CRIMINAL LAW—RAPE—SUFFICIENCY OF EVIDENCE TO SUPPORT CONVICTION—CORROBORATION OF COMPLAINANT'S TESTIMONY—The District of Columbia Court of Appeals had held that corroboration of a mature complainant's testimony is no longer required to sustain a conviction for rape, abrogating its corroboration rule.

Arnold v. United States, 358 A.2d 335 (D.C. Ct. App. 1976) (en banc).

On May 30, 1973, Eugenia Dickerson was raped by a man she later identified as James Arnold. Two weeks later, Portia Mills submitted to a man's demands for sexual intercourse after he threatened and assaulted her. She also identified Arnold as her assailant. In a joint indictment Arnold was charged with the two rapes.[1] Before trial the government requested that the jury not be instructed that corroboration of the victims' testimony was required for conviction, in effect asking the trial judge to disregard the District of Columbia's long-standing corroboration rule.[2] The motion was granted over the defendant's objection.[3] Following a trial in which the government nevertheless introduced corroborative evidence of the complainants' testimony,[4] the jury returned verdicts of guilty on both counts. The court imposed sentence and Arnold appealed.[5]

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1. Arnold v. United States, 358 A.2d 335, 336 (D.C. Ct. App. 1976) (en banc). Rape is defined at D.C. CODE ANN. § 22-2801 (1973). Joinder is permitted if the offenses are of similar character or constitute parts of a common scheme or plan. *Id.* § 23-311(a).
2. *See* notes 21-33 and accompanying text *infra*.
3. 358 A.2d at 339. Appellant's pretrial motion to sever the two rape counts was denied because the similarity of the two offenses supported the joinder. Brief for Appellant at 5, Arnold v. United States, 358 A.2d 335 (D.C. Ct. App. 1976). Arnold's motion was based upon D.C. CODE ANN. § 23-313 (1973), which affords the court authority to grant relief from a prejudicial joinder.
4. 358 A.2d at 337-39. Each victim promptly reported the assault to friends as well as to the police, and each had a physical examination. The testimony of these witnesses paralleled the complainants' accounts of the circumstances surrounding the rapes.
5. The basis of Arnold's appeal was threefold. He contended that: (1) the trial court abused its discretion in denying his motion for severance of the offenses; (2) the court erred in denying his motion for a judgment of acquittal; and (3) the court erred in refusing to instruct the jury that a guilty verdict for rape could not be based upon the complainants' uncorroborated testimony. 358 A.2d at 336.

The court dispensed with appellant's severance and acquittal arguments. Noting the striking similarities of the crimes, the court reasoned that the record met the standards for joinder laid down in Drew v. United States, 331 F.2d 85 (D.C. Cir. 1964), and its progeny. *Drew* determined that joinder was proper where evidence for each of the crimes was relevant to establish a common plan, evidence probably would have been admissible in separate trials

In argument before the court en banc,[6] the primary issue was the validity of the District of Columbia's corroboration requirement. The court concluded that the trial judge's refusal to give the corroboration instruction, mandated by the case law of the jurisdiction, was error.[7] Although adequate corroboration was provided in *Arnold,*[8] the government argued there were compelling reasons to reconsider and reject the requirement.[9] The majority agreed and seized the opportunity to reevaluate the rule. The court affirmed the defendant's conviction. It rejected the presumption that a rape prosecutrix's testimony lacks credibility and abrogated the rule which required corroboration of her testimony as a condition precedent to

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on the issue of identity, and evidence as to each crime was separable and distinct and not likely to confuse the jury. In moving for acquittal, the appellant had emphasized the absence of any physical evidence of force and had argued that the circumstantial proof would not support a rape charge. The court relied on Ewing v. United States, 135 F.2d 633 (D.C. Cir. 1942), *cert. denied,* 318 U.S. 776 (1943), which held that evidence of force was not required and that testimony concerning threats of death or grave harm made to overcome the victim's resistance was sufficient to submit a rape case to the jury.

6. *See* M.A.P. v. Ryan, 285 A.2d 310, 312 (D.C. Ct. App. 1971) (announcing rule that en banc proceeding would be required to overrule prior decisions).

