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ON THE LAW; Despite Gains, Prosecution of Rape Still a Tough Task; Changes in the law have aided victims, but juries often remain skeptical. Many want evidence of verbal protest or physical resistance.

By Cynthia Daniels, Times Staff Writer

Humiliation, guilt and pain haunt many sexual assault victims, but it is frustration that plagues Renee.

The woman, now 21, says her boyfriend assaulted her in September. The UC Santa Barbara senior still cannot accept a district attorney's decision not to prosecute.

"It's frustrating to hear someone say, 'I know he raped you, but we can't prove it,'" said Renee, who spoke on the condition that her last name not be used. "I felt like he was getting away with it."

Rape experts say Renee's experience is all too typical for sexual assault victims who must endure both the crime and the notion that a jury might not believe them.

In May, a jury of nine women and three men delivered not-guilty verdicts on some charges and deadlocked on others against three high school students accused of raping a UCLA freshman in her dorm room during a campus tour.

After the trial, several jurors said the woman's testimony lacked credibility. Last month, a judge dismissed charges against two of the three young men, but prosecutors announced that they planned to retry the third.

In June, jurors in Orange County could not decide whether three teenagers sexually assaulted a 16-year-old girl who was allegedly knocked out by drugs and alcohol. An aggressive defense portrayed the girl as a deceitful would-be porn actress who was merely pretending to be unconscious. The district attorney plans to retry the defendants.

Several rape experts believe that juries continue to reflect larger societal myths about sexual assault.

"For 35 years, we have been tinkering with the law, we have been training law enforcement, we have been training judges and ... prosecutors," said Mary Koss, professor of public health at the University of Arizona and co-author of the book "No Safe Haven: Male Violence Against Women at Home, at Work and in the Community."

“But we can’t demonstrate that that has had an impact on how many rapes are reported, how many get investigated, how many get prosecuted and how many result in trials that have guilty verdicts,” she added.

In 2002, about half of all rapes in the nation went unreported, according to the U.S. Department of Justice. Only 58% of those cases prosecuted ended in a conviction, according to the National Center for Policy Analysis. In Los Angeles County, 83% of such prosecutions ended in a conviction compared with 70% 28 years ago, according to the California Department of Justice.

In the last 35 years, California law has changed in favor of rape victims, experts say. Attorneys can no longer use a victim’s manner of dress as a defense. Nor can the defense force the victim to undergo a psychiatric test to analyze state of mind. Also gone is the law that required a victim to have actively resisted.

And if requested, today a victim will be accompanied by an advocate through the entire legal process, from police interviews to court testimony – because of a law that many experts say definitely helps support the victim.

Yet, despite these changes, law enforcement officials and prosecutors acknowledge that jurors are often skeptical in rape cases.

“It is a challenge, there is no question,” said Nancy O’Malley, chief assistant district attorney for Alameda County and chairwoman of the sexual assault committee of the California District Attorneys Assn.

“With some prospective jurors, you’re dealing with a different dynamic,” she said. “We have to continually reinforce the idea that this is not about sex; it’s a crime of violence, power and control.”

Prosecutors know that to convict rapists, they need to have not only a victim willing to testify, but also corroboration – physical evidence backing up the accusations, and expert testimony.

Experts say the burden is on sexual assault victims from beginning to end. They are expected to report the crime, to sometimes help strengthen the case by taping conversations with the suspect and to reveal intensely private matters when they testify.

Still at the center of most rape prosecutions is the question of consent. Experts say jurors often expect sexual assault victims to fight their attackers and vocally resist submission.

“There’s no one way” to say no, said Leah Aldridge, associate director for youth violence prevention for the Los Angeles Commission on Assaults Against Women. “You can say ‘no’ softly, you can say it loud and screaming, you can say it kicking and punching, you

can be passed out and not say it at all. Or you can say ‘yes’ and change your mind and say ‘no’ in the middle.”

The California Penal Code defines rape as an act of sexual intercourse without consent, accomplished by various means, including force or intoxication.

There is no legal requirement that the victim say “no.” But because consent is a defense, jurors expect it, prosecutors said.

Society is still too quick to place the burden of proof on the victim, said Carol Mosley, coordinator of the rape prevention education program at the UC Santa Barbara Women’s Center.

“Well, if you had screamed, if you had poked his eyes out, if you had kicked him ... then he would’ve known,” Mosley said. “We’re missing the point.”

So now instead of “no,” some rape education and prevention directors have begun teaching men to listen for “yes” during sex.

That approach calls on a person to make certain he hears clear consent from his partner for every act.

Critics might say this takes the romance out of the sexual experience, but rape experts say it relieves the potential victim of blame and stresses the importance of communication.

Although defense attorneys never use the “yes” theory to argue their cases, O’Malley said a variation of the concept could be found in California’s legal definition of consent, which requires positive cooperation in actions or attitudes. According to the law, any act without assent is non-consensual.

“It always feels like we take three steps forward and 10 steps back,” said Sandy Ortman, director of special programs for the California Coalition Against Sexual Assault.

“There are still a lot of antiquated ideas out there about sexual assault, a lot of ‘Well, she was asking for it,’ and ‘I don’t understand why she was in his dorm room,’” Ortman said.

Renee said that in her case, prosecutors contended jurors would not believe that a young woman could be raped by her boyfriend after voluntarily joining him in a hotel room.

“It doesn’t seem right,” she said. “It seems like a real double standard. I was afraid to tell people [because] I would be chastised for something that I didn’t do wrong. He was my boyfriend and I trusted him.”

O’Malley has started a district attorney mentoring program to help prosecutors in smaller counties learn to successfully try sexual assault cases, beginning with choosing the fairest jury possible.

Still, all agree that more is required to prevent other victims from suffering the frustration Renee experienced.

“Part of our jobs as prosecutors, victim advocates and law enforcement is to make sure we are educating the public,” O’Malley said. “It might be slow but ... we will be more successful in holding sexual offenders accountable.”

GRAPHIC: PHOTO: STYMIED: “It’s frustrating to hear someone say, ‘I know he raped you, but we can’t prove it,’ “ says UC Santa Barbara student Renee. Rape experts say her experience is still all too typical. PHOTOGRAPHER: Spencer Weiner *Los Angeles Times*.

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