

University of Massachusetts Amherst

From the Selected Works of John Brigham

June, 2011

Rape Culture, Due Process and Sexuality

John Brigham, *University of Massachusetts - Amherst*



Available at: https://works.bepress.com/john_brigham/24/

May 22, 2011

“Rape Culture,” Due Process and Sex

John Brigham, Political Science Department,
University of Massachusetts, Amherst

Prepared for the New England Political Science Conference, Hartford, Connecticut, April 30, 2011 and the Conference on Feminism and the State, Ohio University, Athens, Ohio, May 20-22, 2011.

This paper examines the social and institutional consequences of a “rape culture” in the United States. For at least the last decade the belief that rape is a widely practiced tool of male power has characterized the treatment of sexual assault in many parts of the United States. On college campuses and in some prosecutor’s offices and police departments it has become the dominant framework. The focus here is on how this belief has flourished and the relationship of the belief to larger disciplinary cultures, sexual regimes, due process rights, and perceptions of men.¹

¹ The title was originally “*Feminism, Fairness and the Law: Is There a Problem With Due Process?*” Meg Mott described the project of which it is a part thusly, “We are interested in what precipitates a certain policy (such as the Clery Act, or Violence Against Women Act), what conditions caused such a thing to occur, who benefits from those policy enactments, and how social expectations and values are shaped by these institutional practices.” (March 22, 2011). I am grateful to Meg for 20 years of wisdom sharing, to Denise Gosselin and Chuck DiMare who shared professional insights and experience, to Carla Dominguez, Ira Strauber and Peter Brigham who read the paper with extraordinary care, to Melinda Tarsi whose paper on the intersection of capital punishment and due process made an early contribution to my knowledge of this issue,

1. Introduction

In 1931, nine teen-aged African American males riding a freight train from Chattanooga to Memphis, were charged in Scottsboro, Alabama with the rape of two white woman, one 16 and the other 21. Progressives sent lawyers to defend “the Scottsboro Boys” to enlist supporters in the struggle against oppression in the American South. The defense challenged a system built on subordination and backed up by the intimidating force of the law. The Alabama courts sentenced the defendants to death. In the “rush to judgment,” basic principles of fairness and due process were ignored in the American South. The *Scottsboro Case* was one of the initial struggles of the modern civil rights movement and it spawned the Due Process Revolution.² The United States Supreme Court overturned the Scottsboro convictions in the case of *Powell v. Alabama* (1932).³

The false rape accusation once represented the evils of racism, vigilante opinion and the principles of fair treatment. It also hung over all accusations.⁴ But the meaning of the rape charge has been widely debated since the 1970s and a new understanding has become very prominent. With the publication of Susan Brownmiller’s *Against Our Will*, in 1975 theorists of gender relations have posited the construction of women by men in a “rape culture.”⁵ To a surprising degree, and with relatively little public debate, this new rape discourse, which had strong affinities with the assault on sexual harassment and the prominent but less legally successful anti-pornography crusade, captured the state apparatus.⁶ This view of rape represents a new narrative that has become dominant on college

to Sarah Tanzi and Claire Brault who suggested Marcus to me and to Susan Ball for her critical commentary on the topic and support in life. Other colleagues have been involved, offering specific suggestions, words of caution and support. These include Alan Gaitenby, James Ben-Aaron and Kevin Costa.

² The Communist Party represented the defendants. The NAACP declined to offer support. For a discussion of the women’s motivation partially justifying their false accusations see http://www.pbs.org/wgbh/amex/scottsboro/sfeature/sf_women.html, a PBS web blog from 2009 accessed in 2011.

³ In 1962, *To Kill A Mockingbird*, set in 1935 in Alabama, told the story with a sympathetic lawyer and accused rapist, cute kids and a “victim” and her family representing the worst of southern social life.

⁴ See critiques of rape charge.

⁵ Written in quotation marks when the reference is to the contested culture at the heart of this paper.

⁶ The scarcity of reported cases is said to be an indication of repression and fear at the same time that gender violence by men is sensationalized and widely discussed.

campuses and in some prosecutor's offices.⁷ This "rape culture narrative" is not, to all feminists, the best or only narrative. The "rape culture" narrative is, however, particularly important because of its connection to law enforcement and other institutions, which are roughly treated as "the state" in this analysis. This new rape culture narrative is not to all the best or even the only narrative. The "rape culture" narrative is, however, particularly important because of its connection to the state.

The stated purpose of this narrative, to end violence against women, is an important goal that should not be diminished by the analysis presented here. The horrendous crimes of violence directed at women deserve unequivocal condemnation. But the goal of ending violence against women is at risk of being poorly implemented and the anti-violence project subverted by its partisans. In the name of protection for women, a "rape culture" paradigm⁸ and the law enforcement establishment, many of whose most ardent agents are men, is based in a criminal justice system⁹ that fosters a perception of irresponsible and unchecked male aggression set against female vulnerability¹⁰ and lack of responsibility. The uncritical acceptance of the "rape culture" paradigm and its embeddedness in the institutions of state power poses a threat to innocent men and has become a political weapon¹¹ at the same time that it undermines the claims of sexual equality that have been the hallmark of feminism's "Second Wave." In addition, the image of women's vulnerability that is implicit in the paradigm fails to acknowledge changes in the condition of women¹² and the context of sexual violence in the last 40

⁷ In writing this paper I learned a little about current feminists positions that differ from those "rape culture" is based on. See for instance Marcus and Gruber within and the work of artist Amber Hawk Swanson (<http://www.kickaction.ca/node/4012>; <http://blog.shrub.com/archives/tekanji/>

2011-03-03_840). What I am calling "the dominant narrative" is not, to all feminists, the best or only narrative. The "rape culture" narrative is, however, particularly important because of its connection to the state.

⁸ Aya Gruber's exceptional work describes the subversion of feminist ideals in the sexual violence industry as "The Feminist War on Crime" (2007).

⁹ Gruber cites protection orders, advocates, specialized courts, special evidentiary rules, mandatory arrests and no-drop policies.

¹⁰ The issue of vulnerability has broader meaning with affinities to the "rape culture" paradigm in Martha Albertson Fineman, "The Vulnerable Subject and the Responsive State," Smith College, May 6&7, 2011.

¹¹ It is more immediately connected to the regime in Sweden, which sought extradition of Julian Assaunge to answer a charge of rape in the context of a colleague with whom he had been living.

¹² By the 1980s women were on their way to becoming a majority in American law schools. In 1981 the first woman was appointed to the Supreme Court and four women have been appointed to the court in the last 30 years (of 10 total appointments) where none had been appointed before. In prosecutors offices women are still a minority but they now make up a significant percentage of the lawyers prosecuting sexual assault. AEquitas (<http://www.aequitasresource.org/>), a

years.¹³ In its zeal to enlist the apparatus of the state behind the rape culture paradigm, the interests of women as well as their safety has been subverted. This may be a modern version of the earlier racist rape culture that led to lynching in the American South that buttressed Jim Crow.

In this paper “rape culture” is treated as a political ideology with institutional manifestations in the 1994 Violence Against Women Act (VAWA), the victim’s rights movements, rape crisis centers in communities and women’s centers on college campuses.¹⁴ Included will be evidence issues bearing on the pervasiveness of rape and sexual violence in America, a brief discussion of VAWA and *U.S. v. Morrison* and the treatment of sexual assault in Tracy Kidder’s *Home Town*. The second major consideration is about due process with particular attention to the special case of rape and sexual assault on college campuses. The absence of basic due process protections for men accused of sexual assault on campus was the genesis for this inquiry. The paper concludes with a section on “Men and Women” that incorporates the powerful critique of the “rape culture” by Sharon Marcus. Various appendices and documents bearing on the arguments and analysis follow the text.

2. Rape Culture

“Rape Culture” is a belief violent male aggression toward women is an essential feature of male power and that rape is a pervasive fact of women’s lives. Its partisans posit the need to transform society from a place of widespread rape and sexual assault to a society that closely monitors male sexual activity.¹⁵ The “rape culture” paradigm is related to views of sexuality more generally. This

resource center for prosecution of gender violence, has a staff of 5 women and two men.

¹³ Primarily VAWA but also the public “trial” of Clarence Thomas, the spectacle of an all male Senate Judiciary Committee, the prosecution of O.J. Simpson and other highly publicized stories depicting the evils of sexual violence and sexual harassment.

¹⁴ Women’s Centers such as “Everywomen’s Center” on the UMass Campus, are an institutionalization of Second Wave feminism.

¹⁵ This is my definition. One of the readers of an earlier draft wrote: “Rape Culture is the problem, not the ideology. Feminists and advocates working against sexual violence believe in the concept of a Rape Culture and are using a variety of methods of awareness and activism to address and eliminate Rape Culture.” I have tried to edit the paper to be clear that I am suggesting we see “Rape Culture” as a conception of “the problem.” In this sense, “rape culture” is an ideology. See [Emilie Buchwald, Martha Roth, Pamela R. Fletcher, *Transforming a Rape Culture* \(Milkweed Editions, 1994\)](#) and <http://shakespearesister.blogspot.com/2009/10/rape-culture-101.html>.

relationship includes concern about male sexuality as privileged, aggressive, unattractive and generally threatening and evil. Female sexuality might not be heterosexual, certainly not enthusiastically heterosexual. Female sexuality is generally desirable, vulnerable, and delicate.¹⁶ I trace this view to Susan Brownmiller's 1975 book *Against Our Will: Men, Women, and Rape* which spoke of rape as supported by American culture and of "woman's structural vulnerability to rape."¹⁷ Susan Estrich's book *Real Rape*, from a decade later, refined the anti-rape position with regard to the most prominent kind of sexual impropriety on campus, "date rape" which she wanted treated as "real."¹⁸ The work of Reva Siegel and Catharine A. MacKinnon, initially offered at about the same time as "real rape," the 1980s, puts sexual violence in the larger context of sexual harassment (2004). These were some of the same battles and cultural currents that produced VAWA. This development will be examined below.

The idea of a "rape culture" -- that men benefit from rape and that the incidence of rape is an everyday reality -- is an ideology and it has fostered a "moral panic."¹⁹ The description of "rape culture" as an ideology is an analytic one. Seeing the ideology as producing a "moral panic" is more description. My implication is that the empirical basis of the paradigm and its consequent social policy is questionable or over-stated. Another implication is that instances of male violence, traditionally thought of as aberrational and as examples of what not to do, are now thought of as ordinary in some sense expected. As ideology and panic, the fear engendered, in its lack of a rational basis cuts against the very reasoned and even calculated response that seems best fostered if heterosexual relations are to be allowed. These ideas will be examined throughout, beginning with the issues surrounding

¹⁶ For discussions of images of women in books about current sexual mores see "feministing.com."

¹⁷ The rape centric view of the Women's Movement did not seem important to me when it came out. My wife's death, our child, remarriage and the practical dimensions of sharing domestic responsibility while beginning a career made the view that rape was central to social life seem overstated. And, in comparison to the struggle for equality it was not obvious that this should be a central tenant of feminism. That began to change in the late 1970s with the critique of pornography and sexual harassment as sex discrimination but it did not necessarily extend to making "rape culture" central to feminism.