7. Although it was error for the trial judge to refuse to give the instruction, the error was harmless under the circumstances. The majority concluded that the record disclosed the defendant had been fully accorded his constitutional right to a fair trial; the jury was thoroughly instructed on the critical issue of credibility and an additional instruction on corroboration probably would have had little effect on their deliberations. There were adequate evidence and satisfactory corroboration of the complainants' testimony for the guilty verdict. The court was convinced that *Arnold* fell within the "harmless error" standard formulated by the Supreme Court in Kotteakos v. United States, 328 U.S. 750, 764-65 (1946) (court must be able to conclude, with fair assurance, that jury's decision was not swayed by the error). *See* 358 A.2d at 341.

8. *See* note 4 *supra.* Similar corroborative evidence was held adequate in *In re* W.E.P., 318 A.2d 286 (D.C. Ct. App. 1974) (complainant's disheveled appearance, cuts on her hand, and prompt report to police, accompanied by her ability to accurately describe the room where the incident occurred, adequate to support her testimony). *See also* Evans v. United States, 299 A.2d 136 (D.C. Ct. App. 1973) (prosecutrix's appearance and emotional state shortly after the incident, along with prompt reporting of offense, provided ample corroboration).

9. Among the reasons the government proffered for abrogating the rule were: (1) the jurisdiction's changing interpretations of the requirement had resulted in a labyrinth of doctrine with doubtful and unpredictable implications; (2) the doctrine of stare decisis was not meant to perpetuate a precedent no longer deemed just and in keeping with current social and legal trends; (3) the issue was not more suitable for legislative than judicial determination because it involved a judicially imposed rule of evidence which courts have the necessary expertise to handle; and (4) a failure to reach the issue would result in future uncertainty in the trial courts. Supplemental Memorandum for Appellee at 3-7 (May 22, 1975), Arnold v. United States, 358 A.2d 335 (D.C. Ct. App. 1976) [hereinafter cited as Supplemental Memorandum I for Appellee].

conviction. Of the ten judges sitting en banc, five limited their holding to cases involving "mature" victims and suggested they would continue to require corroboration where the victim was chronologically or mentally immature.[10] Four others expressed concern over the inherent vagueness in such a limitation and would have eliminated the need for corroboration in all rape prosecutions.[11] One judge advocated retaining the rule because, as applied in that jurisdiction, it had not been the source of any demonstrable injustice. In his view, it had protected innocent persons against biased judgments, which were unavoidable in rape cases.[12]

The *Arnold* court relied heavily on the California Supreme Court's reasoning in *People v. Rincon-Pineda*,[13] which overruled precedent in its jurisdiction by disapproving the further use of a cautionary instruction requiring the jury to carefully scrutinize a rape prosecutrix's testimony. The cautionary instruction[14] had been required in the belief that a rape charge was easily made but difficult to disprove. The California court had catalogued the other protections afforded the criminal defendant—the presumption of innocence, the standard of proof beyond a reasonable doubt, the right

10. 358 A.2d at 344-45.

11. *Id.* at 348 (Fickling, J., concurring in part and dissenting in part). Judges Kelly, Kern and Gallagher joined in the opinion.

12. *Id.* at 348-52 (Mack, J., concurring in part and dissenting in part).

13. 14 Cal. 3d 864, 538 P.2d 247, 123 Cal. Rptr. 119 (1975).

14. This instruction was traced back to a seventeenth century English author. 1 M. HALE, PLEAS OF THE CROWN 633, 635 (1680), *quoted in* 7 J. WIGMORE, EVIDENCE § 2061, at 342-45 (3d ed. 1940) [hereinafter cited as WIGMORE].

In rejecting the instruction, the California Supreme Court presented a persuasive list of empirical and theoretical analyses of rape prosecutions. To refute the argument that rape is a charge easily made, the court cited statistics and studies showing that rape is largely an underreported crime due to strong social deterrents. *E.g.*, M. AMIR, PATTERNS IN FORCIBLE RAPE 27-28 (1971); FBI, UNIFORM CRIME REPORTS 15 (1973); Comment, *Rape and Rape Laws: Sexism in Society and Law*, 61 CAL. L. REV. 919, 921 (1973) [hereinafter cited as *Sexism in Society and Law*]; Note, *The Rape Corroboration Requirement: Repeal not Reform*, 81 YALE L.J. 1365, 1374-75 (1972) [hereinafter cited as *Repeal not Reform*]. Furthermore, of those rapes reported, a high percentage are classified "unfounded" by police, and the investigation is then terminated. *See, e.g.*, AMIR, *supra* at 29; J. MACDONALD, PSYCHIATRY AND THE CRIMINAL 238 (2d ed. 1969); Comment, *Police Discretion and the Judgment that a Crime Has Been Committed—Rape in Philadelphia*, 117 U. PA. L. REV. 277, 281 (1968).

