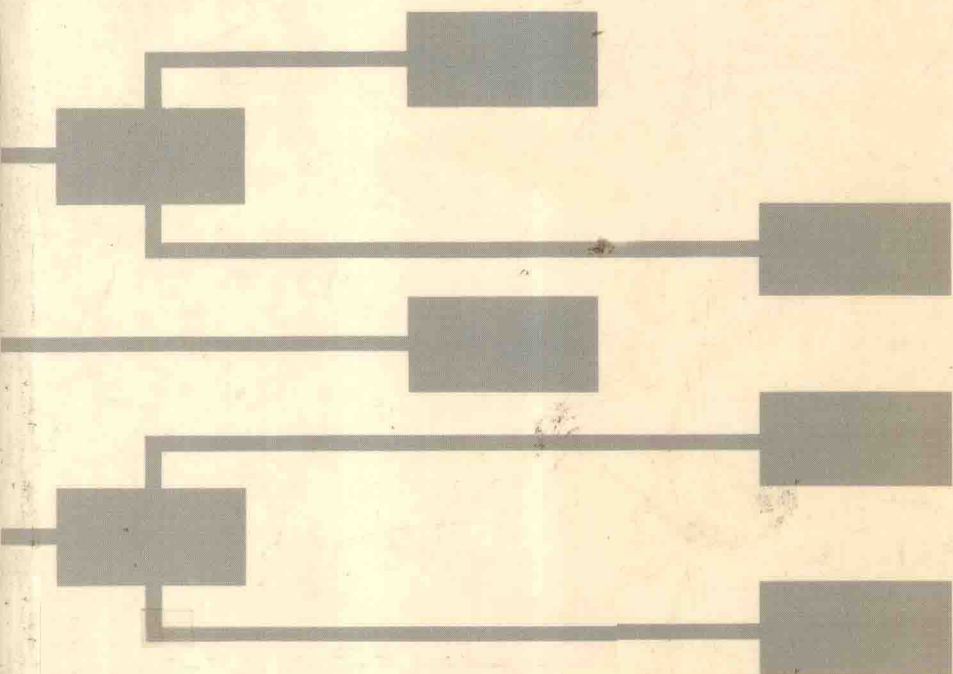


Rape and Criminal Justice

**The Social Construction
of Sexual Assault**



Gary D. LaFree

RAPE AND CRIMINAL JUSTICE

The Social Construction of Sexual Assault

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This book is dedicated to Shelly, Andy, and Kati

Preface

This book is a product of my experiences over the last 10 years observing trials, interviewing police officers, prosecutors, defense attorneys, and judges who process criminal cases, and working as a researcher in the felony section of a prosecutor's office. These experiences have led me to the conclusion that there is rarely such a thing as a definite truth in the legal system. Instead, the application of law to behavior is a task in which officials with imperfect vision are asked to measure outcomes (like determination of guilt or innocence and degree of culpability) that are obscure and constantly changing with a measuring stick (i.e., the law) that is itself malleable and inconstant. On the other hand, my experiences have made me feel just as strongly that violent personal crimes are all too real, oftentimes exacting an enormous cost on society, both directly through victimization and its aftermath and indirectly through the fear of victimization.

I want to make it clear at the outset that this book is more of an attempt to explain the application of law in rape cases than it is an attempt to understand the causes and consequences of rape. There are already a great many fine books and articles that deal exhaustively with the characteristics of rape victims and offenders, the consequences of rape for the victim, and the potential causes of rape. In contrast, this book examines the legal processing of rape cases in order to better understand the operation of the criminal justice system.

I have had a difficult time deciding what types of data analysis should be included in this book. In a discussion of the elements of good writing, William Strunk and E. B. White portray the reader as being "in serious trouble most of the time . . . floundering in a swamp" and argue that it is the duty of the writer "to drain this swamp and quickly get (the

victim) on dry ground, or at least throw him a rope" (p. xii). The terminological "swamp" has gotten deeper and more difficult to traverse in criminology in recent years, in large part because of the explosive development of complex statistical methods. I want this book to be primarily one about ideas. However, much of the research related to these ideas is quantitative and of a type that may be unfamiliar to many readers. To reduce this problem, I have attempted to describe important results in everyday terms and to provide the interested reader with more complete information in technical appendixes. The nontechnical reader will be forgiven for skipping these appendixes entirely.

