Gender-Based Violence and Honest Victim Scripting in the Twitterverse

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This article critically analyzes Tweets regarding recent allegations of interpersonal violence against celebrities in order to explore societal perceptions of and expectations about alleged victims and perpetrators. The article concludes that Twitter may be viewed as a micro-courtroom in which victims’ veracity and perpetrators’ responses are evaluated, interrogated, and assessed. A key, feminist critique of rape law is that the determination of guilt or innocence of the perpetrator too often hinges on assessment of the character of the victim. This is borne out on Twitter, where the terms “gold digger,” “slut,” and “ho” are engaged to describe those who come forward alleging an assault by a public figure. These derogatory terms serve not only to discipline the person of accusers but also to critique parties’ behavior as they forge relationships with legal systems and processes. In the Twitterverse, those who do not conform to what this article deems an “honest victim script,” showing visible physical injury, promptly reporting non-consensual sexual contact to law enforcement, and refraining from filing a civil suit, risk being labeled “whores,” “bitches,” or “skanks.” Alleged perpetrators who do not engage law to defend themselves are transformed into “punks.” Rather than offhand comments, I argue herein that Tweets reveal the ways in which contemporary viewpoints are shaped within the construct of the law’s historical treatment of rape victims and perpetrators. In just 140 characters, the comments suggest pervasive disbelief of victims whose stories do not fit neatly into the stranger rape paradigm. They reveal distrust of survivors who, rather than or in addition to pursuing justice via criminal law, seek compensation in tort for the harms wrought by sexual assault. Further, and importantly, they signal a profound awareness of both the power of law to effect social change and the legal system’s past and present role in fostering oppressions.

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I  INTRODUCTION

“I ain’t sayin’ she a gold digger, but she ain’t messin’ with no broke…..”

In recent years, allegations of gender-based violence have been brought against numerous celebrities, including football players Ben Roethlisberger, Ray Rice, and Jameis Winston and television personality Bill Cosby. Each time an incident comes to

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2 The term “gender-based violence” applies to violence that causes women individually or as a group to suffer or disproportionately to suffer mental, physical or sexual harm. Gender-based violence also may be inflicted upon men as part of upholding perceived societal standards of masculinity. IRIN Humanitarian Analysis, “In-Depth: Our Bodies-Their Battleground: Gender-Based Violence in Conflict Zones.” Accessed August 25, 2015, http://www.irinnews.org/indepthmain.aspx?InDepthId=20&ReportId=62847.
light, the public reaction is strikingly predictable. Some rally around the victim or alleged victim. For example, after Janay Palmer married Ray Rice, whose assault on his fiancé was captured on a hotel video camera, a Twitter hashtag campaign, “#Why I stayed,” developed surrounding the theme of explaining Palmer’s decision to marry her abuser. Explanations offered for her behavior ranged from fear of the abusive spouse, to stigmatization of divorce, to belief in the essential goodness of human nature. At the same time, Tweets questioned the victim’s motives for going forward with the marriage, labeling her a “gold digger,” a “bitch,” and a “ho.”

These vicious online comments reflect a conscious effort to discipline Palmer by engaging what Patricia Hill Collins deems “controlling images,” familiar, historically-rooted metaphors that undermine personal agency and normalize gendered, classed, and raced oppressions. Within the 140-character constraints of the Twitter service, connections to other users are established via coded language and metaphor. Engaging recognizable, gendered tropes defining accusers by their status provides a way for online commenters quickly to classify and order social relationships, as well as to articulate their own political and socio-economic position vis-à-vis other users. Sexualized terms such as “gold digger,” “slut,” or “bitch” at once rhetorically discipline the individual and reaffirm the speaker’s own superior social and moral standing.

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3 This article interchangeably uses the terms “victim” and “survivor,” recognizing that, while those who have experienced sexual assault, rape, or intimate partner violence may prefer the term survivor, the term “victim” remains widely used in criminal legal discourse, as well as in sociological and legal studies.
In the context of claims of sexual assault or intimate partner violence, these terms, also, reflect beliefs and expectations about the way in which parties to very public incidents can and do interact with the legal system. A critique of the law’s treatment of gender-based violence has been that the determination of a perpetrator’s guilt or innocence too often hinges on assessments of character of the victim. This is borne out on Twitter, where the expectation is that, in forging relationships with legal systems and processes, the legitimate accuser will adhere to what this article deems an honest victim script, promptly reporting any non-consensual sexual contact to law enforcement and resorting to civil litigation only as a last resort. Those who do not quickly report the crimes or cease to follow through with criminal prosecution are labeled greedy, self-interested, and manipulative. As David Engel observes, in times of societal transition, the assertion of legal claims or rights may be viewed as a threat to individual freedoms or to the existing social order. Derogatory, shaming terms such as “gold digger” or “ho” are not applied to all victims but to a subset of persons in cases where a crime did not meet the classic “stranger rape” paradigm or when, in the aftermath of a potential assault, the complainant did not behave like an “honest victim.” In very few words, Tweets reveal surprisingly complex impressions about not only the relationship of alleged sexual assault survivors and perpetrators to the U.S. legal system but also societal concerns about potential redistribution of power within and by that system.

The contributions this article makes are twofold. First, critically analyzing how commenters make sense of incidents of sexual assault and intimate partner violence is
vital because the opportunities to explore these points of view are rare. More than twenty percent of internet users currently hold Twitter accounts, rendering the service a new public sphere. When sexual assault allegations are made against celebrities, Twitter users connect to other like-minded commenters by placing alleged victims and perpetrators into an existing historical and social order. Because rape and sexual assault continue to be significantly underreported, those few complaints that reach the media provide unusual opportunities to gain insight into at least some everyday points of view on sexual assault laws and the persons who come into their ambit.

Second, analyzing Tweets regarding recent accusations against celebrities provides an opportunity to further investigate the ways in which the seemingly liberatory space of the internet may replicate or foster harmful, stereotypical norms regarding gender, race, and class. As I describe herein, users’ reactions to recent cases not only convey expectations about engagement with law, they also reveal the ways in which longstanding, “commonsense” ideas about race, gender, and socio-economic status shape such expectations. Ridgeway observes that, “when people at sites of social change come together to construct some…new type of relationship…the cultural beliefs about gender that are activated in the background are more traditional than the innovative circumstances they confront.”

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10 Edgar, supra note ___, at 139; Renee Franiuk, Jennifer L. Seefelt, Sandy L. Cepress, and Joseph A. Vandello, Prevalence and Effects of Rape Myths in Print Journalism, 14 VIOLENCE AGAINST WOMEN 287 (2008).
11 RIDGEWAY, supra note __, at 159.
spaces, recent instances of violent trolling of women gamers and bloggers emphasizes that a “masculine ethos…predomnates in online content and interaction.”

Young women are the group most likely to experience severe online harassment, such as being called offensive names, stalking, being purposefully embarrassed, or being physically threatened. Ubiquitous, derogatory Tweets characterizing Janay Palmer as a “gold digger” “bitch,” or “ho” signal that, even in a novel universe, persons who do not conform to an expected, gendered script will face severe sanctions.

In assessing feminist reforms in the 1980s, Carol Smart warned that the changes to rape law advanced by the movement would be “pyrrhic” unless greater societal issues also were addressed. The comments analyzed herein suggest that Smart’s prediction in fact is a reality. We occupy a moment in which gender norms are being renegotiated and laws surrounding gender-based violence are continually evolving and unpredictably applied. Within this unsettled socio-legal context has emerged a virtual settlement, where users are able immediately to comment on social events and incidents, establishing connections to others, negotiating social status, and creating in-groups and out-groups.

The microblogging format provides a unique vehicle for everyday persons to respond to and about law, to voice opinions about worthy and unworthy victims, and to assess

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12 Michael Salter, Justice and Revenge in Online Counter-Publics: Emerging Responses to Sexual Violence in the Age of Social Media, 9 CRIME MEDIA CULTURE 225, 234 (2013). The Pew Research Center (2014:2) reports that more than seventy percent of internet users have witnessed online harassment of themselves or another user. PEW REPORT, supra note __, at 2. See also Mark Hsueh, Kumar Yogeeswaran, and Sanna Malinen, ‘Leave Your Comment Below’: Can Biased Online Comments Influence Our Own Prejudicial Attitudes and Behaviors?, HUMAN COMMUNICATION RESEARCH 1, 3 (2015); Jessica Megarry, Online Incivility or Sexual Harassment? Conceptualising Women’s Experiences in the Digital Age, 47 WOMEN’S STUDIES INTERNATIONAL FORUM 46 (2014).
13 PEW REPORT, supra note __, at 4.
15 "A microblog is ‘an Internet-based service in which: (1) users have a public profile where they broadcast short public messages/updates […] (2) messages become publicly aggregated together across users; and (3) users can decide whose messages they wish to receive but not…who can receive their messages.” Fuchs, supra note __, 179-180.
perpetrators’ guilt and innocence. Ironically, the new arena of the Twitterverse is an ideal location in which to study the ways in which the realm of sexual assault law is informed and activated by stereotypical tropes and metaphors deeply rooted in a gendered, economically segregated, and racist past.

II METHODS

Each day, the microblogging service Twitter disseminates more than 65 million posts of 140-characters or less (“Tweets”). The service indexes all public Tweets dating back to 2006, and a half trillion Tweets are currently publicly available for search. Given the volume of data available, it is difficult to center in on analyzing how power is perceived and operationalized by users. Thus, Marwick recommends that researchers analyze only small numbers of Tweets, such as those engaging a particular hashtag or topic. By providing thick description of a smaller amount of discourse one is able to “illuminate…specific patterns of use that would [be] difficult…to ascertain with a more automated method.”

Data were collected for this article by using the Advanced Search function on Twitter.com to search for “Top Tweets” engaging key terms relating to recent allegations of sexual assault and other interpersonal violence involving public figures Bill Cosby, Ray Rice, Jameis Winston, and Ben Roethlisberger. Search terms included the names of alleged perpetrators and, in addition, terms such as “rape,” “sexual assault,”

16 Anatoliy Gruzd, Barry Wellman, and Yuri Takhteyev, Imagining Twitter as an Imagined Community, 55 AMERICAN BEHAVIORAL SCIENTIST 1294, 1296 (2011).
18 Alice E. Marwick, Ethnographic and Qualitative Research on Twitter, in TWITTER AND SOCIETY (Katrin Weller, Axel Bruns, Jean Burgess, Merja Mahrt and Cornelius Puschmann, eds.) 109 (Peter Lang, 2013).
19 Marwick, supra note __, at ___.
20 Per the Twitter service, top tweets are selected via an algorithm that identifies “[t]weets that lots of people are interacting with and sharing via Retweets, replies, and more” (Twitter 2015).
“domestic violence,” “intimate partner violence,” “crime,” “lawsuit,” “civil suit” and
“defamation.”21 Initially, open coding was applied to the search results, locating broad
themes of based in law, critical race and gender theory, and feminist history.22 Once
broad themes were identified, a more detailed coding system was developed that included
more specific codes (e.g. “gold digger,” “ho,” “slut,” “bitch,” “punk”).23

Although these data were collected in the public sphere,24 users may not have
Tweeted with the expectation of becoming research subjects. The decision was made to
use direct quotations in this article order to more fully and accurately discuss public
understandings about law and legal structures25; however, to protect users’ identities,
quotations are not attributed to any particular “handle,” nor are any identifying
characteristics about users collected or analyzed. Restricting searches to “Top Tweets”
ensures that data have been collected from those whose ideas are even more firmly in the
public sphere, having been re-Tweeted multiple times by various users. The findings
herein are not intended to be generalizable, nor does this article claim that these
constitute the majority of Tweets or “typical” Tweets regarding these incidents. The
objective herein is simply to provide one, unique lens into how a few persons in a small

21 Specific terms searched differed depending upon the crime of which the perpetrator was accused
22 See Megarry, supra note __, at 47; Jo Reger, Micro-Cohorts, Feminist Discourse, and the Emergence of
the Toronto SlutWalk, 26 FEMINIST FORMATIONS 49, 54 (2014); Anastasia Salter and Bridget Blodgett,
Hypermasculinity & Dickwolves: The Contentious Role of Women in the New Gaming Public, 56 JOURNAL OF
BROADCASTING & ELECTRONIC MEDIA 401-405 (2012).
23 For a model, see Reger, supra note __, at 54.
24 When users sign up for a Twitter account they certify that they have read and understood the service’s
privacy policy, which notes, “Tip: What you say on the Twitter Services may be viewed all around the
world instantly. You are what you Tweet!” There are privacy settings available so that users can choose to
make their Tweets not publicly available via search engines if they choose. Twitter.com, “Twitter Privacy
25 In order to preserve their intended meaning, the majority of Tweets presented here are unedited from
their original form. Brackets have been inserted where, for example, I have capitalized in order to preserve
what I believe is closest to the original meaning of the discourse. Where it was not clear from media
coverage that accusers have self-identified, names of accusers have been deleted. Occasionally,
information incomprehensible to me is deleted from a Tweet and marked by ellipses.
but increasingly significant subset of society are making sense of law in the context of gender-based violence.

III R APE, R EFORM, R EGRET

“You know you want it!”

