
6. What is the extent/frequency of cases where victims complain of penetration other than vaginal penetration by the penis - oral, anal etc. Comment.
1. 20 - 30% of cases.
  2. Not the chief complaint - may come up in the course of treatment.
  3. Approximately 10%.
  4. Only one case where oral and anal penetration was attempted.
  5. -
  6. -
  7. Encountered no such cases.
7. What do you think are the effects of rape on a victim?
1. Psychological effects are severe and can be long-lasting; equivalent in some cases to the distress experienced in losing a loved one. In untreated cases effects may be lifelong and greatly affect that person's life both in present and future relationships. Physical effects can be long lasting if untreated; V.D., pregnancy, sepsis are obvious. Less obvious are vaginismus, asthma attacks, panic attacks with cardiac irregularities to mention but a few.
  2. Severe psychological damage - loss of confidence in self; problems in relationships with others and more especially with a male. Loss of interest and absence of sexual feelings. Persistent anger with the world in general.
  3. Immediate upset. Reaction that is greater than expected for 2 - 3 months. Following depression 1 - 2 years. Lasting memory of distasteful experience.
  4. (Police Surgeon) Unfortunately, the victim tends to be seen again only at follow up medical check (if I do it rather than the G.P.) and sometimes at court. Where a girl has had a bad experience, the assault and subsequent trauma at court has a devastating effect - withdrawn, tearful, depressed; problems relating to others, difficulty with schoolwork etc.

5. Emotional - anxiety and depression.
6. -
7. Physical - pain and bruising around vagina and elsewhere. Emotional - sense of violation, vulnerability and often degradation. Fear of sexual intercourse; sometimes fear and mistrust of men in general. Existing relationship often suffer. Effects can be long lasting and severe.
8. What is your estimate of recovery time for a victim of rape?
- (a) if adequate support is obtained quickly.
  - (b) if adequate support is not obtained.
1. (a) 3 - 5 weeks. Chronic or acceptance phase - 6 months - 1 year.  
(b) Acute phase prolonged to several months. Acceptance phase may never be achieved - e.g. one woman who resolved her psychological traumas 63 years after the rape.
  2. The chances are better in (a) but in my opinion the victim does not recover fully ever. There is always persistent emotional damage.
  3. Cannot judge - however (a) obviously.
  4. (a) Months generally till the court appearance is over.  
(b) May be years.
  5. -
  6. -
  7. (a) 3 - 6 months.  
(b) Depends on personality prior to rape. Could be years.
9. What, in your opinion, are the needs of a rape victim?
- (a) at the time of the rape incident.
  - (b) thereafter.
1. (a) Immediate medical assessment and treatment. Immediate contact with a trained counsellor.  
(b) Medical follow up at 2 weeks and regular counselling to six months with a follow up at 1 or 2 years.
  2. (a) Sympathy and understanding at all times.  
(b) Someone they feel able to talk freely to and express their true feelings.
  3. (a) Satisfactory facilities for (1) lodging complaint (2) examination (3) cleaning and toilet.  
(b) Supportive advice from interested group on follow-up and impact on mental health.
  4. (a) Understanding, security, treatment of injury, shower, reassurance re pregnancy (i.e. contraception).  
(b) rest - may need time off work, reassurance re pregnancy, V.D., close support of family or friends, counselling, assistance during court appearance, counselling for family (if appropriate), occasionally may need some help from police if intimidation by assailants family/friends.
  5. -
  6. -

7. Sympathetic handling is most important. Due respect for her as a person and for the trauma she has gone through. The whole legal and medical procedure should be explained to her. If possible, a woman doctor should perform the examination and it should take place in as comfortable and private situation as possible. She should be encouraged to talk about the whole experience and her feelings. She and her partner should then be encouraged to attend their own G.P. for further help.
10. What medical and other services do you offer to a rape victim?
1. Referral to HELP centre for full counselling services plus O&G or psychiatric help as required.
  2. Try to offer a service where patients may come (willingly) for help with both physical and more especially emotional problems.
  3. (1) Examination for legal requirements (2) Guidance re possible infection and pregnancy.
  4. Contraception (for assault), vaginal swab sent to laboratory, sedation. Follow-up counselling arranged, follow-up medical check for V.D. and assessment for psychological state (with myself, G.P. etc where appropriate).
  5. Referral to agencies and counselling by myself or others.
  6. -
  7. Medical - ability to perform the examination and take the necessary samples if not already done. Opportunity to talk about the experience. Sedation/tranquillisers if required. Long-term continuing care of both the victim and her partner and family. Other - referring for counselling where appropriate.
11. Are you able to offer continuing support?
1. Yes.
  2. Yes, if requested.
  3. Not at present.
  4. I can offer continuing support for a counsellor. Continuing medical support only by Family Planning Clinic.
  5. Yes.
  6. -
  7. Yes.
12. If victims are referred to other services, to whom are they referred?
- |                        |                                  |
|------------------------|----------------------------------|
| Rape Crisis Centre     | Social Worker                    |
| Womens Refuge          | Accident Compensation Commission |
| V.D. Clinic Other      |                                  |
| Psychologist/therapist |                                  |
1. Rape Crisis Centre.
  2. Rape Crisis Centre - excellent for immediate care. I tend to do other services myself as a general practitioner - also mainly governed by what patient wishes. ACC - tried through solicitor in one case. (I find patients tend to want to keep problems to themselves - the fewer people involved the better).
  3. Rape Crisis Centre and Refuges - not known. Rest -
  4. Rape Crisis Centre - once; Social Worker; Family Planning Clinic.

5. Rape Crisis Centre, V.D. Clinic, Psychiatric OPD if needed.
  6. -
  7. Rape Crisis Centre - initially; Womens Refuge - where rapist a husband/de facto; V.D. may well be necessary though G.P. could do these tests. Psychologist/psychiatrist; Social Worker - may be necessary when other members of family are involved; ACC - no longer of use, except where actual physical injury has occurred. I feel that the act of rape is a physical injury.
13. Are these services available in your area?
1. Yes.
  2. Yes.
  3. Uncertain about first two. Others are available.
  4. Yes.
  5. Yes.
  6. -
  7. Yes.
14. What are your views about the adequacy of these services?
1. HELP opened recently. Prior to this no adequate comprehensive service available either in private or the public hospital sector.
  2. Rape Crisis group are excellent here.
  3. Rape centre required - however must co-ordinate with police.
  4. Until recently poor. However we have now established a group of social workers who are available for counselling rape victims. The counsellor is arranged through a co-ordinator.
  5. Reasonably so.
  6. -
  7. I cannot comment as I have not been in the area long enough to have made use of them. Exception - V.D. Clinic service is good.
15. Have you dealt with cases of violent non-consensual sexual intercourse in marriage/de facto relationship? If so, comment.
1. Rarely. Most problems of violence in relationships (de facto or marriage) are not sexual. Violence itself is common in all social groups.
  2. No, not directly.
  3. No.
  4. No.
  5. No.
  6. -
  7. These are very difficult; the situation is often concealed for years. I don't know of any which came before a court.
16. Are you aware of any special difficulties for a rape complainant in pursuing a rape complaint through the Criminal Justice System?
- e.g.
- with regard to police procedure.
  - giving evidence in court.
1. Yes.
    - (i) Major problem is presenting evidence whilst distressed. Immediate care with trained staff improves apprehension rate. (Overseas data) by calming the patient before the full police interrogation.

- (ii) Patients are often intimidated by the police procedure and may withdraw complaint.
- (iii) Courtroom antics by defence lawyers are so well known as to intimidate shy and sensitive women - the so-called "secondary rape" of the cross-examination. The patient needs a trained counsellor and support throughout the trial and needs to know that she will get this well prior to the hearing.
2. My feeling is that both these procedures are better avoided. Patients do better if police are not involved. Both these situations add to the insult and humiliation; and the delays in court procedures mean the painful details have to be suffered much longer.
  3. Consideration that if evidence is not strong it is difficult to prove in court and this in these cases probably not worth pursuing.
  4. No. Only that in 1 - 2 cases the complaint was withdrawn as the girl felt she could not go through the court appearance.
  5. No.
  6. -
  7. The usual difficulties lie in the shame and embarrassment of the victim and unwillingness to appear in public in a court and relive the incident. I have no knowledge of any specific difficulties here.
17. Do you think the 'rape trauma syndrome' is sufficiently understood by the police and lawyers in terms of the standard of accuracy demanded of victims and promptness of reporting - both of which tend to be seen as a validation of the truth of her complaint?
1. No. Police and lawyers do not, as a rule, understand the psychological defence mechanisms that operate both acutely and later in courts to protect the patient from excessive psychological trauma, e.g. processes of denial, withdrawal, memory loss, confusion, anger, rebellion etc. Because of this police and lawyers may misjudge the validity of the victim's testimony.
  2. No male lawyer or police officer seems to have any conception of the true suffering of these cases and their special sensitivity to any minor action or word of thoughtlessness.
  3. Cannot comment on this.
  4. No - I believe one case was not followed up as the girl initially reported assault and several days later made a complaint of rape. She told me she felt embarrassed and guilty - which I understood but felt it reduced her credibility to the police.
  5. No.
  6. -
  7. I think the police and lawyers are more aware of this now than previously.
18. Do you think the present procedures for medical examination are:
- adequate (e.g. present sexual assault kit and procedures).
  - humane and sensitive.
  - necessary.

1. Adequate: No. At present we are redesigning the sexual assault kit and procedure to obtain better forensic evidence e.g. sperm mobility, sperm fluorescence, blood stain collections and acid phosphate testing.  
Humane and Sensitive - No. In the police station where the patient was previously examined. In the Auckland HELP centre, yes. Necessary - of course. But further psychological evaluation could be made by trained psychologists to assist the police and this material should be available in court (see Qs.22&27) and respected as expert testimony. Psychological testing of the victim could indicate levels of psychological trauma; depression and anxiety states could be reported, and the general process act as a sieve to exclude false or malicious claims from the court.
  2. I am not involved in the immediate problem but doctors are tending to be more understanding. Unfortunately all the particular procedures are necessary when cases have been reported to the police.
  3. Adequate - yes.  
Humane & Sensitive - with considerate handling.  
Necessary - yes.
  4. Adequate - No. Humane - depends entirely on the doctor. Necessary, yes.  
I examine the girl in the medical room in the cell block - this to other people is abhorrent but no girl I have spoken to has found it unpleasant. We have access to a shower after examination. It reduces the number of people the girl is exposed to. It reduces travelling time to other centres/consulting rooms etc.
  5. -
  6. -
  7. They are adequate; the procedures are as humane and sensitive as the doctor performing the examination. Necessary insofar as they satisfy the legal requirements necessary to establish the occurrence of rape.
19. Are there any problems in this medical/legal procedure?
1. Yes. Medical definitions do not coincide with legal e.g. "penetration", "trauma", "distress" mean different things to lawyers versus doctors. Doctors examining victims should not examine suspects. Forensic evidence collection must be separate from patient treatment and after care i.e. the police doctor should refer to another doctor or to a counsellor for after care and follow up as the dual role of patient's therapist and the prosecutor's witness are not compatible.
  2. Numerous problems as when the law is involved it seems hard to those trained in legal concepts to see the true human suffering involved. Again, I feel these patients do better if they are not forced into police and court procedures.
  3. Difficult to remember person examined when in court approximately 6 months later.
  4. As a police surgeon I have been given no training whatsoever. I feel we should be given some instruction on practical points of these kits but also on:
    - (a) Do we need the written consent of the girl?
    - (b) Is use of speculum mandatory?
    - (c) How much of the girl's history or medical findings are confidential?
  5. -

6. -  
7. The victim may withhold consent for the examination. The examination can show that intercourse took place but not necessarily that this was rape. If no other physical injury the onus of proof rests with the victim.
20. Are procedures for medical examination explained to the victim?
- by the police.
  - by you.
1. Police - no; self, yes.
  2. Not involved.
  3. Police - don't know; self, yes.
  4. Police - don't know; self: generally I explain briefly but when the victim asks questions I give more detail.
  5. Self - yes.
  6. -
  7. Police - usually yes; self - yes.
21. Are there any special difficulties for the doctor as a witness in presenting evidence in a rape case?
- (e.g. evidentiary requirements).
- procedure.
  - preparation as a witness.
  - time spent in court etc.
1. Time lapse from examination to court appearance does not assist recall. Rape cases should have priority in the courts. Little warning often prior to being called makes other commitments difficult to service.
  2. I am not involved.
  3. As mentioned - remembering findings. Careful notes made at time of examination (see.Q.22).
  4. Preparation as a witness - court appearances would be considerably easier if some preparation was given.
  5. -
  6. -
  7. The doctor should be aware of the special examination requirements and should have satisfied these. The main difficulty probably lies in the time spent in court - the need to get a locum to look after his patients meantime.
22. Are there other ways in which such evidence could better be presented?
1. Not sure.
  2. In private - behind closed doors where the victim does not have to suffer the presence of the rapist in court with her.
  3. Photograph of complainant should be taken at the time of examination and handed to doctor (to jog memory).
  4. Detailed medical findings where the patient's previous sexual experience etc. are brought up I feel should be given with no press or public present.
  5. -
  6. -
  7. I suppose not because a sworn statement which would be a good way of presenting evidence cannot be cross-examined.

23. From the point of view of the victim, do you think there is a case for a special sexual assault unit which offers comprehensive medical, counselling and other services in the one place?
1. Definitely, and needs financial support to offer 24 hour service. Important function of such a unit is statistical collection and the preventative aspects of sexual assault - e.g. increasing community (and police) awareness. Also to offer assistance and help to would-be offenders.
  2. I feel strongly this should be done by the patient's own family practitioner whom she knows and trusts.
  3. Yes.
  4. Yes.
  5. Yes.
  6. -
  7. In cities yes. There would then be a band of people specifically trained and experienced in dealing with such cases. They could undertake teaching sessions in other areas where this unit did not exist.
24. Do you have any views on the reasons why many women do not report rape?
1. Fairly obvious - self protective need for denial outweighs community responsibility often. Rape is an extreme invasion of personal privacy and talking about it is just as invasive to some women. Many are fearful of court procedures; many do not wish to press charges on a family member or acquaintance. Some women wish to avoid contact with the police at all costs. There are many as yet unresearched reasons.
  2. Because they are aware of the extra unnecessary humiliation involved.
  3. (1) difficulty proving rape (2) threat of injury (3) associated stigma.
  4. Embarrassment, guilt; because of threats of reprisal by offender; fear of court appearance, questioning etc; publicity and to protect assailant in some cases.
  5. Fear that they will be blamed for it e.g. by husband and others.
  6. -
  7. Shame and degradation is a big reason. Often a feeling that they were somehow to blame anyway. Knowledge of an unsympathetic response from family and/or authorities.
25. Have you had any experience with rape victims who have reported to the police, where medical evidence has appeared to substantiate their complaint but whose cases have not proceeded? If so, what do think are the reasons.
1. Yes. Only one to two cases where patient decision not to proceed once the acute trauma stage had settled.
  2. Not experienced any.
  3. Insufficient experience. As a police surgeon unless court action proceeds no further action.
  4. (a) Offender not caught.  
(b) Complaint withdrawn after 6 hours of questioning - total of 8 hours in police station.
  5. -
  6. -

7. In the one case I have dealt with the case did not proceed because there was not enough proof against the suspect. The case remains open.
26. Have you any view of offenders?
1. Many conflicting theories in the literature ranging from Freudian explanations through to genetic or hormonal "imbalances". To, more recently fashionable (since the rise of feminism) statements based on psychological testing that "rapists show no differences from normal men", (the inference is that all men could be rapists under the 'right' circumstances). There is a need to identify psychopathology if possible in rapists and isolate this from racial or economic factors. More neuro-physiological data is required to examine the possibility of temporal lobe epilepsy being causative in violent sexual outbursts. In Auckland particularly there is an opportunity in studying male attitudes to rape between the different cultural groups, Polynesian, Maori, Indian, European etc.
  2. Usually severely mentally disturbed - require some sympathy and understanding also.
  3. Usually Polynesian.
  4. Most have had sentences before for assault or rape.
  5. No.
  6. -
  7. Inadequate, mainly unable to deal with women on normal terms. Some still entertain the prevalent notion that it is a very "macho" thing to do; that women really want to be raped.
27. Have you come across any cases of false complaints. If so, what percentage of cases you have dealt with would come into this category?
1. Don't know. None as G.P. Possibly 1 - 2 as police doctor.
  2. No.
  3. Never to my knowledge.
  4. Only one.
  5. -
  6. -
  7. No.
28. Have you dealt with many other cases of sexual assault, including incest? (Indicate frequency).
1. Incest appears much more common than rape and preliminary figures from the HELP centre indicate this. Incest may not be reported to the family doctor (hence the need for an uninvolved objective clinic) because of obvious stigma and embarrassment. I have seen a small number of males who have been sexually assaulted.
  2. Cases of incest have come to light in the course of psycho-therapy when a patient comes in with emotional problems.
  3. Incest - rare. [I think that this is maybe more common amongst Polynesians - my practice is predominantly Pakeha].
  4. Sodomy 1 (since March 1982); incest 2; indecent assault 1.
  5. No.
  6. -
  7. One case of indecent assault on a young girl (aged 10).

29. Have you any recommendations for change in:
- (a) the definition of rape.
  - (b) other legal and procedural matters.
  - (c) other.
1. (a) At present rape occurs in the eyes of the law if penetration by the penis has occurred. This penetration is usually defined as penetration of the vagina. A better definition should be based on penetration of the external genitalia or any body orifice by any object belonging to or held by the offender (one frequently finds lacerations in the vaginal vestibule or labia minora indicating forcible penetration of the external structures, which psychologically and physically is more damaging than penetration of an available orifice, i.e. the vagina). One definition based on antiquated and Victorian and confused concepts of virginity is now focused on the anatomical borders such as the hymen. With modern day attitudes and knowledge this type of thinking is archaic and unnecessary.
  - (b) The counsellor should be able to accompany the patient to court and results of psychological testing made available to the court.
  - (c) The term 'rape' could be changed to sexual assault, but I would resist grading sexual assault according to levels of violence or levels of trauma such as the New South Wales legislation has attempted. I think it is impossible for anyone to grade trauma and would be an unfair onus on the doctor to make statements based on his findings. In my opinion all rape is violent, and violent rape is simply rape with added violence not a different entity requiring a different punishment or penalty. If an attempt has been made on the victims' life then alternative charges of attempted manslaughter must be made rather than the sexual assault or rape charge, graded to a lighter or lesser act.
  2. Should be considered as assault and remove sexual connotation. Complaint should have presence of understanding female, such as member of rape crisis group, at all times through questioning and examination. She should not be subjected to the added insult of being cross-examined in court with the rapist present.
  3. Cannot recommend changes in legal procedures. However, the lot of the complainant can be facilitated with better facilities and sources of immediate and follow-up support.
  4. Exclude public and press from the court.
  5. -
  6. -
  7. No.
30. Any further comment on other issues?
1. Rape and the need for legal reform should not become a battle ground for warring factions in society e.g. the feminist movement versus male chauvinism etc. Recent meetings have unfortunately shown this tendency and the need to improve care of the victim or to better understand the rapist or to better improve forensic evidence, have been secondary to the need for hysterical outbursts from minority groups.

I believe that the government should immediately finance "HELP" type clinics in all major centres and to assist in statistical collation and to promote research into comparing methods of care of sexual assault victims and research into offender pathology (see question 26). I believe this financial assistance is a priority as community assistance for such centres is scarcely forthcoming. Rape or sexual assault is not a popular issue to campaign for public funding. It would seem possible that the Accident Compensation Commission may severely limit its financial contribution towards the care and management of rape victims and I believe a ministerial intervention may be necessary to continue high quality care from official, but community based, centres.

2. I feel as the situation stands it is better for the patient if the episode is not reported to the police and she is able to recover in her own way without the added insults.

#### APPENDIX 6 : SUBMISSIONS AND RECOMMENDATIONS RECEIVED FROM ORGANISATION, GROUPS AND INDIVIDUALS

##### 1. Submissions

Whangarei Rape Crisis Centre  
Auckland Rape Crisis Centre  
Wellington Rape Crisis Centre  
Christchurch Rape Crisis Centre

Advisory Committee on Women  
Federation of University Women  
Inner Wheel (51 members, wives or widows of Rotarians), Palmerston North  
Maori Women's Welfare League  
National Council of Women of New Zealand  
N.Z. Howard League for Penal Reform  
Wellington Central Women's Section, N.Z. National Party  
Women's Electoral Lobby, Palmerston North

Mr O. Bracey, Auckland  
Mrs Osborne, Auckland  
Mrs A. Ring, Auckland (Petition)  
Mr D. Scott and others, Justice Department, Henderson (as private individuals)

Copies of submissions are available on request from the Department of Justice. Papers presented by the Auckland and Wellington Rape Centres to the Symposium on Rape in 1982 are being published by the Mental Health Foundation.

2. In addition, a large number of letters were sent to the Minister of Justice covering all aspects of the rape study.

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# RAPE COMPLAINTS AND THE POLICE

RAPE STUDY:  
RESEARCH REPORT 2

by

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RAPE COMPLAINTS AND THE POLICE

Introduction

As part of the collaborative research on rape by the Department of Justice and the Institute of Criminology, we investigated the police processing of rape complaints. This study was based upon police files of such complaints made during 1981 and closed or inactivated by the time the data were collected (June-September 1982). We received considerable co-operation from the police, who arranged for files to be sent from all Districts and collected together for us at Police Headquarters. The files varied considerably in the amount of information they contained, and ranged from a one-page Police '101' form giving the briefest of details of a complaint which entailed only a single police attendance, to a file which consisted of two very large ring binder folders containing information which was as detailed as that in a homicide file. In addition, most police districts sent in files relating to attempted rape/assault with intent to commit rape complaints. As there is little difference between these two charges, for our purposes they were grouped together as one category - attempted rape complaints.

The objectives of this study were:

- to analyse the police process from the initial complaint of rape to the decision to proceed with prosecution.
- to determine whether complaints of rape involve any particular problems for the police, and how they deal with them.
- to establish the reasons why such a large proportion of reported rapes are classified as "no offence disclosed".
- to ascertain some police officers' views about the substantive and procedural law on rape.

The police statistics for 1981 record that<sup>(1)</sup>:-

316 offences of rape were reported;

80 offences of attempted rape/assault with intent to commit rape were reported.

We examined:

173 complainant files of rape;

47 complainant files of attempted rape/assault with intent to commit rape.

The discrepancy between these two sets of figures is explained by differences in the data bases. The national police figures are offence based, whereas we collected figures on a complainant basis and have not attempted to translate them to an offence basis. An extreme example of the differences between these two bases is a gang rape which occurred in 1981. It involved one complainant, four defendants, and 33 offences. In our study, the complainant is counted once, and the characteristics of any suspects (age, race, relationship with the complainant, etc.) are counted four times. In the police statistics, on the other hand, 33 offences are recorded. In the section of this report dealing with arrested defendants, the conclusion of cases will be discussed by way of complainant and defendant, or in the case of multiple rapes, defendants.

It is impossible to state in what proportion of the 316 reported offences we saw complainant files. There are several reasons for this. First, we had access only to closed files or files declared inactive, so those complaint files which the police were still investigating would not have been sent to Police Headquarters. However, the files we did examine suggested that files rarely stayed active for longer than three months if nobody was charged. We suspect that we did not receive a small number of files where the defendant was still proceeding through Court. However, as it was rare for court proceedings not to be completed within nine months, the

(1) Report of the New Zealand Police for the year ended 31 March 1982, Government Printer, Wellington, 1982.

number of such files is considered to be few. Secondly, the Computer Aid Dispatch (C.A.D.) recording system of phone calls to the police in Auckland, Wellington and Christchurch, also meant that paper files may never have been prepared of calls initially classified as rape but which were dealt with promptly and required no further action. There were 25 such C.A.D. calls in 1981 which resulted in an offence of rape or an offence of attempted rape being included within the national totals of 316 for rape and 80 for attempted rape. The possible characteristics of C.A.D. rape calls (unfounded complaints, withdrawn complaints, misunderstandings by third parties) must be remembered in the following discussion. For instance, there may be a greater proportion of unfounded complaints than our data indicate. The distinguishing line between a C.A.D. call and the preparation of a brief '101' report may be a matter of practice which varies between districts. For example, we were told that one district changed its recording practice in 1982, completing more '101' forms than in previous years because of the increased public concern about rape.

By comparing numbers of police prosecutions for rape with numbers of Department of Justice court files for approximately the same time period, it would seem that we probably examined the great majority of rape complaints where prosecution was at least begun. The police records system is comprehensive and Districts, in complying with Headquarter's request to forward files, would have had little trouble in locating the rape complaint files we required.

Nevertheless, we must acknowledge that we were unable to examine all the relevant complainant files and we are aware of one district which did not send in all its files.

As well as examining the files, interviews were conducted with twenty police officers, both from Headquarters and from four police districts, who were experienced in dealing with rape complaints. Their views on the processing of rape complaints are incorporated into this report. We recognise that their views were personal, spontaneous opinion, which do not necessarily reflect the official view of the police or even their own opinion after more reasoned reflection.

Before looking at some findings from the files it is necessary to put rapes reported to the police in some perspective. It is usually agreed that only a proportion of rapes are reported to the police, but it is difficult to establish what that proportion is and the suggested figure may vary according to the perspective and knowledge of the person asked. Making use of the available sources, it is estimated that in New Zealand about 20% of rapes, or 1 rape in 5, are reported to the police<sup>(2)</sup>.

#### Police Classification of Offences

The police statistics are based on offences reported and the 1981 figures were classified as follows:

Rape:	<u>Number</u> (3)
	100 Prosecuted
	160 No Offence Disclosed
	1 Cautioned
	3 Warning given
	26 Offences admitted while in custody - no further action
	5 Others
	64 Uncleared

Attempted Rape/ Assault with intent to rape	<u>Number</u> (3)
	41 Prosecuted
	17 No Offence Disclosed
	1 Cautioned
	1 Offence admitted while in custody - no further action
	26 Uncleared

(2) The basis for this figure and the reasons for the discrepancy between estimates and official figures are discussed elsewhere (Research Report 1).

(3) The Police statistician advises that these figures do not add up to 316 and 80, the national total of offences reported, as they include clearances from 1980, and the data base at this stage may incorporate suspects as well as offences.

The police acknowledged that the "no offence disclosed" category is a broad one and is used a little bit like a dust-bin category for the disposition of offences which do not fit in anywhere else - for example, if the woman withdraws her complaint. The types of complaints cleared as "no offence disclosed" will be discussed fully below.

#### The Police Procedure - A Summary

When the police receive a complaint of rape or attempted rape, the first unit to respond to the call may well be uniformed officers, particularly in smaller towns and rural areas. Such officers will usually summon promptly a detective or detectives from the Criminal Investigation Branch (C.I.B.). The procedure which follows upon the arrival of a detective may vary according to the type of complaint. Usually, the complainant will be asked for details about both the attack and the assailant in order that resources may be promptly dispersed to locate the assailant, especially if he is a stranger to the complainant.

The complainant will probably then be taken to a police station in order that the various procedures may be completed. These include taking a full written statement from the complainant and arranging for her to have a medical examination. This examination is conducted by a doctor at either the police station or doctor's surgery, or occasionally at a hospital. In Auckland the medical examination may be conducted at the HELP Centre, which is a victim support centre run by a private trust for rape and other sexual assault victims. While this is happening, other detectives may be conducting a search of the scene of the crime. Further, the police may wish to take a statement from the person to whom the complainant first made the complaint and other potential witnesses. Other detectives may be attempting to locate the suspect for questioning. There are various routines to be completed, although the order in which they are undertaken depends on the circumstances of each complaint. Enquiries from the time the complaint is received until the time the complainant is allowed to return home usually take about 7-8 hours. Enquiries by the police, using considerable resources, may well continue for days and occasionally for weeks.

The detectives who were interviewed as part of this study were in Auckland, Rotorua, Wellington and Christchurch. Their comments thus apply principally to these areas. The detectives that a complainant will encounter in these areas may well have considerable experience in conducting rape enquiries, and, in the major centres, may be a member of a squad which concentrates upon interpersonal violence and sexual offences. However, a detective may also have just begun his training with the C.I.B. and be inexperienced in dealing with such complaints. In rural areas, it is probable that the detective will be generally experienced, but he may have conducted only a few rape enquiries. Further, in urban areas, the police have considerable resources available by way of manpower and technical expertise, which will not be so readily available in rural areas. The rural detective, however, may have a greater personal knowledge of his area than the detective in an urban area. The following comments must be read with these issues in mind.

The police officers interviewed stressed that rape is a serious crime and that the way it is handled by them reflects this. As well, a successful rape enquiry sometimes depends on the urgency with which enquiries are initiated. As a serious crime, rape prosecutions proceed to the High Court, and while investigating a complaint, the police must assume that it may well conclude with a jury trial in the High Court at which the defendant will plead not guilty.

The police commented that rape differs from other serious crimes, such as aggravated robbery, in that the proving of a rape relies heavily upon the credibility of the complainant. Independent evidence is important in proving all matters, the police added, but with rape complaints, independent evidence is less frequently available. Rape is a crime of interpersonal violence which seldom occurs in the presence of witnesses and, as one officer remarked, with rape "so much depends upon the complainant".

From the outset of a rape investigation, the police are concerned to determine whether the complaint is genuine. In deciding this point, the police will make use of whatever independent evidence is available. They will consider the circumstances of the incident, and they may well form an opinion about the credibility of the complainant. The issues which may be considered will vary with each complaint, but the following were noted: the appearance and state of the

complainant's clothing; the complainant's demeanour; the previous relationship between the complainant and the suspect; evidence from the scene of the crime; the time gap between the incident and reporting it to others and to the police; injuries to the complainant; the complainant's state of sobriety; the general sexual behaviour of the complainant; and consistency in the complainant's story. Many police officers observed that the relevant considerations varied in each case, but that they developed, with experience, a sixth sense or "gut feeling" about the genuineness of a complaint. They added that even when they held doubts, this did not result in the termination of the enquiry. They would continue in their efforts to locate evidence which would confirm either the complainant's account or their doubts.

In assessing the complainant's credibility on these criteria, the police noted that the complainant's consistency in relating her account is a particularly important consideration, and several officers noted that they will ask the complainant to relate at least twice what happened prior to taking a written statement.

Some officers mentioned that the complainant's past sexual behaviour is also a crucial criterion. The Evidence Amendment Act 1977 prevents cross-examination of the complainant in court about her general sexual history without the leave of the judge, and this Act met with general police approval. However, the police pointed out that it is necessary for them to question the complainant about her past sexual experience so that, at a minimum, they will be forewarned should it later be raised as an issue by the defence.

A few officers believed that the complainant's sexual behaviour should not be a consideration when determining the genuineness of a complaint. However, they acknowledged, that in practice, it is relevant because they believed it is possible that a promiscuous woman, or a woman who is known to associate with gangs, for example, may be more inclined to lie. As a practical point, previous behaviour could have relevance to the issue of consent in the current situation.

Most officers, though, in discussing the relevance of past sexual behaviour, did not distinguish between its applicability to the veracity of the complaint on the one hand and its bearing upon the complainant's credibility in court on the other. These officers thought that promiscuity made it more likely that a complaint was false. They could not really explain, however, why a promiscuous woman was more likely to make a false complaint. Their comments appeared to be:

- (a) the complainant's character, sexual and non-sexual, is an indication of her general reliability, and the extent to which she can be believed.
- (b) her prior sexual behaviour will indicate how far she had given "an open invitation" and therefore given her implied consent.

The issues which emerge from these comments are of two types. First, the police have legal concerns, that is, before initiating a prosecution they must determine both that the complaint is genuine and that there is enough evidence available to establish a *prima facie* case.

Secondly, they must also take into account practical considerations which will affect the likelihood of a successful prosecution. They recognise that, in practice, evidence to corroborate the complainant's account is probably necessary, and that, because of the circumstances in which many rapes occur, overwhelming corroborative evidence is seldom available. The less the amount of corroborative evidence, the more the prosecution must rely upon the complainant's account to prove its case. Even if they consider the complaint is genuine; therefore, the police feel that they must assess, as a practical concern, whether the complainant is likely to make a credible witness in court. In many cases, particularly when the suspect maintains that the complainant consented, such practical concerns are likely to assume greater importance than legal concerns.

However, it is apparent from our comments already that the police themselves do not always distinguish between such legal and practical concerns. For instance, the police were confused about the relevance of prior sexual behaviour. Some saw it as relevant to the veracity of the complaint, and some saw it as relevant to the complainant's credibility in court. Most, however, did not make this distinction.

This may result in the police not realizing that the relevance of sexual behaviour, whether of a promiscuous teenager or a faithfully married woman, bears differently on the genuineness of her complaint on the one hand, and on her potential credibility as a witness on the other. One police officer said that every complaint must be treated as legitimate, and the effort should then be directed towards finding the evidence to substantiate the complaint. However, other police officers, while investigating a complaint, are more inclined to put themselves into the position of a juror, and to assess the genuineness of the complaint according to the likely outcome of a prosecution in court. In other words, the amount of evidence required to convince them that a rape has occurred may often be greater than that needed to establish a *prima facie* case. We cannot say whether or not this differs from prosecution practice in relation to other offences. In any case, this does not necessarily mean that there should be a higher prosecution rate, or that if there were, there would be a higher conviction rate.

The same confusion emerged with respect to the relevance of whether a complaint was made at the first available opportunity. Some police officers regarded it as a matter which related to the veracity of the complaint, while others said that a late complaint could make the pursuit of corroborative evidence, such as a scene search, less likely to be productive. Most, however, failed to distinguish between these two issues.

Despite the equivocal way in which legal and practical issues were treated by many police officers, the impression gained is that rape complaints are treated seriously and considerable effort is expended in the pursuit of independent evidence. It would also appear that police administrative procedures assume that prosecution will result. The way in which a file is constructed and the extent of a police officer's accountability, therefore, are based on this premise. Thus, if a file was to be closed without a prosecution, the reasons for this action would usually be recorded. If, on the other hand, prosecution ensued, the reasons for this action would seldom be noted.

Soon after the enquiry is under way, the police arrange for the complainant to be medically examined. A few police officers said that the complainant might be allowed to choose her own doctor, but the general practice was to arrange for the examination by a police surgeon. The police preferred police surgeons as they were familiar with the requirements of the sexual assault kit, and were aware that they might be later required to give evidence in court. The practice seemed to be to arrange the examination before a statement was taken, although some mentioned that they might delay the examination for an hour or more if they had doubts that it was a genuine complaint. The examination was usually conducted at the police station or the police surgeon's surgery. The police expected the examination to be conducted professionally and sympathetically and a few said they also expected some comment from the doctor about the veracity of the complaint. There were criticisms, especially from one female police officer, about some police surgeons, because they were thought to be too impersonal, and often failed to explain why they conducted a particular examination, such as plucking pubic hair, or did not provide contraceptive advice, or were too willing to offer an opinion about the complainant's veracity. On the other hand, some doctors were regarded as sensitive professionals who conducted the examination with skill and understanding of the complainant's trauma.

After the examination has been completed, the complainant's clothing, if not previously removed, will almost invariably be taken from her in order that forensic tests can be undertaken. Some officers said that they would then allow the complainant the opportunity to have a shower and generally to clean up, and a few said that if it was late at night, they may allow the complainant an opportunity to sleep. These officers were a little critical of some of their fellow officers who felt sometimes an unjustified urgency to continue with the enquiry regardless of the complainant's state.

A few officers commented that they preferred that the complainant's statement be taken by a woman officer, although they admitted that this was not always possible. Most said it was more a matter of personality and experience rather than the sex of the officer, and almost all said that they could think of a few fellow officers who would be totally unsuitable for the questioning of a rape complainant. Some officers stated that it was necessary to be vigorous in questioning the complainant to ensure that she was telling the truth, and the complainant anyway, would be subject to such questioning if the matter reached court.

The police officers were asked at what stage they told the complainant about the court process. The answers revealed a difference in practice and an awareness of the unpleasantness of the trial process for the complainant. Some said that the complainant was told before her statement was taken, but in a diplomatic way so as not to frighten her from making a complaint. Some said that they would mention it during their questioning as an explanation as to why they asked particular questions. Some said that they explained the court process after the statement had been taken, and that, in effect, they gave the complainant an opportunity to withdraw her complaint. Some said that the complainant would not be told about the court process until each stage of that process was reached. And some said it depended upon the circumstances of each complaint.

The officers said that if a complainant wished to withdraw a complaint, they would try to convince her not to do so when they had a strong case. However, if the case was weak, or if they had doubts about the genuineness of the complaint, they would allow it to be withdrawn and in occasional cases, encourage this. Following the arrest of a suspect, however, they would encourage her to continue with the complaint, and would need the consent of a superior officer, and probably prosecutions section, before discontinuing proceedings.

After the statement has been taken, efforts are made to appoint one officer to liaise with the defendant through to the conclusion of the enquiry, including any subsequent trial. It was agreed that it was not usually possible to appoint one officer right from the beginning because of the requirements of shift work and the allocation of duties to different squads. The appointment of one officer before a prosecution was begun had the added advantage of assisting the complainant during the difficult period between the preliminary hearing and the High Court trial, when some complainants wished to have nothing further to do with the court process.

Some officers mentioned that with rape complaints which proceeded to a court hearing, the complainant was in a "no-win" situation. Regardless of whether a conviction was obtained, she was required to recount, relive and be cross-examined about the rape. During this ordeal, the police were sometimes the only people who offered her support during a very trying time. Indeed, because of the personal involvement of the police officers responsible for the case, an acquittal in the High Court might be a considerable disappointment for them.

The one area where some police officers felt that there was a need for an improvement in their training, was in understanding the effects of rape trauma upon a complainant, especially in the first 24 hours or so. They noted that in their perceived need to proceed urgently with their enquiries, the feelings of the complainant might be overlooked. This could, for instance, take the form of not offering the complainant the opportunity to clean and tidy herself up after the medical examination. The police training programme, revised in 1981 and issued in August 1982, includes a paper discussing interview techniques with rape victims (Rape-Notes on Interviewing: Lesson Note 1). The paper points out that rape is a frightening experience for women and that victims react in a variety of ways, any of which may be appropriate for the individual women. Police officers are urged not to be initially judgmental about these reactions, nor to ask questions which may be interpreted as blaming the victim: "the police officer's primary task at this junction is to support the victim, not to put her on the stand" (para. 7).

The paper also notes the conflict between the need of the police to gather evidence speedily and efficiently in an endeavour to solve the crime, and the needs of the victim experiencing the trauma of rape. The following approach is recommended:

The most important thing a police officer can do is to help the woman regain a sense of control over her life and the events that occur therein. One way this can be done is for the Police, whilst retaining actual control over the proceedings, to allow the woman to feel that she too is dictating the exercise of the investigation. Put another way, the Police can afford to abdicate some of the attitudes of control to the woman whilst retaining actual control. The distinction lies in style rather than substance. This stance can be conveyed in many ways:

- drop a directive stance in favour of a consultative one.
- fully explain your reasons for all questions, actions etc.
- ask for her co-operation.
- use plain, non-technical language instead of jargon.
- adopt a friendly and guiding role.
- treat her as an important member of the investigating team and keep her fully informed of events etc.

This type of approach will encourage her to feel positive and co-operative to the investigation and prosecution. It will also lessen any further feelings of having lost control of her life (para. 1).

The interviews with the police officers suggested that these guidelines are not yet the standard practice of all C.I.B. officers.

#### Summary

Rape and attempted rape complaints may either be overwhelming in their corroborative evidence, be acknowledged as false by the complainant, or fall anywhere between these two extremes. The complainants may be rich or poor, old or young, single or married, of various ethnic backgrounds, chaste or promiscuous, stable or unstable, drunk or sober, prostitutes or pensioners, or at any point along these various scales.

With some cases, regardless of the complainant's sexual history, the police acknowledge that they anticipate the jury's assessment of the facts. It is their task to consider the evidence and examine possible defences. They might conclude that there is no doubt that the complaint is genuine, but on the admissible evidence available, or because it is considered that the complainant will not be credible in court, there is only a slim chance of achieving a conviction. In such cases,

they may take on the judicial role and decide not to initiate a prosecution. To some extent the police may do this in relation to any offence and indeed, s.5 of the Costs in Criminal Cases Act 1967, by implication, requires them to do so. Nevertheless, the practice of which cases are prosecuted and which are not, seemed to vary between different police officers, with some police officers expressing a greater willingness than others to test doubtful evidential cases in the court process. The decision by the officer in charge of each case is subject to approval by a more senior officer.

#### Our Research - Classification of Files

We studied 173 complaint files of rape and 47 files of attempted rape reported to the police in 1981. The police classification of closed files was unsuitable for our purposes, as the heading "no offence disclosed" covers a variety of decisions.

We have used the following categories to differentiate between the rape complaints:

- (i) complaint withdrawn by woman before charges laid.
- (ii) substantial evidence of an unfounded complaint.
- (iii) possibly true/possible false complaint, insufficient evidence to decide.
- (iv) genuine complaint, unable to prosecute.
- (v) official action taken against suspect.

All cases in the first three categories and some within the fourth fall within the police classification of "no offence disclosed". This label is therefore highly misleading. It may well be that some of the concern about the police processing of rape complaints comes from a literal reading of what is, in fact, a statistical artifact. At the least it would seem that a separate category of "insufficient evidence to proceed" should be created.

In a circular from Police Headquarters to all Districts in December 1982, officers were instructed not to clear rape complaints as "no offence disclosed" when there was insufficient evidence on which to base a prosecution, and instead to file such complaints as "uncleared". If this practice is adopted, the police statistics for rape and attempted rape will in future years record a considerably larger number of "uncleared" complaints. As the discussion which follows discloses, the possibility of subsequently acquiring sufficient evidence to prosecute is unlikely. A category of "insufficient evidence to proceed", it is thus maintained, would more accurately reflect the outcome of the complaint.

Our categories are not totally discrete although we have treated them as such. For instance, a woman might be encouraged to withdraw her complaint because the police consider that they could never take it through to prosecution, or if she had not withdrawn it, there may have been substantial evidence of a false complaint. The complaints incorporated in categories (i) and (v) above, may fall within categories (ii), (iii) and (iv). We have separated them off for the purpose of analysis. Our method of classification will be discussed as the disposition of complaint files within each category is considered.

Our interpretation of the police files is subject to the limitation that the information in the files has been filtered through police eyes and may have been selectively recorded. Further, it is possible that in some cases an officer may have constructed a file in such a way as to justify the conclusions to superior officers. We might not have been able to detect whether or not information was slanted in this way. However, we do not consider this to be serious defect because we were still able to assess the complainant's actions and attitudes by studying her statements and by following the sequence of events on the files. We cannot be certain, though, that if we had interviewed the complainant, we would not have reached a different conclusion in some cases.

Rape files reviewed = 173

COMPLAINTS TO THE POLICE 1981

Attempted Rape )  
 Assault with intent ) files reviewed = 47

Figures on a complainant basis. Most serious outcome for any offender indicated only.

	<u>Rape</u>		<u>Attempted Rape</u>		<u>Totals</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
<u>Complaint withdrawn by woman before laying charges</u>	30	17	4	9	34	15
<u>Substantial evidence of an unfounded complaint</u>	28	16	5	11	33	15
<u>Possibly false complaint/possibly true complaint insufficient evidence to prove from file</u>	39	23	7	15	46	21
Offence took place, unable to identify suspect	9		5			
Offence took place suspect ident. unable to arrest	7		1			
Offence took place, insuff. evidence to justify pros	7		1			
Offence took place, warning/caution given	1		-			
<u>Genuine complaint, no arrest made</u>	24	14	7	15	31	14
Withdrawn at Depositions	2		1			
Prosecution begun, insufficient case at Deps.	5		1			
Dismissal by High Court Judge	2		3			
Prosecution to High Court-acquittal	12		3			
Prosecution for rape-conviction on lesser charge	2		4			
Prosecution and conviction for indecent assault	-		2			
<u>Prosecution begun, no conviction for rape or attempt</u>	23	13	14	30	37	17
Prosecution begun, plea of guilty before Deps.	10		4			
Prosecution begun, plea of guilty after Deps.	5		1			
Plea of guilty on indictment in High Court	3		2			
Prosecution to High Court - conviction	11		3			
<u>Prosecution begun, final outcome conviction</u>	29	17	10	21	39	17
Totals (4)	173	100	47	100	220	100

(4) This table does not include the 25 Computer Aid Dispatch calls which did not result in a paper file being created.

17.

Prosecution results in a conviction for rape

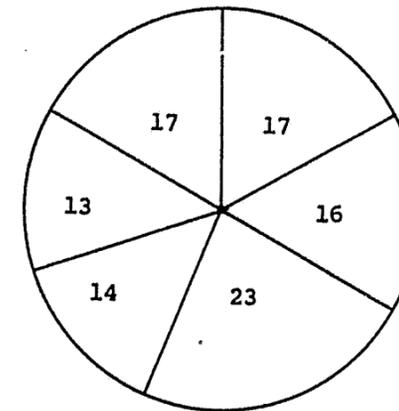
Prosecution begun no conviction for rape

Genuine Complaint, unable to prosecute

Complaint withdrawn by woman before charges laid

Substantial evidence of unfounded complaint

Grey area, possibly false, possible true-insufficient evidence to prove from file



173 complaint files of rape to Police in 1981  
(figures are percentages based on the first column in the table)

Prosecution results in a conviction for attempted rape

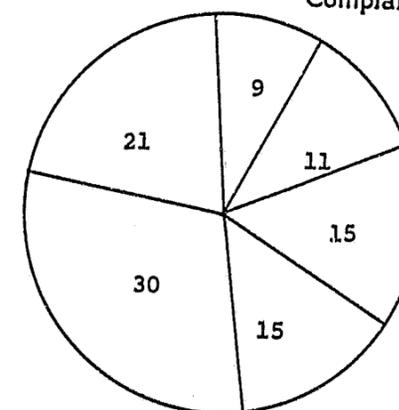
Prosecution begun, no conviction for attempted rape

Complaint withdrawn by woman before charges laid

Substantial evidence of unfounded complaint

Grey area, possibly false possibly true - insufficient evidence to prove from file

Genuine complaint, unable to prosecute



47 complaint files of attempted rape to Police in 1981

### 1. Complaint Withdrawn

There were 30 rape files and four attempted rape files (17% and 9% of the complainant files respectively) where the complaint of rape was withdrawn prior to the apprehension of a suspect. These were classified by the police as "no offence disclosed".