¹⁸ Cambridge: Harvard University Press, 1987. I taught this book uncritically once and I have trouble imagining what I was thinking then. This paper is a partial response to that confusion. I do remember being surprised when its author became the campaign manager for Democratic Presidential candidate Michael Dukakis.

¹⁹ Eric Goode and Nachman Ben-Yehuda, *Moral Panics: The Social Construction of Deviance*, which features the feminist anti-pornography crusade; Gayle Rubin, "Thinking Sex: Notes for a Radical Theory for the Politics of Sexuality," in Carol Vance, ed, *Pleasure and Danger*. Routledge and Kegan Paul, 1984.

“evidence.”

*Evidence of the Problem.*²⁰ On March 23, 2011, the “Academic Minute,” broadcast through *Inside Higher Education*, an online source of campus focused information, featured a “talk” on campus violence by Prof. Michele Paludi of Union Graduate College. In her presentation, Prof. Paludi argued that campuses had become more violent and measures needed to be taken. She referred to the statistic that one in every twenty women in college were raped and claimed that 30-50 percent of college women suffer sexual harassment from faculty. There were no references or citations.²¹ The source of rape statistics and the lore that comes to characterize how they are used is a major study in itself.²²

The ideology of a “rape crisis” dates at least from Susan Brownmiller’s *Against Our Will*, but it is the adoption of the rape culture ideology by the government that has changed the terms by which rape is discussed. In 2000, the Department of Justice published an important study initiated by Attorney General Janet Reno that examined the prevalence of rape on college campuses.²³ The study was a combined effort of the National Institutes of Justice and the Bureau of Justice Statistics directed by Bonnie S. Fisher, Francis T. Cullen and Michael G. Turner. It found a victimization rate of 1.7% for college women or 17 women in a 1,000 person population. It evaluated its research against the victimization studies done by the Department of Justice. The victimization data survey an entire population in an attempt to understand what crime looks like. The survey reported a victimization rate of .16%.²⁴

From another perspective, the Bureau of Justice Statistics reports extensively on “intimate

²⁰ This is a small part of the legal dynamics relevant to this paper. More expansive treatments abound. Some are Katherine T. Bartlett, Angela P Harris, Deborah L. Rohde *Gender and Law: Theory, Doctrine and Commentary* Aspen, 2002.

²¹ My response, which I posted, was the following: “It is a shame that Prof. Paludi failed to cite where the data for her claims of increased violence on campus come from. Her claim that one in every 20 college women are raped is actually much less than the statistic of one in four college women being raped or sexually assaulted that dates from Susan Brownmiller in the 1970s and went unchallenged for years. But the statistic that “30-50 percent of college women suffer sexual harassment from faculty” needs a source so that the part of that harassment that fits into the story of violence can be identified. As scholars we need to be able to examine the ideas behind claims like those made in the segment.”

²² *Acquaintance Rape and the College Social Scene* Sally K. Ward, Kathy Chapman, Ellen Cohn, Susan White and Kirk Williams, *Family Relations* Vol. 40, No. 1 (Jan., 1991), pp. 65-71

²³ National Institutes of Justice, “The Sexual Victimization of College Women,” Research Report. 2000.

²⁴ *Id.*, p. 13.

violence.”²⁵ The number of men murdered by intimates was approximately 1,250 in 1976. In the same year that number for women was 1,600. In the decades after the VAWA became law, the number for men had dropped to around 300 in 2005. The number of women dropped only slightly to something close to 1,250 in 2005. While the numbers were once quite similar the percentage drop for women has been far less. From another angle supported by the data, it is important to note that 1/3 of female murder victims were killed by an intimate and only 3% of male murder victims died in a relationship murder. In these data one alarming statistic is the relatively greater threat women face in an intimate relationship, relative to what men face in that sort of relationship. On the other hand it is due to the high rates of violence that men face generally that the percentage of intimate violence directed toward men is smaller than that directed at women. Thus, it would be wrong to characterize intimate violence as only male on female violence and the amount of non-intimate violence men face is a substantial fact of life.

The website “oneinfourusa.org” (a men’s group site) offers the statistic that one in four women survive rape or attempted rape from the time she is 14. The website is a men’s group site. The citation is to Robin Warsaw, *I Never Called It Rape*, a 1994 book published by HarperCollins that also gives the statistic that 84% of all rapists know the victim. Warsaw’s figures are part of a litany of statistics that support the rape culture claim.²⁶ Department of Education records for 2009 list 2,783 sex offenses on college campuses. The population of women in college that year was approximately 10.5 million. The percentage here (.03%) is a good deal less than one in five (20%), even if a four-year period is factored in.²⁷

Evidence of rape needs to be weighed in a context highly charged with dramatic crimes.²⁸ As in

²⁵ <http://bjs.ojp.usdoj.gov/content/homicide/intimates.cfm#intimates>

²⁶ 1 out of 3 high school relationships includes battering or rape. (Creighton, A., 1990. *Helping Teens Stop Violence*).

²⁷ .03% or 1 in 3,000. These data seem likely to involve under reporting but the theory of under reporting deserves attention and seems unlikely to get from 1 in 3,000 to the widely claimed 1 in 5. Notre Dame in 2005-2006 reported 6 sexual assaults for its 11,600 students in 2006.

²⁸ While working on this paper, I received an email on “corrective rape” and then a report on the global outcry against it from “change.org.” This mailing seemed to be a challenging example of the dramatic representation of a wrong. The face of

all discussions of crime, it is necessary to examine the relationship of horrific events to legislation.

Crime and criminal lawmaking are highly political activities. In the spring of 2011, Vice President Joe Biden and the White House have been presenting the rape culture analysis and the state response as evidence of their concern about women. The White House states, “Three women die every day at the hands of husbands and boyfriends.”²⁹ And, clearly the local papers are full of reports of this sort.

VAWA and Morrison. Passed in 1994 as Title IV, Sec 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, and known as the Violence Against Women Act or VAWA, the law was signed by President Bill Clinton on September 13, 1994. Among other things it provided \$1.6 billion for crimes against women. Senator Biden supported the bill with the staff of the Senate Judiciary Committee,³⁰ which he chaired. Barbara Boxer was one of the lead sponsors when she was in the House of Representatives. Support came from the National Organization for Women and other less well-known groups. Like *Roe v. Wade*, VAWA represents a state capture by groups associated with “the Women’s Movement.” Some of this is hard to calculate because the outsider rhetoric of much feminist discourse is evident at the same time that President Clinton is signing the bill to put billions of dollars into protection for women and mobilizing law enforcement against the violence men do. As an example, the commentary on VAWA is heavily “governmental” and has the technical qualities one might more readily associate with environmental protection.

Critiques of VAWA come almost overwhelmingly from “the Right” in American politics. They are usually “addressed,” in more mainstream college circles, in terms of where they come from. Phyllis Schlafly is one of the most prominent critics. FIRE (Foundation for Individual Rights in Education) is equally provocative. The Center for Individual Rights has been very influential with victories over liberal positions since it challenged *U.S. v. Morrison* in the U.S. Supreme court and won. FIRE was

a woman subject to this form of assault is very much like that of Emmet Till (See Appendix 3).

²⁹ The White House Blog, 16 Years of the Violence Against Women Act, Sept 23, 2010.

³⁰ Victoria Nourse, then Senate Judiciary Committee counsel, and Sally Goldfarb, then NOW Legal Defense and Education Fund (NOW LDEF) staff attorney. NOW LDEF’s Pat Reuss is described by a Christian group, Shattered Men, as “lending lobbying expertise” (<http://www.shatteredmen.com/VAWA%20too.htm>).

founded on the sort of freedom of expression politics that have come to characterize political confrontation on college campuses. It was active in the challenge to Hamilton College's requirement that its freshman men learn "Why Women Fear..." them.³¹ Schlafly's group is The Eagle Forum. It was founded to stop the Equal Rights Amendment and contributed to its demise. At the beginning of the budget fight in 2011 Schlafly called VAWA "an excellent target for spending cuts" and "a radical feminist fairy tale."³²

There are some notable exceptions to the prevalence of critiques from the right. Sharon Marcus is a major exception that will be discussed in the last section of the paper. Aya Gruber writes as a feminist and civil rights lawyer with experience of the states' power in the criminal process. Titled "The Feminist War on Crime," Gruber's article, draws a connection between sex critical feminism and the police establishment. "...the victim is a foil, a tool of an even larger and more dangerous program of vigorous individuality and denial of social responsibility."³³ She also distinguishes between the liberal feminist movement for equality in the criminal justice system and the idea that the criminal justice system reifies patriarchy.

The Supreme Court case, *US v. Morrison* (2000), held part of VAWA unconstitutional. The case stems from an incident in the fall of 1994, the year VAWA was passed. Virginia Tech freshman Christy Brzonkala charged two members of the football team with rape. Antonio J. Morrison, who is an African American,³⁴ admitted having sex with her. According to the discipline report this was after she had twice told him "No." He contended the sex was consensual (in his brief).³⁵ The incident took place just after the beginning of school in the fall of 1994. The student discipline charges were filed early in 1995. Morrison was initially given a suspension but challenged the finding and another hearing was held in the summer of 1995. Morrison was again given a two-semester suspension but the charge was

³¹ Appendix 2.

³² <http://www.eagleforum.org/column/2011/feb11/11-02-04.html>

³³ Gruber, 750.

³⁴ Teaching at the University of Massachusetts, Amherst at the time I worked with two black male students, twice the number I generally taught in a semester, accused of (acquaintance) rape.

³⁵ The Wiki and most VAWA commentary say she was raped, despite the fact that there was no criminal indictment.

changed to “using abusive language.” Morrison appealed this ruling and the Provost, who found the two-semester suspension excessive for a charge of “using abusive language,” rescinded the suspension. A state grand jury did not find enough evidence to charge Morrison with a crime. Brzonkala sued under VAWA’s provisions for a private “civil” remedy for violence against women in the fall of 1995.

The Federal District Court held that the provisions were unconstitutional, the Circuit Court disagreed and the case went to the Supreme Court. At oral argument, Julie Goldscheid and Seth Waxman for the Attorney General’s Office represented the United States. Michael E. Rosman represented Antonio Morrison.³⁶ The Courts decision was 5-4. The majority opinion was written by William Rehnquist and relied on *U.S. v. Lopez* (1995). Rehnquist offers an extensive discussion of the hearing records at the university and is pretty clear that he finds Morrison’s behavior offensive. Some details are left out but Morrison’s boasting is extensively reported in a Supreme Court record taken from Brzonkala’s complaint and the college discipline materials. Justices Souter, Breyer, Stevens and Ginsburg dissented. *The Washington Post* held that the Court “got it right” and that federalizing rape and sexual assault would mean anything could be subject to Congressional action.³⁷

At the same time the Supreme Court limited the reach of VAWA, it reinforced the rape culture paradigm by characterizing Antonio Morrison as disrespectful of women. The consequence of the decision was loss of an innovative feature of the act with little diminution of its overall impact.