Prior to the feminist movement, the confluence of exclusionary legal standards and gendered societal expectations meant that rape trials were rare and convictions likely only in cases fitting into the classic stranger paradigm. Hale instructions cautioning jurors against false accusations, requirements for proof of resistance and corroboration of victims’ statements, and the availability of death as a potential penalty deterred both prosecution and conviction. By the 1990s, new laws did away with requirements of resistance, shielded victims from being impeached with evidence of their character, and provided graduated penalties for many different forms of sexual violence, including marital rape. During this period, the American public became cognizant that the legal term rape could apply to sexual encounters among acquaintances. The new phrase “date rape” was etched into the public consciousness via highly publicized sexual assault charges against Kobe Bryant, Mike Tyson, William Kennedy Smith, and the St. John’s University Lacrosse Team. Interpersonal harassment and violence were also front and center in Anita Hill’s accusation of sexual harassment against Supreme Court nominee

26 Robin Thicke, “Blurred Lines” (featuring T.I. and Pharrell Williams) on Blurred Lines. Star Trak-Interscope, 2013. (“[T]hat’s why I’m gon’ take a good girl/I know you want it/I know you want it/I know you want it/….I hate these blurred lines….Had a bitch, but she ain’t bad as you/So, hit me up when you pass through/I’ll give you something big enough to tear your ass in two….).  
27 SUSAN ESTRICH, REAL RAPE (Harvard University Press, 1988).  
28 The Hale instruction provides that “rape is a most detestable crime, and therefore ought severely and impartially be punished….but it must be remembered that it is an accusation easy to be made, hard to be proved, but harder to be defended by the party accused, though innocent.” PEGGY REEVES SANDAY, A WOMAN SCORNE: ACQUAINTANCE RAPE ON TRIAL 58 (University of California Press, 1997).  
29 SANDAY, supra note __, at 22-23.  
30 SANDAY, supra note __, at 179-180, 218.
Clarence Thomas and the multi-million dollar trial of superstar O.J. Simpson for the murder of his estranged wife, Nicole Brown Simpson.\(^3^1\) Many of these cases inspired highly-charged debates about race, and all of them ignited powerful, public conversations about gender, wealth, and power.

In recent years, not only have there been significant reforms in the criminal system, but, although they remain small in numbers, civil lawsuits seeking damages for sexual assault have increased exponentially.\(^3^2\) Historically, rape was more often than not a private crime vindicated (if at all) by male relatives of the accuser.\(^3^3\) Under the doctrine of coverture, women were property of fathers, then husbands. If sexual violation occurred, these male authority figures and not women themselves were expected to bring charges or privately to come to terms to compensate for the violation.\(^3^4\) For African American women, it has taken decades for rape to be legally recognized as a crime at all.\(^3^5\) Within the construct of the law, female victims of sexual assault were doubly disempowered. The traditional stranger-using-force rape paradigm constructed them as passive “objects of violence” who were expected to react to being assaulted in

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\(^3^1\) Sarah Moore observes that “[b]etween 1990 and 1992 the number of US newspaper reports that featured the phrase ‘date rape’ doubled, and remained at this level until the middle of the decade.” Sarah E.H. Moore, *Tracing the Life of a Crime Category: The Shifting Meaning of ‘Date Rape’*, 11 FEMINIST MEDIA STUDIES 451, 456 (2011).

\(^3^2\) As of 2008, legal opinions had been published in over 2,200 civil law suits regarding sexual assaults. Only one fourth of these were solely against individual perpetrators, and two thirds against third parties. Tom Lininger, *Is It Wrong to Sue for Rape*, 57 DUKELAW JOURNAL 1558, 1568-69, 1571 (2008).

\(^3^3\) Salter, *supra* note __, at 225.

\(^3^4\) Sanday, *supra* note __, at 59; I. Bennett Capers, *The Unintentional Rapist*, 87 WASHINGTON UNIVERSITY LAW REVIEW 1345, 1365 (2010).

\(^3^5\) Capers, *supra* note __, at 1365-66, makes the point that, although in the 1980s, the U.S. was captivated by news of the rape of the white, affluent Central Park jogger, the majority of rape victims in New York City that year were African American, several experiencing assaults not dissimilar from the one suffered by the jogger. This persistent lack of attention to sexual violence against women of color is a factor both of contemporary racism and historical refusal to acknowledge that such women should have the power to deny sexual access.
predetermined and physically and psychologically inaccurate ways.36 Afterward, the ability for a woman to report her own assault was constrained by a system that not only silenced her voice but was unlikely recognize her rape as rape. Although the system remains imperfect, great strides have been made in making the system more inclusive and accessible. As women have entered the public sphere of criminal law, opportunities for women to engage the civil legal system also radically have expanded, with the increasing availability of Title VII and Title IX, as well as the passage of the Violence Against Women Act.37 Even the U.S. Department of Justice itself advocates that victims of sexual assault where possible file civil suits.38 The public has been privy to the details of several public lawsuits and numerous large settlements in which victims received compensation from third parties including universities, religious organizations, and the U.S. military after having experienced sexual assaults. The lower standard of proof and non-unanimous jury requirements of the civil system provide an attractive avenue for redress not only against individuals but also against institutions that intentionally or negligently have fostered environments in which such incidents occurred.39

As legislation has been crafted with the objective of better reflecting survivors’ experiences, critics question whether the presence or absence of consent is a sufficient

38 See, e.g., The National Crime Victim Bar Association, Civil Justice for Victims of Crime 2 (2001), https://www.victimsofcrime.org/docs/Public%20Folders/Civil%20Justice%20-%20FINAL%20(non-book).pdf?sfvrsn=0 (Department of Justice funded research providing that “Every crime victim has the right to file a civil lawsuit seeking financial compensation from the perpetrator or from other parties whose unreasonable conduct gave rise to conditions which allowed the crime to occur.”)
39 Lininger, supra note __, at 1570.
basis for apportioning criminal responsibility. More than twenty years ago, Katie Ropihe famously cautioned, “[S]omeone’s rape may be another person’s bad night,” launching a conversation regarding sexual encounters that continues to preoccupy both scholars and the public today.⁴⁰ Throughout the 1990s, in case after case, debates raged as to who was the “true” victim: Was it the accuser, who potentially had experienced interpersonal violence, or the accused, targeted by an overzealous legal system? Lisa Cuklanz identifies a trend whereby, once legal change has been established, the media begin to question whether such change has “gone too far.”⁴¹ With news of each accusation against a public figure—Tyson, Kennedy Smith, Bryant, Simpson—questions arose as to whether claimants were untruthful, untrustworthy, or complicit.⁴²

Today, wariness about consent as an appropriate demarcation of culpability continues to pervade both everyday assumptions about sexual interactions and the black letter law. As Deborah Tuerkheimer observes, the majority of state statutes require action to convey non-consent (“no means no”), while consent may be legally inferred from a victim’s inaction.⁴³ This construct, she argues, reinforces traditional ideas of “an ultra-passive female sexuality—that is, sexuality without agency.”⁴⁴ Confusion regarding the aftermath of potentially non-consensual encounters is evident in numerous research projects finding that, although many college women report having experienced events that meet the statutory criteria for rape, few choose to report such incidents to campus

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⁴¹ LISA M. CUKLANZ, RAPE ON TRIAL HOW THE MASS MEDIA CONSTRUCT LEGAL REFORM AND SOCIAL CHANGE 74 (University of Pennsylvania Press, 1995).
⁴² Moore, supra note __, at 453; CUKLANZ, supra note __, at 74.
⁴³ Deborah Tuerkheimer, Rape on and off Campus, 65 EMORY LAW JOURNAL 1498 (forthcoming 2015).
⁴⁴ Tuerkheimer, supra note __, at 1498.
officials or local law enforcement.\textsuperscript{45} That debates about the nature of consent rage on is evidenced by the popularity of multi-platinum “relationship anthem,” \textit{Blurred Lines} by pop singer Robin Thicke, the chorus of which repeats a rote narrative of male, active pursuit conquering reluctant and passive feminine desire.\textsuperscript{46}

Historically, procedural rules of evidence and substantive criminal definitions excluded the most common experiences of sexual assault from juridical consideration.\textsuperscript{47} As Carol Smart observes, perhaps the greatest accomplishment of the feminist movement has been to incorporate women’s lived experiences into the criminal law.\textsuperscript{48} However, as women’s access to law has increased, so too have suspicions that the law is incapable of affording justice in an unbiased manner. In her most recognizable form, justice is blind, but she is also distinctly gendered. As became clear in heated, public debates arising regarding incidents involving Mike Tyson and Kobe Bryant, or accusations against the St. John’s and Duke lacrosse teams, the affording of formal legal rights or formal equality to victims may be perceived as a transfer of power, particularly when the media inundates the public with coverage of large-scale recoveries in the aftermath of sexual assaults.\textsuperscript{49} With legal reform came public perception of such laws as biased and subject to manipulation.

As victims increasingly have been drawn to the civil system as an avenue for seeking justice, members of the public question their motivations; an honorable desire for

\textsuperscript{45} The recent \textit{White House Task Force Report on Sexual Assault on Campus} observes that only 13 percent of forcible rapes on campus, and 2% of sexual assaults of incapacitated victims are reported. \textit{Not Alone: The First White House Task Force to Protect Students from Sexual Assault} (April 2014), \url{https://www.notalone.gov/assets/report.pdf}. (hereinafter \textit{WHITE HOUSE REPORT}).

\textsuperscript{46} Publicly, the parties agreed to disagree about what occurred, Bryant acknowledging, “After months….I now understand how she feels that she did not consent to this encounter.” ESPN.com, \textit{Kobe Bryant’s Apology} (September 2, 2004), \url{http://sports.espn.go.com/nba/news/story?id=1872928}.

\textsuperscript{47} \textit{SMART}, supra note __, at 13, 33.

\textsuperscript{48} \textit{SMART}, supra note __, at 33.

\textsuperscript{49} \textit{SMART}, supra note __, at 144.
justice is juxtaposed with a less honorable quest for “deep pockets.” In the 1992 criminal case against Tyson, for example, editorials debated whether alleged survivor Desiree Washington was “a real champion” or “a phoney, a gold digger, [or] an opportunist.”

Around the same time, the lawyer for one of the defendants accused in a rape case against several members of the St. John’s University lacrosse team spoke out on the nightly news, labeling the alleged victim just one of those “‘scheming females’ who ‘manipulate and control the entire criminal justice system’.” News articles minimized allegations of acquaintance rape, contrasting “real rapes” such as those occurring in Bosnia to the he said/she said incidents taking place in the hotel rooms of high profile athletes and celebrities.

Despite that the vast majority of sexual assaults occur in non-stranger contexts, the stranger rape myth continues to prevail in U.S. society. Moore chronicles how, while, initially the term “date rape” was used to describe sexual violence occurring in the midst of ongoing intimate relationships, today, the term most often brings to mind an event where, rather than unwanted sex occurring in the course of a long-term relationship, a threatening stranger either has administered a drug or taken advantage of a victim he barely knows. These changes in acquaintance rape as a “crime category” suggest that there has been a process of “co-optation”; under the weight of the stranger

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51 SANDAY, supra note __, at 36-37.
52 Franiuk et al., supra note __, at 7, found that more than 60 percent of articles written about the Kobe Bryant allegations contained at least one statement that reflected the typical stranger rape mythology.
53 The White House Report presents data that the vast majority—more than 90 percent—of female survivors have been raped by a current or former intimate partner or by an acquaintance, and more than 50 percent of boys who report sexual assault report having been raped by an acquaintance. WHITE HOUSE REPORT, supra note __, at 9 (emphasis mine). Despite these data, however, Corrigan observes that we tend to find more compelling sensationalist narratives rather than the idea that “sexual abuse exists embedded in a quieter, more persistent, and more troubling cultural context.” ROSE CORRIGAN, UP AGAINST A WALL: RAPE REFORM AND THE FAILURE OF SUCCESS 245 (New York University Press, 2014).
54 Moore, supra note __, at 459.
mythology, date rape has become under-inclusive of those actors and actions it was initially crafted to encompass.\textsuperscript{55}

Although more than twenty years have passed since Mike Tyson’s trial, little has changed in public discourse that occurs when high profile persons (usually men) publicly are accused (most often by women) of committing sexual or interpersonal violence.\textsuperscript{56} What radically has transformed is the power of the everyday person to comment on these events. As I discuss below, the themes present in Twitter comments are remarkably consistent across recent, high profile incidents, and they reveal the ways in which contemporary viewpoints are shaped within the construct of the law’s historical treatment of rape victims and perpetrators. The comments suggest pervasive disbelief of victims whose stories do not fit neatly into the stranger rape paradigm. They reveal distrust of survivors who, rather than or in addition to pursuing justice via criminal law, seek compensation in tort for the harms wrought by sexual assault. Further, and importantly, the comments signal a profound awareness of the horrific history of the criminal justice system in regard to rape law, and the system’s past and present role in furthering oppressions. Due to Twitter’s microblog format these important conversations about law and society are not and cannot be fully articulated. Rather, fears, apprehensions, and expectations about power and privilege are conveyed in shorthand, often by deploying just a few, vicious words about women.

\section*{IV \hspace{1em} ONLINE CHARACTERIZATIONS, MATERIAL IMPLICATIONS}

\textsuperscript{55} Moore, \textit{supra} note __, at 463.