The circumstances of these complaints were such that if the complaint had not been withdrawn, they might have been classified in any of a number of our other categories, e.g. possibly true/possibly false, genuine complaint but unable to prosecute, or substantial evidence of an unfounded complaint. Because the complaint was often withdrawn prior to the completion of enquiries, it was not always possible to determine from the information on the file into which category it would have otherwise been allocated.

The 30 rape files where the complaint was withdrawn will be discussed first and the four attempted rape files afterwards. There were four rape files where there was insufficient information for further analysis, e.g. in one case it was merely recorded that the complainant after speaking to police said that she did not wish to take the matter further.

The balance, 26 files, have been divided on the basis of who made the complaint to the police. The files were classified in this manner because it became apparent from a reading of the files that many false complaints were made by or at the insistence of a third party.<sup>(5)</sup> There are five such groups: (i) the rape was reported to the police by a stranger to the complainant (3 cases); (ii) the rape was reported by the complainant only on the insistence of another person (2 cases); (iii) the rape was reported by a parent, relative or friend of the complainant (11 cases); (iv) the rape was reported by the complainant after she had discussed the incident with another person (5 cases); (v) the complainant reported the rape on her own initiative (5 cases). As with other types of rape complaints to be discussed, the complainant who reports a rape to the police prior to at least mentioning it to another person, is the exception (see Appendix: Table 10).

(5) In the Appendix to this report, there is further information about complaints, complainants, and suspects: e.g. Table 18 records the relationship between the complainant and suspect.

### (i) Rape reported by stranger - 3 cases

The rapes were reported respectively by a hospital, by an ambulance driver, and by a security guard who found the complainant walking along the street in a distressed state. In each case the complainant displayed reluctance to co-operate fully with the police, although in two cases a medical examination was undertaken. In the one case where an examination was not undertaken, the file recorded that all possible avenues of enquiry were pursued in an attempt to get the complainant to assist the police, but that they were met with a negative response from her. The complainant had finally refused to talk to the police and had walked out of the police station.

In case 75, this lack of co-operation did not prevent the police from deciding themselves that the complaint was not genuine. The complainant told the police that she did not wish to pursue the complaint. She said she intended to put it down to experience and that she would not be trusting the man involved again. The police, after calling the complainant's mother to the station, concluded that she and the complainant were both unstable and emotional. It was noted that the complainant was a state ward and known to the police Youth Aid Officers for a possible history of prostitution. It was suggested that her story of rape could have been concocted to justify being out late.

Although in each case efforts were made to obtain the complainant's co-operation, a reluctant complainant makes it very difficult for the police to pursue the complaint other than superficially.

### (ii) Rape reported by complainant on the insistence of any party - 2 cases

In both cases the complainant was reluctant to co-operate. In one case the police accepted the validity of the complaint, but their enquiries came to an end when the complainant signed a statement to the effect that she had not wanted to report the rape to the police and that she did not want them to do anything about it, because of possible publicity and because she was scared that her friends would find out. The complaint was made some months after the incident. The complainant was pregnant as a result of the rape and had only complained to the police at the insistence of the Department of Social Welfare when she was seeking the Domestic Purposes Benefit.

In the other case, the complaint was laid at the insistence of the complainant's friend. The complainant signed a written statement shortly afterwards withdrawing the complaint, as she did not want the suspect to be charged with the crime.

(iii) Rape reported by parent, relative or friend - 11 cases

The most common reason why the complaint was withdrawn was because the complainant was reluctant to co-operate with the police. For example, in case 183, the mother reported the rape but the complainant refused to have a medical examination. The complainants in cases 68 and 69, did not want to go through the trial process. In the latter case, the complainant's refusal was based on what a girlfriend in similar circumstances had gone through.

There were two complainants who feared retribution from the suspect. In one of these cases, a gang rape, the police did considerable work and noted that it was probable that the complainant was raped. However, there was also some unexplained delays on the police part in the gathering of evidence, and the withdrawal of the complaint some three months after the date of the initial complaint resolved any possible evidential difficulties in court. The complainant told the police that she probably would not give evidence in court about what happened to her if she was called as a witness. She felt too ashamed and embarrassed about it and was frightened that the assailants might come after her again if they found out that she had been talking to the police.

Most of the complaints in these cases were withdrawn within hours or a few days of the initial complaint, especially if the complainant's co-operation was minimal from the outset. This was the situation in case 158 where the complainant initially spoke to her doctor about the incident while seeking advice about preventing pregnancy. The doctor contacted the police who then spoke to the complainant. She said that she did not want to make an official complaint but made a statement about the incident to reduce the possibility of a similar event occurring. In any case, the police were sceptical about their chances of preparing a case which would justify court proceedings. In case 112, the complainant withdrew the complaint two days after the initial report. During that time the police had interviewed

the suspect and were inclined to believe his account that consensual intercourse had occurred. This belief was reinforced by the complainant's withdrawal, as the reason given, that her de facto husband would be upset, was regarded by the police as rather spurious.

In the other two cases the complainant was initially co-operative. In one, the complainant later withdrew because she was unwilling to give evidence in relation to the matter, partly, it would appear, as the suspect was a former lover. Again the police were sceptical about the genuineness of the complaint. In the other, the police officer recorded that it appeared that she had had sex against her will. The officer then listed six reasons why the jury might be sceptical of the genuineness of the complaint and the credibility of the complainant:

- The complainant was aware of the assailant's history of sex offending.
- She had been drinking earlier in the evening.
- She had had several opportunities to escape but had made no attempt to do so.
- She did not appear to be emotionally stable and she was physically abused by her husband.
- It was known locally that she had been unfaithful to her husband.
- Although she had not consented to intercourse with the suspect, she had offered no resistance apart from saying 'No'.

The suspect was spoken to and he claimed that intercourse was consensual. The officer noted that there was no corroboration. He recorded that after speaking to the complainant for about 15 minutes, she had decided that she no longer wished to make the complaint. It seems probable that the complaint was withdrawn on police advice given the practicalities of the situation.

## (iv) Rape reported after consultation with another party - 5 cases

In each of these five complaints there was insufficient evidence, from the police point of view, to initiate a prosecution. In two cases, the reasons for withdrawal were not given. In the other three, it seems that the complainant withdrew the complaint after discussion with the police and possibly upon their advice. In each case, though, the police seemed to accept that a rape had occurred. For example, in case 165, a police officer had interviewed the complainant at length about the rape. She had been emphatic that it had occurred but after discussion she said that she did not wish to pursue a formal complaint. The officer pointed out that there was no corroboration and because of the complainant's occupation (a nude photographic model), it would have been nearly impossible to obtain a conviction. It was suggested that, of the two suspects, the one which the complainant could identify should be given a warning. In case 164, the complainant initially misled the police in order that she would not be embarrassed in front of her boyfriend. When she admitted the truth, the police pointed out that her credibility as a court witness was in tatters and consequently she withdrew her complaint, although the deceptions related to time and place rather than to the details of the rape. The other complaint, which the police believed to be true, involved a multiple rape by four suspects. It was noted that the complainant was not a person who could be described as a "slag", however her ability as a potential witness was seriously doubted and her subsequent written withdrawal of the complaint was accepted.

## (v) Rape reported by complainant on her own initiative - 5 cases

In one case there was minimal information available because the complainant left the police station while making a statement. Her reasons for doing so were not recorded. In the other four, the complainant encountered considerable police scepticism about the genuineness of her complaint. For example, in case 31, a police officer recorded that after brief questioning, he became very suspicious as to the truth of the complaint. The complainant withdrew the complaint, but later in the day, she reactivated it and she was, at that stage, medically examined. However, a short time later, she again withdrew it, giving the reasons that she felt that she could not handle the court case and that she feared repercussions following the incident.

The police had doubts about the complaint in one case because the complainant had a history of drug taking and hallucinating. In another, the complainant's history of psychiatric illness, inconsistencies in her account to the police, and a medical report from the psychiatric hospital which questioned her veracity, influenced the police in their assessment of her credibility.

Scepticism was raised in the last case because a scene search did not bear out the complainant's account of the events. It was stated that the complainant became nervous when this was pointed out to her and she then refused to undergo a medical examination. She gave, instead, a short statement in which she said that she had not been raped and that she did not want the matter to be taken any further.

## (vi) Attempted Rape/Assault with intent to commit rape - 4 cases

Many features of these cases were similar to those of the rape cases already discussed. In two cases, potential problems with evidence at a trial were discussed by the police and the complainant, and it led to the complaint being withdrawn. In case 87, the complainant withdrew the complaint in order to avoid her de facto husband becoming aware of the incident. In case 78, the complainant discussed the matter with her de facto husband and in her statement to the police, in which she withdrew the complaint, she said she would help the police if she could but that she would not go to court about the matter.

## (vii) Discussion

Rape complaints which were withdrawn were reported to the police by the complainant on her own initiative (20%), by the complainant after consultation with another person (27%), by a relative (17%), by a friend (13%), by a neighbour (7%), by a stranger (7%), or in some other way or unknown (10%). However, the manner of reporting does not differ significantly from that of rapes in the other categories (see Appendix: Table 10). There was a slightly increased likelihood that the complaint would be withdrawn if it was reported by a friend. However, rapes reported by a friend amounted to only 7.5% of the total reported rapes.

Complaints of rape were withdrawn for two main reasons. First, the complainant refused to co-operate to the extent necessary for the police to undertake a full enquiry. This occurred in 16 of the 30 rape and attempted rape files where information was available. Such cases fell into two categories: first, those where the complainant did not wish to make a complaint and the matter only came to police notice because they were advised of the incident by some person to whom the complainant had spoken; and secondly, those cases where the complainant initially was prepared to co-operate but at some stage during the enquiry, often at a fairly early stage, changed her mind about proceeding with the complaint. The reasons for a change of mind might have been a reluctance to appear as a witness, a fear of reprisals, or the possible effect of the incident upon someone with whom she was closely involved.

The second major reason for withdrawing a complaint was because of potential problems in proving the case. The police may or may not have accepted the complaint as genuine but were aware that they had insufficient evidence, even when the suspect had been identified, to proceed to a trial. Withdrawal in these cases seemed sometimes to be a joint decision between the complainant and the police. In many of these cases the complaint was accepted as genuine or no comment as to genuineness was made. In some other cases, there was obvious police scepticism which might have persuaded the complainant to withdraw. It is difficult to assess from the files how much pressure was brought to bear on the complainant in such cases.

All rape complaints which were withdrawn for whatever reason were cleared in police statistics as "no offence disclosed". The police officers who were interviewed said that they were reluctant to allow a complainant to withdraw prior to the arrest of a suspect when they believed that they had a solid case, but agreed that if the complainant was determined to do so, they had little realistic option but to agree.

## 2. Unfounded Complaint

There were 28 rape files and five attempted rape files (16% and 9% respectively) which we classified as unsubstantiated or unfounded complaints. They were all classified by the police as "no offence disclosed".

Before we determined that a complaint was unfounded, we required an acknowledgement on the file from the complainant to that effect, or independent evidence, i.e. corroboration of the police opinion. It is pertinent to point out that we relied upon the police recording of information and their construction of files. Thus, we cannot state with certainty that complaints filed as "false" were all, in fact, groundless. Although our figures, bearing in mind these reservations, therefore disclose that 1 in 6 complaints were unfounded, they were made under a variety of circumstances by many different parties, and did not necessarily entail malice.

The 28 rape files where the complaint was deemed unfounded will be discussed first. There was one file where there was minimal information. The balance, 27 files, have again been divided on the basis of who made the complaint<sup>(6)</sup>: (i) the rape was reported by a stranger (4 cases); (ii) the rape was reported by a parent, relative or friend of the complainant but the complainant denied the rape (6 cases); (iii) the rape was reported by the complainant only on the insistence of another person (2 cases); (iv) the complainant initiated the complaint (15 cases). It is only this last group (8% or 1 in 12) which may fall into the category of malicious complaint. Further, this epithet must be considered in light of the cases to be discussed below.

(6) Further detailed information on other factors is presented in the Appendix.

## (i) Rape reported by stranger - 4 cases

The rape was reported by a neighbour, headmaster, the suspect, and an ambulance driver respectively. In each case the victim, when interviewed, denied having been the victim of a rape. In case 64, the neighbour witnessed a scuffle taking place on her front lawn, and called the police. The police dealt with it as a domestic dispute, not a rape. The headmaster, in case 105, heard on the grapevine that a pupil had been the victim of a gang "block". The police, upon completing their enquiries, were convinced that the alleged victim was not raped and that she had been a willing party to sexual intercourse with her boyfriend. In another case, the suspect called at the police station and admitted rape, but was disbelieved when the supposed victim denied the incident.

The last case, reported by an ambulance driver, involved a protracted enquiry. This was not the supposed victim's fault as at no stage did she allege rape. It was an ambulance driver's opinion endorsed by a house surgeon who examined a woman with severe bruising. The officer in charge of the case stated that extensive enquiries were undertaken to convince his superiors that it was not a rape investigation.

## (ii) Rape reported by parent, relative or friend - 6 cases

The incident was reported by an aunt in two cases, a husband, a de facto husband, a boyfriend, and a family friend. In each case, it was the reporting person's interpretation of the events which initiated the opening of a rape complaint file. The alleged victim, when interviewed, denied that she had been a victim of rape in five cases. In the other case, the victim could not recall the event. She had been taken to a hospital by her boyfriend who insisted that she had been raped. The police recorded that she had drunk a considerable amount of alcohol both in a hotel and at a party. At the party, another person had made several advances towards her. She claimed that she had rejected each of these overtures. She could recall going to bed at the flat, being naked, and rolling about with the other person previously mentioned. She then went to sleep and had woken up in the morning in her own flat with her boyfriend knocking at her door. She could not recall how she got home. The boyfriend apparently could not accept his girlfriend's behaviour in his absence. Both persons were given a talk by the crime co-ordinator about the facts of life.

## (iii) Rape reported by the complainant at the insistence of another person - 2 cases

The person who insisted that the rape be reported was a doctor in one case, and the alleged victim's mother in the other. Both cases were treated as rape complaints and medical examinations were undertaken. However, subsequent enquiries disclosed consensual intercourse.

The 12 cases in the above three categories did not come to police attention on the initiative of the alleged victim. Police enquiries disclosed that sexual intercourse had either not occurred or had been of a consensual nature. Consent in some of these cases might not have been totally voluntary, and intercourse may have involved some coercive element. However, the alleged victim was not prepared to describe the intercourse as rape and thus the police were confronted with a complaint of rape but without a rape complainant. Such cases were closed by the police as "no offence disclosed", and treated by us as an unfounded complaint.

## (iv) Complainant initiates the rape complaint - 15 cases

The files in this group did not necessarily all fall within the category of a malicious complaint. For example, in case 76, the complainant alleged rape against her husband with whom she was living. Although initially recorded by the police as rape, it was treated by them as a domestic dispute because the current legal definition of rape excludes spousal rape when the partners are cohabitating.

In two cases, the complainant insisted that her complaint was genuine. Both incidents occurred at parties and the police enquires included interviewing the suspect and other party-goers. The suspect in both cases claimed that intercourse was consensual and his interpretation of the events was supported by the other people at the parties. It was because of the independent evidence from the other party-goers that the cases have been treated by us as an unfounded complaint. In neither case did the complainant withdraw her complaint or admit that it was a fabrication. It is indeed possible that the complainant in each case continued to feel a rape victim.

In a further three cases, the complainant did not acknowledge that her complaint was unfounded, but police enquiries led them to this conclusion. The complainant in each case had a history of psychiatric illness and one was a patient in a psychiatric hospital. The complaint in this last case first came to police notice nearly three months after the incident when the complainant recounted the event to a psychiatrist, who reported it to the police. The suspect was interviewed and the police were clearly satisfied that the complainant and her de facto husband had concocted the complaint, motivated by revenge for some business dealings between the suspect and the complainant's de facto spouse. In case 184, the complainant's account was believed false by the police and by the complainant's parents, and the medical examination disclosed neither injuries nor evidence of recent intercourse. The complainant in case 190 reported the crime to the police, but when interviewed she was inconsistent in her account of the event and unco-operative, refusing a medical examination. The police noted that the complainant was apparently well-known to the uniformed police staff, that she was known to make up stories and they were convinced that this was the case on this occasion.

In the final nine cases (5% of the total rape complaints), the complainant admitted her complaint was false. In two cases, the complainant and a male friend were unexpectedly discovered in compromising circumstances, in one case by an uncle, in the other by the police. It seems that in their embarrassment and surprise they alleged rape. In both cases, the complainant acknowledged within a reasonably short time that the complaint was false.

In one case, the file noted that the complainant, a psychiatric hospital patient, had a history of reporting rape. The hospital authorities to whom she had complained were sceptical, and when interviewed in the presence of a nurse, she admitted that she had not been raped.

The one complaint by a woman in her 40s seemed to arise from the unsatisfactory state of her relationship with her de facto. The file noted that the complainant had admitted her complaint was false. The complainant was warned of the consequences of any further offending in this way, although it was added that she was of very low intelligence and was more to be pitied than punished.

The remaining five of these final nine files seem to fit a pattern in that all the complainants were aged 17 or under, and rape was alleged because of concern about a parent's reaction, often the father, to some behaviour (see Appendix: Table 1). Two of the complainants were charged with making a false complaint.

Case 111 involved a 16 year-old boy and a 15 year-old girl who had consensual intercourse during which the condom split. The girl and the boy, because of their fear of pregnancy, decided to complain of rape. The girl later muddled and ripped her clothes and then complained to her mother of rape. The medical examination was undertaken but within 2 1/2 hours of the complaint, the complainant acknowledged the falseness of her allegation. The girl was charged with making a false complaint and was placed under Social Welfare supervision. The boy was charged with unlawful sexual intercourse for which he was admonished and discharged.

The other case, 204, was initially accepted as genuine by the police and extra resources were allocated to conduct the enquiry. The officer in charge of the case, after about four hours, felt that there were too many inconsistencies in the account and re-interviewed the complainant who admitted that her complaint was false. She said she had met a former boyfriend at a sporting function and had spent the night with him. She said that she had decided to complain of rape because she had panicked and was scared of what her father would say as she had stayed out all night. She acknowledged that she should have known better and that it was wrong to tell lies to the police. She expressed regret. She was charged with making a false complaint, pleaded guilty, and was released on probation.

(v) Attempted Rape - unsubstantiated complaint - 5 cases

There were five attempted rapes which we classified as unfounded complaints. In three cases, the complaint was made by a parent, relative or friend on the basis of their interpretation of an incident (specifically a de facto husband in two cases, and the suspect's daughter in one), but the supposed victim denied that an attempted rape had occurred. The other two complaints were made by the complainant. In both cases, part of the complainant's account was accepted as accurate, but it was believed that she had exaggerated the details because of the emotional

stress from which she was suffering at the time. In case 159, the police were told of the likelihood of exaggeration by a psychiatrist who knew the complainant and who arranged for her admission to a psychiatric hospital. In the other case, because of conflicting information from the complainant and her de facto, they were both re-interviewed. It was established that the complainant was extremely depressed and she admitted that her complaint was false. There remained, however, some evidence that the complainant had been indecently assaulted by the suspect, although this was not pursued. The police officer warned the complainant about making false complaints, but because of his concern for the complainant's mental health, he discussed counselling arrangements for her with her de facto, which the latter said he intended to arrange.

(vi) Discussion

In interview, police officers often talked about the frequency of false complaints. Some thought that they were very frequent (as high as 1 in 2), whereas others thought that they were "very rare", with officers from the same area offering vastly different figures. The two most frequent reasons proffered for such complaints, were that they were an excuse for some behaviour which would earn someone's disapproval, or that they were motivated by revenge - situations, one police officer remarked, in which the complainant was under emotional stress.

In the past, some noted, the fear of pregnancy following consensual intercourse was often a reason for false complaints, but this had diminished in recent years, and a fear of venereal disease was now a more common reason (although not mentioned in the files we studied). Some officers also noted that the reasons for false complaints were limitless. Several unfounded complaints were made by patients or former patients of psychiatric hospitals, and these complainants would probably have low credibility with the police. However, a report of rape, or even a history of making false complaints, may have resulted from an earlier rape experience which occurred before admission to hospital.

The possibility of an unfounded complaint is given as one of the reasons why the attitude of some police officers is sceptical when initially investigating a rape complaint. The statistical category "no offence disclosed" provides minimal guidance as to the national pattern of unfounded complaints and police officers may well judge the frequency of unfounded complaints by their own limited, and possibly abnormal experience. And a police officer who believes that 50% of complaints are unfounded may establish a self-perpetuating prophecy in which his "experience" is reinforced by his responses.

Of the 220 files studied, only 17(8%) met the criteria of an unfounded complaint made because of a cover-up or as revenge. Even in some of these cases, it was not recorded that the complainant acknowledged that she had fabricated a complaint of rape. Further, in some of these cases, a lesser offence such as indecent assault, may have occurred. There were only a few occasions when false complaints, which could be described as malicious, were reported to the police. It must be remembered, however, that there were 25 additional C.A.D. calls for which no file was created. Some of these may have been unfounded and perhaps malicious, and hence a source of police folklore about the frequency of false complaints.

A total of 67 of the 220 files examined (30%) were allocated to the 'complaint withdrawn' or 'unfounded complaint' categories. However, by examining the types of complaints received, some light has been shed upon the many reasons why rape and attempted rape complaints are made, and why, because of the restricted number of categories available, the files discussed so far have been cleared as "no offence disclosed". Nevertheless, there are further cases to be discussed which were also put into this category.

### 3. Possibly True/Possibly False Complaint

There were 39 rape files and seven attempted rape files (23% and 15% respectively) which we identified from the information on the police files as being in a grey area, and which could have been possibly true or false. From the information on the file, it was not possible to say beyond reasonable doubt that the complaint was either unfounded or genuine. The police closed all these files as "no offence disclosed".

With most files, the police documented why they had come to the conclusion to take no further action. Many of these complaints involved the issue of consent and the reasons given for not proceeding related to evidential difficulties where the police were unable to obtain evidence to corroborate the complainant's account. Also, reasons were frequently given which raised doubts about the complainant's credibility. On many files the police expressed their opinion as to the genuineness or otherwise of the complaint. Opinions ranged from accepting the validity of the complaint, being unsure, being dubious, to expressing considerable doubt as to its genuineness.

The following were among the reasons cited on the police files for being unable to determine the genuineness of a complaint.

#### Evidential

- suspect's word against complainant's.
- no bruising, not beaten up, no injuries consistent with a struggle.
- clothing in good condition, neat and tidy.
- complainant had not escaped from the suspect at the first reasonable opportunity.
- complainant had been willingly with the suspect before the incident.
- suspect unco-operative.
- inability to locate suspects or their vehicle.

#### Complainant

- discrepancies, inconsistencies in her statement.
- complainant not generally known for her chastity, or having a reputation for being of low character.
- complainant unco-operative or anti-police.
- complainant only reported the rape at the insistence of another party.
- complaint arose out of domestic dispute, or was possibly motivated by revenge or fear of parents, de facto, boyfriend.
- complainant had been drinking heavily, smoking cannabis, or using other drugs prior to the incident.
- complainant's demeanour was too calm, or was otherwise inappropriate for a rape victim.
- complainant's mannerisms were such that she would not appear credible as a witness in court.
- complainant untrustworthy as she had a criminal record, associated with known offenders, was unstable or had a psychiatric history, or had previously made a false complaint of rape.
- complainant's occupation was one involving dubious morality.

It must be made clear that not all these matters were relevant to every case. Further, the files indicated that the police take the vast majority of complaints as reports of a serious crime to which considerable resources and time are allocated. But, as mentioned earlier, the outcome of a complaint of rape, perhaps more than other offences, is dependent upon the complainant's credibility. This is especially so when there is little corroborative evidence from other sources. The complainant's character in these cases will be important either in determining the credibility of the complaint, or in assessing the likelihood of a successful prosecution before a jury.

Some of these points are illustrated in the following cases. Case 199 typifies the difficulty in weighing up the complainant's word against the suspect's word. A woman in her early 20's was driving to a sports club function where she had arranged to meet her de facto. Her car broke down. She was offered a lift by three strangers, one man and two women. They drove past the sports club and stopped to drop the two women off at a house. The man drove the complainant to a lonely suburban area. He told her he wanted sexual intercourse, and she said that he achieved this by forcing her legs apart and holding her arms. Afterwards he drove her back to the sports club where she immediately complained to her de facto. The suspect was located and agreed that intercourse took place, but said it was consensual. The complainant was medically examined and intercourse was confirmed but there were no other injuries, although the complainant said that she bruised easily. The officer in charge of the case, while not expressing an opinion on the validity of the complaint, suggested that the matter be cleared "no offence disclosed", because of the potential evidential difficulties. As well as the lack of bruising, her clothing was not damaged, she had had several opportunities to get away from the suspect which she had not taken, and the suspect rather than leaving her in an isolated area, had dropped her off at a place where she could immediately complain.

In case 70, the complainant, aged 15, and the suspect were well known to each other, and although the police accepted the complaint as genuine, the file was closed "no offence disclosed" because of the absence of corroboration. The complainant agreed to go for a ride with the suspect, her sister's former boyfriend, on his motorcycle. In a remote place she fell off the bike and she said that the suspect threw her to the ground, slapped her face, and raped her. The suspect claimed intercourse had been consensual. Enquiries disclosed that there was discord between the suspect and the complainant's family. The reasons noted for not prosecuting included the lack of corroboration, as the bruising on the face could have been caused when she came off the motor bike. The complaint was made only at the insistence of the complainant's family and friends, and there were other domestic considerations. Further, the complaint had not been made at the first available opportunity.

In case 71, a police officer recorded the reasons early on in the enquiry why he believed the complaint was genuine. The complaint had been made as soon as practicable; the complainant's actions, demeanour, and account of the event seemed genuine; she did not need an excuse for being late home as she lived by herself; there seemed little chance of pregnancy; and the complainant had made efforts to locate and identify the suspect. The suspect was located by the police and admitted attempting sexual intercourse, but, he said, with the complainant's consent. Faced with a complaint and a denial the police felt that they had insufficient evidence to prosecute. The complainant had earlier consented to kissing the suspect, her recent injury to her foot did not necessarily corroborate a rape attempt and there were no other signs of a struggle. The police later speculated that a rape may have been reported in order to terminate any possible pregnancy, as the complainant acknowledged an earlier abortion. This possibility was put to the complainant but she denied it. The file was closed as "no offence disclosed".

Sometimes the police attitude changed during the enquiry. Two cases are presented as examples. The first involved two high school students who knew each other. Upon taking the complaint the officer in charge recorded that he was impressed by the honesty and directness of the complainant. She said that she was a virgin. The suspect admitted intercourse claiming that it was at the complainant's initiative. The complainant's teacher, however, said that the complainant was known to have a low standard of morality, and her family doctor confirmed, confidentially, that she was sexually experienced. The police then considered that the complainant was unreliable and that she had misled them. Again the file was closed as "no offence disclosed".

In the second case the police had some initial doubts, but these were countered by the complainant's positive attitude. Very extensive, but inconclusive, enquiries were undertaken. Upon reviewing the file, the police believed, because of the inconsistencies, that the complaint was false. This conclusion was reinforced by a belief that the motive for reporting the offence included elements of attention-seeking behaviour. Further issues were that the complainant had lied to her parents about other matters, and that the complainant's attitude was now anti-police (an inappropriate attitude, it was believed, for a genuine complainant).

Sometimes there were problems with the complaint which presented difficulties to the police both on evidential grounds and because of some matter relating to the complainant. Two cases will be discussed here, one where the police were inclined to believe the complainant, and the other where they were inclined not to.

The first did not come to police notice until one week after the event. Both parties were high school students. The complainant was then medically examined with a view to assessing injuries, but there were none consistent with a struggle. The complaint was made by the victim's father, and the victim was very reluctant to supply details of the incident. The suspect maintained that intercourse was consensual. The police believed that the complainant had agreed to petting but not to intercourse, but they realised that it would be her word against his word. Further, it was felt that the complainant would make a poor witness in court. The suspect was warned and the file was closed.

In the other case, the complainant had made the complaint at the insistence of her boyfriend. Between the time of the event and the complaint to the police (seven hours), the complainant had had sexual intercourse with her boyfriend and had bathed. The complainant was not medically examined, but the police could not see any marks to support her story of being slapped about the face. Her clothes worn at the time of the incident were not torn or stained in any way. There were some inconsistencies in the complainant's account of the events and she said she would refuse to give evidence if the matter came to court. The suspect, a relative, was not interviewed and as there was minimal evidence in the opinion of the police to support a rape complaint, the file was closed as "no offence disclosed".

Questions of evidence on the one hand, and doubts about the complainant on the other, appear to be especially important considerations when the police are investigating complaints in the grey area of possibly true/possibly false complaints. Sometimes the police distinguish between the two issues. However, case 16 illustrates that sometimes no such distinction is made. The complainant, aged 16, was drinking and later kissing and cuddling a 27 year old acquaintance in a hotel. She left the hotel and went with him to his house. She returned home later in the night and told her sister that she had been raped. Next morning, after also discussing it with her parents, she complained to the police. A

medical examination was arranged and the doctor noted a love bite on her ribs, and commented that he felt that the complainant would make a good witness. The suspect acknowledged that intercourse had occurred but claimed it was consensual. Upon completing enquiries, the officer in charge listed the reasons why he considered that no offence had been committed, but, in doing so, he did not distinguish on the file between the legal and practical concerns:

- the complaint was not reported to the police for some hours;
- the complaint was made at her father's instigation;
- the complainant had not called for help on two possible occasions;
- the complainant and the suspect had been kissing and cuddling earlier in the evening;
- the complainant had told a friend earlier in the day that she intended "to get a fuck" that night;
- the complainant was generally known locally for her lack of chastity.

The possibility that the complaint was false was put to the complainant, who considered withdrawing her complaint, but she insisted that sexual intercourse had not been consensual.

In another case, the police distinguished between evidence and the complainant's credibility. A woman in her 40s was in bed when a drunken acquaintance broke into her home, entered her bedroom and raped her at knifepoint. The complainant mentioned it to a friend the following day, but did not report it to the police until three days later when she was talking it over with some other friends in a pub, and they suggested that she complain to a passing police patrol. The suspect was seen and denied the rape. The police decided not to proceed, listing three evidential problems:

- the rape was not mentioned to anyone for nearly 24 hours, and not to the police for another two days;

- there was no forensic evidence because the complainant had bathed and had washed her clothing;
- the suspect produced a seemingly strong alibi.

The other reason given related to credibility, as it was recorded that it would not be difficult for the defence in court to produce evidence of the complainant's promiscuous lifestyle. The police, despite the restrictions in the Evidence Amendment Act 1977 concerning the complainant's previous sexual behaviour, acknowledged here that the defence could adduce evidence indirectly about the complainant's sexual mores.

#### Discussion

The distinctive feature of the possibly true/possibly false complaints is that there was limited evidence by way of corroboration. In some cases there was evidence of identity and sexual intercourse, but these matters were not in dispute. There might have been little evidence by way of injuries to the victim, as the victim said that she submitted after actual or threatened physical violence. There might have been alternative explanations for the injuries incurred. Often the complainant and suspect were known to each other, or there were witnesses who had seen them together behaving amicably before the incident. Where there was a lack of corroborative evidence, the police sometimes expressed an opinion as to the validity of the complaint, but the inevitable action was to close the file as "no offence disclosed".

In some cases, as the complainant's credibility assumed greater importance when the corroborative evidence was minimal, they focused extensively upon the complainant. Evidence of sexual experience with others, apart from the suspect, is not admissible as evidence except with the leave of a judge. However, the police are aware that there are ways for defence counsel to introduce evidence of the complainant's life style into a trial. And, as one police officer observed, "defence counsel will use every dirty trick in the book". The enquiries and comments about the complainant, in some cases, might not be made in a judgmental way, but as an appraisal of potential prosecution difficulties. On the other hand, when they were

closing a file which did not have sufficient evidence to prosecute, the police sometimes expressed an opinion about the genuineness of the complaint. Almost invariably, this opinion was based on their assessment of the complainant's credibility. Inconsistencies in the statement, promiscuity, and lack of co-operation were the three main measures of credibility apparent from the files. The files recorded, on occasions, that the possibility that the complaint was false was put to the complainant. In each case where it was recorded that this had been done, the complainant denied it.

The cases in this section illustrate the difficulties faced by the police in investigating some rape complaints. They also illustrate that some police officers in necessarily considering other possible interpretations of the incident seem less inclined to accept as valid a complaint from a woman of unchaste habits. A woman who sleeps around, drinks to excess, associates with known offenders, or is less than totally honest when making a complaint, must be able to produce strong corroborative evidence if she wants to complain successfully of rape. This may only be reflecting what, from police experience, is necessary to convince a jury. Some police officers seemed to distinguish between their opinion and evidence necessary to convince a jury, whilst others made no such distinction. With many types of offending, the police must consider whether they have sufficient evidence, first, to establish a prima facie case and secondly, to convince a court and jury of a suspect's guilt. However, a failure to distinguish between their opinion and the potential juror's opinion, might result in their displaying a sceptical attitude towards the complainant. The types of complaints and complainants in this category were not significantly different from those in the other categories. The one area where there was some slight variation was that complainants aged 16 years and younger were slightly more likely to have their complaints fall into this category, than were complainants in other age groups (see Appendix: Table 1).

The above three sections deal with the various circumstances which result in files being closed, and cleared as "no offence disclosed". It was in the possibly true/possibly false category that practical concerns were of particular significance and often tended to overlap with legal concerns.

#### 4. Genuine Complaints - Uncleared

This category contained 24 rape files and seven attempted rape files (14% and 15% respectively). Unlike the matters discussed in the previous sections, these files were not necessarily closed "no offence disclosed". Rather, when all the enquiries were completed but there was insufficient evidence to bring a prosecution, the file might be inactivated awaiting further information. For example, we were studying one inactivated file at Police Headquarters when an urgent call was received from the District because a suspect had been located nine months after the crime. He was subsequently convicted of rape. As rape was generally regarded as a serious crime, the enquiries could involve considerable use of police resources, and a file would not be inactivated until all leads had been exhausted. In one case, involving the rape of a young school girl, the file consisted of two thick volumes, reflecting the very extensive and thorough, but unsuccessful, enquiries which had taken place.

For the purpose of discussion, the files have been subdivided into the following categories: (i) offence took place, unable to identify suspect; (ii) offence took place, suspect identified but unable to arrest; (iii) offence took place, insufficient evidence to prosecute; (iv) offence took place, warning or caution given.

##### (i) Unable to identify suspect

There were nine rape and five attempted rape complaints (5% and 11% respectively) where the files were inactivated because it was not possible to identify a suspect.

As with all rape complaints, the police made an initial decision as to the probable genuineness of the complaint, sometimes using the observations from the doctor who examined the complainant as a source of information. With most of these files the police accepted the complaint as genuine because corroborative evidence was available, or because some features about the complainant impressed the police as trustworthy. An example of corroborative evidence concerned a woman at home during the day who was raped after she made a cup of coffee for a stranger who

knocked at her door. Enquiries disclosed that a neighbour had been similarly approached earlier in the day by a man who resembled the identikit picture of the suspect. In another case, the corroborative evidence came from a resident who heard a scream from a woman outside, and went out to find a very distressed complainant.

If the complainant was very young or very old, the police seemed to accept that the complaint was more likely to be genuine. Other matters which tended to confirm the validity of a complaint were, for example, in one case that the complainant was intelligent, upset and would make an excellent witness, and in another that she was mature, level-headed, honest, had a good memory and provided a consistent account of the event.

In three cases the police were initially not convinced that the complaint was genuine. In one, the medical and recent complaint evidence, however, supported the complainant's account. In another, the complainant suffered from a speech defect, was reluctant to make a full statement, and expressed considerable reluctance about giving evidence. Her account, however, was corroborated by the D.S.I.R. examination. In the third, the police scepticism was based on the lack of injury or damage to clothing and it was supported by the doctor who conducted the medical examination and who said that intercourse had not taken place. However, the opinion was rebutted by the D.S.I.R. report received about two weeks later which confirmed the presence of semen in the vagina. The enquiries had continued in the meantime, but no suspect was located.

The assailant in all of these 14 cases was a stranger to the victim, and the attacks occurred in the following circumstances. In six of them, the offender broke into the complainant's house at night. In three cases, the complainant was raped in a park or on school grounds. In two cases, the complainant was attacked in the street after travelling home by bus in the evening. One case involved a woman approached in her home by a stranger who asked for a drink. In another, the complainant was hitch-hiking and in the last, the complainant accepted a lift when out walking late one evening.

In most cases the police had very little evidence with which to try and identify the offender. The complainant was usually able to supply an estimated age and some indication of race. Sometimes an identikit picture was prepared and sometimes fingerprints or other physical evidence was available. In one case which occurred in a provincial town, there was insufficient evidence for an identikit, and the file recorded that the police had used informants and radio appeals, both unsuccessfully. In another case the police used the media to appeal to people who might have seen anyone in the area at the time of the rape. A total of 13 possible suspects were elicited from either the police's own sources or the public. In the opinion of the police, the suspects' statements upon interview tended to establish their innocence. In another case a suspect, located near the rape scene, was interviewed for 10 hours. He denied the rape and his fingerprints did not match the prints taken from the scene. The officer in charge opined that he did not believe the suspect was responsible. Having exhausted all avenues of enquiry, the police had no option but to inactivate the file and hope that in due course some further information would come to light.

(ii) Suspect Identified - Insufficient independent evidence of identity

In seven rape cases and one attempted rape case (4% and 2% respectively) the police accepted the complaint as genuine, located a suspect or suspects, but lacked sufficient evidence to justify prosecution because there was insufficient independent evidence of identification.

In four of the eight cases, the suspect was unknown to the complainant. Three were attacked in their own home and one on the street. In two cases, the suspect blindfolded the complainant. In the third, the three assailants wore balaclavas and gloves, and in the fourth, the attack occurred in a dark bedroom at night. In two cases the suspect was identified by reference to police files, and in one he was located nearby. The suspect in each case was subject to a lengthy interview and considerable efforts were made, albeit unsuccessfully, to find other evidence to link him to the crime. In the case with three suspects, the police believed they knew who was responsible but again lacked sufficient evidence to link them to the rape.

In one case the complainant believed she knew who the offender was. The other evidence available confirmed her opinion, but it was insufficient to establish identity firmly. In this case and the previous four, deficiencies with the corroborative evidence relating to identification were the principal reasons for the police being unable to proceed to prosecution.

In the remaining three cases, the complainant's credibility was also in question. In case 120 (two suspects), the complainant was able to name the suspects. Each was interviewed and each denied the offence. In case 176, there was little corroborative evidence and the complainant had a history of psychiatric treatment and unchaste behaviour. The final case only came to light during the course of other enquiries, and the complainant was of low repute and reluctant to co-operate.

In all the cases in this category, the police accepted the complaint as genuine and were able to locate a suspect or suspects. Most of them were interviewed, but each one denied any involvement. Because of the lack of independent evidence about identity which would link the suspect to the crime, there was insufficient evidence to prosecute.

(iii) Insufficient evidence to prosecute - not identity

In seven cases of rape and one of attempted rape (4% and 2% respectively) the police accepted the complaint as genuine, obtained corroborative evidence which identified a suspect or suspects, but lacked sufficient evidence on other matters to justify a prosecution. Information was collected from six of the eight files as to the police method of classifying the complaint. Five files were closed as "no offence disclosed", and one was inactivated as uncleared.

Seven of the eight files did not proceed to prosecution because of difficulties relating mainly to the complainant. In case 25, the suspect maintained that intercourse had been consensual. The complainant had been very drunk at the time of the rape. In case 85, it was the complainant's word against the word of the three suspects (two of whom said intercourse was consensual and one of whom denied that intercourse occurred). The complainant said intercourse occurred when she was unconscious following heavy drinking; two suspects said she was conscious and that

she had consented. Case 133 also involved three suspects who said intercourse was consensual. The 14 year-old complainant was suffering from amnesia following heavy drinking and could not recall the event, while a girlfriend who was with her said that the complainant had been raped. The suspect said intercourse was consensual in case 208, while the complainant was mentally retarded and refused to co-operate fully. In case 28 there were two suspects involved. The complainant was mentally unstable, a drug user and known to have traded sexual favours for drugs in the past. The complainant's mental instability was also noted in cases 99 and 55. In the former, the complaint was made several days after the event and the complainant's account was incoherent. In the latter, there were two suspects, neither of whom were interviewed. There was also considerable corroborative evidence about the rape, the lack of consent and identity, but the complainant was mentally retarded, possibly intoxicated, unco-operative, and had a poor memory.

In the final case, which involved three suspects, the file included a list of the factors considered by the police. There were several features of the evidence which supported the complainant's story: an accurate description of the room in which the rapes occurred; the weapon the complainant said was used to obtain consent was found on one of the suspects; one suspect admitted the complainant was upset; and the complainant was very upset when she made her first (and prompt) complaint. Against the complainant were the points that she had been drinking, she was not injured, and her clothes were not torn. One possible prosecution witness was very drunk, and another witness did not confirm one point. All the suspects denied having intercourse with the complainant. Because of the lack of corroboration, it was felt there was insufficient evidence to establish a prima facie case, and the file was closed as "no offence disclosed".

These cases illustrate that even when a complaint might be accepted as genuine and identity is firmly established, the absence of independent evidence about either the act of sexual intercourse, or the consensual nature of the act, might result in insufficient evidence to justify a prosecution.

(iv) Suspect warned

There was one rape file (0.5%) where the three suspects were warned. The police recorded, with regret, that there was a lack of corroborative evidence and that some of the complainant's actions prior to the offence would affect her credibility as a witness. The police were in no doubt that a rape had occurred and each suspect was given a warning. This file was also closed as "no offence disclosed".

(v) Discussion

Upon receiving a complaint of rape, the police act as a filtering process. They might accept a complaint as totally genuine. Such a response seemed more likely if the suspect was a stranger and/or the complainant had not been socialising with him before the attack. However, even when the police had some doubts about the complainant's veracity, it seemed that their response was usually to arrange a medical examination for the complainant and still to investigate the complaint to ascertain what other evidence was available. Stranger rapes raised the problem of identifying the suspect and there were 14 files where it was not possible to do so. There were a further eight where a suspect was identified but there was insufficient corroborative evidence about identity to justify prosecution. Most of the files were inactivated when the police had exhausted all avenues of enquiry.

In the area where the weakness of the case from the point of prosecution rested with the complainant's credibility, most files were closed as "no offence disclosed". In the cases where identity was the main problem, there was always the possibility of new avenues of enquiry emerging. In the cases where credibility was the main issue, on the other hand, the investigation would probably only be revived by a confession from the suspect, who in most cases had already been interviewed and had denied the offence.

Some of the cases which we definitely believed to be an offence, but with insufficient evidence to justify prosecution, did not differ markedly from some of those we categorised as possibly true/possibly false. Rape complaints did not fall into neat categories but ranged along a continuum from very weak to very strong. Files discussed so far all contained at least one major flaw from the prosecution perspective. Cases without an identified suspect were a small but important group. In the majority of complaints which did not proceed to prosecution, however, the flaw rested with either the corroborative evidence, or with the complainant, or both. Most cases had some weaknesses with both aspects, although again cases were on a continuum - from a very credible complainant and minimal corroboration to extensive corroboration but a complainant with very little credibility, often combined with a reluctance to co-operate on her part. And, again excluding cases where identity was an insurmountable difficulty, most of the rape complaints which fell within this continuum were closed as "no offence disclosed". This category, which also included complaints which were acknowledged as false, indeed included a wide variety of factual situations.

#### 5. Prosecution Initiated

This section will deal with all the cases which were cleared by initiating a prosecution. Prosecutions for rape and attempted rape may be started by either the arrest of a defendant or by a summons to the defendant. In New Zealand, the police usually initiate action by the arrest procedure, particularly if the offence is serious. All the following cases were begun by arrest. An arrest followed 52 of the rape complaints and 24 of the attempted rape complaints (31% and 51% respectively).

Because rapes and attempted rapes are regarded as serious offences, the Crimes Act 1961 requires that they be dealt with in the High Court. However, like all criminal matters, a defendant, after his arrest, first appears in the District Court. In the District Court, a defendant will not be asked to plead to the charge until a preliminary hearing for the taking of depositions from witnesses has been completed. There is, though, a procedure pursuant to s.153A of the Summary Proceedings Act 1957, where the defendant may elect at an earlier stage, by giving notice in writing, to plead guilty in the District Court. If he follows this course, the police will read the summary of facts and the defendant will be remanded to the High Court for sentence. In this case, it is not necessary for any of the prosecution witnesses (including the complainant) to give evidence. The s.153A procedure is also the speediest for the defendant.

If the defendant does not follow this procedure, he will be remanded for the preliminary hearing at which it is necessary for the prosecution to establish a prima facie case. The evidence at this hearing will be in the form of either oral evidence or written statements, or some combination of these two methods. The consent of the defence is necessary before a written statement, in lieu of oral evidence, can be accepted from any witness. In some cases the prosecution itself may wish to see its witnesses give oral evidence. The preliminary hearing will be before either a District Court Judge or two lay Justices of the Peace. The Judge or the Justices of the Peace, after hearing the evidence, may decide that the prosecution has not established a prima facie case, in which event the charge will be dismissed. If a prima facie case is found to be established, the defendant will be asked to plead to

the charge. If he pleads guilty, he will be remanded to the High Court for sentence. If he pleads not guilty, he will be remanded to the High Court for trial. Prior to the High Court trial, following a not guilty plea, a High Court Judge may review the prosecution evidence as presented at the preliminary hearing, either on his own initiative or upon application from the prosecution or defence. If he considers that the evidence does not establish a prima facie case, he may dismiss the charge pursuant to s. 347 of the Crimes Act 1961.

At the preliminary hearing, the prosecution will usually be conducted by a police prosecutor. In the High Court, the prosecution will be undertaken by a Crown Solicitor (a lawyer in private practice warranted to conduct prosecutions on behalf of the Crown), or by a member of his staff or another lawyer appointed by him. The prosecutor in the High Court will review the evidence before preparing the indictment, and will present the charges (at this stage the charges are termed "counts") which he believes can be proved by the evidence. The counts may not necessarily be the same as those which the defendant faced at the preliminary hearing.

