

Wolfe: The flaws of “legitimate rape”



Tom Wolfe is a trial attorney and commercial litigator whose practice is focused on complex business cases including product liability, oil and gas, mass tort and class action defense. Tom is also the president and managing partner at Phillips Murrah.

By [Tom Wolfe](#), Published Aug. 30, 2012 in [The Journal Record](#) monthly legal column, [Gavel to Gavel](#).

Gavel to Gavel: Definitions of Rape

For years, the Concise Oxford English Dictionary defined rape as “forceful or fraudulent intercourse.” This is important because federally funded health care programs cover abortion only if pregnancy results from rape (or incest or if the mother’s health is at risk).

If a woman is raped and becomes pregnant, an abortion is covered by federally funded health care programs.

But thanks to Republican U.S. Rep. Todd Akin of “legitimate rape” and “can’t get pregnant from rape” fame, the waters are muddied.

But there’s history here.

It started in the 1990s, with the phrase “truly raped.” Republican North Carolina Rep. Henry Aldridge said when a woman is “truly raped – the juices don’t flow.” Hence, a woman can’t get pregnant. Using his “logic,” there’s no need for a rape exception to the federally funded abortion ban.

In 1999 John C. Wilke coined a term, claiming that women were unlikely to get pregnant from being “assault raped,” with no need for exceptions.

These terms and nuances are crap.

“Forcible rape” entered the lexicon in 2011, when Akin and Republican U.S. Rep. Paul Ryan included it in the No Taxpayer Funding for Abortions Act. The word “forcible” was removed before the bill passed the House and was never considered by the Senate. The FBI has used “forcible rape” in crime statistics for years to denote rapes with physical violence. But starting in January, it will use one definition: when a victim doesn’t consent.

What happens when a woman is drugged and raped while

unconscious? Is that “legitimate rape?” What about a mentally impaired woman in a nursing home who is raped by an employee and becomes pregnant? Was she “truly raped?” And where does statutory rape fall in this continuum? A 13-year-old girl has sex with a 40-year-old man – has she been “forcibly raped?” If she can’t afford an abortion, should she have the baby because she wasn’t “forcibly” or “legitimately” – as defined by some – raped?

All become relevant questions this fall.

Was it groundbreaking to hear, “rape is rape?” Probably not! In fact, even those who earlier claimed otherwise seemed to suddenly agree – “rape is rape.”

Perhaps noteworthy: Of the self-proclaimed experts on women, pregnancy and rape – most are men. The Spencer Davis group probably said it best: “I’m a man/Yes I am.”