

TRYING MALE RAPE:
LEGAL RENDERINGS OF MASCULINITY, VULNERABILITY,
AND SEXUAL VIOLENCE

by

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Dedication

This dissertation is dedicated to Nuala Rachel.

Acknowledgements

One friend inquired recently as to whether it would be difficult to juggle the demands of motherhood and a faculty position. It strikes me as an odd question. In my life, the two, my mothering and scholarly identities, are deeply entwined. My daughter and my dissertation came into this world at about the same time. I began reading for the prospectus the summer I was pregnant. I sat with my round and growing belly in the garage, with the sun streaming through the open door, reading about trauma, sexual violence, and rape laws. I remember one meeting with other gender scholars where I consumed food for the entire three hours. I remember attending prenatal yoga classes on hot summer nights and collapsing in bed after a bowl or two of cereal and then starting all over again the next morning.

After my daughter was born on the last day of summer, I took some time off, and then resumed reading in the winter months. Now she nursed and napped on my lap while I read and formulated my prospectus. We couldn't work in the mornings because that was time for play. I wrote in the evenings after she slept. Throughout her babyhood and toddlerhood, she often came with me to meetings, as she attended daycare only part-time. There was one conference in Chicago, at the beginning of her first summer, when I was scheduled to present first thing on a Sunday morning, and of course she cried all night in the hotel room. But of course we survived and drove home to Michigan that afternoon with some new baby teeth. We continued on. I collected lots of data, and she grew into a kid. By the end, she was still snuggled next to me on the couch, watching cartoons and keeping me company, as I edited all the words I had written. One rainy afternoon this past spring, she asked what I was doing. I told her I was writing a thing

called a dissertation. Then she asked if I had written it that afternoon. When I told her, no, it took a long time to write, she nonchalantly turned back to the television.

My deepest thanks go to this lovely girl who has been with me for this whole journey. Even though she scarcely knows what I do, she has been there every step of the way. She *is* the journey. My hope for her is twofold. First, I hope to model for her how to be a person who is deeply engaged with people and play and creative thought. Second, I hope that this scholarship contributes, even if only slightly, to crafting a world that is safer and kinder and much less violent. She deserves this. Her buddies deserve this. We all deserve this. So thank you, my sweet one.

My intellectual journey began at San Francisco State University where I was fortunate enough to meet two amazing mentors. Jessica Fields introduced me to sociology. I wouldn't go on to take my first course in the discipline until I came to Michigan, but I learned most of what I needed to know on Jessica's research team. She gathered together a diverse group of students; taught us how to analyze and dialogue; and then let us explore broadly our collective questions. It is not an exaggeration to say that working on this team changed my life. Amy Sueyoshi taught me how to do research. She had unending patience for reading proposal drafts and guiding me through my first big project. I still remember her soundest, and best, piece of advice: "Don't get stuck in a quagmire of research hell!" Although I may have lost touch with this recommendation during the dissertation process, I still strive toward her vision of editing, clarity, and focus.

The University of Michigan has been an outstanding place to be a graduate student. There is strong institutional support, especially in the Sociology and Women's Studies departments, for innovative qualitative research. I received a variety of grant and fellowship funding, without which my dissertation and professional development would not have been possible. Funders

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This dissertation focuses on sexual violence. I examine how people make meaning about culturally appropriate kinds of sexuality, desire, and aggression. I examine the conditions under which these behaviors transform into violence, trauma, and harm. I examine how justice is understood and adjudicated in cases of male-on-male sexual assault. As such, I owe a great debt of gratitude to the prosecutors and defense attorneys who participated in this research project. They gave generously of their time, resources, and networks. Moreover, they do challenging work under circumstances that are often constrained and under-resourced. Finally, I acknowledge the survivors around which my analysis centers. Though they remain unnamed here, their experiences of sexual violence and, importantly, the prosecutorial process are the core of this project. I wish them much healing and hope.

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Abstract

This dissertation examines how the legal field reflects and reproduces masculinity. There has been much research on the relationship of women and femininity to the law but less on that of men and masculinity to the law. The law has been largely conceptualized as a site of unified masculine domination. The recent proliferation of scholarship on hegemonic masculinity indicates that masculinity is more complex, and the law is a crucial site where everyday meanings about gender are made because of its state-backed authority. Investigating the relationship between law and masculinity illuminates broader processes of how gender is embedded in and constructed through the law. The empirical focus is male sexual victimization, examining how it emerges as a social problem at different points in the legal process. This dissertation is organized around a three-state comparison – Georgia, Michigan, and Idaho – to investigate how state-level legal regimes affect the framing of male rape cases. These three states are ideal comparisons because they write gender into their rape laws in distinct ways. This dissertation consists of three stages. First, the author created an original database of 67 male rape cases to identify the conditions under which judicial outcomes are most likely to be successful for the prosecution. Second, the author selected a sub-sample of cases to analyze how actors make sense of male sexual victimization in various historical documents such as police reports, investigation files, courtroom transcripts, and appellate opinions. Third, the author interviewed prosecutors and defense attorneys who worked on male rape cases to understand how they select, frame, and allocate resources toward allegations of male rape. This multi-method approach provides strong analytical leverage for an examination of the ways that male sexual victimization

enters the legal arena. Legal actors perceive male sexual victims as especially egregious because of cultural assumptions about men's sexual desires, vulnerabilities (or lack of), and capacity to move safely through the public sphere. Ultimately, this dissertation shows how masculine vulnerability is constructed in the legal field.

Chapter 1: Disappearing Acts

So far, like, seven men have already come forward and reported this in the Houston area, and reported this motherfucker, which means he must have raped thousands, 'cause that's a tough phone call for us to make. It's not like when you get raped, ladies. Society don't give a fuck about male rape. There's no hotline for us. A man gets raped, you have to get up and walk that shit off.

— Dave Chappelle

Sipping a bottle of beer and bouncing around the stage, comedian Dave Chappelle brought his Laugh Factory audience to boisterous laughter in 2010. He introduced the bit by way of the recent conviction of Houston's so-called Baytown Rapist, a young black man who violently sexually assaulted a series of white men. A Texas jury ultimately convicted the defendant, Keith Hill, of aggravated sexual assault, and he was sentenced to 99 years in prison. Chappelle's two-minute riff taps into the cultural unease that surrounds adult male sexual victimization. He reflects the audience's surprise at the existence of male rape victims; notes the paucity of social support for this class of victim; and argues that the shame for men is so great that they will rarely reveal their victimization. In fact, Chappelle suggests that the articulation of sexual victimization is tantamount to social death for men. His closing line emphasizes how nearly anything, even engaging in adultery, is far preferable to identifying oneself as a rape victim. "Couldn't even tell my wife some shit like that. Come home, all disheveled and shit. 'Hey, where you been? It's three o'clock in the morning!' 'Out fucking another woman. Just go back to sleep, okay?'" Notably, in this exchange with his imaginary wife, Chappelle substitutes the forced sexual assault with another man with a consensual sexual encounter with a woman. As we shall see, the logics behind this justification – attempting to restore damaged masculinity

through the assertion of heterosexuality – permeate cultural understandings of adult male sexual victimization.

American men experience sexual assault. Despite this silencing, empirical data indicates that adult male sexual victimization is a diverse phenomenon. The National Crime Victimization Survey reports that men aged 12 and older experienced sexual assault at a rate of 0.3 per 1000 persons in 2008 (Rand 2009). Victimization rates may be much higher than criminal statistics indicate due to the stigma associated with male rape. Male survivors report reluctance to identify their sexual victimization as such to themselves, friends, and family members, let alone to make a formal report to public authorities (Mezey and King 1989; Mitchell et al. 1999; Walker et al. 2005). Contextual patterns of male rape mirror those of female victims. Men experience coercive as well as physically violent sexual assaults. Perpetrators may be close associates, acquaintances, or strangers. Location of the assault may be private homes; schools; public spaces like streets or bars; or jails and prisons. Male victims report trauma reactions to sexual assault that include shame, denial, embarrassment, and anger. Thus, adult male sexual victimization is much more variable than the proverbial joke about male rape in prison showers would indicate.

Although it is clear that men experience sexual assault under a variety of circumstances, Dave Chappelle is right to observe that survivors, perpetrators, and public authorities alike actively silence male rape. Historically, it was inconceivable to imagine a man as a sexual victim. There were no legal or cultural frameworks through which to understand a masculine body in such a state of vulnerability. However, widespread rape law reforms, beginning in the 1970s, created a legal penumbra under which men could potentially be sexual victims. Many states implemented gender-neutral sexual assault laws, and grassroots activists campaigned tirelessly to expand cultural definitions of rape beyond the narrow stranger-in-the-bushes

stereotype. Moreover, there is nascent public recognition of men's potential sexual vulnerability, even as there is not yet vocal advocacy for the issue. Although there is a dearth of research comparing the trajectory of women's and men's sexual assault allegations in the criminal justice system, media reports and anecdotal evidence indicate that investigators and prosecutors take men's allegations at least as seriously as they do women's.