At the beginning of the High Court trial, the defendant will be asked to plead to the count(s) as laid in the indictment. If he pleads guilty, he will be remanded for sentence; but if he pleads not guilty, the matter will proceed to the hearing of evidence before a jury. At any time during a jury trial, the judge may decide that the prosecution evidence is so flawed that there is no possibility of a finding of guilt, and dismiss the matter, again pursuant to s.347 of the Crimes Act 1961.

Once a prosecution has been initiated by the police, the responsibility then rests upon the defendant and his counsel to decide whether to defend the charge and, if so, what the defence might be. Defence counsel is entitled to a copy of the defendant's statement to the police, if any, prior to entering a plea. At this stage the disclosure of any matters beyond that is at the discretion of the prosecution. One advantage in pleading guilty at any stage before a High Court trial is the discount sentencing principle. It is an accepted principle of sentencing in the High Court that a defendant is entitled to some credit for pleading guilty when the judge assesses penalty, as the guilty plea has avoided the necessity of a trial.

Once a matter proceeds to trial, the prosecution is required to present all their evidence to a jury. Evidence may be presented in statement form by agreement between the prosecution and defence, although such a procedure is unusual except for technical evidence which the defence does not wish to challenge in any way.

At the conclusion of the prosecution and defence evidence, the judge will sum up the evidence and explain the law to the jury who will retire to consider the evidence and deliver their verdict. If the finding is one of not guilty, then the defendant is acquitted and cannot be charged again with any offence on the same facts. However, if no alternative charges are laid, the jury cannot make a finding of guilt for any offence (e.g. indecent assault) other than rape or attempted rape (s.339(3) Crimes Act 1961). Should the jury be unable to come to a decision after a thorough consideration of the case, the judge will discharge the jury and order a new trial.

The rape and attempted rape cases will be discussed below at the point at which they reached a conclusion as they proceeded through the court process. Some complaints resulted in the arrest of more than one defendant, and there were frequently different outcomes for the different defendants. The discussion below will discuss both defendants and complainants, and references will be made where appropriate to those cases which involved more than one defendant.

(i) Defendant under disability

In one case the defendant was found to be under disability pursuant to s.39C of the Criminal Justice Act 1954 before the prosecution evidence was called at the preliminary hearing. The defendant was thus unfit to plead. It was regarded as a very strong prosecution case as the complainant was injured and she was still tied up when she first complained. There was also other corroborative evidence and the defendant admitted the offences. He was charged with five other offences as well as rape, as the incident had continued over a 12 hour period. The complainant was a stranger to the defendant and she had been forced into the defendant's car while waiting for a taxi. A defendant found to be under disability is committed to a psychiatric hospital as a special patient, and his release is subject to the specific provisions of s.39H of the Criminal Justice Act 1954.

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From early on in the proceedings in another case, the police suspected that an insanity defence was possible. The matter proceeded through the preliminary hearing before Justices of the Peace at which the complainant was required to give oral evidence. The defendant was committed for trial. However, the question of the defendant's fitness to plead was raised. A hearing was held before a High Court Judge to determine this matter and the defendant was found to be under disability. Accordingly, as he was unfit to plead, he was committed to a psychiatric hospital as a special patient pursuant to s.39G of the Criminal Justice Act 1954.

(ii) Plea of guilty under s.153A

Twelve defendants charged with rape and four defendants charged with attempted rape elected to plead guilty in the District Court pursuant to s.153A of the Summary Proceedings Act 1957 (17% of the defendants charged with rape and 16% of the defendants charged with attempted rape). As some of these cases involved group rapes, only nine complainants of rape and four complainants of attempted rape were not required to give evidence at any stage of the court process.

One distinctive feature in each of these cases was that the defendant had made a written confession upon apprehension. It thus appeared that defendants were more likely to plead guilty when their statement agreed with the complainant's account. The sentences imposed in the High Court ranged from 18 months' imprisonment through to eight years' imprisonment, plus one suspended sentence when the defendant was ordered to be deported. Most of the defendants were also charged with other related offences, often burglary, to which they also usually pleaded guilty. In one case the other charges were withdrawn, and in another case the other charge was dismissed under s.347 of the Crimes Act 1961 as the High Court Judge ruled that it was the wrong charge to lay in the circumstances. In three of these cases, the police believed that they had no problems with the case right from the time of the initial complaint, in that the complainant was credible, corroborative evidence was available, and the complainant was able to identify her assailant. In eight of the other nine cases, the complainant was unable to name the rapist. However, the police accepted the complaint as genuine and corroboration was available that intercourse had occurred without consent. The police efforts were thus directed primarily towards locating a suspect or suspects.

Identification was obtained by using a number of methods. As an example, in case 123, voice identification confirmed the identity of a defendant who had blindfolded his victim. In one instance after initial inquiries were unsuccessful, the suspect admitted the offence when he was arrested while attempting to commit a similar crime some three months later. In case 122, the complainant was raped three times by one defendant and twice by another defendant over a three-hour period. The suspects initially obtained admission to the complainant's house by purporting to be police officers. The police considered the incident bizarre and a large group of detectives were assigned to the case. The defendants were located later that day and the complainant confirmed their identity from photo files. These rape files confirm the impression noted earlier that the police regard rape as a serious crime, and will allocate considerable resources to locate the defendants in apparently genuine cases which they believe they have some chance of proving in court.

In one case, although there was no mention on the file about possible difficulties with the complainant's credibility, there were features which in other cases might have influenced the decision not to prosecute. The complainant was a 16 year old who had been drinking heavily and had agreed to accompany a seaman to his ship. She did not make her complaint until nearly 12 hours later. The defence requested that the complaint be withdrawn on the grounds that the complainant was a "ship girl". However, the police refused, since the defendant had made a full written confession.

There were also two cases in this category where initial police doubts about the truth of the complaint proved to be wrong. In case 137, the police expressed considerable scepticism that the complaint was genuine, as among other matters, the complainant was uninjured. The officer in charge recorded that he had asked the complainant why she had not called for assistance, why she had not resisted the attack, and why she had not bitten the defendant's penis when he had forced it into her mouth. The complainant said that she was frightened for the safety of her children. The police officer believed, for these and other reasons, that the complaint was an exercise in attention-seeking. He noted that he had had a lengthy discussion with the complainant during which time he had applied considerable

pressure to ascertain the truth of the complaint. She, however, refused to change her story. A little over a fortnight later, a burglar was arrested and some of the complainant's property was found at his house. He then admitted the rape. The second complaint of this type was by a woman of dubious morality who was raped after she had been hitch-hiking. She said that the suspect had performed a number of indecent acts, including cutting her pubic hair. The complainant was taken for a medical examination after which the doctor told the police that the complainant's pubic hair had not been cut. Since there was no evidence to confirm this part of her account, the police officer was satisfied that the complaint was probably not genuine. Two days later, another complainant reported an indecent assault and supplied the same car number as had the first complainant. The car owner was interviewed and admitted both offences. A search of the premises where the rape occurred revealed, in the words of the police officer, "enough pubic hair to burn the factory down". The police officer also commented that this case proved that even prostitutes could be raped.

It is conjectured that if the defendant had not confessed to the shipboard attack, and had not been found with the incriminating evidence in the other two cases, the files could well have been considered as falling in the grey area, and would thus have been closed as "no offence disclosed". The police officers recorded on two of the files, that in their opinion the defendants might well re-offend in a serious way upon their release from prison.

In some cases, a written confession formed a vital element of the prosecution case, without which a conviction might have been doubtful. In other cases, although a confession completed the file in a neat manner, the other evidence was overwhelming and a confession was icing rather than substance. A confession though, the police stated, was particularly valuable in reducing the likelihood of a not guilty plea.

Pleas of guilty pursuant to s.153A of the Summary Proceedings Act 1957 have some important advantages for the prosecution. As well as ensuring a conviction, they avoid the need for the complainant to give evidence, and save the police considerable effort in preparing the case for the preliminary hearing and the High Court. Six percent of the total complainant files, involving 16 defendants, concluded in this way.

(iii) Prosecution withdrawn at the preliminary hearing

A defendant charged with rape who does not elect to plead guilty under the s.153A procedure, is remanded to a preliminary hearing for the taking of depositions at which the prosecution is usually conducted by a police prosecutor. It is the prosecution's task to present their evidence and to show that it amounts to a prima facie case. In three rape complaints and one of attempted rape (4% and 5% of the defendants respectively) the prosecution was withdrawn at the start of the preliminary hearing. In three of these four cases, the complainant disappeared and the police were aware that she had been a reluctant prosecution witness. In two cases, the defendant denied the offence and neither was an overwhelming case. In the third case, the complainant failed to appear on two previous occasions, and the matter was withdrawn on the day set down for the third attempt at a preliminary hearing. Her absence resulted in three charges of rape being withdrawn against the defendant, but he pleaded guilty to two firearms charges associated with the offences, for which he was sentenced to imprisonment.

Case 36, the last of the four cases, was regarded as a strong case and it included a confession from the defendant. The police were expecting a guilty plea. The complainant, prior to the preliminary hearing, presented a written request to the police explaining that she did not want to give evidence. She provided reasons relating to the health of other members of her family. The police acceded to her request and withdrew the charge.

The various police officers spoken to expressed a great deal of reluctance about allowing a complainant to withdraw after a suspect had been arrested. Some mentioned that they would be prepared to issue witness summonses, and perhaps even use arrest powers, to ensure the complainant's attendance. They pointed out that it was the Crown, not the complainant, who brought the case against the defendant. The complainant was not the prosecutor but merely a witness for the prosecution. However, they acknowledged that they would be reluctantly prepared to allow the complainant to withdraw for personal reasons or if they believed she would make a poor witness. A withdrawal of the prosecution at the preliminary hearing is not a bar to re-laying the charge.

It was very rare for charges of rape to be withdrawn when the complainant was available. It happened on one occasion when the defendant was charged with rape of a very young girl. However, on the day set down for the preliminary hearing, he pleaded guilty to a substituted charge of committing an indecent act on a girl under the age of 12, and the rape charge was withdrawn. He was released on probation.

Three defendants were released when all the charges against them were withdrawn while two faced other, but less serious charges. It is possible that the defence in case 36 above had some inkling of the complainant's reluctance and proceeded to a preliminary hearing to see if she would in fact appear to give evidence.

(iv) Prosecution dismissed at preliminary hearing

Nine defendants charged with rape and one defendant charged with attempted rape (13% and 4% respectively) had the charges against them dismissed at the preliminary hearing. The cases were all heard before Justices of the Peace. In all the cases but one, where all the evidence was presented orally, most of the prosecution's evidence was admitted in statement form. The complainant, however, was required to give evidence in all the cases. In the three cases of multiple rape in this category, the charges against some defendants were dismissed while the balance of the defendants were committed to the High Court.

The five cases involving one defendant will be discussed briefly. In case 10, the officer in charge considered the dismissal of the charge of attempted rape a fair result as three prosecution witnesses failed to come up to brief (i.e. did not give the evidence in court as previously supplied to the police). However, the officer later laid a charge of assaulting a female, to which the defendant pleaded guilty and was fined. The complainant in case 91 failed to come up to brief, but the defendant also faced a charge under the Immigration Act 1964 for which he was later deported. Case 115 also involved a complainant who did not come up to brief and the police thought that she might have been too scared of the defendant to give a full account in court. The defendant was convicted in the District Court on another

charge arising from the incident, for which he was fined. The police in case 3 had no doubts about the veracity of the complaint but were aware that there might be insufficient evidence to convince the jury. In case 216, the complainant had suffered extensive injuries and although the rape complaint was dismissed, the defendant was committed on two other charges and was convicted of assault in the High Court.

In these five cases, although the rape or the attempted rape complaint was dismissed, the defendant was convicted in three instances of offences arising from the same incident, and in one case, the Immigration matter, on a separate charge. Thus in only one case was the dismissal the end of the proceedings and then the police had had some doubts about obtaining a conviction. The police believed however, that the Justices of the Peace in this case had been unduly swayed by irrelevant defence tactics. Although comparable figures are not available, it is our impression that the rate of dismissal of rape charges by Justices of the Peace is higher than that of other indictable offences.

(v) Plea of guilty at conclusion of the preliminary hearing

After the prosecution has presented its evidence and the court has ruled that a prima facie case has been established, the defendant will be asked to plead and then will be committed to the High Court for trial or sentence. Five rape defendants and one attempted rape defendant (7% and 4% of the defendants respectively) pleaded guilty and were remanded to the High Court for sentence. In five cases, the hearing was before Justices of the Peace and in one case, a District Court Judge. Most preliminary hearings were held before Justices of the Peace (see Appendix: Table 21).

It is not easy to ascertain why the defence proceeded to the preliminary hearing rather than electing to plead guilty earlier. It is sometimes said that the preliminary hearing provides the defence an opportunity to see how the complainant acts as a witness. However, in three of the cases, the defence was amenable to having all the prosecution evidence, including the complainant's, admitted in statement form. In the three cases where the complainant was required to give evidence, the defendant had made a full written confession. One possible explanation is to ensure the giving of evidence which will bring out mitigating factors not contained in the police summary.

Two defendants were sentenced to five years' imprisonment, one to 18 months', one to six months', one to community service, and one was committed to a psychiatric hospital. In none of the cases was there any apparent doubt about the genuineness of the complaint, the credibility of the complainant, or the sufficiency of the corroborative evidence. Four of the defendants were strangers to the complainant, three of whom were located by prompt police action, e.g. using a police dog in one case, and by taking fingerprints in another. The two defendants who were not strangers were in one case the complainant's neighbour, and in the other, the complainant's former boyfriend who had been seeking a reconciliation.

(vi) Case dismissed by High Court Judge

In two rape and three attempted rape cases all involving one defendant (3% and 12% respectively), the counts were dismissed by a High Court Judge pursuant to s.347 of the Crimes Act 1961. One of the attempted rapes was dismissed by a Judge before hearing the evidence as he ruled the defendant's statement inadmissible as evidence, since it had been taken in breach of the Judges' Rules. The police had some doubts about the genuineness of this case, and had laid an alternative charge of indecent assault which they thought more correctly reflected the events. However, as the defendant's statement was an essential part of their case, the dismissal brought all proceedings to an end.

It is not clear from the other two attempted rape files whether the dismissal took place before the cases got under way or after some evidence had been heard. In one case, the police held some doubts about the veracity of the complainant, as although she was consistent in recounting the incident, the police did not believe her actions were appropriate for an attempted rape victim. The defendant pleaded guilty to assaulting a female. In the other attempted rape case, the police accepted the complaint as genuine, although expressing the opinion that the 11 year-old complainant was from a very problematic family and had probably led the defendant on. The defendant was imprisoned on an alternative charge of indecent assault.

Both the rape cases involving one defendant were dismissed part way through the prosecution case in the High Court, although in one, the defendant then pleaded guilty to indecent assault and was sentenced to imprisonment for that offence. In this case, the judge ruled that the scientific evidence was insufficient to establish that intercourse had taken place. In the other case, the complainant failed to come up to brief. The police prosecutor at the District Court had recorded on the file that the complainant would be a very poor witness. The case against one defendant in a multiple rape was dismissed at the completion of the prosecution case. Five of the preliminary hearings were held before Justices of the Peace, and the one involving the inadmissible statement, before a District Court Judge.

(vii) Plea of guilty upon indictment

After a defendant has been committed for trial at the preliminary hearing, the prosecution review the evidence and prepare an indictment with the counts which the defendant will face in the High Court. At the beginning of his trial, the defendant will be asked to plead to these counts. The defence will also have had an opportunity to review the evidence and perhaps discuss the case with the prosecution prior to entering a plea.

Four rape defendants and two attempted rape defendants (6% and 8% respectively) pleaded guilty upon indictment in the High Court. With both attempted rape complaints, the police regarded their evidence as overwhelming. In one case, they thought that insanity might be raised as the defence, but this did not happen. In the other, the police were concerned that the complainant might not attend court, noting that she was believed to be promiscuous and possibly a prostitute. She had, however, been the victim of a vicious attack.

The police felt that they had strong evidence for the two rape cases involving a single defendant, and for one they had obtained a full written confession. The other case involved four defendants altogether. One had earlier pleaded guilty, and one had been released following a dismissal at the preliminary hearing. Again the prosecution case included statements of admission from the defendants.

## (viii) Prosecution in the High Court - Conviction

In ten rape trials and two attempted rape trials, the jury returned a finding of guilt to the charges as laid after a trial in the High Court. Three of the rape trials involved joint defendants. One case involved three defendants, one of whom pleaded guilty on indictment in the High Court; the other two were convicted after trial. The third involved four defendants. The charges against two were dismissed at the preliminary hearing, while the third was convicted for rape, and the fourth for attempted rape, at the conclusion of the High Court trial. In case 206, the defendant was charged with rape and attempted rape as alternative charges. He was acquitted on the former and convicted on the latter. The ten rape trials thus resulted in thirteen defendants being found guilty by the jury (19%), eleven of rape, and two of attempted rape. Further, there was one case of attempted rape which involved a defendant aged 14. The case was heard before a District Court Judge, without a jury, in the Children and Young Persons' Court. The defendant was convicted.

All the defendants in these cases were arrested within a few days, and apart from the Children and Young Persons' Court case, the cases proceeded through a preliminary hearing before trial. Two cases reached the trial stage within three months of the rape. A time gap of five months was the most common (four cases) although one took nine months and one, ten months. It should be pointed out, of course, that any cases taking longer than this would probably not have fallen within our sample.

It would seem that the police usually regarded their case as being reasonably strong. In the case concerning two defendants, the evidence was considered to be overwhelming and the file noted that defence counsel conceded, prior to the trial, that convictions were the likely outcome. The police had tried to convince defence counsel to enter guilty pleas and suggested to the Crown prosecutor that he try as well for this result. The matter, however, proceeded through the trial process.

On some files the reasons for accepting the complaint as genuine were recorded. In most of the cases, the principal defence appeared to be consent, although in a few cases, the defence was concerned with identity rather than consent. In case 217, identity was established by the use of modus operandi files followed by an identification parade at which the complainant recognised the defendant. The police noted that the complainant had no reason to make a false complaint. This defendant, upon conviction, admitted two previous rapes with which he had been charged and acquitted at a trial 18 months earlier.

One case was acknowledged not to be a strong case. The defendant, who was known to the complainant, denied that intercourse took place. The complainant had suffered injuries, but she was known to be a heavy drinker, and the sexual assault kit was accidentally destroyed before its contents had been analysed. The police commented that she had not been a convincing witness at the preliminary hearing and that the corroborative evidence was not strong. Defence counsel suggested that the charge be reduced to assault on a female. The prosecution proceeded with the charge of rape, the jury found the defendant guilty, and an appeal against conviction by the defendant to the Court of Appeal was unsuccessful.

The sentences imposed upon conviction for rape ranged from two through to seven years' imprisonment. Sometimes, the file would acknowledge that the experience was harrowing for the complainant. In case 198, the complainant was raped twice in one evening by an acquaintance, but she said that she was too scared to complain to the police. The suspect returned about a week later and raped her again. This time she complained and the defendant, admitting most of the facts, was convicted on all three charges. The file noted, as a conclusion, that the police had been impressed by the complainant's courage and attitude.

## (ix) Prosecution to High Court - Acquittal

There were 11 rape complaints where a total of 14 defendants were acquitted of rape after a High Court trial (20%). Two trials involved two defendants, both of whom were acquitted. Another began with five defendants, two of whom had the charges dismissed at the preliminary hearing, one pleaded guilty on indictment, one had the case dismissed by the judge at the conclusion of the prosecution case, and one was acquitted by the jury.

At this point, evidentiary problems with gang rapes should be noted. First, the prosecution must prove that the offence occurred. This is usually not the difficult part of the case as often the defendants or their friends will acknowledge that the complainant was "blocked". The second and more serious problem is identification. Whereas the participants or their friends may acknowledge the event, they usually deny that they were involved personally, and they will not admit that anyone they knew participated. Identification thus often rests with the complainant and she may only know one or two of the defendants by name. Often, her evidence about identity is not corroborated, and may be challenged by a denial from each defendant. Although in the case just discussed, all the five defendants were arrested, there were some cases where the complainant would state that she had been raped by more men than were charged. For example, in case 83, the complainant said that seven men were involved, but only four were charged and, in the end, only two were convicted.

Five attempted rape complaints resulted in an acquittal, one of which involved two defendants. However, in two cases the jury found the defendant guilty of a related charge, assault and abduction respectively. All the preliminary hearings of the defendants charged with rape and attempted rape were heard by Justices of the Peace, and in all but one, the complainant was required to give oral evidence.

In two of the rape complaints, the jury were unable to reach a decision at the trial, and a second trial was held. In both cases, the defendant was acquitted at the conclusion of the second trial. One matter reached the High Court trial stage within two months of the complaint, although the usual length of time was four to six months.

The files were not consistent in noting reasons why the prosecution believed the jury acquitted the defendant. Some of the reasons recorded included two cases where the judge ruled the defendant's confession inadmissible because of the circumstances in which it was made. In three cases the prosecution was aware that the corroborative evidence was limited, and this limitation was exacerbated, in case 98, as the complainant was shy and quietly spoken in giving her evidence. In one case some of the prosecution witnesses, friends of the defendant, failed to come up to brief. In another case, the police first suspected that the complaint might be

motivated by family disputes and thus be false. Although this was later dismissed by the police, it was a possibility stressed by defence counsel and may have been sufficient to raise the necessary doubt in the minds of the jury. In yet another case, the defence attacked the credibility of a naive complainant who also acknowledged drinking and smoking cannabis before the event. The defence in this, and most of the other cases involving a single defendant, was consent. (The defence does not need to prove that the complainant consented, but only has to raise a reasonable doubt about the complainant's account of the incident). In one case of attempted rape, the prosecution believed that they had a solid case, including a written confession from the defendant that he intended to rape the complainant. Her screams attracted the attention of some people nearby who frightened the defendant away before the rape was committed. He was convicted, however, only for assault for which he was fined.

(x) Miscellaneous cases

There were four attempted rape complaints which later resulted in a conviction for another offence related to the incident. In two cases, the only charge laid was indecent assault as, it would seem, the police did not believe sufficient acts had been committed to justify a charge of attempted rape. In one case the defendant pleaded guilty and was sentenced to corrective training. The defendant in the other case pleaded not guilty and the matter was heard by a District Court Judge. The evidence included a neighbour who had heard the complainant scream, "Don't hit me". The neighbour had not taken any immediate action as she thought the complainant was having a fight with her husband. The defendant was convicted and sentenced to six months' imprisonment.

With the other two cases, the police laid a charge of attempted rape. One matter went to the Children and Young Person's Court where the attempted rape was withdrawn, and substituted by a charge of assaulting a female. The defendant admitted this and was returned to the care of the Director-General of Social Welfare. With the other case, the police laid charges of abduction and indecent assault, as well as attempted rape. Nearly three months later, on indictment in the High Court, the defendant pleaded guilty to indecent assault and the other two charges were withdrawn. He was sentenced to four years' imprisonment.

There were two rape complaints which fell into this miscellaneous category. The police in case 194 considered that they had a strong case. However, the defendant, released on bail, absconded after the preliminary hearing and before the High Court trial. He was believed to have fled to Australia and a warrant was issued for his arrest.

The initial charge in case 47 was rape. Before the preliminary hearing, the prosecution also laid a charge of incest, and the defendant was committed for trial on both charges. The prosecution in the High Court only proceeded with a count of incest, upon which the defendant was acquitted.

It was not apparent from the files whether the withdrawal and substitution of charges was initiated by the prosecutor or whether it occurred after discussion between the prosecution and the defence. Other research shows, however, that plea bargaining merely for the sake of a guilty plea is not a widespread practice in New Zealand. Police usually only agree to substitute a reduced charge where they have doubts about the strength of their evidence to prove the charge as originally proffered<sup>(7)</sup>.

(xi) Discussion

It will be recalled that the police initiated court proceedings in 52 of the 173 rape complaints (31%) and 24 of the 47 attempted rape complaints (51%). The 52 rape complaints involved proceedings against 69 defendants, and the 24 attempted rape complaints involved 25 defendants. The following tables show the disposition of proceedings by defendant.

(7) Stace M.V., The Prosecution Process in the District Court, forthcoming.

Table 1: Disposition of Rape Complaints Against Distinct Defendants

	<u>No.</u>	<u>%</u>
Defendant pleaded guilty or found guilty of rape	34	49
Defendant charged with rape - pleaded guilty or found guilty of attempted rape	2	3
Defendant pleaded guilty or found guilty of other offence related to incident	5	7
All charges withdrawn or defendant discharged or acquitted on all charges	26	38
Defendant committed as unfit to plead	2	3
Total	69	100

Table 2: Disposition of Attempted Rape Complaints Against Distinct Defendants

	<u>No.</u>	<u>%</u>
Defendant pleaded guilty or found guilty of attempted rape	10	40
Defendant pleaded guilty or found guilty of indecent assault	4	16
Defendant pleaded guilty or found guilty of other offence related to the incident	5	20
All charges withdrawn or Defendant discharged or acquitted on all charges	6	24
Total	25	100

These tables show that a defendant charged with attempted rape is slightly less likely to be convicted of the offence with which he is charged (40%), than a defendant charged with rape (52%). However, the defendant charged with attempted rape is more likely to be convicted for attempted rape or for some offence related to the incident (76%), than a defendant charged with rape (62% - if the defendants found unfit to plead are included).

Of the 52 rape complaints (of a total of 173) which resulted in prosecution, a conviction for rape for one or more defendants was entered on 28 (16%). For attempted rape, the equivalent number was 10 (21%). Nevertheless, although these figures illustrate the attrition which occurs as a complaint moves through the police and subsequent prosecution process, they do not reflect what actually happens in court as accurately the figures presented in Tables 1 and 2.

Neither the circumstances of the offence nor the characteristics of the complainant differed between rapes which resulted in prosecution and those which did not. For example, there were no clear differences by way of the age, race, occupation or marital status of the complainant, or the time of the attack. However, one difference which was apparent between prosecuted and unprosecuted rape complaints, was that the complainant in the former group was more likely to report the attack promptly (see Appendix: Tables 11 and 12). However, as with other groups, the complainant who approached the police before mentioning it to another person, was the exception rather than the rule.

The prosecuted complaints (particularly when combined with the category, genuine attack-not prosecuted) were more likely to involve an attack by a stranger, often occurring in the complainant's home, than the rapes in the other categories (see Appendix: Table 4).

In all the prosecuted rape complaints, the complainant was medically examined and specimens were taken for D.S.I.R. analysis (see Appendix: Table 14).

The findings of guilt, or dismissals, discharges or acquittals occurred at the following stage of the court process. The figures are again by distinct defendants.

Table 3: Stage of Court Process at which Rape Complaints Concluded Against Distinct Defendants

	<u>No.</u>	<u>%</u>	<u>Convicted related Offence</u>
Pleaded Guilty (s.153A)	12	17	
Withdrawn at Preliminary Hearing	4	6	(2)
Dismissed at Preliminary Hearing	9	13	(3)
Pleaded Guilty at end of Preliminary Hearing	5	7	
Pleaded Guilty on Indictment	6	9	
Dismissed by Judge (s.347)	3	4	(1)
Convicted by Jury of rape or attempted rape	13	19	
Acquitted by Jury of rape or attempted rape	14	20	
Unfit to Plead	2	3	
Defendant absconded and failed to appear on indictment	1	1	
Total	69	100	(6)

Table 4: Stage of Court Process at which Attempted Rape Complaints Concluded Against Distinct Defendants

	<u>No.</u>	<u>%</u>	<u>Convicted related offence</u>
Pleaded Guilty (s.153A)	4	16	
Withdrawn at Preliminary Hearing	1	4	
Dismissed at Preliminary Hearing	1	4	(1)
Pleaded Guilty at end of Preliminary Hearing	2	8	
Pleaded Guilty on Indictment	2	8	
Withdrawn in High Court	2	8	(2)
Dismissed by Judge (s.347)	3	12	(2)
Convicted by Jury	2	8	
Acquitted by Jury	6	24	(2)
Charge of Indecent Assault laid only - convicted	2	8	(2)
	<u>25</u>	<u>100</u>	<u>(9)</u>
Total			

Tables 3 and 4 show that the majority of defendants convicted of rape or attempted rape were convicted following a guilty plea at some stage prior to the trial (64% of rape convictions and 80% of attempted rape convictions). Of the 27 rape defendants who proceeded to the end of a jury trial, 13 (48%) were convicted by a jury of either rape or attempted rape. Of the eight defendants charged with attempted rape who proceeded this far, two were convicted of attempted rape, two were convicted of a related offence, and four were acquitted on all charges.

The question of plea becomes an issue for the defendant from the time of his arrest. A number of defendants, no doubt after discussion with counsel, decided that there was no chance of a successful defence and proceeded to plead guilty in the District Court prior to the hearing of any evidence, pursuant to s.153A of the Summary Proceedings Act 1957.

If this procedure was not adopted, the matter was set down for a preliminary hearing. The great majority of such hearings were heard before two Justices of the Peace and the prosecution was most often conducted by a police prosecutor. The complainant and the police officer in charge of each case were almost always required to give oral evidence, while much of the other evidence was presented in the form of written statements. Most defendants were committed for trial. The preliminary hearing discloses the prosecution case, and it would appear that the defence, after seeing the prosecution case and deciding that the complainant was a credible witness, sometimes decided to enter a guilty plea at that stage. The defence, alternatively, occasionally then pleaded not guilty in order to take advantage of the time delay before the trial, to reflect upon the evidence and perhaps to make further enquiries of their own. Some defendants were probably assigned counsel on legal aid. In this situation, it was possible that the counsel who appeared for them at the preliminary hearing was replaced by more experienced counsel for the High Court trial. In these circumstances, the counsel at the preliminary hearing might well have advised a not guilty plea at that stage, in order not to limit later options.

In some cases, the defence after completing all their enquiries and concluding that the prosecution case was solid, entered a guilty plea upon indictment in the High Court.

Prior to pleading guilty, the defence probably considered the option of technical defences. Indeed, in a few cases the defence was successful in having some of the prosecution evidence ruled inadmissible, thus severely weakening the prosecution's case.

The two defences which seemed to be the most common were either consent or mistaken identity. Identity, as noted earlier, was a problem for the prosecution with some multiple rapes, but was seldom an effective defence when only one defendant was charged. The most frequent issue, therefore, was consent. The prosecution would be likely to prove lack of consent when there was corroborative evidence and the veracity of the complainant's evidence was accepted. It would appear that the defendant was more likely to plead guilty when there were no difficulties with these issues. Conversely, those cases which proceeded to trial were more likely to contain weaknesses in the independent evidence or be such as to allow the defence to raise some doubt about the issue of consent because of the complainant's behaviour or presentation.

It was perhaps significant that the cases in which the jury acquitted seemed mainly to have insufficient independent evidence establishing that the complainant did not consent to intercourse. Some defendants were acquitted because the complainant did not present herself as a credible witness, and a few, because the defence were able to raise some doubts about the veracity of the complaint, e.g. by suggesting a motive for a fabricated complaint. They were perhaps doubts which the police had also held at some stage during the investigation of the complaint. As recorded in Tables 1 and 2 above, 38% of all defendants charged with rape and 24% of all the defendants charged with attempted rape, were not convicted of any offence related to the incident. Their charges had either been dismissed at the preliminary hearing or dismissed by a judge because he believed there was insufficient evidence to put to a jury, or they had been acquitted of all charges by a jury.

The police who commented on the court process agreed that it was an extremely unpleasant experience for the complainant. Opinion, however, was divided on what changes would be desirable. Some saw no point in requiring the complainant to give oral evidence at the preliminary hearing. As one officer noted, the result was that in the High Court, the complainant retold her account as given at the preliminary hearing, rather than recounting the event itself. Several officers, on the other hand, believed that oral evidence at the preliminary hearing was valuable in providing the complainant with some court experience and thus making her a more competent and credible witness in the High Court. Some considered that the preliminary hearing provided them with an opportunity to ensure that they had prepared their case to cover all possible exigencies.

There was general agreement that any oral depositions should be heard before a District Court Judge rather than Justices of the Peace. The latter were thought not to be conversant with some of the rules of evidence and allowed defence counsel too much latitude in the type of questions asked. Some defence counsel used this latitude to go on "fishing expeditions", asking irrelevant questions in the hope of developing a line of defence to use at the High Court trial.

Police officers said that they were usually reluctant to present charges in the alternative as details relating to the extent of the injuries for example, were matters which went to sentence. They were also concerned that juries might be confused and thus compromise by bringing in a guilty verdict only to the lesser charge. One officer commented, as an analogy, that it was now very difficult to obtain a conviction for murder, as juries usually settled for manslaughter. Alternative or additional charges in rape cases, it was thus suggested, could result in finding of guilt to lesser charges that the facts might justify. Officers added that Crown Solicitors, anyway, decided what counts were to be included in an indictment.

Officers were satisfied on the whole with the way Crown Solicitors carried out their role. There was some concern expressed that Crown Solicitors did not explain sufficiently their role to the complainant before the High Court trial. Further, in their opinion, it was not the Crown Solicitor's task to object frequently to the line of the defence cross-examination. An excessive number of objections, it was pointed out, might incorrectly suggest to the jury that the prosecution had something to hide. It was the judge's task to intervene, the police said, and although opinion again differed, most felt that the judges provided sufficient protection to the complainant from unjustified defence tactics.

In a rape trial at present, it is mandatory for the judge to warn the jury in his summing up of the dangers of convicting on the uncorroborated word of a complainant in a sexual offence case. Most police officers considered that the warning about corroboration should be left to the judge's discretion, rather than be compulsory as it is at present. It was pointed out that the ruling about corroboration was technical and often seemed to confuse the jury. Consequently, the jury would retain the phrase, "It is dangerous to convict without corroboration", without understanding what could be considered corroborative evidence in their particular case.

Apart from the above matters, the police on the whole were satisfied with the current rape trial procedures. A number added that other changes might unnecessarily disadvantage the defendant. There was agreement that the complainant often required support and comfort during a trial, and that it was necessary for the participants to show understanding and sympathy for her situation. Some mentioned that the presence of a counsellor and/or friends for the complainant could reduce the anguish experienced by the complainant during the trial.

Rape is regarded by the police as a serious crime. It is usually one on which the police expend considerable resources, especially if they have no doubts about the veracity of the complaint. The police enquiry is directed towards obtaining corroborative evidence of the identity of the suspect and of the fact that intercourse occurred and was non-consensual. Because of the nature of rape, it is not always possible to amass such evidence, particularly relating to the issue of consent. In deciding whether there is sufficient evidence to justify court action, i.e. a prima facie case, the police must assess the evidence available, and the credibility of the complainant and the other witnesses. The assessment must also consider possible defences and the various relevant rules of evidence.

Finally, some police officers, who had considered the various issues involved, stated that, although they recommended some relatively minor procedural changes, improvements in the court process would come about principally when social attitudes towards rape complainants and rape situations were more closely aligned to the reality of rape.

#### APPENDIX

The following tables are a statistical summary of the 173 rape complaint files and the 47 attempted rape files which we perused. All the files were opened in 1981 and had been closed or inactivated by the time we examined them (June - September 1982). We did not have access to files not closed by that time, principally because the prosecution had not been finalised. Further, in 1981 there were 25 Computer Aid Dispatch calls (C.A.D.) for rape and attempted rape which were resolved without the preparation of any sort of paper file. Our enquiries suggest that we studied the great majority of files dealing with rape and attempted rape complaints made to the police in 1981.

We have omitted from most of the tables the complaint files which we believed to be unfounded complaints (8 rape complaints, five attempted rape complaints). Such material has been included only on Table 1, Age of Complainant, Table 10, Person Reporting Rape, and Table 14, Medical Examination Completed, as reference has been made to these issues in the report. The numbers in the other tables refer to all the rape and attempted rape complaint files, excluding unfounded complaints, which we researched as part of this study.

Table 1: Age of Complainant

<u>Age</u>	<u>Rape</u>					<u>Attempted Rape</u>					<u>Total</u>	<u>%</u>
	<u>False Compl</u>	<u>Compl With/Dwn</u>	<u>Grey Area</u>	<u>Genuine No Pros</u>	<u>Pros</u>	<u>False Compl</u>	<u>Compl. With/Draw</u>	<u>Grey Area</u>	<u>Genuine No Pros</u>	<u>Pros.</u>		
up to 16	9	2	16	4	13	2	0	2	1	9	58	26
17-20	10	17	10	9	12	0	1	4	0	5	68	31
21-25	2	2	6	4	13	1	2	0	2	5	37	17
26-30	0	2	1	4	3	1	0	0	2	2	15	7
31-40	0	2	3	1	6	1	1	0	0	3	17	8
41-50	2	0	1	1	2	0	0	0	1	0	7	3
51+	1	1	0	1	3	0	0	1	1	0	8	4
Not Known	4	4	2	0	0	0	0	0	0	0	10	5
<b>Total</b>	<b>28</b>	<b>30</b>	<b>39</b>	<b>24</b>	<b>52</b>	<b>5</b>	<b>4</b>	<b>7</b>	<b>7</b>	<b>24</b>	<b>220</b>	<b>100</b>

Table 1 discloses that the majority of rape victims are within the 15 to 25 age range. However, all women are potential victims, and rape complaints were recorded with a victim as young as five and as old as 87 years.

Table 2: Time of Rape

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
6pm - 9pm	8	1	9	5
9pm - midnight	42	10	52	28
Midnight - 3am	53	16	69	37
3am - 6am	18	4	22	12
6am - 9am	2	0	2	1
9am - midday	5	2	7	4
Midday - 3pm	7	4	11	6
3pm - 6pm	9	5	14	7
Unknown	1	0	1	.5
Total	<u>145</u>	<u>42</u>	<u>187</u>	<u>100</u>

Rapes reported to the police are primarily nocturnal events. This finding confirms research in other countries. Again, although the hours of 9pm - 3am predominated, rapes may occur at any hour of day or night.

Table 3: Day of Rape

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Monday	10	5	15	8
Tuesday	15	3	18	10
Wednesday	11	3	14	7
Thursday	14	9	23	12
Friday	36	5	41	22
Saturday	23	7	30	16
Sunday	35	10	45	24
Unknown	1	0	1	.5
Total	<u>145</u>	<u>42</u>	<u>187</u>	<u>100</u>

The majority of reported rapes, as well as occurring late at night or in the small hours of the morning, occurred on Fridays, Saturdays and Sundays.

Table 4: Place of Rape

	<u>Rape</u>		<u>Att. Rape</u>		<u>Total</u>	<u>%</u>
	<u>Pros</u>	<u>Not Pros</u>	<u>Pros</u>	<u>Not Pros</u>		
Complainant's House	21	25	11	3	60	32
Suspect's House	13	20	3	5	41	22
In a Car	5	9	3	2	19	10
In a Park	2	2	2	0	5	3
Other Public Place	9	25	6	6	46	25
In Another House	0	3	0	2	5	3
Other/Unknown	2	9	0	0	11	6
<b>Total</b>	<b>52</b>	<b>93</b>	<b>24</b>	<b>18</b>	<b>187</b>	<b>100</b>

Although over a quarter of the rapes took place in a park or other public place, the majority occurred in a house - 1 in 5 in the suspect's house and 1 in 3 in the complainant's home.

Table 5: Complainant's Marital Status

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Single	86	28	114	61
De Facto	9	3	12	6
Married	13	3	16	9
Separated	16	4	20	11
Divorced	5	2	7	4
Widowed	5	1	6	3
Not Known	11	1	12	6
<b>Total</b>	<b>145</b>	<b>42</b>	<b>187</b>	<b>100</b>

The preponderance of single complainants reflects their age structure, with over half being under the age of 20 and nearly three quarters being under the age of 25.

Table 6: Complainant's Occupation

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Student	23	10	33	18
Unemployed	22	6	28	15
Unskilled	41	8	49	26
Skilled	9	2	11	6
Professional	2	4	6	3
Beneficiary	7	1	8	4
Housewife/Solo Mother	30	4	15	8
Unknown	11	4	15	8
<b>Total</b>	<b>145</b>	<b>42</b>	<b>187</b>	<b>100</b>

The number of students reflects the youth of some of the complainants. Many of the complainants were either unemployed or in unskilled work. Less than ten percent of the complainants were in either skilled or professional positions. The majority of rape complainants were thus from the lower socio-economic statuses.

Table 7: Complainant's Race

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Caucasian	68	22	90	48
Maori	32	8	40	21
Pacific Islander	8	1	9	5
Other/Not Known	37	11	48	26
<b>Total</b>	<b>145</b>	<b>42</b>	<b>187</b>	<b>100</b>

By omitting the Other/Not Knowns, 65% of the complainants were Caucasian, 29% were Maori, and 6% were Pacific Islanders. The young, the unemployed and unskilled, and Maori women are more likely to be victims of reported rape attacks than older, skilled, and Caucasian women.

Table 8: Complainant's Virginit

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Virgin	9	6	15	8
Not a Virgin	113	23	136	73
Uncertain/Not Known	23	13	36	19
Total	145	42	187	100

A small minority of rape complainants were virgins at the time of the attack. It will be recalled that a number of the complainants were school children at the time of incident, and 47 victims were aged 16 or under.

Table 9: Number of Suspects

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
One	100	38	138	74
Two	13	3	16	9
Three	11	0	11	6
Four	5	0	5	3
Five	5	0	5	3
Six	1	1	2	1
Eight	4	0	4	2
Not Known	6	0	6	3
Total	145	42	187	100

Nearly three quarters of the rape attacks involved only one assailant. However, the other 43 attacks about which information was available, involved 154 assailants. Although only one in four of the complaints were multiple rapes, the number of suspects involved exceeded those against whom single rapes were alleged. When more than one assailant was involved, the attack was more likely to be a rape than an attempted rape.

Table 10: Person Reporting Rape

	Rape					Attempted Rape					Total	%
	False Compl	Compl With/ Drawn	Grey Area	Genuine No. Pros	Pros	False Compl	Compl With/ Drawn	Grey Area	Genuine No. Pros	Pros		
Complainant on own initiative	5	7	2	6	9	2	1	2	3	6	43	20
Complainant after consultation with another person	5	13	10	8	23	0	5	0	0	6	70	32
Relative	7	12	3	5	9	1	0	2	1	5	45	20
Friend	1	2	1	4	5	0	0	0	0	2	15	7
Neighbour	2	0	3	2	5	0	0	1	0	2	15	7
Stranger to complainant	3	3	2	2	1	0	0	1	0	3	15	7
Other/Unknown	5	2	3	3	0	2	1	1	0	0	17	8
<b>Total</b>	<b>28</b>	<b>39</b>	<b>24</b>	<b>30</b>	<b>52</b>	<b>5</b>	<b>7</b>	<b>7</b>	<b>4</b>	<b>24</b>	<b>220</b>	<b>100</b>

The complainant who tells the police about the incident before anyone else is the exception (1 in 5). The complainant is more likely to tell another, frequently a relative, and either the complainant will then report the event to the police, or the relative will report it at the complainant's request or on their own initiative.

Table 11: Length of Time Between Rape and Telling Someone

	<u>Rape</u>		<u>Att. Rape</u>		<u>Total</u>	<u>%</u>
	<u>Pros</u>	<u>Not Pros</u>	<u>Pros</u>	<u>Not Pros</u>		
Immediately	29	20	15	9	73	39
Within 1 hour	15	29	4	8	56	30
1-24 hours	8	33	4	1	46	25
24+ hours	0	2	0	0	2	1
Unclear	0	9	1	0	10	5
<b>Total</b>	<b>52</b>	<b>93</b>	<b>24</b>	<b>18</b>	<b>187</b>	<b>100</b>

The majority of complainants did not tell someone of the event immediately. And, as the previous table suggests, complainants seem to prefer to wait and tell someone they know, rather than a stranger.

Table 12: Length of Time Between Rape and Reporting to the Police

	<u>Rape</u>		<u>Att. Rape</u>		<u>Total</u>	<u>%</u>
	<u>Pros</u>	<u>Not Pros</u>	<u>Pros</u>	<u>Not Pros</u>		
Within 1 hour	33	33	15	13	94	50
1-24 hours	19	49	9	4	81	43
24+ hours	0	8	0	1	9	5
Unclear	0	3	0	0	3	2
<b>Total</b>	<b>52</b>	<b>93</b>	<b>24</b>	<b>18</b>	<b>187</b>	<b>100</b>

The police were notified of exactly half the events within one hour of their occurrence. We did not collect the material in such a way so the time gaps could be presented in greater detail, but nearly half left reporting for at least an hour, often preferring either to think about the event, or talk about it with another person, before advising the police.

Table 13: Orifices Penetrated other than Vagina

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
None - i.e. Vaginal penetration or attempt thereat	105	39	144	77
Oral by suspect	18	1	19	10
Anal	2	0	2	1
Oral and Anal	2	0	2	1
Oral by complainant	9	0	9	5
Other	2	2	4	2
Unknown	7	0	7	4
<b>Total</b>	<b>145</b>	<b>42</b>	<b>187</b>	<b>100</b>

As reported to the police, in over three quarters of the rape complaints, the suspects focused solely on the complainant's vagina (although our sample did not include indecent assault cases).

Table 14: Medical Examination Completed

	<u>Rape</u>					<u>Attempted Rape</u>					<u>Total</u>	<u>%</u>
	<u>False Compl</u>	<u>Compl With/Dwn</u>	<u>Grey Area</u>	<u>Genuine No Pros</u>	<u>Pros</u>	<u>False Compl</u>	<u>Compl. With/Draw</u>	<u>Grey Area</u>	<u>Genuine No Pros</u>	<u>Pros.</u>		
Yes	9	14	23	23	52	1	1	2	3	14	142	65
No	19	16	16	1	0	4	3	5	4	10	78	35
<b>Total</b>	<b>28</b>	<b>30</b>	<b>39</b>	<b>24</b>	<b>52</b>	<b>5</b>	<b>4</b>	<b>7</b>	<b>7</b>	<b>24</b>	<b>220</b>	<b>100</b>

In all the cases where prosecution was initiated for rape, the complainant was medically examined. Also she was examined in all cases bar one where the complaint was accepted as genuine. It would appear that the police act as a filtering process, and do not necessarily obtain an examination if they hold doubts about the genuineness of the complaint. The medical examination was also sometimes used by the police as one source of information to assess the truthfulness of the complaint. The vast majority of examinations were conducted by a male doctor (94% of the examinations where this information was available) either at his surgery or at the police station.