Bringing It Home. One of the challenges when talking about the ideological dimensions of power is the frequent lack of particulars. This paper has described “rape culture” as an ideology. I would like to situate this ideology in an institutional and social context. I have said that rape culture has

³⁶ Rosman is now General Counsel to the Center for Individual Rights. He graduated *summa cum laude* from the University of Rochester in 1981, majoring in economics and political science. He received his J.D. in 1984 from Yale Law School. He is the author of: "Ambiguity and the First Amendment: Some Thoughts On All-White Advertising," 61 *Tenn. L. Rev.* 289 (1993); and "Standing Alone: Standing Under The Fair Housing Act," 60 *Mo. L. Rev.* 547 (1995), "Thoughts on Bakke and Its Effect on Race- Conscious Decision-Making," 2002 *U. Chi. Legal F.* 45; Book Review of Kent Greenawalt's *Fighting Words*, 13 *Constitutional Commentary* 317 (1996)

³⁷ For critical work, including a feminist critique of Justice Sandra Day O’Connor’s lack of feminist commitments in *U.S. v. Morrison*, see Heather MacDonnell writing about Dahlia Litwack, *The New York Times*. See also Heather MacDonnell, “The Campus Rape Myth,” *City Journal* Winter 2008.

roots in 2nd Wave Feminism and that it was evident in the U.S. Department of Justice, which produced the report “The Sexual Victimization of College Women” in 2000. Here I situate “rape culture” in the area around Northampton, Massachusetts. As part of this contextualization I use Tracy Kidder’s book *Home Town* about Northampton. Northampton has been something of a “ground zero” in the modern evolution of sexual relations and the proposition that we live in a rape culture. For instance at a ceremony during graduation festivities in 1990 Catharine MacKinnon suggested the graduates look to the men who were accompanying them to understand what a rapist looks like.³⁸

Rape culture in Northampton as a feature of state power in the mid 1990s may be due to a shift in the authority of men from presumed leadership in the public sphere to diminished stature and consequently a more vulnerable situation. Rape culture flourished as public policy in Northampton because it had social and institutional foundations. Northampton in the mid 1990s provides a vehicle for considering the relationship of “rape culture” to the power of women in some social and institutional settings in the United States. Kidder’s book, like the city, is not “all about” a culture of rape. Rather the point is that the city contains and accepts a culture of rape as part of its social and institutional life. This means that socially the presumption of male sexual impropriety is widespread and it has institutional places as diverse as the police department, the bars and the probate (divorce) court.

Kidder’s book is in many respects a romantic depiction of an old New England mill town that goes through a transformation to become a land of nice restaurants, trendy shops and general prosperity. But, because of the presence of rape culture the depiction is more Gothic than Romantic. In the 1990s and the first decade of the 21st Century, Northampton shifts from a town run by men to one run by women, at least as chief executives. The book includes the story of the first female Mayor, Mary Ford who served five two-year terms from 1989-1999.³⁹ She was followed by Claire Higgins who has

³⁸ Black male student in the marching band accused of rape. Date? Name?

³⁹ In 1995 Judy Dench took over the role of “M,” James Bond’s boss in the series. See Susan Burgess, APD Workshop,

served since her election in the year that Ford stepped down. *Home Town* begins with the story of local cop Tommy O'Connor. The gaze of the cop is offered in an unproblematic way but it has affinities with aspects of the carceral state.⁴⁰ Tommy is “old” Northampton and it is through his eyes that Kidder presents what is real, what we need to see. Part of what is real is sexual violence.

Sexual violence and the presence of rape culture come out in the story of Rick Janacek, a working class cop who married a woman from Smith College. The class dynamics are presented as a warning sign. During the period covered by the book Rick is involved in a nasty divorce where his 4-year-old daughter is allowed to testify against him for sexual assault. Rick's demise becomes one basis for telling the story of the town. This entails explicit attention to class issues and more implicit incidents of child molestation,⁴¹ one of the corollaries to rape culture along with sexual assault.⁴² Rick's downfall comes through a divorce that leads to a charge of sexual violence toward his child, who lives with his estranged wife.⁴³ Judge Michael Ryan, who is a key actor in the book, allows the testimony. Ryan represents the alliance between rape culture and sensitive, thoughtful men. Allowing the testimony is part of a culture that produces the first female district attorney in Massachusetts, Elizabeth D. Scheibel who stepped down in 2010 after 18 years as district attorney and 12 years before that in the DA's office.

Attention to sexual violence and the ascendance of women as political and legal authorities is one of the book's themes, one that gives a creepy, *Blue Velvet* quality to the town once called the Paradise of America. The sexual allegations are about gender and power.

3. Gender and Guilt (Due Process)

The paper began with the bleak history of race relations sacrificing due process to the

May 2011.

⁴⁰ Naomi Murakami, Renee Haerberle, APD Workshop.

⁴¹ Sometimes it seems like the author is putting stuff out there for the reader to find and put together herself.

⁴² See review by Christopher Lehmann-Haupt in *The New York Times* May 6, 1999.

⁴³ For a excellent discussion of Kidder's writing process and the relative insignificance of the sexual violence dimensions of his story to the author, see the interview with Brian Lamb at <http://www.q-and-a.org/Transcript/?ProgramID=1253>.

protection of a racial hierarchy. Summary judgment was part of the wrong of that hierarchy and a sign of a myriad of other practices we often find unacceptable. These old cases turn on the manipulation of protection for women in the interest of racial hierarchy administered by white men. The particular dynamics of due process that seem relevant in this context are the racial dimensions, the presumption of innocence, including the burden of proof, the opportunity to respond to witnesses, the notion of an impartial tribunal and the conception of punishment.

Traditional due process guarantees have been under pressure with regard to the reputation of women for some time. One of the oldest produced “rape shield laws,” which shielded a woman’s reputation when she was the victim in a rape trial.⁴⁴ Some of this is more historical than the contemporary “rape culture” but it is related. At one point the promise of due process was a way to combat prejudice, racism, and inequality. This section considers the way it is being used today with particular attention to American colleges.

Racial Discrimination. Mona Lynch and Craig Haney have recently reminded us that Justice Thurgood Marshall, in *Furman* “...noted that a total of 405 blacks had been executed for the crime of rape over the preceding 40 years, compared to 48 whites.”⁴⁵ These biases continue and as with incarceration generally the increase of state disciplinary power exacerbates and becomes an element of racial discrimination.

My own experience of prosecutions at the University of Massachusetts, Amherst where upwards of 5,000 student complaints are prosecuted on campus each year, is that black men are at much greater risk of being charged than their white counterparts. In the high profile cases such as that of Antonio

⁴⁴ Recently, Linda Baker of Keene State and Meg Mott called my attention to a 2007 article by Julie Stubbs, in the *Journal of Criminology and Criminal Justice*, titled “Beyond Apology” which was reported to “get at some of the feminist criticisms.” Stubbs is at the University of Sydney law school and she is a specialist on domestic violence. The feminist criticisms are that women are at a disadvantage in an Alternative Dispute Resolution model like mediation or diversion. Baker is interested in how safety can actually be enhanced through the restorative model. Stubbs speaks about “...gendered or other asymmetrical forms of social relations.” That idea is addressed in the context of due process below.

⁴⁵ 1972: 362; Mona Lynch and Craig Haney, “Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the ‘Empathic Divide’,” *The Law and Society Review* 45: 69-102 (2011).

Morrison at Virginia Tech and the Katie Couric interview⁴⁶ were of black men.

The Presumption of Innocence. One of the challenges for due process is that guilt is not (supposed to be...) gendered (or raced, or a function of wealth) but individual. The idea is that guilt needs to be proven. It has foundations in the Common Law and in the 5th, 6th and 14th Amendments to the U.S. Constitution.⁴⁷ This is evident in the burden of proof being placed on the prosecution, the right not to be forced to testify, or have ones words used by the prosecution. While more sexual violence is male to female not all sexual violence is of that sort so the gendered dimension can't be assumed. Sometimes the presumption of male aggression is referred to as the asymmetrical nature of sexual violence.⁴⁸ The culture of violence premise, which is based on a faulty assumption, includes a presumption of guilt.

Defining the Crime. An aspect of criminal due process is definitions of crime. One of the current controversies over rape is the idea that all "rape" is equally horrendous. This includes stranger rape with physical force and bodily harm, acquaintance assault where there is unwanted penetration, and statutory rape where age makes a consensual activity rape.

On May 18, 2011 in the House of Commons the opposition (Labor) leader, Ed Miliband challenged Conservative Party Prime Minister David Cameron on a statement by his Justice Secretary Kenneth Clarke that suggested all "rape" was not the same.⁴⁹

The Burden of Proof. In the U.S. the burden of proof in criminal cases is "beyond a reasonable doubt." In sexual violence cases on campus today the burden is much less in practice but has not always been stipulated. Now the Department of Education has mandated a decreased "burden" for charges of sexual assault on campus from "clear and convincing" to "preponderance of the evidence."

⁴⁶ See note...

⁴⁷ The U.S. Supreme Court discussed the presumption in *Coffin v. United States* (1895).

⁴⁸ In a bizarre twist, marriage counselors say to men "you have power, you could beat your wife up." That is very different from what our mother's taught us. Likewise the consequences of exercising superior physical force, if it exists, are dire.

⁴⁹ <http://c-span.org/Events/British-House-of-Commons-Prime-Ministers-Questions/10737421649-1/>. While the *Daily Mail* in an article by Quentin Letts reported that politicians had to "tread with care when discussing rape. The smallest goof will see them caricatured as pillaging Vikings." on the rape issue, the *Guardian* offered that it was a sensitive issue and that both Labor and *The Mail* were seeking to profit from opposite directions by crassly raising a sensitive issue.

Already less than in the criminal process as “clear and convincing,” the new burden adds weight to the prosecution of cases against students for sexual assault.⁵⁰

Confrontation of Witnesses. The idea that due process requires the accused to be able to confront witnesses against him (or her) is old. Justice Scalia’s discussion of the right in *Crawford v. Washington* (2004)⁵¹ is exceptionally comprehensive. It goes to the origins of the practice and the differences between Civil Law and Common law practices as well as its meaning for Sir Walter Raleigh who was tried for treason in 1603 and sentenced to death on the testimony before the Privy Council of his alleged accomplice. English law was subsequently changed and the right reinforced after the American Revolution. Since the codification of the Bill of Rights, it has been protected by the “confrontation clause” in the 6th Amendment to the U.S. Constitution. In Aaron Burr’s case, Chief Justice John Marshall held that “I know of no principle in the preservation of which all are more concerned. I know none, by undermining which, life, liberty and property, might be more endangered.”⁵²

In sexual cases the ideal of confrontation has often been challenged, as in *Bell v. Harrison* (1982),⁵³ where its many facets were discussed in an analysis of rape shield laws as they implicate the right to confront witnesses. Including taping the testimony of a child *Spigarolo v. Meachum* (1991).⁵⁴ In the case of the child’s testimony attorneys from both parties were required to be present. Where the issue of testimony out of court is “hearsay” various exceptions are permitted such as dying declarations, “excited utterances,” and officially kept records.

