COURTS' RESPONSE TO RAPE VICTIMS – IT'S ALL FOR SHOW

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In

Sexuality Studies

by

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San Francisco, California

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CERTIFICATION OF APPROVAL

I certify that I have read Courts' Response to Rape Victims – It's All for Show by Melinda Lelia Cordasco, and that in my opinion this work meets the criteria for approving a thesis submitted in partial fulfillment of the requirement for the degree Master of Arts in Sexuality Studies at San Francisco State University.

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COURTS' RESPONSE TO RAPE VICTIMS – IT'S ALL FOR SHOW

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This research explores how language used in cases of sexual violence perpetuates gender bias and rape culture. Though courts are often seen as sites of impartial judgment, courtroom proceedings are littered with gendered language that reinforces stereotypes of victim and offender. Rape laws and courtroom arguments consistently affirm masculinist interpretations of harm, leaving little room for interpretations of sexual violence as anything other than bodily injury. Analysis of gendered language in sexual violence cases often focuses on of victims during trial proceedings and less focused on briefs, memorandums, and motions. Using court documents from 16 cases over a six-year period I examine how lawyers deploy gendered and stereotypes, reinforce bodily injury as the ultimate measure of valid harm, and fail to address psychological trauma. This language fosters biased judgment and reinforces institutionalized rape culture.

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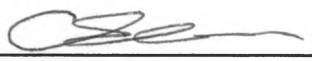

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Sexual Violence Background

Worldwide, rape and other sexual violence affect approximately 1 in 3 women.[1] Sexual assaults are less likely to be reported and even less likely to lead to an arrest, a trial, or a conviction.[2] A study from the National Institute of Justice found five common factors for non-reporting of sexual assault: guilt, shame, humiliation, fear of being perceived as lying, and lack of trust in the criminal justice system.[3] These are not singularly felt emotions; rather, they are intersecting issues that are part of the structure of what we define as "rape culture." Society normalizes and excuses sexual violence through shame, victim blaming, trivializing rape, and treating victims as sexual objects. Language used in cases of sexual violence further perpetuates rape culture.

The United States legislative and judicial systems have, historically, failed victims of sexual violence. Driven by political, social, and moral ideology, persons within the legal system make biased and prejudicial judgments. Individuals make up courtrooms and they themselves embody cultural and societal norms. Laws can only be created, codified, and enforced by persons who are in a position of power to do so and laws are designed to protect and maintain existing power structures. In the U.S. ethnically white men

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[1] The World Bank, "Violence Strikes 1 in 3 Women Globally; Uneducated Girls Especially Vulnerable," Accessed March 30, 2015. http://www.worldbank.org/en/news/video/2014/05/14/violence-strikes-1-in-3-women-globally-says-wb-report

[2] RAINN: Rape, Abuse, Incest National Network, "Reporting Rates," Accessed Dec 5, 2013.http://www.rainn.org/get-information/statistics/reporting-rates

[3] National Institute of Justice, "Reporting of Sexual Violence Instances," Accessed Dec 6, 2013. http://www.nij.gov/topics/crime/rape-sexual-violence/Pages/rape-notification.aspx#note4

constitute most political and legal representation. Consequently, sexual violence laws reflect masculinist interpretations of harm.

U.S. culture privileges white men over women and persons of color. Male privilege is demonstrated within many different social, economic, and political institutions. Often seen secondary to their male counterparts women's needs, desires, stability, and autonomy are overlooked. Furthermore the media, political debates, and judicial proceedings reproduce sexual violence that diminishes the impact rape has on victims.

Media perpetuates rape culture by sexually objectifying women and girls. Commercial advertisements to news media reinforce the commodification of women, that their self worth is predicated on their ability to pique men's' desire. Additionally, women and men are taught that male desire is compulsive and uncontrollable and in cases of sexual violence fault lies with the victim rather than the perpetrator. For example, in 2011 18 men, ranging from young teens to late 20's, gang raped an 11-year-old Texas girl. A *New York Times* reporter focused on statements about the girl's clothing, behavior, and her absentee mother rather than the behaviors of the male rapists'.[4] Depictions such as this one are common in media but spill over into criminal justice proceedings as well.

In 2013 Human Rights Watch released a study documenting sexual assault investigation mishandling in the Washington D.C metropolitan area. Most cases went

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[4] James C. McKinley Jr., "Vicious Assault Shakes Texas Town," *The New York Times*, March 8, 2011. Accessed May 7, 2015. http://www.nytimes.com/2011/03/09/us/09assault.html

uninvestigated based on gendered stereotypes. In one case a young woman, found unconscious in a hotel room with 5 men, required emergency surgery for severe tearing in her anus and vagina. A police officer told a sexual assault specialist at the hospital that her injuries could have resulted from falling on rocks while not wearing underwear and asked, "what kind of girl is in a room with five guys?"[5] In a recent case from Montana, four men ganged raped an incapacitated college women. The attorney assigned to the case refused to continue the investigation saying they could not prove the sex was nonconsensual. Despite her blood alcohol at, "three times the legal limit, authorities told her that because she was moaning, she wasn't incapacitated."[6]

Stereotypes about gender carry over into the courtroom as well, and judges and attorneys have come under scrutiny for making prejudicial statements about the victim. In a 2007 Montana case, a teacher sexually assaulted his 14-year-old student. Judge Todd Baugh issued a light sentence, 30 days in jail, because he believed the student acted much older than her age and was equally in control of the situation. The victim later committed suicide and Baugh was suspended in 2014.[7] Likewise, military courts act in similar fashion. In a 2013 Navy hearing, attorneys asked the victim if she wore a bra, if she

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[5] Human Rights Watch, "Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia," January 2013: 115. Accessed Dec 2, 2013. http://www.hrw.org/sites/default/files/reports/improvingSAInvest_0.pdf

[6] Sarah Hoye, "Is the University of Montana the 'Blueprint' for Sexual Assault Response?," *Al Jazeera America*, April 17, 2015. Accessed April 30, 2015. http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/4/17/is-the-university-of-montana-the-blueprint-for-sexual-assault-response.html

[7] M. Alex Johnson, "Montana Judge Who Partly Blamed Teen Rape Victim Censured," *NBC News,* July 22, 2014. Accessed August 3, 2014. http://www.nbcnews.com/news/us-news/montana-judge-who-partly-blamed-teen-rape-victim-censured-n162621

opened her mouth during oral sex, and if she apologized to another man, "for being a ho."[8] This particular case, among others, led to political debates over Article 32 which allows lawyers at military hearings to ask questions that are not allowed in civilian cases. Nevertheless, both cases highlight how gendered stereotypes are deployed in the courtroom, which place blame on victims rather than the actions of the rapist.

These examples are not surprising when we consider how political and legal discourse trivialize rape. Virginia senator Dick Black supported an amendment to HB 488 that would have prohibited spousal-rape prosecutions. Black stated:

> "I don't know how on earth you could validly get a conviction in a husband-wife rape when they're living together, sleeping in the same bed, she's in a nightie and so forth. There's no injury, there's no separation, or anything."[9]

Furthermore, in cases where defendants have been convicted of prior sexual offenses, the Riverside County, California Superior Court stated that introducing past offenses in trial would not likely prejudice the defendant because rape, oral copulation, and burglary are neither offensive or inflammatory, they are neither "brutal", "repulsive", or

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[8] Jennifer Steinhaur, "Navy Hearing in Rape Case Raises Alarm," *The New York Times*, September 20, 2013. Accessed December 12, 203. http://www.nytimes.com/2013/09/21/us/intrusive-grilling-in-rape-case-raises-alarm-on-military-hearings.html?

[9] Molly Redden, "GOP Congressional Candidate: Spousal Rape Shouldn't Be a Crime," *Mother Jones*, January 15, 2015. Accessed on March 4, 2015. http://www.motherjones.com/politics/2014/01/gop-congressional-candidate-richard-dick-black-spousal-rape-not-a-crime

"sensational."[10] Though *Verzi v. Superior Court* dates back to 1986, courts continue to cite this case in current trials. The very nature of the words belittle sexual assault survivors' traumas and underscore the way rape is contextualized.

Moreover, racial stereotypes further complicate ways in which we think of victims and who perpetuates violence. The construction of the "proper" rape victim and rapist often lead to poorly crafted legislation, failed investigations, higher incarceration rates for men of color, and misdirected courtroom behaviors that accentuate racial stereotypes. Situated against white standards of morality, men of color are overwhelmingly cast as sexually deviant and socially transgressive. For example, when Texas Rep. Louie Gohmert sought to vilify immigrants entering the U.S. from Mexico, he not only accused them of carrying various disease, but he also accused them of increased crime and sexually assaulting women. He further stated that the real "war on women" is in the form of illegal immigration over the Texas border.[11]

My research explores how language used in cases of sexual violence perpetuates rape culture through gender bias. I aim to look at how the construction of gender hierarchies are reflected in sexual assault laws and courtroom discourse by drawing from the Hobbesian social contract. If courts analyze cases beyond the scope of facts relevant to

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[10] *Verzi v. Superior Court*, 183 Cal. App. 3d 382: 388 (1986)

[11] Brian Tashman, "Louie Gohmert Claims Central American Youth Are Lying about Violence," *Right Wing Watch,* July 30 2014. Accessed on May 5, 2015. http://www.rightwingwatch.org/content/louie-gohmert-claims-central-american-youth-are-lying-about-violence; David Edwards, "Louie Gohmert Demands Obama Stop 'Luring' Lice and Scabies-Ridden Immigrant Youth," *Raw Story,* June 26, 2014. Accessed May 5, 2015. http://www.rawstory.com/2014/06/louie-gohmert-demands-obama-stop-luring-lice-and-scabies-ridden-immigrant-children/

the crime, by using stereotypes for example, victims and defendants do not receive adequate justice. Furthermore, if courts give too much attention to bodily injury, they fail to fully incorporate harms stemming from rape. Research in this area is important in combatting rape culture within the judicial system and providing much needed empirical data that can support changes in legal definitions and allowable courtroom behaviors.