Table 15: Physical Injuries Incurred

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
None	30	2	32	17
Minor - No medical treatment	69	13	82	44
Required medical treatment	7	2	9	5
Required hospitalisation	2	1	3	2
Not Known	37	24	61	33
Total	<u>145</u>	<u>42</u>	<u>187</u>	<u>100</u>

Rape complaints which involved serious physical injury were rare. The injuries incurred, if any, usually consisted of bruising and minor abrasions. The files made frequent reference to the use of force, such as grabbing and pushing, in order to obtain the complainant's submission.

Suspects

There is less information available about the suspects than the complainants. Sometimes they were not sought, for example, if the complaint was withdrawn, and sometimes when sought, they were not located. The following tables are dominated by information about prosecuted assailants, since in these cases there was usually more information available about the suspect(s).

Table 16: Suspect's Age

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Up to 16	6	5	11	5
17-20	36	11	47	22
21-25	41	10	51	24
26-30	26	8	34	16
31-40	12	3	15	7
41-50	5	2	7	3
51+	2	1	3	1
Not Known	44	4	48	22
Total	<u>172</u>	<u>44</u>	<u>216</u>	<u>100</u>

Most suspects, as the Table shows, were in their late teens or their 20s. The average age of the suspects tended to be slightly older than that of the complainants.

Table 17: Suspect's Race

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Caucasian	47	16	63	28
Maori	78	21	99	44
Pacific Islander	16	5	21	9
Not Known	37	4	41	18
Total	178	46	224	100

Where the suspect's race was recorded, he was more likely to be of Maori origin than European. The incidence of inter-racial and intra-racial attacks are presented in Table 20 below. When information was available, suspects were predominantly single and either unemployed or unskilled workers. Rape suspects and rape complainants thus tended to be from the same social class, but they were by no means confined to any specific class, age, occupation or race.

Table 18: Relationship Between Complainant and Suspect

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Friend	20	6	26	14
Former Lover	12	1	13	7
Relative	10	1	11	6
Acquaintance	29	7	36	19
Stranger	48	17	65	35
Known by Sight	10	0	10	5
Pick Up	7	8	15	8
Hitch-hiker	3	1	4	2
Not Known	6	1	7	4
Total	145	42	187	100

In nearly half the attacks, the complainant and the assailant had been involved in some type of social relationship prior to the event. In 13 of the complaints, five of which were prosecuted, the complainant and the assailant had been former lovers. The largest single group of assailants, 1 in 3, were strangers to the complainant.

Table 19: Identification of Suspect

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Identification never sought	29	2	31	17
Name known by complainant	64	14	78	42
Address known by complainant	8	1	9	5
Suspect located at scene of attack	2	2	4	2
Modus Operandi Files	1	1	2	1
Photo Files	3	2	5	3
Identikits	1	0	1	.5
Fingerprints	2	2	4	2
Other Witnesses	4	2	6	3
Other Physical Evidence	5	2	7	4
Police Intervene during attack	1	0	1	.5
Impossible to Identify	14	11	25	13
Other	11	3	14	7
Total	145	42	187	100

In some cases, more than one method of identification was available. The above table records the method which seemed to be regarded as the most important. Nearly half the suspects were located because the complainant was able to give the police a name, or at least an address. This reflects the fact that nearly half the attacks involved parties who had some social relationship prior to the event. When a name or an address was not available, the police used a number of other means of detection. In approximately 1 in 8 complaints, it was not possible to identify the assailant.

Table 20: Racial Comparison between Complainant and Suspect(s)

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Complainant and suspect both Caucasian	32	13	45	20
Complainant and suspect both Maori	38	4	42	19
Complainant and suspect both Pacific Islander	6	0	6	3
Complainant Caucasian - Suspect non-Caucasian	37	11	48	22
Complainant non-Caucasian - Suspect Caucasian	7	2	9	4
One Maori, the other Pacific Islander	4	2	6	3
Not Known	52	12	64	29
Total	<u>176</u>	<u>44</u>	<u>220</u>	<u>100</u>

The first point which must be stressed is that the information was not available for 64 cases (29%). If these cases are excluded, 60% of the attacks were intra-racial - e.g. Caucasian attacks Caucasian or Maori attacks Maori. Of the balance, (63 cases) about three-quarters involved an attack by a Maori directed at a Caucasian.

Table 21: Presiding at Preliminary Hearing

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
District Court Judge	1	2	3	6
Justices of the Peace	34	11	45	83
Not recorded	4	2	6	11
Total	<u>39</u>	<u>15</u>	<u>54</u>	<u>100</u>

As was noted in the body of the report, two Justices of the Peace presided at the great majority of the preliminary hearings held in the District Court for the taking of depositions from the prosecution witnesses.

The final table presents the complaints in this study according to what we considered an appropriate typology.

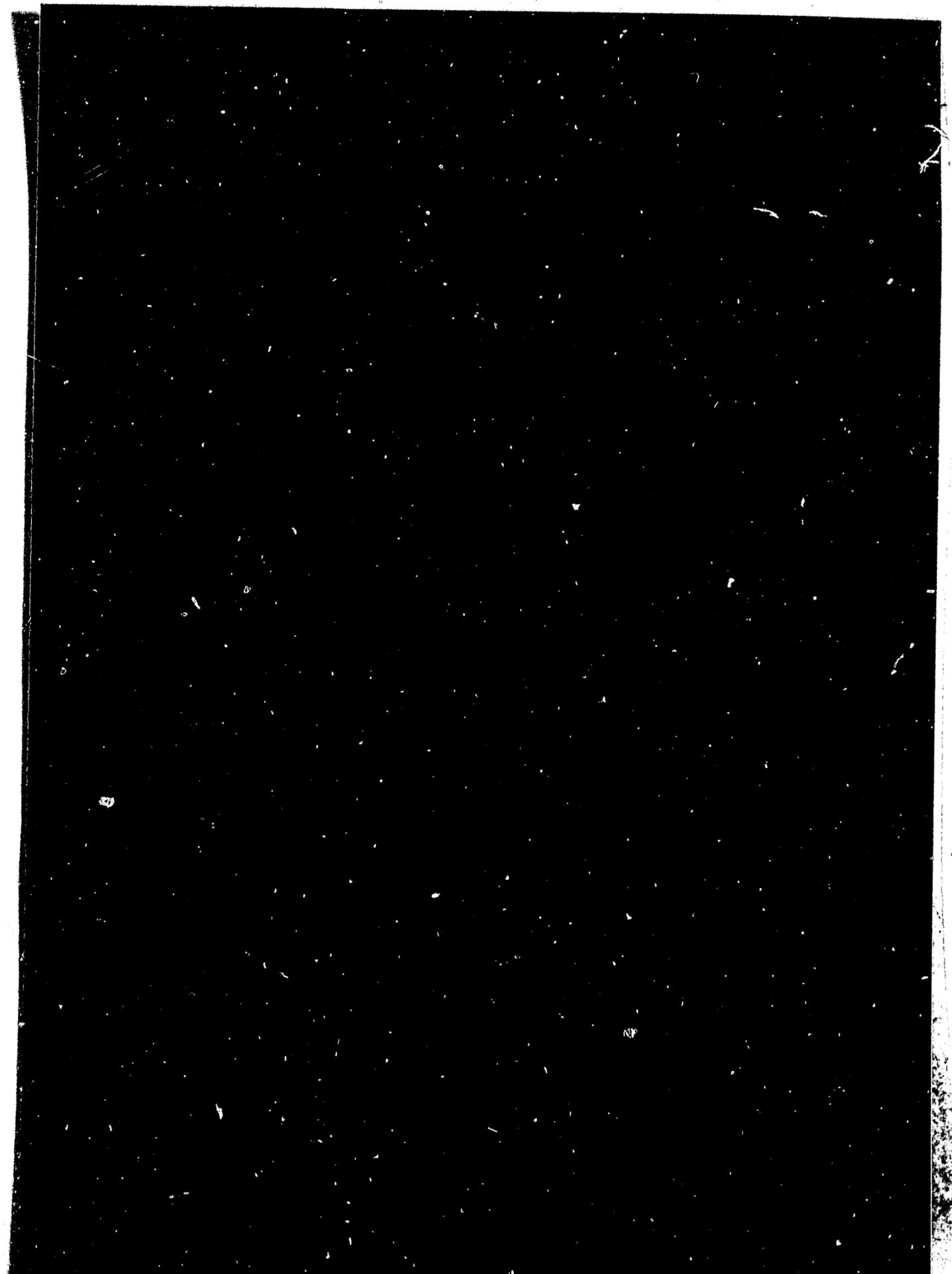
Table 22: Rape Typology

	<u>Rape</u>	<u>Att. Rape</u>	<u>Total</u>	<u>%</u>
Single Stranger Rape - Break into complainant's house	16	8		
Single Stranger Rape - Hitch-hiker, woman requests ride	3	1		
Single Stranger Rape - Complainant persuaded to go for a ride	8	6		
Single Stranger Rape - other				
Sub-total	<u>16</u> <u>43</u>	<u>6</u> <u>21</u>	64	34
Single Acquaintance Rape - in public place	7	2		
Single Acquaintance Rape - in complainant's house	7	5		
Single Acquaintance Rape - in suspect's house	10	4		
Single Acquaintance Rape - elsewhere				
Sub-total	<u>2</u> <u>26</u>	<u>1</u> <u>12</u>	38	20
Single Friendship Rape	26	5	25	13
Multiple Gang Rape - Stranger - Break into complainant's house	1	0		
Multiple Gang Rape - Stranger - Other	1	1		
Multiple Gang Rape - acquaintance	12	0		
Multiple Rape - non gang-strangers	12	1		
Multiple Rape - non gang - Acquaintance, friends				
Sub-total	<u>13</u> <u>39</u>	<u>1</u> <u>3</u>	42	22
Family Relationship (not incest)	9	1		
Spousal, De-facto	1	0		
Incest				
Sub-total	<u>1</u> <u>11</u>	<u>0</u> <u>1</u>	12	6
Impossible to classify	6	0	6	3
Total	<u>145</u>	<u>42</u>	<u>187</u>	<u>100</u>

This table discloses that one reported rape or attempted rape in three was committed by a single suspect who was a stranger to the complainant. One in five was committed by a single suspect who was an acquaintance of the complainant, while one in eight was committed by a single suspect who was a friend of the complainant. A little over one in five complaints involved a multiple rape. If a gang was involved, the complainant was very likely to be an acquaintance of at least some members of the gang. If it was not a gang, the numbers were about equal between strangers and acquaintances. About one rape complaint in sixteen involved a family relationship. The relationships recorded were usually cousins, or uncle and niece.

This table confirms figures in some of the other tables, that in the majority of rape complaints reported to the police, the complainant was able to name the alleged offender because he was known to her, in some cases very well known to her, prior to the attack which resulted in the complaint.

The information collected suggests that rape may occur in any place and at any time. While some women are more at risk than others, it is nevertheless true that all women are potential victims and that rapes are committed by men of all ages, class and race. Moreover, the stereotype that "real rapes" are committed by strangers in a dark alley at night was disproved by this data: in over half the rapes and attempted rapes reported to the police, the assailant and victim were known to each other before the assault.



## RAPE STUDY

### EXECUTIVE SUMMARY - 1980 AND 1981 COURT FILES

An examination of 1980 and 1981 court files was undertaken as part of a larger study on rape. The object of the court files research has been to provide basic descriptive information about alleged rape incidents and how the criminal justice system deals with rape cases.

It should be remembered that the information in the report refers only to cases which entered the criminal justice system, and in which an indictment was laid. It is based upon 83 cases, which involved 117 defendants and 64 High Court trials. 65% of cases proceeded through at least one full trial. In 9 cases there was more than one trial. In 14.5% of cases all the defendants pleaded guilty to rape before or at the preliminary hearing. There was a preliminary hearing but no trial in 20.5% of cases and in nearly all of these cases the defendants pleaded guilty to rape after the hearing.

In 76% of cases there was only one defendant although the rape incident as described by the complainant often involved more assailants than appeared in court. In only 1.2% of cases were there more than 4 defendants, whilst in 15.7% of cases the complainant stated that there were more than 4 persons actively involved in the rape incident.

In 15.6% of cases the complainant received physical injuries that required medical treatment and/or hospitalisation. Physical force of some sort was used in 66.3% of the rape incidents, and in nearly 17% of cases a weapon was used or displayed. In 4 of the 7 cases where the complainant required hospitalisation, and in 9 of the 14 cases where a weapon was involved, the defendants pleaded guilty to rape (2 of the cases overlap). In 37.3% of cases sexual acts in addition to vaginal intercourse were recorded. There was a significant association between whether additional sexual acts were performed and whether any defendant in a case was convicted of rape.

In nearly 50% of the cases the defendant had not been known to the complainant prior to the interaction leading to the rape, and in almost 35% of cases the rape incident occurred in the complainant's own home.

The complainant was the person who reported the rape incident to the police 44.6% of the time, and in the majority of cases it was reported to the police or a complaint was made to someone else within one hour of the incident.

The average length of time from the offence to the conclusion of the case was 5.7 months. For cases where there was a preliminary hearing and one trial the average length of time from the offence to the hearing was 2.1 months, and from the hearing to the trial it was 2.9 months.

Preliminary hearings were presided over by Justices of the Peace in 91.5% of cases where there was a full hearing. Written depositions were used for the complainant's evidence in only 9.6% of cases.

Provisions which enable the public to be excluded from preliminary hearings were used on only one occasion. Permission was not given for the publication of the complainant's name in any of the cases in this study.

Rape is an indictable offence and must always be heard before a judge and jury in the High Court. The average number of females on a jury was 3.85 whilst the average number of males was 8.1. At 73.4% of trials there were more males than females on the jury.

In approximately 23% of trials the complainant was cross-examined by more than one defence counsel. The defendant chose to give evidence at 43% of trials.

It was found that consent was by far the most common defence put forward by defendants. Consent was raised by 62% of defendants as their principal defence and by 73.4% as one of their defences. Certain lines of argument or areas of questioning tended to be repeatedly referred to by defence counsel when the defence of consent was raised.

Section 23A of the Evidence Act 1908 was introduced in 1977 in order to provide protection for the complainant from largely irrelevant but highly prejudicial questioning by defence counsel on her previous sexual experience with persons other than the accused. The complainant's previous sexual experience was mentioned in some way in approximately 49% of cases where there was a preliminary hearing and/or trial, although in only seven of these cases had an application been granted. References to the previous sexual experience of the complainant were made more often and more directly at preliminary hearings whereas at the trials all but one direct reference was objected to or disallowed.

There was a total of 117 defendants in the cases in this study, 31.6% of whom pleaded guilty and 68.4% of whom pleaded not guilty to rape. Of those who pleaded not guilty to rape 50% were convicted of rape. Approximately 11% of defendants were not convicted of rape but were convicted of another sexual offence and one defendant was not convicted of rape but was convicted of a non-sexual offence. 22.2% of defendants were acquitted of all charges.

The maximum prison sentence that can be imposed upon a convicted rapist is 14 years. Preventive detention can be imposed (under certain circumstances) upon a recidivist sexual offender. Only one person in this study was sentenced to preventive detention but this was changed to a fixed term of 9 years imprisonment upon appeal. Nearly all of the convicted defendants received custodial sentences. The average length of prison sentence was 4.1 years.

Appendix 1 - SummaryCOURT OF APPEAL FILES

A small study of Court of Appeal files relating to appeals against conviction and or sentence for rape or being a party to rape, was carried out. All relevant completed Court of Appeal files for 1979, 1980 and 1981 were obtained. There was a total of 46 files, each referring to a separate defendant.

During the period of the study, sentence was appealed against either on its own or in conjunction with an appeal against conviction, on 37 occasions. Appeals against sentence alone were allowed in two cases.

Twenty-three defendants appealed against conviction either separately or in conjunction with an appeal against sentence. Four defendants appealed successfully against conviction, two of whom were co-defendants in the same case. In one case the successful ground of appeal was that there was insufficient evidence to justify the verdict. In the other two cases the successful grounds of appeal were concerned with the judges' directions upon corroboration.

It was found that the length of time between conviction and the Court of Appeal judgments for the three successful appeals was, 3-1/2 months, 7 months and 13 months respectively.

The summings-up in the Court of Appeal files were examined as these had not been available in the court files. Examples were given of the wording of the corroboration warning, explanations of intent and the evidential rules relating to complaint.

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## 1. INTRODUCTION

This examination of court files is part of a larger study on rape that has been undertaken by researchers from the Department of Justice and the Institute of Criminology, Victoria University of Wellington.

This study on rape has been victim-oriented. It has focused upon the victims' experience of rape and its aftermath.

The object of the court files research has been to provide basic descriptive information about the alleged rape incident and how the criminal justice system deals with rape cases. The functioning of section 23A of the Evidence Act 1908 was an area of particular concern and is discussed in a separate section of the report.

The appendix to the report contains the results of a smaller study of Court of Appeal rape files.

### 1.1 METHODOLOGY AND DESCRIPTION OF DATA SET

The data set consists of every completed trial file where an indictment for rape had been laid in 1980 and 1981 (including sentence files). None of these cases were the subject of an appeal at the time the data was extracted. Cases which were the subject of appeals at that time were excluded from the data set.

Each High Court was requested to send all relevant files to us for analysis. There is no way to ascertain whether every file was in fact sent, but the number received fell within the expected range.

The total number of files received was 83.

In a further case the complainant could not be traced after the preliminary hearing. This case was also excluded.

The ideal method of collecting data about preliminary hearings and trials would have been to observe court proceedings as well as having access to the written record of these proceedings. As the time available for this study was limited this method was not viable and the records from trials which had already been completed were used. Information was extracted from the court files and recorded on data sheets.

Two major pieces of research carried out in the U.S.A. on rape used non-participant observation of the court process as part of their studies. These studies are; The victim of Rape: Institutional Reactions, L.L. Holmstrom, and A.W. Burgess, 1978; and The Aftermath of Rape, T.W. McCahill, L.E. Meyer and A.M. Fischman, 1979; they are referred to in the text.

Rape in the context of this research refers only to offences under section 128 of the Crimes Act 1961 or being party to that offence.

#### Section 128

Rape - (1) Rape is the act of a male person having sexual intercourse with a woman or girl -

- (a) Without her consent; or
  - (b) With consent extorted by fear of bodily harm or by threats; or
  - (c) With consent extorted by fear, on reasonable grounds, that the refusal of consent would result in the death of or grievous bodily injury to a third person; or
  - (d) With consent obtained by personating her husband, or
  - (e) With consent obtained by a false and fraudulent representation as to the nature and quality of the act.
- (2) Every one who commits rape is liable to imprisonment for a term not exceeding 14 years.
  - (3) Notwithstanding anything in subsection (1) of this section, no man shall be convicted of rape in respect of intercourse with his wife, unless at the time of the intercourse he and his wife were living apart in separate residences.

#### Section 66

Parties to offences - (1) Every one is a party to and guilty of an offence who -

- (a) Actually commits the offence; or
- (b) Does or omits an act for the purpose of aiding any person to commit the offence; or

- (c) Abets any person in the commission of the offence; or
- (d) Incites, counsels, or procures any person to commit the offence.

- (2) Where 2 or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

Court files where a case has gone to trial and resulted in a conviction usually contain:

- (1) the indictment
- (2) the information
- (3) the depositions of witnesses
- (4) the notes of evidence
- (5) any applications made to the judge and the judge's ruling on the application
- (6) a probation report
- (7) the judge's sentencing speech
- (8) notices to witnesses
- (9) lists of exhibits
- (10) any information relating to bail.

(See glossary)

Unfortunately not all the files were complete; in five cases there were no notes of evidence available. The final speeches of defence and prosecution lawyers are not recorded, and the judge's summing up is only typed up at the request of the Court of Appeal.

The following report comprises the statistics from the data sheets and extracts from the files. The extracts are usually from the notes of evidence taken at the trial and serve to illustrate various points about the defences raised at the trials. This section of the report is based upon recurring types of questioning by defence counsel which were recorded from the notes of evidence.

Extracts are also used in the part on section 23A of the Evidence Act 1908.

There obviously tend to be conflicting descriptions of the rape incident, but the complainant's version was the only one that was available in a consistent manner (either from her evidence or the police summary of the facts). The onus of proof rests with the Crown and defendants have the right to silence and do not have to put forward an explanation of events. Defendants may make a statement to the police

but the defence sometimes challenges the accuracy of these statements at the trial. The majority of defendants did not give evidence at the trial. Defence counsel clearly state the defendant's point of view in their final speech to the jury but these speeches are not recorded. In 28 cases all the defendants in the case pleaded guilty.

Because the defendant's version is not available in a consistent manner and because this research is victim-oriented and focuses upon the complainant's experience of the criminal justice system, the complainant's description of events has been used in compiling the data. The tables where this type of data has been used are marked with an asterisk, and details of whether any of the defendants were convicted of rape have also been given.

It is important to remember that the data in this report refer only to cases which entered the criminal justice system and in which an indictment was laid. It should not be seen as being representative of all rapes. The estimates of the percentage of rapes that are reported to the police vary widely<sup>(1)</sup> but are usually not more than 33%, and in 1981 of those offences reported to the New Zealand Police only 32% resulted in prosecution. The cases in this study cannot therefore be considered to be representative of all rapes.

In approximately 76% of the cases in this study there was only one defendant, and in 83.3% of the cases that involved a trial there was only one trial.

(1) Estimates of the percentage of rapes that are reported to the police come from many sources the main ones being victim surveys. The National Crime Victims Survey conducted by the Australian Bureau of Census and Statistics in 1975 indicated that only 32.7% of rape and attempted rape offences were reported to the police, at the 1982 Rape Symposium, Wellington the figure of 20% was suggested.

Table 1 Number of Defendants in Each Court Case

<u>Number of defendants</u>	<u>No.</u>	<u>%</u>
1	63	75.9
2	12	14.5
3	4	4.8
4	3	3.6
6	<u>1</u>	<u>1.2</u>
	83	100.0

There was a total of 117 defendants.

In two cases there was a co-defendant who was not charged with rape. Information was not collected on these defendants and they are not included in the 117.

Table 2 Number of Trials in Each Case

<u>Number of Trials</u>	<u>No.</u>	<u>%</u>	<u>Adjusted %</u>
1	45	54.2	83.3
2	8	9.6	14.8
3	1	1.2	1.9
No trial	<u>29</u>	<u>34.9</u>	<u>No trial</u>
	83	100.0	100.0

In one of the 'single trial' cases trials commenced on two occasions before the complete trial. On these two occasions the judge discharged the jury. No evidence was recorded and the reasons for the discharge of the juries was not set out in the trial file.

In the instances where there was more than one trial, one of the retrials was ordered upon appeal, in another the judge declared a mistrial and the rest were because the juries failed to agree upon a verdict.

The cases break down into three main types:

1. Where the case proceeded through the preliminary hearing and trial.
2. Where there was a preliminary hearing but no trial (or only the beginning of a trial). In nearly all of these cases the defendant pleaded guilty after the preliminary hearing.
3. Where there was no preliminary hearing or trial. In these cases the defendants had pleaded guilty pursuant to section 153A of the Summary Proceedings Act 1957.

Section 153A provides that a defendant may plead guilty before or during a preliminary hearing.

**Table 3** Court Cases Grouped by the Stages of the Criminal Justice System through which they Passed

<u>How the case proceeded through the Criminal Justice System</u>	<u>No.</u>	<u>%</u>
Preliminary hearing, and trial	52	62.6
Preliminary hearing, but no full trial. <sup>a</sup>	17	20.5
No preliminary hearing or trial.	12	14.5
Preliminary hearing, trial but pleads guilty after all the evidence.	1	1.2
Preliminary hearing, trial but discharged from all charges by judge after all the evidence.	<u>1</u>	<u>1.2</u>
	83	100.0

a: In 15 of the 17 cases where there was a preliminary hearing but not a full trial the defendants pleaded guilty to rape. In two of these cases the defendant pleaded guilty at the beginning of the trial before the complainant had completed her evidence.

## 2. THE RAPE INCIDENT

### 2.1 THE NUMBER OF PERSONS INVOLVED IN RAPE INCIDENTS

Although approximately 76% of the cases involved only one defendant, the rape situation described by the complainant shows a slightly different picture. Generally there were more alleged assailants than there were defendants, with the number of times there were more than four persons involved increasing substantially (from 1.2% in Table 1 to 15.7% in Table 5).

**\* Table 4** Number of Persons Whom the Complainant Stated Raped Her

<u>Number of Assailants</u>	<u>No.</u>	<u>%</u>
1	58	69.9
2	12	14.5
3	5	6.0
4	1	1.2
More than 4	<u>7</u>	<u>8.4</u>
	83	100.0

Note: Tables marked \* use figures that come from the complainants' description.

**\* Table 5** Number of Persons Whom the Complainant Stated were Actively involved in the Rape Incident; this includes those said to have Actually Raped the Complainant as well as those who were Involved in other Ways

<u>Number of Assailants</u>	<u>No.</u>	<u>%</u>
1	54	65.1
2	11	13.2
3	4	4.8
4	1	1.2
More than 4	<u>13</u>	<u>15.7</u>
	83	100.0

**Table 6** Number of Defendants who were on Trial by Number of Defendants who were Convicted of Rape in Each Court Case

		Number of defendants convicted of rape						No.	%
		0 <sup>a</sup>	1	2	3	4	5		
<u>No. defendants on trial</u>	1	23	40	0	0	0	0	63	75.9
	2	3	2	7	0	0	0	12	14.5
	3	0	0	0	4	0	0	4	4.8
	4	2	0	0	0	1	0	3	3.6
	6	0	0	0	0	0	1	1	1.2
		28	42	7	4	1	1	83	100.0

a: 0 means that none of the defendants were convicted of rape.

In 55 cases at least one defendant was convicted of rape. However in 28 of these cases all the defendants pleaded guilty and in another case one of the defendants pleaded guilty.

**Table 7** Number of Defendants by the Outcome of the Case

<u>Number of Defendants</u>		Whether anyone was Convicted of Rape		Total
		At least one Defendant Convicted of Rape	No Defendant Convicted of Rape	
1	No.	40	23	63
	%	63.5	36.5	100.0
2	No.	9	3	12
	%	75.0	25.0	100.0
3	No.	4	0	4
	%	100.0	-	100.0
4	No.	1	2	3
	%	33.3	66.7	100.0
5	No.	1	0	1
	%	100.0	-	100.0
Total	No.	55	28	83
	%	66.3	33.7	100.0

**Note:** In the tables that follow the headings relating to whether any defendants in a case were convicted of rape will be shortened to 'someone convicted' and 'no-one convicted', but they refer only to the offence of rape.

Other than cases where there were 4 defendants the percentage of cases where at least one defendant was convicted of rape increased with the increase in the number of defendants in a case.

**2.2 THE ALLEGED RAPE**

In an attempt to reduce the difficulties associated with proving lack of consent some of the changes in overseas legislation have involved the creation of a graded offence.

The infliction of personal violence and/or the use of a weapon are often set down as being aggravating circumstances, the presence of which makes the offence more serious. The following tables show that probably very few cases which at present enter the criminal justice system would be affected by this type of change in legislation.

**Table 8** Seriousness of Physical Injuries to Complainant

<u>Injuries</u>	<u>No.</u>	<u>%</u>
None	34	41.0
Minor	35	42.2
Complainant required medical treatment	6	7.2
Complainant required hospitalisation	7	8.4
Not Known	1	1.2
	83	100.0

**Table 8.1** Seriousness of Physical Injuries to Complainant by the Outcome of the Case

<u>Injuries</u>		Whether Anyone was Convicted of Rape		Total
		Someone Convicted	No One Convicted	
None	No.	18	16	34
	%	52.9	47.1	100.0
Minor	No.	26	9	35
	%	74.3	25.7	100.0
Complainant required medical treatment	No.	4	2	6
	%	66.7	33.3	100.0
Complainant required hospitalisation	No.	6	1	7
	%	85.7	14.3	100.0
Not Known	No.	1	0	1
	%	100.0	-	100.0
Total	No.	55	28	83
	%	66.3	33.7	100.0

In 4 of the 7 cases where the complainant required hospitalisation and in 9 of the 14 cases where a weapon was involved the defendants pleaded guilty to rape (two of these cases overlap).

**\*Table 9** Methods used to Overcome the Complainant

Method used	No.	%
Verbal threat of force against complainant	5	6.0
Verbal threat of force against another	1	1.2
Verbal threat of a weapon	2	2.4
Physical force	55	66.3
Weapon used or displayed	14	16.9
Other <sup>a</sup>	5	6.0
Not Known	1	1.2
	83	100.0

Note: Where a verbal threat was combined with the use of physical force or a weapon the latter categories were recorded, with the use of a weapon superseding physical force.

<sup>a</sup>: The category 'other' included the following situations - mothers who were frightened for their children's safety, the complainant being overwhelmed by numbers, and the complainant having seen her de facto assaulted.

**\*Table 9.1** Method used to Overcome the Complainant by the Outcome of the Case

Method Used		Whether anyone was convicted of rape		
		Someone Convicted	No One Convicted	Total
Verbal threat of force against complainant	No.	3	2	5
	%	60.0	40.0	100.0
Verbal threat of force against another	No.	0	1	1
	%	-	100.0	100.0
Verbal threat of a weapon	No.	0	2	2
	%	-	100.0	100.0
Physical force	No.	34	21	55
	%	61.8	38.2	100.0
Weapon used or displayed	No.	13	1	14
	%	92.9	7.1	100.0
Other	No.	5	0	5
	%	100.0	-	100.0
Not Known	No.	0	1	1
	%	-	100.0	100.0
Total	No.	55	28	83
	%	66.3	33.7	100.0

The categories in table 9 did not prove to be very discriminating as 66.3% of the cases fell within the broad category of physical force. Physical force ranged from holding the victim down to such things as kicking the victim.

**\*Table 10** Frequency of Sexual Acts in Addition to Vaginal Intercourse During the Rape Incident

Additional Acts	No.	%
None <sup>a</sup>		
Oral (by complainant and/or defendant)	52	62.7
Oral and anal	26	31.3
Vaginal penetration by an object	2	2.4
Vaginal and anal penetration by an object	1	1.2
Complainant forced to masturbate herself	1	1.2
	83	100.0

<sup>a</sup>: The category 'none' includes many cases where the defendant manually masturbated the complainant and some where she manually masturbated him.

**\*Table 10.1** Whether there were Sexual Acts in Addition to Vaginal Intercourse by the Outcome of the Case

Additional Acts		Whether anyone was convicted of rape		
		Someone Convicted	No One Convicted	Total
No	No.	29	23	52
	%	55.8	44.2	100.0
Yes	No.	26	5	31
	%	83.9	16.1	100.0
Total	No.	55	28	83
	%	66.3	33.7	100.0

The figures in table 10 may well understate the number of additional acts as many complainants appeared to be unwilling to describe them. Nonetheless in approximately 37% of cases sexual acts in addition to vaginal intercourse were recorded.

\* Table 11 Relationship of Defendant to the Complainant at the Time of the Rape Incident

Relationship	No.	%
Lover	1	1.2
Ex-lover	2	2.4
Relative	4	4.8
Friend	8	9.6
Acquaintance	22	26.5
Met that night	7	8.4
Hitch hiker	2	2.4
Knew by sight	7	8.4
Stranger	23	27.7
Other <sup>a</sup>	7	8.4
	83	100.0

Note: Where there was more than one assailant who allegedly raped the complainant the closest relationship was recorded.

Because percentages are rounded to one decimal place they do not always equal exactly 100.

a: The category 'other' includes two instances where the defendant was the complainant's mother's lover, or ex-lover, one where the defendant had been a taxi fare, one where he was a boarder, one where he was a friend of the person the victim was with and one where the defendant was the complainant's sister's boyfriend.

\*Table 11.1 Relationship of Defendant to the Complainant at the Time of the Rape Incident by the Outcome of the Case

Relationship		Whether anyone was convicted of rape		Total
		Someone Convicted	No One Convicted	
Lover	No.	0	1	1
	%	-	100.0	100.0
Ex Lover	No.	1	1	2
	%	50.0	50.0	100.0
Relative	No.	3	1	4
	%	75.0	25.0	100.0
Friend	No.	4	4	8
	%	50.0	50.0	100.0
Acquaintance	No.	17	5	22
	%	77.3	22.7	100.0
Met that Night	No.	3	4	7
	%	42.9	57.1	100.0
Hitch hiker	No.	2	0	2
	%	100.0	-	100.0
Knew by Sight	No.	4	3	7
	%	57.1	42.9	100.0
Stranger	No.	17	6	23
	%	73.9	26.1	100.0
Other	No.	4	3	7
	%	57.1	42.9	100.0
Total	No.	55	28	83
	%	66.3	33.7	100.0

In nearly 50% of the cases the assailant had not been known to the complainant prior to the interaction leading up to the rape. It is very likely this figure is higher than it would be for all rapes, as rapes involving strangers are probably reported to the police more often than those involving non strangers.

The 1981 Auckland Rape Crisis Centre Questionnaire on Rape, for example, found that nearly 80% of victims had known their assailant ('rape' in this questionnaire included attempted rape and indecent assault).

\*Table 12 Place where the Rape Incident Occurred

Place	No.	%
Complainant's home	29	34.9
Defendant's home	9	10.8
In a car	9	10.8
Bush/farm land	10	12.1
In a park	4	4.8
Alleyway/road side	5	6.0
At a party	3	3.6
House where victim was staying	2	2.4
On a beach	2	2.4
Factory	1	1.2
Army barracks	1	1.2
Complainant's garden	1	1.2
Deserted bach	1	1.2
Building site	1	1.2
Cabin in caravan park	1	1.2
Gang headquarters	1	1.2
Hot pools	1	1.2
Outside a dance hall	1	1.2
Golf course	1	1.2
	83	100.0

Table 12.1 Place where the Rape Incident Occurred by the Outcome of the Case

Place		Whether anyone was convicted of rape		Total
		Someone Convicted	No One Convicted	
Complainant's home	No.	20	9	29
	%	69.0	31.0	100.0
Defendant's home	No.	6	3	9
	%	66.7	33.3	100.0
In a car	No.	8	1	9
	%	88.9	11.1	100.0
Bush/farm land	No.	6	4	10
	%	60.0	40.0	100.0
In a park	No.	2	2	4
	%	50.0	50.0	100.0
Other	No.	13	9	22
	%	59.1	40.9	100.0
Total	No.	55	28	83
	%	66.3	33.7	100.0

It has often been suggested that if women were to avoid certain places then they would not get raped. However given the fact that approximately 35% occurred in the complainant's own home and the remainder in a wide diversity of places this suggestion seems to be rather unrealistic. (In some instances the complainant was taken to the place where the rape took place).

2.3 THE COMPLAINT

\* Table 13 Period of Time Between the Rape Incident and the Complainant Telling Anyone about it for the First Time

Period of Time	No.	%
Within one hour	64	77.1
One to twenty-four hours	14	16.9
More than twenty-four hours	2	2.4
Not known	3	3.6
	83	100.0

\*Table 13.1 Period of Time Between the Rape Incident and the Complainant Telling Anyone about it for the First Time by the Outcome of the Case

Period of Time	Whether anyone was convicted of rape		
	Someone Convicted	No One Convicted	Total
Within one hour	No. 43	21	64
	% 67.2	32.8	100.0
One to twenty-four hours	No. 8	6	14
	% 57.1	42.9	100.0
More than twenty-four hours	No. 2	0	2
	% 100.0	-	100.0
Not Known	No. 2	1	3
	% 66.7	33.3	100.0
Total	No. 55	28	83
	% 66.3	33.7	100.0

Note: The above table includes complaints to the police where they were the first people to whom the complainant complained.

Table 14 Period of Time between the Rape Incident and its being Reported to the Police

Period of Time	No.	%
Within one hour	52	62.7
One to twenty-four hours	21	25.3
More than twenty-four hours	6	7.2
Not known	4	4.8
	83	100.0

Table 14.1 Period of Time Between the Rape Incident and its being Reported to the Police by the Outcome of the Case

Period of Time	Whether anyone was convicted of rape		
	Someone Convicted	No One Convicted	Total
Within one hour	No. 35	17	52
	% 67.3	32.7	100.0
One to twenty-four hours	No. 11	10	21
	% 52.4	47.6	100.0
More than twenty-four hours	No. 6	0	6
	% 100.0	-	100.0
Not Known	No. 3	1	4
	% 75.0	25.0	100.0
Total	No. 55	28	83
	% 66.3	33.7	100.0

Table 15 The Person Who Reported the Rape Incident to the Police

Reporter of rape incident	No.	%
The complainant on her own initiative	12	14.5
The complainant after consultation	25	30.1
A relative of the complainant	7	8.4
A friend of the complainant	13	15.7
Other <sup>a</sup>	15	18.1
Not known	11	13.2
	83	100.0

<sup>a</sup>: The category 'other' is largely made up of people other than a relative or friend whom the complainant told that she had been raped.

\*Table 15.1 The Person who Reported the Rape Incident to the Police by the Outcome of the Case

Reporter of rape incident	Whether anyone was convicted by rape		
	Someone Convicted	No One Convicted	Total
The complainant on her own initiative	No. 9	3	12
	% 75.0	25.0	100.0
The complainant after consultation	No. 19	6	25
	% 76.0	24.0	100.0
A relative of the complainant	No. 4	3	7
	% 57.1	42.9	100.0
A friend of the complainant	No. 9	4	13
	% 69.2	30.8	100.0
Other	No. 7	8	15
	% 46.7	53.3	100.0
Not Known	No. 7	4	11
	% 63.6	36.4	100.0
Total	No. 55	28	83
	% 66.3	33.7	100.0

It is perhaps surprising to note that in the six cases where the complainant was known not to have reported the incident to the police until more than 24 hours after the incident there was a conviction in every case.

In 44.6% of cases the complainant was the person who reported the incident to the police. In the majority of cases the rape incident was reported to the police or a complaint was made to someone else within one hour of the rape incident.

It must be emphasised that these figures relate only to cases that resulted in an indictment, and cases where someone was informed promptly would probably be more likely to have this result. The 1981 Auckland Rape Crisis Questionnaire found that many women had not previously told anyone that they had been raped and that approximately 76% had not reported it to the police.

### 3. DEFENDANTS' ATTITUDES

Although this research was victim-oriented there were repeated references in the files to the defendants' attitude towards women and sex. This information was not collected in a systematic way but many assailants seemed to feel that they had a right to sexual intercourse whenever they wanted it and were indifferent to the feelings of their victims.

The following exchange took place during a trial.

Prosecutor: Why didn't you ask her if she was prepared to have intercourse with you?

Defendant: It didn't come to my mind.

Prosecutor: Do you appreciate she is a person who has the right to refuse?

Defendant: No not really.

In another case the police arrived at the scene of the rape and the defendant swore at the complainant, who had been forcibly detained in the car, "now look what you have bloody got me into".

Another defendant remarked, "she wasn't struggling so she must want it."

Probation reports often refer briefly to the defendant's view of the offence. Two examples of this are given below:

he considered the complainant was a 'bit of stray' and he claims to have had sexual intercourse with her about twelve months ago,

he states that he was surprised to be charged with offences resulting from the incident and he felt that what occurred was not extraordinary when considering his life style and associates.

This research has been concerned with extreme instances of unsatisfactory sexual relationships. General attitudes towards women and interpersonal relationships would be an area where further research would be appropriate.

4. THE CRIMINAL JUSTICE SYSTEM'S PROCESSING OF RAPE COMPLAINTS

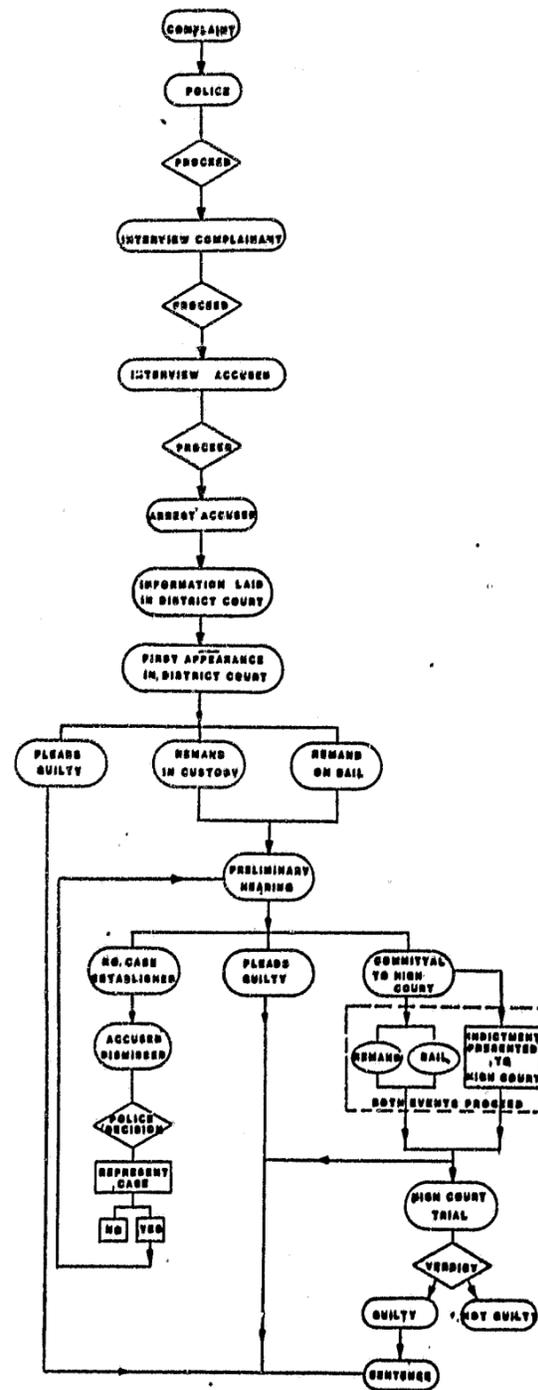


Figure 1: The Main Steps in the Processing of a Complaint

The chain of events in Figure 1 is a simplified description of the major steps from a rape incident to the conclusion of a normal case.

4.1 TIME PERIODS BETWEEN THE VARIOUS STAGES IN A CASE

Concern has been expressed in the literature about the length of time between the various stages in a case. Data was collected so that accurate information upon the situation in New Zealand during 1980 and 1981 would be available.

Table 16 The Length of Time from Offence to the Conclusion of the Case for All Cases

	Days	Months (approx)
Mean	171.58	5.7
Median	150.00	5.0
Minimum length of time	17.00	0.6
Maximum length of time	682.00	22.7

Table 16.1 Length of Time from the Offence to the Conclusion of the Case by the Stages of the Criminal Justice System through which the Case Passed

Type of Case	Length of Time			
	Mean Days	Months (Approx)	Median Days	Months (Approx)
No preliminary hearing or trial	67.7	2.3	62.0	2.1
Preliminary hearing but no trial	152.3	5.1	142.0	4.7
Preliminary hearing and trial (includes cases where there was more than one trial)	201.4	6.7	171.5	5.7
Preliminary hearing and only one trial	167.1	5.6	159.0	5.3

The conclusion of the case was taken to be the date of sentence or acquittal.

Table 17 Length of Time from Offence to Preliminary Hearing for All Cases

	Days	Months (approx)
Mean	70.87	2.4
Median	56.00	1.9
Range	556.00	18.5

**Table 17.1** Length of Time from the Offence to the Preliminary Hearing by the Stages of the Criminal Justice System through which the Case Passed

Type of Case	Length of Time			
	Mean		Medium	
	Days	Months (Approx)	Days	Months (Approx)
No preliminary hearing or trial	38.3	1.3	42.0	1.4
Preliminary hearing but no trial	68.3	2.3	58.0	1.9
Preliminary hearing and trial (includes cases where there was more than one trial)	78.9	2.6	59.5	2.0
Preliminary hearing and only one trial	64.3	2.1	53.0	1.8

**Table 18** Length of Time from Preliminary Hearing to Conclusion of the Case for All Cases

	Days	Months (approx)
Mean	100.71	3.4
Median	86.00	2.9

**Table 18.1** Length of Time from Preliminary Hearing to the Conclusion of the Case by the Stages of the Criminal Justice System through which the Case Passed

Type of Case	Length of Time			
	Mean		Medium	
	Days	Months (Approx)	Days	Months (Approx)
Preliminary hearing but no trial	84.0	2.8	85.0	2.8
Preliminary hearing and trial (includes cases where there was more than one trial)	122.5	4.1	106.5	3.5
Preliminary hearing and only one trial	102.8	3.4	91.0	3.0

Cases where there was no preliminary hearing and no trial were significantly shorter than the other types of case. No other type of case was significantly different (at the 5% level) from the others. This may well be because in cases where the defendant pleaded guilty but there was a preliminary hearing it appears that the guilty plea was often entered on the day that the trial would have commenced, or near to that day.

Three separate sets of statistics were calculated comparing the 'all cases' tables for 1980 with 1981. The year of the offence, the year of the preliminary hearing and the year of the conclusion of the case were compared for the two years. Some cases fell into 1979 or 1982 but these were not comparable with 1980 or 1981 as they contained only a few cases which may not be representative of 1979 or 1982 as a whole.

1980 and 1981 were not significantly different (at the 5% level) in terms of the length of time between the offence and the conclusion of the case; between the offence and the preliminary hearing and between the preliminary hearing and the conclusion of the case.

**Table 19** The Length of Time from the First Day of the Preliminary Hearing to the First Day of the Trial

	Cases where there was one Trial	
	Days	Months (Approx)
Mean	88.4	2.9
Medium	78.0	2.6
Minimum	21.0	0.7
Maximum	348.0	11.6

**Cases where there was more than one Trial**

	Mean	
	Days	Months (Approx)
Length of time from preliminary hearing to first trial	111.3	3.7
Length of time from beginning of first trial to beginning of second trial	96.1	3.2
Length of time from beginning of second trial to beginning of third trial	33.0 <sup>a</sup>	1.1

a: Absolute figure, only one case.