\textsuperscript{56} While, as I discuss herein, the term “gold digger” historically is gendered female, the label is applied to male accusers. For example, Tweets regarding posthumous allegations against Michael Jackson occasionally label accusers “gold diggers.” In future research project, I plan to compare and contrast public opinion regarding recent allegations of inter-personal violence against male celebrities versus allegations against female celebrities, such as Hope Solo or Brittney Griner.
“She take my money when I'm in need”

During 2014-2015, nearly forty women came forward alleging that they had been drugged and sexually assaulted by comedian Bill Cosby. While the public largely rallied behind accusers’ claims, skeptics took to Twitter to defend Cosby against the allegations. Tweets defending the celebrity include, “Bill Cosby ain’t rape nobody. These hoes just wanna pay check”; “Bill Cosby is innocent in my eyes, bitches just hoes and do anything for money”; “Them hoes just want a comeup!”; “[A]nother paycheck and spotlight for you spiteful bitches”; and, directed toward a particular victim, “[Y]ou are nothing more than a damn opportunist and gold digger.” One user tautologically compliments the comedian: “Bill Cosby is smart if he really did rape them hoes cause they hoes and we don’t believe hoes.” Another identifies lovelorn vengeance as a possible motivation for accusers: “Bill Cosby was hittin hoes and not doing them no more and now they mad.”

The accusations against Cosby are by no means the only such allegations against celebrities in recent years. Pittsburgh Steelers football quarterback Ben Roethlisberger received a four-game suspension from the National Football League, having been the subject of a civil suit in Nevada and criminal investigation in Georgia in connection with two distinct sexual assault claims. The Twitterverse weighs in, observing, “Wow I am über angry about Roethlisberger's suspension. Stupid gold digging slut!! #NFL”;

“The…alleged rape victim didn’t pursue any criminal action, she was just after a cash

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57 West 2004.
settlement. We call that a #hooker”; “Enough is enough. Stop demonizing Ben Roethlisberger, the likely victim of a false rape claim”; and “Police didn’t believe Roethlisberger’s accuser, but he had to pay to end the lawsuit. $ motivates false accusations.” Other commenters observe, advise, and threaten, “She is a skank ho bag and the truth is already out...............................SLUT! You are going down BITCH”; “Smfh”, another slut whore tryna get rich quick; dis time it's Ben Roethlisberger who has allegations of rape, damn shame how low they stoop”; and “If I were Roethlisberger, I’d write ‘[the accuser’s name]’ under one eye, ‘slut’ under the other.” Another notes, simply, “I smell payoff.” Online comments defending Roethlisberger are pervasive despite that, in announcing the state’s decision not to go forward with rape charges, the Georgia District Attorney observed that, in his expert opinion, the complainant did not “strike him” “as a gold digger.”

Similar concerns about alleged victims engaging in abuse of the legal system are evident in Tweets regarding the criminal charges and subsequent civil suit filed against then amateur and now pro football quarterback Jameis Winston. Although Winston was cleared of allegations of sexual assault of a fellow Florida State student in a university proceeding and the state did not pursue criminal charges, the alleged victim brought a civil case against Winston that remains ongoing, and Winston is engaged in a counter-suit for defamation. As with Cosby and Roethlisberger, in addition to Tweets supporting

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60 Shaking my f***ing head.
61 Dan Majors, ‘Grow up,’ DA tells Roethlisberger While Announcing Decision Not to Prosecute Rape Case, GEORGIA POST GAZETTE (April 13, 2010), http://www.post-gazette.com/sports/steelers/2010/04/13/Grow-up-DA-tells-Roethlisberger-while-announcing-decision-not-to-prosecute-rape-case/stories/201004130163 (observing that the victim had not been offered money to drop the case).
Winston’s accuser, numerous comments voice suspicion about her motivation in coming forward with accusations against the promising player. A series of Tweets using #golddigger, observe, “This girl who’s suing Winston has no credibility at all: changed her story like 5 times and she just wants to cash in #golddigger”; “How convenient 2 weeks before #NFLDraft #golddigger Jameis Winson sued by accuser in sexual assault incident”; “So, it’s confirmed that Jameis Winston’s accuser is a gold digger, right?”; “Golddiggin’ like crazy!” and “Gimme a break #liar #golddigger #witchhunt.” Commenters riff on Kanye West’s lyrics, noting, “I ain’t sayin’ she’s a gold digger, but she ain’t messing with no broke Jameis Winston’s” or “Jameis Winston…I ain’t saying she a gold digger but she a hoe and lying.”

Having decided to marry rather than prosecute her attacker, Janay Palmer may have the dubious honor of being labeled the most egregious of the gold diggers. Numerous Tweets categorize the victim based on her behavior after the incident, “Only a golddigger would marry their abuser”; “Janay Rice is a fucking gold digger who's on the come up”; and “She married her meal ticket. Gold digger.” Several characterize Rice as the consummate gold digger, noting that “Ray Rice’s wife gotta be the most dedicated gold digger out there”; she is “a perfect definition of a gold digger”; and she may be “the golddigger of the millennium.” A Tweet summarizes, “Ray Rice's wife…is married to a woman-beating punk for three reasons: Money, fame and dick. Money is the big one. TRUTH!!!”

In addition to the label gold digger, a common refrain about accusers is to label them “bitches” for bringing forward accusations of interpersonal violence. Typical tweets defending Winston include: “I hope Jameis takes that bitch for every penny she
got and then some”; “LMAOOOO!!! Jameis...fucked that Bitch and took her home on his scooter the next day! [crying emojis] and she tried to claim rape smh”; “[W]hen you’re in the spotlights bitches make up shiiii and ya’ll should know considering how females are nowadays”; “[Winston] should find that bitch who tried to put fake rape charges on him and spit on her”; “It was just some crazy bitch....Girls are psycho”; “That bitch tryna fuck him over!!! I hate females that spread their Legs and then later say ‘I got Raped’!!”

Janay Palmer in particular is the subject of numerous Tweets that engage physical threats to effect virtual discipline for her (in)actions. Tweets observe: “Janay is a dumb bitch”; “Janay Rice = dumb bitch”; “stupid ass bitch”; “KINKY bitch”; and “Janay Rice is the definition of dumb bitch.”

In these unmoderated online discussions several themes emerge. Foremost is the ubiquitous deployment of what Patricia Hill Collins deems “controlling images,” as accusers are situated as familiar, stock characters: the “ho,” the “gold digger,” the “dumb bitch” or the “psycho.”63 Researchers find that, within the largely anonymous environment of the Twitterverse, social identities take on a heightened importance.64 By engaging powerful and recognizable tropes, online commentators signal that they represent a particular social group or identity and close the social distance between themselves and other posters.65 Twitter’s format, character limitations, and use of hashtags, encourage engagement in “reductive discourses” that privilege one social group

63 Hill Collins, supra note __, at 142.
65 Hsueh, et al, supra note __, at 3; Tamburrini et al, supra note __, at 84-85; Sarita Yardi and Danah Boyd, Dynamic Debates: An Analysis of Group Polarization Over Time on Twitter, 30 BULLETIN OF SCIENCE, TECHNOLOGY, AND SOCIETY 316 (2010).
over another.\textsuperscript{66} As comments on a particular theme such as #golddigger multiply, pressure escalates to reinforce the beliefs of the group.\textsuperscript{67} In perpetuating negative images about accusers, groups of like-minded commenters display a “cultural logic…normatively biased towards and comfortable with the violent discipline of women in order to keep them in their perceived place.”\textsuperscript{68} With engagement of a single term, a status hierarchy is established differentiating honest survivors from dishonest “sluts,” “bitches” or “whores.”\textsuperscript{69}

These derogatory terms are able to persist (and perhaps even undergo a renaissance) in the virtual world because to some extent they reflect “commonsense” beliefs about gender. Among these assumptions are that men are logical and women emotional, and that men are more “agentically competent” than their female counterparts.\textsuperscript{70} Numerous comments reflect on accusers’ mental health, noting, for example, “Kobe Ben Jameis…they don’t rape it’s a crazy hoe or a hoe that needs money behind them…”; “Jameis didn’t rape anyone ya crazy bitch,” or “[the alleged victim is] a sluty, psycho, gold digging cutie pie.” These categorizations fit neatly into a centuries old tradition of disciplining women who speak out by reducing them to a hyper-emotional, ultra-corporeal state.\textsuperscript{71}

In contrast to Tweets labeling accusers as “crazy” or “psycho,” comments谴责condemning “bitches” looking for the “$$$$” call out accusers for behaving too logically.

\textsuperscript{66} Edgar, supra note __, at 145.
\textsuperscript{67} Hsueh, et al., supra note __, at 3.
\textsuperscript{68} Kirsti K. Cole, ‘It’s Like She’s Eager to be Verbally Abused’: Twitter, Trolls, and (En)Gendering Disciplinary Rhetoric, 15 FEMINIST MEDIA STUDIES 356, 358 (2015).
\textsuperscript{69} Armstrong et al., supra note __, at 104; RIDGEWAY, supra note __, at 40-43.
\textsuperscript{70} RIDGEWAY, supra note __, at 61. Counteracting internalized, gendered assumptions about agency and competence in the workplace are the foundation of Facebook Chief Operating Officer Sheryl Sandberg’s best selling book, LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD. Sheryl Sandberg, Lean In: Women, Work, and the Will to Lead (Knopf, 2013).
\textsuperscript{71} Laura Sjoberg and Carolyn Gentry, Mothers, Monsters, Whores (Zed Books, 2007).
The word “bitch” in particular signals that, historically, the least desirable traits in women have been those associated with “forceful dominance.”\textsuperscript{72} The accusers in the recent celebrity sexual assault cases discussed herein deviate from the norm in that they are pro-actively engaging the legal system in very public context. This systematic engagement flies in the face of assumptions that women engage in “expressive” behaviors—a sudden letting go of pent-up anger—versus “instrumental” ones, such as plotting or planning.\textsuperscript{73} Embedded in the term “bitch” are expectations of female passivity, chastity, and domesticity and the implication that, by coming forward, accusers are flouting these expectations.\textsuperscript{74} As Ridgeway identifies, stereotypes change “more slowly than people’s own behavior in response to opportunities.”\textsuperscript{75} In real life, commenters occupy a world that increasingly supports women’s participation an equal to men’s in the public sphere. Online, however, the backlash against women thrives.

In refocusing attention on the character of the victim rather than the circumstances of the alleged assaults, the comments above operate to sever the parties from their particular circumstances in order to situate them in a larger, societal framework. Tweets such as “[B]itches just hoes and do anything for money”; “[W]hat women will do for money, anything that allows them to get it”; “Girls are psycho”; “[B]itches make up shiiit…”; “Men-watch out for crazy ass psycho chicks. They will try to ruin your life” or “hoes lie about rape so much so often u can't trust these bitches...” rely on broad generalizations that attribute particular characteristics to accusers, regardless of actual events. In a recent study of “slut discourse” on a college campus, Armstrong et al.

\textsuperscript{72} RIDGEWAY, supra note __, at 80-81.
\textsuperscript{73} Salter, supra note __, at 238; Sjoberg and Gentry, supra note __, at 37.
\textsuperscript{74} Jasmine N. Ross and Nicole M. Coleman, Gold Digger or Video Girl: The Salience of an Emerging Hip-Hop Sexual Script, 13 CULT HEALTH SEX. 157, 159 (2011).
\textsuperscript{75} RIDGEWAY, supra note __, at 159.
identify that derogatory terms about female sexuality often are not used to describe actual sexual behaviors. Rather, among college student female interviewees, the terms slut or ho were engaged as a way for “[h]igh- and low-status [to] women draw moral boundaries consistent with their own classed styles of femininity, effectively segregating the groups.” Labeled a “slut” or a “trick,” a fully fledged person who might provide a unique point of view about a distinct incident is transformed into an interchangeable member of a dubious category: “[F]emales that spread their Legs and then later say ‘I got Raped’!!” After being inundated with stories of accusations against Mike Tyson, Kobe Bryant, Ben Roethlisberger, and several college sports teams, for some, the suit against Jameis Winston seems to take on a tired predictability: “probably just another gold digger trying to get money out of a sports star”…. “of course a bird is gonna try and get money off him.” After all, as one Tweet warns, you “[r]eally have to be careful of these types of girls.”

The online branding of bitches, gold diggers, and hos effects a material, societal harm, obscuring the personal experiences of survivors, “making racism, sexism, poverty, and other forms of social injustice appear to be natural, normal, and inevitable parts of everyday life.” The terms are an effective, shorthand way to underscore that (usually female) accusers do not belong online. And, as I discuss in the following section, they emphasize, also, that women do not belong in the courtroom.

V OUTSIDER STATUS AND CLAIMS OF GENDER-BASED VIOLENCE

“I’m huntin’, Lookin’ for a come up…”

76 Armstrong et al., supra note __, at 104.
77 Armstrong et al., supra note __, at 107.
78 HILL COLLINS, supra note __, at 69.
Although the Tweets presented in the previous section quite obviously reflect assumptions about gender, they also reveal particular ideas about the economic status and the race of accusers. As David Engel’s research demonstrates, individuals’ engagement with law may be viewed positively, but also may be perceived as “intrud[ing] upon existing relationships, as pretexts for forced exchanges, as inappropriate attempts to redistribute wealth, and as limitations upon individual freedom.”\(^{80}\) Perceptions of the validity of legal claims are influenced less by the actual, personal characteristics of the claimant than the greater social, legal, and political climate in which such claims are made.