Canonical Formations of Sexual Violence in Law

Hobbesian Framework of the Social Contract

In Hobbesian political philosophy, social norms construct and are reflected in societal laws. This is especially true in places that value equality of their citizens and favor peaceful relations over war and violence.[12] Hobbes believed that man without law existed in a state of nature, in which men completely equal to one another also had an equal right to all things. This state of natural equality presents conflicts when one assumes the right over another's resources and ultimately manifests itself in a state of perpetual fear. Fear thus becomes a motivation for protecting self interests at all times, logically assuming that the self-determination of others will result in the ultimate fear of bodily annihilation.[13] Although pessimistic, Hobbes also believed that people desired peace and stability and were willing to create a social contract that gave absolute authority to a governing power. Rooted in mutual fear, laying down their rights marked an alliance between men and political legitimacy was determined on the sovereign

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[12] Damien Kingsbury, *Sri Lanka and the Responsibility to Protect: Politics, Ethnicity and Genocide* (New York: Routledge, 2012), 95.
[13] Thomas Hobbes, *Leviathan*, ed. C.B. Macpherson (New York: Penguin Classics, 1968), 183-84.

power's ability to protect those who consented to its power.[14] As a consequence, laws thus reflected Hobbes' ultimate fears of loss of liberty and bodily annihilation. Those which focused on crimes inflicted on the physical self embodied a corporeal understanding of human existence, giving prominence to the material body while masking the emotional self.

The Hobbesian Framework Gendered

Within Hobbes' state of nature, women are equal to men but this is not a reflection of political equality, merely one that acknowledges equal fear of bodily annihilation. Women's equality and potential domination over men, which for Hobbes arose through their maternal position, was especially true within marriage contracts and family structure. Distinguishing himself apart from most 17th century social and political norms, Hobbes staunchly believed men and women could equally engage in and benefit from socially contracted sovereignty. However, gender equality ends once society shifts from the natural to civilized state and Hobbes begins situating society and family using a patriarchal framework, completely obscuring women's existence.[15] Hobbes justifies this shift by emphasizing the roles of fathers, not mothers, as creating societies and crafting civil law.[16]

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[14] Sharon A. Lloydand Sreedhar, Susanne, "Hobbes's Moral and Political Philosophy", *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), Edward N. Zalta (ed.). Accessed on May 2, 2015. http://plato.stanford.edu/archives/spr2014/entries/hobbes-moral

[15] Susan Moller Okin. "Women and the Making of the Sentimental Family," *Philosophy and Public Affairs* 11 (1982): 67.

[16] Ibid.

Feminist Response to Hobbes

Positioning women only within a maternal structure unduly robs them of personal agency and delegitimizes their complex emotional and intellectual lives. Grounded in fear and protection, the Hobbesian marriage contract, much like the social contract, ignores how intimacy constructs interpersonal relationships. Hobbes overlooked the psychic connection people share with others and in so doing constructed a masculinist viewpoint of intimacy, namely that it exists secondarily or not at all relative to annihilation.[17] Consequently, legal formation centered on autonomy while disregarding intimacy and ultimately resulting in the existential isolation and separation that individuation and autonomy create.[18]

Feminist legal scholars argue gendered differences exist within value systems, which are then reflected in our laws. Under a patriarchal model, women exist only within the Hobbesian natural state and are therefore materially connected to the home first through childbearing and secondly to men through economic dependence. Because of this structural inequality women, therefore, come to rely on care, nurturance, and duty to the other and value the intimacy born of community. Although the law does not allow compensation for intimate values, such as childcare, women continue to act upon those values regardless.[19]

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[17] Robin West, "Jurisprudence and Gender," in *Feminist Jurisprudence*, ed. Patricia Smith (New York: Oxford University Press, 1993), 520
[18] Ibid., 521.
[19] Ibid., 520-21.

On the other hand, feminist legal scholar Robin West argues that while women value intimacy, "we are endangered by the invasion and dread the intrusion in our lives which intimacy entails, and we long for individuation and independence."[20] The evolution of rape laws reflect a masculinist understanding of harm associated with sexual violence. Rape laws were initially born out of property rights and rape was considered tantamount to stealing another man's property.[21] For example, various state penal codes still make a distinction between spousal and non-spousal rape.[22] Furthermore, and perhaps most Hobbesian, many rape laws measure harm by bodily injury and degree of force. More often than not, legal discourse surrounding rape becomes caught between "forcible" and "non-forcible" definitions and arguments rest upon the presence of injury to prove the validity of a crime.[23] This narrow and masculinist understanding of rape further undermines invasion as an actual harm.[24] In other words, the Hobbesian approach to rape law cannot fully acknowledge a "nonviolent" act as harmful simply because threat of annihilation remains absent from the deed.

Force, Threat, and Bodily Injury Observed in Rape Law

Force, threat, and bodily injury related to rape dominate courtroom discourse. Oftentimes entire cases rest upon whether force was involved and to what degree. Cases have been dismissed, appealed, overturned, and defendants found not guilty simply

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[20] Ibid., 521.
[21] Ibid.
[22] See Appendix B.
[23] West, "Jurisprudence and Gender," 521.
[24] Ibid.

because the victim lacked serious injury. Susan Estrich argues in such cases the law essentially fails to protect a victim's "interest in bodily integrity."[25] Many laws consider fear of bodily injury as a valid harm but difficulties arise in proving fear, compared to force, because it is less corporeal and difficult to prove, especially when there is no weapon used. In a 1984 case from North Carolina, *State v. Alston,* the victim had an intimate relationship with the defendant prior to the rape. He had physically and verbally threatened her on prior occasions and earlier in the day of the rape. Later on the same day he undressed her, pulled her legs apart, and forced her to have sex, though she did not give consent, her only resistance were her tears. Alston was convicted but the North Carolina Supreme Court overturned the conviction on the grounds that no element of force had been established because the victim did not physically resist. The court decided the threats made prior to the rape were unrelated, therefore, threat or fear of force could not substantiate her claim because it was not incidental to the sexual assault.[26]

Even when force and injury are present state courts assess the amount of force used during the commission of a rape. In *Rusk v. State*, a 1981 case from Maryland, the defendant took the victim's car keys and forced her into his apartment. The defendant then raped her and when she cried he "lightly" choked her.[27] The court found Rusk guilty but the Maryland Court of Appeals thought differently. They overturned the conviction

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[25] Susan Estrich, "Rape," in *Feminist Jurisprudence*, ed. Patricia Smith (New York: Oxford University Press, 1993), 167.
[26] *State v Alston,* 310 N.C. 399, 312 S.E.2d 470 (1984): 476.
[27] *Rusk v. State*, 43 Md. App.476, 478-79, 406 A.2d 624, 626 (1979) (en banc), *rev'd* 289 Md. 230, 424 A.2d 720 (1981).

on the grounds that her claims had no substance because she did not physically resist. They further declared that her words and fear did not constitute resistance nor do they change an act of seduction into rape.[28] However, in a last round of appeals the court reinstated the conviction on the grounds that choking constituted an objective show of force reasonable enough to conclude rape occurred.[29]

Serious bodily injury from rape happens less frequently than commonly thought. Studies show that approximately 40% of rape victims sustain an injury, however the majority of injuries are minor – scratches, bruises, and welts. Only 5-7% sustain major injuries consisting of broken bones, deep lacerations, internal damage, or bullet wounds.[30] Furthermore, only 12% of rapists use weapons but 80% involve physical force and rapists are 5 times more likely to use a weapon in stranger rape.[31] However, an intimate partner or an acquaintance commits the majority of rapes and are more likely to rely on threat of force rather than actual force.[32] On the other hand studies indicate that victims suffer from depression, PTSD, suicidal thoughts, and drug abuse at higher rates

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[28] 289 Md. at 255, 424 A.2d: 73 (Cole, J., dissenting).
[29] Ibid., at 246-47, 424 A.2d: 728.
[30] Patricia Tjaden and Nancy Thoennes, "Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women," *National Criminal Justice Reference Service*, November 2000: 50. Accessed on April 4, 2015. https://www.ncjrs.gov/pdffiles1/nij/183781.pdf
[31] Lawrence Greenfield, "Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault," *Bureau of Justice Statistics*, February 7, 1997:11. Accessed on April2, 2015. http://www.mincava.umn.edu/documents/sexoff/sexoff.pdf

[32] Tjaden and Thoennes, "Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women," 50.

than non-victims.[33] Some reported psychological conditions include self-blame, humiliation, trust issues, anxiety, phobias, and obsessive compulsive disorders.[34] Courtroom tactics focus on bodily injury and force rather than psychological trauma which reinforces a masculinist, Hobbesian understanding of harm and, unfortunately, can result in juror and judge bias.

Social consciousness, Ideology, and Rape Victims

Previous research suggests that sexual assault myths pervade courtrooms and despite taking an oath of unprejudiced bias judges, attorneys, and jurors incorporate stereotypes in their judgments. For example, one study has shown that jurors tend to believe that a "real" rape includes the following: the victim was injured; the assault was severe (involved some level of threat or force, weapon use); there was additional evidence linking the defendant to the assault; the victim reported the assault to police immediately; the defendant used force; and the defendant was a stranger.[35] This study was conducted in Australia using data from a mock sexual assault trial study and surveys documenting community beliefs about rape.

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[33] Dean G. Kilpatrick, "The Mental Health Impact of Rape," *National Violence Against Women Prevention Research Center,* 2000. Accessed on May 17, 2015. https://mainweb-v.musc.edu/vawprevention/research/mentalimpact.shtml

[34] Carol E. Tracy et al., "Rape and Sexual Assault in the Legal System" (paper presented at the National Research Council of the National Academies, Washington, D.C., June 5, 2012): 8.