An Impartial Tribunal. Another constitutional due process provision is the idea that those sitting in judgment should be impartial. The constitution of tribunals as impartial takes effort in any case, but

⁵⁰ In a statement released April 4, 2011, the Office of Civil Rights of the U.S. Department of Education requires colleges dealing with sexual harassment, including sexual assault, to use the lower “clear and convincing” standard of proof.

⁵¹ 541 U.S. 36. A case in which Crawford stabbed a man who allegedly tried to rape his wife. Under a hearsay exception the wife’s statement while being interrogated was admitted in evidence. See also *Ohio v. Roberts* 448 U.S. 56 (1980); *Pointer v. Texas* 380 U.S. 400 (1965).

⁵² *U.S. v. Burr*, 25 F. Cas., at 193. See also *Douglas v. Alabama*, 1965.

⁵³ 670 F.2d 656 [6th Cir. 1982]. In this case the complaining party in a rape case is called the “prosecutrix.”

⁵⁴ 934 F.2d 19 (1991).

particularly if the society presumes male defendants are violent. The institutions of the state need to be alert for bias or signs of partiality.⁵⁵

The rape culture paradigm and the provisions of VAWA challenge the institution of an impartial judge or jury. In the paradigm, the strong belief in male violence as a fact limits the concern for impartiality in exactly the places where it needs to be manifest. For instance, we see this in the selection of those sitting in judgment. They are expected to have an open mind about guilt or innocence.

The Conception of Punishment. The conception of punishment is an aspect of the rape culture paradigm. Punishment is one of the facets of the paradigm that raises due process considerations along with the presumption of innocence, the opportunity to respond to witnesses, and the notion of an impartial tribunal. Moral panics put a particular kind of pressure on conceptions of punishment. When crimes are considered monstrous, particularly when the argument is they are newly or uniquely repulsive or not generally taken seriously, moderation and the notions of enlightened punishment, which characterize liberal approaches to crime from time to time, come under pressure.

Tarsi called my attention to the policy preferences for execution in cases of where domestic violence results in murder. She addressed the 2003 case from New York State, *New York v. Cahill*⁵⁶ and the issue of the death penalty in cases of repeated domestic violence or where there was a restraining order issued against a spouse. She calls domestic violence “an evil unto itself” which is compounded or aggravated in murder cases.

A Special Case. Colleges are a special place for examining the generation and reception of ideas about fairness and equality in matters of sexuality.⁵⁷ College students are a select if not always

⁵⁵ *Irvin v. Dowd*, 366 U.S. 717 (1961); *Turner v. Louisiana*, 379 U.S. 466 (1965); *Parker v. Gladden*, 385 U.S. 363 (1966); *Witherspoon v. Illinois*, 391 U.S. 510 (1968); *Gonzales v. Beto*, 405 U.S. 1052 (1972). See Natalie Taylor, “Juror Attitudes and Biases in Sexual Assault Cases,” Trends and Issues #344, *Australian Institute of Criminology* (August 2007), for a discussion of attitudes in Australia.

⁵⁶ 809 N.E. 2nd 561 at 567 (2003).

⁵⁷ I know “the Women’s Movement” best from the perspective of the college campus. I first experienced it at Berkeley. It deepened at Chico State. For over three decades at the University of Massachusetts I have been preoccupied with the

exclusive population. The population is concentrated in an age group disproportionately interested in sex. Only slightly post puberty, young men and women are living together, away from home, and with little or no supervision often for the first time.

Young men across campuses in the United States are being suspended and expelled for sexual intercourse. Sometimes it is a case of a relationship or a date “gone wrong.” Sometimes it is sex between a man and a woman too drunk to consent. Sometimes the men are too drunk or too stupid to know what they are doing. Sometimes it is two women. Sometimes it is two men (but the framework of complaint is rather more consistently heterosexual.) And it is always possible that the precipitating event is an assault where force or violence is used as an exercise of power or to satisfy sexual desire.⁵⁸ Due Process seems currently, in 2011, to have little bearing on proceedings in an age of widespread fear of sexual assault. Some cases are outrageous expressions of old male attitudes and at others the proceedings epitomize the manipulation of protection for women in the interest of a gynotopia.

In 2003, five lacrosse players at Duke University were accused of rape. The condemnation was furious and the public response a better indicator of what is assumed than what has been proven or even adequately demonstrated. Commentators across the United States decried male violence, the violence of lacrosse players and a culture of rape on campus. Later, discovery that evidence had been manipulated by the prosecutor led to his disbarment and legal settlements in behalf of the Duke players, although they seem not to have conducted themselves in a totally appropriate manner. The accusations at Duke fit the profile of media attention to sexual assault on campus.⁵⁹ In a story from “60 Minutes,”⁶⁰ Katie Couric depicts a forcible rape case from University of the Pacific.

On the Haverford College Website, a campus men’s group defines a rape culture. The group’s

struggle for equality and equality between the sexes has been a preoccupation.

⁵⁸ In the “rape culture” literature rape is not about sex but is an assertion of power. However, rape and sexual assault are treated differently from garden variety assault they are considered here as “about sex.”

⁵⁹ Michael L. Seigel, Ed. *Race to Injustice: Lessons Learned from the Duke Lacrosse Rape Case* Durham: NC Academic Press, 2009.

⁶⁰ “The Case of Beckett Brennan,” *Sixty Minutes*, April 17, 2011, <http://www.cbsnews.com/stories/2011/04/17/60minutes/main20054339.shtml>.

definition, apparently originally from UC Davis (Appendix 4), has been widely reproduced. One facet is an essentialized picture of the relationship between men and women. The proposition is that “The high incidence of rape in this country is a result of the power imbalance between men and women. Women are expected to assume a subordinate relationship to men. Consequently, rape can be seen as a logical extension of the typical interactions between women and men.” In the history of the struggle for women’s equality this was certainly one explanation for the challenges women faced. Rarely though has it been demonstrated that the “logical extension” is an essential characteristic of the relationship between men and women in college, or even of a certain age, much less in the United States as a characteristic feature of the relationship between the sexes, as is the implication.

In October of 2010, Hamilton College required its male students to attend a lecture by Keith Edwards entitled “She Fears You.” Edwards bills himself as a social justice educator.⁶¹ He travels around the country lecturing at colleges and universities on male violence. His degree is from the University of Maryland’s “College Student Personnel Program.” It is a program preparing “college student personnel professionals” for jobs in Student Affairs departments. Activists on and off campus protested the program. FIRE was one of the groups that was highly critical (See Appendix 2.)

As demonstrated above, each of the due process considerations is particularly relevant in the college context, and each is threatened by the rape culture paradigm prevalent on campuses today.”

A Specific Example. In 2010, a young male student⁶² accused of inappropriate sexual contact by two female students at a private U.S. college was ordered off campus in the middle of the final exam period. There was no hearing and no charges were communicated to him. He did not languish in prison but was stripped of access to his room, libraries and the campus he had lived at for the previous academic year. He completed finals in absentia.

Two months later he faced a tribunal composed of assistant deans who worked for the Dean of

⁶¹ <http://www.keithedwards.us/>.

⁶² Preserving the anonymity of the charging party is widely practiced in the institutions of the “rape culture.” Here the identity of the accused is being protected.

Students who brought forward the complaint initiated by the accusing students. Without being told of the charge, allowed representation or an opportunity to confront witnesses he was presumed guilty and subjected to four days of questioning and suggestive counseling. In the end the sanction included not being allowed to live on campus for a year or enter the dormitories for any reason. After that he would be “allowed to petition the Deans for permission to return.” He could only come to campus for “activities directly related to his academic responsibilities.” He was forbidden from discussing the case with any member of the community and required to meet regularly with the director of the Women’s Center “to gain a better understanding of how to conduct himself” and to “take a course dealing with the subject of assault, rape, or women’s lack of empowerment.”

In this case, appeal to the president of the college included many of the procedural problems evident in the way colleges are treating male students accused of sexual violations. The dean’s panel and the president had testimony about the female student’s level of intoxication that the defendant did not have. Although the defendant contended that he did not drink on the night he was charged, the panel and the president shared evidence about an earlier alcohol incident in which he was involved. The accused student was not informed of charges against him and did not have a chance to have an advocate or confront witnesses. The appeal was denied without any substantive response.

*Teaching Rape and “The Will of the Victim.”*⁶³ JoAnne Vanin, former Dean of Students, UMass, Amherst has said that in the prosecution of sexual violence cases, the will of the victim drives the cases. In Aya Gruber’s analysis, as we have seen, the prosecutorial role often takes over the case. Gruber’s experience was that there are important issues surrounding the fact that the complainant’s desires in sexual assault and domestic violence cases are treated as relatively insignificant.

In spite of their expressed commitment to critical inquiry, higher education institutions constitute the “perfect storm” of forces conspiring toward an uncritical and repressive approach to

⁶³ Realization from workshops on rape...Marlboro case...if it went to the police it would have gone nowhere. See *Boston Globe* article Feb/Mar 2011.

sexual misconduct. These include the paranoia about lawsuits and publicity, the professionalization of student services and something like a monoculture when it comes to certain public policy considerations.⁶⁴

Although *in loco parentis* was officially abandoned at college in the 1960s, the artificial community that colleges - particularly residence colleges - represent, brings administrators into significant law enforcement roles. The rape culture paradigm and the feminist war on crime provide the backdrop for aggressive prosecution of sexual activity that may not be violent but that involves misunderstandings, lack of consent, incivility, offensiveness, and the sensitivity that is the hallmark of intimate relations.

The Political Dimensions.

4. Men and Women

It sometimes seems, if one looks at the population in prisons, that the criminal process has been devised as a protection against men. In that sense, sexual violence is not much different from other crimes, particularly crimes of violence. The criminal law is disproportionately focused on men. Focus on the current law and politics of gender in this concluding discussion will address current dimensions of the campaign against sexual violence as, predominately, a campaign against men, the role of women and their supporters in the policing apparatus of the state and the relevance of all of this to male and female sexuality outside the state.

The treatment raises the old issue about means and asks whether the violence of the state is the appropriate response to violence against women.

The Campaign Against Men. The difference between the current rape culture paradigm and traditional treatment of men accused of rape is the conception of rape and rapists in a rape culture as

⁶⁴ There is rarely a day in which the online journal *Inside Higher Education* doesn't provide material on campus issues of sexual violence prosecution and most of the articles begin with the assertion that no one pays attention to sexual violence on campus. See "A Call to Shun," *Inside Higher Education* March 30, 2011.

normal, even unexceptional men. This idea that men are a part of a rape culture seems to be the new dimension brought by the campaign against sexual violence that was legislated as VAWA. The impact on men, particularly college age men, of this reconceptualization and the current war on rape is powerful and damaging to men and to society. For nearly a generation “ordinary” men have been described as rapists and perhaps even conditioned as rapists. There is nothing comparable in the impact of other criminal laws such as those on theft or assault, i.e., *all* men are not presumed to be potential thieves, to be complicit in a culture of theft.