In supporting its conclusion that rape is not more difficult to disprove than other charges, the court cited FBI statistics and an analysis of jury behavior which demonstrated that juries frequently acquit a rapist or convict him of a lesser offense even when the evidence of his guilt is clear. FBI REPORTS, *supra* at 116; H. KALVEN, JR. & H. ZEISEL, THE AMERICAN JURY 254 (1966). *See generally Repeal not Reform*, *supra* at 1378-84.

to present witnesses in his defense, and the right to legal counsel—and concluded that these traditional safeguards would suffice to prevent false convictions for rape as well as for nonsexual crimes.[15] Adopting this view, the *Arnold* court decided that the corroboration requirement no longer served a legitimate purpose since the accused was adequately protected by the constitutional guarantees of due process.

The District of Columbia Court of Appeals rejected the appellant's argument that any revision of the corroboration rule should be made by Congress. The requirement neither existed at common law nor stemmed from constitutional or statutory provisions.[16] Since this evidentiary rule had been judicially imposed, consideration of its continued vitality was appropriate for judicial determination.[17] Even if there once had been a rationale for the rule, it contributed little to the resolution of the credibility issue since any fixed standard was inadequate for determining a witness' truthfulness.[18] Furthermore, the suggested purpose of the corroboration rule, avoiding baseless accusations, could be accomplished by the judicial discretion to set aside or direct a verdict based upon insufficient evidence.[19] The court underscored the importance of determining the prosecutrix's credibility, but indicated the jury could resolve that issue when guided by the traditional credibility instruction.[20] The

15. The decision undercut the rationale for the presumption that the defendant in a sex-offense case is entitled to greater protection than other criminal defendants, and the victim in such a case must undergo a stricter test of credibility than other witnesses. *Accord*, State v. Settle, 111 Ariz. 394, 531 P.2d 151 (1975); State v. Fedderson, 230 N.W.2d 510 (Iowa 1975) (similar cautionary instructions disapproved because they constituted a comment upon the weight of the evidence, an unfair burden upon the victim's testimony, and an infringement upon the jury's province). *See also* Lopez v. State, 544 P.2d 855, 870 (Wyo. 1976) (Raper, J., concurring) (alleged victim of rape should be treated the same as a witness in any other criminal case).

16. 358 A.2d at 344.

17. *But see id.* at 349 (Mack, J., dissenting). Judge Mack suggested that the issue was more complex than the majority realized. In his view, the question was ripe for legislative review, taking into account several practical realities: the severity of the sentence, the lack of delineation of degrees of rape, and the risk of attitudinal judgments by jurors who view rape with suspicion and who often are influenced by racial hostility.

18. *Id.* at 343.

19. *See* WIGMORE, *supra* note 14, at 354. *But see* Comment, *Nebraska's Corroboration Rule*, 54 NEB. L. REV. 93, 104 (1975), where the author suggests that the trial judge's power to set aside a verdict is severely restricted and considers the corroboration rule a better vehicle to prevent convictions based on inadequate evidence.

20. 358 A.2d at 344.

special rule of evidence precluding conviction for rape on the unsupported testimony of a complainant would no longer obtain.

Before *Arnold,* the corroboration doctrine had long enjoyed acceptance in the District of Columbia and in other jurisdictions.[21] Because of the fear of false accusations and baseless convictions for sex offenses,[22] a fixed rule had been considered necessary to minimize the possibility of convicting an innocent man.[23] Although the common law did not require corroboration in prosecutions for rape or other sexual offenses,[24] early dicta in the District of Columbia Court of Appeals had suggested that corroboration would be helpful in questionable cases where the complainant's testimony truly lacked credibility.[25] That language evolved[26] into the unqualified corroboration requirement first articulated in *Ewing v. United States.*[27] A prosecutrix's unsupported testimony could no longer sustain a conviction for rape.