Gold-diggers are deeply embedded in U.S. sexual-legal history, featured in the very first issue of *Playboy* magazine in 1953.\(^{81}\) The magazine tied women’s increasing access to court-awarded child support to abuse of the legal system and mourned the carefree days, where “wives were faithful and alimony was reserved for the little floozies who periodically married and divorced millionaire playboys.”\(^{82}\) The article noted that no man was safe: “[A]limony has gone democratic and any man can get hit.”\(^{83}\) And the magazine suggested that, in the justice system, women would receive preferential treatment: “Even if wife is a ‘trollop’ or a ‘spendthrift’ the judge grants ‘the little missus a healthy stipend for future escapades and extravagancies.”\(^{84}\) The piece concluded ominously, with a warning to everyman: “The modern gold digger is…after you[!]”\(^{85}\)

The *Playboy* article highlights that terms such as “gold digger” have embedded

\(^{80}\) Engel, *supra* note __, at 577.
\(^{81}\) SANDAY, *supra* note __, at 149.
\(^{82}\) SANDAY, *supra* note __, at 150.
\(^{83}\) Id.
\(^{84}\) Id.
\(^{85}\) Id.
within them a “status inequality” premised on the idea that women are reliant on men for their economic security. The essence of both a “gold digger” and a “ho” is what Stephens and Phillips deem the “sex for sale” principle, reliance on sexuality to obtain financial benefit. The gold digger “trades sex for a harder currency…. Gold Diggers are not traditionally viewed as being successful in educational, employment, or other economic spheres. Instead, the…plan is to ‘toss them titties around, shake that ass, make that money’…. Sex may be used to barter for basic needs such as a bag of groceries, getting rent paid, or making sure their lights do not get turned off. However, manicures and pedicures, new clothing, vacations, or having a car note paid are also possible wants.”

Playboy’s positioning of the unwitting everyman against the “liberated” wife of the 1950s bears a surprisingly striking resemblance to Tweets about today’s rape accusations proclaiming that “bitches,” “sluts,” and “tricks” are reporting crimes to further a “feminist agenda.” Few persons coming forward to accuse celebrities today escape being hypothetically connected to some sort of greater plan, conspiracy, or cabal, as users decry, “No matter what feminist RACISTS like [Winston’s accuser]…say, we will always have your back, brother. #JameisWinston”; and “the feminist agenda is to promote the lie that we live in a rape culture. the Bill Cosby case is the perfect time to promote it.” Each new case is situated as evidencing (or not) a perceived “feminist agenda,” as users observe, “[W]hat is this ‘rape culture’? is this some feminist agenda???

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86 RIDGEWAY, supra note __, at 27.
88 Ross and Coleman , supra note __, at 17-18.
STOP TRYING TO FORCE YOUR LIBERAL HIPPIE TRASH ON ME!”; “I don't feel bad for rape victims at all. Stop pushing that feminist agenda yall. Whores.”; “[W]aking up to feminist agenda to use rape to make money & bring biased law. Rapist Rape not M… #feminist “[J]ust remember to #listenandbelieve and not let facts distort the #feminist fear narrative. #TweetLikeAFeminist…”; and, paradoxically, “[They] were raped to further their feminist agenda and spread propaganda instead of focusing on the real issue, rape.”

On one hand, the persona whom we recognize as a “typical” gold digger portrays the historical tendency to deem women impetuous, frivolous, and less agentically competent than men. As a society, we “construct consumption as feminine,” impulsive, and “excessive” in contrast to men’s spending, which is more likely to be perceived as measured and rational. Implicit in the labels “ho,” “hooker” and “gold digger” is the idea that women are capable of earning money but do not have the capacity to be shrewd financial managers. Comments such as “Everyone talking shit on Janay Rice meanwhile she just bout [sic.] a new $1,000 Versace purse” or “this female victim of Jameis Weston is out for some NFL cheese because she can't make money on her own” characterize accusers as incompetent, petty, and valuing material possessions over physical comfort. Allegations about the existence of a “feminist agenda” or the “#feminists” controlling accusers’ actions plays into this stereotype, assuming accusers are puppets, with other parties controlling the strings. The gold digger’s ultimate objective is a “come up” in resources but at the same time the surrender of financial control over those resources.

For “her own good,” there is or will be a (presumably male) pimp or husband who dictates wages and access.

On the other hand, however, the gold digger of *Playboy* past and hip hop present seems anything but passive or incompetent. The “gold digger” in a “perverted entrepreneurial spirit…aims to extort the defendant into settlement…[M]oney lust…propel[s] her to try to dupe a trier of fact into infusing her bank account with ready cash.”*90* She is “not…a victim, but instead is…the villainous perpetrator of a fraud.”*91* Ann Camnett discusses how the idea of the “welfare queen” materially impacted legislation crafted in the 1980s. She concludes that metaphors such as these appear to be organic but in fact are deliberately and politically deployed:

“[T]he social construction of poor Black single mothers deemed them the agents of their own misfortune due to their unmarried status— assumed to indicate loose morals, hypersexuality, and presumed laziness— framed as reliance on public assistance rather than work.”*92*

The U.S. legal system is Byzantine in its structures and requirements, but, like the “welfare queen” of the 1980s, the gold digger is exceptionally capable not just at navigation but at rigging an exceedingly complex system in her favor. The volume of Tweets referencing “bitches” who “cry rape,” suggest not only that accusers are prone to lie, but that the legal system is at their disposal.

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*91* Id.

As discussed above, the term “gold digger” encapsulates stereotypical views of women as lacking capability and agency by categorizing legal claimants as seeking out men on whom they can become financially dependent. However, paradoxically, gold digging is the achievement of independence via dependence, an economically comfortable life attained via the exercise of sexual agency. This tension between the expectation that women as a group, on the one hand, will be passive, emotional, and giving, and, on the other, the impression that accusers are cool, logical, and calculating is evident in Twitter comments juxtaposing the persona of the gold digger against the usual tropes situating women as dependent, emotional, or hysterical. For example, users observe, “Janay Rice is either just plain dumb or is a full fledged gold digger”; “[Janay] either loves the abuse or is money hungry”; “[She] isn’t crazy, she knew Ray was her meal ticket. Maybe to her, it’s a small price to pay for access to such tremendous wealth”; and “Ray and Janay Rice are the ideal ‘relationship goals’ couple. he KO’s her, Ravens give him a settlement of $3.5 mill, he buys her a purse.” Another commenter notes, “I say she’s smart. She married him after it happened. He does it again = divorce and $$$."

These Tweets suggest that the label gold digger is not only a critique of women as flighty, irresponsible consumers. Within each of the popular online tropes—ho, hooker, gold digger—is a penalty exacted against women who are perceived as engaging law in an attempt to improve their economic circumstances. Every successful gold digger seeks reliance on a male counterpart but must also encompass “masculine” characteristics: ambition, strategy, logical thinking. Like “bitch,” the term gold digger is “rooted in social conditions,” it “represents a backlash against advancements in feminism and women’s cultural power, providing a shorthand for women who challenge masculine
cultural authority.\textsuperscript{93}

\section*{A \hspace{2cm} INTERSECTIONALITY IN ONLINE SCRIPTING: GENDERED TERMS, RACED IMPLICATIONS}

Importantly, although the accusers in recent high-profile sexual assault and domestic violence incidents comprise a variety of racial and ethnic backgrounds, the term "bitch," "gold digger" and "ho" are rooted in racialized conceptions of womanhood. The terms "bitch" and "ho" echo terms such as "jezebel" and "mammie," which historically were used to obscure the realities of everyday life for many African American women and to justify white male violence against them.\textsuperscript{94} Even with the evolution of rape laws in the United States, many women and men continue to find themselves outside the purview of justice. This is true for African American women who, based on the history of sexual access granted in slavery and the attention paid to the rape of white women, may continue to be perceived by the public as less worthy victims.\textsuperscript{95} It is also true for men as a group, and for women who engage in sex work, who are married to the accused, or who otherwise have engaged in non-traditional sexual relationships.\textsuperscript{96} Tuerkheimer explains that

\begin{quote}
"[r]ape law…place[s] certain sexual conduct outside of the bounds of acceptability …Women whose pasts involve consensual sex of a disapproved kind are presumed to be ‘unrapeable’."\textsuperscript{97}
\end{quote}

Stock characters such as the African American "mammy," presenting women of color as

\textsuperscript{93} Edgar, \textit{supra} note __, at 150.
\textsuperscript{94} Cammett, \textit{supra} note __, at 248; Stephens and Phillips, \textit{supra} note __, at 11-12; HILL COLLINS, \textit{supra} note __.
\textsuperscript{96} See Capers (2013), \textit{supra} note __, at 868, suggesting that many of the reforms in rape and sexual assault laws disproportionately have benefited white women over women of color.
\textsuperscript{97} Tuerkheimer, \textit{supra} note __, at 1502.
self-sacrificing, nurturing, and devoted to domesticity, were developed to hide from the public the realities of life for Black women during slavery and, subsequently, under Black Codes and Jim Crow. What have become “normalized” descriptors in contemporary society in fact were images deliberately deployed to exoticize and constrain women of color and to delimit the roles available to them.

These terms also reflect the limited societal roles traditionally available to white women, who, though privileged by comparison, were expected to achieve happiness and economic security via marriage and children and were harshly disciplined for stepping outside a narrowly defined sphere. Throughout the 1800s and early to mid-1900s, middle class homes historically were defined by the chastity and purity of the ladies housed within them. One way to maintain the dominance of the status quo has been emphasize the “divide between the public and private spheres of social life, where men are associated with public political action and women are relegated to the private domain of the household.” To call a woman a “ho” is to convey that not only that she has been unchaste but that she has engaged in sexual relations as a business arrangement outside the sphere of the home. Notably, to be labeled “gold digging,” a woman need not be acting wholly out of self-interest; the characterization of women as consumers in part reflects their status as domestic caregivers. Kanye West’s exemplary gold digger does not just carry a fancy handbag, she persuades the narrator to feed her kids.

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100 Megarry, *supra* note __, at 48.

101 Sandlin et al., *supra* note ___, at 466.

102 “OK get your kids but then they got their friends I pulled up in the Benz, they all got up in
In implying that women have engaged in sex for sale, terms such as ho, hooker or slut not only remove accusers from the bounds of social acceptability, they also suggest that alleged victims’ testimony regarding sexual violence should be distrusted. I discuss this and other ways in which Tweets intentionally and unintentionally impose raced, classed, and gendered frames on engagement with law in the following section.

VI Honest Victim Scripting in the Twitterverse

“[T]hem hoes cause they hoes and we don’t believe hoes.”

Tropes such as gold digger, bitch, and whore appear so frequently online, that we may come to view them as placeholders, signifying little besides a gendered disdain for the subject. However, although brief, many Tweets demonstrate thoughtful and specific expectations about how accusers should interact with the legal system. First and foremost, there is the frequently voiced idea that “real” or “honest” victims will file criminal charges against their attackers, and that failure to do these things is a warning sign. Comments such as, “Them hoes shouda said something when the ‘Cosby raping’ first happened or asking “Where’s the criminal complaint?” suggest that “real” victims promptly report crimes. In the views of commenters, going to the police is a “game changer,” and taking “too long” to do so implies guilt, complicity, or manipulation.

Themes referring to accusers as manipulating the system in order to achieve notoriety or financial gain extend across recently publicized incidents of interpersonal violence. In regard to the Winston allegations, for example, a user provides a handbook to how s/he believes events will proceed, the drama unfolding like a sordid, legal novella:

“1. Sloot got fucked

We all went to Din and then I had to pay
If you fucking with this girl then you better be paid...” West 2004, supra note __.
2. She loved it
3. Jameis becomes famous
4. Bitch realizes he’s a star and wants money
5. Bitch claims rape
6. Winston wins.”

Tweets regarding the criminal accusations and civil suit against Winston critique what appears to commenters to be the deliberate timing of both, making observations such as, “[T]he girl waited till Jameis Winston was the hottest name in college football to try and pull a rape case. That's messed up”; “How convenient 2 weeks before #NFLDraft #GoldDigger Jameis Winston sued by accuser”; “[The alleged victim’s] timing is impeccable. Notice how she and her ‘investors’ always show up just before/after big games…?”; “[S]he had ‘impeccable timing filing the lawsuit’; “Funny how this [story] keeps showing up during football season, never wants to talk before. Winston didn't force anything that. #golddigger”; “This bitch only files after he wins something....” and “[The accuser] is a scandalous money seeking whore Sending info to media when FSU gets to #2 & beats CU? Press conference day before Heisman?” The issue of timing also raises alarm bells for Twitter commenters on the Rices’ intimate partner violence incident, as they speculate that the couple’s marriage hastily was arranged around Ray’s indictment for assault: “They did an emergency/quickie marriage so she wouldn't have to testify against Ray Rice”; “Ray Rice Gets Married One Day After Grand Jury Indictment; Coincidence.”

In regard to the allegations against Bill Cosby, where over thirty years have passed since some alleged incidents occurred, timing is key for numerous users: “I don’t
believe that Bill Cosby shit, took you hoes too long to say something...”; “Them hoes shoulda said something when the ‘Cosby raping’ first happened. 30 years later I don't believe it and it's too late” and “SORRY PUDDING POP YOU DON'T GET TO CRY RAPE 40 YEARS LATER!” Others ask, “Where’s the criminal complaint?” and “Serious q: Is it normal for there 2b 30+ sexual assault victims of same man without ONE victim going to police?” As with instances of other allegations, the filing of a police report is perceived as evidence of victims’ veracity: “This could be game changer .. she’s [one of the victim’s] gone to police to make official statement today....” And engaging the civil system—a sign that an accuser may be disingenuous: “YET, NO CIVIL SUITS have yet been filed against Bill Cosby, shitting all over the gold digger cop-out.”