The recent inclusion of men in legal categories of sexual victimization, even if sometimes unintentional, demonstrates how cultural meanings about sexual violence shift across time and place (Freedman 2014). For instance, male bodies were not historically protected from rape by the state. Men were categorically assumed to be sexual aggressors, which was not necessarily understood as a bad thing, and women were sexual victims, although their propensity for true sexual victimhood varied by how many other social privileges they enjoyed. Moreover, Sally Engle Merry shows how dominant Western understandings of gendered violence, which are based in human rights discourse, are sometimes culturally ill-fitting when applied in various local communities that are far different from the geo-political contexts in which the frameworks first evolved.

The enactment of sexual assault is a crucial mechanism through which structural inequalities are maintained and reproduced (Puar 2004; Feimster 2011; Freedman 2013; Smith 2015). The reproduction of these inequalities via sexual assault exist across multiple lines of difference, including gender, class, race, nationality, and religion. Law's relationship to gendered inequalities and sexual violence is complicated, especially given the recent transnational proliferation of laws targeting sex- and gender-based violence. Law can be conceptualized alternately as either an institution of justice or as institution that simply reproduces the cycle of

violence. In this dissertation, I take the case of sexual violence to ask: How is gender reproduced through law and the legal process?

Mobilization around injury-based identities have become highly effective ways to access political recognition and public resources the United States post-Civil Rights era. Pain, injury, and trauma have emerged as oddly salient ways of defining postindustrial citizenship, even as mobilization around marginalized social identities has grown more contentious and less effective. Even as the social welfare state has been dismantled slowly, crime victims rights activists defined the experience of criminal victimization as a mechanism for distributing public resources (Tobolowsky et al. 2009; Waller 2010). Jonathan Simon calls this profound shift in the US as “governing through crime” (2007). This means that citizens are defined as either crime victims, perpetrators, or adjudicators, and broad cultural meanings of fear and security are seen through the lens of crime rhetoric, personal injury, and victimhood (Brown 1995). In turn, understandings of vulnerability, and its differential distribution through the population, are key to defining citizenship. Thus, the case of adult male sexual victimization, whereby men are conceived of as potential sexual victims, heretofore a conceptual impossibility, opens a broader window to understanding gendered citizenship in the US. Ultimately, this investigation uncovers evolving understandings of gender, vulnerability, justice, and inequality.

Literature Review

Sociology of Law

Social scientists began undertaking empirical studies of the law in the mid-twentieth century. Up to then, analyses of the law appeared largely in law review journals, and attorneys, mostly law school faculty, wrote the articles. The focus was on legal analysis, and the scope was internal. However, in the wake of the Civil Rights, when social activists turned to the law to

redress deep social inequalities, some scholars began to conceptualize the law more broadly. Sociologists, economists, historians, and political scientists, among others, began to systematically study legal outcomes and processes. In this section, I explain some key analytical elements of this intellectual trajectory and their relevance for this project.

One of the key innovations of law and society scholarship is identifying the significance of culture in relation to the law. Positivist approaches to law assume that it is a rational set of social rules that have predictable outcomes and can approach an objective truth (Sebok 1998; George 1999; Kramer 2003). Yet historical and even anecdotal research shows, time and again, that judicial outcomes are not simply the cumulative effect of a given set of known legal variables. Legal realist Jerome Frank famously, and perhaps now infamously, wrote, “Justice is what the judge ate for breakfast” (1973). In contrast, cultural explanations of law assume that culture is a crucial explanatory variable in understanding legal processes and outcomes. A cultural analytical framework assumes that interpretive approaches are just as important, if not more so, as the identification of causal mechanisms. In a review essay, Saguy and Forrest outline the various ways that cultural analyses are typically done in socio-legal scholarship (2008). First, law can be understood as having cultural effects. For instance, changes in legal policy can shape how people understand social identities, like how the Americans with Disabilities Act works to reshape how people make sense of ability status in general (Engel and Munger 2003; Kirkland 2008). Second, culture can be understood as effecting legal outcomes. For instance, cultural understandings of gender and sexuality can shape how aggressive prosecutors are when working on a sexual assault case (Frohmann 1997; 1998). Third, law and culture can be understood as having an interactive dynamic. Law is a dynamic social process, as opposed to simply a static social structure.

Feminist Legal Theory

Early feminist legal scholarship emerged from second wave feminism in the 1970s, and it sought to identify the ways that law codified and reified gender relationships. Scholars theorized that law was the primary social site through which men came to dominate women (Ortner 1974; Rubin 1975; Brownmiller 1975). Backed by the authority of the state, law regulated distinctions between men and women in the family, education, labor markets, and civic life (Hoff 1994). Feminist legal scholars explored these gendered spheres theoretically and empirically. First, scholars investigated how the structure of Western legal systems privileged men (MacKinnon 1987; Pateman 1988). By masking their masculine composition under a cloak of gender neutrality, these legal systems necessarily excluded women from participation. This system simultaneously mirrored and reinforced the relegation of women to the private, domestic sphere (Boyd 1997). Second, both historical and contemporary empirical studies revealed the ways that legal processes oppressed women. Women, especially those marginalized by other statuses like race and class, lacked adequate legal protections from rape and domestic violence, and they were legally excluded from a variety of economic, political, and educational opportunities (D'Emilio and Freedman 2012; Kitch 2009). Feminist legal activists sought to undo these oppressions through consciousness-raising, litigation, and statutory reform (Scales 2006).

Despite its prominence, early feminist legal scholarship received criticism from several different quarters. Feminists of color (King 1988; Collins 1990) and poststructural feminists (Bordo 1987; Alcoff 1988; Scott 1991) launched similar critiques: namely, that early feminist legal scholarship created artificially unified categories of male and female. The sharp distinctions between men and women obscured the variety of fissures within the category of woman. These critics argued that the earlier scholarship did not adequately account for differences between

women, such as race, class, sexuality, ability, age, and nation. Differences between women are important because critical legal scholars demonstrate that statuses like race and class, especially, lead to differential legal outcomes (Williams 1991). For many women, gender is not their primary status of oppression; rather, gender intersects with other social identities, which lead to unique legal outcomes. Feminist legal scholars of color developed the concept of intersectionality to account for the unique trajectories that women of color follow in the legal system (Crenshaw 1991). As yet, however, Western legal systems remain ill-equipped to adequately address discrimination or criminal victimization that is the result of intersecting social identities.

Men, Masculinities, and the Law

Although the category of woman has been critically interrogated, the relationship of men and masculinities to the law remains underexplored. Gender is a relational concept, both theoretically and empirically, so cultural understandings of “women” and femininities do not exist without the corresponding “men” and masculinities. Connell developed the concept of hegemonic masculinity to understand the ways that gender structures social life and creates systems of meaning for individuals (1987; 1995). She sought to bring men into the rubric of feminist studies without obscuring the fact that women face much oppression because of their gender. Rather, hegemonic masculinity reveals the ways that men are also organized hierarchically in relation to normative ideals of masculine power (which may never be realized by individual people). Numerous empirical studies have further elaborated on the concept of hegemonic masculinity, demonstrating how men experience and deploy masculine ideals in a variety of settings including family life, religion, pub cultures, sport, and government (Donovan 1998; Archer 2001; Campbell 2000; Light and Kirk 2000; Hooper 2001).

Empirical investigation of adult male sexual victimization will reveal the theoretical relationship of men and masculinity to the law. While there has been much research on the relationship between law and women (Bartlett and Kennedy 1991; Verchick and Levit 2006; Conaghan 2009), there has been relatively little done on the relationship between law and men. Thusfar, law has been largely theorized as a site for the reproduction of male dominance, either as an explicit theoretical assumption or as an empirical conclusion (MacKinnon 1991). Yet conceptual innovations in the area of hegemonic masculinity suggest that maleness is not a unified, all-dominant category (Connell 1987; 1995). Relationships between dominant and subordinate masculinities are important, and the legal field is a crucial site where these constructions emerge. Deliberately placing the male subject in the role of sexual victim will disrupt the common narrative of masculine legal domination, and it will reveal how masculinities are negotiated in law.

Sexuality is a key component in the construction of hegemonic masculinity. Heterosexuality is the lynchpin that distinguishes dominant masculinities from subordinate ones. Men become manly in part because of the ways that they perform their sexuality. Butler argues that gender and sexuality are inextricably linked through what she calls the “heterosexual matrix” (1993). Dominant models of sexuality emerge through gender differences, which, in turn, reinforce the seeming naturalness and inevitability of heterosexuality. Numerous empirical studies elaborate on the theoretical significance of sexuality to the construction of masculinities. Pascoe describes how high school boys lob the sexualized epithet “fag” at one another to maintain their masculine status (2011). Similarly, McGuffey shows how parents of sexually abused boys put great effort toward restoring their son’s masculinity and sense of heterosexuality (2005). Thus, sexuality is an important dynamic of hegemonic masculinity.