[35] Natalie Taylor and Australian Institute of Criminology, "Juror Attitudes and Biases in Sexual Assault Cases," *Australian Institute of Criminology* 344 (2007): 1. Accessed on March 14, 2015. http://www.aic.gov.au/publications/current%20series/tandi/341-360/tandi344.html

Remarkably, very few studies have used contemporary data from the U.S. to examine the presence of bias in courtrooms here. One exception is a study from Pennsylvania that found courtroom members who ascribe to these stereotypes of rape are more likely to disbelieve victims when injury, weapons, or great force are absent and especially when the victim knew the defendant.[36] One study found that when the victim and the defendant knew one another courts issued lower bail and shorter sentencing.[37]

Racial Conceptualization of Hobbesian Law

While feminist scholarly research explored gender within the Hobbesian social contract, mainstream white feminism historically ignored how sexual violence affects people of color. Indeed, race plays significantly into socio-juridical discussions. The construction of modern jurisprudence reflects the desires and fears of men but also legitimized the protected legal status of whites. White men mostly benefited from the social contract because it mirrored white concepts of political and moral ideology thus forming what Charles Mills calls the "Racial Contract." Mills argues that, like women, persons of color were left in the natural state and this became a way to justify white supremacy. Whereas white men were accorded status within the civil state, non-whites, regarded as savage and wild, were left in a state of nature, or as Mills writes, *"[t]hey* are in the state of nature, and *we* are not."[38] Moreover, materially motivated, the Racial

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[36] Tracy et al., "Rape and Sexual Assault in the Legal System," 11.
[37] Pennsylvania Supreme Court, "Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System," 2003: 420. Accessed on February 2, 2015. http://www.deathpenaltyinfo.org/documents/PAFinalReport.pdf
[38] Charles Mills, *The Racial Contract* (New York: Cornell University Press, 1997), 59.

Contract allowed whites the ability to subordinate non-whites materializing as colonial rule, imperialistic politics, slavery, and genocide.[39] The Racial Contract explains the historical context for institutionalized racism in the United States and the use of violence to reinforce the subordinate status of persons of color.

During the Post Reconstruction Era and early 20th century lynching served to reinforce white supremacist attitudes.[40] Not only did lynching represent an ultimate fear of annihilation it also inflicted psychological trauma on African American men and women. But lynching also served as a tool for sexual subordination and, "to dramatize hierarchies of men."[41] Lynch mobs mostly justified their actions through allegations of sexual assault but only between a Black male and a white female. The image of the Black rapist – deviant, crazed, monster – dominated popular culture and news media thus popularizing the violent Black male stereotype.[42] Additionally congress' passage of the Mann Act (White-Slave Traffic Act) disproportionately targeted Black men in relationships with white women, further institutionalizing racism.

On the other hand, while laws like the Mann Act sought to protect white women they largely ignored Black women who are assaulted at statistically higher rates than whites.[43] Already perceived as hyper-sexualized in white society, rape reinforced this stereotype,

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[39] Ibid., 58-59.
[40] Jacquelyn Dowd Hall, "The Mind That Burns in Each Body": Women, Rape, and Racial Violence," in *Powers of Desire: Politics of Sexuality,* ed. Ann Snitow, Christine Stansell, and Sharon Thompson (New York: Monthly Review Press), 330.
[41] Ibid., 332.
[42] Ibid., 334.
[43] Victoria C. Olive, "Sexual Assault Against Women of Color," *Journal of Student Research* 1 (2012): 2.

asserted white male dominance over Black women, and amplified racial inequalities. Lynching and rape sat within the intersection of sexual, social, and political control.

Race and Sexual Violence in the Courtroom

Racial dynamics implicitly play out in courtrooms. Multiple studies have shown how race affects sentencing outcomes, credibility, and jury selection. Persons of color face more discrimination in courts than do whites. Rapes that involved a Black male and a white woman result in harsher convictions than if the victim was a Black female, presumably because judges and juries view white women as more credible and deserving of justice.[44] Furthermore, in capital cases, men of color are more likely to receive the death penalty than whites.[45] Unemployment or past offenses also result in harsher convictions for men of color.[46] Additionally, prosecutors are more likely to favor white jury members while the defense prefers non-whites when the defendant is a person of color.[47] This is not surprising considering that white Americans favor harsher punishments if they believe more people of color, rather than whites, are incarcerated.[48] Using a Hobbesian framework men of color tend to fear the loss of liberty, via

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[44] Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43 (1991): 1275.
[45] Tshar Kansal, "Racial Disparity in Sentencing: A Review of the Literature," *The Sentencing Project* (2005), 2.
[46] Ibid., 7.
[47] "Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System," 206-07.
[48] Shara Tonn, "Stanford Research Suggests Support for Incarceration Mirrors Whites' Perceptions of Black Prison Populations," in *Stanford News*, August 6, 2014. Accessed on May 12, 2015, http://news.stanford.edu/news/2014/august/prison-black-laws-080614.html.

incarceration, and, quite literally, annihilation from the death penalty.

Women of color unfairly shoulder the weight of sexual violence, silence, and community protection. According to Kimberle Crenshaw, communities of color hesitate releasing domestic violence statistics because they fear political backlash.[49] Higher rates of domestic violence may reinforce stereotypes of the violent Black male which could result in more oppressive legislation rather than legal protections.[50] Women of color who speak out against domestic violence and rape are often chastised within their own communities.[51] Moreover, Black women must shoulder the stereotypes about their own sexuality, such as promiscuity and licentiousness, which are often reproduced in media.[52] The challenges that make confronting sexual violence difficult for women of color only push them further outside the dialogue emphasizing their status as subordinate to men and whites. Women of color face the harms of community loss, humiliation, and invasion more than white women.

An Empirical Analysis of Sexual Violence and Hobbesian Law

My research constitutes a contemporary empirical investigation of Robin West's theories of the Hobbesian social contract and Susan Estrich's analysis of the element of force in judicial proceedings. Specifically, I explore the ways that gender hierarchies are

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[49] Crenshaw, "Mapping the Margins," 1273.
[50] Roxanne Donovan and Michelle Williams, "Living at the Intersection: The Effects of Racism and Sexism on Black Rape Survivors," in *Women and Therapy* 25 (2002): 102-3; Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Massachusetts: South End Press, 2005), 1.
[51] Crenshaw, "Mapping the Margins," 1273-74.
[52] Donovan and Williams, "Living at the Intersection," 97-98.

reflected in sexual assault laws within the social contract model. I also explore the ways that courtroom arguments conceptualize harm in sexual violence cases, paying close attention to masculinist emphases on bodily injury. In doing so, I contribute an empirically-grounded, social scientific perspective to the existing literature, which primarily focuses on theoretical interpretations of sexual assault law or legal analysis of isolated cases. Furthermore, by analyzing data from recent court cases tried in San Francisco, I explore whether West and Estrich's critical approach to rape law applies to a presumably liberal city in contemporary times.

Methodology

Data Sources

I conducted a content analysis of 16 felony court cases over a 6-year period to explore how language used in sexual violence cases perpetuates gender bias and rape culture. For the purpose of this study I collected cases from 2008-2013. I wanted cases that represent current political and social dialogue regarding sexual violence. I stopped at 2013 because trials move slowly and completion can take years. These cases only represent defendants and victims over 16 years of age. I did not include cases where either victim or defendant was considered a juvenile because this involves another level of issues surrounding age, power, and law. All cases were sourced from the San Francisco Superior Court.

Preparation

Though mostly considered public record, challenges arise when accessing cases.

Most courts require your presence to access records or allow full record electronic searches. Therefore, I limited my data to San Francisco Superior Court. I began my study by researching California Penal Codes, accessible online, and compiled a list of penal codes that contained a sexualized criminal element.[53] I then omitted any penal codes that focus on juvenile defendant or victim.

After compiling a penal codes list I went to the San Francisco Superior Court Record's office. The court holds felony record books categorized by year. The record books contain all arrest records but do not include information about dismissals or verdicts. I searched through each 2008-2013 book reading line by line to find any sexualized penal codes. I collected a list from each year and then asked a records clerk to tell me the status of each arrest record. Statuses include dismissals, still awaiting trial, in appeals, and convictions. The records warehouse does not generally hold dismissed cases. Inaccessible cases include those currently in trial, awaiting trial, or in appeals. I further condensed my list of completed trials and convictions totaling 69 cases. From this list I randomly sampled 5 cases from each year, filled out records request forms, and submitted them to the San Francisco Superior Court records department for retrieval. After several weeks the records became available with a 7-day viewing period. However, 14 out of the 30 cases were unavailable because the records had gone missing or the case went into appeals leaving me with 16 cases total. The records consisted of memorandums, briefs, and motions; some cases included plea and sentencing transcripts.

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[53] See Appendix B

Data Coding

I examined each case systematically and identified 5 main themes – bodily injury and force, mental harms, movement, and stereotypes:

- Bodily Injury: When coding for bodily injury, I included any mention of physical injury to the victim or physical violence inflicted upon the victim's body. This included prosecutors' claims that injury was present as well as defense attorneys' claims that injury was not present.
- Force: This theme included any mention of force used by the defendant to attempt or complete a sexual assault. This includes prosecutors' claims that force was used as well as defense attorneys' claims that force was not used or irrelevant.
- Mental harm: When coding for mental harms, I included any mention of psychological or emotional distress during or after the sexual assault. This includes lawyers' claims that mental harm was or was not present, as well as victims' narration of mental harm, in cases where victim testimony was available.
- Movement: This theme included any mention of movement used by the defendant, such as penetration, change in sexual act, and bodily position.
- Stereotypes: When coding for stereotypes, I included any mention of commonly held beliefs regarding gender, race, or morality. This includes lawyers' use of stereotypes for both defendant and victim.