Rape is an ancient crime that has been poorly understood by criminologists and citizens alike. It warrants our serious attention.

Gary LaFree

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Because this book is based on nearly 10 years of research, a great many people and institutions have contributed to it along the way. Part of Chapter 4 is a revision of an article that first appeared in *Social Forces* (volume 58, 1980); part of Chapter 5 is a revision of a *Social Problems* (volume 28, 1981) article; part of Chapter 6 is a revision of an *American Sociological Review* (volume 45, 1980) article; and part of Chapter 8 is a revision of an article with Barbara Reskin and Christy Visher, which originally appeared in *Social Problems* (volume 32, 1985). These revisions are all included here with the permission of the journals.

This book was made possible through the generous cooperation of the Indianapolis Police Department and the Marion County Prosecutor's Office and Criminal Courts. I want to thank the police officers, prosecuting attorneys, judges, defense attorneys, and jurors who freely contributed their time to this study. Special thanks to Sue Duffey who assisted me in the early phases of data collection. I am also indebted to the University of New Mexico, which helped in the preparation of the book by providing several grants-in-aid.

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CHAPTER 1

Criminology and the Study of Rape

With ready-made opinions one cannot judge of crime. Its philosophy is a little more complicated than people think.

Fyodor Dostoevsky, *The House of the Dead*.

One summer evening in 1977, Lloyd Jeffries,* 32 years old, walked into a diner in downtown Indianapolis and ordered a cheeseburger. Martha Jones, 41 years old, took the order and began to prepare the food on a grill behind the counter. The customer and the cook were the only two people in the diner. After a few moments, Jeffries moved behind the counter, pulled a knife, grabbed Jones, and pushed her through the kitchen and out the back door of the diner. He then forced Jones into the trunk of his car and slammed the lid shut. After driving Jones to a location that she was later unable to identify, Jeffries bound her hands and raped and sodomized her at knifepoint. He then forced her back into the trunk and again began driving. When he stopped again they were in a wooded area. This time he forced Jones to have oral and anal sex, repeatedly threatened her with a knife, urinated on her, and sexually assaulted her with a stick. Jones begged Jeffries to release her. Instead, he began stabbing her in the back, neck, and arms. Later examination would reveal 25 stab wounds and a deep slash over her throat. Apparently con-

* All the names in these accounts are fictitious.

vinced that she was dead, Jeffries left Jones lying on the ground, naked except for a shirt, covered in blood. Miraculously, Jones managed to crawl out of the woods and back to the main road before collapsing unconscious near the highway. A passing motorist saw her beside the road and called the police. When Jones regained consciousness, she was in an Indianapolis hospital.

After she began to recover, Martha Jones remembered Lloyd Jeffries as the man who, two months earlier, had offered her \$20 to go to bed with him. She identified Jeffries from police photographs, and he was arrested shortly afterward. Police detectives found part of the necklace Jones had been wearing on the night of the assault in the trunk of Jeffries's car.

The main defense offered at Jeffries's trial was that he was insane at the time of the incident. Evidence presented in court revealed that Jeffries had a history of mental problems, including several occasions when he threatened women with sexual assault. He was on medication for these problems at the time of the incident. In court, the defense argued that Jeffries's mother and siblings had all died in a tragic fire when he was a child and that he had had mental problems ever since. Jeffries's father eventually remarried a woman whom the defense claimed Jeffries hated—a woman who closely resembled Martha Jones. Nonetheless, two psychiatrists retained by the defense and two retained by the court all concluded that Jeffries was sane at the time of the incident. After deliberating for three hours, the jury convicted Lloyd Jeffries on multiple counts of aggravated rape, confinement, and attempted murder.