Despite its popularity with scholars, the concept of hegemonic masculinity remains contested, and there are still aspects about men and masculinities about which little is known. In a 2005 article, Connell and Messerschmidt reviewed the origins of the concept of hegemonic masculinity, its strengths and weaknesses, and subsequent empirical foci. Importantly, they also identified avenues for future research (Connell and Messerschmidt 2005). First, little is known about how masculinity is embodied. As a structural model of gender, hegemonic masculinity does not readily account for the experiences and agency of individuals. Yet Connell and Messerschmidt argue that the concept does not preclude such analyses, and, in fact, it is critical to better theorize how hegemony is embodied. Like sport, violence is an ideal site to explore embodiment because it deals with the corporeality and physical vulnerability of individual bodies. Second, little is known about how difference is constructed between men. There has been much research demonstrating how subordinate masculinities are constructed in relation to hegemonic ideals (Chen 1999; Yeung *et al* 2006), but the general process of constructing difference between real men is undertheorized. Third, little is known about the actual process of how law produces masculinities. Collier writes, “For all the declarations within much socio-legal scholarship on law and gender that law and/or legal discourse are implicated in the way distinctive masculinities are constituted or constructed, it is extremely difficult to grasp the *process* by which this takes place – at least beyond the making of generalized statements that law ‘shapes our lives’ or is part of a ‘discursive context’ in which a gendered subjectivication occurs” (2010, 458). Thus, it remains to be seen how masculinity is embodied, how differences are constructed between men, and the process through which law produces masculinities.

The prosecution of cases of male sexual victimization raises important questions about masculinity, sexual identity, violence, and the construction of credible legal victims. The state of

sexual victimhood renders its subjects vulnerable and permeable; their corporeal boundaries are no longer in tact. In addition, it is a feminized state. Not only do women experience sexual assault at disproportionate rates, but symbolically the female subject is defined by this vulnerability (Cahill 2000). The male subject, in contrast, is symbolically defined by his capacity to dominate (Graham 2006). These cultural associations of feminized vulnerability and masculinized dominance make it challenging to comprehend the male sexual victim. Male bodies are perceived to be hard and impenetrable – quite the opposite of a normative sexual victim. To construct a credible sexual victim, prosecutors must minimize the contradictions between masculinity and sexual victimhood, and they must fit the charge in existing state-level criminal statutes.

This dissertation investigates the processes through which male sexual victimization is understood in the legal field. How do prosecutors and defense attorneys react to initial allegations of male sexual victimization? How do they decide which cases to pursue and which to drop? How do they determine trial strategies and where to devote scarce resources? At trial, how do legal actors – including judges, juries, attorneys, witnesses and other observers – make sense of the male sexual victim and his assailant? Under which conditions are cases most likely to result in a conviction?

Research Design

In this dissertation, I take an unrecognized social issue as the object of study to examine the chronological process by which law and culture interact. Conceptually, an unrecognized social issue is an ideal case because it isolates the mean-making processes that emerge as legal actors do the work of implementing legal structures at the local level. I focus on the unrecognized social problem of male rape. Adult male sexual victimization exists, although exact

rates are difficult to estimate given available data – yet this social issue is virtually silenced. Among the range of unrecognized social problems, adult male sexual victimization is an especially strong case for two reasons. First, it is closely aligned to sexual assault in general, so there are existing legal rubrics in place for addressing this issue. Therefore, even though legal or cultural recognition of this social problem is exceedingly rare, there are logical pathways for cases to enter the legal field when they occasionally emerge. Second, adult male sexual victimization bring gendered social identities to the fore. Sexual assault is a gendered crime, whereby perpetrators are perceived as men, and victims are perceived as women (or children).

Three State Comparison: Georgia, Michigan, and Idaho

This project is organized around a state-level comparison because most rape cases are tried under state law. Each US state conceives of male sexual victimization in distinct ways, and this variability provides an ideal terrain for a rigorous comparison. It enables an examination of the relationship between legal regimes and cultural narratives about gender and sexuality. This research design will illuminate how laws on the books shape opportunities for processing male sexual victimization. The three-state comparison is a sampling strategy designed to maximize variability of the ways that states address sexual assault in their legal codes. Ultimately, a state-level comparison enables me to conclude with a normative argument about which types of laws work best for recognizing male victims of sexual violence. Hopefully, the findings will improve social policies regarding adult male sexual victimization.

Since the widespread reform of rape laws in the 1970s (Spohn and Horney 1992; Bevacqua 2000), Georgia, Michigan, and Idaho have followed different trajectories in the ways that they address male victims of sexual violence. Georgia has been minimally affected by rape

law reform (Spohn and Horney 1992). It retains non-consensual sodomy language¹ and gender-specific rape language; in effect, Georgia's laws specify that rape victims are, by definition, women. Michigan law does not specify the victim's gender, and it no longer uses sodomy language in its codes (Spohn and Horney 1992). Heralded as a model of reform by early anti-rape activists, Michigan rape law takes into account the power relations between the victim and the assailant, imposing stricter punishments for perpetrators such as teachers, for instance. Georgia and Michigan are good comparisons because they have similar populations, racial compositions, and rural/urban splits, and they occupy the far ends of a rape law continuum. Idaho offers a completely different model. Like Georgia, Idaho specifies the rape victim as female, but it also added a law specifically addressing male rape, which defines sexual assault victims as men, in 1989. Additional information about each state's legal structure is provided in Chapter 3.

Georgia, Michigan, and Idaho are particularly good comparisons in part because of their geographic distance from one another. Spatial proximity shapes the enactment and effects of controversial state laws (Strang and Tuma 1993; McMahon-Howard et al. 2009). In this case, it is reasonable to believe that their respective state legislatures and prosecutors are acting independently of one another because they are located in opposite corners of the country, which minimizes the likelihood of network effects on state legislation and legal processing.

Stage 1: Database of Male Rape Legal Cases

The first stage of the project was the collection of male rape legal cases from Georgia, Michigan, and Idaho. Here, the objective was to ascertain how male rape cases have been tried, in terms of both statutes invoked and strategies used. I examined why some cases are successful

¹ Following the 2003 Supreme Court decision, *Lawrence v. Texas*, all remaining consensual anti-

even as most are not, reviewing the impact of factors such as sexual identity, gender presentation, various details of the assault, and legal frameworks invoked.

There were several criteria for case selection. First, the crime or dispute included an allegation by an adult man of nonconsensual sexual contact or intercourse perpetrated by a man. This was broadly construed as any unwanted sexual advance that might be considered sexual assault by a reasonable person. Second, I included only criminal cases even though some men seek compensation in civil court. Criminal and civil cases have different burdens of proof and their respective attorneys work in different institutional contexts, so including both types of cases would have introduced too much legal variability for a project of this size. Third, I excluded children because children cannot legally consent to sexual activity. I define a child as one who cannot legally consent to sexual activity in his or her state; depending on the state's age of consent laws, a child generally transitions to an adult at 16, 17, or 18 years of age. The time frame for case inclusion dated from 1989 – 2012. Idaho introduced its male rape law in 1989, so I chose that year as the starting point because it is the farthest back that all three states were operating under consistent sexual assault laws. By this year, both Michigan and Idaho had implemented at least some rape law reforms, and Georgia retained the same laws throughout the time period. So the legal apparatus for criminalizing male sexual victimization in each state remained constant throughout the time period under examination.

I constructed an original database of male rape legal cases, locating the cases in multiple ways. First, with the help of two undergraduate research assistants, I searched LexisNexis using key terms such as “male rape,” “sodomy,” “man and sexual assault,” “rape and masculinity,” and “male victim and sexual violence.” Since LexisNexis archives only appellate cases, I traced those cases back to the trial court to identify any variables not included in the appellate decision.

So the database will include both trial- and appellate-level cases. Second, I identified cases in the male rape research, a small descriptive body of literature that frequently references anecdotal and legal cases (Scarce 1997). Third, I identified cases through a snowball method by researching cases from my database that are referenced in other judicial decisions. Fourth, I searched Newsbank for local newspapers that reference the same key words as above. When I found mentions of a male rape trial, I traced that case back to its courthouse. Fifth, I searched the respective states' sex offender registries. This technique was most effective in Idaho because there is a specific violation, male rape, for which to search. However, the sex offender registries do not provide victim characteristics, so there is no way to link these lists with other databases to identify cases of male-male rape. Sixth, I conducted Internet searches that had greater likelihood of yielding cases that were in process.