In order to make the preceding tables in this section clearer the figures have been extracted for the type of case that occurred most often in the study. In this type of case there was a preliminary hearing and one trial.

**Table 20** Cases where there was a Preliminary Hearing and Trial by the Length of Time Between the Stages in the Case.

	Mean Length of Time	
	Days	Months (Approx)
From the offence to the conclusion of the case	167.1	5.6
From the offence to the preliminary hearing	64.3	2.1
From the preliminary hearing to the trial	88.4	2.9
From the preliminary hearing to the conclusion of the case	102.8	3.4

There may be good reasons, such as the police investigation, the locating of the defendant and the preparation of the case, why there is an average of just over 2 months between the offence and the preliminary hearing.

However, the average period of nearly 3 months between the preliminary hearing and the start of the trial for cases where there is one trial is a cause for concern. It means that in these cases an average of 5 months will have elapsed from the time of the offence to the trial, and the complainant will be expected to remember the details of an event which she would undoubtedly rather put out of her mind.

#### 4.2 THE PRELIMINARY HEARING

The primary function of preliminary hearings is to ensure that no one stands trial unless a prima facie case has been made out. The Justices of the Peace or District Court Judge presiding over the hearing determine, after the evidence for the prosecution and the defence, (the defence do not usually produce any evidence at this stage) whether the accused ought to stand trial. It is not part of their province to decide upon guilt. They decide whether a reasonably minded jury at the trial could convict the defendant on the evidence placed before them, if that evidence were not contradicted. When considering the test of a reasonably minded jury the fact that a jury must be given a warning relating to corroboration does not prevent an accused being committed for trial where there is no corroborative evidence.

The onus of establishing a prima facie case rests upon the prosecution. They can call whatever evidence they consider necessary for this.

In the English case of *R v Epping and Harlow Justices, ex parte Massara* [1973] 1 All E.R. 1011 the prosecution declined a defence request to call a young complainant to give evidence at committal proceedings on a charge of indecent assault. The prosecution was unwilling to subject the young girl to giving evidence at both the preliminary hearing and the trial. They called other supporting evidence which led to the defendant being committed for trial.

The defendant applied for an order of certiorari to quash the committal order on the grounds that he had been deprived of the opportunity of hearing the evidence of the girl and of being able to cross-examine her, and that in all the circumstances of the case the committal was contrary to natural justice.

Lord Widgery C.J. stated that what the Court had to decide was whether the function of committal proceedings was to safeguard the citizen to ensure that they do not stand trial unless a prima facie case has been made out or whether it was a rehearsal proceeding so that the defence may try out their cross-examination on the prosecution witnesses with a view to using the results to their advantage in the Crown Court at a later stage?

The Court of Appeal decided that:

the function of the committal proceedings is to ensure that no one shall stand trial unless a prima facie case has been made out. If the prosecution believe that it is possible to make a prima facie case without calling a particular witness, even though the principal witness, that is a matter within their discretion and they cannot be compelled to call the witness at the committal proceedings.

The prosecution in addition to presenting the facts has two other important functions:

- (a) to make all necessary disclosures of facts peculiarly within its knowledge which might affect the outcome of the committal proceedings;
- (b) to bring to the attention of the presiding Justices of the Peace or Judge any facts which might affect the outcome of the committal proceedings.

Notwithstanding the case of R V Epping and Harlow Justices, ex parte Massara the complainant gave either written or oral evidence at all of the preliminary hearings in this study.

The major aspects of the preliminary hearing that have been criticised by many commentators have been that complainants often have to face two cross-examinations one at the preliminary hearing and another at the trial, and that the hearings are often presided over by Justices of the Peace, who do not usually have any legal qualifications. (The training of justices is discussed in the section on section 23A of the Evidence Act 1908).

Preliminary hearings can at present be presided over by a District Court Judge or two Justices of the Peace.

**Table 21** Who Presided over Preliminary Hearing?

<u>Presiding Official</u>	<u>No.</u>	<u>%</u>
Two Justices of the Peace	65	78.3
A District Court Judge	6	7.2
No depositions as defendant pleaded guilty prior to this	<u>12</u>	<u>14.5</u>
	83	100.0

**Table 22** Frequency of Cross-Examination of Complainant

<u>Complainant Cross-Examined</u>	<u>No.</u>	<u>%</u>
Yes	52	62.7
No	11	13.3
Not Applicable <sup>a</sup>	<u>20</u>	<u>24.0</u>
	83	100.0

<sup>a</sup>: Not applicable comprises cases where section 153A and 173A of the Summary Proceedings Act 1957 were used.

In two cases a defendant acted as his own counsel at the preliminary hearing and cross-examined the complainant.

Some cross-examinations of the complainant at the preliminary hearings were quite extensive. In one case three defence lawyers cross-examined for 3-1/2 hours. In some cases the cross-examination at the preliminary hearing was conducted in a rather more blunt manner than the cross-examinations at trial, and may well have been more unpleasant for the complainant.

Suggestions for the reform of preliminary hearings have ranged from the requirement that they be presided over by a legally qualified person, to their total abolition for rape charges. The use of written statements and improved privacy for the complainant are two further proposals for reform that have often been discussed.<sup>(2)</sup>

4.2.1 The Use of Written Depositions

Section 173A of the Summary Proceedings Act 1957 in essence provides for the use of written depositions in preliminary hearings where all parties to the hearing give their consent to this. The use of written depositions means that the complainant is liable only to cross-examination at trial.

This study found that in only 11.3% of cases, where there was a full hearing, were written depositions used for the complainant's evidence.

**TABLE 23** Type of Evidence Given by the Complainant

<u>Type of Evidence</u>	<u>No.</u>	<u>%</u>	<u>Adjusted %</u>
Written	8	9.6	11.3
Oral	63	75.9	88.7
Not Applicable <sup>a</sup>	<u>12</u>	<u>14.5</u>	<u>Not Applicable</u>
	83	100.0	100.0

<sup>a</sup>: In 12 cases the defendant had pleaded guilty pursuant to section 153A of the Summary Proceedings Act 1957.

(2) For example: The National Conference on Rape Law Reform, Tasmania; Criminal Law and Penal Methods Reform Committee of South Australia, Special Report, Rape and Other Sexual Offences; The Australian Royal Commission on Human Relationships, Vol.5.

In 3 of the 8 cases where there were written depositions the defendants pleaded guilty to rape after the preliminary hearing.

The Department of Justice has recently conducted some research into the operation of Section 173A in general. This study found that 34% of lay witnesses gave evidence in the form of written depositions. Unfortunately victim/complainant witnesses were not separated out from this group.

#### 4.2.2 The Privacy of the Complainant at Preliminary Hearings

Apart from the greater use of written depositions it has been suggested that the privacy of the complainant could be ensured by forbidding the publication of information about the complainant, and by limiting the persons who can be present at the hearing. There are already provisions which met these suggestions.

Section 156 of the Summary Proceedings Act 1957 provides that:

(1) The room or building in which any preliminary hearing takes place shall not be deemed to be an open Court; and, where the Court is of opinion that the interests of justice or of public morality or of the reputation of any victim of any alleged sexual offence or offence of extortion require that all or any persons should be excluded from the Court, the Court may direct that those persons be excluded accordingly:

Provided that the power conferred by this subsection shall not be exercised for the purpose of excluding the informant or the defendant, or any barrister or solicitor, or any accredited news media reporter.

It appears from the files that this power was only used on one occasion at the request of the prosecution when the complainant was under 16 years old.

Section 375 of the Crimes Act 1961 provides similar powers at the trial stage of the case. No reference to this provision being used was found in the files.

Sub-section 2 of section 156 provides that:

In any case in which, in the interests of (justice or of) public morality or of the reputation of the victim of an alleged sexual offence or offence of extortion, the Court may give any direction under subsection (1) of this section, and whether or not it gives such a direction, the Court may make an order forbidding the publication of any report or account of the whole or any part of the evidence adduced.

It did not appear from the files that this sub-section was used at all.

Section 45C of the Criminal Justice Act 1954 provides for the prohibition of publication of the complainant's name or identifying details in specified sexual cases.

(1) No person shall publish, in any report relating to any proceedings commenced in any Court in respect of an offence against any of sections 128 to 142 of the Crimes Act 1961, the name of any person upon or with whom the offence has been or is alleged to have been committed, or any name or particulars likely to lead to the identification of that person, unless -

- (a) That person is of or over the age of 16 years; and
- (b) The Court, by order, permits such publication.

No such permission was given at any of the preliminary hearings in this study since this provision was brought into operation late in 1980.

The provisions mentioned above could provide the complainant with more privacy. The court can exclude most persons from the hearing and forbid the publication of evidence. However they rarely do so.

The automatic suppression of the complainant's name and identifying details unless the Court gives permission for publication offers the complainant more protection. Permission for publication was not granted in any of the cases in this study.

#### 4.3 THE TRIAL

If a prima facie case has been made out at the preliminary hearing the defendant is committed for trial. Defendants may plead guilty and be committed for sentence. Rape is an indictable offence and must always be heard before a judge and jury in the High Court. In the period of this study there were 64 trials, (in 8 cases there were 2 trials, and in one case 3 trials).

4.3.1 The Jury

The literature on rape has often considered the question of the composition of juries. An attempt was made to ascertain the number of males and females on the juries of the trials in the study, in nine cases this was impossible as only initials were noted on the file. Information relating to potential jurors who were challenged or stood outside was not recorded in a consistent manner in the trial files so this data is not available.

Table 24 Sex Composition of Juries

<u>Number of Males on a Jury</u>	<u>Number of Females on a Jury</u>	<u>Frequency of this Distribution</u>
12	0	5
11	1	3
10	2	4
9	3	10
8	4	7
7	5	18
6	6	4
5	7	2
4	8	1
3	9	1
2	10	0
1	11	0
0	12	0
		<u>55</u>
Not Known		<u>9</u>
		64

The mean number of females on a jury was 3.85 with a median of 4, whilst the mean number of males on a jury was 8.10 with a median of 8. At 73.4% of trials there were more males than females on the jury. In only 6.2% of trials were there more females than males (this information was not available at 9 trials).

The cases in this study were dealt with by the courts before the new Juries Act 1981 was brought in to operation in 1982. This Act made major changes to both the mechanical process of assembling a jury and to the law relating to the qualification and collection of jurors. It substantially revised the classes of persons who are entitled to automatic exemption from service. The change that would seem to be the most likely to have a marked effect on the sex composition of juries relates to the exemption from jury service of parents.

Under the old legislation a parent or someone in the position of a parent who had the continuous responsibility for the day-to-day supervision of a child under the age of six years was exempt from service if they notified the Jury Officer or Sheriff. The new Act removes this exemption, but registrars now have the power to excuse such persons from jury service if they feel that attendance would result in undue hardship or serious inconvenience to the person. We do not as yet have any information on whether this or any of the other changes brought about by the new Act is affecting the number of females serving on juries.

4.3.2 Cross Examination of the Complainant by Defence Counsel

In criminal trials there is theoretically no limit to the number of counsel who can be prosecuting or defending a case, nor is there a restriction upon more than one examining or cross-examining a witness. Where there is a joint trial, several accused may instruct the same counsel or they may choose to have separate counsel.

In the 1980 and 1981 trials where more than one counsel was representing a particular defendant there were no instances where more than one of them cross-examined the complainant.

As we were interested in the complainant's experience of the trial we noted how many times complainants were cross-examined by defence counsel representing different defendants during the trial.

Table 25 Number of times the Complainant was Cross-Examined by Different Defence Counsel at Trial

<u>Number of Cross-Examinations</u>	<u>No.</u>	<u>%</u>
1	48	75.0
2	11	17.2
3	3	4.7
4	1	1.6
Not known	<u>1</u>	<u>1.6</u>
	64	100.0

In approximately 23% of trials the complainant was cross-examined by more than one defence counsel.

At trial no defendant acted as his own counsel.

#### 4.4 DEFENCES RAISED AT THE HIGH COURT TRIAL

The offence of rape as set out in section 128 of the Crimes Act 1961 contains several elements which have to be proved beyond reasonable doubt by the Crown.

The Crown has to prove that the male accused had sexual intercourse with the complainant, that she did not consent, and that he intended to have intercourse without her consent or was reckless as to whether or not she was consenting.

McCahill et al (1979: 185) in their study found that there were three major defence arguments put forward in cases of sexual assault.

1. Identity: the assault may indeed have occurred, but this defendant was not involved.
2. Consent: this defendant may indeed have had sexual relations with the complainant, but such relations were consented to by the complainant.
3. Fabrication: the alleged incident never took place.

The defences at the trials in this study were slightly different.

The identity defence was raised, but in some cases the suggestion was that although the defendant may have been involved the complainant was mistaken in thinking that he was one of those who had had sexual intercourse with her.

The consent defence was often used.

The fabrication defence was frequently used in conjunction with the consent defence. It was not usually suggested that the incident did not take place at all, but rather that there had been consensual sexual intercourse and that the complainant had fabricated an allegation of rape afterwards.

In some cases the defence of lack of penetration was used. Lack of penetration reduces the offence to attempted rape or assault with intent to rape. These charges are available as an alternative to a charge of rape.

Information relating to the defences raised by individual defendants was collected mainly from the notes of evidence of the trial. As the final speeches of the defence and prosecuting counsel are not available it was sometimes difficult to determine exactly what the defence was. It is during their final speech that counsel pull together the threads of the defence and clearly state the defendants' version of what occurred. For this reason those defences relating to the intention of the accused have been included under the general heading of consent, except in one case. In this case the argument was that the defendant was too drunk to have formed the intention to rape.

Where the defendant gave evidence it was easier to decide the exact nature of the defence. However, the defendant is under no obligation to give evidence as it is the Crown who must prove guilt. In about half the cases the defendant chose not to give evidence.

TABLE 26 Whether Evidence was Given by the Defendant at the Final Trial

Did the defendant give evidence?

	<u>No.</u>	<u>%</u>
Yes	34	43.04
No	40	50.63
Not known	<u>5</u>	<u>6.33</u>
	79	100.00

In two cases a defendant gave evidence at the preliminary hearing but not at the final trial. In one case a defendant gave evidence at his first trial but not at the final trial.

**TABLE 27** Principal Defence by Whether the Defendant gave Evidence at the Final Trial (where this was known)

Defence		Whether the defendant gave evidence		
		Yes	No.	Total
Consent	No.	18	28	46
	%	39.1	60.9	100.0
Identity	No.	6	7	13
	%	46.2	53.8	100.0
Penetration	No.	7	3	10
	%	70.0	30.0	100.0
Intention	No.	1	0	1
	%	100.0	-	100.0
Not clear	No.	2	2	4
	%	50.0	50.0	100.0
Total		34	40	74
		46.0	54.0	100.0

Several defences were often raised by the same defendant but often with differing emphasis.

**TABLE 28** Was Consent raised as a Defence by the Accused

Was consent raised?

	No.	%
Yes	58	73.4
No	18	22.8
Not known	3	3.8
	79	100.0

(In the study there were a total of 117 defendants, 79 of whom were tried in the High Court.)

**TABLE 29** Was Mistaken Identity Raised as a Defence by the Accused?

Was identity raised?

	No.	%
Yes	18	22.8
No	58	73.4
Not known	3	3.8
	79	100.0

**TABLE 30** Was Lack of Penetration Used as a Defence by the Accused?

Was lack of penetration used?

	No.	%
Yes	20	25.3
No	56	70.9
Not Known	3	3.8
	79	100.0

In only one case was the matter of the intention of the accused raised as a defence where it did not relate to consent.

**TABLE 31** What was the Principal Defence raised by the Accused?

Principle Defence

	No.	%
Consent	49	62.0
Identity	13	16.4
Penetration	10	12.7
Intention	1	1.3
Not Known	6	7.6
	79	100.00

Note: One of the defendants pleaded guilty after all the evidence where the defence was consent, and another where the defence was penetration.

From tables 28 to 31 it can be seen that in the cases in this study consent was by far the most common defence put forward by defendants. Consent was raised by 62% of defendants as their principal defence and by 73.4% as one of their defences.

In 8 cases the defendants had more than one trial and in only one of these did the defence change significantly from one trial to the next. In one trial identity appeared to be emphasised whilst in the other consent was emphasised.

**TABLE 32** Principal Defence by Not Guilty Plea and Outcome for the Charge of Rape

Principal defence  
(where this was known)

	<u>Pleads</u> <u>Not Guilty</u> <u>Convicted</u> <u>of Rape</u>	<u>Pleads</u> <u>Not Guilty</u> <u>Not Convicted</u> <u>of Rape</u>
Consent	26	22
Identity	7	5
Penetration	4	6
Intention	<u>1</u>	<u>0</u>
	38	33

There was no significant association at the 5% level between the principle defences (where this was known) of consent, identity and penetration and being found guilty whilst pleading not guilty.

#### 4.4.1 Arguments put forward by the Defence

During a trial the onus of proving guilt beyond reasonable doubt rests upon the prosecution.

The Crown Prosecutor is obliged to act fairly at all times;

He is required to present the case firmly wherever necessary, but not to present it with undue or unnecessary vigour in order to secure a conviction at all costs. He opens the case to the jury by explaining what it is all about. He calls the witnesses for the Crown to give their evidence. He cross-examines any defence witnesses who may be called and he makes a final address to the jury although the law gives the accused or his counsel the right to the final say (Stone: 1982: 1).

In contrast to this, the role of the defence counsel is to;

Use his ability to the utmost to obtain an acquittal. He must fearlessly uphold the interests of his client without regard to any unpleasant consequences either to himself or to any other person.

He should make use of every argument and observation that can legitimately lead to an acquittal (Buckton: 1982: 1).

From the evidence at the trials it was noted that certain lines of argument or areas of questioning were repeatedly referred to by defence counsel.

One of the defence arguments centred around the previous sexual experience of the complainant, this is discussed in a separate section of the report.

The other main defence arguments or areas of questioning that were put forward were:

1. Lack of resistance, screaming, escape or injury
2. Rape is impossible
3. The complainant behaved in a manner or wore clothing that was sexually provocative
4. The complainant consumed drugs or alcohol
5. There was a close relationship between the complainant and the defendant
6. The complainant did not complain straight away
7. The complaint is false
8. The complainant is unreliable
9. The complainant is confused because of the trauma of what happened.

These arguments are generally used when consent is one of the defences. The complainant is not as likely to be the subject of these lines of argument if the defence is based upon identity, although the defence may still attempt to show that her description of events is not reliable.

The study included 64 trials. However, in 5 cases there were no notes of evidence available so the discussion of defence arguments is based upon 59 trials.

In this part of the report extracts from the notes of evidence have been used, but any identifying details have been either omitted or altered.

Lack of Resistance, Screaming, Escape or Injury

One of the main defence arguments relates to any lack of resistance on the part of the complainant or any lack of injury to the complainant. The argument is that if the victim did not vigorously resist, scream, attempt to escape or suffer injury this may be indicative of consent and thus there was no rape.

In 51 trials or approximately 86% of trials where details were available the defence commented on or asked questions about lack of resistance, screaming, escape or injury.

In one case the following questions on this topic were put to the complainant:

- Defence: You were wild with him but you weren't crying.  
 Complainant: No I was too angry to cry.  
 Defence: In fact you didn't cry at all while you were in the room did you?  
 Complainant: Yes  
 Defence: I suggest to you that you didn't  
 Complainant: Yes I did.  
 Defence: You didn't scream?  
 Complainant: No.  
 Defence: I suggest that you didn't really struggle while on the decking either.  
 Complainant: Yes I did.  
 Defence: I put it to you, you didn't struggle.  
 Complainant: I was struggling with my arms to lessen his grip and I was trying to push him away.

In another case:

- Defence: While you were being raped did you scream?  
 Complainant: Yes  
 Defence: Each time?  
 Complainant: Yes

Defence: You were screaming almost continuously from 11.30 till after 6 in the morning?

Complainant: Not continuously.

When the complainant says she did resist or scream in some way this was sometimes made light of.

The assumption seems to be that virtually no matter what the circumstances the victim should resist. If she does not it may be seen as being evidence of consent. The following cross-examination suggested that given the slightest possibility of escape the complainant should try to get away. This complainant had awoken to find the defendant in her room holding a piece of wood:

Defence: How did he jam the door?

Complainant: He did - he must have jammed it shut - he might have let go of me I don't know.

Defence: Were you right over by the door?

Complainant: I was right beside him.

Defence: If he did let go of you why didn't you try and run?

A few minutes later the same complainant was asked:

Defence: Did you at any time scream as loud as you possibly could?

Complainant: I screamed when I came too, it was more of a - you could call it a scream that was the only time I screamed though.

Defence: Did you at any time try to hit him?

Complainant: No I felt he was stronger than me if I aggravated him it would only make him worse I thought once of running but I didn't - there were doors to go through.

Defence: What about when you were over by the door? Wasn't there an opportunity to make a bolt for it?

The victim can be placed in a "no win" situation. If she does not resist or is not injured it may not be seen at the trial to be rape, but if she does struggle she may incur injury from the assailant.

Rape is Impossible

If a woman does not want to have sexual intercourse and struggles against her assailant it is sometimes suggested that sexual intercourse is not possible. One defence medical "expert" in a case in this study stated,

It is a recognised fact in medical jurisprudence, given two people of approximately the same size and physical strength, rape is highly improbable, if not impossible.

He then went on to quote from a book by Keith Simpson whom he cited as being recognised as a world expert on criminal matters pertaining to rape. Simpson in his book Forensic Medicine (1979: 208) asserts that,

it is doubtful indeed whether a woman can be raped by a man of anything like or less than her physique.

This book of Simpson's does not contain any medical evidence to support his statement.

The suggestion implicit in the above views seems to be that if a woman struggles she will usually be able to prevent rape.

During several trials the complainant was asked about the tightness of the jeans or trousers she was wearing. If it was established that they were tightly fitting it was then often suggested that she must have assisted in their removal because otherwise it would have been impossible for this to have occurred.

Assertions that rape is improbable, and concern over the likelihood of false complaints have been fairly constant themes in medical jurisprudence (Edwards: 1981: 120-172).

Sexually Provocative Manner or Clothing

In approximately 46% of trials where information was available, it was suggested that the complainant behaved in a sexually provocative manner.

Assertions by the defence that the complainant acted in a sexually provocative way were significantly associated with the defence of consent being raised (where this information was known).

Table 33 "Sexually Provocative Manner" by Consent Raised as a Defence

Comment on "Sexually provocative manner"

	<u>Consent Raised as a Defence</u>		
	<u>Yes</u>	<u>No</u>	<u>Total</u>
Yes	27	0	27
No	<u>18</u>	<u>14</u>	<u>32</u>
	45	14	59

(Corrected Chi Square = 13.14 Significant at the 5% level 1 d.f.)

The type of behaviour commented on ranged from wearing a dress with a split up the side to kissing the defendant earlier in the evening.

On several occasions there were fairly explicit suggestions that the clothing worn might be in some way unsuitable or sexually provocative.

Defence: I suggest to you that you weren't cautious in any respect about taking a lift with these defendants at any time.

Complainant: No that wouldn't be correct.

Defence: The Court has already seen the clothes you were wearing.

(After descriptions of a jacket she was also wearing at one stage the defence continued.)

Defence: Were the yellow trousers you were wearing very tight trousers?

Complainant: No.

Defence: The top you were wearing was that a revealing top?

Complainant: No .....

The following type of questioning seems to be aimed at raising doubts about the complainant's character in the minds of the jury which are difficult to refute.

Defence: Remember what you were wearing that night?

Complainant: Yes I had a pair of jeans on and a top.

Defence: What sort of top?  
 Complainant: It was a white cheese cloth type of top.  
 Defence: Were you wearing a bra?  
 Complainant: Yes.  
 Defence: During the course of the party did you take the bra off?  
 Complainant: No.  
 Defence: Quite sure of that?  
 Complainant: Yes.

In this particular case the alleged assault had occurred later after the complainant had gone to bed.

#### Consumption of Drugs or Alcohol

Another major area of questioning focused upon any consumption of alcohol or drugs by the victim. This occurred in approximately 68% of the 59 trials where information was available.

The following extract shows the type of questioning that occurs. In a number of other cases the complainant was asked to estimate the number of drinks she had consumed.

Defence: Did you have quite a bit to drink?  
 Complainant: No.  
 Defence: How would you describe your state at about half past one?  
 Complainant: I was sober.  
 Defence: You had been drinking at the hotel?  
 Complainant: Yes.  
 Defence: Had you been drinking since you had been back at the flat?  
 Complainant: Yes I had a little bit to drink.  
 Defence: What were you drinking at the flat?  
 Complainant: Beer.

Defence: Was there any marijuana being smoked at the party?  
 Complainant: No there was not.

#### Relationship between Complainant and Defendant

The defence sometimes tried to establish or imply that there was a closer prior relationship between the complainant and the defendant than the complainant said there was.

Sometimes the defence alleged that the complainant and defendant, had had sexual intercourse previously even though this was denied by the complainant.

#### Lack of Immediate Complaint

There appears to be a general belief that if a woman has been raped she will tell someone about it straight away, even if the first person she sees is someone she does not know.

Defence: You passed some people going into a house?  
 Complainant: Yes  
 Defence: You never said anything to them did you?  
 Complainant: No.  
 Defence: And the first person you saw was the receptionist?  
 Complainant: Yes.  
 Defence: And you never said anything to the receptionist?

In 42.4% of the trials (where information was available) comment was made upon the lack of an immediate complaint.

Comment about the failure of the complainant to complain about rape to someone immediately (where this was known) was significantly associated with the defence of consent being raised.

**Table 34** Comment upon Lack of an Immediate Complaint by Consent being Raised as a Defence

<u>Comment upon the Lack of an Immediate Complaint</u>	<u>Consent Raised as a Defence</u>			<u>Total</u>
	Yes	No		
Yes	24	1		25
No	21	13		34
	45	14		59

(Corrected Chi Square = 7.43 Significant at the 5% level 1 d.f.)

#### The Complaint is False

The belief that many women make false complaints of rape has a long history in jurisprudence (Edwards:1981:126,130). Defence lawyers in their cross-examinations often provide an alternative explanation of what occurred which includes an assertion that the complaint is false (42.4% of trials where information was available).

Defence: I suggest that you then became angry at the remarks of the accused.

Complainant: No I wasn't angry.

Defence: I suggest that having been the object of derogatory remarks from the accused that you then decided to fabricate an allegation of rape.

Complainant: No that is not right.

In another trial:-

Defence: Did you make a complaint of rape to the police because he said the others would "block" you?

Complainant: No I didn't.

Defence: Had he made a bit of a fool out of you by taking your clothes out into the other room and showing them to the others?

#### The Complainant is Unreliable

In reading through the trials it was noticed that the defence sometimes asked quite detailed questions about the complainant's employment history when this appeared to have little relevance.

#### The Complainant is Confused

This argument was sometimes put forward when one of the defences was lack of penetration or wrongful identification.

Defence: Would it be fair to say you were upset about the incident?

Complainant: Yes

Defence: And that would have some effect on the consequent events?

Complainant: Yes

Defence: Including the certainty or otherwise about all the details. ... Is that correct?

Complainant: Yes.

#### Other Issues

Burgess and Holmstrom (1978:205) discussed the use of what they called declarative sentences by the defence. This is where the defence makes a statement or introduces an idea in the guise of asking a question.

The defence lawyer uses the statement as a way of presenting an image or of sneaking in information that is not allowed. (Burgess and Holmstrom : 1978:205).

For example:

Defence: I suggest to you that you weren't cautious in any respect about taking a lift with these defendants at any stage.

The following three questions from the preceding extracts conjure up a picture of the complainant and her behaviour which is probably difficult to dispel with just a denial.

1. During the course of the party did you take your bra off?
2. Was there any marijuana being smoked at the party?
3. The top you were wearing was that a revealing top?

**CONTINUED**

**4 OF 6**

Different words may also be used by the defence and the prosecution or complainant to describe the same thing. The defence tries to minimise violence or coercion. For example, the word 'punch', becomes 'slap', 'grabbed' becomes 'put on the ground', and 'punching the wall' becomes 'banging the wall with his fist'. The choice of word conveys a rather different picture in each case.

Defence counsel appear to try to paint an image (often based upon stereotypes) of the particular complainant and the particular rape and sometimes the particular defendant which is not consistent with the general stereotypes about actual rapes or which are consistent with general stereotypes about women falsely asserting rape.

Other studies have noted similar types of defence arguments (Burgess and Holmstrom: 1978 McCahill et al: 1979, Newby: 1981) especially when the defence raised is that of consent.

Two other major defence strategies were noticed although these would not necessarily be peculiar to rape trials. These strategies were trying to pick up inconsistencies between the evidence given at the preliminary hearing and that given at the trial, and the questioning the propriety of certain police procedures.

Certain points might be gone over in great detail; questioning about the time that various activities took place was fairly common.

Defence: From there you went to an address in Kelburn was it?

Complainant: Yes.

Defence: You arrived there just after eleven?

Complainant: Yes.

Defence: How long did you stay?

Complainant: About an hour.

Defence: You left just after midnight?

Complainant: Yes.

Defence: What time would you have arrived at this party?

Complainant: We stopped off at another place first, it would have been at about half past twelve I think.

Defence: Half an hour later?

Complainant: Half an hour to an hour later

Defence: And you went to Karori?

Complainant: Yes.

Defence: How long do you think it was from the time he left the car until the time you got back?

Complainant: Ten to fifteen minutes.

Defence: That would take it to about quarter past one in the morning?

Complainant: I'm not quite sure.

Defence: Would it be in that area?

Complainant: Yes if you say so.

Defence: Well just add it up as we go along, you arrived there about half past one?

Complainant: No it was later than that.

Defence: In previous occasions when giving evidence you said it was no later than half past one?

Complainant: I'm not sure of the time it was a long time ago.

Defence: How much after half past one do you think it was?

Complainant: I'm not quite sure.

Defence: After 2 o'clock?

Complainant: I'm not quite sure, I can't tell you exactly.

Defence: You have given evidence on previous occasions and its always been about half past one?

Complainant: If that's what's written down Yes.

In approximately 34% of the 59 trials, where information was available, the propriety of police procedure was questioned by the defence in a fairly substantial way (more than just a passing reference). The area that was commented on was usually the way the defendant had been questioned and his statement prepared.

5. THE USE OF SECTION 23A OF THE EVIDENCE ACT 19085.1 The Evidence Amendment Act 1977

This Act began as a private members Bill standing in the name of Mr McLay the Member for Birkenhead, and now Minister of Justice. The Bill was adopted by the Government and subsequently revised by the Statutes Revision Committee.

Section 2 of the amendment inserts a new section 23A into the Evidence Act 1908.

## 23A. (1) In this section -

'Complainant' means a woman or girl upon or in respect of whom it is alleged that a rape offence was committed;

'Rape' has the same meaning as in section 128 of the Crimes Act 1961;

'Rape offence' means any of the following offences:

- (a) Rape;
- (b) Attempted rape;
- (c) Assault with intent to commit rape;
- (d) Aiding, abetting, inciting, counselling, or procuring the commission of any offence referred to in paragraphs (a) to (c) of this definition;
- (e) Conspiring with any person to commit any such offence.

(2) In any criminal proceeding in which a person is charged with a rape offence or is to be sentenced for a rape offence, no evidence shall be given, and no question shall be put to a witness, relating to -

- (a) The sexual experience of the complainant with any person other than the accused; or
- (b) The reputation of the complainant in sexual matters - except by leave of the Judge.

(3) The Judge shall not grant leave under subsection (2) of this section, unless he is satisfied that the evidence to be given or the question to be put is of such direct relevance to -

- (a) Facts in issue in the proceedings; or
- (b) The issue of the appropriate sentence, -

as the case may require, that to exclude it would be contrary to the interests of justice:

Provided that any such evidence or question shall not be regarded as being of such direct relevance by reason only of any inference it may raise as to the general disposition or propensity of the complainant in sexual matters.

- (4) Notwithstanding subsection (2) of this section, leave shall not be required -
  - (a) To the giving of evidence or the putting of a question for the purpose of contradicting or rebutting evidence given by any witness, or given by any witness in answer to a question, relating, in either case, to -
    - (i) The sexual experience of the complainant with any person other than the accused; or
    - (ii) The reputation of the complainant in sexual matters; or
  - (b) Where the accused is charged as a party, and cannot be convicted unless it is shown that a person other than the accused committed a rape offence against the complainant, to the giving of evidence or the putting of a question relating to the sexual experience of the complainant with that other person.

This legislation was introduced in order to provide protection for the complainant. It sought to prevent defence counsel referring to largely irrelevant but highly prejudicial aspects of the complainant's character and behaviour for the purpose of intimidating her or moving the thrust of the trial away from their client.<sup>(3)</sup>

Section 23A does not prohibit questioning on the complainant's previous sexual experience with the defendant. In some cases in this study defence counsel asked questions alleging a previous sexual relationship between the complainant and the defendant. In some instances the complainant denied that there had been any such prior relationship.

<sup>(3)</sup> Hon. David Thompson, Second Reading Speech

### 5.1.1 The Use of Section 23A

As there has been some disagreement regarding the effectiveness of this Amendment it was hoped that an accurate picture of its operation could be obtained from the trial files. However, applications and rulings do not appear to follow a set form, and are not recorded in a consistent manner.

TABLE 35 Applications Granted under Section 23A Evidence Act 1908

#### Applications Granted

	<u>No.</u>
At the preliminary hearing	1
At the High Court	
Full applications granted	4
Partial application granted	1
Application may have been granted	<u>1</u>
	7

One written application was found with "application granted" written on it by the judge; three written rulings were found, and one letter from a defence lawyer to the Crown Prosecutor saying that an application was to be made. During an examination of Court of Appeal files a further application and ruling was referred to, although there was no reference to it in the actual trial file. These applications were all made by defence counsel.

In an attempt to gain more information on the operation of this Amendment a number of Justices of the Peace and High Court Judges were contacted.

One Justice of the Peace informed us that he had granted an application, and one High Court Judge confirmed that the application referred to in the Court of Appeal file had been granted.

### 5.2 REFERENCES TO THE PREVIOUS SEXUAL EXPERIENCE OF THE COMPLAINANT

Any references to the previous sexual experience of the complainant in the transcripts of the preliminary hearings and trials were noted. References made or elicited by both prosecution and defence were noted as the Act requires both to make an application.

Once the references to previous sexual experience had been extracted from the files they were checked by another person. If we both agreed that there had been a direct or an indirect reference it was retained but if we did not agree it was not retained as a reference.

### 5.2.1 At the Preliminary Hearing

In each case where a reference had been made to the complainant's previous sexual experience at least one of the justices concerned was contacted by letter and asked if an application had been made, and whether it had been granted if one had been made. District Court Judges were not contacted. To the 35 letters sent out, 19 responses covering 15 separate cases were received.

In one case we were informed that an application had been refused and in another that an application had been granted. In the remaining 17 cases no application had been made.

#### References during the Examination by the Prosecution

In 11 cases the previous sexual experience of the complainant was mentioned while she was giving her evidence at the preliminary hearing.

The questions put by the prosecution are not usually recorded. In one case the prosecutor asked the complainant if she had had sexual intercourse with anyone else on the night of the rape incident. In the other cases the questions were not recorded and it was not possible to tell whether the information was unsolicited.

In one case the doctor who had examined the complainant volunteered that he did not know if she was a virgin.

In another case a gang member called by the prosecution stated that "she was living up to her name. That's how she got her nickname \_\_\_\_\_. She was 'turning it up' for all the boys." No effort seems to have been made to stop these assertions and they were commented on by the defence during their cross-examination of the witness.

Six of the responses from justices related to these 13 references. Five stated that no application had been made or granted. In one case an application had been granted but it related to a different area of questioning.

Where the application was granted the defence was allowed to question the complainant about her behaviour with two other males earlier in the same evening that the rape incident took place.

In two of the cases the preliminary hearings had been presided over by District Court Judges.

References during Cross-Examination by the Defence Counsel

**TABLE 36** Number and Type of References made to the Complainant's Previous Sexual Experience by Defence Counsel at the Preliminary Hearing

<u>Type of Reference</u>	<u>Number of References</u>
Direct	7
Direct but District Court Judge intervened to disallow the question	1
Indirect	3

Direct References

In seven cases direct references were made about the complainant's previous sexual experience. These references took the form of questions to the complainant in six cases. In one of these cases and in a separate case questions were put to other witnesses. In an eighth case a question to the complainant was not allowed.

1. Defence: Did you have sexual intercourse during the evening of 24 January with \_\_\_\_\_?

Complainant: Yes - (the prosecution objected but she had to answer).

Defence: Can you tell their Worships the circumstances in which the intercourse took place?

2. Defence: Can you tell the court whether at the time prior to the incident, immediately prior, you were a virgin?

A little later in the same case;

Defence: Had you had intercourse with anyone not too far distant in time from the incident?

3. Defence: Who did you spend the previous night with?

A little later in the same case;

Defence: Who did you sleep with the previous night?

4. Defence: Have you experienced love bites before?

5. Defence: Were you and \_\_\_\_\_ living as man and wife?

6. Defence: Is that the first time someone has put his penis in your vagina?

This was the first question this defence lawyer asked this complainant.

A little later in the case he asked the complainant's mother whether her daughter had been taking the contraceptive pill.

7. A doctor who had examined a complainant was asked the following questions.

Defence: Can we take it from your conversation with this girl that she was no stranger to sexual intercourse?

Defence: What is your opinion as to her previous history of sexual experience?

Only in case number 1 was an objection made to the questions by the prosecuting counsel.

8. Defence: Did he (not the accused) have sexual intercourse with you?

This question was not allowed by the District Court Judge who was presiding over the hearing. All the other seven cases were presided over by justices.

In five of the cases justices confirmed that no application had been made or granted, in the other two cases we did not receive a response to our enquiry. In the hearing in which reference number 3 (above) was made an application had been made and refused.

Where a reference to the complainant's previous sexual history had been made during the prosecution's examination of the complaint she was often asked to confirm what she had said by the defence counsel during cross-examination.

#### Indirect References

In three cases rather more indirect references were made by defence counsel.

1. To complainant

Defence: Is it correct Miss \_\_\_\_\_ that you have a bad conduct report from the navy for being found in the men's quarters?

2. To the complainant

Defence: Was he living in your unit at the hostel?

Later in the case the complainant's boyfriend was asked.

Defence: On the night in question was it your intention to stay at her unit at the hostel?

Defence: Where were you when she changed into her nightie?

3. To the complainant's mother.

Defence: Had her activities with boys been causing you concern?

#### Applications made to Justices

In order to gain an impression of the number of applications made and granted or refused at preliminary hearings the 35 justices were also asked the following questions:

1. How many deposition hearings where a person was charged with rape did you preside over during 1980 and 1981?
2. How many applications were made, and then granted or refused?

Where there were no records available the justices were asked to give an approximate number.

TABLE 37 Number of Rape Preliminary Hearings Presided over by Justices who Responded

<u>Number of Rape Preliminary Hearings Presided Over</u>	<u>Frequency</u>
1	7
2	3
3	6
4	0
5	1
6	1
	—
	18
	—

One respondent had presided over a case in 1979 only.

The justices had presided over 42 hearings during 1980/81 (some of these hearings would overlap).

In only two cases were the justices sure that applications were made. One was refused and one was granted. In several cases they were unsure but felt that applications had not been made. In the remainder of cases they stated that no application had been made.

Justices were also asked to comment upon the procedure that was normally followed in the making and consideration of an application, and upon the major factors that were taken into consideration.

TABLE 38 Comments by Justices on the Consideration of Applications

<u>Comments from Justices</u>	<u>Frequency</u>
Unable to comment, as never had to consider an application	9
Would follow section 23A	2
Would hear the application in chambers	2
Would take submissions from the defence and prosecution	2
Would consider the following factors:	
1) the necessity to see that justice is done	
2) relevancy	
3) immediacy to alleged offence	
4) complainant's reputation and good name	
5) whether a vital element was concerned	1
Would consider both the protection of the complainant and whether the refusal of an application would be prejudicial to a fair trial	1
It is not the function of a justice to disallow evidence	3
The final three justices made quite lengthy comments asserting that it was not the function of a justice to disallow any evidence.	

#### The Training of Justices

Justices of the Peace are not trained to rule on matters of evidence - admissibility. They are lay people appointed by the Governor-General and it would be unusual for them to have legal qualifications.

Justices may if they wish apply to belong to their local Justices Association. The associations serve educational and social purposes. Membership of an association entitles a justice to receive the publication "Justice's Quarterly". This journal helps to inform justices of legislative and procedural changes. District Court Judges or Court Registrars may sometimes discuss with justices points of law or new legislation, but there is no formal procedure whereby the Department of Justice informs justices of legislative changes.

The New Zealand Technical Correspondence Institute runs a Justices of the Peace Judicial Training course which justices may take if they wish. This course does not at present contain any training related to the Evidence Amendment Act 1977.

The Department of Justice produces the Manual for Justices of the Peace which is one of the basic texts for the Judicial Course but this has not been revised since 1977 and the Evidence Amendment Act 1977 is not referred to.

In fact this manual states in the section "Rulings on Evidence" that justices should not exclude evidence, and that:

Justices are conducting the preliminary hearing on behalf of the Supreme Court, and ultimately it is for the Judge to decide whether or not any particular evidence is admissible.

It is hardly surprising that some justices do not seem to be taking into account the Evidence Amendment Act 1977 at the preliminary hearing and are allowing questions relating to the complainant's previous sexual experience.

#### 5.2.2 At the High Court Trial

##### Applications Made

In five cases applications to adduce evidence relating to the complainants' previous sexual experience were granted (in one case in a limited form), and in a further case an application may have been granted. In the later case a letter in the file referred to a possible application but the judge did not recall if one had in fact been made. This case has been treated as if an application had been granted.

Details of the grounds upon which the application was granted were available in four cases from the files, and in the fifth case the judge supplied us with the information.

In two cases the applications were granted because the judge thought the questions to be of a direct relevance to the facts in issue in the proceedings (no further details regarding why this view was held were given).

The judge stated in the third ruling:

it appears to me that in terms of the Amendment I should admit this proposed evidence because to do otherwise would be to deny the accused a defence, tenuous though it may seem, to a fairly strong case against him.

In the fourth ruling the judge stated that:

I am satisfied that it would be unjust to deprive the accused of the right to test her testimony by inquiring into her statements relating to a similar allegation but on a different occasion. I am also of the view that the fact that the complainant is only 13 years of age is another unusual factor. A jury would, in my view, normally not expect a 13 year old girl to be sexually experienced. In particular, they would not expect her voluntarily to have love bites on her breast and neck.

I am satisfied that the responsibility for the love bites is a most material matter in this trial and that it would be unjust to the accused not to allow cross-examination which might lead to a doubt as to his responsibility for the bites. I do not really see how the cross-examination can be limited just to the one incident creating the love-bite and I therefore allow Counsel for the accused to cross-examine the complainant as to her previous sexual activities as well as the allegations of rape.

In the fifth case the judge informed us that he had allowed questions about previous intercourse with another person, which the defence suggested accounted for traces of semen in the complainant's vagina. He stopped the defence when they tried to ask further questions.

In all the cases where an application was granted the complainant was asked about her previous sexual experience. The questioning ranged from just one question being asked to a fairly detailed cross-examination.

In two cases where applications were granted at the trial unauthorised questions had been asked at the preliminary hearings.

The following unauthorised references to the previous sexual experience of the complainant were made at the trial during both the examination and the cross-examination of witnesses. In all but one case (this judge had since retired) the judges were asked if an application had been made during the case. Most judges were sure that no applications had been made, but several did not have a clear recollection.

It is unfortunate that all applications and their result are not recorded in a systematic way. As we wrote only to judges regarding the cases where references to previous sexual experience were made it is possible that applications were made and refused in other cases.

Several judges informed us that they have dealt with some applications orally since the introduction of section 23A.

Reference made during the Examination-in-Chief by the Prosecution

In 5 trials the complainant's previous sexual experience was referred to directly during her evidence-in-chief. In one of these cases the prosecutor asked,

were you still living with your boyfriend?

In the other cases it was impossible to tell if the information was prompted by a question or was volunteered, as the prosecutions questions were not recorded. Where the complainant's previous sexual experience was mentioned in this way the defence counsel usually referred to it in their cross-examination.

References made during Cross-Examination by the Defence Counsel

During the cross-examination of various witnesses the previous sexual experience of the complainant was referred to in nine cases.

TABLE 39 Number and Type of References made to the Complainant's Previous Sexual Experience by Defence Counsel during the Trials

<u>Type of Reference</u>	<u>Number of References</u>
Fairly explicit followed by more indirect	1
Direct, objected to by prosecutor	2
Direct, judge intervened to disallow	1
Indirect	2
Questions which obtained answers relating to previous sexual experience	4

Note: Two types of reference were made in one case.

Direct References

1. In one case a complainant in her evidence-in-chief said that she had a boyfriend who owned a particular type of car. During cross-examination the defence counsel asked a series of questions one of which contained a more explicit reference to her relationship with that boyfriend; the others served to make the jury aware that the complainant had had a number of boyfriends.

Defence: But you knew this type of car when you saw one because you had lived with "A" who also owned one?

Defence: Was it made for a contest in which your boyfriend "B" was involved?

Defence: At the time you moved into this flat at \_\_\_\_\_ did you have a boyfriend named "C"?

2. In another case the complainant had told the defendant that she was a virgin in an effort to deter him. At the trial the defence asked about it.

Defence: Was that remark about you being a virgin the truth?

The complainant had answered the question before the prosecution objected.

3. Defence: Do you say you have never had intercourse in your life before?

This question was objected to by the prosecutor and the complainant did not have to answer.

4. Defence: How long have you been on the pill?

The judge intervened to disallow the question.

Indirect References

Rather more indirect references were made to the complainant's previous sexual experience in two cases.

1. and 2. After having ascertained that the only bed in the complainant's room was a double bed the defence asked if anyone else slept there or had stayed with her there.

Questions which Obtained Answers Relating to Previous Sexual Experience

In four cases (one of these references is from the same case as direct reference number 1) the reference to previous sexual experience was obtained in response to a defence question. These questions may well have been intended to solicit this type of answer, although this is not necessarily the case.

1. Defence: As a result of those events were you concerned that you might get pregnant?

Complainant: No because I'm on the pill.

2. Defence: Do you know what sexual intercourse is?

Complainant: Yes

Defence: How do you know?