At about 1:00 in the morning on a summer evening in 1977, 19-year-old Cathy Marsh had just left a female friend and decided to try to find her boyfriend, Steve. Steve had told her earlier that he would be at a party that evening but had not given her the exact location. She stopped to talk with Paul Richards, a friend of Steve's, to get directions. Richards got into Marsh's car and they drove off together, ostensibly heading for the party and Marsh's boyfriend. On the way, Richards asked Marsh to stop at a tavern so he could buy beer. Richards then directed Marsh to drive to a wooded area near

a gravel pit, claiming that Marsh's boyfriend would be there. However, once Marsh had stopped the car, Richards said to her, "I want to make love with you." Marsh refused. She claims that Richards then grabbed her and said that if she did not have sexual intercourse with him, he would "beat the hell out of" her. After forced intercourse, Marsh drove Richards home and then returned to the house that she shared with her boyfriend, Steve. When she told Steve what had happened, he immediately called the police. Shortly afterward Richards was arrested and charged with rape.

Richards maintained that Marsh had touched his leg just before they had intercourse and had told him that she wanted to "mess around." He further claimed that he had had a sexual affair with Marsh before the incident. When the case went to trial, the defense tried to show that Cathy Marsh was being pushed into prosecution by Steve, who wanted revenge. The defense challenged Marsh's credibility by pointing out that she was living with her boyfriend out of wedlock and asked the jury, "How many virtuous girls would go out looking for their drunken boyfriend at 1:00 in the morning and then leave with another boy for a gravel pit?" After deliberating for less than an hour, the jury acquitted Paul Richards.

On the morning of January 22, 1979, 15-year-old Sheila Davis was watching her younger sister and two younger brothers after her mother, Dorothy, was taken to a local hospital for an emergency operation. After breakfast, Sheila's stepfather, George Davis, left with her nine-year-old sister, Rachel, saying that he was going to take her to a grocery store to do some shopping. Instead, George Davis took Rachel to the home of Frank Davis, his father. On the way to Frank's house, George Davis forced Rachel to have oral sex with him. Once they arrived at Frank Davis's house, the girl was also forced to have oral sex with him. George then returned Rachel to their home. At 9:30 that evening Sheila Davis put her two brothers and her sister Rachel to bed and then went to bed herself. At about 1:00 in the morning, George Davis entered her bedroom and asked her to remove her clothing. She refused. He then removed her clothing, held her down, placed a pillow over her head to prevent her from screaming, and forced her to have sexual intercourse with him.

When Dorothy Davis, George's wife, returned from the hospital six days later, Sheila told her about her stepfather's actions. Dorothy took her daughters to the Indianapolis Police Department. George and Frank Davis were arrested and charged with rape for the January 22 incident. In later testimony, Sheila Davis revealed that similar attacks had been taking place two to three times a week for approximately eight years—ever since she had been legally adopted by George Davis in 1971. She testified that she had told her mother about it two years earlier. However, after her mother had confronted George Davis with the allegation, he had told Sheila that if she didn't change her story, he would kill her. Sheila testified that she had also told the family physician that her stepfather was forcing her to have sexual intercourse with him. However, both her stepfather and her mother had denied the charges, and Sheila had later told the physician that the charges had been false. Sheila further testified that on other occasions George had forced her to have intercourse with her 13-year-old brother, David. David confirmed this testimony and further claimed that on one occasion, his stepfather had forced him to have intercourse with a prostitute while Davis watched and took pictures.

Apart from the testimony of the children, the main evidence introduced in the trial of George and Frank Davis was a collection of pornographic magazines and pictures recovered from their homes. Much of the pornography had incest themes. The principal defense claim in the case was that the children had made up the story to punish their stepfather for leaving their mother. The defense also attempted to provide alibi witnesses to show that the two men were with other people when the alleged attacks occurred. After four hours of deliberation, the jury convicted both men on all charges.