The construction of the case database was thorough. Although there was no feasible way to externally verify the exact proportion of the population of cases that my sample comprises, it is reasonable to assume that my sample is comprehensive and closely approximates the population of male rape cases in each state. First, the sample covers a wide range of different fact patterns, which indicates that it was not simply the case that my search techniques only uncovered a particular type of case. Second, the interview respondents did not report having seen many male rape cases over the course of their respective careers. In fact, most respondents were emphatic that cases involving adult male sexual victims were exceedingly rare at the prosecution stage, and they largely only remembered having worked on the specific case about which I was inquiring. Finally, multiple informal conversations with advocates who worked at rape crisis centers, most of which were not directly related to this project, indicated that they do occasionally see adult male sexual victims but it remains infrequent (as compared to women and

children victims). In fact, advocates were often aware of this underserved population of survivors, and they brainstormed methods to loop them into public services in more effective ways, although as yet they were seeing few male victims. The following three visuals present overview findings from the case database. Each one shows the attrition process of cases in each state as they move through the criminal justice system. The first visual is a table that charts the raw number of cases at each stage in the process. The second visual displays this same information in a graph format, whereby Series 1 is Idaho; Series 2 is Michigan; and Series 3 is Georgia. The third visual charts ratios of cases at various points in the criminal justice process. For instance, in Idaho, 83% of formal allegations result in a conviction.

Table 1: Attrition of Male Rape Cases in the Criminal Justice Process

	Investigation	Prosecutor Review	Charges	Dismissal	Plea	Trial	Conviction	Appeal
ID	23	23	22	8	14	4	19	6
MI	34	34	34	0	8	25	30	26
GA	30	30	30	2	6	13	15	11

Table 2: Attrition of Male Rape Cases in Graph Format

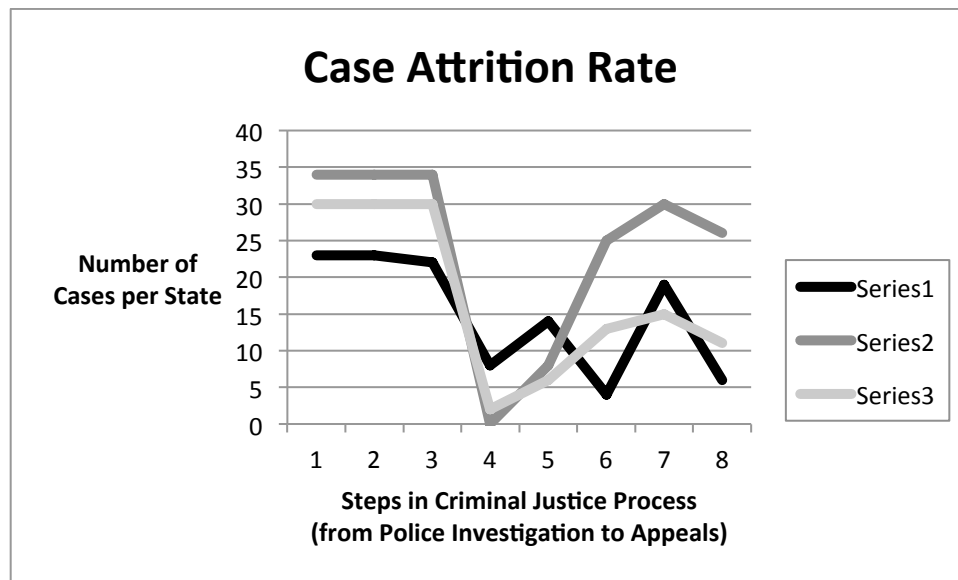


Table 3: Ratio Comparisons of Cases at Different Points in the Criminal Justice Process

	Allegation:Conviction	Charge:Dismissal	Plea Bargain:Charge	Trial:Charge
ID	83%	36%	64%	18%
MI	88%	0%	24%	74%
GA	50%	7%	20%	43%

Stage 2: Discourse Analysis of Historical Documents

The second stage of the project was the analysis of relevant case documents (including police reports, audio and video files from investigation interviews, trial transcripts, appellate brief, and so on) from a sub-sample of cases from Stage 1. The objective was to examine the construction of male rape at the interactional level. I collected as many historical documents as I could find through interview respondents, courthouse archives, and media outlets. The range of documents totals more than 10,000 pages. I examined the tension between masculinity and vulnerability, looking for the ways that legal actors narrated the events of sexual violence, how they framed the victim and perpetrator, and what other facts are deemed relevant to the arguments. I recognized that some of the courtroom narratives are directly motivated by laws on the books. However, the ways that actors invoked these legal frames – their *social* character – reveals salient discursive issues in constructing male sexual victimization.

Stage 3: Interviews with Attorneys

The third stage of the project was in-depth interviews with prosecutors and defense attorneys who worked on a male rape case to understand their decision-making processes. I conducted 75 interviews; see Table 1 for further information about the respondents. I recruited attorneys who tried cases included in my database. I solicited information about how the attorneys decide to pursue cases; how laws and judicial precedents affect their choices; and how they determine trial strategies. I asked open-ended questions so that the interviewees have the

opportunity to describe their framing logics in detail (see a sample interview guide in Appendix B). I opened the interviews with general questions about respondents' work histories and understanding of sexual assault cases. In addition, I made specific inquiries about how the social identity of the victim and perpetrator – especially their race, gender, sexual identity, and gender presentation – affects the trial strategies.

I conducted the interviews face-to-face because this enriched the interpersonal exchange, and it enabled me to observe firsthand the office environments in which the respondents work. Sexual violence is a sensitive issue, so phone interviews would not have been appropriate or effective (Campbell et al. 2009). Face-to-face interviews allowed me to observe pauses, facial expressions, and body language, which were important clues with such a sensitive issue. I conducted most interviews in a private room in the attorney's workplace, while a couple occurred in public places such as cafes or on university campuses. All interviews were recorded and transcribed and will remain confidential. Although I cannot guarantee anonymity because this professional population is relatively small, I do not use real names in my work. A professional transcriptionist typed the interview data verbatim.

The objective with the interviews was to discover how attorneys select cases and how they usher them through the legal process. Both prosecutors and defense attorneys have much discretion, especially the former, in picking cases and determining trial strategies. Because their decisions are not inevitable it is important to understand which factors they consider at all stages of the process (Frohmann 1991, 1997). This final stage of the research design will reveal how legal actors enact laws and case precedents regarding male rape.

Data Analysis

Data analysis proceeded in multiple waves. This dissertation approaches the legal construction of male rape from several different angles, each of which requires a different kind of analysis. First, I collected information on each state's respective legal regime, including statutes, case law, and professional infrastructure. These are objective social facts that can be assembled and analyzed in a straightforward fashion. Second, I created a database that is comprised of 67 cases of adult male sexual victimization. Each case has multiple documents, and some have many hundreds of pages. This phase of analysis included both deductive and inductive analysis. Much of the work involved piecing together disparate case facts into a coherent narrative. However, it also included interpretive analysis for documents like police reports and trial transcripts that were more open-ended. Third, I conducted in-depth interviews with 75 prosecutors and defense attorneys. Part of the objective with the interviews was to piece together case facts, as above, in the style of an expert informant interview. However, the interviews were largely open-ended and interpretive. I used a grounded coding technique to analyze the themes that emerged. I conducted two rounds of coding, one to generate the broadest themes and one to enhance the focus of the themes once the analytical structure had emerged.

Reading Rape

Discursive meanings of sexual violence are historically and culturally specific (Freedman 2013). Because it is a well-defined social problem in post-industrial United States, epistemological ways of knowing sexual violence are also diverse. There are four types of knowledge about sexual violence: professional, experiential, potential, popular. The first two types are based on direct knowledge, and the second two types are based on indirect knowledge. First, professional knowledge is that which is gained in professional realms, such as the legal, medical, or activist fields. Second, experiential knowledge is that knowledge gained through

personal experience, whether by virtue of surviving sexual assault or being the confidante of someone who has survived. Third, potential knowledge is that knowledge that circulates among all potential victims, namely women and other groups that are perceived to be vulnerable. For instance, managing one's dress, behavior, and bodily comportment in public to manage and minimize the risk of sexual assault. Fourth, popular knowledge is that which circulates in the public sphere, specifically in the media about what sexual violence is. It is important to distinguish between different types of knowledge about sexual violence because they each emerge from a different place and take on different contours. Respondents in this study draw most on professional knowledge about sexual violence, which means that they largely approach cases in a rational, bureaucratic manner.

Researching sexual assault poses ethical dilemmas. On the one hand, it is necessary to write frankly about the case facts and offer rigorous analyses, as a researcher would do with any object of study. On the other hand, this particular object of study involves deeply personal moments of violence, violation, and terror. Feminist scholars have reflected on how to represent sexual violence without simply reproducing the gendered power in the re-telling (Hesford 2005). This methodological challenge may emerge in any sort of research that addresses inequalities, but it is particularly challenging with the case of sexual violence because this issue deals with raw bodies, desires, sexuality, and domination. These can be easily construed as salacious and tantalizing. While anti-rape activists draw sharp lines between sexual assault and sexual pleasure, popular accounts often still weave together the narratives of danger and pleasure (Small 2012). In this dissertation, I strive to neither sanitize nor sensationalize the many stories of sexual violence that are forthcoming. Moreover, many of the individuals involved in my dataset are still alive and may still be profoundly affected by these (alleged) crimes. I try to remember this living

and breathing and striving quality of the dataset, even in the moments of greatest analytical rigor. I also recognize that the attorneys' voices are directly represented, while the complainants and defendants emerge only second-hand at best, which is ironic given that they are essential actors in the process. Although this dynamic is a result of the broader theoretical questions that informed the research design, it is still important to note it.