During the next thirty years the rule became subject to changing interpretations as judges in the District of Columbia attempted to circumvent this troublesome impediment to rape convictions while adhering to precedent requiring corroboration.[28] The subtle distinctions drawn by the courts indicated uncertainty and vacillation con-

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21. *See* notes 25-30 & 48 and accompanying text *infra.*

22. *See* notes 35 & 36 and accompanying text *infra.*

23. *See* notes 37 & 38 and accompanying text *infra.*

24. WIGMORE, *supra* note 14, at 342. At common law, a single witness' testimony was sufficient to support a jury verdict; credibility did not depend upon the number of supporting witnesses. *Id.* § 2034, at 259.

25. Lyles v. United States, 20 App. D.C. 559, 562-63 (1902) (warning of the danger of basing a conviction on the testimony of a single witness, and emphasizing the importance of looking to circumstances that would concur with the complainant's statement). *See also* Kidwell v. United States, 38 App. D.C. 566, 573 (1912) (acknowledging the common law rule but underscoring the desirability of showing circumstances which corroborate indirectly the prosecutrix's testimony).

26. The government's brief in *Arnold* indicated that over half the District of Columbia decisions applying the corroboration requirement cited *Kidwell* directly, the remainder citing other cases which had relied on *Kidwell.* Brief for Appellee at 17-18, Arnold v. United States, 358 A.2d 335 (D.C. Ct. App. 1976).

27. 135 F.2d 633, 636 (D.C. Cir. 1942), *cert. denied,* 318 U.S. 776 (1943) (corroboration required in the sense that there must be circumstances which tend to support the prosecutrix's story).

28. *Compare* Allison v. United States, 409 F.2d 445 (D.C. Cir. 1969) (requiring corroboration of corpus delicti and identification of accused), *and* United States v. Bryant, 420 F.2d 1327 (D.C. Cir. 1969) (requiring corroboration of each element of offense and explicit jury instructions to that effect), *with* United States v. Terry, 422 F.2d 704 (D.C. Cir. 1970) (questioning *Allison* and narrowly construing it), *and* United States v. Gray, 477 F.2d 444 (D.C. Cir. 1973) (indicating that *Allison* and *Bryant* were no longer controlling law).

cerning the propriety of the rule. Decisions closely following *Ewing* reaffirmed the necessity for corroboration and imposed stringent standards for the prosecution to meet.[29] Eventually, the government was required not only to introduce independent corroborative evidence to establish every material element of the offense, but also to substantiate the complainant's identification of her assailant.[30] More recent decisions, however, reflected a hesitancy to apply the stricter rule and mitigated prior standards.[31] Decisions immediately preceding *Arnold* espoused an extremely flexible approach to the rule, calling only for independent evidence of circumstances which would convince the trier of fact that the prosecutrix's account of the alleged offense was not a fabrication.[32] The courts recognized that every rape case had to be evaluated independently; no checklist of corroborative factors would provide a satisfactory solution to the credibility problem.[33] *Arnold* represents the culmination of this re-

29. *See, e.g.*, Allison v. United States, 409 F.2d 445 (D.C. Cir. 1969) (conviction of assault with intent to commit carnal acts reversed when corroboration of prosecutrix's testimony that defendant attempted to expose himself was lacking); United States v. Bryant, 420 F.2d 1327 (D.C. Cir. 1969) (conviction of assault with intent to commit rape reversed because independent evidence including torn dress, bruises, and prompt complaint was considered minimal, and trial court failed to emphasize corroboration rule in its jury instructions).

30. In Walker v. United States, 223 F.2d 613 (D.C. Cir. 1955), Judge Bazelon suggested that corroboration was required not only to establish the elements of the crime but for the identification testimony as well. *Id.* at 620-21 (dissenting opinion); *accord*, Franklin v. United States, 330 F.2d 205 (D.C. Cir. 1964) (government's evidence showing that the victim was raped several times deemed insufficient corroboration of her testimony linking the accused to the crime).

