CHAPTER 1

HISTORICAL PERSPECTIVE

OVERVIEW:

N.J.S.A. 2C went into effect on September 1, 1979. It severely changed the statutory law with regard to sex crimes. Under the previous statutory scheme there was a crazy quilt of laws regarding the issue. The purpose of this chapter is not to provide an extensive historical look at sex crimes statutes in New Jersey. Rather, it is give some historical background to the statutes that are presently in existence. The following is a sampling of the old laws:

The Crimes of Rape and Carnal Abuse

2A 138-1 described the crimes as follows:

> Any person who has carnal knowledge of a woman forcibly against her will, or while she is under the influence of any narcotic drug, or who, being of the age of 16 or over, unlawfully and carnally abuses a woman-child under the age of 12 years, with or without her consent, is guilty of a high misdemeanor and shall be punished by a fine of not more than $5000, or by imprisonment for not more than 30 years, or both; or who, being of the age of 16 or over, unlawfully and carnally abuses a woman-child of the age of 12 or over, but under the age of 16 years, with or without her consent is guilty of a high misdemeanor and shall be punished by a fine of not more than $5000, or by imprisonment for not more than 15 years, or both.

Definitions of Rape and Carnal Abuse

In *State v. N.W.*, 329 *N.J. Super* 326 (App. Div. 2000), the petitioner sought to have his *N.J.S.A.* 2A conviction for carnal abuse expunged. The court did a lengthy analysis of the difference between rape and carnal abuse under *N.J.S.A.* 2A. The court, in quoting prior cases, stated:

> "Rape" and "carnal knowledge" mean the same thing: "sexual intercourse with a woman against her

> will," which "does not occur without **penetration.**" [citation omitted]. "Carnal abuse," on the other hand, is an entirely separate and distinct crime. It has been defined as "'an act of debauchery of the female sex organs by those of a male which does not amount to **penetration**.'" [citations omitted].

The Crime of Fornication

Under *N.J.S.A.* 2A:110-1 Fornication was a crime: albeit, a misdemeanor punishable by a fine of $50 and a maximum prison sentence of six months. I suspect if this was still law today, prison overcrowding would have a new meaning. Notably, the crime of fornication is not defined in the statute. It would appear that the term was self-explanatory. However, nothing is that simple.

The court in *State v. Sharp, 46 Vroom 201*, (1907) stated that the word fornication is "a word of long settled meaning, and implies an act with an unmarried woman." Presumably women were not charged under this statute.

The Crime of Adultery

So what if the woman was married? In such cases, the crime was that of adultery. Yes, it was a crime under *N.J.S.A.* 2A: 88-1. In *State v. Lash, New Jersey Supreme Court May Term 1938*, the defendant was charged by way of indictment with having committed adultery with a single woman. The court held that adultery cannot be committed against an unmarried woman. The basic reasoning of the court was that the true victim in the crime of adultery was the husband because the act caused "the destruction of all domestic confidence, the alienation of the affections of the wife from the husband; and the withdrawal of the protection and support of the father, from the child."

More importantly, "[I]t is the confusion of the issue, the corruption of the blood, casting upon a man the insufferable imposition of compelling him to maintain by his name, and with his property, as his own heir, the child of his worst enemy, which eminently distinguishes the crime of adultery from that of fornication. The true distinction between adultery and fornication will be found to consist of this. That whenever the issue which may arise from illicit intercourse, will be Legitimate, it is adultery; but on the contrary, if the issue will be a Bastard, it is fornication."

The Crime of Prostitution

N.J.S.A. 2A:133-1 made Prostitution a crime. *State v. Baldino*, 11 *N.J. Super*. 158 (App. Div. (1951), defined prostitution in its general sense as "the letting of oneself to indiscriminate sexual intercourse for gain." 2A: 133-1 *et seq*. sets forth a series of statutes detailing a list of related crimes.

The Crime of Sodomy

N.J.S.A. 2A: 143-1 made criminal "the infamous crime against nature." It was a high misdemeanor with a maximum punishment of twenty years in prison. The term "infamous crime against nature" was not defined—I guess because it was so infamous. The matter was dealt with in *State v. Morrison, 25 N.J. Super.* 534 (Essex County Court, 1953).

In *Morrison*, the defendant was charges with acts involving oral sex (per os). The court went into a detailed history of the statute, and concluded that sodomy only related to acts of anal penetration (per anum). Previous *non-vult* pleas were vacated.

The Crime of Incest

N.J.S.A. 2A:114-1 *et seq*. criminalized various forms of interfamilial sexual activity. 2A:114-1 criminalized interfamily marriages within certain degrees of bloodline. 2A: 114-2 made criminal sexual activities between parent and child. The maximum term was set at fifteen years.

The Crime of Abortion

N.J.S.A. 2A:87-1. This statute criminalized the act of abortion and subjected the abortionist to a high misdemeanor and a maximum of fifteen years if the woman died.

The Crime of Bigamy

N.J.S.A. 2A:92-1 criminalized marrying another person while having a living wife or husband. There were certain exceptions. Bigamy was a high misdemeanor.