One result is false accusations. It seems necessary to distinguish various contexts when thinking of false accusations. There are the charges lodged in the criminal process. There are charges that are part of civil processes like divorce and child custody hearings. And, there are charges in the context of college, on campus generally, in classes and in residence halls. A group called “The False Rape Society” operates mostly in the context of the criminal law.⁶⁵ There is also an “anti-misandry” group. Another called SAVE (Stop Abusive and Violent Environments) is cleverly positioned rhetorically to try and avoid seeming to be simply reactionary.⁶⁶

While, following the claims about the incidence of rape in college, one might be tempted to say that 1 in 5 college men are falsely accused of rape, that would be unfair. The number is probably more like 1-2 %, the same number as women who are raped. That is, in the current climate it may be deduced that roughly the same number of men are falsely charged as are legitimately charged outside the criminal process with rape and sexual assault.⁶⁷ These men have their lives turned upside down.⁶⁸ They are led off in handcuffs,⁶⁹ expelled from college, taught that society is unfair.

⁶⁵ <http://falserapesociety.blogspot.com/>

⁶⁶ www.saveservices.org

⁶⁷ Some months after the Duke Rape case was reported, the charges were determined to be groundless and the prosecutor, who in his zeal to convict the male athletes violated many laws, was himself ultimately prosecuted.

⁶⁸ Some of the “rape culture” dynamics must be linked to the internet. The extraordinary capacity for distributing quite remarkable material deserves note. A case in point is “Republicans for Rape.” This is a handsomely produced website that depicts Republican Senators who voted against Al Franken’s “anti rape amendment” to the 2010 defense appropriations bill. The amendment would have prevented funds from going to Halliburton.

⁶⁹ This was the incident from which I first became interested in the subject. It was at the University of Massachusetts,

Another consequence of the prevalence of the rape culture paradigm is that the subject of rape and sexual violence is treated on campuses as if it is an established truth. For instance, we have noted the mandate that college freshmen at Hamilton attend a lecture on the rape culture at which they were to accept that they were responsible for the culture of violence. The response to the mandated rape lecture at Hamilton College was uproar on campus contesting the “rape culture” view fostered by the Dean of Students. Feminists at Hamilton and around the country condemned the use of the college’s authority to impose a point of view. The talk was challenged by FIRE, a conservative watchdog group interested in 1st Amendment and Due Process issues.⁷⁰

At Hamilton College as at many contemporary colleges there is confidence among student affairs administrators, Women’s Studies Departments and rape crisis centers that men are a problem. Pedagogically, this may not be the most productive premise.

Dike/Justitia: Women in Law. The law is not just run by men anymore. Of course, women have been central to the image of justice in western law for some time. It is often a female figure that epitomizes justice in American law. And, before that she was “Dike” for the Greeks and “Justitia” for the Romans. Currently she is usually blindfolded but this was not always the case. At the same time that women have been central to images of justice and law they have widely been seen as outside of it. That is no longer the case, particularly in the prosecution of sexual violence and specifically on college campuses.

The role of women in prosecution, particularly the prosecution of sexual violence deserves attention. For the most part it has not been examined at all and, I believe, the particular dynamic of the role of women in the prosecution of men bears examining. In the critique of rape prosecutions as they were practiced in the past, the male prosecutorial view of the female complainant became an important

Amherst. It was one of my students who said to me that because he knew the police officers they allowed him to be cuffed in front of his body and to be able to cover the handcuffs with his jacket. He was the only African American member of the university’s award winning 300 member marching band.

⁷⁰ See Appendix 2 for FIRE correspondence..

dimension. Prosecutors were said not to take women seriously and/or to “blame the victim.” In a different sense, the current regime of law and prosecutorial zeal deserves attention. Between 1970 and 1990 the number of women entering the legal profession increased many fold⁷¹ at the same time that VAWA expanded the prosecution of sexual violence.

One of the elements of the position described in the note to the work of Julie Stubbs as asymmetrical social relations is that it is offered as an absolute rather than a condition. As in, “Men have more power than women. Men can beat women up.” At the time the critique was offered by radical feminists critiquing the liberal paradigm, women were excluded from many colleges and graduate programs. They were a small factor in the legal profession. The perception of women’s place was different from what it is today. While the make up of faculties, dean’s and prosecutor’s offices have changed; the critique of a gendered sexual assault has not evolved much. “Asymmetrical” relations are posited and prosecutions incorporate that presumption at every level. The potential unfairness of the critique remaining the same AND women coming into prosecutorial positions is potentially grave.

Part of the “culture of rape” literature is a “men's group” angle in with men see the culture as something to take over as part of their own transformation.⁷² At Haverford College the men’s group is a visible presence. Men addressing their propensity for violence are heroes in the campaign against sexual violence. Like the role of women in prosecution, the role of men as ideologues for the rape culture deserves to be examined. This is especially true as the critique of what this culture does to women becomes more obvious.⁷³

Men and their violence have been essential features of the state for millennia. In sexuality and sexual violence the state has been something of an exception in the West. This has been changing and it

⁷¹ Check the figures.

⁷² “In addition to its use as a theory to explain the occurrence of rape and domestic violence, rape culture has been described as detrimental to men as well as women. Some writers and speakers, such as Jackson Katz, Michael Kimmel, and Don McPherson, have said that it is intrinsically linked to gender roles that limit male self-expression and cause psychological harm to men.” Jackson Katz, “Tough Guise,” Media Education Foundation, 2002. Wiki, Rape Culture, 12/14/2010.

⁷³ See Marcus; Gruber; and Susan Ball, “Sexual Violence/Sexual Relationships: The Creation of the Female Victim,” A Feminist Tea Party, April 15, 2011, New York Foundation for the Arts, Brooklyn, NY.

has brought women into the state as lawmakers and prosecutors, judges and cops.

Sexuality Outside the State. Sharon Marcus writes in “Fighting Bodies, Fighting Words,”⁷⁴ from a feminist perspective embedded in the politics of sex. Her radical treatment suggests a rethinking of how women conceive of and respond to rape. She evaluates and rethinks gender relations and conventional sexuality. This perspective, like the analysis in this paper, deals with law. But Marcus shows the importance of frameworks embedded far more deeply in the social fabric. She argues that women need to be more aggressive in situations where they are threatened with sexual violence and in thinking about sexual violence. The chapter begins by discussing Mary Hawkesworth who is characterized as saying, “rape is real, to be real means to be fixed ... and that feminist politics must understand rape as one of the real, clear facts of women’s lives.”⁷⁵ Hawkesworth is said to be characterizing “real rape” as against post-modern ephemeral rape discourse with its multiple facets and indeterminacy. For Marcus, rape IS “a question of language, interpretation and subjectivity.”⁷⁶ And a restatement of rape’s meaning requires rethinking how we speak and talk about it.

Her rethinking is quite substantial. In one remarkable sentence she takes on the meaning of male, female, the state, power, law and a few other social dynamics. For Marcus the view that rape is “terrifying and unnamable...often concurs with masculinist culture in its designation as a fate worse than or tantamount to, death....”⁷⁷ Her essay is about naming as epistemological awakening and anti-rape strategy. She calls for refusal to accept the inherited politics of naming rape a fate worse than death to be endured in the hope of subsequent legal vindication.⁷⁸ Or in Marcus’ remarkable words: “The language of rape solicits women to position ourselves as endangered, violable, and fearful and

⁷⁴ “Fighting Bodies, Fighting Words: A Theory and Politics of Rape Prevention,” Judith Butler and Joan Scott, eds. *Feminists Theorize the Political* p. 385-403.

⁷⁵ p. 385.

⁷⁶ p. 387.

⁷⁷ p. 387.

⁷⁸ A corollary version, harking back to *To Kill a Mockingbird*, the trial is to be endured with promised vindication at the appellate level.

invites men to position themselves as legitimately violent and entitled to women's sexual services."⁷⁹ Thus in the language by which we live our understandings of what male and female mean include the foundations of our sexuality and the key elements of rape discourse.

Part of her analysis includes a discussion of women's power in rape situations and the vulnerability of men when we think about rape and when they attempt to perform it. For Marcus, rape is "...a process of sexist gendering which we can attempt to disrupt."⁸⁰ For instance, in "the rape script" women, as objects of violence rather than the source of violence, subjects of fear rather than agents of fear, are disadvantaged. Women, in anticipation of pain and violation, are taught the inefficacy of action. It is from this narrative, rather than actual power, that men are generalized as more powerful than women and possessors of the agency in rape.

...the penis is vulnerable in a variety of dimensions and to a variety of responses. Marcus' analysis of rape culture from this perspective has implications for how we see rape culture and the state response.

"Legislation backs up the objectifying violence of the rape script by not defining rape as assault."⁸¹

Law may be both the expression of our moral economy and a force shaping it. In the case of the rape culture on American college campuses from roughly 1990 to the present, a petrified version of 2nd wave feminism has come to characterize the structure of authority and the college's teaching on sexuality. It is a dangerous development that demonizes all men in constituting a vulnerable female subject.⁸² How much of this is the price a society has to pay to make women safe? This "price" is often characterized as insignificant relative to the widespread violence that men do. This is the challenge posed the rape culture paradigm. Sexual violence remains a social problem and a policy challenge but

⁷⁹ p. 390.

⁸⁰ p. 391.

⁸¹ p. 397.

⁸² In some respects the vulnerable female is a polar opposite to the fallen woman who was blamed for her own attack in the rape lore from times past.

at present it seems to me that there is too much of this view that men take sexual violence as a gender privilege, that they benefit from rape and are presumed to engage in sexual violence with impunity.

Part of the preceding analysis has been about educational institutions because they have adopted the rape culture paradigm in dramatic ways but they have done very little about education for sexual relations. This is of course not an area where there is much confidence about state intervention. Nevertheless, the social order does require some attention to the construction of sexual relations, both attitudes and behaviors. The current campaign against sexual violence is doing very little to foster this sort of enlightened educational enterprise.

In the area of sex and sexual violence the largest changes seem likely to take place outside the state, while the state, for its part, continues to over reach and demonstrate its mastery of unintended consequences.

5. Bibliography

Basu, Srimati "Feminism, Courts and Law," A syllabus, aaanet.org., Association for Political and Legal Anthropology, American Anthropological Association.

Brown, Wendy "Finding the Man in the State," *Feminist Studies* 18:1 (1992) 7-34.

Brownmiller, Susan *Against Our Will: Men, Women and Rape* New York: Simon and Schuster, 1975.

Butler, Judith P. *Gender Trouble: Feminism and the Subversion of Identity*. New York: Routledge, 1990.

_____ and Joan W. Scott, *Feminists Theorize the Political* New York: Routledge, 1992.

de Beauvoir, Simone *The Second Sex*. New York: Vintage, 1952.

Estrich, Susan "Real Rape," *The Yale Law Journal* 95:6 (1986) 1087-1184.

Foucault, Michel *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984*. Collected by Lawrence D. Kritzman. Psychology Press, 1990.