31. The twofold requirement that the prosecution introduce independent evidence supporting both the corpus delicti and the defendant's identity was relaxed in United States v. Terry, 422 F.2d 704 (D.C. Cir. 1970). In *Terry*, the court noted that the need for corroboration in a rape case was based on the danger of false charges. Any evidence outside the complainant's testimony which could serve to eliminate that danger was sufficient. *Id.* at 707. The court in effect resurrected the *Ewing* rule. *See* note 27 *supra*. In United States v. Gray, 477 F.2d 444 (D.C. Cir. 1973), the court also adopted a flexible corroboration standard; any independent evidence which would support a jury conclusion beyond a reasonable doubt that the victim's account of the crime was not a fabrication would suffice to substantiate her story. The proof required for each case would vary, depending upon the circumstances. For example, a clear and convincing identification based upon an adequate opportunity to observe the accused required no further corroboration. *Id.* at 446.

32. *See, e.g.*, *In re* W.E.P., 318 A.2d 286 (D.C. Ct. App. 1974) (rejecting arguments that the government was required to produce conclusive medical evidence and corroboration of complainant's positive identification of her assailants); Evans v. United States, 299 A.2d 136 (D.C. Ct. App. 1973) (specific corroboration of acts described by complaining witnesses not required).

33. *See, e.g.*, United States v. Jones, 477 F.2d 1213 (D.C. Cir. 1973) (medical testimony that victim's condition was consistent with penetration, along with her emotional state and

forming trend. Since the rule had been reinterpreted and revised, it had lost so much of its force that it had become a source of uncertainty for both prosecutors and defense counsel.[34] Neither could be sure of the manner in which the rule would be invoked in a given case or of the supportive evidence which would be deemed sufficient for conviction. Underlying the *Arnold* decision was a desire to dispel the confusion the rule had generated.

While it may be true that the corroboration requirement engendered confusion in the District of Columbia, there are justifications for its continued existence which the *Arnold* court largely ignored. It has been argued that the increased danger of false charges, the inability of a jury to remain emotionally neutral when dealing with a rape charge, and the difficulty of disproving an accusation of rape warrant a special rule of evidence in rape cases.[35] Since rape charges may be fabrications prompted by questionable motives, it is reasonable to require that they be supported by independent facts which substantiate the prosecutrix's account of the incident.[36] A belief persists that in sex cases the defendant's presumption of innocence will be subverted by the jury's outrage and sympathy for the victim.[37] To ensure that this critical presumption will not be impaired, an evidentiary adjustment in favor of the defendant may be needed. A man accused of rape may have difficulty establishing that he did not have sexual intercourse with the prosecutrix, or that she consented, since they are frequently alone at the time of the alleged offense.[38] If the trial evidence solely consists of two conflicting stories, the presumption of innocence has not been overcome, and the

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accurate description of the scene of events, and the absence of a motive for fabrication supplied ample corroboration); United States v. Huff, 442 F.2d 885 (D.C. Cir. 1971) (bruise on complainant's head, her emotional state, missing shoe discovered at scene of alleged offense, and broken lock on door sufficient corroboration despite possible motive for victim to fabricate the charge).

34. *See* Supplemental Memorandum I for Appellee, *supra* note 9, at 4.

35. *See, e.g.*, Ploscowe, *Sex Offenses: The American Legal Context*, 25 LAW & CONTEMP. PROB. 217, 222-23 (1960) [hereinafter cited as Ploscowe]; Note, *Corroborating Charges of Rape*, 67 COLUM. L. REV. 1137, 1138-39 (1967) [hereinafter cited as *Corroborating Charges*]; Note, *The Corroboration Rule and Crimes Accompanying a Rape*, 118 U. PA. L. REV. 458 (1970).

36. One commentator has suggested that rape complaints often spring from such motives as shame, revenge, blackmail and a desire for notoriety. *See* Ploscowe, *supra* note 35, at 222-23.

37. *See Corroborating Charges*, *supra* note 35, at 1139.

38. *Id.*

corroboration requirement should be utilized to resolve the conflict in the defendant's favor.