Rape language is politicized. The terms, phrases, and connotations used to describe sexual assault are contentious because the stakes are high. Sexual violence has come to symbolize the significance of longstanding gendered inequalities, especially in countries that have a strong anti-rape movement. The types of words used indicate from which perspective a person comes. For instance, a person who has experienced sexual assault may be called a "victim," "survivor," or "complainant." Each of these terms carries different connotations. "Victim" suggests someone who has suffered a wrong, whereas "survivor" suggests someone who has experienced a wrong but has moved beyond it into a new stage. "Complainant," in contrast, carries a more legal connotation; it is literally the individual who files a criminal complaint. During my first couple of interviews with defense attorneys, they were always quick to correct me if I accidentally used "victim" rather than complainant, as from their perspective, the victim only exists if there is a criminal conviction. Similarly, feminist activists, on the whole, may be more reluctant to use the term "defendant," preferring perpetrator, which implies the prior existence of the crime. Here, we have the contrast of activist and legal communities. During the course of data collection, I used whichever terms I anticipated the respondent would use, and I mirrored their language once they began talking.

As a feminist sociologist, I bring a sense of reflexivity to the data collection and analysis processes. My identity shapes how I analyze the data and how the data emerges as such in the

first place. Due to the structure of the research design, there are two distinct categories against which my identity interacts. First, I interacted directly with the attorney respondents. My gender, age, and class status had a significant impact in the interviews. As a comparatively younger woman who presented in a professional manner, I occupied an insider-outsider space. Almost uniformly, the attorneys accepted me as a colleague, spoke candidly about their work practices, and shared relevant documents as available. Moreover, our differences seem to have enabled them to be even more candid with me. This is probably partly due to the fact that attorneys are trained to be confident and authoritative, so questions from an academic outsider are not taken as particularly threatening. Regardless, my presentation as a gender-normative young woman put them at ease. It is likely that the interview interaction would have proceeded differently (although not necessarily badly) had a man, person of color, age peer, or professional insider conducted the interviews. Second, I interacted indirectly with the men whose lives made up these criminal cases. I read about them in interview transcripts, media reports, police reports, trial transcripts, judicial briefs, and appellate decisions. I learned a lot about this noteworthy moment in their lives, but of course their voices are only represented in a mediated fashion. It is certainly possible that some of them may not recognize their selves in my analysis. My hope is to due justice to their stories, even the defendants, while also placing each individual case in dialogue with the broader pattern of the legal construction of male rape, which has heretofore remained invisible. Although these two groups – the attorneys and the men involved in the criminal cases – are distinct, what they do have in common is that they are comprised overwhelmingly of men. This creates a unique gendered dynamic between them and me. Historically, privileged groups have studied marginalized groups and othered them in the process. For so long, men studied women without fully appreciating the dynamic contexts of their lives and bodies. Here, I am a

woman studying men, one elite group and one marginalized group, so I am studying both “up” and “down.”

In this dissertation, I extend the boundaries of normative victimhood by investigating the legal construction of adult male sexual victims. Examining how men are situated in the shadow of the law, I ask: How do legal actors construct sexual victimization on adult male bodies? Historically, men as a class have been understood as both the agents and benefactors of an unjust legal system. Feminist legal scholars document many empirical moments at which systemic and intersecting gendered inequalities emerge. Yet occasionally men experience sexual assault and then turn to the state to redress their criminal victimization. These rare cases reveal much about the legal construction of masculine vulnerability, and they illuminate the interactive process by which legal structures are implemented at the local level. One of the perennial questions of socio-legal scholarship is how legal structures and local implementation interact. Legal and policy reforms often have unintended consequences that can be quite variable across jurisdiction. Findings reveal that variations in the articulation of gender in the states’ sexual assault statutes significantly affects how prosecutors and defense attorneys make their cases. Embedded in the statutes are subtle social expectations about men’s sexual desires, vulnerabilities, and capacity to move through the public sphere.

Chapter Organization

After two descriptive chapters, which provide relevant background information, analytical findings are presented chronologically in terms of the criminal justice process. In Chapter 2, I draw attention to the different ways that sexual assault has been conceptualized at different pivotal points in history. I develop a concept that I call the “sexual violence paradigm” to show the key contours by which rape is understood currently. The key features of the sexual

violence paradigm are that rape is gendered in a dichotomous and hierarchical way. This formulation renders it difficult to understand men as sexual victims, yet, at the same time, legal reforms have opened the door to do just that. So in essence, this chapter will be exploring the conceptual puzzle and historical lineage that is male rape. In Chapter 3, I provide information about the organizational contexts in which male rape allegations are processed. I include detailed descriptions of the three state's legal regimes as well as information about the professional workplace norms that contour criminal justice processing. In Chapter 4, I examine how sexual assault cases involving adult male complainants are investigated by police officers and prosecutors. This is an important point in the criminal justice process because, depending on how these early responders react to the allegation, the evidence collected at this stage shapes the strength of the case with which prosecutors have to work at later stages in the process. Moreover, this point in the criminal justice process reveals how law enforcement actors approach an unfamiliar type of crime. Counterintuitively, findings indicate that male sexual victims are actually perceived as especially egregious during the investigation process. As the legal actors collect evidence about the allegations, they tend to perceive of these cases as terribly problematic and actually more severe and urgent than cases involving female complainants. I argue that these perceptions of severity are a result of an interaction between sexual risk and harm as understood in relation to masculinity. In Chapter 5, I examine what is arguably the most important point in the criminal justice process: charging decisions and plea bargain negotiations. Here, the allegations are defined as valid (or not) and criminally constructed as either a misdemeanor or a felony. This point in the criminal justice path is wholly determinative of what will the case outcome will be. If prosecutors are on the cusp of making a criminal charge, then they believe that a crime has occurred and that the case has a reasonable chance of success (prosecutors

define this differently, but they each have relatively consistent thresholds for charging a case). However, they still must determine *how* to charge the case; in any given case, there are often many permutations for how it might be charged. This is where prosecutorial decision-making discretion emerges as important. In Chapter 6, I examine how sexual injury is constructed on the male body at trial. A small proportion of all criminal charges go to trial, but the few that do go to trial before a judge or jury are important because this is the first time that the nature of the crime is being articulated in the public sphere. I explore how prosecutors construct credible masculine vulnerability – and, conversely, how defense attorneys attempt to challenge these claims. Cases involving two men undo the element of sexual difference and, in turn, highlight how rape trials are gendered. In other words, because the element of sexual difference falls away in cases involving both a male complainant and a male defendant, the gendered dynamics between these two actors comes to the fore. In turn, this illuminates how masculinity is “done” as an interactional process in the legal field. In Chapter 7, I conclude with recommendations on how to improve the recognition and legal processing of adult male sexual victimization.

Significance

Law structures social life in both profound and ordinary ways. My research investigates how the law reflects, refracts, and reconfigures gendered social identities through the case of sexual violence. This is an ideal case because instances of sexual violence are intensely private articulations of dominance even as they evolve into spectacular public manifestations of power when they enter the criminal justice system. Laws on the books, institutional actors, cultural norms, and victim narratives each shape how an allegation of sexual violence is evaluated. By tracing the myriad ways that gendered power is crystallized in law – sometimes quite unexpectedly – my research reveals how plausible and sympathetic victimhood is constructed in

the legal field. In turn, the category of plausible and sympathetic victimhood opens an analytical window to understand the contours of gendered citizenship in the post-industrial US. Diverse literatures inform my research questions, including sociology of law, criminology, feminist legal theory, and masculinity studies.

Adult male sexual victimization emerges as a particularly egregious crime in the criminal justice investigation because of the unique interaction between the acceptable risks that male bodies can take and the heightened harm that is the result of the initiation into homosexuality. And this is precisely what Dave Chappelle is getting at in his comic bit on male rape. Interestingly, I first watched the Chappelle clip during an interview. One of the respondents asked if I had seen it at the beginning of our interview, and, as I had not, we watched it after our discussion. Watching that clip in the interview moment was fascinating and revealed interesting things about how the respondent thought about the issue. During our discussion and over email, he was emphatic that he did not treat male sexual victims any differently than female ones. However, his hearty laughter while watching the clip on Youtube indicated that there is actually something a bit different about male victims. Or at least a unique dynamic. Although revealing, the process of watching the clip with a respondent was also a little awkward because the humor shattered the professional decorum that we had maintained during the interview. He was one of the younger prosecutors, so he was close in age to me, which meant that we probably shared more cultural references than I did with most of the respondents. So watching the Chappelle clip shifted our social interaction from one of a research interview to one of two young professionals laughing at a comedian. The process of laughing together meant that we both understood the humor in Chappelle's observations. We both got it. The humor also serves as a masquerade for the deeply unsettling nature of these crimes. Literary scholars argue that the line between

comedy and tragedy is fine. In sum, the investigation of adult male sexual victimization is about the contestation and competing definitions of manhood and gendered movement and desire through the public and private spheres. These cases represent moments in which expectations about appropriate behavior and outcomes for men are brought into jeopardy.