Complainant: Because I've done it before.

3. Defence: How do you know he penetrated you?

Complainant: Because I have had intercourse before.

4. To the doctor who examined the complainant.

Defence: In the course of the examination of the vagina did you find the cervix was normal and in a healthy state?

Doctor: The cervix was quite normal considering the fact that she was taking an oral contraceptive pill.

References to the previous sexual experience of the complainant by defence counsel during the trial (where no application had been granted under section 23A) were less direct and less frequent than those made at preliminary hearings. At the trials all but one direct reference was objected to or disallowed.

### 5.3 DISCUSSION

The use of innuendo or the hinting by defence counsel that some sort of behaviour is unacceptable is often done by the tone of voice or by placing emphasis on certain words. It was not possible to pick up this type of reference from the transcripts. But from my observation of defence lawyers and discussion with others who have observed rape trials this certainly appears to be fairly common practice. Bohmer and Blumber (1975:397) noted that "a harsh undermining tone of questioning" was sometimes employed. In the small number of cases that we observed the tone of voice was sometimes used to convey disbelief.

At least three other examinations of trial files have been undertaken overseas in order to study the functioning of similar legislation.<sup>(4)</sup>

Newby (1980) has published a preliminary report based upon 38 rape trials in West Australia. Of the trials 21 took place before the 1976 West Australian amendment to the Evidence Act and 17 took place afterwards. The full report will be based upon an analysis of 113 contested trials.

(4) Evidence Act Amendment 1976, West Australia; Sexual Offences (Amendment) Act 1976, England; Evidence Act Amendment Act 1976; South Australia

In 7 out of the 21 trials heard before the amendment came into effect evidence referring to the complainants' previous sexual experience was used. In the 17 trials following the amendment this type of evidence was used 4 times, and on each of these occasions an application had been granted. An application was therefore granted in 23.5% of trials following the introduction of the amendment.

Adler's study (1982) was based upon 50 contested rape trials that were conducted in England during 1978-79. She found that in 60% of cases where consent was an issue an application was made, and that applications were successful 75% of the time. Unfortunately data on the number of cases where consent was an issue was not available.

Eyre (1981) examined some 45 rape trial transcripts in order to provide information upon the practical operation of the South Australia legislation. The data in her report is not set out in sufficient detail to allow comparisons with other studies.

In this study of the situation in New Zealand there were 64 trials which related to 54 cases (in 9 cases there was more than one trial), and as far as we can tell only 6 applications were probably granted at the trial stage. Thus in 9.4% of trials applications were granted.

One application was granted at the preliminary hearing stage (an application was not granted at the trial stage of this case). Therefore as far as we can tell applications were granted in 9.9% of the 71 cases where there was a preliminary hearing and/or trial.

TABLE 40 Outcome of Cases where an Application was Granted

<u>Number of Defendants per Case</u>	<u>Number Convicted of Rape</u>	<u>Number Convicted of another Sexual Offence</u>
1	0	0
2	1	1
1	1	0
1	1	0
1	0	0
1	0	1
7	3	2

Consent was one of the defences in 4 trials where applications were granted whilst in the other 2 the evidence of previous sexual experience was concerned with the defence of lack of penetration.

As far as we could tell no prosecuting counsel made an application, although the previous sexual experience of the victim was often mentioned during their examination of the complainant.

Newby (1980:121) observed that evidence can be introduced "by the 'back door'" in that it was stated that the complainant had told the accused about her previous sexual experience. This happened in one case in this study when a defendant said that the complainant had told him that she and her boyfriend had had sex earlier that night.

Information regarding the accused's opinion of the complainant's previous sexual experience was sometimes included in the accused's statement to the police. This statement when produced as an exhibit at the trial along with other exhibits can be examined by the jury when they retire to consider their verdict.

The following is an extract from one such statement

I would like to add one more thing, the girl \_\_\_\_\_ I have been with her a few times, she is the biggest whore in town. I know some other fellows that she has been with too.

It should also be noted that the previous sexual experience of other witnesses at rape trials was sometimes mentioned.

The previous sexual experience of the complainant was mentioned in some way in 35 cases or approximately 49% of cases where there was a preliminary hearing and/or trial, although in only seven of these cases had an application been granted.

Raised at both preliminary hearing and trial	in	10 cases
Raised at trial but not at preliminary hearing	in	11 cases
Raised at preliminary hearing but not at trial	in	14 cases

The Evidence Amendment Act 1977 has probably served to reduce the amount of evidence that is given about the complainant's previous sexual experience although this is still mentioned in a majority of cases. This type of evidence was raised more often and more directly at preliminary hearings than it was at trials. References to previous sexual experience were usually only one question or answer, although more prolonged questioning sometimes took place. Section 23A has not or rather the way it is administered has not given the complainant complete protection from unauthorised questions about previous sexual experience.

6. THE OUTCOME OF THE TRIAL

Every defendant in this study was charged with rape or being a party to rape.

TABLE 41 Type of Case by Plea and Outcome for Each Defendant

	<u>Pleads Guilty to rape</u>	<u>Pleads Not Guilty to rape</u>	<u>Acquitted</u>	<u>Discharged</u>	<u>Stay of Proceedings</u>	<u>Charge amended to lesser one</u>
	<u>Convicted</u>	<u>Convicted</u>				
Preliminary hearing and trial	1 <sup>a</sup>	40	34	2 <sup>b</sup>	1	0
Preliminary hearing but no full trial	19	0	0	0	0	2 <sup>c</sup>
No preliminary hearing or trial	16	0	0	0	0	0
Preliminary hearing and trial but pleads guilty after all the evidence	1	0	0	0	0	0
Preliminary hearing and trial but discharge from all charges by judge after all the evidence	0	0	0	1	0	0
	<u>37</u>	<u>40</u>	<u>34</u>	<u>3</u>	<u>1</u>	<u>2</u>

TOTAL: 117

a: Pleads Guilty: convicted; in this instance only one out of a group of co-defendants pleaded guilty.

b: Pleads Not Guilty: discharged; in one instance only one out of a group of defendants was discharged; in the other the defendant was discharged from the rape charge but pleaded guilty to indecent assault after the trial.

c: Pleads Not Guilty: charge amended to lesser one; charge amended to attempted rape at trial.

TABLE 42 Frequency of Type of Plea and Outcome for the Charge of Rape

<u>Plea and outcome</u>	<u>No.</u>	<u>%</u>
Pleaded guilty; convicted	37	31.6
Pleaded not guilty; convicted	40	34.2
Acquitted	34	29.0
Discharged	3	2.6
Jury could not agree; stay of proceedings	1	0.9
Charge amended to lesser one	<u>2</u>	<u>1.7</u>
	<u>117</u>	<u>100.0</u>

TABLE 43 Frequency of Type of Plea and Outcome for the Charge of Attempted Rape or Assault with Intent to Rape

<u>Plea and outcome</u>	<u>No.</u>
Pleaded guilty; convicted	2
Pleaded not guilty; convicted	2
acquitted	3
discharged	3
Charge available as alternative to rape; convicted	4
No plea; discharged	<u>1</u>
	<u>15</u>
Not charged specifically; not convicted	102
	<u>117</u>

**TABLE 44** Frequency of Type of Plea and Outcome for the Charge of Indecent Assault

<u>Plea and outcome</u>	<u>No.</u>
Pleaded Guilty; convicted	9
Pleaded Not Guilty; convicted	7
acquitted	1
discharged	1
	<hr/>
Not charged	18
	99
	<hr/>
	117

**TABLE 45** Frequency of Type of Plea and Outcome for the Charge of Abduction

<u>Plea and outcome</u>	<u>No.</u>
Pleaded Guilty; convicted	7
Pleaded not Guilty; convicted	4
	<hr/>
Not charged	11
	106
	<hr/>
	117

**TABLE 46** Frequency of Type of Plea and Outcome for the Charges Relating to any Other Sexual Offences

<u>Plea and outcome</u>	<u>No.</u>
Pleaded Guilty; convicted	3
Pleaded not Guilty; convicted	2
	<hr/>
Not charged	5
	112
	<hr/>
	117

The other sexual offences consisted of attempted indecent assault, incest, unlawful sexual intercourse, and indecent act upon girl under 12 years.

**TABLE 47** Frequency of Type of Plea and Outcome for Charges Relating to any other Non-Sexual Offences

<u>Plea and outcome</u>	<u>No.</u>
Pleaded Guilty; Convicted	25
Pleaded Not Guilty; Convicted	8
Acquitted	3
Discharged	1
	<hr/>
Not charged	37
	80
	<hr/>
	117

**TABLE 48** Other Non-sexual Offences - Type of Offence Defined

<u>Type of offence</u>	<u>No.</u>
Assault on a female	10
Burglary	8
Assault with intent to injure	6
Grievous bodily harm	4
Aggravated assault	3
Unlawfully taking motor car	3
Injury with intent	2
Kidnapping	2
Enters with intent	2
Theft	2
Threatening to kill	2
Assault	2
Unlawfully possessing a firearm	1
Possess firearm with intent to kidnap	1
Disabling	1
Unlawful entry	1
Robbery	1
Escape from lawful custody	1
	<hr/>
	52

A number of defendants were charged with more than one "other non-sexual" offence.

Sub-section (1) of section 339 of the Crimes Act 1961 provides that:

Every count shall be deemed divisible; and if the commission of the crime charged, as described in the enactment creating the crime or as charged in the count, includes the commission of any other crime, the person accused may be convicted of any crime so included which is proved, although the whole crime charged is not proved; or he may be convicted of an attempt to commit any crime so included.

The charges of murder and rape are exceptions to this.

Sub-section (3) of section 339 provides that:

On a count charging rape, the accused shall not be found guilty of any charge other than rape or an attempt to commit rape.

In the light of section 339(3) it is perhaps surprising that most of the defendants in this study were not charged with other sexual offences as well as the charge of rape.

#### Outcome Summary

117 = total number of defendants

37 (31.6%) pleaded guilty to rape, 80 (68.4%) pleaded not guilty to rape.  
 40 (50%) of those who pleaded not guilty were convicted of rape.  
 77 (65.8%) of the total number of defendants were convicted of rape.  
 13 (11.1%) were not convicted of rape but were convicted of another sexual offence.  
 1 was not convicted of rape but was convicted of a non-sexual offence.  
 26 (22.2%) were acquitted of all charges

#### 6.1 TESTS OF SIGNIFICANCE

A series of cross-tabulations were constructed to see if any particular variable in the data were significantly associated with whether any of the defendants were convicted of rape in a particular case.

As the number of cases involved in this study is small it was not possible to carry out chi square tests on many variables, and the categories within a variable had to be collapsed into fewer categories as the expected cell frequencies were too small.

With a larger number of cases more statistically significant relationships may have been revealed.

Whether the complainant or someone else reported the offence to the police, the promptness of the report to the police, and the closeness of the relationship of the victim to the defendant were not significantly related to whether any of the defendants were found guilty of rape in a particular case.

There was, however, a significant association (at the 5% level, corrected chi square = 5.754 1 d.f.) between whether sexual acts in addition to vaginal intercourse were performed (where this was known) and whether any defendant in a case was convicted of rape.

TABLE 49 Sexual Acts in Addition to Vaginal Intercourse by the Outcome of the Case

Additional Sexual Acts (where this information was known)	No one Convicted of Rape	Someone Convicted of Rape	Total
	No	23	29
Yes	5	26	31
Total	28	55	83

Further sets of cross-tabulations were constructed to see if any of the variables we had noted relating to a particular defendant were associated with his being convicted or not convicted of rape.

The following variables were not significantly associated with a defendant being convicted:

large age disparity between defendant and complainant;  
 consent being raised as a defence;  
 mistaken identity being raised as a defence;  
 whether the defendant gave evidence at the final trial.

Lack of penetration being advanced as a defence was associated at the 0.10 level with not being convicted of rape (corrected chi square = 3.507 with 1 d.f.). This is suggestive of an association but it is not significant at the chosen 0.05 level.

## 7. SENTENCING

The maximum prison sentence that the court can impose upon a convicted rapist is 14 years. Preventive detention can be imposed (under certain circumstances) upon a recidivist sexual offender.

### 7.1 THE SENTENCES IMPOSED

Only one person in this study was sentenced to preventive detention but this was changed to a fixed term of 9 years imprisonment upon appeal.

TABLE 50 Sentence (most serious) for Rape

<u>Sentence</u>	<u>No.</u>	<u>%</u>
Prison	68	88.3
Borstal Training	6	7.8
Periodic Detention	1	1.3
Probation	1	1.3
Section 39J. Criminal Justice Act 1954	<u>1</u>	<u>1.3</u>
	77	100.0

The mean length of prison sentence for rape was approximately 4 years (48.94 months). This figure does not include cumulative sentences. The shortest prison sentence imposed was 6 months and the longest was 9 years.

Borstal training was an indeterminate custodial sentence with a maximum period of two years for 17 to 20 year olds which was phased out in 1981.

### 7.2 "CONTRIBUTORY" BEHAVIOUR

Most of the files where the defendant was found guilty contained the sentencing speech of the judge. These were examined because of the recent discussion and criticism in England relating to the concept of "contributory" behaviour by the complainant.

In one of the cases in this study the judge stated:

I am prepared to accept for the purposes of this sentencing, and to your advantage, that this girl perhaps may not have been of the highest moral standard but for all that she was entitled to be given the opportunity to say no.

8. ISSUES RAISED BY THIS STUDY RELATING TO THE CRIMINAL JUSTICE SYSTEM

There were many issues raised by this study of court files. This discussion focuses on only the major ones that relate to the processing of rape complaints by the criminal justice system.

These major issues are:

1. The time taken to conclude a case
  2. The use of written depositions and the privacy of the complainant at preliminary hearings
  3. The composition of juries
  4. Section 23A of the Evidence Act 1908
1. It is said that a speedy trial should be the right of a defendant but it can equally be said that the speedy trial of the defendant should be the right of the victim of the alleged offence. This is especially true where the offence is of a sexual nature.

This study found that for all cases the average length of time from the offence to the conclusion of the case was 5.7 months. For the 'normal' type of case where there was a preliminary hearing and one trial there was an average of 2.1 months from the offence to the preliminary hearing, and 2.9 months from the preliminary hearing to the trial. Is it reasonable or right to expect the complainant to remember all the details of so disturbing an event for this length of time? It may well be possible to reduce the length of time between the preliminary hearing and the trial.

2. There are already provisions that can remove the necessity for the complainant to attend the preliminary hearing or which would increase her privacy if she did need to attend. However, written depositions were used for the complainant's evidence in only 9.6% of cases, and the public were excluded from the hearing on only one occasion in the cases in this study.

If the present law was revised to make protections automatic but revocable this would probably give the complainant greater protection. Section 45c of the Criminal Justice Act 1954 provides an automatic prohibition of publication of the complainant's name or identifying details unless the court gives permission for their publication. Permission to publish was not given in any of the cases in this study.

3. This research found that in 73.4% of trials there were more males than females on the jury. It has been suggested in some of the literature that defence counsel tend to challenge potential jurors who are female but it was not possible to confirm or disprove this from the files as the information was not available in a consistent manner. Nevertheless there is a large difference between the average number of men on a jury (8.10) and the average number of women on a jury (3.85).
4. Section 23A of the Evidence Act 1908 was intended to provide protection for the complainant from unauthorised questioning on her previous sexual experience with persons other than the accused.

However the complainant's previous sexual experience was mentioned during 24 of the 71 preliminary hearings and during 21 of the 64 trials in this study. References were authorised only in 7 instances.

In 92% of cases (where there was a full hearing) the preliminary hearing was presided over by Justices of the Peace. At the trials all but one direct reference by defence counsel was objected to or disallowed, whilst at preliminary hearings only one of the direct references by defence counsel was disallowed and another reference was objected to but the complainant had to answer. The fact that section 23A is not being applied at some preliminary hearings in the way intended by Parliament is a matter of considerable concern, and raises serious questions about the desirability of having justices preside over preliminary hearings for offences of this nature.

Appendix ICOURT OF APPEAL FILES

A small study of Court of Appeal files relating to appeals against convictions and/or sentence for rape and being a party to rape, was carried out.

This study provides information on the number of appeals that were made, the grounds of the appeals and their result.

As information on the judge's summing-up was not available from the analysis of trial files it was extracted from the summings-up in the Court of Appeal files. Elements that were thought to be particularly relevant to rape trials were noted; with special emphasis being placed upon the issues of corroboration, intent and complaint.

All completed Court of Appeal files for 1979, 1980 and 1981 where a defendant had been convicted of rape or as a party to rape were obtained. There was a total of 46 files which fell into the following categories:

Table 1 Type of Appeal by the Year of the Appeal

<u>Type of Appeal</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>Total</u>
Appeal against sentence only	8	8	7	23
Appeal against conviction only	5	3	1	9
Appeals against conviction and sentence	4	7	3	14
	—	—	—	—
	17	18	11	46
	—	—	—	—

Each file refers to a separate defendant and therefore several files may refer to the same case.

Appeal Against Sentence

From table 1 it can be seen that sentence was appealed against, either on its own or in conjunction with an appeal against conviction, on 37 occasions.

Both the defendant and the Solicitor-General may appeal against sentence unless the sentence is one fixed by law. In one case in this study the Solicitor-General appealed against sentence. The other appeals were made by the defendant.

A number of appeals were withdrawn or not pursued but this was often not clearly indicated in the files.

Appeals against sentence alone were allowed in two cases.

In the first case the Solicitor-General appealed against a sentence of 5 years' imprisonment for rape, 3 years for indecent assault, and 3 years for breaking and entering, upon the grounds that the sentence was manifestly inadequate. The Court of Appeal increased the sentences to 9 years, 5 years and 5 years respectively (concurrent).<sup>(1)</sup>

In the second case a defendant appealed against the imposition of the sentence of preventive detention on the grounds that there was no jurisdiction to impose that sentence as the previous convictions were under section 135 of the Crimes Act 1961.<sup>(2)</sup>

Concurrent sentences were imposed of 9 years' imprisonment for rape, 2 and 4 years for indecent assault, and he was convicted and discharged for burglary.

Four defendants had their convictions quashed, and their sentences did not stand.

Appeal Against Conviction

Twenty-three defendants appealed against conviction either separately or in conjunction with an appeal against sentence.

Four defendants appealed successfully against conviction, two of whom were co-defendants in the same case.

(1) R v Jordan, Court of Appeal, No.188/1979

(2) R v Tipene, Court of Appeal, No.266/1980

Grounds of Appeal

Most appeals were related in some way to the judge's summing-up of the case, or the claim that the verdict was unreasonable.

Appeals were usually made on more than one ground.

**Table 2** Ground of Appeal, all Appeals whether or not they were Successful

Ground of AppealConcerned with the Judge's Summing UpNo.

Relating to direction upon:

Lies

2

Intent

6 \*

Onus of proof

2 \*

Accomplices

1

Corroboration

6 \*\*

Failure to adequately put the defence to the jury

2

Failure to put the issue of attempted rape to the jury

1

Relating to the admission or exclusion of certain types of evidence

Evidence relating to an identity parade wrongly admitted

1

Accused's statement should not have been admitted

1

Evidence relating to complaint wrongly admitted

1

Questioning relating to previous sexual experience wrongly prohibited<sup>(3)</sup>

1

Relating to lack of proof

Verdict unreasonable and cannot be supported by the evidence

5

Failure to prove penetration

2

Failure to prove lack of consent

1

Other grounds:

New evidence

1

Judge when asked to read part of the evidence to the jury should have read the cross-examination as well

1

Jury biased because complainant was allowed to sit down and have a policewoman with her

1

\* in these cases two co-defendants put forward the same grounds.

\*\* in these cases two separate pairs of co-defendants put forward the same grounds.

(3) Since the introduction of section 23A of the Evidence Act 1908 there have not been any successful appeals based upon grounds relating to this provision. However in this case the Court of Appeal did consider the use of Section 23A; R v Bills, Court of Appeal, No.42/1981, reported [1981] 1 N.Z.L.R.760.

Successful Appeals

Two appeals were successful in 1979 and two 1980. Those in 1980 were co-defendants in one case.

Case 1: 1979<sup>(4)</sup>

The ground of appeal was that there was insufficient evidence to justify the verdict. The appeal was allowed on the basis that there was no evidence to support the contention underlying the offence. The conviction was quashed and there was no order for a new trial.

Case 2: 1979<sup>(5)</sup>

There were four general grounds advanced to support the appeal against conviction. The grounds of appeal relating to corroborative evidence were accepted by the Court of Appeal.

The Court of Appeal considered that there were misdirections concerning corroborative evidence upon the primary question as to whether acts of sexual intercourse took place at all within the relevant period covered by the charges; and also upon the issue of non-consent in relation to the rape charges.

The Court went on to say:

that if a trial Judge in such a case should find that he has had to search for possible items of corroboration that cannot easily be pinned down he should then be quite sure, before any material that may seem to qualify is left with the jury, that it really will add something significant to the complainant's own evidence. In practice this is an area which frequently produces unexpected problems; and when there is a misdirection there is very often a consequential need for a further trial.

(4) R v Smith, Court of Appeal, No.34/1979

(5) R v Arnold, Court of Appeal, No.222/1979, reported [1980] 2 N.Z.L.R.111

The Court concluded that it had no right to dismiss the appeal where the jury had been instructed to approach their decision on a wrong basis as to what could be corroboration and the possibility could not be ruled out that they might have reached a different decision if instructed on the correct basis.

The appeal was allowed in respect of all the convictions and a new trial ordered.

Case 3: 1980<sup>(6)</sup>

In this case two defendants had been convicted of rape, and to a substantial degree the grounds overlapped.

With the exception of one matter all the grounds of appeal were concerned with the directions given to the jury about corroboration. The judge had suggested to the jury that several matters were capable of amounting to corroboration.

The Court of Appeal was satisfied that:

it was incorrectly put to the jury that in a number of respects there was evidence before them capable of providing corroboration in regard to the material matters in the complainant's evidence. This had the result that the jury was, in our view, incorrectly led to believe that by accepting the evidence in these respects as in fact corroborative they became able to consider the complainant's evidence without regard to any question of danger in acting upon it to found a conviction. This being so the case clearly becomes one in which it is impossible for the proviso to be applied. It is impossible to predict what conclusion the jury might have reached if they had been directed properly on corroboration. This is a case therefore where the leave sought, we conclude, should be granted and the appeal allowed and a new trial ordered in respect of both applicants.

The Court of Appeal advised judges to bear in mind the following extract from Adam's Criminal Law and Practice (1971) relating to corroboration:

opinions are notoriously apt to differ on whether a particular piece of evidence is corroboration - the judge walks a tightrope. In a borderline case where evidence is just capable of being corroborative but is certainly not strongly so, it may be safer and fairer to direct the jury that there is no corroboration but that they should consider all the relevant evidence in deciding whether they are nevertheless convinced of the truth of the essential allegation.

(6) R v Matiu and Sadler, Court of Appeal Nos.228, 231/1980

Corroboration was the major issue in two of the three cases where there was a successful appeal against conviction. The Court of Appeal by its advice to judges appears to realize that this is an extremely difficult area for the trial judge, and seems to suggest that they should be very cautious when dealing with this.

Delay in Appeal Cases

The length of time between the date of conviction and the date of the Court of Appeal hearing and judgment was recorded for the three successful appeals against conviction.

Case 1

Date of conviction	30/3/79
Date of Court of Appeal hearing and judgment	19/7/79

Approximately 3-1/2 months elapsed from conviction to Court of Appeal judgment.

Case 2

Date of conviction	22/10/79
Date of Court of Appeal hearing	17/7/80
Date of Court of Appeal judgment	13/11/80

Approximately 13 months elapsed from conviction to Court of Appeal judgment.

Case 3

Date of conviction	24/9/80
Date of Court of Appeal hearing	12/3/81
Date of Court of Appeal judgment	1/5/81

Approximately 7 months elapsed from conviction to Court of Appeal judgment.

The length of time from the conviction to the Court of Appeal judgment in these successful appeals gives cause for concern.

THE JUDGE'S SUMMING-UP

Adams' Criminal Law (1971 : 781) states that the summing-up has two primary functions

- (a) it must direct the jury on all the relevant points of law, the jury being bound to accept such directions; and
- (b) it must give the jury adequate guidance in regard to their consideration of questions of fact.

The judge's summing-up had not been included in the trial files. It is typed up at the request of the Court of Appeal where they consider it to be relevant to the appeal. Eleven different summings-up were available in the Court of Appeal files.

We noted the presence or absence of certain elements that were thought to be particularly relevant to rape trials.

Elements of the Summing-Up that were Noted

- (a) Direction to jury members to put aside sympathy or prejudice for accused/complainant
- (b) Direction to jury to disregard extraneous matters and come to verdict solely on the evidence before the court
- (c) Warning against accepting uncorroborated testimony of complainant
- (d) Explanation as to what constitutes corroboration
- (e) Suggestion that sexual charges are easy to make and hard to answer
- (f) Some details about the likelihood of false complaints given
- (g) Explanation of the elements of the offence of rape

- (h) Explanation of what constitutes penetration
- (i) Explanation of what constitutes consent or lack of consent
- (j) Explanation of need to prove mens rea - i.e. intent or recklessness on the part of the accused
- (k) Explanation of the evidential rules relating to complaint

Table 3 Elements Referred to in the Eleven Summings-Up

<u>Year</u>	<u>Element referred to</u>										
	a	b	c	d	e	f	g	h	i	j	k
<u>1979</u>	Y	Y	Y	Y	Y	N	Y	N	Y	Y	N
	N	N	Y	Y	N	N	Y	Y	Y	Y	N
	Y	Y	Y	Y	Y	N	Y	Y	Y	N	N
<u>1980</u>	Y	Y	Y	Y	Y	N	Y	Y	Y	N	N
	Y	N	Y	Y	Y	N	Y	N	Y	N	Y
	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
<u>1981</u>	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y
	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
Total	Y	10	9	11	11	10	2	11	9	10	7
	N	1	2	0	0	1	9	0	2	1	4

Y = Yes, this element was referred to.  
N = No, this element was not referred to.

Each element is not necessarily relevant or of importance in every trial.

Corroboration

In every case the corroboration warning was given, and an explanation of what constitutes corroboration. Part of Lord Hale's famous dictum lives on in summings-up. In 10 cases it was suggested that the warning was necessary because charges of this nature are easy to make and hard for the accused to answer.

In some cases it was said that charges were easy to "fabricate" and hard to answer.

For example:

In all cases of a sexual nature, it has to be recognised - and this is not strictly speaking a rule of law but it is something the Courts have learnt from bitter experience - it has to be recognised that complaints of this kind are very easy to fabricate and they are extremely difficult to refute. And it is, therefore, my duty to warn you that it is always dangerous to convict a person accused of a sexual offence on the uncorroborated evidence of the complainant. Now that does not mean that you cannot convict solely on that evidence. If you are convinced by the evidence, bearing in mind the warning that I have given you, then you are perfectly free to convict without any corroboration but this warning must be given to you; these allegations of sexual offences can be easily fabricated and they can be extremely difficult to refute.

In two cases the judge went into some details about false complaints, as can be seen from the example below:

The law says that it is dangerous to convict of a sexual offence upon the uncorroborated evidence of the complainant. The reason for giving that warning is that an allegation of a sexual offence, such as rape or any other sexual offence, is easy to assert but difficult to refute. In rape cases experience shows that it is not uncommon for false allegations to be made for various reasons: hysteria, desire to attract attention, revenge in some cases, an endeavour to cover some other form of discreditable conduct - things like that have been known to give rise to false allegations of sexual attack - that is why the warning is given that it is dangerous to convict upon the uncorroborated evidence of the female involved.

The need for the corroboration warning is based upon a belief that it is easy to allege rape and that false complaints are not uncommon, and this belief is often referred to in the judge's summing-up.

The actual wording of the corroboration warning varied although it always contained the assertion that it is "dangerous" to convict on the uncorroborated testimony of the complainant. The word "dangerous" was often used more than once during the warning.

I must first give you a warning because of the nature of the case. This is a case of a sexual nature, at least as to eight of the nine counts, and the law requires that I give you a particular warning, and this is the warning: that it is dangerous to convict a person on the uncorroborated evidence of the woman concerned. You are entitled to accept her evidence and convict on it without corroboration if you so wish, but it is dangerous to do so. It is relatively easy for a woman to implicate a man in an allegation of sexual misconduct and often very difficult for the man to do anything other than to deny it and so the law says you should look for corroboration, and that is why I am required to give you the warning that it is dangerous to convict without corroboration; though, as I say, the law also says that if you are wholly satisfied on the evidence of the complainant woman without corroboration you may still convict upon it.

In some cases it is made very clear to the jury that this is a warning that is given in every case and that the judge is not warning them against this complainant in particular.

If you come to the conclusion that it is her word and nothing else, will you please bear in mind that it is always dangerous, unwise in the extreme, to accept the unsupported evidence of the woman alone if she says she was raped. I have heard many people say that is a fairly harsh rule. Maybe it is. But it is a rule that I am obliged to tell you, as does every Judge tell every jury in cases of this sort. If it is the girl's word alone, there is reason to be extra cautious, and we use the words that it is dangerous to convict on uncorroborated evidence. Nevertheless you are entitled to accept it if it is the girl's word alone, and I do not know what view you will take of any of the evidence. Let us say that you put aside all the other evidence and must depend on what you think of the girl. Even though I have told you what juries are always told in cases like this, you are entitled to say to yourselves, if you think it proper, "We remember that girl; we remember the story she told, the way she answered all the questions. We are quite sure that she is telling the truth and we can have confidence in her when she says that she was unwilling and that from all the circumstances that was made clear to the accused. I will not comment one way or the other on what I thought of her as a witness. You will remember her sitting there for quite a long time giving the account to Mr \_\_\_\_\_ and then answering Mr \_\_\_\_\_ questions. If there was no other evidence in the case, and if, bearing in mind what I have said, you can each say to yourself "I am sure that she is telling the truth, that she was forced, and by her conduct she had made it clear that she was unwilling" then you convict on that evidence alone.

#### Complaint

In six cases the rules relating to complaint were fully explained in the summing-up.

Two examples of the type of explanation given are quoted below.

1. Ordinarily what a person who has been subjected to such attacks says to other people not in the presence of the accused person is not allowed to be put before the Court but in this sexual type of case it is. Ordinarily the person has to come before the Court and tell the Court herself or himself, just what has happened; and of course that is what Mrs \_\_\_\_\_ did this time; but the fact that she also said it immediately afterwards to this man who helped her, to the policeman, can be used by you for the limited purpose of considering her credibility. What she said then and what she said to you now, is it consistent or inconsistent? It may well help you to form an opinion as to her reliability. Another reason why the law allows it to be given is that it may well indicate that consent was never given by the woman.

One of the reasons for the admission of evidence about the complaint is the questionable belief that a woman who has been raped will immediately complain about it, as is illustrated in the following extract.

2. There is some evidence which, according to the view you take, is of assistance to you in approaching your task. First of all, something which is not what we call corroboration but which is of interest to you is the complaint that she made shortly afterward to Mr \_\_\_\_\_. It is not corroboration because it does not come other than from her mouth, but you are entitled to be told by Mr \_\_\_\_\_ that not only has she said what she said yesterday, but that she went up to his flat that morning, around about 7 o'clock, knocked him up, and told him. You will remember his words. I think he used the more colloquial expression that she had said she had been "done over", which you might well think was her complaint that somebody had had sexual intercourse with her in circumstances that she was complaining about it. Now that does not amount to what we call corroboration because it is not from a source other than her own mouth. The fact that a person tells something untrue does not become more acceptable because she tells it on two or three occasions. You still have to decide if she is truthful. In a case like this when you are asking yourself, is she telling us the truth when she says she was unwilling, it is always interesting to see how she behaved immediately afterwards. If a woman comes along and says "I was raped" and you say When? and she said "about a month ago", you might say that is an unlikely story, why did you not make a fuss about it at the time? That is the commonsense approach that the Courts have accepted when they let you listen to the evidence of Mr \_\_\_\_\_. If a woman has been outraged and if she was unwilling you would expect her to make a fuss about it, whereas if she had been willing, especially in circumstances which she might be ashamed of, you would expect her to keep it to herself. So it is perfectly relevant for you people to say to yourself in considering this question as to whether she was willing or not. If she was not unwilling why would she have behaved

the way she did by telling Mr \_\_\_\_\_? Certainly he describes her as being reasonably composed, although I think he said - to use his words - "white about the gills", but she then said to him "Do you think I should tell the police?" He said that was for her to decide, and she thought for a bit and then rang the police up and made a complaint. That is material which shows that she behaved in a way which is consistent with the way you might think a woman who has been outraged would behave.

#### Intent

Since the English case of DPP v Morgan [1976] AC 182 the issue of the intent of the defendant has attracted a lot of attention. The aspect of the intent or recklessness on the part of the accused was explained in 7 of the 11 summings up in this study.

Two examples of these explanations are:

1. Now the man when he has sexual intercourse must know that the woman was not consenting or be indifferent, that is, just not care whether she consents or not.
2. The crime of rape consists in a man having sexual intercourse with a woman with intent to do so without her consent or with indifference as to whether or not she consented. It cannot be committed if the essential guilty mind is absent. Accordingly, this is the crux of it, if an accused in fact believed that the woman had consented, whether or not that belief was based on reasonable grounds, he cannot be found guilty of rape. So you look at all the evidence and consider all the circumstances. You know, the person who puts the knife across the woman's throat really does not think that she is voluntarily consenting, and he would have little chance, I would think, in front of a jury saying that he had an honest belief that she had consented in those circumstances. I think you understand the position.

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**GLOSSARY**

- An Information**  
A sworn complaint that an offence has been committed, laid at the District Court before a District Court Judge or Justice or Registrar. Informations are usually laid by police officers. They contain a statement of the specific offence and must also state such particulars as are necessary for giving the accused reasonable information as to the nature of the charge.
- Corroboration**  
Evidence from an independent source confirming and strengthening other evidence. In sexual cases the jury is warned that it is dangerous to convict upon the uncorroborated evidence of the complainant.
- Complainant**  
One who commences a prosecution against another. In this study the complainant is the victim of an alleged rape.
- Depositions**  
The evidence of the witnesses at the preliminary hearing is typed in the form of documents known as depositions. Depositions also include written statements admitted in evidence at the preliminary hearing pursuant to sections 173A and 175 of the Summary Proceedings Act 1957.
- Evidence of Complaint**  
Evidence of what a witness said on some previous occasion in the absence of the accused is in general inadmissible for the purpose of showing that the evidence is consistent with previous statements. In offences of a sexual nature the fact that the victim made a complaint shortly after the alleged offence and the substance of that complaint are admissible as evidence of consistency of conduct on her part and to negative consent if consent is an issue. A complaint is not corroborative of the complainant's testimony.
- Examination**  
The interrogation of witnesses. The examination-in-chief of a witness is the interrogation of a witness by the counsel for the party producing her/him as a witness. The examination by the opposing counsel is called the cross-examination. Further examination of a witness by their own side, on points arising out of the cross-examination, is called the re-examination.
- Indictment**  
The indictment is a written statement of the charges against the accused. The indictment is prepared in a prescribed form and may be presented to the High Court by the Attorney-General or a Crown Solicitor or by the informant in the case of a private prosecution.

Mean	The arithmetic average.
Median	The-mid point in a distribution of scores.
Notes of Evidence	A written record of the evidence produced at trial.
Penetration	For the purposes of sexual offences sexual intercourse is said to be complete upon penetration.
Preliminary Hearing	A hearing presided over by two Justices of the Peace or a District Court Judge to determine whether the evidence against the accused is sufficient for there to have been a prima facie case made out. If the court considers the evidence is sufficient the accused is committed for trial.
Prima Facie	(On the face of it). A prima facie case is a case sufficient to call for an answer.
Rape Incident	In this study the term "rape incident" has been used as a broader term than rape. It has been used when referring to the rape itself and also when referring to the circumstances or the events surrounding the rape. The term was used irrespective of whether there was a conviction for rape. It would strictly have been more accurate to use the term "the alleged rape incident" but as this is a cumbersome phrase the simpler term was used.

### ACKNOWLEDGEMENTS

One of the aims of the rape research has been to gain as comprehensive an appreciation as possible of the rape victim's involvement in the criminal justice system. This would not have been achieved without the co-operation of Judges and lawyers for which I am most grateful.

I also thank Janice White for her typing.

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INTRODUCTION

As part of the larger study of rape, two questionnaire studies were initiated: one for judges and a complementary one for lawyers. The purpose was to obtain their views on the adequacy of the current procedural, evidentiary and substantive law relating to rape offences and to seek their ideas for changes to the law particularly with reference to mitigating the difficulties faced by the complainant. In June 1982 questionnaires<sup>1</sup> were sent to 22 High Court judges and 5 Court of Appeal judges. 23 questionnaires were completed, 19 from the High Court and 4 from the Court of Appeal. 66 questionnaires were sent to lawyers. The list was generated from a number of sources: all crown prosecutors were invited to participate, as well as lawyers who had acted either as prosecutor or defence counsel in rape trials in 1982. We also invited lawyers to participate by means of an open letter to a number of legal professional journals and papers and to Law Faculties. We received 32 completed questionnaires.

We were aware of the difficulties involved in treating such a complex matter by way of questionnaire and so invited respondents to make extra comments and explanations. The following report includes the views supplied by this means. However it must be stressed that because of their sporadic nature they cannot be interpreted as representative responses but rather as indicative of the variety and depth of ideas and factors involved.

Not all questions were answered by all respondents. If the unanswered proportion is not significant it has been omitted from the following results and consequently not all tables have a total of 23 cases or 32 cases. The question numbering used in this report refers to the original question on the questionnaire. The respondents are introduced and results presented separately for the judges' and the lawyers' surveys. The final section concludes with some comparisons between the two.

<sup>1</sup> Copies of the questionnaires are available on request from the Department of Justice.

THE JUDGES

Before embarking on the results proper, the respondents are introduced briefly according to their involvement in criminal trials and in rape trials.

On the question of frequency of presiding over criminal trials or appeals, 21 judges said they did so "frequently" and 1 said "sometimes". More particularly we asked how many rape, attempted rape and assault with intent to rape trials or appeals the judges had presided over during the last 3 years. Of those who specified, the number ranged from none, to one judge who estimated between 30 and 40. 3 others said "many" without giving an actual number.

We also asked about their relative experience in prosecuting and defending criminal cases before their judicial appointment:

	Experience at	
	Prosecuting	Defending
a lot of experience	7	5
some experience	3	9
only a little experience	5	4
no experience at all	<u>7</u>	<u>3</u>
	22	21

There were 5 respondents who had "little" or "no" criminal experience, either prosecuting or defending.

THE COMPLAINANT'S TRAUMA

The terms of reference of the study state:

"The perspective of the victim will therefore be the point of reference for an analysis of any legal and procedural changes that are deemed necessary to mitigate the ordeal to which rape victims are subjected".

As the questionnaire to judges was designed with this victim focus, we thought it only reasonable to ask respondents whether they felt the assumption that the rape complainant's involvement in the criminal justice system needs improvement is a justifiable one. The responses of the 19 who responded were:

justifiable	14
not justifiable	4
don't know	<u>1</u>
	19

Specific improvements mentioned included improvements in relation to corroboration, at the complaint stage, counselling and explaining the court proceedings to the complainant. Two further points made were that changes would benefit all, not just the complainant, and that changes were needed for all offences not just rape. Comments from those who disagreed with the proposition were that it is inevitable that people don't like giving evidence on personal matters and that there is no evidence that changes to the law would encourage more reporting to the police.

Although the whole survey relates to the complainant's ordeal, a few questions asked directly for the judges' appreciation of the complainant's experience. The results and comments are set out below. The numbering refers to the original questionnaire numbers.

Q5 In your experience are complainant witnesses generally aware of how the trial will proceed in respect of their giving evidence and the cross-examination?

yes	12
no	0
don't know	<u>11</u>
	23

Q3 From your observation, is the trial generally a more traumatic experience for rape complainants than it is for complainant witnesses in trials dealing with other offences against the person?

yes	19
no	<u>4</u>
	23

One respondent qualified his negative response by saying it was no more traumatic than in offences of indecency against children, incest etc.

Respondents were asked to agree or disagree with the following statements:

Q27(b) Compared with other offences, rape trials emphasise the victim's behaviour more than the accused's behaviour.

agree	10
disagree	11
neither agree nor disagree	<u>2</u>
	23

Q27(i) One of the main reasons for detailed cross-examination of the complainant witness is to discredit her before the jury.

agree	16
disagree	4
neither agree nor disagree	<u>3</u>
	23

4.

Q6(a) In your experience is the cross-examination of the complainant witness in rape cases more prolonged and more insistent than in other cases of offences against the person?

always	0
frequently	12
sometimes	9
rarely	2
never	<u>0</u>

23

8 of the 12 who answered "frequently" considered that this sort of cross-examination is generally necessary to establish the facts of the case particularly when the issue is one of consent.

Question 5 produced a strange result with half of the respondents thinking complainants are aware of how cross-examination proceeds and half not knowing the complainant's state of awareness in this respect. Note, however, that none think that complainants are generally unaware.

Despite this, there was general agreement that the trial is more traumatic for rape complainants than for complainants in other trials. There was no consensus on whether the victim's behaviour is emphasised more in relation to the accused's when compared with non-rape trials, a factor that possibly contributes to the trauma. The cross-examination is one source of possible trauma and there tended to be agreement that this is frequently longer and more insistent in rape trials and that one of the main reasons for a detailed cross-examination is to discredit the complainant in front of the jury.

#### THE DEFINITION OF RAPE

This section deals with three aspects relating to the definition of rape: the definition of "sexual intercourse", gender neutrality, and husband's immunity.

##### Definition of "Sexual Intercourse"

Respondents were presented with a list of acts and asked which they would include in the definition of sexual intercourse for the purpose of defining rape. Twenty-two judges responded and the following table shows the frequency with which each act was endorsed.

vaginal penetration by the penis	22
anal penetration by the penis	11
oral penetration by the penis	10
cunnilingus	8
vaginal penetration by other parts of the body	7
anal penetration by other parts of the body	7
vaginal penetration by means of inanimate objects	8
anal penetration by means of inanimate objects	7

Eleven thought that only vaginal penetration by the penis should constitute sexual intercourse.

A comment from a couple of those who preferred the status quo was to the effect that rape has a recognised identity and that this should not be changed fundamentally. A more common comment was that the other acts are already other forms of indecent offences.

Two comments from those that endorsed all options were one, that any form of gross sexual violation should be regarded as similar to the traditional concept of rape and two, that it would have to have another name, not rape.

##### Gender Neutrality

A separate question asked whether rape should be defined so that it is sex neutral. 8 said "yes" and 15 "no". The prevailing comment from those against making it sex neutral was that there are already offences covering these acts. Comment from those advocating neutrality were that neutrality better accords with sexual equality and places laws relating to sexual offences on the same basis as the general law which is desirable and that it is particularly relevant if other forms of sexual violation are included in the definition of rape.

##### Husband's Criminal Immunity

There was no consensus on the question about whether the husband's exemption of criminal liability for rape of his wife should be retained or not. 8 thought the exemption should be retained; 5 thought it should be abolished; 7 thought it should be abolished when there was actual or threats of bodily harm, acts of gross indecency or threats of a criminal act against any person; and 2 thought it should be abolished when there was actual or threatened bodily harm to spouse and/or children.

This question elicited considerable comment. From those who advocated retaining the exemption 3 noted that the more appropriate recourse is to end the marriage; 3 noted that the law has no place in the marital bedroom; 1 that the danger to marriage of regarding every act of intercourse without free consent as rape is too great; 1 that it is impractical from the proof point of view; and 1 that the qualified abolition is covered by law anyway. Similar points were made by those who favoured the qualified exemption.

Points mentioned in favour of abolition were, one, that husbands are liable to be convicted of indecent assault if they in fact rape their wives and two, that the abolition would generally be beneficial in consciousness raising. One respondent noted that he understood that jurisdictions with no such exemption do not have vindictive allegations.

6.

EVIDENCE

Previous Sexual History and the Evidence Amendment Act 1977

Empirical evidence on applications pursuant to the Evidence Amendment Act 1977 is difficult to come by so we took this opportunity to ask judges to estimate how frequently, in their experience, applications are made:

always	0
frequently	0
sometimes	7
rarely	12
never <sup>2</sup>	
don't know	<u>2</u>
	23

The next question asked about the frequency of granting applications, but it is evident that some respondents answered relative to applications, while others gave estimates relative to all trials. The results are, therefore, not presented.

More important is some appreciation of the effect of this provision. The first consideration is the overall effect in terms of reducing reference during the trial to the complainant's previous sexual history.

Q14 In your experience, does the complainant's previous sexual history with persons other than the accused generally feature less in trials since the introduction of the provision than prior to it?

yes	19
no	1
don't know	<u>3</u>
	23

Q13(c), asking if the 1977 provision actually resulted in less distress for the complainant during the trial, produced a clear affirmative response:

yes	21
no	1
don't know	<u>1</u>
	23

There was also fairly strong agreement that it has not led to greater injustice to the accused (Q13(d)), but for all that there was no consensus about whether it has effected a greater likelihood of conviction (Q13(b)). It is interesting to note from the table below that only 2 of the 6 who think it has resulted in greater likelihood of conviction also think there has been greater injustice to the accused.

7.

<u>Greater Injustice to the Accused</u>	<u>Greater Likelihood of Conviction</u>			<u>Total</u>
	<u>Yes</u>	<u>No</u>	<u>D.K.</u>	
yes	2	0	0	2
no	2	7	5	14
d.k.	2	0	4	6
no answer	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>
TOTAL	6	8	9	23

Similarly there was no consensus at all about whether the 1977 Amendment has effected greater difficulties for the defence in conducting its case (Q13(a)):

yes	6
no	9
don't know	<u>8</u>
	23

Even though it is generally agreed that previous sexual history features less in trials than previously, we also asked whether reference, either direct or indirect, is made to such matters even though no application has been granted (Q15 and 17). Two judges noted that they would not permit this.

Reference to Previous Sexual History when no Application Granted

	<u>Direct Reference</u>	<u>Indirect Reference</u>
always	0	0
frequently	0	0
sometimes	1	8
rarely	16	8
never	4	5
don't know	<u>2</u>	<u>2</u>
	23	23

When asked, 19 judges thought the provisions incorporated in the Evidence Amendment Act 1977 do not need strengthening. Two thought they do: one because of concern for complainants and the other because he thought clearer guidelines for the exercise of the discretion would aid effectiveness.