These purported bases for the corroboration requirement, formerly accepted in the District of Columbia,[39] apparently were rejected by the *Arnold* court. Balancing the conflicting interests involved, abrogation of the rule seems the better view. As both courts[40] and legal commentators[41] have recognized, neither the theoretical foundation of the rule nor its justifications is entirely persuasive. Empirical evidence reveals that juries are more skeptical of rape accusations than is often supposed.[42] Jurors seldom return rape convictions in the absence of aggravating circumstances such as the use of force or violence, and there is evidence that they are lenient with an accused rapist if there are indications that the victim encouraged her attacker.[43] The danger of fabrication of rape charges is counterbalanced by the existence of strong social deterrents to reporting rapes.[44] The argument that rape offenses are difficult to defend is also questionable. Instead of being at a disadvantage in disproving his guilt, a defendant is unlikely to be convicted of rape on the uncorroborated testimony of a complainant even in those jurisdictions which do not require corroboration.[45] Thus, there seems to be no reason why the traditional standard of proof beyond a reasonable doubt will not provide adequate protection for the accused. He should not be entitled to special treatment denied other criminal defendants. Conversely, the rape victim should not be subject to a

39. *See* Coltrane v. United States, 418 F.2d 1131, 1134-35 (D.C. Cir. 1969) (risk of unjust convictions and high frequency of fabricated charges in rape cases cited as reason for corroboration rule). *See also* United States v. Bryant, 420 F.2d 1327, 1331 (D.C. Cir. 1969); Franklin v. United States, 330 F.2d 205, 208 (D.C. Cir. 1964) (expressing similar views).

40. *See, e.g.*, United States v. Wiley, 492 F.2d 547 (D.C. Cir. 1973) (Bazelon, C.J., concurring); People v. Radunovic, 21 N.Y.2d 186, 234 N.E.2d 212, 287 N.Y.S.2d 33 (1967) (Breitel, J., concurring). *See also* note 14 and accompanying text *supra*.

41. *See, e.g.*, Younger, *The Requirement of Corroboration in Prosecutions for Sex Offenses in New York*, 40 FORDHAM L. REV. 263, 275-76 (1971); *Sexism in Society and Law, supra* note 14, at 931-32; *Repeal not Reform, supra* note 14, at 1366.

42. *See* H. KALVEN, JR. & H. ZEISEL, THE AMERICAN JURY 249-54 (1966).

43. *Id.* at 249.

44. Statistics show that rape is one of the most underreported crimes. *See Sexism in Society and Law, supra* note 14, at 921. Several factors discourage accusations: the stigma which attaches to the victim of a sordid crime, humiliating publicity, harsh treatment by police and doctors, and the necessity of facing the insinuations of defense counsel. *Id.* at 921-22.

45. *See* United States v. Wiley, 492 F.2d 547, 554 (D.C. Cir. 1973) (Bazelon, C.J., concurring) (thorough critical analysis of the justifications for the corroboration rule presented).

demeaning presumption against her truthfulness. If she is credible, her testimony alone should sustain a conviction.

The *Arnold* decision accords with other jurisdictions which have recognized that a corroboration requirement rests on invalid premises. The majority of states, as well as Congress, have judicially or statutorily rejected the rule[46] for the same reasons that motivated the *Arnold* court to eliminate its requirement. The consensus of legislators is that proof beyond a reasonable doubt is sufficient to sustain a rape conviction, and corroboration of the victim's testimony is an undesirable and unnecessary burden for the prosecution.[47] Although some jurisdictions retain a limited version of the rule, requiring little more than the traditional standard of proof with the jury's customary consideration of the complainant's credibility, *Arnold* aligns itself with the majority which has determined that a rigid corroboration requirement is unwarranted.[48]

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46. *See* SENATE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., REPORT ON S. 1, CRIMINAL JUSTICE CODIFICATION, REVISION AND REFORM ACT OF 1974, at 590 (Comm. Print 1974) (explaining that no corroboration was required to prove rape because the traditional protection afforded by the reasonable doubt standard would be adequate to safeguard the accused; a corroboration requirement would be an artificial substitute for a credibility determination). *See also* Comment, *Nebraska's Corroboration Rule,* 54 NEB. L. REV. 93, 94-95 (1975) (outlining the differing positions of the states); *Repeal not Reform, supra* note 14, at 1367-68.