Findings

Bodily Injury and Force

Claims about bodily injury and force appeared frequently in my data, as lawyers argued about severity of violence and whether violent acts occurred beyond the rape or sexualized crime. These claims need to be understood in the context of two California penal codes that pertain to force:

> "The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing is enough. The touching does not have to cause pain or injury of any kind."
>
> CALCRIM 890

> "The term "force" as used in the rape statutes does not have a specialized meaning and court is not required to define the term… (People v. Griffin, supra, 33 Cal.4th at pp. 1023–1024.) In *People v. Griffin*, the Supreme Court further stated: Nor is there anything in the common usage definitions of the term "force," or in the express statutory language of section 261 itself, that suggests force in a forcible rape prosecution actually means force "*substantially* different from or *substantially* greater than" the physical force normally inherent in an act of consensual sexual intercourse. [People v. Cicero (1984) 157 Cal.App.3d 465, 474 [204

> Cal.Rptr. 582].] To the contrary, it has long been recognized that "in order to establish force within the meaning of section 261, subdivision (2), the prosecution need only show the defendant used physical force of a degree sufficient to support a finding that the act of sexual intercourse was against the will of the [victim]." People v. Young (1987) 190 Cal.App.3d 248, 257–258 [235 Cal....)"
>
> CALCRIM 1000

Injury

As these codes make clear, California criminal law provides a relatively expansive definition of "force" that does not require evidence of pain, injury, or violence. Nonetheless my data shows how lawyers use absence of injury to downplay sexual assault violence or negate it completely. In September 1998 Reginaldo Woods forced his way into the victim's office then began hitting her neck, throwing her to the floor, and dragging her into another room. Woods laid on top of her, pulled her pants off, and attempted to rape her. Although he was unable to penetrate her vagina he did rub his penis all around her vaginal area to include the labia. The victim also testified that he raped her. Despite her testimony and DNA confirming his penis did touch her genitals the defense argued that because she lacked any trauma she could not have possibly been raped.[54]

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[54] *People of the State of California v. Reginaldo Woods*, No. 2362479 (S.C. – San Francisco 2009): 216-17.

The victim's injuries, however, consisted of bruises to her face, neck, legs, and buttocks along with broken capillaries. The defense attorney further argued her injuries fail to prove the allegation of significant or substantial physical injury stating:

> "None of the hallmarks of great bodily injury as defined by the statute appears here. There was no stabbing, no shooting, no broken bones, no paralysis, no loss of function, no blood, no open wound which would have obviously been "significant or substantial" injury needed to support the great bodily injury claim."[55]
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> People v Woods, 2009

Moreover, despite the victim's injuries and the force used against the victim when Woods attempted the rape the defense attorney claimed, "[h]ere, the suspect did not exert any force necessary to complete a rape, nor does his conduct demonstrate the intent to have forcible rape."[56] The "intent" here alludes to Woods inability to obtain an erection.

Like the Woods victim, the victim of Juan Gomez suffered little injury but nonetheless was assaulted. In this particular case Gomez forced the victim to the ground and then digitally penetrated her. Although her injuries were minimal the allegation of "assault with force likely to produce great bodily injury" reflects the digital penetration, not the fall resulting in minor scratches and bruises.[57] However, ignoring the harm of penetration, i.e. invasion, the defense insisted Gomez did not use great force because he

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[55] Ibid., 216-17.
[56] Ibid., 167.
[57] *People of the State of California v. Juan C. Gomez*, No. 10000058 (S.C. – San Francisco 2011): 47-48.

did not push, punch, or slap the victim.[58] Interestingly enough, both the defense and prosecution use "great bodily injury" numerous times throughout the documents but the jury instructions they cite (CALCRIM 875) only says, "bodily injury as a result of force."[59]

In October 2012 Eusebio Jimenez broke into his neighbor's home during the early hours of morning. The victim, naked and asleep, woke up to a partially naked Jimenez licking her ear and laying on top of her. Using CALCRIM 890, the prosecution instructed the jury that force does not require severity, pain or injury, it needs only to appear offensive, rude, or angry. Within this context, Jimenez's actions clearly fit the criteria of offensive and rude. However, the defense rejected the CALCRIM 890 framework and instead argued within the context of assault law which requires an intent to commit violent injury. His lawyer alleged the defendant's actions lacked aggression and force, neither rude nor angry, because he did not attempt to "injure" her. Moreover, because the victim had not felt Jimenez on her body it could not rise to the level of injury, restraint, or, and effort to "control [her] liberty by his words, act or authority."[60] The jury did not convict Jimenez of sexual battery, instead he was convicted of indecent exposure.

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[58] Ibid., 40.
[59] Ibid., 39-40.
[60] *People of the State of California v. Eusebio Jimenez*, No. 12025501 (S.C. – San Francisco 2013): 359-61.

Force

Even with severe trauma and positive testimony from the defendant lawyers still deploy language that focuses on the rarest means of force like possessing a weapon.[61] In February 2011 police arrested Wendell James Tyree on charges of rape, intent to commit oral copulation, domestic violence, and felony assault. The victim testified that he grabbed her neck and choked her. A nurse who examined the victim testified that her neck was red and exhibited limited range of motion, she complained of soreness, an inability to swallow, and drooling. When asked how hard he choked her Tyree responded: "Hard enough. Put it like this, I squeezed hard enough to keep her… from yelling at me."[62] Courts provide leniency in degree of injury for domestic violence situations requiring only *some* physical injury to include strangulation and suffocation.[63] Despite this the defense challenged the domestic violence charge on the grounds that the victim did not suffer from a traumatic condition going so far as to say, "[he] did not inflict great bodily injury on [the victim] and had no intention to harm [the victim]."[64] The defense insisted that the victim's injuries were inconsistent with a "traumatic condition."[65] Additionally, the defense asserted that Tyree was not armed.[66]

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[61] *People of the State of California v. Wendell James Tyree*, No. 11004724 (S.C. – San Francisco 2011): 348.
[62] *The People v. Wendell James Tyree,* No. A134212 (App. – San Francisco [1st Dist.] 2013): 2-3.
[63] *People v Gutierrez* (1985) 171 Cal.App.3d 944, 952; Stats. 2011, ch. 129, § 2.
[64] *People of the State of California v. Tyree*, No. 11004724 at 354.
[65] *The People v. Tyree,* No. A134212 at 4.
[66] *People of the State of California v. Tyree*, No. 11004724 at 354.

Movement

In my data, lawyers made multiple claims about movement during sexual violence, focusing on penetration and how each change of sexual position, penetration with penis, tongue, or other object became a site of reflection and remorse. They argued whether or not changing positions presented opportunities for reflection which implies an incongruity of rational thought during a sexual act.

For example, in a sentencing brief for Frederick Dozier, the prosecution argued:

> Each pause in the assault, each change in body position, each penetration into a different part of the victims' bodies presented the defendant with a reasonable opportunity to reflect upon actions.[67]
>
> People v Dozier, 2012

By making the distinction that rational thought only occurs during a break in penetration the court allows defendants a space in which males are held to a different standard of reason and reinforces masculinist ideas of the corporeal self. Likewise, sustaining or losing an erection was treated in the same manner. In the same case the defendant lost his erection and because he could not complete penile penetration he committed either digital penetration or oral copulation. The defendant described the lose of erection as a time of reflection:

> [U]nable to achieve an erection because Victim 1 said that the defendant was unable to penetrate her with his penis, defendant described his

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[67] *People of the State of California v. Frederick Dozier Jr.*, No. 12000635 (S.C. – San Francisco 2012): 477.

reflective process, "it was like I thought about it then it was just like something deep down inside was like don't do that."[68]

People v Dozier, 2012

Despite his reflection the defendant physically assaulted the victim by punching her in the face and then resumed the sexual assault. In doing so the prosecution argues the defendant is capable of reasoning only when he cannot penetrate his victim. The district attorney believed the defendant should receive full, separate, and consecutive terms for each act committed against each victim. This, however, sets up a dangerous precedent in which assaults are measured by degrees of penetration rather than an approach which looks at the entire assault as an invasion regardless of penetration.

Mental Harm

In my data the psychological trauma resulting from sexual violence frequently develops as a central theme articulated by rape victims. This data shows that the long-term consequences of psychological trauma often out-weigh the physical damage sustained during an attack. Sexual violence victims express fear, humility, embarrassment, and depression while bodily harm is often secondarily mentioned or not mentioned at all. Due to the nature of my data I was only able to access the testimony of three victims. Each victim expressed fear resulting from the attack directly or fear stemming from being a woman and intoxicated. In two of the three victim transcripts'

[68] Ibid., 480.

bodily harm is stated but only in conjunction with emotional abuse or because the lawyers focused questioning on bodily injury rather than psychological traumas.

Victims withdraw from family and friends, lose interests in work and social settings, fear being alone or going outside, and have difficulty trusting others. The emotional backlash is severe and long-term. In an impact statement one victim cited all of the above as traumatizing, never once alluding to bodily injury:

> I no longer feel secure anywhere, and have the constant fear that something will go wrong. For months after the assault, even the hugs from my two year old son didn't feel the same. I withdrew from everyone and felt as if I lost control of my life…I was so embarrassed for so long, humiliated… I almost lost my husband because I pushed everyone…away. I lost my job. My grades in school went way down, and I couldn't leave me [*sic*] house for almost a month for fear that someone else like him could be around the corner.[69]
>
> People v Rosales, 2009

For another victim, the defendant's wife, her fears stemmed from both emotional and physical abuse. Like the woman above, she had a difficult time leaving her house for fear of kidnapping, separation from her child, and even death. However, even though she greatly feared for her life, the ultimate fear in Hobbesian-masculinist law, when she

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[69] *People of the State of California v. Gustavo Rosales*, No. 2352774, "Sentencing," (S.C. – San Francisco 2009): 3-4.

articulated her concerns she described emotional issues first, parenting concerns and separation second, and only mentioning violence last:

> He raped me. I felt so dirty, embarrassed, and ashamed…I don't want to worry about my daughter going to school and never coming home… I'm afraid for the safety of [daughter's name] and myself when he is released from jail because he told me if he ever went to jail again, he would kill me when he got out.[70]

People v Malik, 2008

This particular case accentuates the conflict between a masculinist and feminist jurisprudence. While masculinist law emphasizes injury and force, feminist law would ideally emphasize separation, invasion, and loss of dignity.