Second, in addition to filing criminal charges promptly, an honest victim behaves altruistically. She does not file a civil suit, perceived to benefit her personally, but instead resorts to the criminal system, a maneuver which, ideally, will benefit society. A theme among comments defending Bill Cosby is that victim’s veracity declines in proportion to they extent they personally receive financial compensation or public recognition. Tweets repeatedly refer to settlements paid by Cosby and settlement offers proffered by Jameis Winston’s accuser’s attorney as “hush money” and note, “Only thing stopping these rape victims credibility is that they took money instead of speaking out”; “My only issue wit the Cosby alleged victims why not pursue criminal charges immediately instead of waiting and going after money” and “What bothers me most about the Cosby rape story is that the victims pursued civil money more than criminal justice.” One Cosby defender observes that “It disgusts me to see women cry rape years after it supposedly happened….All for attention & $$” and another critiques, “Thank you
to Bill Cosby’s accusers you just set women back 20 years! Why now-why not then? You can't cry rape 20 years later-it's on you! [unhappy emojis].”

A Steelers fan observes, “You know what pisses me off? The typical Roethlisberger-type victim, who is willing to be paid off and made to go away.” Comments such as “Seems to me that the so called Bill Cosby Victims want money and not justice”; “How bout the women who took the money and shut up? Victims?”; and “[L]et's say all this stuff is true with Cosby. My question to the victims is do you want money or a conviction?” imply that, unless they are lying, accusers’ motives interaction with the legal system must be unsullied by motivations other than the betterment of society. Users similarly accuse Winston’s victim of illicitly attempting to get money, observing “Jameis Winston is the victim of attempted EXTORTION”; Oldest trik in book #whitechicks #feminism #extortion”; and “[S]he's asking for money to shut up.

#BLACKMAIL.” Users write, “The fact that this whore is pursuing a civil case against Jameis Winston is actually ridiculous what a money grubbing hoe”; “This does seem like a set up for a civil law suit”; and “Stupid bitch trying to sue Jameis Winston she didn't win with the rape shit now she's trying to hit him with a civil lawsuit smh.” As one Tweet notes, “Patricia Carroll is the perfect lawyer for [Jameis Winston’s accuser]. Dumb bitch lawyer for a dumb bitch liar.”

Another undercurrent among numerous Tweets associates the idea of “crying rape” as a way for claimants to achieve fame or status as public figures. Commenters on the Cosby accusations opine that these “fame whore[s]” or “thirsty tricks” who “just want all the fame, fortune, money, prestige, and power that comes with being a rape victim in America.” A Tweet observes that the women are “‘trying to getting 15 mins of fame. It’s
BS. Cosby is the victim,” and that “being a rape victim is trendy.” Jameis Winston’s accuser is compared to “the new Monica Lewinsky, [since] she got famous off of sexual activity.” Users muse, “Maybe when [her] civil suit against Jameis gets dropped…she'll a write a book ‘Web of Lies…’” Janay Rice is labeled a “fame money whore” who “stand[s] by [her husband’s] fame & fortune” because she “wanna be relevant so bad.” Tweets such as, “[The survivors] were raped to further their feminist agenda and spread propaganda instead of focusing on the real issue, rape,” convey a perception of law as readily manipulable and law enforcement as pawns in a greater agenda to use the law to further biased, feminist goals. There is a profound fear that the legal system can and will be engaged for ulterior motives.

Tweets labeling those who come forward “opportunists” looking for a “come up” or imply that such women are themselves engaging in criminal behavior, such as blackmail or extortion, make it clear that seeking economic security is an unacceptable motivation for reporting a sexual assault. The honest victim never comes forward for the purpose of achieving personal gain or inflicting pain or harm on her attacker. On Twitter, acceptable reasons for reporting crime include seeking “justice,” getting a “pig” off the streets, or receiving compensation for prove-able physical injuries. Even though non-consent has been the legal standard on the books in many states for more than twenty years, and although research bears out that many sexual assaults do not result in lasting physical harm, Tweets assess the culpability of the attacker based on the physical condition of the victim: “Cuts, bruises, blood, semen found in the girl and no rape occurred? Ben Roethlisberger has just change the way we all have casual sex!” and

“Wow. Bruises, lacerations, bleeding... Sure sounds like roethlisberger raped her to me.”
Of Cosby, a user notes, “Not to defend #Cosby, but unbelievable that 24 women accuse him of rape, & there is no hospital record of those bruises yet. No, not one.” One comment offers the following advice: “Re Cosby: I don’t know if claims R true, but NOTE to women, the time 2 cry rape is bef washing off the evidence. Years later its just rumor.”

Tweets, too, evaluate the likelihood that a criminal incident occurred by the perceived attractiveness of the victim. Comedian Damon Wayans recently made comments defending Bill Cosby, relying in part on the rationale that Cosby’s alleged victims are “un-rape-able. I just look at them and go, ‘you don’t want that. Get out of here’.”104 For decades, feminist scholars and activists have fought to reframe rape as a gendered crime of power rather than an impetuous crime of passion, a societal harm in addition to a personal one.105 Despite these efforts, like Wayans, many Twitter users proclaim astonishment and confusion that an attractive celebrity would coercively or forcibly obtain sexual gratification because, as one Tweet notes of Roethlisberger, famous men don’t “need to rape” anyone. Of the Cosby incidents, Tweets note, “[He] DEFINITELY ain’t rape them 3 broads...they was ugly in they younger days too” and “[D]on’t care what you say.... Bill Cosby couldn't have ‘raped’ all these ugly ass women....” Other Tweets discuss sexual violence as occurring in proportion to one’s “ability” to obtain sexual partners, for example, users note that “[r]egular ugly dudes get chicks. Jameis Winston is the QB at Florida State. He got chicks ironing his draws right

now. He doesn't have to rape…” and ask “Why would FAMOUS Jameis Winston need to rape a girl? I mean come on? He is ugly but he's built for success & will generate a large revenue!”

Lastly, when and how a crime is reported is a significant indicator as to whether an accuser is a truthful claimant or a “hoe” or “trick.” First, suggested by comments such as, “took you hoes too long to say something…” and “Them hoes shoulda said something when the ‘Cosby raping’ first happened,” the honest victim reports her sexual assault to law enforcement immediately. In real life, whether and how to engage the justice system after having experienced sexual violence is a complex decision informed by multiple, intersecting factors.106 For rape and sexual assault victims, studies bear out that the decision to report is influenced by the stigma attached to reporting or guilt at perceived complicity in the incident due to drinking too much, wearing the wrong attire, or being in the wrong place at the wrong time. Self doubt about potential personal responsibility for or complicity in events may mean that victims’ stories do not unfold immediately, logically, or completely.107 Waterhouse-Watson describes an unfortunate cycle, in which fear of disbelief dissuades women from pressing criminal charges, and the lack of pursuit of charges adds to the widespread assumption that women lie about sexual assaults.108 In the online world, though, there is a profound lack of recognition of the chronic significant

107 For example, Fisher et al. found that, among female college students who experienced but did not report incidents meeting the legal definition of rape, a significant portion characterized such incidents as a “miscommunication” or a “seduction.” BONNIE S. FISHER, LEAH E. DAIGLE, FRANCIS T. CULLEN, UNSAFE IN THE IVORY TOWER: THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN 134 (Sage Publications, 2010).
under-reporting of crimes of sexual violence, and there is little room for confusion, uncertainty, or mixed emotions among victims.

The honest victim, also, stands steadfast to her story and her motives. Tweets noting “Regret isn't rape!” or suggesting that, after time “rape” becomes “rumor” convey that there is little room for ambivalence in recollection of events. Commenters critique Jameis Winston’s accuser in particular for lacking a consistent story about events: “u say [the alleged victim’s] story hasn't changed. Do u mean her latest version?”; “[R]ead the police report/her 5 diff stories!; “her entire story just has way too many holes”; “[The accuser] is a skank. Sorry but after your story changes 10,000 times…ur DONE” and “which story that [the accuser] told made you believe her?”

In the eyes of many Twitter users, there are few, if any, shades of gray. Either an accuser is an honest victim who promptly reported a straightforward narrative to appropriate authorities, or she is a gold digger, who, interested in “financial gain must be lying, and was therefore not raped. Her claims are to be doubted.” 109 As one user notes of the Cosby accusations, “them hoes cause they hoes and we don’t believe hoes.” Although the comment may be grammatically challenged, the Tweet in fact provides salient commentary regarding how women historically have been perceived in the legal context, where their assertions of sexual agency not uncommonly have been conflated with lack of personal integrity.

A notable undercurrent is the vitriol with which users would like to see those who make false accusations or who, like Janay Rice, otherwise flout the law by not adhering to the “honest victim” script, severely punished. One user notes of Winston’s accuser, “bitches that cry rape when they didn't get raped shudd get charged n same sentencing as

109 Id.
a rapist imo, fuckin skank….” Another writes, “If it is found that she purposely made a false allegation of rape, she needs to go to prison for TWICE as long as [Winston would have].” Some call for civil penalties, noting, “I want the Tallahassee Police Department to sue [the accuser]…for slander. THAT. WOULD. BE. GLORIOUS” and “jameis winston finna sue the white girl who accused him of rape for $7 million lmao hahahaha teach these hoes false rape ain’t no game then.” Some commenters express desire to take matters into their own hands, one classifying Janay Palmer as “ on my Whoop That Trick list. Sorry NOT Sorry” and another noting of Roethlisberger’s accuser, “Ben Roethlisberger is a 2x Superbowl Champion, Pro-Bowl NFL Quarterback. He doesn’t need to rape anyone. I hope that slut dies.” The theme of vengeance is interwoven among many “jokes” Tweeted about Janay Palmer. For example, in 2015, a debate regarding the color of a particular dress captivated many on social media. One re-Tweeted joke connecting the year’s big media events: “The dress is black and blue as Janay rice in an elevator.”

Advocating severe penalties for false accusers fits into the historical fear of blackmail in rape prosecutions, entrenched in law by practices such as the use of the Hale instruction. The harsh nature of penalties exacted against the accused coupled with the cash value of women’s chastity and fidelity meant that each accusation was accompanied by a strong threat of the transfer of power from accused to accusers and a similarly strong incentive to protect the status quo. Twitter users’ discussion of potential false...

110 Although, in its current iteration, West’s Gold Digger seems to be a relatively lighthearted romp through the socio-legal pitfalls of contemporary relationships, the original version, available online, is less jovial. In a 2003 video from the Second Annual Dynamic Producer Conference with John Legend, West sings: “On their 18th birthday he found out it wasn’t his/He killed that bitch/They gave him 25 years, 25 years, yeah yeah….Now get down, go ladies….“ Samantha Grossman, “Watch Kanye West and John Legend Perform an Early Version of ‘Gold Digger,'” TIME.COM (March 11, 2015), http://time.com/3740771/kanye-west-john-legend-original-gold-digger-2003/.
accusations fits into this paradigm of victim blaming; accusers’ behavior is scrutinized as closely as if they had been wearing the “wrong outfit” or walking alone in a “bad area.”

When Tweets invoke the specter of false allegations, they accomplish they reinforce hegemonic masculinity\textsuperscript{111} in at least two ways. First, allegations of false accusations reframe an alleged victim as agent and the alleged perpetrator as target. Tweets notes, “Ray Rice is the true victim, if it was bad enough she woulda left. #GoldDigger” and “Crazy thought. What if Jameis Winston is innocent....Who is the victim now?” Others describe the accuser “throwing a case” at a celebrity or “trying to bring a brother down.” With this shift in attribution of power, the accuser’s character now is problematized to a greater extent than alleged perpetrator’s actions.\textsuperscript{112}

Second, as the victim/perpetrator roles are reversed, attention is drawn away from the alleged crime and toward the aftermath. Although recent incidents of interpersonal violence involving celebrities sometimes seem to have taken over the nightly news, in fact, victims coming forward to report sexual assaults remain few and far between, and the likelihood of receiving a large financial payout as a result of suffering a sexual assault remains rare. By categorizing the parties to publicized incidents as deviating from everyday, honest victims, any crimes that may have occurred become characterized as exceptional and unusual rather than everyday dangers that are part of the fabric of society. On the books may appear to be more inclusive of women’s realities than ever before; however, Adrian Howe warns that, to be acknowledged as legal claims, harms

\textsuperscript{111} For a nuanced discussion of the definition and operation of hegemonic masculinity see R.W. Connell and James W. Messerschmidt, \textit{Hegemonic Masculinity: Rethinking the Concept}, 19 \textit{Gender \& Society} 829 (2005).

\textsuperscript{112} Edgar, \textit{supra} note \_, at 151.
must be perceived as socially-created and not particular to individuals. In focusing on personal characteristics of the parties, responsibility for the incident is shifted, and the events in question become characterized as individual mistakes of judgment rather than societal crime problems.

In the Twitterverse, the difference between whether an accuser is an unwitting, “honest” victim or an ubër-logical, manipulative “bitch” hinges on her interaction with the legal sphere. The expectation is that, if it is “real” rape or assault, the survivor will be traumatized, the story will be straightforward, and criminal charges promptly will be filed. In cases of rape, the time to fight back is during the crime itself—not later via the legal system. Accusers who behave otherwise are no longer identified as victims, but predators. The expectations of online commenters that victims conform to a specific, honest victim script suggest that, although rape and sexual assault laws have undergone significant reforms, that there remains long way to go. Public impressions of rape law are haunted by fears of false accusations, gendered expectations of perpetrators and victims, and, in particular, a history of disproportionate accusations by white women and punishment meted out against Black men. They also are influenced by a generalized fear of redistribution of wealth via the civil legal system.