When asked for further comments on problems arising from the provision, the answers of three judges conveyed a sense of ambiguity in the provision:

"Cross-examination on previous sexual history can be a two edged sword and it is of little or no relevance where the victim is a married woman".

8.

"There are of course difficult value judgments involved in deciding where the balance lies - but these must be".

"[When] the complainant is living in a de facto relation with another person or has a boyfriend, inevitably there arises an implication of a previous sexual history with another person".

Corroboration

The justification given for the need for a corroboration warning to the jury in sexual cases is that sexual charges are easy to make and difficult for the accused to answer. This originates from Lord Hale's dictum, three centuries ago, '[rape] is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent'. The first and third elements of this equation are still often included in the judge's summing up to the jury.

Q23 took each of the three parts separately and asked judges if they thought it reflects the situation in New Zealand today:

	<u>Agree</u>	<u>Disagree</u>	<u>Neither Agree nor Disagree</u>	<u>Can't Generalise</u>
it is easy to allege rape	17	3	2	1
it is hard to prove a charge of rape	8	5	8	2
it is hard to defend a charge of rape	2	10	9	2

There seems to be general agreement about the first proposition that it is easy to allege rape, but considerable lack of agreement on whether it is easy to prove or not. There is also indecision on the question of how easy or otherwise it is to defend a charge of rape, but the indication is that it is not generally considered a hard task.

Q21 was directed at some specific effects of the corroboration warning:

<u>The Corroboration Warning:</u>	<u>Yes</u>	<u>No</u>	<u>Can't Generalise</u>
abrogates the jury's fact finding role	7	14	1
often confuses the jury	16	4	2
is usually helpful for the jury in its task of assessing the facts	3	18	1
is detrimental to the prosecution in that the jury gives undue weight to this aspect	9	10	2

The weight of opinion is that the warning is not usually helpful to the jury when it comes to assessing the facts, indeed it often confuses the jury. However it was not thought that the warning from the judge abrogates the jury's fact finding role. There was no consensus on the issue of whether the warning is detrimental to the prosecution or not.

9.

Two questions related to the possible effect of abolishing the mandatory corroboration warning and replacing it by a judicial discretion to warn the jury where there was some evidence to suggest a false complaint.

Q22(a) Do you think the prosecution's burden of proving its case beyond reasonable doubt would afford sufficient protection to the accused?

yes	20
no	<u>2</u>
	22

Q22(b) Do you think verdicts would generally be any different than they are now?

yes	9
no	10
sometimes, not generally	1
a few more convictions	1
don't know	<u>2</u>
	23

In all but 2 cases, it was thought the normal burden of proof would provide sufficient protection for the accused without the extra corroboration warning, though there was considerable divergence of opinion over whether verdicts would be different once the warning was discretionary.

When asked if they favoured such a change from mandatory to discretionary warning, only 2 dissented, both High Court Judges.

These questions, plus Q24 which asked for general comments on the corroboration issue, prompted much comment, suggesting corroboration to be one of the most urgent topics from the judges' point of view. Because of its perceived importance, the comments are grouped into similar themes and reported verbatim here. First, many of those arising from Q22(a) - (c) analysed further the source of the jury's confusion and made suggestions as to what the judge's direction ought to be:

"I don't think the rule often confuses the jury but it does tend to cloud their perception of the truth in cases where they fully believe the complainant's story. That should be enough for a conviction after proper warning of the need to be satisfied beyond reasonable doubt".

"The necessity for corroboration and the inexplicable rules relating to it confuse a jury and tend to lead them in false directions".

"Our Court of Appeal has so thoroughly confused the corroboration principles that it is sometimes impossible to sum up without confusing the jury".

"I am for changes in the law which render the judge's task more simple and minimise the confusion that the present required directions occasion but at the same time retain the protection that the rule is designed to give - and that is a TALL order".

"A greater burden must be placed on the judge to warn about the dangers of false complaints and a need to examine all the evidence without need to refer to corroboration".

"It would be sufficient to leave it to the judge to decide in a particular case what warning, if any, is called for".

The comments from the two who did not favour change as proposed in the question were:

"I think telling a jury of the need for some independent evidence as confirmation for the complainant's story is helpful to it. On the other hand the rules as to corroboration have now become so refined that they go well beyond just confirmation of the complainant's story - it has to corroborate each element of the crime. I think they have become too complex".

"The discretion proposed is not in my view a satisfactory formulation or recognition of the special problems of proof".

Under Q24 this last judge proposed:

"I should be sorry to see any distinction between corroboration rules as between rape and other sexual offences. I am inclined to the view that the solution lies in developing a simpler approach to corroboration generally by developing the principles in Hester & Kilbourne".

Three other respondents to Q22 introduced other elements for consideration:

"With juries of higher educational standard than at the time of Baskerville the need for standardised forms of warning has lessened".

"The necessity to warn the jury in every case inevitably suggests that every complainant should be viewed with suspicion. There are many cases where such suspicion is unfounded".

"On balance I favour change, but obviously there would be the risk of the rare case of injustice to the accused; it is a balancing exercise".

The comments arising from Q24 were very similar:

"The jury can be told to look for [corroboration] and use it to support complainant's evidence, as in other cases, without elevating it to a mandatory requirement".

"As in any case where credibility is in issue evidence tending to make one version more probable than another is valuable. I consider the mandatory rules about corroboration are unnecessary with today's jurors and that a trial judge can readily draw the jury's attention to any 'corroborative' material if that seems necessary".

"I am very much opposed to the mandatory rule on corroboration. Besides protection to accused of burden of proof there is police investigation which results in high number of unfounded rates, and witnesses are always for a jury to assess".

"The limitations as to what amounts to corroboration can mean that the other evidence in the case (not amounting to corroboration) can appear to have little significance when it may be of considerable importance".

"The use of the words "dangerous" to convict in the standard Baskerville may be offputting where the judge goes on to say, as he must in some cases, that there is no corroboration".

"The standard formula is in my limited experience almost impossible to express in a manner that is logically satisfying, as well as comprehensible as well as correct".

"The whole field of corroboration requires review including the statutory field".

Q40 was directed at Court of Appeal judges only and asked them what special issues arise in appeals against rape convictions. All 4 respondents without exception referred to corroboration:

"Corroboration difficulties".

"Almost solely questions of corroboration. Judges find difficulty in this field and sometimes direct that matters of evidence are corroboration when they are not".

"Corroboration - in particular whether a matter is capable of being corroborative and is so identified by the trial judge".

"I am afraid that trial judges have tended to strain to find evidence capable of being corroborative and have not at times followed the suggestions in such cases as Collings p.121 and R v. Moana [1979] 1NZLR 181, 186, R v. Arnold [1980] 2NZLR 111, 123. This has left the Court of Appeal at times with no option but to direct a new trial".

The responses to these questionnaires leave no doubt that the corroboration warning is currently felt to be unsatisfactory from the point of view of the judiciary.

#### 'Early Complaint'

A few questions were included about evidence of 'early complaint'. The first asked after the reasonableness of it from a jury's point of view but produced no discernible trend.

12.

Q25 Is it reasonable to expect a jury to heed evidence about 'early complaint' when considering the consistency of the complainant's evidence, but to ignore it when considering corroboration?

yes	8
no	12
probably not	<u>1</u>
	21

The next question asked for views on changing the status of the current rule of evidence.

Q26 Do you consider the rule of evidence which allows admission of the evidence that a victim complained or did not complain shortly after the alleged offence should be

abolished	2
retained	13
retained with the proviso that the trial judge be required to warn the jury that there may be good reason why a victim may delay or fail to complain and does not necessarily imply falsity	<u>8</u>
	23

The status quo prevailed but a strong group contended for the required warning. As well as the 8 who endorsed the qualified option, another 6 who opted for retaining the rule noted that the proviso is normally given anyway.

The only comments in support of abolition of the rule were that it results in artificial emphasis on what the victim did rather than what the accused did, that there is no reason to conclude that an early complaint is more trustworthy than a late one, that the rule confuses the jury and that evidence of complaint should be admissible only in accordance with the general rules of evidence.

Two further questions broached the subject. It is argued that the rule of evidence implies that if a woman is raped she will tell about it as soon as possible, and perhaps by further implication, if she does not tell immediately it is a false complaint. The first question asked whether respondents agreed or disagreed with the first part of this proposition and the second related this to the issue of consent.

Q27(c) Please indicate whether you agree or not with the statement that a woman who has been raped will generally tell someone about it at the first opportunity.

agree	12
disagree	3
neither agree nor disagree	<u>8</u>
	23

13.

Q31(c) How important is the fact that the complainant waited at least 24 hours before telling anyone about the rape in suggesting that she consented?

very important	1
important	10
not important	7
not at all important	1
can't generalise	<u>4</u>
	23

CONSENT

Consent is of course the crux of many of the difficulties that the complainant faces during her passage through the criminal justice system. The complexity of the consent issue was evident from the amount of extra comments offered on this subject.

The issues discussed in the previous sections - previous sexual history, corroboration and early complaint - are all evidentiary elements that assume their importance because of their bearing on the question of consent.

Before looking at some specific suggestions for de-emphasising consent, we asked a few general questions about behaviour that some argue is consistent with lack of consent. Firstly we asked for views on general statements and then for an assessment of how important they are when ascertaining whether the complainant consented or not.

Q27 During our preliminary reading and discussions we encountered many statements either about the circumstances surrounding rape or about the conduct of a rape trial. A number of those statements are set out below.

Would you please indicate whether you agree with them or not.

	<u>Agree</u>	<u>Disagree</u>	<u>Neither Agree nor Disagree</u>
(a) rapes are usually accompanied by violence or threats of violence			
(h) it is unlikely that a woman has been raped if she did not scream or struggle at the time	22	1	0
(j) evidence as to the complainant's general character and behaviour (not sexual) is usually relevant to the issue of consent	1	19	3
	9	10	3

Q31 From your observation, how important are each of the following in suggesting the complainant consented:

	very important	important	not important	not at all important	can't generalise
(a) evidence showing lack of struggling on the part of the complainant	0	14	6	0	3
(b) inconsistencies in the complainant's account of the rape	1	16	4	0	2
(c) the complainant waited at least 24 hours before telling anyone about the rape	1	10	7	1	4
(d) evidence referring to the complainant's general behaviour and reputation	0	5	11	3	4
(e) lack of physical injury of the complainant	0	9	10	1	3

Weight of opinion suggests that lack of struggling and inconsistencies are important in suggesting the complainant consented. The first is an interesting conclusion in light of the general disagreement with the statement in Q27(h) which suggested women are likely to scream and struggle when being raped.

The above responses tend to the opinion that the complainant's general reputation and behaviour are not important to the question of consent (Q31(d)), a more differentiated result than that from the similar question 27(j) where there was marked lack of agreement on the issue.

There was no consensus on the suggestive effect of early complaint and lack of physical injury when ascertaining consent or not.

Because consent is so crucial yet at the same time has inherent difficulties for proof, the witness's credibility becomes an important factor. It is relevant to recall here in the context of consent two results reported previously. First that the cross-examination of the rape complainant is frequently longer and more insistent than it is in other trials and secondly, that there was general agreement that a main reason for this is to discredit her before the jury.

There have been a number of attempts in overseas jurisdictions to mitigate the difficulties associated with proving lack of consent by reformulating the substantive law. We realise it is difficult to deal with these alternatives in a questionnaire such as this, as the ramifications are considerable and their effectiveness is not yet established. However we wanted to broach the subject in a preliminary way by asking fairly limited questions and inviting comments. Judges were not asked to state whether they supported such changes or not.

Q32 In a number of jurisdictions, rape and other non-consensual sexual offences have been replaced by a ladder of degrees of unlawful sexual assault, graded according to circumstances of aggravation and attracting different maximum penalties. There are a variety of versions, an example being the recent New South Wales legislation:

Sexual assault category 1: inflicting grievous bodily harm with intent to have sexual intercourse (maximum penalty 20 years)

Sexual assault category 2: inflicting actual bodily harm or threatening to do so with intent to have sexual intercourse (maximum penalty 12 years)

Sexual assault category 3: sexual intercourse without consent (maximum penalty of 7 years)

Sexual assault category 4: indecent assault and act of indecency (maximum penalty of 4 years)

(a) Do you think a gradation of sexual assault (not necessarily the New South Wales example) would shift attention away from the complainant witness's behaviour onto the accused's behaviour to a significant extent?

yes	4
no	12
yes to categories 1 & 2	1
don't know	<u>6</u>
	23

(b) Do you think such legislation would alleviate the trauma of the rape trial for the complainant witness?

yes	3
no	15
yes to categories 1 & 2	1
don't know	<u>4</u>
	23

Obviously the weight of feeling is that this gradation would not alleviate the complainant's ordeal.

Three respondents commented that consent is still going to be an issue and it will operate much as it does now in that if bodily harm is inflicted, consent is unlikely to be so contentious and if it is not, New South Wales category 3 is similar to our current definition. Two respondents noted that the complainant will always find giving evidence an ordeal and 3 said they would be interested in knowing the effect of the legislation in N.S.W.

Other comments mentioned singly were a concern that a side-effect might be an even more casual attitude by young men to achieving intercourse without consent, that the gravity of the case is already a matter of importance in sentencing, and that if serious physical harm is inflicted, a person should be charged with that as well.

Q33 Another suggestion aimed at improving the trial experience for the complainant witness is to remove the consent element from rape completely and to replace it with a list of criteria (e.g. force, threats, coercion), proof of which constitutes an offence. Again there are a variety of models, one being Michigan's Criminal Sexual Act which does not expressly mention consent. Examples of circumstances in which sexual intercourse would be unlawful are listed on p21.

(a) Do you think legislation of this sort would shift attention away from the complainant witness's behaviour and onto the accused's behaviour to a significant extent?

yes	7
no	7
don't know	<u>9</u>
	23

(b) Do you think such legislation would alleviate the trauma of the rape trial for the complainant witness?

yes	3
no	11
don't know	<u>9</u>
	23

There was more indecision as to the effectiveness of this formulation than the previous graded model. There was more support (though not strong) for the possibility of it shifting attention away from the complainant and onto the accused, but not for the overall proposition of it lessening the complainant's trauma.

Four judges reinforced their answers (and these ranged over all options) that consent must remain an issue in sexual offences, another reiterated that submission due to force will not in practice be equated with consent and that juries readily understand this. There were two judges calling for evidence of the effectiveness of these measures from practising jurisdictions.

Q34 listed a number of circumstances envisaged in a model such as Michigan's and asked in which, if any, absence of consent to sexual intercourse and therefore unlawfulness should be presumed. Endorsement does not necessarily indicate that the respondent supports this approach and some only answered based on a postulation that the law would change. Eight judges made their opposition to such a change clear by endorsing "none" and/or commenting that consent can never be presumed or that the idea is too simple and it must remain a question of fact.

Q34 Upon proof of which of the following circumstances, if any, should absence of consent to sexual intercourse and therefore unlawfulness be presumed:

(a) none	8
(b) infliction of grievous bodily harm	11

(c) infliction of bodily harm on the victim or another	7
(d) threats of bodily harm with an offensive weapon	11
(e) overcoming the victim by force or violence	11
(f) coercion to submit by threats of force or violence to the victim	11
(g) coercion to submit by threats of prior violence to a third person	8
(h) coercion to submit by threats of future punishment (including physical and mental punishment, extortion or public humiliation or disgrace) to the victim or another	5
(i) mentally incapacitating the victim by administering drugs	12
(j) impersonation	12
(k) fraud as to the character of the act	13
(l) exploitation of the victim by a close relative or by a person in a position of trust or authority	5
(m) mental deficiency of the victim	10
(n) submission while being unlawfully detained	6
(o) where the victim is under a specified age	9
(p) sexual penetration occurs under circumstances involving the commission of any imprisonable offence	1

Three judges qualified their responses by continuing the theme that in practice now consent is not an issue when force and bodily harm are involved and that consent is negated without the need of presumptions. Another noted that these situations are adequately covered by a direction to the jury of what amounts to consent. One comment was that the presumption of absence of consent in these circumstances should be rebuttable, to cover situations where gratification is in part derived from the infliction of pain.

Q35 offered the opportunity for any further comments on the issue of consent in rape cases and elicited the following comments:

"Because absence of consent is basic to the present definition of rape a trial glaringly focuses upon it and therefore on the victim. In no other crime are the actions of someone other than the accused so critical to the commission or not of the crime charged. At the very least the emphasis is misplaced and ought to be changed".

"The distinction between lawful and unlawful intercourse must be clearly maintained".

"[I] repeat that it is a question of fact. In a very few cases such as an imbecile or drunken victim a more careful direction to the jury is required. You will not help the judge by trying to enforce it in statutory language".

COURT PROCEDURES

As well as the difficulties implicit in the consent element of the offence and the evidentiary complexities which ensue, the complainant also has to run the gauntlet of the court hearings.

Preliminary Hearings

Once the decision to prosecute has been taken, the complainant's first major contact with the court process is the preliminary hearing. Although not necessarily so, the complainant more often than not, gives detailed evidence and is cross-examined on it. It is claimed that depositions are as harrowing as the trial itself and some people have suggested that a preliminary hearing in the form we have it now is not necessary to establish a prima facie case. We asked judges what they considered the most appropriate procedure for a preliminary hearing of a rape prosecution.

- (a) the complainant witness never appear in person to give oral evidence or to be cross-examined on written evidence 1
- (b) the complainant not appear in person for the purpose of evidence except at the discretion of the court 1
- (c) the complainant not appear in person for the purpose of evidence except at the discretion of the defence 4
- (d) the complainant not appear in person for the purpose of evidence except at the request of the defence 1
- (e) the complainant appear to give evidence unless the defence agrees to her giving evidence by written statement 11
- (f) the court always be closed when the complainant witness gives evidence, unless the court orders otherwise 0
- (g) the court have the discretion to decide to hear the complainant's evidence in camera 1
- (h) committal proceedings be abolished for all offences but a proof of evidence of each prosecution witness be made available to the defence in the form as is now done for depositions 1
- (i) combination of (c) & (e) above 3

The continuation of the current situation was obviously the most popular, with a slight change of emphasis to written depositions as the norm being the choice of 4 others, while 3 endorsed the present situation with the addition of in camera hearings during the complainant's deposition.

The accompanying explanation to the one endorsement of option (b), i.e. complainant not appear in person except at the discretion of the court, was that her appearance should be required where there is special reason to test her credibility and in any other circumstances where fairness to the accused makes her appearance essential.

The 4 judges who endorsed the change of emphasis in option 3, thought the defence would exercise this discretion "frequently" or "sometimes". One further comment was that the defence's right to see and hear the complainant should not be lightly taken away.

One further question on this topic asked who is the most appropriate judicial officer to preside over preliminary hearings of rape charges. There was a strong majority in favour of a district court judge without the present option of justices of the peace.

justices of the peace	0
a district court judge	16
justices of the peace or a district court judge depends on the nature of the case	6
	<u>1</u>
	23

There were a couple of comments reinforcing this result, one being particularly strong:

"Depositions heard by justices of the peace is the area of greatest weakness in rape trials. Lack of knowledge and lack of proper control over conduct of proceedings by justices causes more distress to complainant than any other aspect of trial procedure".

The one comment made in support of the status quo said that rape should not be treated differently from other major offences, especially other sexual offences.

Juries

The relative role of men and women on rape juries is subject to considerable discussion and speculation. A few questions asked the experience of judges in this area.

Q9 Do you think there are generally more men on rape juries than on other juries?

yes	7
no	13
don't know	<u>2</u>
	22

Because we could not anticipate this answer, four questions were designed to discover some of the dynamics involved if it was generally thought rape juries are of a different composition from other juries. Although this is not supported by the above result, the results of the further question are given here.

Q27 Do you agree or disagree with the following statements:

	<u>Agree</u>	<u>Disagree</u>	<u>Neither Agree nor Disagree</u>
in rape trials, the defence usually tries to avoid women jurors	8	9	6
in rape trials, the prosecution usually tries to avoid women jurors	0	18	5
in rape trials, the defence usually tries to avoid men jurors	0	17	6
in rape trials, the prosecution usually tries to avoid men jurors	0	18	5

The general conclusion from the above would seem to be, that neither the defence nor the prosecution selects jurors on the basis of sex. The only deviation from this is the 8 who agree that the defence tries to avoid women jurors. Further comment on this course of action is discussed in relation to Q10:

Q10(a) In your experience, are men or women jurors more likely to acquit persons accused of rape?

Men are more likely than women to acquit	1
Women are more likely than men to acquit	4
No difference between men and women as to likelihood of acquitting	14
don't know	<u>4</u>
	23

The explanation for the one response that men are more likely to acquit than women was that women are both more competent and more confident in assessing a complainant's credibility; women seem to be prepared to follow their judgment and will convict where men will not.

All 4 who think women jurors are more likely to acquit than men jurors gave the same reason: women tend to be harder on their own sex and if they think there is an element of "having asked for it" they are likely to acquit.

A comment from one who perceived no difference between men and women jurors was that the judge seldom has any knowledge of the jurors' attitudes.

Prohibition of Publication of Complainant's Name

Q8(a) How often in your experience is an order made permitting publication of the complainant's name?

always	2
frequently	1
sometimes	1
rarely	4
never	12
don't know	<u>3</u>
	23

(I suspect the 2 "always" read 'permitting' as 'prohibiting').

Q8(b) From your observation has this provision had a beneficial effect for the complainant witness?

yes	8
no	2
don't know	<u>12</u>
	22

When asked in what circumstances an order is likely to be made, 7 said it was hard for them to envisage any, 6 said if the complainant had given false evidence, 1 if the complainant specifically asks for it, and 1 when it is sought by prosecuting counsel.

An associated question in terms of the complainant's anonymity was Q4(a) which asked if it is necessary for the complainant to publicly state her full address in court. 18 said 'no', 1 'yes' and 2 said it depends on the case. The reason given for the one affirmative answer was that criminal trials should be in open court and the accused is entitled to know full particulars of the complainant. He added that publication of name is almost always suppressed as would be her address.

The Trial and Cross-Examination

It was established earlier that the majority of judges agreed that the trial is more traumatic for the rape complainant than it is for complainants in other serious offences, that the cross-examination is generally more prolonged and insistent and that one of the main reasons for this is to discredit the complainant before the jury. In the light of this and the general acceptance that the complainant's involvement needs improving, we asked judges how strongly they favoured six possible sources of protecting the complainant's interests during the High Court trial (Q38).

22.

	strongly favour	favour	neutral	oppose	strongly oppose
(a) more active protection on part of the crown prosecutor	0	3	12	5	1
(b) court appointed representation for the witness	0	0	3	14	5
(c) private representation for the witness	0	0	2	13	5
(d) advice and assistance from member of a support group	4	8	5	4	1
(e) greater Court control of procedures and evidence	0	1	13	6	1
(f) non-legal representation for the witness	0	0	3	10	9

The only suggestion favoured by a substantial number of respondents was advice and assistance from a member of a support group. More active protection by crown prosecutor was favoured by only 3 and greater Court control by only 1, and on balance respondents were neutral about these two options. The remaining three suggestions (court appointed, private, or non-legal representation for the witness) were on the whole opposed as means of protecting the complainant.

A variety of comments followed this question, the most usual being the need for sympathetic support from friends to sit through court with the complainant. Two judges noted that the crown prosecutor must be left to conduct his case without interference.

Q42 gave respondents a final opportunity to comment or make suggestions in relation to reducing the trauma for the rape complainant. These comments are reproduced here.

- \* Sound amplification and evidence recording systems are important, especially with young complainants or those with limited English. It must be very difficult to speak in an unusually loud voice for a considerable period.
- \* Should consider seating distressed witnesses.
- \* Better methods of dealing with and investigating complaints.
- \* Complainant not appear in person to give evidence or be cross-examined at depositions.
- \* If defence has no objection, her evidence in brief could be read from the depositions or other statements and she asked to confirm it. This of course would not prevent cross-examination.

23.

- \* Counsel are generally as considerate as possible in their cross-examination of rape complainants - if only in order to not alienate the jury.
- \* A friend of court or policewoman should sit with her or beside her when giving evidence.
- \* There is a real danger of concentrating on the undoubtedly traumatic effect on the victim to the exclusion of the right of an accused to a fair trial. I have seen many false complainants who did not deserve the protection given to them.
- \* In 10 years as a prosecutor and 14 years as a judge the "trauma" has not manifested itself to any marked degree.
- \* I doubt if anything will relieve the sensitive, the shy and those who feel humiliated by the public statement required, of the pain involved in giving evidence. Some parts of the difficulties are common to other offences.
- \* I strongly favour a move away from the emphasis on present ingredients and issues to the violence which is so often involved - am attracted to N.S.W. legislation.

MISCELLANEOUS ISSUES

Q37(a) Section 339(1) Crimes Act provides that a person may be convicted of a crime, though not charged with it, if it is included in the description of the crime charged. Section 339(2) Crimes Act excludes rape from this general provision and states "the accused shall not be found guilty of any charge other than rape or an attempt to commit rape".

Do you think it is necessary for rape to be excluded from the general rule?

yes	4
no	<u>18</u>

22

Reasons given for the affirmative answers were that rape is a very serious charge and this ought not be laid unless there is a real intention of establishing it; that if further alternatives are appropriate, further counts can be added under s.340; there are no other crimes which can be charged which are encompassed in the description of rape.

It is evident that there are some evidentiary and procedural rules relating to rape offences which do not have general application. Q39 asked which of these special rules should be retained regardless of other changes to the substantive or evidentiary law. This prompted the following thoughts.

Four judges mentioned evidence regarding early complaint, 3 mentioned prohibition on publication of complainant's name and 3 mentioned the provisions relating to previous sexual history. Corroboration requirements were mentioned twice, one supporting a relaxation of the rules. Other matters mentioned once were the definition of sexual intercourse, lack of consent, absence of honest belief that complainant was consenting. 2 judges said there are no special rules and another said it should be treated like any other serious crime in substantive and evidentiary law, but it is unrealistic to ignore the sexual element of rape offences.

### THE ACCUSED

Although the focus of this study is the rape victim, the rape accused must not be lost sight of. The basic issue from the accused's point of view is of course the final verdict. As the results below show judges do not on the whole think rape accused are acquitted or discharged at a different rate from accused in other trials. Reasons given by the few who answered that acquittals happen "more often" related to consent being the crucial issue and to the corroboration direction. One reason given for "less often" acquittals was that juries do not waste sympathy in rape cases, presumably this refers to sympathy on men accused of rape.

Q36(a) Do you think that compared with other High Court trials, persons accused of rape are acquitted or discharged

more often	3
about the same	12
less often	2
don't know	<u>5</u>
	22

Apart from this basic question we asked a couple of question about whether the accused faces special problems when compared with non-rape accused.

Q7(a) From your observation, does the accused in rape trials face any particular problems which are not faced by accused in other cases of offences against the person?

yes	8
no	12
don't know	<u>1</u>
	21

The 8 who answered "yes" were asked what the special problems are. Three mentioned difficulties arising because of the element of consent - it is subjective, personal impression of accused is vital, and the risk of untruthful evidence is greater. 4 mentioned prejudice and feelings of hostility from others, particularly, one noted, in bad cases (e.g. young victims, substantial injury, gang rapes) where jurors are openly sceptical of defences offered. Other problems noted were embarrassment in non-violent cases, concern for effect on his own marriage, and sensitivity in discussing intimate sexual matters.

Q43 was a final chance to comment on or make suggestions as regards special problems of the accused:

- \* I think most accused get a fair trial and most victims are fairly heard under the present system.
- \* Accused men can suffer from undue attention being given to the complainant, and from the assumption that a complainant has indeed been raped.
- \* I am concerned by the increasing number of Polynesian men arriving before the court whose ideas of sexual behaviour are totally different from those of the judge and jury. Interpreters are inadequate protection.

### FINAL COMMENTS AND AREAS FOR FURTHER IMPROVEMENT

Although this study is oriented towards the rape victim, we acknowledge that this must be only part of a wider appreciation of rape.

We therefore asked judges what they consider to be the three most important things that need to be improved in dealing with the problem of rape.

Victim services	15
Legal reform	8
Sentencing	1
Police investigative techniques	12
Prosecution policies	0
Treatment and rehabilitation of offenders	3
Public education	18
Police training	4

Interestingly, the three options receiving easily the greatest endorsement - victim services, police investigative techniques and public education - are mainly outside the Court part of the process.

Judges were given a final opportunity to make any comments not covered in the questionnaire. Most were of a general nature, plus one more specific one:

"In my view, much of what is being said these days about rape trials was true before the passage of the Evidence Amendment Act but is not valid today".

"Whilst consideration must obviously be given to the complainant, it is to be remembered that not every complainant is a victim, and not every accused is guilty".

"From the nature of the case it is inevitable that a complainant will find the giving of evidence a painful experience .... I would say that there is a good deal of misapprehension as to the stance adopted by defence counsel in these cases at the present time. I have found that counsel are as considerate as possible in their cross-examination of rape complainants - if only because they are conscious of the fact that any other approach will alienate the jury".

"The present difficulties arise as much from not achieving a sufficiently high standard of performance from all participants of the trial process as from the procedure itself".

"We are not using available medical knowledge about the ageing of spermatazoa, nor fully applying the available knowledge of grouping blood and other body fluids. We have finally decided that motorists may be asked to supply blood. I should be happy to extend this principle to defendants in rape cases, but doubt that my view would be accepted by a majority of judges or lawyers".

### THE LAWYERS

First, general criminal experience as prosecutor and defence counsel (Q55):

	Experience at	
	<u>Prosecuting</u>	<u>Defending</u>
a lot of experience	12	12
some experience	6	9
only a little experience	3	2
no experience at all	<u>10</u>	<u>9</u>
	31	32

Three claimed to have done a lot of both prosecuting and defending in criminal trials. All 10 with no prosecuting experience had "some" or "a lot" of defending experience, and 8 of the 9 with no defending had "some" or "a lot" of prosecuting experience.

More specifically in relation to rape, we asked if recently he/she had been more involved in prosecuting or defending rape trials (Q57):

#### Involvement in rape trials

prosecuting	16
defending	13
about the same amount of prosecuting as defending	<u>1</u>
	30

As many of the issues divide on the basis of prosecuting vs. defending, it was gratifying for the purposes of analysis to see we obtained relatively even numbers of prosecutors and defenders.

Q56 asked how many rape, attempted rape and assault with intent to rape trials or appeals the lawyer had acted in during the last 3 years. Of those who specified, the range was from 0 to 28, the median number being 4 trials.

### THE COMPLAINANT'S TRAUMA

It is necessary to restate the terms of reference which set the focus of the study and in particular the emphasis of this questionnaire survey:

"The perspective of the victim will therefore be the point of reference for an analysis of any legal and procedural changes that are deemed necessary to mitigate the ordeal to which rape victims are subjected".

The terms of reference also assumed that the accused's rights would not be overlooked. Albeit the victim focus is very evident in the questionnaire and it was only reasonable to ask respondents if they felt the basic assumption - that the complainant's involvement in the criminal justice system needs improvement - is justifiable (Q5). It was obvious in analysing the responses, that some respondents felt irked by this emphasis, which is borne out in the results below, but for all that there is greater support for the proposition than rejection.

<u>victim assumption justifiable</u>	<u>prosecutors</u>	<u>defenders</u>	<u>others</u>	<u>total</u>
yes	11	8	1	20
no	5	5	1	11
other	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>
total	16	13	3	32

Comments from the 11 who did not support the assumption included that it would be difficult to achieve such improvement without increasing the risk of injustice for the accused; that the trial is between the accused and the state, not the complainant; that she should be treated with the compassion and dignity due to all witnesses; and why not improve the accused's involvement.

Comments from the 20 agreeing with the assumption included that in practice it is the complainant who is on trial and many complainants are more damaged by the court experience than by the rape; that the focus would be shifted away from the complainant and onto the accused by emphasising the violence and aggression of rape rather than the sexual particulars; that all the complainant expects is a little sympathy; that the complainant's understanding of the system needs improving; that there could be improvements at the investigation stage and when giving evidence e.g. being seated; that a proper perspective must be maintained, i.e. the accused is on trial for a serious offence.

A number of questions were directed at the nature of the complainant's ordeal. It is agreed that the trial is generally a more traumatic experience for rape complainants than other complainants (Q3), though the answers to Q5 seem to indicate that this does not arise from ignorance of how the giving of evidence and cross-examination will proceed.

Q3 From your observation, is the trial generally a more traumatic experience for rape complainants than it is for complainant witnesses in trials dealing with other offences against the person?

yes	29
no	<u>3</u>
	32

Q5 In your experience are complainant witnesses generally aware of how the trial will proceed in respect of their giving evidence and the cross-examination?

yes	24
no	1
don't know	<u>7</u>
	32

The cross-examination is often cited as a harrowing experience and a few question related to this.

Q6(a) In your experience is the cross-examination of the complainant witness in rape cases more prolonged and more insistent than in other cases of offences against the person?

always	1
frequently	12
sometimes	15
rarely	4
never	<u>0</u>
	32

Although the above does not give an unqualified response, the general impression is that cross-examination in rape trials tends to be more prolonged and more insistent than in other serious trials. Of the 13 who responded that they are "always" or "frequently" longer, 9 continued to say this is generally necessary to establish the facts of the case and the reasons given for this mostly revolved around the fact that consent is subjective and therefore the facts have to be thoroughly tested. Other reasons noted were that the jury's opinion of the worth of the complainant's evidence is important, that some inconsistency may be found, that cross-examination can paint a picture favourable for the accused, but on the other hand prolonged cross-examination can be harmful for the accused.

Q32(i) endorsed these later ideas when it asked if respondents agreed or not with this statement:

Q32(i) One of the main reasons for detailed cross-examination of the complainant witness is to discredit her before the jury.

agree	25
disagree	6
neither agree nor disagree	<u>0</u>
	31

Similarly, Q32(b):

Q32(b) Compared with other offences rape trials emphasise the victim's behaviour more than the accused's behaviour.

agree	17
disagree	9
neither agree nor disagree	<u>5</u>
	31

The majority agree that the victim's behaviour is emphasised more in relation to the accused than in other trials, again a possible source of trauma.

### THE DEFINITION OF RAPE

This section discusses the definition of "sexual intercourse", gender neutrality and husband's immunity in relation to the definition of rape.

#### Definition of "sexual intercourse"

Q33 presented respondents with a list of acts and asked which would they include in the definition of sexual intercourse for the purposes of defining rape. The following table shows the frequency with which each was endorsed.

vaginal penetration by the penis	29
anal penetration by the penis	17
oral penetration by the penis	12
cunnilingus	5
vaginal penetration by other parts of the body	5
anal penetration by other parts of the body	5
vaginal penetration by means of inanimate objects	10
anal penetration by means of inanimate objects	9

Thirteen thought that only vaginal penetration by the penis should constitute sexual intercourse.

Comments from those not wishing to see the definition expanded say "rape is rape" and that these other acts are adequately provided for in indecent assault or other offences. It was pointed out by proponents of an extended definition that serious acts go beyond indecent assault and that indecent assault would need an appropriate maximum penalty. Some say that if extended, the label "rape" should be dropped.

One respondent who wished to see some extension discussed at length how the law today does not recognise that some of these degrading indignities are essentially sexual, with an equivalent level of intimacy as the traditional definition, and can be the worst of the victim's ordeal.

#### Gender Neutrality

Q34 asked whether rape should be defined so that it is sex neutral, i.e. committed by males or females on males or females. Responses were evenly divided with 17 lawyers answering "yes" and 14 answering "no".

Once again the negative response was endorsed by the idea that rape is what we know it as now, that such changes would not reflect the social situation, and that other offences cover the other permutations.

A number of comments associated with the affirmative response noted the outmoded nature of the offence which originates from times when woman were considered man's property. It was argued that this is no longer relevant today, rather it is an invasion of the right to choose and women can do this too. Along the same lines, others noted that rape should be regarded as forceful, non-consensual sexual assault on another person, for which women should also be liable. Other points noted were that if rape is extended to include other acts, it should be sex neutral; that women can threaten harm in order to have sexual intercourse; that females can be accomplices (given on one occasion to support the proposition and on another to reject it).

#### Husband's Criminal Immunity

When asked about the exemption of criminal liability of husbands, 7 thought the exemption should be retained, 13 thought it should be abolished, 8 thought it should be abolished in cases of actual or threats of bodily harm, acts of gross indecency, or threats of the commission of a criminal act against any person, 1 thought it should be abolished in cases of actual bodily harm or of gross indecency.

Comments from those who wished the exemption to be retained included that there is no social need, that the appropriate remedy is divorce, and that the husband can be charged with indecent assault. Difficulties of proof were acknowledged by one who opted for retaining the exemption and by one who wanted it abolished.

Those endorsing abolition noted that juries are sensible enough to separate out the issue and that the corroboration warning would need to be retained.

### EVIDENCE

#### Previous Sexual History and the Evidence Amendment Act 1977

As explained in the report relating to the judges' questionnaire, it is difficult to discover the actual incidence of applications made pursuant to the 1977 Amendment to the Evidence Act in relation to the complainant's previous sexual history. Consequently and although it is not very satisfactory we hoped to glean some idea of its usage from this questionnaire source. Although it is imprecise the answers to Q13 indicate applications are not often made. Again, as with the judges' report, the following question about the frequency of granting applications is omitted because of its ambiguous phrasing.

Q13 In your experience how often are applications made pursuant to the Evidence Amendment Act 1977?

always	0
frequently	2
sometimes	11
rarely	13
never	2
don't know	4

32.

The next few questions were directed at the effect of the provision for both the complainant and the accused. First of all the complainant and the basic issue of whether her previous sexual history features less than it did previously (Q16) and whether this consequently has led to less distress for her (Q15(c)). Both questions drew forth a resounding affirmative answer from lawyers. There was also some concern that in an effort to discredit the complainant, emphasis may have shifted to the complainant's non-sexual character or reputation, but it was generally agreed that this has not happened (Q15(e)).

Q16 In your experience, does the complainant's previous sexual history with persons other than the accused generally feature less in trials since the introduction of the provision than prior to it?

yes	23
no	4
don't know	<u>5</u>
	32

Q15 In your view has the 1977 Amendment actually effected:

	<u>yes</u>	<u>no</u>	<u>possibly</u>	<u>don't know</u>
(c) less distress for the complainant during trial	20	6	1	2
(e) greater emphasis being placed on the character or reputation of the complainant in non-sexual matters	5	16	0	7

Looking at the effect on the accused, there were slightly greater numbers saying that the Amendment had caused greater difficulties for the defence in conducting its case, and as one might expect defence lawyers were more inclined to agree with this and prosecution more inclined to disagree. The balance of opinion was that it has not led to a greater likelihood of conviction, though this too broke down so that 7 of the 9 answering "yes" were defence lawyers and 9 of the 13 saying "no" were prosecutors. However there was a strong feeling that it has not caused greater injustice to the accused.

Q15 In your view has the 1977 Amendment actually effected:

	<u>yes</u>	<u>no</u>	<u>possibly</u>	<u>don't know</u>
greater difficulties for the defence in conducting its case	15	11	4	0
greater likelihood of conviction	9	13	7	0
greater injustice to the accused	2	18	5	3

The next questions sought to get some idea of the frequency with which the complainant's previous sexual history features in the trial when no application has been granted. As the figures below show it is not thought to be frequent, but seems to arise indirectly or by innuendo more often than directly (Q17 and Q19).

Reference to Complainant's Previous Sexual History when no Application Granted

	<u>Direct</u>	<u>Indirect</u>
always	0	0
frequently	1	3
sometimes	4	12
rarely	12	9
never	11	4
don't know	<u>4</u>	<u>4</u>
	32	32

None of the 4 "frequent" responses thought such reference was usually as a consequence of s.23A(4) which provides that leave to raise the matter is not required in certain circumstances.

Only 2 respondents thought the provisions incorporated in the Evidence Amendment Act 1977 need strengthening. One thought the provisions should also extend to indecent assault trials where consent is the issue, and another that the provisions should extend to previous sexual relations between the accused and the complainant.

Q21 asking for further comments on problems arising from the Evidence Amendment Act elicited various comments. Four respondents commented that the provision had made little difference in practice, 2 of whom went further to say that the judge's discretion to exclude irrelevant cross-examination was and should be sufficient. On the other hand 2 respondents noted that the provision had had a profound effect on the conduct of trials and in minimising distress, a view more in line with the overall view as shown in questions 16 and 15.

Three respondents said that sexual experience can be gauged from or an impression given by the complainant's attitude and demeanour in the witness box, from what other witnesses say of her, and from surrounding circumstances. The point was also made by 3 respondents that too much cross-examination on this topic can lose the jury's sympathy.

Two particular points made were one, in some cases, the sexual attitude of the complainant is indirectly very relevant as being objective evidence as to whether or not consent may have been given, and two, if denial of sexual intercourse is the defence and the prosecution's medical evidence shows she is not a virgin, then the complainant should always be cross-examined so as to establish previous sexual experience.

Corroboration

The mandatory nature of the corroboration warning has become an issue of considerable debate.

The explanation often given by judges to juries for the mandatory warning is that rape is easy to allege and hard to refute, a statement that derives directly from Lord Hale's centuries old dictum that "[rape] is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent".

In this context, we asked lawyers to indicate whether they think this explanation reflects the actual situation in New Zealand today by agreeing or disagreeing with the three statements below (Q25). Although the group who neither agree nor disagree is sizeable, the bulk of the remaining respondents agree with all three statements. Once again the responses are drawn up according to their camp. Prosecutors and defenders both agree with statement (a), but prosecutors tend to agree with statement (b) to a greater extent than defenders (12 : 3 respectively), and vice versa in respect to statement (c) (3 : 9 respectively).

	<u>Agree</u>	<u>Disagree</u>	<u>Neither Agree nor Disagree</u>
(a) it is easy to allege rape	21	3	7
(b) it is hard to prove a charge of rape	17	6	7
(c) it is hard to defend a charge of rape	15	8	9

Q23 asked about the effect of the current mandatory warning. The overall conclusion from the results is that the warning is more useful than not for the jury. Prosecution lawyers thought it can be confusing for the jury but defence lawyers tended to deny this. 12 of the 20 endorsing its usefulness in assessing facts were defence lawyers. 7 of the 8 who think it is detrimental to the prosecution happen to be prosecutors.

Q23 Do you think the requirement that the jury be warned of the need for corroboration:

	<u>Yes</u>	<u>No</u>	<u>Can't Generalise</u>
(a) abrogates the jury's fact finding role	0	21	1
(b) often confuses the jury	11	14	0
(c) is usually helpful for the jury in its task of assessing the facts	20	5	1
(d) is detrimental to the prosecution in that the jury gives undue weight to this aspect	8	16	1

Q24 asked what they thought would be the effect if the mandatory corroboration warning was abolished and replaced by a discretion to warn the jury where there was some evidence to suggest a false complaint:

Q24(a) Do you think the prosecution's burden of proving its case beyond reasonable doubt would afford sufficient protection to the accused?

	<u>prosecutors</u>	<u>defenders</u>	<u>both</u>	<u>total</u>
yes	9	1	0	10
no	6	12	1	19
don't know	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
	16	13	1	30

Q22(b) Do you think verdicts would generally be any different than they are now?

	<u>prosecutors</u>	<u>defenders</u>	<u>both</u>	<u>total</u>
yes	7	9	0	16
no	6	1	0	7
don't know	<u>1</u>	<u>1</u>	<u>1</u>	<u>3</u>
	14	11	1	26

It is evident that the majority think that the normal standard of proving the charge beyond reasonable doubt would not provide the accused with sufficient protection in the absence of a mandatory corroboration warning and that it would generally change the verdict from what it is now. In the former question the defence lawyers are mainly responsible for the "no" and the prosecution for the "yes", and vice versa in the second question.

When asked if they would favour such a change only 8 responded positively, all of them prosecutors, while 22 said they would not.

Comments from those supporting the change were:

"My concern about the present rule is twofold:

1. It is too complex and must confuse a jury hearing it for the first time.
2. It can have a very negative effect on a strong case i.e. strong in several aspects although nothing amounting to what the law regards as corroboration".

"It seems to me to be commonsense that there should only be a need to warn the jury if the defence raises false complaint - in most other instances the situation would be covered by other warnings, e.g. identification".

"As a prosecutor, I regard this as the area most in need of reform. The law relating to corroboration in New Zealand has become far too complicated and inflexible. An unfettered discretion to warn (or not to warn) is the best solution".

"The modern jury is capable of assessing evidence. It is an anachronism to suggest that a rape complainant will more readily or convincingly lie than (say) a victim of robbery. The warning is an unnecessary extension of the existing onus and standard of proof".

The gist of comments from 9 of those wishing to retain the mandatory warning was that it is a vital safeguard because of the emotive nature of the offence and that we should not increase the chances of convicting innocent people. Two said that it has proven to be an important rule, 2 saw it as an application of the prosecution's onus to prove the facts beyond reasonable doubt, and another 2 put the emphasis on its reinforcing the prosecution's case. Another comment was that more flexibility and less technicality in the way it is applied is needed.

Q26 asked for any other comments on the issue of corroboration warnings in rape cases.

The risk for the accused and the mandatory warning as necessary protection was mentioned by 4 respondents.

The actual expression of the warning was commented on by several respondents. Two noted that it could be confusing. One said that warnings should not be made in a manner that indicates an acquittal to the jury or that a higher standard of proof is required for rape than for non-sexual crimes. This respondent also noted that the skills of the individual judge are determinative in that those who deal simply and fairly with the issues and explain the law in a practical, commonsense way show that corroboration is valuable whereas those who get carried away with long explanations, or who deal with little but corroboration, help make the trial a lottery.

Other comments were that there always seems to be corroboration where the complaint has credibility; many cases of rape involve consent obtained by fear and it is very hard to obtain corroborative evidence in this situation; given the confusing nature of the warning, the simple issue for the jury should be whether they believe the complainant and are satisfied that she was raped; if there is no supporting evidence, comment could be made on that without the formal corroboration warning; the known ordeal of a trial is generally a safeguard enough against false allegations, thus removing one part of the historical rationale for the warning; in the experience of one respondent, the truthfulness of complainant witnesses in non-sexual cases had been more often doubtful than in sexual offence cases.