_____, *The History of Sexuality* (1976-1986).

Gruber, Aya "Rape and the Feminist War on Crime," *Iowa Law Review* 92: 741 (2007).

Hirsch, Susan “Interpreting Media Representations of “A Night of Madness: Law and Culture in the Construction of Rape Identities,” *Law and Social Inquiry* 19:4 (2004) 1023-1056.

Kelly, Liz “Inside Outsiders: Mainstreaming Violence Against Women into Human Rights Discourse and Practice,” *International Feminist Journal of Politics* 7.4 (2005) 471-495.

Kidder, Tracy *Home Town* New York: Washington Square Press, 1999.

Lee, Harper *To Kill a Mockingbird* New York: J.B. Lippincott, 1960.

Marcus, Sharon “Fighting Bodies, Fighting Words: A Theory and Politics of Rape Prevention,” in *Feminists Theorize the Political* Judith Butler and Joan W. Scott, eds, New York: Routledge, 1992: 385-403.

Merry, Sally Engle “Rights, Religion and Community: Approaches to Violence Against Women in the Context of Globalization,” *Law and Society Review* 35: 1 (2001) 39-88.

Russell, Sarah F. “Covering Women and Violence: Media Treatment of VAWA’s Civil Rights Remedy,” *9 Mich. J. Gender & L.* 327 (2002-2003).

Siegel, Reva and Catharine A. MacKinnon *Directions in Sexual Harassment Law* New Haven: Yale University Press, 2004.

Stubbs, Julie “Beyond Apology,” *Journal of Criminology and Criminal Justice*, 2007.

Tarsi, Melinda, “Capital Punishment and Domestic Violence: Some Intersections in Law,” paper written for *Constitutional Issues*, UMass Amherst (2008).

Legislation

Violence Against Women Act, *Wikipedia*.

Cases

Bell v. Harrison 670 F.2d 656 [6th Cir. 1982].

Douglas v. Alabama, 1965.

Gonzales v. Beto, [405 U.S. 1052](#) (1972).

Irvin v. Dowd, [366 U.S. 717](#) (1961).

New York v. Cahill 809 N.E. 2nd 561 at 567 (2003).

Ohio v. Roberts 448 U.S. 56 (1980).

Parker v. Gladden, [385 U.S. 363](#) (1966).

Pointer v. Texas 380 U.S. 400 (1965).

Powell v. Alabama 287 U.S. 45 (1932).

Roe v. Wade 410 U.S. 113 (1973).

Spigarolo v. Meachum (1991).

Turner v. Louisiana, 379 U.S. 466 (1965).

U.S. v. Burr, 25 F. Cas., at 193.

U.S. v. Lopez 514 U.S. 549 (1995).

U.S. v. Morrison 529 U.S. 598 (2000).

Witherspoon v. Illinois, 391 U.S. 510 (1968).

Appendix 1. Rape culture

Wikipedia, the free encyclopedia (12/14/2010)... a term used within [women's studies](#) and [feminism](#), describing a [culture](#) in which [rape](#) and other [sexual violence](#) (usually against women) are common and in which prevalent [attitudes](#), [norms](#), practices, and [media](#) condone, [normalize](#), excuse, or encourage [sexualized violence](#).

Within the [paradigm](#), acts of [sexism](#) are commonly employed to validate and [rationalize](#) normative [misogynistic](#) practices; for instance, sexist jokes may be told to foster disrespect for women and an accompanying disregard for their well-being, which ultimately make their rape and abuse seem "acceptable." Examples of behaviors said [\[by whom?\]](#) to typify rape culture include [victim blaming](#) and [sexual objectification](#).

In a 1992 paper in the *Journal of Social Issues* entitled "A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change," Patricia Donat and John D'Emilio suggested that the term originated as "rape-supportive culture" [\[1\]](#) in [Susan Brownmiller's](#) 1975 book *Against Our Will: Men, Women, and Rape*.

Researchers such as Philip Rumney and Martin Morgan-Taylor have used the rape culture paradigm to explain differences in how people perceive and treat male versus female victims of [sexual assault](#).[\[3\]](#)

Criticisms of the paradigm

Some writers, such as [Christina Hoff Sommers](#), have disputed the existence of rape culture, arguing that the common "one in four women will be raped in her lifetime" is based on a flawed study, but frequently cited because it leads to campus anti-rape groups receiving public funding.[\[4\]](#) Others, such as [bell hooks](#), have criticized the rape culture paradigm on the grounds that it ignores rape's place in an overarching "culture of violence".[\[5\]](#)

References

Patricia Donat and John D'Emilio, "A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change", *Journal of Social Issues*, vol. 48, n. 1, 1992; published in Di Karen J. Maschke, "The legal response to violence against women", Routledge 1997, [ISBN 978-0-8153-2519-2](#).

Phillip N.S. Rumney & Martin Morgan-Taylor, "The Construction of Sexual Consent in Male Rape and Sexual Assault", in *Making Sense of Sexual Consent*, edited by Mark Cowling and Paul Reynolds, [ISBN 0-7546-3687-9](#)

bell hooks, *Feminist Theory: From Margin to Center*, quoted in *Feminism is for Everybody* by bell hooks, [ISBN 0-89608-628-3](#)

Appendix 2. FIRE Letter to Hamilton College President President Joan H. Stewart
September 24, 2010

URGENT

Sent via U.S. Mail and Facsimile (315-859-4991)

Dear President Stewart:

As you can see from the list of our directors and board of advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, voluntary association, freedom of speech, and academic freedom on our nation's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of conscience posed by a mandatory, ideological presentation designed for male Hamilton College students to acknowledge their personal complicity in a "rape culture" on Hamilton's campus and to change their "rape-supportive beliefs" and attitudes. The mandatory presentation depends on "a combined cognitive and emotional intervention."

This is our understanding of the facts; please correct us if you believe we are in error.

On Tuesday, September 21, 2010, Northside Area Director Noelle Niznik, a member of the Residential Life staff at Hamilton College, e-mailed the EVENTS-ALL@listserv.hamilton.edu mailing list announcing a mandatory program for "First-Year men." The program, "She Fears You," is a presentation by Keith Edwards, founder of Men Ending Rape, on Monday, September 27, 2010, at 7:00 pm in the Chapel at Hamilton College. Edwards founded and served as Chair of the Commission for Social Justice Educators for the American College Personnel Association. First-year men were instructed to "be sure to bring your Hill Card" so that their attendance could be logged. First-year women, in contrast, are required to attend a one-act play called *Fresh* on either September 25 or September 26 in the Events Barn.

According to the text and videos at the Men Ending Rape website, menendingrape.org, the "She Fears You" presentation operates under the presumption that every college campus has "aspects of a rape culture [which] encourages, condones, and teaches rape." Edwards admits that his understanding of these aspects is complex, but that they boil down to "the objectification of women; the subordination of women's intelligence, capability, and humanity; the defining of masculinity as sexual conquest; and other intersecting forms of oppression."

Men Ending Rape presentations teach students that a campus' "rape culture" includes much expression that is a regular part of the free marketplace of ideas in a free society and at a liberal arts college such as Hamilton. Such expression is frequently a matter of significant social and political debate, but the mandatory presentation will teach that certain views must be made "no longer acceptable in any way." As Edwards states in one of the videos:

[When] men and women on this campus start speaking up and talking about the T-shirts or the comments that people shout or the parties that happen, or the advertisement they see for events, and start confronting those things, and make this an environment where **it is no longer acceptable in any way to objectify women or define masculinity as sexual conquest, or subordinate women's intelligence, capability, and humanity, or allow issues of racism, classism, and homophobia to go unabated**, then this campus will be a better place for all of us to be." [Emphasis added.]

While Hamilton College is free to promulgate the ideal that these beliefs should be combated, an institution that promises-as Hamilton does-the right to think and speak freely may not **require** its students to attend a presentation explicitly billed as a "cognitive and emotional intervention" designed to reform their innermost beliefs.

When Hamilton College authorities force students to attend such a presentation lest they be punished, those authorities have encroached upon the very respect for humanity that Edwards intends to teach. The mandatory nature of this program cuts to the core of the most essential rights of a free people. Students must be free to choose whether or not to attend such a presentation. Hamilton College offends the fundamental intelligence and humanity of its male students by invading their freedom of conscience, the right to keep their innermost thoughts free from intrusion by the authorities. No agency of Hamilton College, no matter how noble the intended purpose, should believe it is morally acceptable to re-educate students by such coercive means.

At the heart of this concept relating to freedom of the mind is a recognition of our own limitations-like us, those in power are neither omniscient nor omnipotent, and therefore have no right to dictate to others what their deepest personal beliefs must be. Concerns for free speech and freedom of conscience are rooted in the wisdom of humility and restraint. It is hard to imagine a social goal more benign than that of reducing the heinous crime of sexual assault. However, this program, which presumes to show students the specific ideological, political, and moral assumptions they *must* make in order to be "better people," crosses the boundary from education into unconscionably arrogant, invasive, and immoral thought reform. Students might choose to undergo this experience, but they must be offered the option of not undergoing it.

Please respect the basic humanity of first-year Hamilton College students and announce to all first-year men that their attendance at "She Fears You" is optional. Strongly encourage students to attend, if you like, but recognize that making this program mandatory violates core normative notions of freedom of conscience that are at the heart of our liberal democracy. Likewise, FIRE asks that you carefully consider the content and method of instruction in *Fresh* and then

determine whether or not to make attendance at *Fresh* optional for first-year women.

FIRE became involved in this matter because more than one Hamilton College faculty member expressed their concern about this mandatory programming to us. Because of the imminence of these events, FIRE asks you to respond immediately by announcing that the first-year program for men is optional and notifying FIRE that you have done so. We look forward to hearing from you.

Sincerely,

Adam Kissel □ Vice President of Programs

cc:

A.G. Lafley, Chair, Board of Trustees, Hamilton College; Nancy Thompson, Dean of Students, Hamilton College; Patrick Reynolds, Interim Dean of the Faculty, Hamilton College; Travis Hill, Director of Residential Life, Hamilton College; Patrick Marino, Assistant Director of Residential Life, Hamilton College; Ashley Menard, Eastside Area Director, Office of Residential Life, Hamilton College; Noelle Niznik, Northside Area Director, Office of Residential Life, Hamilton College; Jean Burke, Staff Assistant, Office of Residential Life, Hamilton College



[Join the global outcry against "corrective rape" in South Africa](#)



SIGN THE PETITION

Dear Susan,

Several weeks ago, survivors of "corrective rape" -- a heinous practice in South Africa where lesbians are raped under the guise of "curing" them -- started a petition on [Change.org](#) to ask the Minister of Justice to declare corrective rape a hate crime. ☐ ☐ It has since become the largest-ever petition on [Change.org](#), and the Chief of Staff at the Ministry of Justice has repeatedly contacted us to complain that they are overwhelmed with the messages coming from every part of South Africa and every corner of the globe. But the minister still refuses to meet with the activists who started the campaign -- Ndumi Funda and the women of the non-profit Lulekiszwe. Ndumi asked us to pass the note below along to [Change.org](#) members. Take a look, then please add your name to their petition to keep up the pressure: ☐ ☐ http://www.change.org/petitions/view/south_africa_declare_corrective_rape_a_hate-crime?alert_id=ZNkkDPUPUC_eBbzjAMTtY&me=aa

To Change.org members, editors and most of all to all of you who signed our petition, ☐☐ We are GOBSMACKED at the response that our petition has received. Our fight against corrective-rape has been going on for so long, under the most harrowing of circumstances, with only a few volunteers to help, and it just seemed that nobody was listening, nobody cared, and our sisters were getting raped, beaten up and murdered without anyone doing anything about it. ☐☐ In absolute frustration, [we decided to write a petition](#). This was a first for us, and never in our wildest dreams did we imagine that we would get this kind of a response. We did jokingly say that we wanted to crash the Ministry of Justice's servers, but we thought that our petition would get a thousand or so signatures if we were lucky. More than 65,000 signatures later, and the senior Ministry officials we targeted are apparently having major difficulty accessing their e-mail because of all the e-mails your signatures are generating! WOOOHOOOO! Well done & thank you!