VII THE COMMODIFICATION OF RAPE AND THE REDISTRIBUTION OF LEGAL POWER

“Got one of yo kids’ got you for 18 years”

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114 Moore, supra note __, at 453; Alberta Brenner, Resisting Simple Dichotomies: Critiquing Narratives of Victims, Perpetrators, and Harm in Feminist Theories of Rape, 36 HARVARD J. LAW & GENDER 503, 507 (2013); MacKinnon, supra note __.
115 West, supra note __.
The discomfort with victims seeking redress in tort expressed on Twitter suggests that society has yet to come to agreement regarding the nature of the harms wrought by gender-based violence, whether such harms are compensable, and if victims personally are deserving of compensation. It is only recently that incidents of marital rape or rape of a sex worker, or rape of a long-term partner have been recognized inflicting as legally cognizable harms. Many actions that inflict actual harms on women, such as catcalling certain forms of harassment, or intra-familial violence, continue to be deemed “private” problems unrecognized in the legal sphere.116 This distinction between private and social injury also leads to confusion—even among victims—as to whether infliction of some injuries should be criminal, let alone that they should be actionable in tort.117

The pervasive unfriendliness toward civil claimants expressed via Tweets conveys a discomfort that lawsuits for having suffered a rape or sexual assault somehow are commodifying rape.118 As a Tweet notes, “35 women are not Cosby's victims. They're the women who sold sex to Cosby. Sell your body for sex, lie to make money, eaassyyyy.” The connection between rape and the assignment of a hierarchy economic value to women’s bodies is, of course, not new. Historically, rape was treated as a crime against property, with the harm resulting not from the physical or emotional trauma inflicted on the victim but the devaluing of the victim’s body in the eyes of (male) others.119 Although in contemporary jurisprudence rape no longer is explicitly linked to

116 Howe, supra note __, at 157; MacKinnon, supra note __.
117 Megarry, supra note __, at 49; Howe, supra note __, at 149).
118 Lininger, supra note __, at 1587.
119 Jed Rubenfeld, The Riddle of Rape-by-Deception and the Myth of Sexual Autonomy, 122 YALE L.J. 1372, 1392 (2013) (observing that “[r]ape originated as a crime against property, not a crime against a person. As such, the crime related to patriarchal inheritance rights and a female’s reproductive capacity and therefore was limited to a crime against unmarried virgins and included only forcible penile/vaginal penetration. These laws have evolved but retain vestiges of their archaic origins. The result is from state to state as well as anomalies.”).
Theories of property, courts and scholars have not reached consensus on the actual harms wrought by sexual violence. Some, including Jed Rubenfeld, advocate continuing a property-based theory of harm, arguing that rape violates self-possession. Others seek to broaden legal recognition of the harms associated with gender-based violence, arguing for criminalizing violation of sexual agency and autonomy. As Tweets demanding that victims show their bruises attest, the debate over the harms wrought by sexual assault and rape are not purely academic. Conversations among the public at large mirror those in academic scholarship; if the resulting harm is not physical, Tweets ask, then how does one appropriately compensate the victim?

Tweets referring to women who file civil suits against alleged celebrity attackers as “greedy,” “selfish” or “gold digger hoes” reflect discomfort with victims receiving financial rewards for violations of sexual or bodily autonomy or integrity. For commenters, the idea that a victim might receive a financial benefit, or “come up,” after sexual activity appears to come uncomfortably close to a sex for sale arrangement, even if that sexual encounter was not at the outset consensual. Survivors who pro-actively engage the civil system challenge historical assumptions that victims of rape are irreparably passive or broken. But, if a victim has overcome the trauma of sexual assault, then, users ask, how and why should she be compensated? The terms “hooker,” “whore” and “ho” are used casually to delimit women across the internet, but, in the context of discussions about sexual assault, the term “whore” is anything but a metaphor.

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120 Rubenfeld, supra note __, at 1392.
121 Deborah Tuerkheimer, Sex Without Consent, 123 Yale L.J. Online 335, 352 (2013).
The idea that a sexual assault survivor may receive economic benefit or advancement as a result of anything over and above documented, physical harm triggers a fear that the accuser has purposefully engaged in sexual relations in order to blackmail an unwitting partner. Even in the case of Janay Palmer, rendered unconscious after her fiance’s attack, users characterizations of the victim as “kinky” question whether she invited or even enjoyed the experience.

The suggestion that accusers are “fame whores” “throwing a case” at celebrities not only imply that accuser is selling her body but also that it will be strikingly easy for her to succeed. The widespread classification of alleged victims as able to “game the system” belies that that rape results in fewer criminal complaints, arrests, and prosecutions than any other crime in the United States. These comments fly in the face of numerous studies finding that victims of rape—and, particularly, acquaintance rape—are the least likely victims of violent crime to report the incidents to authorities. They also convey a misunderstanding about law on the books. Although Tweets frequently reduce the determination of whether the crime of rape has occurred to a question of consent, in reality, about half of U.S. states still maintain some force requirement. Further, although civil suits in response to rape have grown in the past several years, such

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123 This societal discomfort is mirrored in the legal sphere. Lininger, for example, argues that courts continue to allow “scathing impeachment of accusers” who bring coterminous civil and criminal actions, indicating that members of the judicial system. Lininger, supra note __, at 1651.
125 Fewer than twenty percent of rapes are reported to the police, making rape the least reported violent crime. Anderson, supra note __, at 231.
suits remain extremely rare. Tweets suggest that, among the American public, there is an over-estimation of the success of the reforms of the feminist movement. There also appears to be a lack of understanding about the processes by which victims of gender-based violence engage with the legal system, perceiving the law as more accessible than it actually is.

Although expressed in a particularly demeaning or insulting manner, Twitter users’ disdain for sexual assault accusers who sue their alleged attackers is not unique to this crime. Bloom, for example critically evaluates personal injury lawsuits, arguing that, in order to achieve the goal of compensating disabled victims, such lawsuits convey the potentially harmful message that “disability is tragic.” McClellan, et al., identify a widespread and mistaken perception among medical professionals that litigants in malpractice cases are more likely to come from low-income families, impressions that lead to differential treatment of poor clients. It is most often women who do not have the “status shield” of family support or middle class respectability are particularly vulnerable to being stigmatized. These women are deemed to be looking for a “come up,” a “paycheck” or simply the “$$.”

127 Anderson, supra note __, at 226; Lininger, supra note __, at 1557, 1615.
130 Salter, supra note __, at 234.
131 Similar socio-economic arguments are present in the “Twitter war” that took place this year between celebrities Khloe Kardashian and Amber Rose. After having been accused of being a “whore” by Kardashian, Rose fans called out Kardashian for her classist comments, arguing that Rose had engaged in stripping “to provide for her family wyd [what have you been doing?]” Amanda Michelle Steiner, “Khloé Kardashian and Amber Rose Embroiled in Massive Twitter Feud” PEOPLE.COM (February 17, 2015), http://www.people.com/article/khloe-kardashian-amber-rose-twitter-feud.
As Engel observes, opinions about those who engage the law reflect social boundaries and in-group and out-group status.\textsuperscript{132} Legal claims today arise in the shadows of the overarching tort reform movement. Mendlow argues that tort suits today may be perceived as a form of “institutionalized revenge,” driven by the assumption that plaintiffs bring lawsuits primarily to inflict harm on tortfeasors rather than to be duly compensated or made whole.\textsuperscript{133} As Howe observes, and as the U.S. tort system recognizes with its “eggshell skull” admonition, parties do not all feel injury the same way.\textsuperscript{134} She writes,

“The success of the tort ‘reform’ movement…has hinged upon this idea that there are greedy or drama-seeking parties who feel injuries more acutely than others. Punitive damages, then, are characterized as serving the special interests of a few, demanding plaintiffs rather than penalizing bad actors on behalf of the collective good.”\textsuperscript{135}

The fact that the tort system allocates power away from the state and onto individuals to re-allocate resources may arouse suspicion of dishonest motives not only in sexual assault cases but across all personal injury claims.\textsuperscript{136}

While the complex negotiations involved in the decision to report allegations of sexual assault distinguish sexual violence from other types of violence, there are similarities across survivors of crime, in that all interpersonal relationships come with complexity and uncertainty. Although it is in cases of rape and sexual assault where

\textsuperscript{132} Engel, supra note __, at 581.
\textsuperscript{133} Gabriel Seltzer Mendlow, Is Tort Law a Form of Institutionalized Revenge?, 39 FLORIDA STATE UNIVERSITY L. REV. 129, 132 (2011) (arguing that, other than punitive damages, “tort remedies…might diminish a defendant’s welfare, but they do not thereby cause her harm”).
\textsuperscript{134} Howe, supra note __, at 164.
\textsuperscript{135} Howe, supra note __, at 162.
\textsuperscript{136} Mendlow, supra note __, at 129.
victims’ narratives most frequently and visibly are interrogated, researchers find that persons who suffer all sorts of harms have complex goals in resorting to the justice system.\textsuperscript{137} Feltsiner, et al. observe that most injuries do not become legal disputes; in order for an injury to become a civil legal dispute, the plaintiff must undergo a process of “naming, blaming, and claiming.”\textsuperscript{138} Morgan similarly finds civil plaintiffs motivated by intertwined desires, including not only the hope of profit but also the assertion of dignity and self-worth.\textsuperscript{139} For example, a driver who is a defendant in a personal injury suit may at once wish to minimize her financial responsibility for the incident and also believe that she may be at fault or that the plaintiff also should be compensated.\textsuperscript{140}

Across criminal cases, victims’ objectives in filing are complex and ambivalent: “a party may file criminal charges intending only to have another person removed from the home…[or] may resort to seeking redress through the criminal system because of the dearth of restorative justice practices and the expense of civil legal assistance.”\textsuperscript{141} Victims of myriad crimes choose to drop charges once they fully understand the consequences of a criminal proceeding for themselves and for the perpetrator.\textsuperscript{142} It is not just for rape victims, but for anyone engaging legal systems and processes that “disputing is a complicated process involving ambiguous behavior, faulty recall, uncertain norms, conflicting objectives, inconsistent values, and complex institutions.”\textsuperscript{143} For a person who perceives he or she has suffered a harm, the motive in filing a criminal complaint

\textsuperscript{137} Thomas, supra note __, at 250; see also Phoebe Morgan, Risking Relationships: Understanding the Litigation Choices of Sexually Harassed Women, 33 LAW & SOCIETY REVIEW 67 (1999); Felstiner, et al., supra note __.
\textsuperscript{138} Felstiner, et al., supra note __, at 635-636.
\textsuperscript{139} Morgan, supra note __, at 67-68.
\textsuperscript{140} Felstiner et al., supra note __, at 638.
\textsuperscript{141} Thomas, supra note __, at 270.
\textsuperscript{142} Id.
\textsuperscript{143} Felstiner, et al., supra note __, at 638.
versus a civil suit may be the same—achieving justice by whatever means possible.144

No matter the crime, victims’ conceptions of “justice” may be less than clear at the start and may change over time.

Although false accusations may be no more likely in the case of rape or sexual assault in comparison to other crimes145, and although mixed motivations are present across crime victims, the longstanding and particular focus on victims’ character in rape prosecutions has fostered a “blackmail myth” that continues to pervade discussions of survivors of sexual violence. During Mike Tyson’s sexual assault trial, witnesses testified that the alleged victim, prior to the assault, had “talked about Tyson’s money.”146

In their opening arguments, the defense pointed out that she could become very rich via a civil suit.147 These same comments resonated throughout Ben Roethlisberger’s civil suit, during which his lawyer characterized the plaintiff as both “disturbed and calculating.”148

Jameis Winston’s attorney, similarly, notes of the alleged victim’s civil suit, “this stunt was expected.”149 The very first page of Winston’s counterclaim for defamation describes his accuser as going “0 for 6” in her claims against the player,

“However, [the alleged victim] has been successful in one major area. She has mounted a false and vicious media campaign to vilify Mr. Winston

144 Lininger, supra note __, at 1563-1564.
145 These statistics are widely disputed. In 1996, Sanday noted that false complaints for rape were around 2%—same as other crimes. SANDAY, supra note __, at 30. Other research cited herein places the rate of false reporting of crimes of sexual violence as high as 50 percent. Cf. Tracey Owens Patton and Julie Snyder-Yuly, Any Four Black Men Will Do: Rape, Race, and the Ultimate Scapegoat, 37 J. BLACK STUDIES 859, 865 (2007).
146 SANDAY, supra note __, at 235.
147 Id.
148 Id.

with the objective of getting him to pay her to go away. [The alleged victim] is motivated by the most insidious objectives—greed.”

That they are engaged immediately and directly in the pleadings indicates that these statements are not mere insults; they may in fact serve to create reasonable doubt in rape cases. Lininger describes how “[e]vidence of parallel civil litigation inflames jurors’ instinctive prejudice in much the same way that evidence of prior sexual history inflames prejudice against accusers.” Tweets demanding that sexual assault accusers conform to a specific honest victim script indicate that, in an environment of widespread distrust of personal injury more generally, victims of sexual assaults are being held to an even higher standard than other claimants. The labels “gold digger,” “slut” and “hoe” await the survivor who is anything less than impeccable in pursuing her claims.

In the following section I discuss that is not only accusers who are expected to conform to specific norms in engaging law in the aftermath of an alleged rape. Public opinion of alleged perpetrators, too, is influenced by the manner in which they reckon with the allegation that they have committed a crime.

VIII  SCAPE-GOATS153: SCRIPTING ALLEGED PERPETRATORS

‘If you ain’t no punk holla’...”