Victim Stereotypes

Good Victim, Bad Victim – History

Although rape shield laws were created to protect victims from harassment during trial proceedings loopholes exist which allow lawyers to introduce evidence that is damaging to the victim's credibility and moral character.[71] In two cases I reviewed lawyers either used the victims' sexuality to discredit their testimony or mentioned their sexuality as an aside.

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[70] *People of the State of California v. Hamza Malik*, No. 2342785, "Sentencing," (S.C. – San Francisco 2008): 2-3.

[71] Michelle J Anderson, "Understanding Rape Shield Laws." *National Online Resource Center on Violence Against Women.* Accessed on January 7, 2015. http://www.vawnet.org/Assoc_Files_VAWnet/RapeShield.pdf

The domestic partner in Dillon Winn's case called the police after he assaulted her via strangulation, threat of death, and attempted rape. During sentencing the defense representing Winn alleged the assault as unfounded, characterized as "great violence", and proceeded to tell the judge that the victim only sustained a minor bruise.[72] However, when the judge corrected the lawyer and stated that the victim's injuries included neck abrasions defense saw this as an opportunity to discredit the victim by using the couple's past sexual experiences to diminish the seriousness of her injuries:

> "Right, scratches. Scratches on her neck. Also, your honor, on the stand, Ms. G stated, admitted that they like rough sex and they had participated in sexual asphyxiation voluntarily before all of this.[73]
>
> People v Winn, 2010

During trial the defense submitted a motion to include the defendant and victim's past sexual history. The lawyer claimed the victim attempted to "elevate consensual acts" and, she argued, the victim concealed her propensity for erotic asphyxiation from her parents.[74] The motion meant to discredit the victim by implying she enjoys rough sex, distorts truths, and lies, as highlighted by concealing her extreme sexual activities from her parents.

Mathew Flatt, in concert with two male peers, was convicted of forcible rape of two

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[72] *People of the State of California v. Dillon Winn*, No. 2443780, "Felony Sentencing," (S.C. – San Francisco 2010): 4-5.
[73] Ibid.
[74] *People of the State of California v. Dillon Winn*, No. 2443780, "Notice of Motion and Motion to Admit Proferred Evidence," (S.C. – San Francisco 2010): 2-3.

women. A memorandum, written by the assistant district attorney, briefly mentions the two victims occupation. On the night of the incident both women, "were working as prostitutes."[75] However, the sexual assault and other incidents that happened throughout the night had no bearing on the fact they were sex workers nor was it mentioned again. Passing statements highlighting a moral turpitude[76], such as prostitution, could cause judge and jury bias.

Moral Character

Aside from using past history, lawyers often call into question victims' moral character. My data shows that in cases where victim and defendant are not strangers but intimate partners lawyers paint victims as anything but "innocent."[77] In one case because the victim was an intimate partner the public defender claimed that she, "had an agenda for retribution."[78] Furthermore, her drug addiction compounded her retribution agenda and further undermined her claim of innocence. The jury clearly believed this because they deadlocked on the rape charge. He was, however, convicted of assault and domestic violence.

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[75] *People of the State of California v. Matthew Flatt*, No. 2334473, "Notice of Motion and Motion to Consolidate, Declaration, and Memorandum of Points and Authorities," (S.C. – San Francisco 2008): 14.

[76] Ilona Bray, "What's a Crime of Moral Turpitude According to U.S. Immigration Law?," *NOLO Law for All*. Accessed May 29, 2015. http://www.nolo.com/legal-encyclopedia/what-s-crime-moral-turpitude-according-us-immigration-law.html Moral turpitude is usually defined as, "refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general."

[77] *People California v. Tyree*, No. 11004724 at 354.

[78] Ibid., 347.

In Gregory A McFarland's case the public defender submitted two separate motions: (1) related to DNA evidence; and (2) to seek a continuance. Though the motion to compel discovery focused on potentially contaminated DNA evidence the defense did not miss a chance to reinforce character stereotypes. In an appeal to expose potential laboratory misconduct the lawyer cites case law that includes various types of exculpatory evidence - police misconduct, criminal charges against a witness, and, "anything that might show a prosecution witness has a "morally lax character," from which a "readiness to lie" could be inferred.[79]

Furthermore, McFarland's lawyer submitted a continuance stating he had discovered a list of the victim's prior juvenile and adult arrest records. He also drew upon the fact that the victim had been arrested the night of the incident. The victim's arrest records are used to discredit the victim's credibility and character, insinuating that criminals cannot be victims nor truthful.

Emotional State

Trial lawyers often find ways to incorporate emotional states to characterize a victim as either someone who had not been victimized or to inflate the sense of panic or heroism during an attack. Using negative and positive depictions creates comparisons that perpetuate unrealistic ideas of how victims are supposed to behave during and after a sexual assault.

During the Winn case, in addition to downplaying the victim's injuries and using

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[79] *People of the State of California v. Gregory McFarland*, No. 2367337, "Notice of Motion and Motion to Compel Discovery," (S.C. – San Francisco 2010): 6.

her sexual preferences against her, the pubic defender also called into question her behavior after the attack. While the victim phoned the police, Winn came back to retrieve his keys and she did not express any fear nor mention his presence. Likewise medical personnel on scene reported that, "she appeared normal."[80]

Conversely, victim lawyers will incorporate language that highlights and purposefully engages emotive responses to fear, panic, and heroism. In October 2012, Eusebio Jimenez broke into a woman's apartment and proceeded to assault her while she slept. Upon waking the assistant district attorney in this case described the victim's emotional state as "hysterical" that she was "very scared" and the experience was "petrifying."[81] She went on to declare that a rape did not occur because the victim responded in a forceful way to Jimenez:

> "... the rape did not occur because [*victim's name*] was defiant and ferocious in defending herself and ordering the defendant to exit her apartment immediately..."[82]
>
> People v Jimenez, 2012

Statements like this reinforce the stereotype that a "truly" assaulted victim fights defiantly and ferociously while diminishing the assault of those who do not.

When All Else Fails, Grasp at Straws

One final stereotype that only came up in one case concerned appropriate size of

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[80] *People v. Winn*, No. 2443780, "Felony Sentencing," at 6.
[81] *People v. Eusebio Jimenez*, No. 12025501 at 459-61.
[82] Ibid., 398.

the victim. On December 31, 2009, while walking alone at night, Juan Gomez attacked the victim. Coming up from behind her, Gomez grabbed her which caused both of them to fall. On the ground Gomez proceeded to digitally penetrate the victim while she screamed and tried fighting him off. In a 2011 sentencing memorandum, the prosecution suggested victim vulnerability as a factor in aggravation pointing out the victim was alone. However, the defense took particular offense at this suggestion arguing that because the victim was taller than Gomez, "there was no particular vulnerability due to physical size or strength."[83] The victim, according to the defense, was able to defend herself thus negating her vulnerability. Be that as it may, Gomez still completed digital penetration. This case highlights how lawyers seize upon the stereotype that "true" victims are small, weak, and powerless.

Defendant Stereotypes

As with victims, lawyers often deploy stereotypes to distort the defendant's character. Both prosecution and defense use sexual history, moral character, extenuating circumstances, and race to play upon the sympathies of jurors and judges potentially creating prejudice.

Sex Crimes Histories

When Celso Arrevalo sexually assaulted a woman the assistant district attorney filed a motion to include the defendant's prior arrests for soliciting a prostitute, stating, "[d]efendant's involvement with prostitutes undermines any testimony…denying that he

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[83] *People v. Gomez*, No. 10000058 at 256.

committed the act with the intent for sexual gratification, or denying that he would ever commit sexual battery."[84] This implies his interest in sex workers makes him untrustworthy and predisposed to sexually abusive behavior. The public defender rebutted, claiming Vasquez had never been arrested for, "a violent sexual offense or for anything involving children," and that soliciting prostitution is a victimless crime.[85]

Wendell James Tyree's case shares similarities with Arrevalo. In a Romero motion to strike past arrests the public defender pointed out that Tyree had no prior convictions or arrests for rape or domestic violence.[86]

Moral Character

Facing life in prison for assaulting his girlfriend, Tyree's lawyer described him as a non-violent, moral older man. The defense argued, "that Tyree does not exhibit violent behavior towards others such that society needs to be protected by incarcerating him," that he was raised to respect women, and attended church regularly.[87] Furthermore, he was not armed during the assault and his girlfriend was not an "innocent victim."[88] Lastly, at 48 years old Tyree could not possibly be violent as, "[h]e is…over the worst crime years of his life."[89] Such claims perpetuate stereotypes that a "true" rapist is a young, violent man disconnected from religious or moral institutions.

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[84] *People of the State of California v. Celso Arrevalo*, No. 13022720, "People's Trial Brief, Witness List and Motions in Limine," (S.C. – San Francisco 2013): 8.
[85] *People v. Arrevalo*, No. 13022720, "Bail Motion," (S.C. – San Francisco 2013): 4.
[86] *People v. Tyree*, No. 11004724 at 347, 359.
[87] Ibid., 348-49.
[88] Ibid., 354.
[89] Ibid., 359.