If you haven't already signed the 'Corrective Rape' petition, please sign and share it with your friends:

http://change.org/petitions/view/south_africa_declare_corrective_rape_a_hate-crime ☐☐ Unfortunately, despite this becoming the most popular petition of ALL TIME on Change.org, and clearly getting the attention of the minister, Lulekisizwe has still not heard a word from the Justice Department! We need a meeting with the Minister of Justice so we can discuss how 'corrective rape' victims are treated, the lack of police response, how long the court cases take, why so many of the dockets get 'lost' and why the rapists get out on such low bail. Please keep the pressure up! ☐☐ Thanks to a donation from an ethical cosmetics company in the

UK called Lush, we were able to get another, more secure place to stay and use as a safe-house for the victims, but the rapes and assaults are continuing. We are worn out and things are far from easy, especially at this time of the year when stress levels are very high.

□□ The one thing that is giving us hope is all of you showing love and caring by signing and sharing the petition. We are thrilled, excited and very, very humbled by the support that every one of you have shown, and all we can say is thank you and please, please don't stop.

Ask your friends to sign our petition: □□ http://www.change.org/petitions/view/south_africa_declare_corrective_rape_a_hate-crime?alert_id=ZNkkDPUPUC_eBbzjAMTtY&me=aa

Bless you all and have a great Festive Season, □ Ndumi Funda & the Lulekisizwe team

Appendix 4 Defining a Rape Culture, from Haverford College, MASAR (Men Against Sexual Assault and Rape)

Often attributed to UC Davis (<http://pubweb.ucdavis.edu/Documents/RPEP/rculture.htm>) the piece is widely cited.

This section will more closely examine the social and cultural conditions that intensify or perpetuate rape. The causes and reasons for rape are deeply entrenched in our social structure. Up to this point, we have explored some of the motivations and circumstances which lead men to rape. We have learned that men rape out of anger and a need to overpower, dominate, and humiliate. We have also looked at some of the historical attitudes from which today's beliefs and stereotypes have evolved. However, we must look beyond both rapists' motivations and history if we are to truly understand the act of rape.

Why does rape exist? What causes rape? What is it about our society that makes rape one of the fastest growing violent crimes in this country? Rape prevention techniques are very important in decreasing the vulnerability of individuals, but in order to eliminate the occurrence of rape from our society, we must first examine its causes more deeply so that we can take collective action. We must understand the sociology of rape in order to effectively work towards the elimination of it.

Despite the necessity for rape prevention, it is, to some degree, like applying a "band-aid" on the problem. The underlying reasons and causes for rape must be defined, examined and resolved or rape will not cease. Rape Prevention must focus on eliminating the conditions in society which make women easy targets for rape. Victim control or rapist control alone are not effective. Victim control teaches women to avoid rape, but doesn't reduce the threat of rape. Furthermore, rape cannot always be avoided, no matter what precautions the woman takes. It also puts part of the responsibility and blame for rape on the victim. Rapist control confuses prosecutions with prevention. There is little evidence that punishment serves as a deterrent. Besides, very few rapists are ever incarcerated.

From very early ages, men and women are conditioned to accept different roles. Women are raised to be passive and men are raised to be aggressive. We are conditioned to accept certain attitudes, values and behaviors. Our conditioning is continuously and relentlessly encouraged and reinforced by the popular media, cultural attitudes and the educational system. The media is a major contributor to gender-based attitudes and values. The media provides women with a complete list of behaviors that precipitate rape. Social training about what is proper and ladylike, as well as what is powerful and macho, teaches women to be victims and men to be aggressors. The high incidence of rape in this country is a result of the power imbalance between men and women. Women are expected to assume a subordinate relationship to men. Consequently, rape can be seen as a logical extension of the typical interactions between women and men. One way to analyze the power relationship between men and women is by examining some of the common social rules women are taught.

RULE #1: When spoken to, a woman must acknowledge the other person with a gracious smile. Smiling and acknowledging almost any approach has become reflexive. For a potential rapist, this can serve as a "pretest" to determine how compliant a woman will be. Because women do not usually consider the option of ignoring an unwanted approach, they are more vulnerable. There are many reasons why women feel compelled to acknowledge someone they do not want to: peer group pressure; not wanting to hurt someone's feelings; women's lack of experience in acting on their own intuition about danger. The key to changing this comes in evaluating each approach as it comes and using your own feelings and needs as the main criteria for responding.

RULE #2: Women must answer questions asked of them. In our culture, one of the rudest things a person can do is not answer a direct question. In social situations preceding rape, the man often puts the burden of rejection on the woman by asking questions such as, "What's wrong with you, don't you like me?" or, "What's wrong with you, don't you like men?" a woman often compensates for hurting the man's feelings by complying with his demands. It is important to consider each question you are asked against your own wishes at the moment.

RULE #3: Women must not bother other people or make a scene because they are uncomfortable. Generally speaking, it is not ladylike to bother anyone at any time. Women are not expected to intrude at any time, but rather, to be ready to help others at all times. When women scream for help, no one is willing to get involved. We have learned that yelling "FIRE" is much more effective than yelling "RAPE" or "HELP". Women are reluctant to draw attention to themselves, especially if in a place, such as a party, bar, or dance. The solution is to solicit the help of others if a direct statement of "stop" is not heeded.

RULE #4: When in trouble, it is best to defer to the protection and judgment of men. There are two flaws with this rule: 1) it is men who endanger or bother women 2) there are not always trustworthy men around to protect women. Women must take the problem of victimization into their own hands; support and protect each other by being together, watching out for each other and understanding what it is like to be at the mercy of men.

RULE #5: Causal touching or suggestive comments in social settings are meant as a tribute to a woman's desirability. Many women believe that being ogled by a group of construction workers is nothing more than a form of praise. Many sexual assaults, however, begin with a "harmless" compliment or inquiry from a rapist. His comments are a way of testing how accommodating the woman might be. The lack of clarity about what constitutes insulting behavior and the learned

ambivalence women have about unwanted approaches makes them vulnerable to sexual assault.

RULE #6: It is the natural state of affairs for men to carry the financial burden of social situations. This rule is losing some of its strength as more women are now paying their own way. This is still a popular rationale for men to justify demanding sex. The autonomy and self-respect that come with not always allowing an escort to pay is important in reacting to potentially dangerous situations.

RULE #7: When engaged in a social encounter, it is not proper for a woman to be superior in any game, sport or discussion, if she wants to be accepted. It has been held that beating a man at games, be it pool, tennis, scrabble, or monopoly will hurt a man's pride and decrease his interest. It follows that if women are never allowed to win at anything with a man, it is expecting a great deal to ask a woman to effectively cope with a man who is trying to rape her. The danger in this is having a mindset that trivializes our own resources and talents in deference to a man's. This ridiculous unwritten rule of expected passivity needs to be recognized and eradicated in order for women to know they are capable of defending themselves.

RULE #8: Women should always accept and trust the kindness of strangers if they offer help. Women tend to trust people who approach them or offer help. Unfortunately, the ploy of, "I'm helping you for your own good, you obviously need it," is used by potential rapists who have planned the crime in advance. The problem for women is that there is no way of knowing whether an overture of assistance is genuine or not. Therefore, it is best to limit the times where you might be in genuine need of help. Women must learn to scrutinize such "shoulds" more closely. Each individual woman must reexamine society's expectations of her. Once women have evaluated these rules of social behavior, they can create their own guidelines instead of adhering to, however unconsciously, these socially prescribed rules.

The next step involves examining each situation as it arises. Understanding a potentially dangerous situation before one finds oneself in the midst of it will make it much easier to act in a definitive, effective way. The time to reevaluate the need to accept help from strangers is not after the fact: not after he has pushed you into your front door after having helped you with your packages. The time to reevaluate is before the situation occurs. In order to accomplish this, it is important for women to respect themselves, and know they are worthwhile. Women have basic rights. When a woman really values herself, she is less likely to find herself in a situation where she can be used or misused. This is not to say that women who find themselves in dangerous situations are at fault or do not value themselves, but rather that women can reduce their vulnerability by cultivating assertive behavior and by thinking about potentially dangerous situations in advance.

Women's vulnerability to rape is a result of their subordinate relationship to men. The set of beliefs and attitudes that divide people into classes by sex and justify one sex's superiority is called sexism. There are a number of sexist dictates that serve to maintain this subordinate relationship:

1. Women's status in society: Women occupy a relatively powerless position in society and are the recipients of fewer advantages and privileges. Men's benefits are built into a patriarchal system.
2. Rape as a means of control over women: Rape plays a role in maintaining patriarchy by perpetrating the threat of violence. The acts of just a few violent men can terrorize all women and can control women's lives. The indifference of other men reinforces this effect.
3. Women's dependence on men: Many women receive most of their benefits through men rather than through their own ability. This dependence is reinforced by the cultural belief that dependence is a "womanly" trait. Women are dependent on men for political representation, economic support, social position and psychological approval.

A strategy for eliminating women's vulnerability to rape involves altering the power relationship between women and men. Women's vulnerability will not end with individual change alone; there will have to be social change as well. The whole assumption of male superiority will have to be negated. Rape must be viewed as a political issue, because it keeps women powerless and reinforces the status quo of male domination.

The socialization of women must be changed. Society trains females to be physically and emotionally unequipped to respond effectively to danger. Training begins at an early age. Boys and girls are channeled into different physical activities, because of the believed differences in physical and muscular development and stamina. Consequently, as adults, females are unable to gauge both their own bodies' resistance to injury, and their own strength and power. Learning self-defense in schools and on the job would be a step towards alleviating women's vulnerability, as would providing girls and women with equal opportunities and encouragement to engage in sports. The emotional training women receive also contributes to their inability to successfully fight back. Women learn to be passive, gentle, nurturing, accepting and compliant. Rapists select victims they can intimidate and overpower. Most women are reluctant to challenge men's offensive behavior because of their emotional training and conditioning (i.e., it is not proper to "make a scene.")