Jennie Thorsten was 21 years old and lived with her boyfriend, Don, and her one-year-old son. On February 21, 1980, she got up at 5:00 A.M. to help Don get ready for work. Afterward, she returned to bed. At 7:00 A.M. she was awakened by a man holding a knife to her throat, who told her that if she moved, he would "cut her head off." She later said that she had gotten a clear view of the intruder's face and described him as about 6 feet tall, with dark, curly hair, wearing a tear-

drop necklace with a marijuana leaf on it and a silver watchband. She also remembered that the assailant had a tattoo on his arm. The intruder ordered Thorsten to remove her nightgown and then raped her. At one point, her baby began crying in the next room. The intruder told her "to go quiet the kid, or I will kill it." Thorsten went to the baby's room with the intruder, gave her son a bottle, and then returned with the intruder to the bedroom, where the assault continued. As the assailant left, he threatened Thorsten with violence if she went to the police. Thorsten took her baby to her cousin's house, where she called the police and her boyfriend, Don. She and Don then went to the police department, where she picked out Walter Milliken as the assailant from police photographs of recent arrestees. She had never seen him before.

The police eventually located and arrested Milliken. No fingerprints were recovered in the case, and the police laboratory did the examination for blood type of the assailant's sperm incorrectly, so the prosecution was unable to introduce it as evidence.

The defense agreed that a rape had occurred, but argued that Milliken was the wrong man. The defense attorney pointed out that while Milliken had a tattoo on his arm, he also had two large tattoos on his torso that Jennie Thorsten did not mention. Milliken's girlfriend testified that he never owned a necklace such as the one described by Thorsten. Several other witnesses testified that at the time of the incident, Milliken had a serious foot injury, which made walking difficult for him; Thorsten's testimony indicated that the assailant was walking normally. The defense also introduced alibi witnesses who claimed to have seen the defendant before 7:00 A.M. and after 8:15 A.M. on the morning of the rape. After deliberating for four hours, the jury convicted Walter Milliken of rape.

A common first reaction to accounts of rape like those just described is emotional: anger, shock, disgust, outrage, fear, disbelief. Perhaps you know someone who has been a rape victim. Perhaps you have been a rape victim. My most indelible impression from studying rape cases like these is the degree of sheer viciousness that often accompanies the crime. Several of the rape victims whose cases are described in this

book were killed, hundreds were very seriously injured, and most required hospitalization. Apart from the physical injuries, there was a wide range of psychological and social consequences. Many of the rape victims included in this study changed homes and jobs. Many left the city in direct response to the crime. Although I have no way to calculate the effects precisely, it is clear that rape victimization often permanently changed the lives of the women who experienced it as well as the lives of their relatives and friends.

After your initial reactions to these cases, perhaps you also noticed just how different they are. Despite the fact that the defendants in all four of the cases summarized here were legally charged with the same crime, forcible rape, individual differences among the cases are nonetheless striking. Philosopher Michel Foucault (1970, p. xv) quotes a passage from Argentine writer Jorge Luis Borges, who describes “a certain Chinese encyclopedia” as dividing animals into the following categories:

- (a) belonging to the Emperor, (b) embalmed, (c) tame, (d) sucking pigs, (e) sirens, (f) fabulous, (g) stray dogs, (h) included in the present classification, (i) frenzied, (j) innumerable, (k) drawn with a very fine camelhair brush, (l) *et cetera*, (m) having just broken the water pitcher, (n) that from a long way off look like flies.

In a discussion of this extraordinary list, Foucault concludes (p. xvi) that what is impossible about it is not merely the things listed—which under the right circumstances are all ordinary—but rather the impossibility that such diverse elements should form some common basis for classification. Reading case descriptions such as those described may lead you to ask a similar question: Apart from the fact that all four cases involved the same criminal charge, how can they be included in the same field of study? Are there any similarities among them, and, where there are differences, can the differences be explained within some broader, theoretical framework? The main purpose of this book is to search for commonalities and patterns in official reactions to rape cases, to identify similar and dissimilar processes, and to try to make sense out of what might otherwise be interpreted as random, unexplainable, or idiosyncratic phenomena.