Extenuating Circumstances

My data shows in both the Arrevalo and Tyree cases the lawyers tried averting guilt by blaming drug or alcohol use. In Arrevalo's case a licensed psychologist conducted a psychological evaluation on the defendant and concluded Arrevalo's actions resulted from alcoholism:

> The Defendant has no sexual diagnosis, he does not appear to suffer any known pathology related to sexual function, and the problem in this case is rather straightforward: the Defendant is an alcoholic who does stupid things. It is not sexual registration that should be on the table, it is the existence of the real problem, the Defendant's alcoholism. Society is not going to be any safer against the onslaught of this man's continuing stupidity by having him register as a sex offender.[90]
>
> People v Vasquez

While truth may exist in his assessment of Arrevalo's alcoholism it fails to grasp that the defendant felt he could sexually invade a person.

For Tyree, facing a life sentence, his lawyer blamed Tyree's problems on a abusive childhood, past drug addiction, and the victim's drug abuse. In fact, the defense claimed the victim provoked and attacked the defendant.[91] Again, possibly truthful, it should not excuse the defendant's behavior of choking the victim and allegedly raping her.

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[90] *People v. Arrevalo*, No. 13022720, "Bail Motion," at 4.
[91] *People v. Tyree*, No. 11004724 at 347-49.

Race

Information about the defendants' race is not explicitly or consistently included in the legal documents that I reviewed. However, race can frequently be inferred from other information, most notable the defendant's name. Based on these inferences, Latino and African-American men appear to represent the majority of defendant's in my cases. On the other hand, because victims' names are not always included in my documents, it is more difficult to make such inferences. Overrepresentation of men of color in my data is not surprising, given the documented racial bias that exists at all stages of the criminal justice system, including the decision to arrest, prosecute, and bring to trial a man for rape.

Although not overt, racial stereotypes about employment and violence occurred in two cases while in another case the one jury questionnaires explicitly mentions race. For example, Arrevalo immigrated to the United States when he was 26 years old. Defense lawyers emphasize that after immigrating he took English classes, maintained significant employment, and never collected social security.[92] Similarly, in another case, defense lawyers argue that throughout Tyree's prior prison terms he obtained his GED, participated in various prison employment programs, and maintained significant employment after incarceration. During the assault in this case he was not in possession of any dangerous weapons.[93] The statements made by Arrevalo and Tyree's lawyers convey racially nuanced stereotypes by suggesting immigrants do not learn English, that

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[92] *People v. Arrevalo*, No. 13022720, "Bail Motion," at 2-4.
[93] *People v. Tyree*, No. 11004724 at 351, 438.

people of color cannot maintain employment, they rely upon welfare, and are inherently dangerous. Such statements try to distance the defendants from racial stereotypes that may increase the chances of conviction.

Courts recognize that jury members carry racial stereotypes into courtrooms and their biases can have an impact on decisions. In *People v Roberts* the jury questionnaire asked potential peers how they felt about race, particularly African Americans: "Both the defendant and the complaining witnesses are African American. Do you have strong feelings about African Americans which might influence the way you decide this case?"[94] This questionnaire demonstrates, at least in this case, that potential jurors may have averse opinions about African Americans.

Conclusion

In this study, I analyzed 16 recent superior court cases from San Francisco to the explore the ways that language used in cases of sexual violence perpetuates rape culture through gender bias. My analysis revealed that rape cases are argued within the masculinist Hobbesian framework, which reinforce bodily injury as the ultimate measure of valid harm, and obscure psychological trauma and invasion. These findings expand our understanding of how gender bias operates in contemporary rape cases and underscore the need for legal reforms.

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[94] *People of the State of California v. Tye Roberts,* No. 11021002, "Juror Questionnaire," (S.C. – San Francisco 2013): 3.

Force and Bodily Injury

My analysis reveals that contemporary rape cases often rest on definitions of force that are incapable of capturing the reality of sexual violence and its associated harms. Within the Hobbesian jurisprudence model, force and injury define rape through applied limitations on how we measure sexual violence. CALCRIM 890 and CALCRIM 1000 offered two very different measurements of force. On the one hand, 890 describes force as harmful and offensive touching while 1000 defines force in such broad terms that lawyers can easily manipulate its meaning. Most sexual assaults do not result in injury and in the absence of injury, or with minimal injury, cases should not rest upon force. When we consider *People v Jimenez*, the experiences of the victim, who awoke to a stranger licking her ear, cannot be measured using the masculinist framework. The prosecution, however, insisted that the element of force was the action of licking. Instead, this case should have focused on invasion, right to privacy, and bodily integrity. Or, rather, legal definitions of force and injury should be strictly tailored to mean something more concrete. A more productive definition of force, for example, could include the will of another to invade someone and deprive them of their autonomy. This definition allows for injury to be interpreted in terms of invasion as well as bodily harm.

Mental Harm and Psychological Trauma

My analysis also reveals that lawyers in contemporary rape cases ignore or minimize the mental harms resulting from sexual assault, despite their central importance to victims. As stated previously, the FBI has reported embarrassment and humiliation as

two of the top five factors for not reporting rape. These emotional outcomes are direct consequences of rape culture and often the most debilitating effect of a sexual assault. As documented in *People v Rosales* and *People v Malik* both victims focused on the psychological trauma inflicted upon them rather than bodily injury. Indeed, courts recognize mental harms only after a conviction. In *People v Rosales* the court emphasized to the victim and the defense attorney that she is entitled to one year of counseling free of charge under the California Aid to Victims of Violent Crimes Act.[95] The state collects funds both federally and as restitution from convicted offenders. Although the criminal justice system is aware of the psychological impact of sexual assault, my data shows that lawyers almost never mention the mental anguish suffered by victims suggesting that mental harms are only considered once a rape is proven.

Stereotypes and Rape

My analysis also shows that sexual assault myths continue to pervade contemporary courtrooms, even in a presumably liberal city such as San Francisco. These findings corroborate the results of a previous study of juror bias, conducted in Australia, which found that jurors are far more likely to view a rape as "real," if the victim was injured, the defendant used force, the victim reported the assault to police immediately; and the defendant was a stranger.[96]

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[95] *People v. Rosales*, No. 2352774, "Sentencing," at 5.
[96] Taylor and Australian Institute of Criminology, "Juror Attitudes and Biases in Sexual Assault Cases," 1.

My data reveals lawyers deploying multiple stereotypes of what constitutes an appropriate rape victim. For example, as demonstrated in *People v. Gomez*, lawyers play upon stereotypes that cast "real victims" as weak and powerless. However, because the victim in this case was taller than the defendant the defense argued that rape had not occurred. This stereotype of a necessarily weak victim intersects with masculinist definitions of force, as lawyers argue that the force was absent from the assault simply because a tall woman is more capable of defending herself. In fact, in cases where the defendant and the victims do fit the criteria laid out above, of a violent stranger and a small powerless victim, punishment can be severe. For example, the defendant from *People v Dozier* may have gotten sentenced to 373 years to life, because he was a stranger to his victims, he used severe force causing serious injuries to all three women, and his victims were "petite."[97]

My data also reveal that victims in domestic partnerships with their rapist have more difficulty proving sexual assault, as established in three of my cases in which each defendant was convicted of domestic assault, but not of a sexual crime. Part of the difficulty is that lawyers use the victim's sexual history to discredit her claims of sexual assault. Although rape shield laws were created to protect victims from salacious testimony from the defense, domestic partners are held to different standards. In *People v Dillon*, for example, the defense was able to introduce the sexual histories of both

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[97] Vivian Ho, "S.F. Sex Offender Gets 373 Years to Life," *SFGate,* December 14, 2012. Accessed April 12, 2015. http://www.sfgate.com/bayarea/article/S-F-sex-offender-gets-373-years-to-life-4119938.php

partners, stressing their "kinky" sex as a factor leading to the victims claims rather than an act of sexualized violence. The defense most likely employed this strategy to downplay the fact that Dillon had a previous domestic assault conviction from a former partner.

Finally, my data reveal that lawyers use stereotypes of how rape victims should present their emotions, arguing for example that a victim's calm demeanor when reporting her rape compounded her non-credibility. However, studies show that victims respond within a wide range of behavioral symptoms including an outwardly calm appearance.[98] While lawyers are socially discouraged from making inferences based on victim behavior, in cases of domestic partner rape lawyers view such inferences as necessary. This is because alleged victims may file a false report, having reason for retribution or vengeance, as argued in *People v McFarland.*

Male Sexual Desire and Rational Thought

My analysis shows that contemporary court cases involve arguments concerning the alleged incompatibility of male sexual desire and rational thought. In *People v. Woods* and *People v. Dozier* the lawyers focused their arguments on erection and penetration. The defense lawyers argued that because Woods was unable to maintain an erection he could not possibly have intended to rape the victim. Woods nevertheless tried but according to the victim's testimony he was unable to do so because she, "wasn't

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[98] RAINN: Rape, Abuse, Incest National Network, "How Long Does it Take to Recover?," Accessed January 26, 2015. https://ohl.rainn.org/online/resources/how-long-to-recover.cfm

reacting."[99] Some rapists commit sexual assaults because it gives them a sense of power and control. Rapists' sexual arousal varies by person though convicted rapists are more aroused by non-consensual and violent assault than non-rapists.[100] The inability to maintain an erection or complete penetration of the genitalia, mouth, or anus does not reflect desire. In fact, multiple elements could contribute to why, in the moment of assault, a perpetrator loses an erection, and therefore it is impossible to ascertain only what the rapists knows.