Examining the legal construction of male sexual victimization is important because this process will illuminate how the legal field reflects and reproduces masculinity more broadly. The relationship between law and gender has been explored from a variety of angles, but this body of scholarship largely focuses on women and assumes masculinity to be a source of domination. Situating male subjects in the role of sexual victim disrupts the common narrative of masculine domination and feminine vulnerability. Close examination of this phenomenon will reveal how the law is enacted to construct masculinity in subtle ways. Legal actors use top-down and bottom-up approaches to make sense of these new victims. They look to criminal statutes and case precedent as well as cultural narratives about what constitutes appropriate gender behaviors and presentations. In addition, the focus on sexual violence will illuminate how masculinity is embodied because sexual violence deals with the raw material of the body.

Bibliography

Abdullah-Khan, Noreen. 2008. *Male Rape: The Emergence of a Social and Legal Issue*. New York: Palgrave Macmillan.

Alcoff, Linda. 1988. "Cultural Feminism Versus Post-Structuralism: The Identity Crisis in Feminist Theory." *Signs* 13 (3): 405–36.

Archer, Louise. 2001. "'Muslim Brothers, Black Lads, Traditional Asians': British Muslim Young Men's Constructions of Race, Religion and Masculinity." *Feminism & Psychology* 11 (1): 79–105.

Bartlett, Katherine. 1991. *Feminist Legal Theory: Readings In Law And Gender*. Edited by Rosanne Kennedy. Boulder: Westview Press.

Bevacqua, Maria. 2000. *Rape On The Public Agenda: Feminism and the Politics of Sexual Assault*. Boston: Northeastern.

Bordo, Susan. 2000. *The Male Body: A New Look at Men in Public and in Private*. 1st edition. New York: Farrar, Straus and Giroux.

———. 1987. "Feminism, Postmodernism, and Gender Skepticism." In *Feminism/Postmodernism*, edited by L.J. Nicholson, 133–56. Routledge.

Boyd, Susan B., ed. 1997. *Challenging the Public/Private Divide: Feminism, Law, and Public Policy*. 2nd Revised edition. Toronto; Buffalo: University of Toronto Press, Scholarly Publishing Division.

Brownmiller, Susan. 1993. *Against Our Will: Men, Women, and Rape*. Reprinted edition. New York: Ballantine Books.

Bumiller, Kristin. 2008. *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement against Sexual Violence*. Durham: Duke University Press Books.

Butler, Judith. 2011. *Bodies That Matter: On the Discursive Limits of Sex*. 1 edition. Abingdon, Oxon ; New York, NY: Routledge.

Cahill, Ann J. 2001. *Rethinking Rape*. 1 edition. Ithaca: Cornell University Press.

Campbell, Hugh. 2000. "The Glass Phallus: Pub(lic) Masculinity and Drinking in Rural New Zealand." *Rural Sociology* 65 (4): 562–81.

Campbell, Rebecca, Adrienne E. Adams, Sharon M. Wasco, Courtney E. Ahrens, and Tracy Sefl. 2009. "Training Interviewers for Research on Sexual Violence A Qualitative Study of Rape

Survivors' Recommendations for Interview Practice." *Violence Against Women* 15 (5): 595–617.

Chen, Anthony S. 1999. "Lives at the Center of the Periphery, Lives at the Periphery of the Center: Chinese American Masculinities and Bargaining with Hegemony." *Gender & Society* 13 (5): 584–607.

Collier, Richard. 2010. "Masculinities, Law, and Personal Life: Towards a New Framework for Understanding Men, Law, and Gender." *Harvard Journal of Law and Gender* 33 (2): 431–75.

Collins, Patricia Hill. 1999. *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*. Revised, 10th Anniv., 2nd edition. New York: Routledge.

Conaghan, Joanne. 2009. *Feminist Legal Studies*. 1 edition. Milton Park, Abingdon ; New York: Routledge.

Connell, R.W. 1987. *Gender and Power: Society, the Person, and Sexual Politics*. 1 edition. Stanford, Calif: Stanford University Press.

Connell, R.W., and James W. Messerschmidt. 2005. "Hegemonic Masculinity Rethinking the Concept." *Gender & Society* 19 (6): 829–59.

Connell, R.W. 1995. *Masculinities: How Masculinities Are Made and How They Differ*. Allen & Unwin.

Crenshaw, Kimberle W. 1991. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory, and Anti-Racist Politics." In *Feminist Legal Theory: Readings in Law and Gender*, edited by Katharine T. Bartlett and Rosanne Kennedy, 57–80. Boulder, CO: Westview Press.

Donovan, Brian. 1998. "Political Consequences of Private Authority: Promise Keepers and the Transformation of Hegemonic Masculinity." *Theory and Society* 27 (6): 817–43.

Dunn, Jennifer L. 2001. "Innocence Lost: Accomplishing Victimization in Intimate Stalking Cases." *Symbolic Interaction* 24 (3): 285–313.

D'Emilio, John, and Estelle B. Freedman. 2012. *Intimate Matters: A History of Sexuality in America, Third Edition*. 3 edition. Chicago ; London: University Of Chicago Press.

Estrich, Susan. 1988. *Real Rape*. Reprint edition. Cambridge, Mass.: Harvard University Press.

Frank, Jerome. 1973. *Courts on Trial*. Princeton, N. J.: Princeton University Press.

Freedman, Estelle B. 2013. *Redefining Rape: Sexual Violence in the Era of Suffering and Segregation*. Cambridge, MA: Harvard University Press.

- Frohmann, Lisa. 1991. "Discrediting Victims' Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections." *Social Problems* 38 (2): 213–26.
- . 1997. "Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decisionmaking." *Law & Society Review* 31 (3): 531–56.
- Gardner, Carol Brooks. 1995. *Passing By: Gender and Public Harassment*. Later Printing edition. Berkeley: University of California Press.
- Graham, Ruth. 2006. "Male Rape and the Careful Construction of the Male Victim." *Social & Legal Studies* 15 (2): 187–208.
- Hesford, Wendy S. and Wendy Kozol (eds.). 2005. *Just Advocacy? Women's Human Rights, Transnational Feminism, and the Politics of Representation*. New Brunswick, NJ: Rutgers University Press.
- Hoff, Joan. 1994. *Law, Gender, and Injustice: A Legal History of U.S. Women*. New York: New York University Press.
- Holmes, Jr., Oliver Wendell, and G. Edward White. 2009. *The Common Law*. Reprint edition. Cambridge, Mass: Belknap Press.
- Hooper, Charlotte. 2000. *Manly States*. New York: Columbia University Press.
- Keck, Thomas M. 2009. "Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights." *Law & Society Review* 43 (1): 151–86.
- Kerstetter, Wayne A., and Barrik Van Winkle. 1990. "Who Decides? A Study of the Complainant's Decision to Prosecute in Rape Cases." *Criminal Justice and Behavior* 17 (3): 268–83.
- King, Deborah K. 1988. "Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology." *Signs* 14 (1): 42–72.
- Kitch, Sally L. 2009. *The Specter of Sex: Gendered Foundations of Racial Formation in the United States*. Albany: State University of New York Press.
- Konradi, Amanda. 1997. "Too Little, Too Late: Prosecutors' Pre-Court Preparation of Rape Survivors." *Law & Social Inquiry* 22 (1): 1–54.
- . 2007. *Taking the Stand: Rape Survivors and the Prosecution of Rapists*. Westport, Conn: Praeger.
- Light, Richard, and David Kirk. 2000. "High School Rugby, the Body and the Reproduction of

Hegemonic Masculinity.” *Sport, Education and Society* 5 (2): 163.

MacKinnon, Catharine A. 1988. *Feminism Unmodified: Discourses on Life and Law*. Cambridge, Mass.: Harvard University Press.

———. 1991. *Toward a Feminist Theory of the State*. Reprint edition. Cambridge, Mass.: Harvard University Press.

Matoesian, Gregory M. 1993. *Reproducing Rape: Domination through Talk in the Courtroom*. Chicago: University of Chicago Press.

Matthews, Nancy A. 1994. *Confronting Rape: The Feminist Anti-Rape Movement and the State*. London ; New York: Routledge.

McCann, Michael W. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. 1 edition. Chicago: University Of Chicago Press.