When any media-worthy event occurs, a trend is for commenters to develop memes155 surrounding the incident. When athletes are involved, a primary topic of such

151 Waterhouse-Watson, supra note __.
152 Lininger, supra note __, at 1564.
153 Greatest of All Time
154 West, supra note __.
155 According to MERRIAM-WEBSTER, a “meme” is “an idea, behavior, or style that spreads from person to person within a culture.”
memes is to relate alleged incidences of sexual violence to events occurring on the field. After sexual assault allegations were waged against him, Jameis Winston’s successes and failures in the legal arena have been translated into numerous viral images and phrases regarding his on field performance. After a good result, Tweets note, “He only rapes defenders” and “South Carolina couldn't stop Jameis Winston with a chloroformed white girl....” After a loss, “Finally, Winston knows what rape feels like”; “Jameis karma is definitely a bitch. Looks like you’re about to get raped an Auburn is going in dry.” Similar statements abound regarding Ben Roethlisberger, such as “Steelers QB...allegedly arrested and charged with rape. Victim believed to be the Indianapolis Colts defense”; “Ben Roethlisberger’s 3rd victim? The Colts”; “for the safety of all the women in dallas, i hope the greenbay packers win so big ben doesnt have an excuse to party at clubs #kobe #rape”; “Maybe if they put a club skank in the end zone, Roethlisberger would get there more often”; “Roethlisberger goes down easier than drunk slut” and “Being drunk and alone in a dark alley with Ben Roethlisberger would have been better than that game.”

A commonality among these comments is the extent to which they are imbued with humor or sarcasm, the harshness of statements seemingly minimized by inclusion of emojis or notations, such as LOL\textsuperscript{156} or ROFL.\textsuperscript{157} The metaphorical use of sexist tropes can be particularly difficult to challenge, as indirect statements, such as, “I don’t want to sound sexist, but,” or “I’m not sayin’ she...” at once “express sexism whil[e] at the same time denying responsibility for it.”\textsuperscript{158} In one phrase, a speaker positions herself as aware

\textsuperscript{156} Laughing out loud.
\textsuperscript{157} Rolling on the floor, laughing.
\textsuperscript{158} Kristin L. Anderson and Jill Cermele, Public/Private Language Aggression Against Women, 2 J. LANGUAGE AGGRESSION AND CONFLICT 274, 280 (2014).
of sexism or racism while, at the same time, making a profoundly sexist or racist statement.159 This is also true of “rape jokes,” which use humor to diffuse the seriousness of the crime while, at the same time, exhibiting an awareness of both the violence of the offense and sexual assault as embedded in U.S. culture. The comments above are striking in that many at once assert that the accused is guilty—“Finally, Winston knows what rape feels like”, “Being drunk and alone in a dark alley with Ben Roethlisberger would have been better than that game”—and also minimize or heroize the athletes’ actions. The implication, for example, that even a “chloroformed white girl” could not stop Winston’s success on the field signals recognition that a crime may have occurred but that it is the actions on field and not the social harm that are important. The statement “Karma is a bitch” or the nickname “Rapelisberger” similarly suggests that, although the commenter believes a player may have acted inappropriately off the field, being tackled on field is sufficient punishment. For some, criminal charges are an inconvenience: “WISH THEY WOULD LEAV BIG BEN ROETHLISBERGER ALONE…THEY MESSIN UP MY BEARS STEELERS SUPA BOWL WISHES.”

Memes drawing comparisons between on and off field events not only display astute awareness of and strong opinions about recent allegations against athletes, they also convey a particular consciousness about the adversarial nature of the U.S. legal system. As users engage events in everyday life to enhance the play-by-play description of on field actions, they also borrow from athletics to describe what is happening in the legal arena. For example, when cases are dropped or settled or the accused receive a favorable ruling on a particular motion, descriptions are often presented in terms of

159 Anderson and Cermelé, supra note __, at 280.
winning or losing. One user notes, “Jameis—‘That bitch tried to take u out’; and another, “If I was Jameis I woulda been like ‘to that bitch that tried to catch me a case, fuck you, I won, and I roofied you ass peace [fingers in peace sign emoji]’ #UOENO.”

Comments characterize athletes as heroes across alleged incidents, “Jameis, Kobe, and Ben Roethlisberger all won titles & raped a bitch. They are GOATS for that, rare shit;” “What do Kobe [and] Jameis Winston… have in common? You're correct they’re…champions” and “WTF Ben Roethlisberger?...is this another “Kobe Bryant money-hungry skank” incident?”

An undercurrent in these gameday memes is role reversal. Whether the athlete is receiving his comeuppance for misbehavior, dodging an offender, or deftly out-maneuvering the victim in the legal arena, it is he who is the pursued, and the alleged victim, the pursuer. As one commenter describes, “Ben Roethlisberger was the victim of conniving whores both times.” In their description of varied relationships to law, Ewick and Silbey characterize some parties who are “with the law,” able to engage the power of the institution to their benefit and, sometimes, delight in doing so. The authors stress that the position of “with the law” is context-dependent; one may, for example, have the upper hand in a contract dispute, but may (or may be perceived to) lack power to refute a criminal charge. Tweets referring to accusations against Winston as a victim of “sabotage” or Roethlisberger as a target of “conniving whores” suggest that, in the view

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160 This Tweet referencing UOENO, “you don’t even know it,” references a controversy surrounding lyrics by performer Rick Ross in his song, U.O.E.N.O., that progress, “Put molly [ecstasy] all in her champagne, she ain’t even know it / I took her home and I enjoyed that / She ain’t even know it.” Brandon Soderberg, “The ‘U.O.E.N.O.’ Rape Rape Controversy One Month Later: Tracing Hip-Hop’s Encouraging, Mature Response to the Grotesque Insensitivity of Rick Ross,” SPIN.COM (May 23, 2013), http://www.spin.com/2013/05/rick-ross-rocko-rape-rape-controversy-ueno-childish-major/.
161 GOAT is an acronym for Greatest of All Time.
163 Id.
of the Twitterverse, it is the alleged victim—the person in the situation with the weakest economic and social resources—who is perceived as holding all the legal power.

The rationale for perceiving criminal law as on the side of accusers—and accusers as “out to get” innocent athletes—stems from a variety of competing narratives interwoven into the U.S. socio-legal fabric. Sanday attributes the tendency to protect alleged perpetrators of rape to the idea that “we are a nation that thirsts for male heroes and thrives on warrior dreams.”¹⁶⁴ “American identity [is]…linked with masculine heroism”: “[t]he rugged, solitary man, who is larger than life questing for glory.”¹⁶⁵ In this context, celebrities’ successes most often are attributed to individual action—grit—rather than luck, suggesting that social mobility is gained via talent and hard work.¹⁶⁶ A plaintiff who secures economic benefit via the civil system is attempting to achieve success without effort. As evidenced by the Playboy gold digger article, and by Tweets referencing claims as part of a “feminist agenda,” there also is a collective fear that, when the masculinity of celebrities are threatened by the feminine (or feminist) charge of rape, the masculinity everyman is also threatened. Dowd, et al. observe that, while men and boys may have a collective privilege, like their female counterparts, they “operate in a gendered context and collectively experience…harm as a result of the social construction of what it means to be a boy or man.”¹⁶⁷ One female victim’s achievement of a “come

¹⁶⁴ SANDAY, supra note __ , at 49.
¹⁶⁷ Nancy E. Dowd, Nancy Levit, and Ann McGinley, Feminist Legal Theory Meets Masculinities Theory, in MASCULINITIES AND THE LAW (Ann McGinley and Frank Rudy Cooper, eds.) (NYU Press, 2012). Others attribute the defense of celebrities accused of sexual violence to morally loftier ideals. Boisseau argues, consonant with the
“up” may be perceived as indicative of a larger, systemic shift or bias. As a comment warns, “…ANY bitch u fucked can get out the bed rite after and fry u for rape. Please dont act like Jameis is diff than anybody else.”

It is important that, despite widespread support for the falsely accused, in the eyes of the armchair quarterbacks following the litigation game, alleged perpetrators are not free to behave in any way they please. A refrain in Kanye West’s song is: “If ya ain’t no punk, holla ‘we want prenup!’” The phrase implies that those who do not engage the legal mechanisms available to them to ward off potential gold diggers are “punks.” Like gold digger, bitch, and ho, “punk” is a gendered term, originating in prisons and referencing to the “bottom” in a coercive sexual relationship. In other words, those who are “targeted” by ambitious women and do not use law as a shield are themselves analogized to victims of sexual assault. For these men, the role of victim and perpetrator roles fully have been transposed, and a new relationship is forged where the former victim is now, at least legally speaking, in the dominant position.

Comments on Twitter abound reflecting the sentiment that, if they are actually innocent, the accused will deploy any and all legal mechanisms available to defend their honor and exact punishment against their accusers. Tweets provide copious legal advice: “Famous Jameis should sue that bitch, her family, and the police”; “Jameis’s next move

Blackstonian formulation, that “false accusations provide the basis for one of the most poignant narratives of injustice because we have the sense that someone is punished for a specific, discrete act that they did not commit is entirely innocent, not only of that discrete act but in some sort of existential sense of the word.” Tracy Jean Boisseau, Response to ‘The Duke Rape Case Five Years Later: Lessons for the Academy, the Media, and the Criminal Justice System’ by Dan Subotnik, 45 AKRON L. REV. 927 (2012).

West, supra note __.

Mary Anne Franks, How to Feel Like a Woman, or, Why Punishment is a Drag, 61 UCLA L. REV. 566 (2014).
is to sue the fuck out of that bitch for defamation and slander”; “So two white women can slander Bill Cosby and it’s okay… and yes it’s slander…. I’d press charges!!!”; “Fight the slander, Ben!”; “My prediction is that Jameis Winston uses the Kobe Bryant strategy. Give the bitch a couple mil, shave his head, and change his jersey #”; “2015 AND THE BILL COSBY SLANDER CONTINUES. I HOPE HE BEATS EVERY SINGLE ONE OF THE ALLEGATIONS AND SUES EM BACK FOR TRAUMA”; “Gloria Allred… should probably be sued for slander by Bill Cosby”; “Winston lawyers need to go for slander and defamation of character”; and “I would love for Winston to sue for slander/libel. Only thing that ends it.” Conflating criminal and civil law, a Tweet notes, “Why doesn’t the girl get charged with slander in Winston’s case. Tarnished his name because he’s a stud and you’re a dum bitch #checkplease.” Another bemoans, “Ben Roethlisberger QB for Pittsburgh Steelers settles Lake Tahoe sex scandal. That is a sign of guilt... how did he get away with twice....”

Commenters advise parties to current suits based on experience of similar, past and current incidents. For example, a user notes, “[Jameis Winston’s accuser]… should heed Tawana Brawley, who was successfully accused of defamation for calling someone a rapist”170 Another characterizes the Cosby allegations, “This isn’t a Tawana Brawley... situation.” A Tweet suggests that “Bill Cosby should reach out to Ben

170 In 1987, a fifteen year-old African American woman, Tawana Brawley, stated—and later retracted the statement—that six white men had raped her, placed her in a trash bag and written on her body in feces. A grand jury concluded that Brawley was not in fact the victim of such an attack. Although the Brawley family maintains that the incident occurred, the case has become notorious not only for the audacity of the accusations but also the opportunity for those determined to have been falsely accused successfully to sue their accuser for defamation. Notably, however, the deployment of Brawley’s name as a warning to false accusers cloaks less of a threat than it initially might seem. Although the large amount requested by the accused in the Brawley case made headlines, like most tort suits, the damages ultimately were significantly reduced. It was not until ten years later that the case went to trial, and, ultimately, after requesting nearly $400 million, the plaintiff received only $500,000 in damages. Claire Steinman, Defamation and False Rape Claims: Policies, Attitudes, and Suggested Reform in the United States and the United Kingdom, 19 CARDOZO J. LAW & GENDER 907, 908 (2013).
Roethlisberger on how to refute false sexual misconduct claims.” And another: “Kobe: rape charge, beat it, prospered Big Ben: rape charge, beat it, prospered Famous Jameis: rape charge, beat it, prospered Hoes salty…” If the accused do not follow the expected legal script and counter sue for libel or defamation of character, their veracity is placed in question. Like “hos,” the credibility of “punks” also is dubious. Speculation on incidents include: “If Cosby wasn’t guilty, he could sue these women for slander, libel, defamation etc. And yet….”; “Jameis Winston should seriously consider a slander lawsuit against the worlds biggest liar”; and “If i was Jameis winston i’d sue that lying ho for defamation and slander. Hate women that do that.”

These comments signal an awareness that, as civil suits for rape and sexual assault have increased, defamation claims for false rape accusations also have risen. The reference to the Brawley case refers to perhaps the most well known of such suits, where, after her claims of a violent and racially-motivated rape were found to be false, Brawley and her attorneys were sued for nearly $400 million by the alleged perpetrator. The casual manner in which law is discussed online—“catching a case,” “beating the rap”—implies not only that money-minded gold diggers individually or, perhaps, feminists collectively, are targeting male celebrities but that these accusers and the accused readily are able to engage legal structures to their benefit. This assumption that law readily may be called upon and deployed is in many ways positive; the public will have more faith in a system citizens actually can use. The ability, for example, of the defendant, O.J. Simpson, to engage the powerful instrument of the law during his trial for the murder of

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171 “Salty,” in contemporary parlance, means made to look stupid.
172 Steinman, supra note ___, 908.
173 Id.
his ex-wife, for some was an example of bias but for others signified the capacity of the law to rise above racial divisions and to promote racial equality.