On the other hand, in *People v. Dozier* the assistant district attorney argued that loss of erection and each pause in penetration provided an opportunity for the defendant to reflect upon his actions. While the lawyer was acting within the best interest to the victim, defining rational thought separately from sexual penetration sets up a dangerous standard. The assistant district attorney implies that males are capable of rationalizing their behavior only when they are not engaged in the action of sexual penetration. This is consistent within the Hobbesian framework as it places the emphasis on the physical, corporeal self. Males who transgress the social contract fall outside the civilized state. Using Hobbes' analysis of the natural state, rapists are beyond reason and assert their power to gain access to their victims' bodies.

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[99] *People v. Woods*, No. 2362479 at 182

[100] Dennis Doren, *Evaluating Sex Offenders: A Manual for Civil Commitments and Beyond* (Thousand Oaks, Calif: Sage Publications, 2002), 65-66.

Racial Stereotypes

In *People v. Arrevalo* and *People v. Tyree* the defense navigated racial stereotypes to elevate the status of the offenders by suggesting they conform to white standards of social morals and behaviors, such as working full time, and not using social welfare services Class considerations complicate stereotypes especially when we look at a National Opinion Research Center report which showed that approximately 46.6% whites believed African Americans are lazy and 58.9% reported they thought African Americans prefer welfare.[101] While that data was from 1991 another poll was taken in 2008 and showed 42% of whites still believed they were more hardworking than African Americans, not much change overall.[102] Studies have shown that unemployed African American males are 5.2 times more likely to be incarcerated compared to unemployed whites.[103] The defense lawyers were attempting avoid the negative implications of unemployment and welfare associated with non-whites but by drawing attention to these stereotypes the lawyers may have resulted in the opposite by reinforcing generalized racial stereotypes. While this may seem counterintuitive, there is a long history of African American and Latino men being stereotyped as sexually violent; consequently lawyers defending African American and Latino men accused of rape have to navigate within this context. Individual white men are more likely to be assessed on personal

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[101] Robert Smith, *Racism in the Post-Civil Rights Era: Now You See It, Now You Don't* (Albany: State University of New York Press, 1995), 39.
[102] John Wihbey, "White Racial Attitudes," *Journalist's Resource*, August 14, 2014. Accessed on May 3, 2015. http://journalistsresource.org/studies/society/race-society/white-racial-attitudes-over-time-data-general-social-survey
[103] Kansal, "Racial Disparity in Sentencing," 7.

characteristics while individual African American men are assessed by generalized racial stereotypes.[104]

Limitations and Implications

My data only allows analysis using a female-victim-male-offender framework. While women are more often victimized by male offenders there are male victims and female offenders. Further research should include data that encompasses different gender composition.

In addition, further research should cross-compare cases from various geographical locations within the U.S. to provide a more comprehensive understanding of how sexual assault cases are handled. Although San Francisco is known for its liberal and progressive attitudes these cases show even northern California ascribes to antiquated notions of sexual assault.

My study highlights how judicial proceedings further perpetuate rape culture through obscuring mental harms by placing emphasis on bodily injury and force and reinforcing misleading and negative stereotypes about victims and offenders. In light of this, practices should be put into place that limit or abolish the use of both explicit and implicit stereotypes. Penal codes should remove *forcible* and *non-forcible* when defining rape and legal definitions should move beyond the current and limited understanding of force and injury to include invasion and psychological trauma as valid harms.

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[104] Lane Flosheim, "Four Inmates Might Return to Death Row Because North Carolina Republicans Repealed a Racial Justice Law," *The New Republic*, May 9, 2014, accessed May 22, 2015. http://www.newrepublic.com/article/117699/repeal-racial-justice-act-north-carolina-gop-takeover

For example, California has made significant changes to rape laws in the past few years. In 2013 the California legislature amended the state's rape law to include rape of someone other than a spouse when the rapist impersonates the victim's romantic partner. Language in the older version, dating back to the 1870's, only considered a rape victim in such a situation a married woman.[105] San Francisco recently passed legislation that requires testing backlogged rape kits by mid-2015 and assigning analysis to new kits within 14 days of receiving them.[106] In 2014 California Governor Jerry Brown signed into law an affirmative "yes means yes" consent statue replacing the older "no means no" definition. The new definition requires an affirmative yes from each individual.[107] Modifications in California's approach to rape law reform show that lawmakers are willing to make appropriate changes that better reflect the needs of rape victims.

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[105] "California Rape Loophole Closed Thanks to New Law Signed by Gov. Jerry Brown," *The Huffington Post*, September 10, 2013. Accessed on May 30, 2015. http://www.huffingtonpost.com/2013/09/10/california-rape-loophole_n_3902734.html

[106] Jonah Owen Lamb, "SFPD Working to End Rape Kit Backlog, but Several Thousand Will Never Be Tested," *The San Francisco Examiner*, September 17, 2014. Accessed on May 30, 2015. http://www.sfexaminer.com/sanfrancisco/sfpd-working-to-end-rape-kit-backlog-but-several-thousand-will-never-be-tested/Content?oid=2901276

[107] Cheryl K. Chumley, "California Gov. Brown Signs 'Yes Means Yes' Rape Shield Law," *The Washington Times,* September 29, 2014. Accessed on May 30, 2015. http://www.washingtontimes.com/news/2014/sep/29/california-gov-brown-signs-yes-means-yes-rape-shie/

References

Anderson, Michelle J. "Understanding Rape Shield Laws." *National Online Resource Center on Violence Against Women.* Accessed on January 7, 2015. http://www.vawnet.org/Assoc_Files_VAWnet/RapeShield.pdf

Bray, Ilona. "What's a Crime of Moral Turpitude According to U.S. Immigration Law?" *NOLO Law for All.* Accessed May 29, 2015. http://www.nolo.com/legal-encyclopedia/what-s-crime-moral-turpitude-according-us-immigration-law.html

"California Rape Loophole Closed Thanks to New Law Signed by Gov. Jerry Brown." *The Huffington Post*, September 10, 2013. Accessed on May 30, 2015. http://www.huffingtonpost.com/2013/09/10/california-rape-loophole_n_3902734.html

Chumley, Cheryl K. "California Gov. Brown Signs 'Yes Means Yes' Rape Shield Law." *The Washington Times,* September 29, 2014. Accessed on May 30, 2015. http://www.washingtontimes.com/news/2014/sep/29/california-gov-brown-signs-yes-means-yes-rape-shie/

Crenshaw, Kimberle. "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43 (1991): 1241-99.

Donovan, Roxanne and Michelle Williams, "Living at the Intersection: The Effects of Racism and Sexism on Black Rape Survivors," in *Women and Therapy* 25 (2002): 95-105

Doren, Dennis. *Evaluating Sex Offenders: A Manual for Civil Commitments and Beyond.* Thousand Oaks, Calif: Sage Publications, 2002.

Edwards, David. "Louie Gohmert Demands Obama Stop 'Luring' Lice and Scabies-Ridden Immigrant Youth." *Raw Story,* June 26, 2014. Accessed May 5, 2015. http://www.rawstory.com/2014/06/louie-gohmert-demands-obama-stop-luring-lice-and-scabies-ridden-immigrant-children/

Estrich, Susan. "Rape." In *Feminist Jurisprudence*, edited by Patricia Smith, 158-87. New York: Oxford University Press, 1993.

Flosheim, Lane. "Four Inmates Might Return to Death Row Because North Carolina Republicans Repealed a Racial Justice Law." *The New Republic*, May 9, 2014. Accessed on May 22, 2015. http://www.newrepublic.com/article/117699/repeal-racial-justice-act-north-carolina-gop-takeover

Greenfield, Lawrence. "Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault." *Bureau of Justice Statistics*, February 7, 1997. Accessed on April2, 2015. http://www.mincava.umn.edu/documents/sexoff/sexoff.pdf

Hall, Jacquelyn Dowd. "The Mind That Burns in Each Body": Women, Rape, and Racial Violence." In *Powers of Desire: Politics of Sexuality,* edited by Ann Snitow, Christine Stansell, and Sharon Thompson, 329-49. New York: Monthly Review Press.

Hobbes, Thomas. *Leviathan*. Edited by C.B. Macpherson. New York: Penguin Classics, 1968.

Ho, Vivian. "S.F. Sex Offender Gets 373 Years to Life." *SFGate,* December 14, 2012. Accessed April 12, 2015. http://www.sfgate.com/bayarea/article/S-F-sex-offender-gets-373-years-to-life-4119938.php

Hoye, Sarah. "Is the University of Montana the 'Blueprint' for Sexual Assault Response?" *Al Jazeera America*, April 17, 2015. Accessed April 30, 2015. http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/4/17/is-the-university-of-montana-the-blueprint-for-sexual-assault-response.html

Human Rights Watch. "Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia," January 2013. Accessed Dec 2, 2013. http://www.hrw.org/sites/default/files/reports/improvingSAInvest_0.pdf

Johnson, Alex M. "Montana Judge Who Partly Blamed Teen Rape Victim Censured." *NBC News,* July 22, 2014. Accessed August 3, 2014. http://www.nbcnews.com/news/us-news/montana-judge-who-partly-blamed-teen-rape-victim-censured-n162621

Kansal, Tshar "Racial Disparity in Sentencing: A Review of the Literature," *The Sentencing Project* (2005).

Kilpatrick, Dean G. "The Mental Health Impact of Rape." *National Violence Against Women Prevention Research Center,* 2000. Accessed on May 17, 2015. https://mainweb-v.musc.edu/vawprevention/research/mentalimpact.shtml

Kingsbury, Damien. *Sri Lanka and the Responsibility to Protect: Politics, Ethnicity and Genocide*. New York: Routledge, 2012.