In addition, women tend to have an aversion to violence. It must be recognized that non-violence is no longer a virtue if it serves to maintain victimization. There is a difference between becoming a violent person and responding to violence in an appropriate and assertive manner. Women are not being encouraged to become violent individuals or to sanction violence, but rather to learn the skills to combat violent assaults against their persons.

Unfortunately, many women see themselves as powerless victims. Women can cultivate a confident and competent image. They need to learn direct and appropriate responses which reflect a seriousness about their refusal to be intimidated. Confrontation training helps women learn how to respond to men's suggestive and rude comments effectively.

Women are also kept vulnerable through their isolation from each other. Women are socialized to compete with each

other for the attention of men and to mistrust each other. Collective strategies to eliminate rape must be utilized. Competition and mistrust are not conducive to collective strategizing among women. Women must learn to see other women as sources of aid and to work together to decrease the vulnerability of all women. It is important that women not blame themselves for the conditioning that has resulted in isolation.


Frequently, women psychologically distance themselves from the issue of rape and from each other by adopting the attitude that, "It can't happen to me," or that, "Only immoral women are raped." Community isolation also exists. Women within a community do not use and sometimes do not even see each other as resources. There are many factors which enforce the belief that "a woman's place is in the home." Consequently, women tend to be displaced from the mainstream of community action and decision making.

In order to deal with the problem of isolation, it is important to recognize and use the power of numbers. Women might develop ad-hoc committees, confrontation groups and support groups. More effective defenses can be planned by sharing common experiences and reactions to rape. Consciousness raising groups can work to identify and overcome sexist and racist attitudes. Through analysis of common problems, women can come to trust each other and recognize the effectiveness of their collective strength. Women can work in their neighborhoods to command public attention to their safety needs.

A few awareness strategies that can be employed in neighborhoods are:

1. Organizing meetings and educational programs
2. Block organizing (small groups to meet to discuss safety and planning to organize neighborhood)
3. Neighborhood lobbying (i.e. letter writing)
4. Whistle alert (Whistle sounded for help)
5. Shelter houses (women in neighborhood make their homes available for temporary refuge)
6. Watch programs (patrol programs, with assistance of experienced community organizers)
7. Lobbying for preventive education to be included in the public school curriculum
8. Take Back The Night March (symbolically supporting women's right to walk at night)

In essence, attention must be drawn to the focus of rape. Rape must be viewed as a political issue, not just another crime or mental health problem. It must be seen as an issue which affects all women. However, rape is not just a women's problem--it is a community problem.

	<p>WELCOME TO NCHERM THE NATIONAL CENTER FOR HIGHER EDUCATION RISK MANAGEMENT</p>
<p>NCHERM / ACPA</p> <p>SEXUAL MISCONDUCT TRAINING INSTITUTE</p> <p>JULY, 2010</p> <p>THREE LOCATIONS</p> <p>DREW UNIVERSITY MADISON, NJ</p> <p>LOYOLA UNIV. CHICAGO CHICAGO, IL</p> <p>STANFORD UNIV. NORTHERN CA</p>	<p>THE NATIONAL CENTER FOR HIGHER EDUCATION RISK MANAGEMENT www.ncherm.org</p> <p>TOGETHER WITH ACPA COLLEGE STUDENT EDUCATORS INSTITUTE www.myacpa.org</p> <p>RESPONSE</p> <p>These landmark two-day institutes are designed to help college administrators, hearing boards, conduct administrators, appeals officers, and campus law enforcement respond to sexual harassment and sexual assault.</p>
<p>Hosted by Drew University</p>	
<p>Hosted by Loyola University Chicago</p>	
<p>Hosted by Stanford University</p>	
	<p>**RE</p>

These two-day institutes are designed to elevate the national dialogue on how to respond to sexual assault.

The Institutes are intended to achieve the following five learning outcomes for attendees:

- Gain an understanding of the Title IX, negligence law, FERPA and Clery Act structures;
- Comprehensively understand the best practices for campus sexual misconduct;
- Learn the essential elements and recommended best practices for conduct proceedings;
- Gain knowledge of how to effectively manage the conduct proceedings in sexual misconduct cases;
- Explore the substance of what training should be provided to hearing panels.

These Institutes will be followed in September by a series of two-day sexual misconduct

AGENDA

These Institutes will provide participants with an opportunity to learn the skills and

You are encouraged to attend with a group of stakeholders from your campus, to discuss policy and procedures confidentially evaluated in one-on-one sessions with the facilitator. This consultation will enable you to receive a review of and feedback on your policies and procedures.

The topics over the two-days are as follows:

I. Gender Climate Issues

- a. Intake
- b. SART
- c. Crime v. code
- d. Mandated reporting by employees
- e. Amnesty
- f. Process designed to encourage reporting, or discourage it?

II. Understanding the Legal Landscape

- a. Title IX law
 - i. Role of the Office of Civil Rights
 - ii. Gamechangers – significant cases that shape and interpret the law
- b. Negligence
 - i. Duty of care
 - ii. Foreseeability of harm
 - iii. Prior similar incidents
- c. FERPA
 - i. Privacy
 - ii. Disclosure
- d. The Clery Act
 - i. Notice
 - ii. Victim's rights

III. Sexual Misconduct Policy Revision Best Practices

- a. Essential elements for every policy
- b. Recommended best practice language

- c. Victim's Rights/Rights of the Accused
- d. Jurisdiction

IV. Investigation

- a. Who investigates?
- b. What?
- c. How?
- d. To what result?
- e. For what purpose?
- f. Problem-solving exercise

V. Sexual Misconduct Hearing Procedures

- a. Required responses (public and private institutions)
- b. Hearing panel formats
- c. Hearing panel composition
- d. Recommended best practices
- e. Advisors/Advocates
- f. Role of alleged victim
- g. Sanctioning guidance
- h. Rights of the accused student
- i. Appeal
- j. Role of alternative dispute resolution
- k. Hearing accommodations for alleged victims
- l. Case studies

VI. Training Hearing Boards

- a. Understanding evidence
- b. Questioning guidelines
- c. Physical set up
- d. Decision/analysis process
- e. Sanctioning process

VII. "The Anatomy of a Sexual Misconduct Hearing"

- ☐ a. Participants will engage in a hearing and apply the skills gained throughout

DELIVERABLES:

Each participant will be provided an extensive training manual containing the ex

Each institution will have the opportunity for individual consultation with the Inst

Q&A with some of the country's foremost experts on campus sexual misconduct

INTENDED PARTICIPANTS:

- Presidents and Boards of Trustees
- Vice Presidents of Student Affairs
- Deans of Students
- Student Affairs Administrators
- Judicial/Conduct Administrators

- University Legal Counsel
- Risk Managers
- Human Resources Staff
- Disability Services Personnel
- Residential Life Administrators
- Campus Law Enforcement
- Student Activities and Student Development Staff
- Student Government Representatives and Leaders
- Counseling Services Personnel
- Health Services Staff
- Conduct Board Members and Hearing Officers
- Women's Studies and Women's Center Staff
- Campus Advocates, SART and Health Educators
- Peer Educators and Advocates

INSTITUTE FACULTY :

Brett A. Sokolow, J.D. is a higher education attorney who specializes in high-risk response and remediation. He is legal counsel to sixteen colleges, and is the faculty as an expert witness on sexual assault and harassment cases, and he has authored 1,400 college campuses. He has provided strategic prevention programs to student conduct codes of more than fifty colleges and universities. The NCHERM Model country. NCHERM has trained the members of more than 400 conduct hearing Behavioral Intervention Team Association (www.nabita.org), and is a Director at William and Mary and the Villanova University School of Law.

W. Scott Lewis, J.D. is a partner with the National Center for Higher Education Assistant Vice Provost at the University of South Carolina. Scott brings over fifty frequent keynote and plenary speaker, nationally recognized for his work on behavior management and dealing with disruptive students. He presents regularly through development and implementation. He serves as an author and editor in a number of board training, and other higher education issues. He is a member of NASPA, Association in Psychology and his graduate work in Higher Education Administration at Texas

□ **Saundra K. Schuster, J.D.** is a partner with the National Center for Higher Education. Schuster is a recognized expert in preventive law for education, notably in the fields of Property and Employment Issues. She previously held the position of Senior Associate at the University of Toledo. Prior to practicing law, Saundra served as the Associate in administration and teaching. She frequently presents nationally on legal issues. Miami University, completed her coursework for her Ph.D. at Ohio State University. She is the president-elect of the National Behavioral Intervention Team Association (www.nabita.org).

COST AND ATTENDANCE:

Individuals

Individual attendee rates are \$359 per person. ACPA members receive a 10% discount.

Institutions

Each institution may bring up to 4 individuals for the group registration fee of \$500.

Institutions are welcome to purchase multiple registrations if bringing more than 4 individuals.

Each day will run from 9am to 5pm. Continental breakfast will be served on site.

or campus dining facilities.

TRAVEL INFORMATION

Please click [here](#) for information on airports, hotels and ground transportation for

REGISTRATION

To register for the Institute at Drew University on July 20th and 21st, click [here](#).

To register for the Institute at Loyola University Chicago on July 26th and 27th,

To register for the Institute at Stanford University on July 29th and 30th, click [he](#)

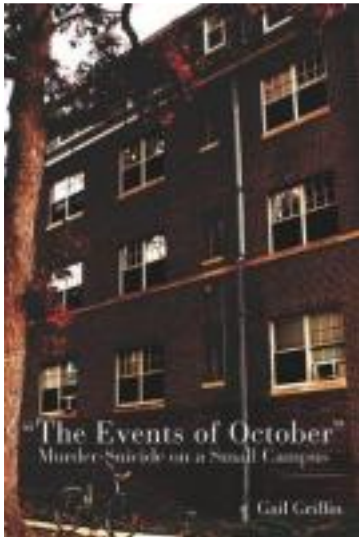
To download the .pdf registration form to pay by cheque, click [here](#).

For more information, contact Samantha Dutil, NCHERM Client Relations Coord

PRESS RELEASE

Please click [here](#) to read the press release for the National Institutes.

The Events of October - Gail Griffin



Sunday, May 1, 7:00pm □ **Ragle Hall, Serkin Center**

Author and professor of English at Kalamazoo College Gail Griffin reads and discusses her 2010 book, *The Events of October: Murder-Suicide on a Small Campus*.

On a Sunday night during Homecoming weekend in 1999, Neenef Odah lured his ex-girlfriend, Maggie Wardle, to his dorm room at Kalamazoo College and killed her at close range with a shotgun before killing himself. In the wake of this tragedy, the community of the small, idyllic liberal arts college struggled to characterize the incident, which was even called "the events of October" in a campus memo. Griffin's use of source material, including college documents, official police reports, Neenef's suicide note, and an instant message record between perpetrator and victim, puts a very real face on issues of violence against women. □□Gail Griffin is the Parfet Distinguished Professor of English at Kalamazoo College, a poet and essayist, and the author of two volumes of nonfiction, *Calling: Essays on Teaching in the Mother Tongue* and *Season of the Witch: Border Lines, Marginal Notes*.