McMahon-Howard, Jennifer, Jody Clay-Warner, and Linda Renzulli. 2009. “Criminalizing Spousal Rape: The Diffusion of Legal Reforms.” *Sociological Perspectives* 52 (4): 505–31.

Mezey, Gillian, and Michael King. 1989. “The Effects of Sexual Assault on Men: A Survey of 22 Victims.” *Psychological Medicine* 19: 205–9.

Mitchell, Damon, Richard Hirschman, and Gordon C. Nagayama Hall. 1999. “Attributions of Victim Responsibility, Pleasure, and Trauma in Male Rape.” *The Journal of Sex Research* 36 (4): 369–73.

Myers, Michael F. 1989. “Men Sexually Assaulted as Adults and Sexually Abused as Boys.” *Archives of Sexual Behavior* 18 (3): 203–15.

Ortner, Sherry. 1974. “Is Female to Male as Nature Is to Culture?” In *Women, Culture, and Society*, edited by M. Rosaldo and L. Lamphere, 67–87. Stanford, CA: Stanford University Press.

Pascoe, C. J. 2011. *Dude, You’re a Fag: Masculinity and Sexuality in High School*. Second Edition, With a New Preface edition. Berkeley, Calif.: University of California Press.

Pateman, Carole. 1988. *The Sexual Contract*. 1 edition. Stanford, Calif: Stanford University Press.

Rand, Michael R. 2009. *Criminal Victimization, 2008*. U.S. Department of Justice. <http://www.bjs.gov/content/pub/pdf/cv08.pdf>.

Rubin, Gayle. 1975. “The Traffic in Women: Notes on the ‘Political Economy’ of Sex.” In *Toward an Anthropology of Women*, edited by R.R. Reiter, 157–210. New York: Monthly

Review Press.

Saguy, Abigail C., and Forrest Stuart. 2008. "Culture and Law: Beyond a Paradigm of Cause and Effect." *The ANNALS of the American Academy of Political and Social Science* 619 (1): 149–64.

Scales, Ann. 2006. *Legal Feminism: Activism, Lawyering, and Legal Theory*. New York: New York University Press.

Scarce, Michael. 2001. *Male On Male Rape: The Hidden Toll Of Stigma And Shame*. 1 edition. Cambridge, Mass.: Basic Books.

Schneider, Professor Elizabeth M., and Elizabeth Schneider. 2002. *Battered Women and Feminist Lawmaking*. New Haven: Yale University Press.

Scott, Joan W. 1993. "The Evidence of Experience." In *The Lesbian and Gay Studies Reader*, edited by H. Abelove, M. Barale, and D. Halperin, 397–415. New York: Routledge.

Small, Jamie L. 2012. "Trafficking in Truth: Media, Sexuality, and Human Rights Evidence." *Feminist Studies* 38 (2): 415-443.

Spohn, Cassia, and Julie Horney. 1992. *Rape Law Reform: A Grassroots Revolution and Its Impact*. 1992 edition. New York: Springer.

Tamanaha, Brian Z. 2009. *Beyond the Formalist-Realist Divide: The Role of Politics in Judging*. Princeton, N.J: Princeton University Press.

Taslitz, Andrew. 1999. *Rape and the Culture of the Courtroom*. New York: NYU Press.

Verchick, Robert, Nancy Levit, and Martha Minow. 2006. *Feminist Legal Theory: A Primer*. New York: New York University Press.

Walker, Jayne, John Archer, and Michelle Davies. 2005. "Effects of Rape on Men: A Descriptive Analysis." *Archives of Sexual Behavior* 34 (1): 69–80.

Weinrib, Ernest J. 1993. "The Jurisprudence of Legal Formalism." *Harvard Journal of Law & Public Policy* 16: 583.

Williams, Patricia J. 1992. *Alchemy of Race and Rights: Diary of a Law Professor*. Cambridge, Mass.: Harvard University Press.

Yeung, King-To, Mindy Stompler, and Reneé Wharton. 2006. "Making Men in Gay Fraternities Resisting and Reproducing Multiple Dimensions of Hegemonic Masculinity." *Gender & Society* 20 (1): 5–31.

Chapter 2: The Sexual Violence Paradigm

“Then be this all the task it hath to say
Dear husband, in the interest of thy bed
A stranger came, and on that pillow lay
Where thou was wont to rest thy weary head;
And what wrong else may be imagined
By foul enforcement might be done to me,
From that, alas, thy Lucrece is not free.”

— William Shakespeare, *The Rape of Lucrece*, 1594

“Rape is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear.”

— Susan Brownmiller, *Against Our Will: Men, Women, and Rape*, 1975

Rape figures prominently in the social imaginary. It is a symbol of aggression, invasion, domination, and ruin. Although sexual aggression is a common component of all social groupings, the forms, cultural meanings, and frequency that it takes can vary significantly across time and space. As the work of anthropologists and historians remind us, the boundaries between appropriate, inappropriate, and deviant sexual behavior are highly variable (Rubin 1984; D’Emilio & Freedman 1988). For instance, in societies like ancient Rome or in Papua New Guinea, it was common for boys and young men to engage in sexual intercourse with men; these interactions were even perceived as an important developmental milestones (Herdt 2005). In contrast, the exact same behavior in the United States today is widely considered not only inappropriate but criminal as well (Lancaster 2011). In this chapter, I examine the “sexual violence paradigm”: This is the dominant way of understanding the social problem of sexual assault in the United States, which is influenced greatly by radical second wave feminist models

of gender and travels transnationally. I argue that the sexual violence paradigm ultimately constrains critical analysis of the issue because it is undergirded by a dichotomous and hierarchical framework of gender.

Violence Against Women: Sweeping Reforms for Gender Justice

The feminist social movement emerged at a unique historical moment in the United States. After World War II, there was both economic prosperity as well as widespread reflection on social inequalities in relation to race, class, ethnicity, and religion. These conditions culminated politically in the Civil Rights Act of 1964. Much of the initial political activism focused on racial inequalities. However, by the late 1960s and early 1970s, recognition of women's subordination also materialized as a significant issue on the public agenda. In this era, social mobilization in regards to social identity flourished at both the structural and grassroots levels. Institutional reforms that were generated by progressive policy shifts and prominent court cases left an enduring legacy even after public opinion shifted back toward a more conservative tone in the 1980s. This historical moment of widespread social change profoundly transformed how rape was understood and addressed in the United States. In this section, I describe how second wave feminists conceptualize rape; the reforms for which they advocated; and finally the long-term impacts and limitations of those reforms.

Identifying the causes and consequences of men's domination over women was one of the perennial questions of second wave feminism. Scholars from fields as varied as history, anthropology, literature, and biology examined why and how men seemed to consistently dominate women across different times and places. The second wave feminist social movement was largely comprised of three unique segments – radical, liberal, and cultural – each of which conceptualized gender differently and consequently focused on distinct substantive issues. In

fact, as in many social movements, there was tension between these groups precisely because they formulated different understandings of women and gender, and they had different external alliances that shaped their own internal agendas. Violence against women emerged as the primary explanatory mechanism for radical feminists, and the reforms for which they advocated have arguably been the most successful and enduring of all the second wave feminist projects.

Violence against women was a key mobilizing issue for radical feminists, and they arguably achieved the most widespread and enduring reforms of the second wave feminist movement with this issue (Bevacqua 2000). The rubric of “violence against women” was divided into three substantive areas of domestic violence, pornography, and rape. They theorized rape as the fundamental mechanism through which men dominated women (Brownmiller 1975), and they understood gender as dichotomous and hierarchical. Even if an individual woman did not experience rape, they argued, her life was always shaped by the mere threat of violence, which was made public through behaviors like cat-calling and the objectification of women’s bodies (Gardner 1995; Cahill 2000).

Although the efficacy of rape law reforms remains incomplete, as is so often the case with legal reforms and their unintended consequences, the reforms have nonetheless created an institutional culture and responsiveness to sexual assault that is improved significantly from how things used to be. Anti-rape reformers crafted a new plane of possibility for addressing sexual assault in the United States. The state-by-state legislative reforms eventually culminated in the passage of significant federal legislation, the Violence Against Women Act of 1994. Indeed, over time their work profoundly shifted public understandings of the issue and elevated it to a prominent social problem. As we will see next, these reforms set the stage for even broader conceptualizations of rape in the subsequent decades.

Human rights and public health emerged as the dominant lenses through which to understand sexual violence in the new millennium. Although they overlap to a certain extent, these two frames are largely deployed in different ways. First, the human rights frame of sexual violence draws on earlier feminist mobilization, which was legalistic, but it is deployed on an international scale, rather than the national scale of rape law reforms. Importantly, this means that the significance of national boundaries falls away when advocating for victims of sexual violence. There are enforceable mechanisms for addressing sexual violence outside of one's own country, which is noteworthy because it means that victims who live in countries without strong legal protections still have some mechanisms of justice-based redress, at least in theory. Second, the public health frame operates outside of governance institutions and is operated by health professionals like the World Health Organization. While the human rights frame draws on earlier methods of mobilization, the public health frame is largely a new angle for addressing sexual violence. This frame views sex- and gender-based violence as a significant global health crisis which effects women's economic productivity as well as the well-being of themselves and their families. It is somewhat less politicized than the origins of the legalistic frame of sexual violence, but nonetheless it works to bring the issue to the attention of a broader audience and further establish it as a significant social problem. Although they are largely implemented in mutually exclusive processes, the human rights and public health frames respectively enable transnational recognition and mobilization of efforts to eliminate sexual violence. They do this by providing institutional pathways for preventing, studying, and addressing sexual violence.