47. *See* SENATE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., REPORT ON S. 1, CRIMINAL JUSTICE CODIFICATION, REVISION AND REFORM ACT OF 1974, at 590 (Comm. Print 1974).

48. The current positions taken by states may be categorized as follows:

(1) Corroboration is *required* for conviction: GA. CODE ANN. § 26-2001 (1972) (no conviction for rape on unsupported testimony of the female); Clemmons v. State, 233 Ga. 187, 210 S.E.2d 657 (1974) (elements of the crime must be corroborated by other evidence, but corroborating identification evidence is not necessary); State v. Fisher, 190 Neb. 742, 212 N.W.2d 568 (1973) (testimony of prosecutrix alone not sufficient to sustain conviction for rape or assault with intent to rape).

(2) Corroboration requirement is *limited* to certain factual circumstances: N.Y. PENAL LAW §130.16 (McKinney 1975) (corroboration required where victim is deemed incapable of consenting to the act by reason of age, mental defect, or capacity); State v. Gee, 93 Idaho 636, 470 P.2d 296 (1970) (no corroboration required where character of prosecutrix for truth and chastity are unimpeached and circumstances surrounding alleged offense support prosecutrix's statements); People v. Popely, 36 Ill. App. 3d 828, 345 N.E.2d 125 (1976) (testimony of complaining witness, even if contradicted by accused, may be sufficient for conviction if such testimony is "positive"); Robinson v. Commonwealth, 459 S.W.2d 147 (Ky. App. 1970) (unsupported testimony of prosecutrix, if not contradictory, incredible, or inherently improbable, may be sufficient); Villareal v. State, 511 S.W.2d 500 (Tex. 1974) (prosecutrix's testimony need not be corroborated except where there is neither outcry nor prompt reporting of act and there existed a reasonable opportunity to do so).

(3) Corroboration is *not* required: People v. Stevenson, 275 Cal. App. 2d 645, 80 Cal. Rptr. 392 (1969), *cert. denied,* 397 U.S. 1014 (1970) (victim's testimony that sexual intercourse occurred does not require corroboration); State v. Riggins, 314 So. 2d 238 (Fla. Dist. Ct. App.

While appellate courts are understandably reluctant to overrule their prior decisions, the *Arnold* court apparently believed that the need to amend an unjust precedent outweighed the benefits of stability and predictability promoted by stare decisis. The court wisely rejected an emasculated version of the rule which had made a determination of the proper standard difficult to predict. By limiting its holding to cases involving "mature" victims,[49] however, the majority indicated it still considered rape a unique crime which may require some precautions to protect the accused.[50] Those courts which continue to classify the rape victim's testimony as inherently suspect, thereby carving out exceptions to general evidentiary principles, may unintentionally create an effective bar to legitimate prosecutions. This is particularly troublesome in view of evidence that reporting and conviction rates for rape are exceptionally low.[51] A corroboration requirement, even to the limited extent retained in *Arnold,* seems unjustified and alien to our system of criminal justice which seeks to exonerate the innocent but at the same time prevent and punish criminal conduct.

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1975) (testimony of prosecutrix need not be corroborated); State v. Garcia, 83 N.J. Super. 345, 199 A.2d 860 (1964) (conviction for a sex offense may be sustained on uncorroborated testimony); *In re* Johnson, 445 Pa. 270, 284 A.2d 780 (1971) (testimony of one witness can be sufficient to sustain conviction); Poindexter v. Commonwealth, 213 Va. 212, 191 S.E.2d 200 (1972) (prosecutrix's testimony alone sufficient).

49. *See* text accompanying notes 10 & 11 *supra.*

50. Although children or immature persons are generally regarded as less reliable than adult witnesses, this does not warrant the use of a special testimonial disability for that class in cases involving sex offenses. Any special cautionary procedures with respect to a child's testimony should apply to all cases. It is the characteristic of the child, not the crime, that is significant. *See* Supplemental Memorandum for Appellee at 4 (Dec. 3, 1975), Arnold v. United States, 358 A.2d 335 (D.C. Ct. App. 1976).

51. *See, e.g., Sexism in Society and Law, supra* note 14, at 921, 927-28; *Repeal not Reform, supra* note 14, at 1370.