Lamb, Jonah Owen. "SFPD Working to End Rape Kit Backlog, but Several Thousand Will Never Be Tested." *The San Francisco Examiner*, September 17, 2014. Accessed on May 30, 2015. http://www.sfexaminer.com/sanfrancisco/sfpd-working-to-end-rape-kit-backlog-but-several-thousand-will-never-be-tested/Content?oid=2901276

Lloyd, Sharon A. and Susanne Sreedhar. "Hobbes's Moral and Political Philosophy." *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition) edited by Edward N. Zalta. Accessed on May 2, 2015. http://plato.stanford.edu/archives/spr2014/entries/hobbes-moral

McKinley Jr., James C. "Vicious Assault Shakes Texas Town." *The New York Times*, March 8, 2011. Accessed on May 7, 2015. http://www.nytimes.com/2011/03/09/us/09assault.html

Mills, Charles. *The Racial Contract*. New York: Cornell University Press, 1997.

National Institute of Justice. "Reporting of Sexual Violence Instances." Accessed Dec 6, 2013. http://www.nij.gov/topics/crime/rape-sexual-violence/Pages/rape-notification.aspx#note4

Okin, Susan Moller. "Women and the Making of the Sentimental Family," *Philosophy and Public Affairs.* 11, no. 1 (1982): 65-88.

Olive, Victoria C. "Sexual Assault Against Women of Color," *Journal of Student Research* 1, no. 1 (2012): 1-9.

Pennsylvania Supreme Court. "Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System." 2003. Accessed on February 2, 2015. http://www.deathpenaltyinfo.org/documents/PAFinalReport.pdf

RAINN: Rape, Abuse, Incest National Network. "How Long Does it Take to Recover?" Accessed January 26, 2015. https://ohl.rainn.org/online/resources/how-long-to-recover.cfm

RAINN: Rape, Abuse, Incest National Network. "Reporting Rates." Accessed Dec 5, 2013.http://www.rainn.org/get-information/statistics/reporting-rates

Redden, Molly. "GOP Congressional Candidate: Spousal Rape Shouldn't Be a Crime." *Mother Jones,* January 15, 2015. Accessed on March 4, 2015. http://www.motherjones.com/politics/2014/01/gop-congressional-candidate-richard-dick-black-spousal-rape-not-a-crime

Rusk v. State, 43 Md. App.476, 478-79, 406 A.2d 624, 626 (1979) (en banc), *rev'd* 289 Md. 230, 424 A.2d 720 (1981).

Smith, Andrea. *Conquest: Sexual Violence and American Indian Genocide.* Cambridge: South End Press, 2005.

Smith, Robert. *Racism in the Post-Civil Rights Era: Now You See It, Now You Don't.* Albany: State University of New York Press, 1995.

State v Alston, 310 N.C. 399, 312 S.E.2d 470 (1984): 476.

Steinhaur, Jennifer. "Navy Hearing in Rape Case Raises Alarm." *The New York Times*, September 20, 2013. Accessed December 12, 203. http://www.nytimes.com/2013/09/21/us/intrusive-grilling-in-rape-case-raises-alarm-on-military-hearings.html?

Tashman, Brian. "Louie Gohmert Claims Central American Youth Are Lying about Violence." *Right Wing Watch,* July 30 2014. Accessed on May 5, 2015. http://www.rightwingwatch.org/content/louie-gohmert-claims-central-american-youth-are-lying-about-violence

Taylor, Natalie and Australian Institute of Criminology. "Juror Attitudes and Biases in Sexual Assault Cases," *Australian Institute of Criminology* 344 (2007). Accessed on March 14, 2015. http://www.aic.gov.au/publications/current%20series/tandi/341-360/tandi344.html

Tjaden, Patricia and Nancy Thoennes. "Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women." *National Criminal Justice Reference Service*, November 2000. Accessed on April 4, 2015. https://www.ncjrs.gov/pdffiles1/nij/183781.pdf

Tonn, Shara. "Stanford Research Suggests Support for Incarceration Mirrors Whites' Perceptions of Black Prison Populations." *Stanford News*, August 6, 2014. Accessed on May 12, 2015, http://news.stanford.edu/news/2014/august/prison-black-laws-080614.html.

Tracy, Carol E. et al. "Rape and Sexual Assault in the Legal System." Paper presented at the National Research Council of the National Academies, Washington, D.C., June 5, 2012.

Verzi v. Superior Court, 183 Cal. App. 3d 382 (1986).

West, Robin. "Jurisprudence and Gender." In *Feminist Jurisprudence*, edited by Patricia Smith, 493-530. New York: Oxford University Press, 1993.

Wihbey, John. "White Racial Attitudes." *Journalist's Resource*, August 14, 2014. Accessed on May 3, 2015. http://journalistsresource.org/studies/society/race-society/white-racial-attitudes-over-time-data-general-social-survey

The World Bank. "Violence Strikes 1 in 3 Women Globally; Uneducated Girls Especially Vulnerable." Accessed March 30, 2015. http://www.worldbank.org/en/news/video/2014/05/14/violence-strikes-1-in-3-women-globally-says-wb-report

Appendix A: San Francisco Superior Court Cases

People of the State of California v. Celso Arrevalo, No. 13022720 (S.C. – San Francisco 2013).

People of the State of California v. Frederick Dozier Jr., No. 12000635 (S.C. – San Francisco 2012).

People of the State of California v. Matthew Flatt, No. 2334473 (S.C. – San Francisco 2008).

People of the State of California v. Juan C. Gomez, No. 10000058 (S.C. – San Francisco 2011).

People of the State of California v. Eusebio Jimenez, No. 12025501 (S.C. – San Francisco 2013).

People of the State of California v. Hamza Malik, No. 2342785 (S.C. – San Francisco 2008).

People of the State of California v. Gregory McFarland, No. 2367337 (S.C. – San Francisco 2010).

People of the State of California v. Tye Roberts, No. 11021002 (S.C. – San Francisco 2013).

People of the State of California v. Gustavo Rosales, No. 2352774 (S.C. – San Francisco 2009).

People of the State of California v. Wendell James Tyree, No. 11004724 (S.C. – San Francisco 2011).

The People v. Wendell James Tyree, No. A134212 (App. – San Francisco [1st Dist.] 2013).

People of the State of California v. Dillon Winn, No. 2443780 (S.C. – San Francisco 2010).

People of the State of California v. Reginaldo Woods, No. 2362479 (S.C. – San Francisco 2009).

Appendix B: Abbreviated Sexual Violence California Penal Codes

209. (b) (1) Any person who kidnaps or carries away any individual to commit robbery, rape, spousal rape, oral copulation, sodomy, or any violation of Section 264.1, 288, or 289.

220. (a) (1) Except as provided in subdivision (b), any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289.(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289.

243.4. (a)Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

261. (a)Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator. (2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another. (c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

262. (a)Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse.

264.1. (a)The provisions of Section 264 notwithstanding, in any case in which the defendant, voluntarily acting in concert with another person, by force or violence and

against the will of the victim, committed an act described in Section 261, 262, or 289, either personally or by aiding and abetting the other person, that fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant.

288a. (a)Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

289. (a) (1) (A) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

Appendix C: 2014 Judicial Council of California Criminal Jury Instructions

CALCRIM 875: Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury (Pen. Code, §§ 240, 245(a)(1)–(4), (b)).

- The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.
- The touching can be done indirectly by causing an object [or someone else] to touch the other person.
- *Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

CALCRIM 890: Assault With Intent to Commit Specified Crimes [While Committing First Degree Burglary] (Pen. Code, § 220(a), (b)).

- The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.
- The touching can be done indirectly by causing an object [or someone else] to

touch the other person.

CALCRIM 1000: Rape or Spousal Rape by Force, Fear, or Threats (Pen. Code, § 261(a)(2), (6) & (7)).

- Intercourse is *accomplished by force* if a person uses enough physical force to overcome the woman's will.
- *Duress* means a direct or implied threat of force, violence, danger, or retribution that would cause a reasonable person to do [or submit to] something that she would not do [or submit to] otherwise. When deciding whether the act was accomplished by duress, consider all the circumstances, including the woman's age and her relationship to the defendant.
- *Menace* means a threat, statement, or act showing an intent to injure someone.
- Intercourse is *accomplished by fear* if the woman is actually and reasonably afraid [or she is actually but unreasonably afraid and the defendant knows of her fear and takes advantage of it.
- "[T]he offense of forcible rape occurs when, during apparently consensual intercourse, the victim expresses an objection and attempts to stop the act and the defendant forcibly continues despite the objection . . . . '[I]t is immaterial at what point the victim withdraws her consent, so long as that withdrawal is communicated to the male and he thereafter ignores it.' " (*In re John Z.*, *supra*, 29 Cal.4th at p. 760.)

- The instruction includes definitions of "duress," "menace," and the sufficiency of "fear" because those terms have meanings in the context of rape that are technical and may not be readily apparent to jurors. (See Pen. Code, §§ 262(b) [duress] and (c) [menace]; *People v. Iniguez*, *supra*, 7 Cal.4th at pp. 856–857 [fear].)
- The term "force" as used in the rape statutes does not have a specialized meaning and court is not required to define the term sua sponte. (*People v. Griffin*, *supra*, 33 Cal.4th at pp. 1023–1024.)
- In *People v. Griffin*, the Supreme Court further stated, Nor is there anything in the common usage definitions of the term "force," or in the express statutory language of section 261 itself, that suggests force in a forcible rape prosecution actually means force "*substantially* different from or *substantially* greater than" the physical force normally inherent in an act of consensual sexual intercourse. [*People v. Cicero* (1984) 157 Cal.App.3d 465, 474 [204 Cal.Rptr. 582].] To the contrary, it has long been recognized that "in order to establish force within the meaning of section 261, subdivision (2), the prosecution need only show the defendant used physical force of a degree sufficient to support a finding that the act of sexual intercourse was against the will of the [victim]." (*People v. Young* (1987) 190 Cal.App.3d