Tweets urging celebrities to sue for slander or defamation misapprehend, however, that, due to the onerous standards of proof upheld by the courts in celebrity defamation cases, “of all the defamation cases over false rape allegations to reach American courts, only a handful have held in favor of the plaintiff.” In regard to accusers, Tweets conveying the assumption that law is easily manipulated further the honest victim stereotype by questioning the veracity of claimants who do not, or, perhaps due to lack of evidence, cannot engage the criminal system. For the accused, the expectation that innocent parties smoothly will engage law as a shield envisions a universe in which public figures are as protected from untoward attacks as fantasy football fans would desire them to be. The assumption that law is easy to use as a sword or as a shield harms both accusers and the accused by ignoring that lawsuits are costly and time consuming. The ideas that a victim can easily “throw a case” at an offender or that a defendant is a “punk” if he does not counter-sue are contrasted by the Winston cases themselves, which are not set to reach the federal court until 2017.

In the public imagination, of course, references to the Tawana Brawley incident, the O.J. Simpson case, or the Kobe Bryant accusations not only signify the potential power of false accusations but also suggests the role that race historically has played in such accusations. In each of these cases, the race of the alleged victim and perpetrator

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174 In *New York Times v. Sullivan*, 376 U.S. 254 (1964), and *Curtis Publishing Co. v. Butts*, 88 U.S. 130 (1967), the Supreme Court upheld the actual malice rule, requiring that, in order for a public figure to bring a successful defamation claim, the person relating a falsehood must have done so “with knowledge” that a statement is false or with “reckless disregard” for its falsity,” a standard exceedingly difficult for public-figure plaintiffs to meet.

175 NBC News, *supra* note __.
was a significant factor in the ways in which both victims and defendants were
categorized in the press or to the jury. Although this article focuses primarily on
gendered aspects of Tweets regarding recent incidents, the interweaving of comments
that either imply or overtly engage the role of race in these incidents cannot be ignored.
It is impossible to discuss rape in the U.S. context without discussing race.

A Racial Consciousness and Perceptions of Alleged Perpetrators

It is not just the timing of sexual assault complaints, the celebrity status of the
perpetrator, or the race and class of the victim that influence public perception of
claimants. Just a very small sample of tweets regarding recent accusations against Bill
Cosby reveals an astute public consciousness of and anger about the discriminatory
manner in which rape laws historically have been applied in the United States. Just a few
of the comments referencing rape law’s horrific past include: “[F]ool! Cosby is Black. If
he raped white women in the 60’s and 70’s, they would have hung him”; “Black ass Bill
Cosby was raping white women in the ‘60s and ‘70s America and wasn’t lynched? Get.
The. Fuck. Outta. Here. With. That. Bullshit.”; “U mean to tell me Bill Cosby was raping
white women in the early 60s and 70s with impunity? They would have hoisted bill up
from the finest oak tree”; “And they say Bill Cosby was rapin white women 50 years
ago? Lmnfao somebody lying”; “i just saw on Facebook “they killed Emmett Till for
whistling at a white woman you think they would let Cosby rape 20 white women”; and
“So..Y’all really just gone believe that Bill Cosby, a negro, raped more than 5 WHITE
women in the 50s and 60s and they just let him slide.”

Many Tweets in Winston’s case also clearly reference the race of alleged
perpetrator and accuser, such as “That white girl couldn't wait for Jameis Winston to go
pro so she can get some money smdh”; “Jameis Winston CANNOT trust white girls when he’s in the league moving forward bruh”; “GUESS: it was a white girl!”; “That white chick out to get Jameis Winston [crying emoji] she will not stop until justice is served”; “[Y]ou SHOULD NOT fuck with white girls, they're crazy & will claim rape on anyone, smh” and “Jameis said no. White bitch said rape. End of story.” One asks Winston’s accuser, “Does To Kill a Mockingbird ring a bell? You should know better. Why advancing false narrative? Confused.”

Cases such as that of Emmett Till and narratives like that of To Kill a Mockingbird, referenced by commenters, offer examples of the ways which rape accusations and rape law have “been a means of exercising white power over black male bodies.” While rape law functioned to exclude Black women as potential legal subjects, for black men, as Harris describes, “rape’ signified the terrorism of black men by white men, aided and abetted, passively (by silence) or actively (by ‘crying rape’), by white women.” These comments highlight that, historically, black men have been treated as “a rapist, or a potential rapist, or a rapist in waiting” regardless of one’s actions or intentions. Capers uses the term “white letter law” to describe the “reallocate[ion] of burdens of proof persuasion” and racially-motivated under- and over-prosecution of perpetrators in the context of U.S. rape laws. He points out that it is not only women, but black men whose testimony has been excluded and systematically discredited in the

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176 Brenner, supra note __, at 523.
177 Harris, supra note __, at 599.
179 Capers (2010), supra note __, at 1349.
criminal legal system. 180 Just as judicial and societal distrust of female complainants has not magically evaporated with the eschewing of Hale instructions, distrust of African American men has not become obsolete with changes in law. While the movement away from force requirements may have benefited women as a group vis a vis men as a group, particularly in cases involving cross-racial accusations, a standard based solely consent may continue to prejudice black defendants.181

Leonard and King, who analyzed online comments regarding allegations against Kobe Bryant, observe that “every public act unfolds as an occasion for reconnecting race and sexuality, for destabilizing racial difference, and for reaffirming racial hierarchies.”182 “Typically, when Black athletes do something wrong in public, they find themselves ensnared in…the White racial frame….consist[ing] of ‘stereotyped racial knowledge, racial images and emotions and racial interpretations’ along with ‘several “big picture” narratives.’183 Not infrequently, history is activated to compare contemporary attitudes toward accused African American celebrities to lynchings of the early to mid 1990s. Tweets note, “#RayRice The Media is creating a “Lynch Mob” atmosphere” and ask “Does anyone else see how quick #America is to form a lynch mob mentality lately? Jesus.” One user describes “fascist lynch mob organizers in the media [who] claim to be acting on behalf of Jany (sic.).” These comments express a collective, societal fear that “race supersede[s] rape,” that regardless of the facts of the incident, Black men will pay the price.184 As a Tweet notes, “The only black men in America who

180 Capers (2010), supra note __, at 1377.
181 Capers (2010), supra note __, at 1381.
183 Id.
184 Patton, supra note __, at 877.
got treated like rich white people by the police this year were Jameis Winston & Bill Cosby.”

In addition to recognizing the rampant discrimination that African American men have faced and continue to face in the context of the criminal justice system, implicit—or, as often, explicit—in Tweets is a recognition of the white privilege that historically has indered in making claims of sexual assault. Capers identifies that, while rape is no longer formally treated as a crime against the property of fathers or husbands, the public outrage that emerges when there is a suggestion of inter-racial sexual assault, such as in the case of Kobe Bryant or the Central Park jogger, suggests that there remains a sense of “trespass to a racial collective” when such crimes occur.185 Twitter users observe, “I’m not defending Bill Cosby…but too many white women accusers”; “I support Bill Cosby against the accusations of selfish white women”; “[T]he white women are a trip. Why are they attacking Bill Cosby for no reason. Why?”; “No love at all for Bill Cosby but—Criminologist: 90% of black men falsely accused of rape are accused by white women”; “they [hoes] all got together to plot on him”; and “The Jameis Winston case shows you exactly why you SHOULD NOT fuck with white girls, they’re crazy & will claim rape on anyone, smh.” Another Tweet about Winston’s alleged victim: “She played the ‘black men beat me over the head card’.”

Although many single out individual accusers as solely responsible for targeting celebrities because they are “crazy,” “psycho” or “out to get” particular persons, others attribute women’s actions to the work of a group, agenda, or conspiracy. Not infrequently, what is characterized as the deliberate and calculated targeting of black male athletes and celebrities by deploying law against them is attributed to the work of a

185 Capers (2010), supra note __, at 1365.
“feminist agenda.” Tweets about the Winston accusations include, “Not all white people believe her: just the feminists” and “Predicting that #FSU will cave in to #feminist pressure,” and “Athletes, the Leftist/Feminist Machine is out for blood. Behave!” Within the 140-character limit Tweets articulate a history that replete with stories of white women allegedly raped by black men manufactured in order to preserve the white, elite status quo. Users clearly identify this practice, in which a “gendered hierarchy, based on white patriarchal dominance [exists], where one woman is protected over another.” Tweets posit that the “feminist agenda”—most often a white, feminist agenda—stands in opposition to successful Black male athletes, noting, “So when does the conversation about Jameis switch from rape culture to the willingness of the public to condemn a black man of a false acc?” and “Racism or war on women? Ok liberals, take your victim side.” For some, the sheer number of accusers in Bill Cosby’s case further supports this theory of a conspiracy against Cosby: “…[I]f it’s THAT many girls SOMEBODY would’ve have come forward years ago!”

The Tweets described in this section clearly convey recognition of the existence of stranger mythology in rape law and awareness about the ways the persistence of this myth is dependent upon the stereotypes of the black male perpetrator and the innocent white female victim. While commenters recognize the ways in which the stranger myth traditionally has operated to perpetuate harmful and inaccurate assumptions about black men as a group, however, they are less likely to acknowledge how the stranger rape myth has served to delegitimize non-conforming victims, not only women of color but women who were attacked by an acquaintance, drank before their attack, walked alone at night, or engaged in sex work.

186 Patton, supra note __, at 876.
The assumption underlying many Tweets that women are a collective source of oppression of Black men, locates in (often, but not exclusively white), female accusers an agentic competence that stands in contrast to U.S. legal history, a history founded upon excluding, doubting, and devaluing women’s claims. As envisioned by many Twitter users, in the adversarial arena of the law, a person’s gender is more predictive of the likelihood of success than his or her socio-economic status. As Playboy magazine noted, “Even if wife is a ‘trollop’ or a ‘spendthrift’ the judge [usually] grants ‘the little missus a healthy stipend…’.”\(^{187}\) Users display little sympathy for women who “cry rape from a star” because, today, “All it takes is one thirsty bitch to cry rape before a perfectly innocent man gets "rapist" attached to their name. #Kobe #BigBen #Winston.” As one user puts it, “They tried to Kobe Jameis Winston….Every bitch wanna cry rape when it involves a sports star.”

Descriptions female accusers as part of a “#feminist media machine” or “feminist agenda” not only mischaracterize accusers as wielding more legal power than they actually do, they also fail to acknowledge that, although privileged in comparison to their African American counterparts, white women historically were deployed as “symbolic markers” in debates between Black men and the white power structure.\(^{188}\) In engaging an oppositional characterization that posits the interests of white women as opposite those of women of color, users engage what Razcak and Fellows identify as “competing marginalities.”\(^{189}\) Rather than acknowledging commonalities among historically disenfranchised groups, Tweets grasp at difference and rank accusers in a hierarchy of

\(^{187}\) Sanday, supra note __, at 150.

\(^{188}\) Boisseau, supra note __, at 863.

honest to dishonest and perpetrators in regard to guilt or innocence. Although white women as a group most certainly are privileged in comparison to African American women, Tweets conflate the possession of privilege with the capacity to exercise power. A commonality across recent accusations is that the wealthiest parties are recast as the victims, and the party with least access to resources, the abuser, a narrative which suggests that it the dominant groups within society that retain the resources to “shape cultural images.” As Boisseau observes, it is likely there are “powerful or at least privileged men who have been brought low [and] made to respond to awkward questions and made to endure scrutiny injurious to their dignity due to the unfair and unsubstantiated accusation of a…subordinate woman of some sort.” However, naming these men, who have been divested of liberty and property, is a challenging proposition. While Tweets astutely identify the ways in which Black males disproportionately have been accused of rape and have faced and continue to face discrimination within the U.S. legal system, fewer comments recognize that accusers, also, speak from the boundaries of the status quo.

IX Conclusion

More than twenty years ago, when discussing the widespread reforms being effected in rape law, Carol Smart cautioned, presciently, that “we cannot make the mistake that law can provide the solution to the oppression that it celebrates and sustains.” Since the 1970s there have been myriad, significant changes embracing claimants who, historically, would have been left outside the courthouse doors. Changes in law, however, constitute one, sometimes small, part of social change.

190 Ridgeway, supra note __, at 67.
191 Boisseau, supra note __, at 934-935.
192 SMART, supra note __, at 149.
Analysis of Tweets regarding recent allegations of gender-based violence made against celebrities supports that the internet is not a comfortable place to be a woman. Online, “bitches,” “hoes,” “gold diggers” and other dubious characters abound. These derisive terms reduce subjects to gendered bodies, at once reinscribing stereotypical views of women as hyper-corporeal, emotional and illogical and punishing actors who do not conform to these tropes.

Tweets not only discipline those perceived to challenge the status quo, they also reveal a deep discomfort with the manner in which the U.S. legal system deals with both victims and perpetrators of gender-based violence. Honest victim scripts regularly are deployed to protect masculine, socio-economic privilege and to chastise accusers who seek a “come up.” As legal scholars weigh the future trajectory of rape and sexual assault laws, Tweets reflect an astute understanding among the American public that society is experiencing a moment of cultural crisis. Comments engage powerful racial images, referencing both historical injustices and current disparate impacts of criminal justice system. Instances of interpersonal violence involving celebrities become sites at which feminist and anti-feminist debates are replayed and reenacted in the public sphere. In this way, Twitter might be viewed as a micro-courtroom in which victims’ veracity and perpetrators’ responses are evaluated, interrogated, and assessed. Deeper than blaming victims and exalting perpetrators, these very brief statements convey important critiques of rape law in the United States and reveal deeply held concerns about the capacity of the criminal and civil systems to afford justice in the context of gender-based violence.