It is interesting to note that 7 of the 11 who answered Q49 about special issues that arise in appeals against rape convictions mentioned specifically problems related to corroboration arguments and misdirections.

#### 'Early Complaint'

The behavioural basis for the rule that allows admission of the evidence of when a victim did or did not complain is based on the assumption that a raped woman will tell someone at the first opportunity that she has been raped. An inference easily drawn from this is that a woman who delays complaining is more likely to be falsely complaining.

Q32(c) asked lawyers whether they agreed or not with the basic assumption. The responses are interesting for the large proportion who neither agreed nor disagreed with the statement. The balance, however, register agreement with the statement:

A woman who has been raped will generally tell someone about it at the first opportunity.

agree	14
disagree	6
neither agree nor disagree	<u>11</u>
	31

It seems to be generally agreed that a delay in complaining is important when consent is at issue:

Q36(c) How important is the fact that the complainant waited at least 24 hours before telling anyone about the rape in suggesting the complainant consented?

very important	7
important	20
not important	5
not all important	<u>0</u>
	32

Two other questions related to 'early complaint'. The first (Q27) is in relation to the jury's ability to heed evidence about 'early complaint' when considering the consistency of the complainant's evidence, but to ignore it when considering corroboration. The responses are relatively evenly distributed, with 17 thinking it is not reasonable and 14 thinking it is a reasonable expectation.

Despite these 14, no-one thought the rule should be abolished outright:

Q28 Do you consider the rule of evidence which allows admission of the evidence that a victim complained or did not complain shortly after the alleged offence should be

abolished	0
retained	15
retained with the proviso that the trial judge be required to warn the jury that there may be good reason why a victim may delay or fail to complain and does not necessarily imply falsity	<u>16</u>
	31

Eight of the 13 defenders thought it should be retained as is, while 10 of the 15 prosecutors thought it should be retained with a required warning. Four commented that the option to warn the jury about the reasons for delaying to complain is the prosecution's task and for the jury to decide, not the judge's. Two noted that this happens in practice now anyway. Three others would have opted for this if it had been couched in terms of "may" rather than "required".

Four respondents reinforced the importance of such evidence in assessing the credibility and consistency of the complainant's story, though not giving to corroboration. One thought a general comment on consistency preferable to the present corroboration direction.

CONSENT

It is the lack of consent element of the offence of rape that causes many of the problems in prosecuting and defending an allegation of rape and around which many of the evidentiary rules have developed. Overseas jurisdictions have experimented with reformulating the offence in the hope of avoiding some of the inherent difficulties. We asked a few questions about these alternatives, but first we report the results of the questions which sought lawyers' views about behaviour which is said to be consistent with lack of consent.

Q32 During our preliminary reading and discussions we encountered many statements either about the circumstances surrounding rape or about the conduct of a rape trial. A number of those statements are set out below.

Would you please indicate whether you agree with them or not.

	<u>Agree</u>	<u>Disagree</u>	<u>Neither Agree nor Disagree</u>
(a) rapes are usually accompanied by violence or threats of violence	25	1	5
(h) it is unlikely that a woman has been raped if she did not scream or struggle at the time	0	26	6
(j) evidence as to the complainant's general character and behaviour (not sexual) is usually relevant to the issue of consent	15	11	5

Q31 From your observation, how important are each of the following in suggesting the complainant consented:

	very important	important	not important	not at all important
(a) evidence showing lack of struggling on the part of the complainant	6	20	5	1
(b) inconsistencies in the complainant's account of the rape	13	13	6	0
(c) the complainant waited at least 24 hours before telling anyone about the rape	7	20	5	0
(d) evidence referring to the complainant's general behaviour and reputation	3	11	17	1
(e) lack of physical injury of the complainant	7	17	5	1

The answers suggest that inconsistencies in the complainant's account of the rape is particularly important when assessing consent, and that lack of struggling or injury also suggest she consented. However in Q32(h) nearly all respondents disagreed with the statement to the effect that a woman who didn't scream or struggle was unlikely to have been raped. The answers as regards the suggestive effect of the complainant's general behaviour and reputation are not at all decisive, a result reinforced by the responses to Q32(j).

The credibility of the complainant as a witness is important when consent is at issue. Previous results have already indicated that cross-examination of the complainant is generally longer and more insistent in rape trials and that one of the main reasons for this is to discredit her before the jury.

We turn now to the alternative formulations of rape introduced overseas. We realise the implications of these experiments cannot be adequately dealt with in a questionnaire such as this, but we did want to raise the possibilities and get some feedback on the possible effects of such schemes, particularly in relation to the complainant's ordeal. Respondents were not asked whether they supported change in any of these directions, and unless they stated this explicitly, the answers cannot be taken as supporting or rejecting these formulae.

Q37 In a number of jurisdictions, rape and other non-consensual sexual offences have been replaced by a ladder of degrees of unlawful sexual assault, graded according to circumstances of aggravation and attracting different maximum penalties. There are a variety of versions, an example being the recent New South Wales legislation:

Sexual assault category 1: inflicting grievous bodily harm with intent to have sexual intercourse (maximum penalty 20 years)

Sexual assault category 2: inflicting actual bodily harm or threatening to do so with intent to have sexual intercourse (maximum penalty 12 years)

Sexual assault category 3: sexual intercourse without consent (maximum penalty of 7 years)

Sexual assault category 4: indecent assault and act of indecency (maximum penalty of 4 years)

(a) Do you think a gradation of sexual assault (not necessarily the New South Wales example) would shift attention away from the complainant witness's behaviour onto the accused's behaviour to a significant extent?

yes	12
no	15
don't know	<u>5</u>
	32

(b) Do you think such legislation would alleviate the trauma of the rape trial for the complainant witness?

yes	10
no	19
don't know	<u>3</u>
	32

There is obviously no consensus about the effect such a gradation would have for the complainant during the rape trial, and there was no marked difference of opinion between defence and prosecution on this, though the latter were stronger in their denial of the benefits.

A recurring comment from four of those affirming the possible effects was that these changes would emphasise the violent, rather than sexual, nature of rape and therefore shift the focus away from the complainant and onto the alleged offender. One person who answered "yes" wished to discourage it all the same, because it lends itself to plea bargaining, and another noted that consent would still remain an issue in category 3.

This last point was also made by 3 of those who did not foresee changes for the complainant. Four others noted that the complainant will still have to relate events and suffer the distress of this; 1 that there is no trauma for the complainant; and 3 that the focus is on the accused who will be undergoing trauma too; and lastly 1 who commented that the degree of seriousness is taken care of in sentencing.

Q38 Another suggestion aimed at improving the trial experience for the complainant witness is to remove the consent element from rape completely and to replace it with a list of criteria (e.g. force, threats, coercion), proof of which constitutes an offence. Again there are a variety of models, one being Michigan's Criminal Sexual Act which does not expressly mention consent. Examples of circumstances in which sexual intercourse would be unlawful are listed on p55-56.

(a) Do you think legislation of this sort would shift attention away from the complainant witness's behaviour and onto the accused's behaviour to a significant extent?

yes	12
no	14
don't know	<u>6</u>
	32

(b) Do you think such legislation would alleviate the trauma of the rape trial for the complainant witness?

yes	8
no	19
don't know	<u>5</u>
	32

Again there was no conclusive feeling about the effectiveness of this "objective" model in shifting the focus away from the complainant, though the weight of opinion did not think it would alleviate her trauma.

Even those who thought this approach would have a beneficial effect for the complainant qualified their answers in a number of respects: the presumption must be rebuttable; the alleviation would only be limited because she would still have to relate details; even though it would alleviate trauma, this is not a good enough reason for making intercourse in such circumstances criminal per se; it would obscure the essence of rape; it would lead to plea-bargaining. One unqualified, positive response was that a gradation of offences gives the prosecution the opportunity at the outset of limiting the issues and so possibly spare the complainant the trauma which may be associated with the general charge of rape.

Most of the comments associated with negative responses reinforced their view that no difference would ensue: 2 saw force as a negative aspect of consent, and 2 that there will always be cases of genuine dispute over consent, particularly when no force was involved. Two comments were to the effect that such a formulation would result in more defences and the invention of technicalities, which would lead to greater cross-examination and a worse situation for the complainant.

Q39 listed a number of acts or circumstances in which sexual intercourse could be presumed unlawful. Lawyers were asked to endorse the ones where they thought this should be the case. Eleven made their opposition to this notion clear by endorsing "none". Four respondents did not answer the question at all.

That unlawfulness should never be presumed was a reinforcement from 4 who endorsed "none". A variation on this theme, that it must be a rebuttable presumption with the onus on the defence came from 4 who favoured some of the listed presumptions. Three who endorsed "none" and 2 who did not endorse any of the options, noted that most of these circumstances negate consent by inference anyway, and 1 said the law adequately covers these situations. Two commented on the fact that vigorous consensual intercourse could involve these acts.

Q39 Upon proof of which of the following circumstances, if any, should absence of consent to sexual intercourse and therefore unlawfulness be presumed:

(a) none	11
(b) infliction of grievous bodily harm	14
(c) infliction of bodily harm on the victim or another	10
(d) threats of bodily harm with an offensive weapon	9
(e) overcoming the victim by force or violence	14
(f) coercion to submit by threats of force or violence to the victim	9
(g) coercion to submit by threats of prior violence to a third person	9
(h) coercion to submit by threats of future punishment (including physical and mental punishment, extortion or public humiliation or disgrace) to the victim or another	8
(i) mentally incapacitating the victim by administering drugs	15
(j) impersonation	14
(k) fraud as to the character of the act	12
(l) exploitation of the victim by a close relative or by a person in a position of trust or authority	8

(m) mental deficiency of the victim	10
(n) submission while being unlawfully detained	8
(o) where the victim is under a specified age	8
(p) sexual penetration occurs under circumstances involving the commission of any imprisonable offence	0

Q40 asked for any further comments about the issue of rape. Six reiterated the point that consent is a vital and inherent issue in most rape cases, and that consent is a question of fact for the jury to decide. The following quotations demonstrate new ideas that arose from this question:

"More realism would be achieved in the whole area of consent if judges used their power to comment upon the failure of accused to give evidence or an explanation to the police. Rape involves (usually) a one on one situation and it is unbalanced for one victim to have to give evidence and for her evidence to be subject to warnings when the only other party who was there can sit silent with impunity".

"Consent must always be at the heart of these cases and always will be but abandonment of the necessity to put sexual matters in the charge will assist victims".

"Under present law I believe that juries expect young girls to act as mature women and therefore tend to find that they consented if there is no accompanying violence proved".

"Lack [of consent] should be presumed (but not conclusively) in "blocking" situations".

#### COURT PROCEDURES

Bearing in mind the difficulties the complainant faces as she progresses through the criminal justice system, a number of questions related to procedural factors from the depositions stage through to the trial, plus some on the conduct of the trial itself.

#### Preliminary Hearings

It is said that the preliminary hearing can be as much an ordeal for the complainant as the trial itself. Given that the main purpose of the preliminary hearing is to establish a prima facie case, suggestions have been made to lessen the direct involvement of the complainant. In this context we asked lawyers which of the following they consider to be the most appropriate arrangement for the taking of depositions in rape cases (Q1).

(a) the complainant witness never appear in person to give oral evidence or to be cross-examined on written evidence	0
(b) the complainant not appear in person for the purpose of evidence except at the discretion of the court	1
(c) the complainant not appear in person for the purpose of evidence except at the discretion of the defence	3
(d) the complainant appear to give evidence unless the defence agrees to her giving evidence by written statement	21
(e) the court always be closed when the complainant witness gives evidence, unless the court orders otherwise	4
(f) committal proceedings be abolished for all offences	1
(g) combination of (c) & (e)	1
(h) combination of (d) & (e)	1
	<u>32</u>

The current situation (d) is obviously the most favoured. One of the responses categorised as (c) was modified to the extent that the evidence in chief ought to be written, but the complainant should be available for cross-examination at the discretion of the defence. Two respondents thought this discretion would be exercised "frequently" and I thought "sometimes". Three respondents noted that the experience at the preliminary hearing can be useful to the complainant in preparing her for the High Court trial.

The one respondent who endorsed (b) went on to say that the court's discretion should only be exercised after a written application by the prosecution or the defence and envisaged that this would happen when complainants wanted to give oral evidence rather than do it for the first time at trial, or where the defence advised a desire to seek a discharge at depositions or to elicit information needed to prepare his defence.

The remaining question on preliminary hearings asked who is the most appropriate person for presiding over rape preliminary hearings. The majority considered a district court judge most suitable, though a large proportion opted for the current situation of either a judge or justices of the peace. Defence lawyers tended to find the current practice more satisfactory than prosecutors.

Q2 Which do you think is the most appropriate for preliminary hearings of rape charges?

depositions heard by Justices of the Peace	1
depositions heard by a District Court Judge	18
depositions heard by either Justices of the Peace or a District Court Judge	<u>13</u>
	32

#### Juries

The relative frequency of men and women on rape juries and the consequences of this is often subject to speculation and we asked lawyers for their views on this from their experience.

The basic question (Q11) produced an unusually equivocal response, with no differentiation according to prosecution or defence:

Q11 Do you think there are generally more men on rape juries than on other juries?

yes	14
no	<u>15</u>
	29

In the eventuality that rape juries were distinguishable from other juries in this respect, questions 32(d) to (g) were designed to look at some possible dynamics involved in the selection process. The responses indicate that the prosecution does not actively avoid men or women and that the defence does not avoid men. However there was lack of agreement on whether the defence avoids women jurors or not, and 10 of 12 who thought they do also thought that there generally are more men on rape juries.

Q32 Do you agree or disagree with the following statements:

	<u>Agree</u>	<u>Disagree</u>	<u>Neither Agree nor Disagree</u>
in rape trials, the defence usually tries to avoid women jurors	12	14	4
in rape trials, the prosecution usually tries to avoid women jurors	2	22	7
in rape trials, the defence usually tries to avoid men jurors	2	25	5
in rape trials, the prosecution usually tries to avoid men jurors	1	23	8

The more pertinent aspect was addressed in Q12, where the majority felt that there is no difference between men and women jurors as to the likelihood of acquitting persons accused of rape. Of those who felt there is some differentiation, the greater number thought women are more likely to acquit than men.

Q12(a) In your experience, are men or women jurors more likely to acquit persons accused of rape?

Men are more likely than women to acquit	4
Women are more likely than men to acquit	7
No difference between men and women as to likelihood to acquitting	17
Depends on the circumstances	2
don't know	<u>1</u>
	31

A common assertion in this context was that women jurors are more critical and able to assess the facts and the complainant's credibility and that women, particularly middle-aged ones, are more likely to judge the complainant as leading the accused on, particularly if its a situation that has "got out of hand" and particularly if consent is the issue.

#### Prohibition of Publication of Complainant's Name

Q10(a) How often in your experience is an order made permitting publication of the complainant's name?

always	3
frequently	1
sometimes	0
rarely	8
never	14
don't know	<u>3</u>
	29

Q10(b) From your observation has this provision had a beneficial effect for the complainant witness?

yes	17
no	3
don't know	<u>9</u>
	29

When asked in what circumstances an order permitting publication would be granted, 9 said when an acquittal followed an unfounded or malicious allegation, plus 2 who said it depended on the conduct of the complainant. Three said it is difficult to imagine, plus 2 who doubted such an order would ever be made.

An associated question was Q4(a) which asked if it is necessary for the complainant witness to publicly state her full address in court. 29 answered "no" and 1 answered "yes", on the grounds that, to ensure a fair trial, the complainant must be subject to cross-examination if required.

#### The Trial and Cross-Examination

The results established early on in this report that there is general acceptance that the trial is a traumatic experience for the rape complainant, that she is subject to long and insistent cross-examination often aimed at attacking her credibility, but that she is generally aware of how the trial is going to proceed in these respects.

Given that there is also a general acceptance that the complainant's lot needs improving, this section examines further some aspects of the conduct of the trial and suggestions for protecting the complainant's interest during the trial.

Respondents who have acted for the prosecution in rape trials were asked how many times they usually interview the complainant witness. Of the 18 who qualified, 7 said they usually did not interview her and 11 said once.

For 9 of the 11 who meet the complainant, the meeting is usually on the same day as the court hearing.

The usual purpose given for such meetings were said to be:

to introduce yourself	8
to discuss the rape event in order to prepare the case	3
to explain court procedures to the complainant	9
to explain the likely conduct of her examination and cross-examination	9
to give feedback to the complainant on how the trial is proceeding	1
to put complainant at ease	2
to explain the functions of the prosecutor compared with the defence	1
to explain that a not guilty verdict does not mean she was not raped	1
to ensure that the brief or depositions fairly conveys her patterns of thought and speech	1
to explore inconsistencies that arose at the preliminary hearing	1

These 11 prosecutors were asked for a few more details about case preparation, in particular the extent to which they rely on police officers (Q9(d)) and also to note any special procedures they use.

Q9(d) As prosecutor, to what extent do you usually rely on the police officers involved in the case in your preparation for the trial?

entirely	2
a lot	7
partially	1
a little	0
not at all	0
can't generalise	<u>1</u>

11

Case preparation obviously relies to a great extent on the police officers involved, a factor reinforced by 2 respondents who noted that they go over the whole file with the officer in charge and one who mentioned getting the officer's assessment of the complainant. Two prosecutors mentioned preparing the complainant by forewarning her of what will happen in court and why, and by ensuring that she is accompanied by a sympathetic person.

Questions 29-31 were asked of all respondents and were aimed at the difficulties involved in establishing the facts, especially when the accused elects not to give evidence at the trial.

Q29 At trials where the rape accused does not give evidence, is police evidence adequate to help clarify contentious facts of the case?

always	0
frequently	7
sometimes	14
rarely	3
never	1
depends	<u>1</u>
	26

Q30 How often is police evidence challenged, thus reducing the credibility of that evidence?

always	1
frequently	18
sometimes	9
rarely	2
never	<u>0</u>
	30

It would seem that lawyers think that the police's evidence is only sometimes adequate when it comes to clarifying contentious facts when the accused is not available for cross-examination, and that the police evidence is frequently challenged anyway, thus reducing its credibility.

Q31, which asked for suggestions for improvements to police procedures and investigative techniques in order to improve the quality of the evidence at rape trials, elicited the following ideas: a verbatim record of the police interview with the accused was suggested by 2 people and another suggested that the accused's statements be witnessed by an independent person; improvements in medical and forensic evidence (e.g. immediate vaginal swab, blood sampling) was mentioned by 4; improved techniques such as coloured photos of injuries, videotapes of the scene etc by 2. Other matters raised singly were that the complainant should be interviewed by a trained female police officer, greater efforts should be made in respect of independent witnesses to events involving the complainant before and after the rape, complete and frank discussion with defence to clarify issues before the hearing which might eliminate the need for a hearing. One respondent commented that the right to silence should remain a basic tenet.

Still within the context of the actual trial, we asked a few questions about the extent to which various people should be responsible for the complainant's welfare.

Q32(l) Prosecutors who deal with rape offences should be specially trained about the possible effects of a traumatic experience on the complainant.

	<u>prosecutors</u>	<u>defenders</u>	<u>total</u>
agree	6	8	14
disagree	8	4	12
neither agree nor disagree	<u>2</u>	<u>1</u>	<u>3</u>
	16	13	29

**CONTINUED**

**5 OF 6**

Q32(m) Defence lawyers in rape cases should be specially trained about the possible effects of a traumatic experience on the complainant.

	<u>prosecutors</u>	<u>defenders</u>	<u>both</u>	<u>total</u>
agree	4	5	0	9
disagree	9	7	1	17
neither agree nor disagree	<u>3</u>	<u>1</u>	<u>0</u>	<u>4</u>
	16	13	1	30

There seems to be overall agreement from both prosecutors and defence lawyers that defence lawyers do not need to be specially trained about the possible effects of a traumatic experience on the complainant. However, there is no consensus about whether prosecutors should undergo such training, and as one might expect it is the prosecutors who tend to disagree with the idea and defence lawyers who tend to agree.

Following on from the earlier questions which established that the complainant does undergo an ordeal during the trial, Q7 asked whether there is generally any scope for the prosecutor to do anything to minimise this:

Q7(a) Do you think there is generally scope for prosecutors to make a greater effort in minimising the complainant's ordeal during the preliminary hearing or the trial?

	<u>prosecutors</u>	<u>defenders</u>	<u>both</u>	<u>total</u>
yes	4	6	0	10
no	11	6	1	18
possibly	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
	16	12	1	29

The overall answer is no, prosecutors being more inclined than defenders to think this.

Q47 listed a number of specific suggestions for protecting the complainant's interest during the trial. Lawyers were asked how much they favoured each suggestion:

	<u>strongly favour</u>	<u>favour</u>	<u>neutral</u>	<u>oppose</u>	<u>strongly oppose</u>
(a) more active protection on part of the crown prosecutor	0	4	13	9	4
(b) court appointed representation for the witness	1	2	3	13	11
(c) private representation for the witness	0	0	4	12	13

(d) advice and assistance from member of a support group	2	15	8	1	5
(e) greater Court control of procedures and evidence	1	6	4	13	5
(f) non-legal representation for the witness	0	0	2	13	15

The only suggestion favoured by a substantial number was for advice and support from a member of a support group.

There was a fairly neutral reaction to more active protection from the crown prosecutor and general opposition to greater control of procedures and evidence by the court.

The more radical proposals of actual representation for the witness, whether this be court appointed, private or non-legal, were strongly opposed.

A number of comments following this question made the point that the prosecution's role is to remain impartial and not to seek a conviction regardless, and that the jury should not get the impression that the prosecution or judge is coming to the rescue of the witness unless defence counsel breaks the rules. Two other comments were that the defence should be allowed within reason to challenge the credibility of the person bringing the charge, and that representation for the witness could only prejudice the prosecution's conduct of his case.

Q51 was a final opportunity to make further comments or suggestions in relation to reducing the complainant's trauma. The following points were made:

"Rapid trial and avoidance of retrials (corroboration directions cause most retrials). Many so-called inconsistencies are the result of the passage of time. Until the case is over the complainant can't get her life in order".

"Counselling and support are important at beginning".

"A trained, experienced counsellor should be available if requested by complainant to help sort out emotional issues related to giving evidence".

#### POLICE, COURT AND SUPPORT SERVICES

It is evident from the preceding section that radical changes to the relative roles of the participants in the court proceedings is not a favoured course of action in order to alleviate the complainant's ordeal. This section presents suggestions for assisting the complainant in other arenas, whether they be prior to or during the court hearing.

Q32(k) established a general agreement (24 as against 2 who disagreed) to the proposition that police officers who deal with rape offences should be specially trained about the possible effects of a traumatic experience on the complainant.

Q41 then asked for other suggestions for improvements to police services or procedures which would assist the complainant at the time of reporting the offence and during subsequent investigation.

Better medical examinations were mentioned by 2 respondents - 1 said preferably the women's own doctor, the other that a female doctor is essential. One person mentioned that the sexual assault kit has standardised procedures.

Interviewing techniques were mentioned by 5 lawyers - greater training in interviewing, interviewing by experienced female officers, and an unobtrusive videotape of the interview if the complainant consents.

Crisis training, and a psychologist or specially trained social worker engaged in a similar capacity as counsellors in the family court were two other suggestions. Such a counsellor was suggested for all stages of proceedings.

One respondent repeated a list of improvements noted under Q31: verbatim record of interview be made and be admissible, and the accused be taken through this record and his comments likewise recorded verbatim and be admissible; videotapes of scenes and parties more effective than photos.

Other suggestions included bringing the complainant face-to-face with the accused at some stage if appropriate, a woman police officer to keep the complainant company at court, that few police stations have adequate reception areas, and the comment from 2 respondents that although the police must be sympathetic they must also maintain impartiality.

Q42 asked a similar question but this time in respect of improvements in official court facilities and services which would assist the rape complainant during the court proceedings.

The physical facilities were mentioned by 7 respondents, particularly the need for comfortable and private waiting facilities for witnesses before giving evidence and during adjournments and the fact that some court rooms used for depositions have no facilities. One spoke of the need for sound recording systems so that the typing skill of the judge's associate does not control the pace of the evidence.

Being seated to give evidence and giving evidence in closed court were also mentioned.

One lawyer made the point that a rape trial is between the state (not the complainant) and the accused, and as such the complainant ought to have the right to sue for damages reinstated.

Q43(a) Do you think there is a need for non-police support services for the rape complainant at the time she reports the rape to the police?

yes	18
no	8
don't know	<u>2</u>
	28

Q44(a) Do you think there is a need for non-police or non-court support services for the rape complainant during court proceedings?

yes	18
no	<u>9</u>
	27

Questions 43 and 44 looked at the need for support outside the realm of the official police and court services. The majority think such a need exists. The suggestions as to type of support needed when the complainant reports the offence and during the court proceedings were similar.

When asked for comments, 4 respondents voiced reservations about such support because the police investigations must not be prejudiced by well-meaning people, and 1 who went further and said he thinks such support is directed at the evidence and conduct of the case, and not primarily for the complainant.

However 15 thought there is a need for sympathetic support, 12 of whom qualified this by saying the support should be trained and/or experienced and specialist as required, and 3 who said it should be specifically from women. Rape Crisis Centres were specified on 4 occasions, once in a derogatory manner and the other 3 times laudatory.

Two specific suggestions were that there is a need for support services to provide information on police procedures and on the conduct of proceedings, and that support might well be provided by medical or para-medical practitioners who would insulate the complainant to some extent from the trauma of necessary police investigations and forensic procedures. It was added that this could also, through feedback, help eliminate false complaints.

#### MISCELLANEOUS ISSUES

Q46(a) Section 339(1) Crimes Act provides that a person may be convicted of a crime, though not charged with it, if it is included in the description of the crime charged. Section 339(3) Crimes Act excludes rape from this general provision and states "the accused shall not be found guilty of any charge other than rape or an attempt to commit rape".

Do you think it is necessary for rape to be excluded from the general rule?

yes	13
no	<u>18</u>
	31

Reasons given by those agreeing with the exclusion from the general rule include that rape has a nature distinct from assault, that the defendant should know the exact nature of the charge against him, that it is necessary because of the specific evidentiary rules of corroboration and complaint, that the jury's sympathy for the victim could make them opt for the lesser charge where evidence does not really support it or rape. One person noted that this would not be an issue if sexual assault replaced rape.

As a concluding question, Q48 asked which special rules relating to rape ought to be retained regardless of other changes to the substantive or evidentiary law.

Corroboration was mentioned by 7 lawyers, plus 2 more who said corroboration if rape retains its present definition. Another endorsed corroboration but wanted to see the words "danger to convict" dropped, and yet another thought corroboration should remain but in a more flexible form. Complaint was mentioned by 4 plus another who wished to see complaint retained with an explanation and another endorsed it if rape remains as it now is. The prohibition on previous sexual history was given by 4, consent as an essential element of the offence by 3, and the prohibition on publishing the complainant's identity by 4. One wished to see the present definition of intercourse retained, and 1 that there should be no presumptions and lack of consent should be proved beyond all reasonable doubt. Three respondents queried the existence of any special rules.

### THE ACCUSED

Even though it is not the subject of this study, the position of the accused cannot be far removed from any of these discussions. Comments from respondents made their concern about this clear. We asked a few questions about special problems pertaining to the accused in rape trials, though we acknowledge this has not been treated thoroughly in this study.

The accused's main concern is the outcome of the trial, and Q45 asked about his chances when compared with accused in non-rape trials. The weight of opinion is that rape accused are acquitted or discharged to a similar extent as other accused.

Q45(a) Do you think that compared with other High Court trials, persons accused of rape are acquitted or discharged

more often	7
about the same	15
less often	4
don't know	<u>4</u>
	30

Reasons given for "less often" acquittals were that in the given locality, there are few rapes, which ensures a high standard of police work and in the same area most rapes are gang rapes where the issue is not consent, but identity. Another said that juries are keen to convict for rape.

Reasons for "more often" acquittals reinforce difficulties arising because of lack of independent evidence as regards consent and the importance of the complainant's presentation in court:

"Of the frequently encountered major crimes, rape (and indecency generally) is regarded with the most circumspection by judges and juries. Persons charged with rape will be acquitted on evidence, the equivalent of which in a burglary or drug case or even a murder would almost invariably produce a conviction. The sad reality is that it is the victim who is on trial and penalties are invariably severe so juries won't risk a conviction unless they feel confident that the accused deserves a substantial prison sentence".

"Difficulty in satisfying jury of absence of consent especially where victim comes across in witness box as a poor type (e.g. associates with gangs)".

"The question of consent is so difficult to prove, a poor presentation or silly complainant can be sufficient. Conversely a modest presentation by an intelligent complainant is extremely hard to combat. In either situation, truth is soon irrelevant".

"Rape is a particularly difficult offence with its own special problems for the jury. Sometimes complaints are fatuous, ill-advised or the result of an apparent motive. It presents real difficulty for defendant and complainant by the general privacy of its nature and lack of independent witnesses".

Two questions asked after any problems faced by the accused in rape trials, which don't emerge in other trials.

Q8 From your observation, does the accused in rape trials face any particular problems which are not faced by accused in other cases of offences against the person?

yes	25
no	<u>5</u>
	30

Numerous problems were cited. Eight respondents mentioned public prejudice and disapproval, and 3 spoke in terms of personal stigma and reputation. Difficulty in discussing intimate sexual and emotional details was mentioned 6 times, and 3 respondents mentioned that the outcome depends on the jury's impression of the complainant, regardless of merit. Other aspects of the trial mentioned were that cross-examination which is acceptable in other cases increases sympathy for the complainant; that it is easy to allege rape and difficult to refute; the rare false allegation; the difficulty of getting independent evidence to exculpate the accused; that cross-examination on previous sexual matters can be a major problem where credibility is at issue; and "sloppy" medical and D.S.I.R. evidence.

Heightened public concern and sensational press were considered a problem, as was the prejudicial activity of extreme elements in Rape Crisis Centre and feminists organisations such as hissing in court and demonstrations outside court. That the accused sometimes knows the complainant can also be a problem.

Finally, Q52 asked for any further comments or suggestions as regards special problems faced by the rape accused.

This opportunity was taken by some to repeat that the accused must not be overlooked in any changes to the law, that new rules must not prevent him defending himself. Other difficulties mentioned included police and other organisations briefing complainants before the trial, police methods of extorting statements, incorrect and sensational reporting, and publicity making it difficult to get an impartial jury.

One commented that there is strong pressure for an accused to plead not guilty even if he wishes to plead guilty and that counselling, a different charge and a realistic sentencing range would help here. In a similar vein, one respondent suggested that the gradation of sexual assault would have the advantage that the prosecution could narrow the issues, leaving the defence to do likewise.

### FINAL COMMENTS AND AREAS FOR FURTHER IMPROVEMENT

Q53 acknowledged that the victim perspective is only part of a larger concern of rape and asked lawyers which three areas they considered to be in most need of improvement:

Victim services	18
Legal reform	8
Sentencing	7
Police investigative techniques	5
Prosecution policies	3
Treatment and rehabilitation of offenders	14
Public education	20
Police training	6
Reinstatement of citizen's right to sue for her injury	1
The assumption that appears to be gaining ground that the alleged victim is invariably honest and accurate	1
Adversary system shows up badly in rape cases and I would like to see an experimental family court type hearing	1

Three areas stood out as needing improvement - victim services, treatment and rehabilitation of offenders and public education.

These final remarks were made by those with the stamina to answer the final catchall question:

"I am quite satisfied that the answer suggested by highly politicised feminist groups is not the solution. Rape is a different offence from most in that the issue is consent or non-consent to human behaviour which is commonplace and regular. There is merit in graduating sexual crimes of all kinds from the venial to the gross. That may alleviate the pressure and difficulty to which complainants are exposed. No alteration is justified which increases the risk of conviction, of serious charges, of innocent people".

"More emphasis should be placed by the researchers on the purpose of the criminal law - not to regard a consideration of this purpose as being subsidiary to the victim's plight".

"The questionnaire assumes that every rape complainant is a rape victim. This is not necessarily the case. The whole purpose of a trial is to assess whether or not a rape occurred. If it did, was the accused the offender?"

"Aggression is part of the New Zealand way of life. Children observe parents solving their problems by hitting, smacking etc. They learn to model that behaviour. Some men learn to relate to women on that level only. Those accused of rape and convicted could be introduced to alternative strategies for approaching women. It means, however, a whole re-orientation of how children are brought up".

"True rape is very much a male aggression on a woman. Men have to be made to respect women more".

### SUMMARY AND POINTS OF COMPARISON BETWEEN THE JUDICIARY AND LAWYERS

It needs to be repeated that although all the attention of these two questionnaire surveys was focussed on the victim of a rape in her capacity as a complainant, the right of the accused to a fair trial will not be jeopardized. An uneasiness lest this should happen was apparent in some responses.

However it was agreed by most respondents that the trial is generally more traumatic for rape complainants than it is for complainants in other trials and that her involvement in the criminal justice system needs to be improved. The emphasis of the study is therefore justified in order that possible courses of action be conceived, raised for discussion and debated.

It is important to realise that perspective is an important ingredient in understanding rape and in assessing peoples' reactions to rape law. In this section, the results from the judiciary's survey are brought together with those from the lawyers' to see how they compare. Most of this comparison is done on the results from the specific questions put to respondents rather than from their extra comments in order to preserve a representative picture. It is evident that on some issues there is consensus, but on many there is considerable divergence of opinion, thus delivering a warning that the answers cannot be taken for granted.

Three specific matters were discussed under the heading "definition of rape" - widening the definition of sexual intercourse, making rape an offence which men or women can perpetrate on men or women, and abolishing the immunity a husband has in respect of raping his wife. There was generally a lack of consensus on these issues, though there was more support from lawyers for change than from judges. The stronger results in this section were that judges thought rape should not be sex neutral and lawyers tended to think that the husband's immunity should be abolished, either totally or in certain circumstances.

There was general agreement that the introduction of the Evidence Amendment Act 1977 has had the intended effect of reducing reference in the trial to the complainant's previous sexual history and consequently resulting in less distress for her. There was also agreement that it has not led to greater injustice but there was no consensus amongst judges or lawyers about whether it has resulted in a greater likelihood of conviction or to greater difficulties for the defence.

The topic of corroboration showed up some marked differences between judges and lawyers. The only point of agreement seems to be a general acceptance that it is easy to allege rape, one of the reasons given for the mandatory corroboration warning.

The weight of judge's opinion was that the mandatory corroboration warning is not usually helpful for the jury and that it actually confuses juries quite often. The differing perspectives of the defence versus the prosecution were evident in the lawyers' responses. Defence tended to think the warning is useful, prosecution did not. Prosecutors tended to think it is confusing and detrimental to the prosecution, defence lawyers did not.

On the question about whether the prosecution's burden of proving its case beyond reasonable doubt would afford sufficient protection to the accused if the corroboration was discretionary rather than mandatory, judges and prosecutor thought it would, but defence lawyers thought it would not.

All but two of the judiciary would favour a change away from a mandatory warning whereas lawyers would not. The few who did were, needless to say, prosecutors. The judges' willingness to forego the mandatory nature of the warning was most evident.

There was virtually no support for the abolition of the rule of evidence which allows admission of evidence that a victim complained or did not complain shortly after the alleged offence. Lawyers more than judges, and prosecutors more than defenders supported a proviso that the jury be warned that there may be good reasons for delaying or failing to complain.

There was no strong feeling that any advantages would accrue to the complainant from the reformulation of the substantive offence of rape into a gradated model as in New South Wales or into a list of "objective" circumstances as in Michigan.

As regards the former, judges thought it would not shift attention away from the complainant's behaviour and onto the accused's, nor would it alleviate her trauma. Lawyers were very much divided on these possible outcomes regardless of whether they were defence or prosecution.

The Michigan model produced a slightly different response. There was no consensus amongst judges or lawyers about its effect on shifting attention away from the complainant, but both groups agreed that it would not alleviate her trauma. A strong feeling came through the comments that consent to sexual intercourse should never be presumed, but should remain a question of fact.

The current situation as regards the degree the complainant is involved in the preliminary hearing was by far the most popular choice for lawyers and the judiciary. The judiciary strongly favoured depositions being taken before a district court judge and not justices of the peace whereas lawyers were divided on this. Defence lawyers tended to find the current situation (i.e. either before a judge or justices), which is in effect before justices, more satisfactory than prosecutors.

Lawyers were divided on whether there are generally more men on rape juries than on other juries and judges thought there is not. However there was a general consensus that neither the prosecution nor the defence tries to avoid men jurors and that the prosecution does not avoid women jurors. There was no consensus as to whether the defence tries to avoid women jurors.

It was accepted that attacking the credibility of a complainant is often a factor involved in cross-examination but suggestions for more active protection of her interests during the trial were not supported, particularly if it involved representation for the complainant in her own right. The only suggestion that was positively favoured was for advice and support from a member of a support group.

The topic of support was dealt with more fully in the lawyers' questionnaire.

On the question of training people who are involved with rape complainants about the possible effects of a traumatic experience on the complainant, it was generally accepted that police officers who deal with rape should receive such training, that defence lawyers should not, and a divided response as to whether prosecutors should or should not.

When asked for suggestions for improving police procedures and services and court services, numerous matters were raised but the most frequent involved improved interviewing of complainants with some specific suggestions in this regard plus improved court facilities, particularly private waiting rooms for complainants.

There was strong support for experienced and sympathetic advice from people outside the official system to support the complainant at various stages of her passage through the criminal justice system.

To bring the study back into perspective we were interested in the man accused of rape, to see if he is a special case in any way when compared with other accused.

From the experience of both judges and lawyers, the accused in rape trials are acquitted or discharged to a similar extent as accused in non-rape trials.

However whereas the judges were more inclined to think that rape accused are not faced with special problems, lawyers were fairly insistent that they are. Many different problems were given, but a lot revolved around public prejudice and the difficulties inherent in rape trials because of the lack of independent witnesses.

Finally we asked all respondents which aspects of rape they thought called for further improvement. It was interesting to note that victim services, which fall within the scope of this study, was high on the list for both judges and lawyers. In both cases public education was considered top priority. For judges the third priority was police investigative techniques, an issue that did not rank highly with lawyers. The lawyers' third choice was treatment and rehabilitation of offenders, which did not feature highly with judges.

RAPE STUDY - TERMS OF REFERENCE

A collaborative Department of Justice and Institute of Criminology Study on Rape. Directed by Mr M.P. Smith, Director, Planning and Development, Department of Justice and Dr Warren Young, Director, Institute of Criminology, Victoria University.

INTRODUCTION

Traditionally studies of crime have been offence and offender oriented and emphasis has been placed on descriptions of offenders. The victims of crime have tended to be neglected. Nowhere has this been more true than in the crime of rape.

This study on rape is being undertaken at a time when there is increasing public awareness of the problem of rape in the community and of the vulnerability of the rape victim in relation to the criminal justice system. It is clear that any study of rape in New Zealand needs to take a victim-oriented approach.

The validity of such an approach has been emphasised by the considerable volume of research overseas, particularly in the U.S.A. Most of this research has emphasised the problems of victims and the inadequacy of the response of the traditional criminal justice system to these. Moreover, experience in the U.S.A. with victim survey's (e.g. U.S. Department of Justice 1975) has shown that the incidence of forcible rape in the community is much higher than that indicated by official statistics. This is consonant with the experience of Rape Crisis Centres in New Zealand that a large proportion of rapes are not reported to the police. To date, though the problem of rape has been studied in some depth in Australia, little systematic research on rape has been done in New Zealand. It is appropriate therefore, not only to concentrate on the experience of the rape victim (particularly in the criminal justice process), but also to ascertain to what extent the findings of overseas research are relevant to New Zealand.

The underlying theme of the research will be concerned with the effect of rape on the victim and the victim's perception of the response of criminal justice system to a rape incident - from contact with police through the court process. There may be aspects of the present system which tend to inhibit women from reporting rape. Further, it may be that society's response, as embodied in the criminal law, may not be appropriate. Before any substantial changes can be considered there needs to be a greater understanding of the problem and its effects on the victim.

## OBJECTIVE

The objective of the proposed research will be to determine whether the law and/or the criminal justice system should be modified to accommodate the special problems encountered by the victim of rape and if so, how.

The perspective of the victim will therefore be the point of reference for an analysis of any legal and procedural changes that are deemed necessary to mitigate the ordeal to which rape victims are subjected.

For the purpose of the research a victim oriented perspective is also a convenient one. Though the act of rape itself can be regarded as society's problem, attention in fact becomes centred on the victim as the focal point of action, whether official or non-official. From a research point of view therefore, the activity consequent on the victim reporting rape, encompasses all stages of the criminal justice system. The victim's perception of her situation in relation to the law and official procedures is the thread that links all phases of the research. This view will be the crucial element in the formulation of any recommendations for improvement and change in the substantive, evidential and procedural law.

It should be stressed that an approach which emphasises greater consideration for the victim of rape can in no way detract from the responsibility of the court to ensure a fair trial for an alleged rape offender.

For our purposes we have delineated three stages for research:

1. Reporting/Not Reporting.
2. Police and Prosecution.
3. Court Proceedings.

For this research it is necessary to involve those within the community who have an interest in the problems of rape to see what their perspective and experience can suggest to improve the situation. As well as the victim, this includes those within the law enforcement and criminal justice system and those who have a support role. These are:

Support Groups	- Rape Crisis Centres Womens Refuges HELP Non-specific Support, Medical etc
Police	- National Headquarters 'Front line' staff Police surgeons
Lawyers	- Prosecution Defence

Judiciary

- High Court, Judges, District Court  
Judges and J.P.'s at the  
preliminary hearing level

) Psychological Services  
) Probation Officers

The main sources of information will be interviews with the people listed above, analysis of court files, official statistics and New Zealand and overseas legislation.

In addition, the Symposium on Rape planned for September 1982 will be an important focal point for the discussion of key issues relating to rape.

This study stresses the victims perspectives as this is where it is believed that something practical can be achieved. We do not wish to give the impression, however, of undertaking a major victim survey as this is not a feasible proposition in the time available. It is on the problems encountered by the rape victim in her dealings with the criminal justice system that the study will therefore concentrate.

## OBJECTIVES

### A. THE RAPE VICTIM & THE CRIMINAL JUSTICE SYSTEM

1. In order to review the substantive law: to investigate how the victim defines rape and her views of the relationship between rape, sexual assault and assault.
2. To analyse victim experience and perceptions in relation to reporting rape to the police:
  - (a) in cases reported to the police, analyse the victim's response to police procedures, including medical procedures, from the recording of the initial complaint to the decision to prosecute;
  - (b) in cases not reported to the police, establish the victim's reasons for non-reporting; and to whom she goes for assistance after the incident.
3. To obtain a victim perspective on and reaction to the court process, including the treatment in court proceedings, particularly in relation to the 1977 Amendment to the Evidence Act; the publicity aspect of the trial; the involvement of women in court proceedings (justices, jurors, lawyers, clerks) and whether this is helpful; delays and how these were explained; information provided about court procedures; relationship with lawyer; the outcome of the trial.

4. To obtain a victim perspective on the need for information, counselling, support during the prosecution and criminal justice processes.
5. To seek the victim's views on changes to the substantive, evidential and procedural law of rape.

B. THE VIEWS OF SUPPORT GROUPS AND SERVICE ON RAPE AND THE CRIMINAL JUSTICE SYSTEM

1. To obtain a view of the counselling/support needs of victims particularly during the prosecution and criminal justice processes.
2. To establish from counsellors and their records:
  - (a) the number and circumstances of victims who report rape to the police and those who do not;
  - (b) the reasons for non-reporting;
  - (c) particularly in relation to non-reported cases whether the rapist was known to the victim and where the rape took place.
3. To determine how the needs of victims are met or not met by police.
4. To determine how the needs of victims are met or not met during the court process, e.g. evidential implications; delays; information; explanations of court proceedings; what allowances are made for a counselling or family presence in court.
5. To seek support views on changes to police procedures and the substantive, evidential and procedural law of rape to improve the reporting and court experience for the victim.
6. To investigate the views of support groups on how to define rape and the relationship between rape, sexual assault and assault.

C. THE POLICE RESPONSE TO RAPE

1. To analyse the police process from the initial complaint of rape to the decision to proceed with prosecution in a number of police districts.
2. To determine how the police perceive the needs of the victim and to ascertain whether any special procedures are met to cater for these needs.
3. To establish the reasons why such a large proportion of reported rapes fall into the category of no offence disclosed (1979 60% of reported rapes, 1980 64% of the reported rapes).

4. To establish the attitudes of the police towards the present law, and how they might see changes in the law better meeting the needs of the victims.
5. To investigate the role of police surgeons in regard to the present rape laws and police and court procedures for rape prosecutions.

D. THE PROSECUTION AND DEFENCE LAWYERS' VIEWS ON RAPE AND THE PROSECUTION/COURT PROCESS

1. To inquire into the prosecution's and defence's views on the ordeal for the complainant of pursuing a rape prosecution through the courts with particular reference to difficulties arising from:
  - (i) the substantive law
  - (ii) evidentiary considerations and law
  - (iii) procedural aspects
2. From the point of view of the prosecution and defence lawyers' roles, are these difficulties described in (1) necessary? If so why, and how can they be mitigated?
3. Establish their views on the needs of the complainant at the time of making the complaint and on police procedures to cater for them.
4. Establish their views on the difficulties surrounding the police decision to prosecute.
5. Establish their views on the role of support groups, court staff, and others in assisting the complainant prior to the complaint, during police investigations and during the conduct of the court case.

E. THE JUDICIARY'S VIEWS ON RAPE AND THE COURT PROCESS

1. Inquire into the judiciary's views on the conduct of rape trials, with particular reference to difficulties for the victim arising from:
  - (i) the substantive law
  - (ii) evidentiary considerations and law
  - (iii) procedural aspects
2. From the point of view of the role of the judiciary, are the difficulties described in (1) necessary? If so why, and how can they be mitigated?

3. Establish the judiciary's views on the incidence and necessity of complainants being present and cross-examined at the preliminary hearing.
4. Establish their views on the role of support groups, court staff and others in assisting the complainant during the conduct of court cases.
5. To seek the views of the judiciary for the reasons why the proportion of not guilty findings is greater for rape than for other serious crimes.

**END**