The substantive categories of sexual violence expanded with the emergence of this transnational structural shift in dealing with the issue. Historically, rape was the simple word used to identify the issue, and little thought was given to articulating the myriad behaviors that

this word was intended to describe. Then, rape law reforms engendered more specific distinctions, albeit variable by jurisdiction, that more accurately reflected the range of violent and sexualized behaviors within the legal code. These legalistic distinctions gave rise to public recognition of meaningful distinctions as well. Sexual violence emerged as an umbrella category under which specific issues were housed. The sub-issues include sexual trafficking, sexual harassment, military/wartime rape, youth prostitution, domestic violence, date rape, sexual assault, gender-based violence, sexual assault on campus, child sex abuse, sex tourism, and so on. Each of these sub-issues is understood to have unique empirical patterns that affect specific populations. Moreover, these issues fall in concentric circles in terms of those that are more mainstream versus those which are more marginalized. For instance, child sex abuse, which involves highly credible victims who are perceived to be innocent, is currently (although not necessarily historically) understood as an important social problem, whereas sexual violence in sex worker populations is highly marginalized, as sex workers are not considered legitimate victims. Although this hierarchical ranking of types of sexual violence obviously creates inequitable outcomes of sexual justice, it nonetheless reveals how activists have mobilized around different sub-issues both within and across national boundaries.

There is now a significant flow of resources devoted toward addressing sexual violence. Many of these resources originate under the rubric of international development and flow from the Global North to the Global South. Although there are also significant resources earmarked for sexual violence issues in the US through the federal Violence Against Women Act (VAWA). The transnational resources, much like the domestic US ones, fund a variety of programs, including educational workshops, prosecutorial enhancements, rape crisis centers, therapeutic

services, and research opportunities. These financial resources, in turn, create an infrastructure of institutions, networks, and rhetoric that collectively makes meaning about sexual violence.

As so often happens with institutionalized social movements, there have been important critiques of how sexual violence has been addressed on the transnational level. First, scholars like Sally Engle Merry the local implementation of global policies designed to address gender- and sex-based violence are highly variable according to community dynamics (2009). This means that rhetorical frameworks designed by organizations like the Convention Elimination All Forms of Discrimination Against Women (CEDAW) cannot produce one-size-fits all models for addressing sexual violence. Despite best efforts at addressing diversity and local contexts, proposed policies may be ill-fitting at local levels. Second, transnational feminists argue persuasively that many efforts to address sexual violence in the Global South simply reproduce neo-colonialist power dynamics, effectively subordinating marginalized women on the global stage. Feminist critic Gayatri Spivak famously characterized this model of Western feminism as “white men saving brown women from brown men” (1988). The core of this critique is that powerful, external agents are enforcing rules on communities that are already subordinated on the global geo-political stage. In turn, the focus on sexual violence distracts from other pressing forms of inequality. Third, primarily in response to critiques like that of Spivak, grassroots feminist activists, like those at INCITE, have started to craft anti-violence policies that emerge from within communities and address other intersecting forms of violence, like racism, economic disparities, and militarism (INCITE! 2006). In short, though, there remains great tension between well-resourced and professionalized forms of advocacy and those that are more grassroots and lacking in financial resources.

Rape Law Reforms and Criminal Justice Processing

Rape law reforms swept across the United States beginning in the mid-1970s (Spohn and Horney 1992; Matthews 1994). They were arguably the most successful component of the feminist social movement (Bevacqua 2000). The logics of anti-rape activism drew from both radical and liberal feminist frameworks. Like the former, anti-rape activists formulated gender as dichotomous and hierarchical, and like the latter, they turned to the law as the optimal site for social reform. Writers like Catharine MacKinnon and Andrea Dworkin have received much public recognition for leading this social movement. However, most of the state-level legislative and local-level institutional reforms were mobilized by grassroots activists, who received little historical acknowledgement and who fought hard battles against entrenched sexism. These grassroots activists eventually received significant financial support, which enabled the creation of institutionalized activist networks, with the federal passage of the Violence Against Women Act in 1994.

Michigan was the first state to reform its rape laws in 1974.² The Michigan criminal code organizes sexual assault violations under one category called “criminal sexual conduct” (CSC). CSC is gradated into four degrees, the first three of which are felonies and the fourth of which is a misdemeanor. The degrees are distinguished between the type of behavior that occurred and the relationship between the perpetrator and the victim. For instance, unwanted sexual touching is differentiated from unwanted sexual penetration, and perpetrators who hold formal power over their victims – as teachers, law enforcement officers, adults, and so on – face stricter sanctions.

² All states reformed their rape laws to some degree between the 1970s and 1990s. Each state’s legislative reform was piecemeal and influenced by local politics. Many states followed Michigan’s lead and enacted comprehensive reforms that were gradated, reflected the empirical realities of sexual violence, and accounted for the traumatic experience of the victim. For instance, New York, where Dominique Strauss-Kahn was indicted has similar sexual assault laws as Michigan. Other states enacted more modest reforms, tweaking procedural and evidentiary standards, while leaving the original code’s structure in tact.

Punishment for a CSC conviction ranges from a monetary fine of not more than \$500 to life imprisonment. In addition to statutory reforms, Michigan reformed its procedural and evidentiary standards for the prosecution of CSC cases. Michigan's legal regime profoundly affects how its prosecutors and defense attorneys think about sexual victimization. It has a robust set of laws that address sex crimes, and there are a multitude of professional training opportunities for prosecutors. Moreover, nearly two generations of lawyers have come of age since the original rape law reforms in 1974. So the case law is well established, and most lawyers practicing today have no point of reference for how things used to be. These conditions have created a statewide legal culture that prioritizes the social problem of sexual violence and recognizes the individual dynamics of sexual victimization.

Sexual assault allegations initiate responses from a variety of institutional actors including rape crisis counselors, medical personnel, police investigators, and prosecutors (Martin 2005; Spohn and Tellis 2012). In addition to the victim's needs, the pretrial responses of these actors are shaped by organizational work structures and cultural stereotypes. District attorney offices are often underfunded, and their staff may not be trained to work with rape survivors. So prosecutors have limited resources of time and money that they must distribute amongst multiple allegations (Kerstetter and Van Winkle 1990). In addition, prosecutors are elected public officials, so they have incentives to win cases. Both of these structural factors compel prosecutors to pursue cases that they predict will have the greatest likelihood of success at trial. They either drop remaining charges, or negotiate plea bargains. Frohmann shows how these structural constraints push prosecutors to draw on cultural stereotypes when assessing the validity of a survivor's claims (1991; 1997). She found that prosecutors predict the jury's reception to a rape allegation – how it will fare “downstream” – based on the victim's age, class,

feminine behavior, and geographic location. For charges that they do pursue, prosecutors may not have the time, training, or emotional stamina to adequately prepare survivor-witnesses for the challenges of repeating her story at pretrial hearings (Konradi 1997). Finally, Dunn reveals how the survivor's behavior during the investigatory period affects prosecutors' decisions (2001). In cases of intimate stalking, victims who are too assertive or aggressive – i.e., not performing in an appropriately feminine manner – are deemed less credible. On the other hand, cooperation of the victim is an important component of a successful case (Spohn et al. 2001), so survivors are left walking a fine line between performing appropriate victimhood and asserting their legal violation. Each of these social factors affects the pretrial legal processing of sexual violence cases.

The lens through which prosecutors and defense attorneys make sense of sexual violence builds on feminist legal theory. They understand sexual violence to be an assault rather than an act of passion; they believe that it occurs more frequently than is generally acknowledged; and they recognize the harm of sexual violence. As one Michigan prosecutor states bluntly, “It messes people up.” Most respondents had difficulty articulating the harm of sexual violence in a nuanced manner, but they recognized that the psychological harm was often more severe and enduring than the physical harm. Here, a Michigan defense attorney hints at the existential threat posed by an act of sexual violence: “Victims would tell me [via victim impact statements] about how they were afraid to be at home alone, and they are always looking over their shoulders. So they never feel completely safe again. You sort of rob the person—practically for life—of the ability to feel free.” The attorneys developed this lens on sexual violence through their professional, rather than personal, experience. Most respondents did not identify as either a survivor or potential victim. In addition, prosecutors tend to be more distressed about sexual

violence because they are the ones who articulate the crime on behalf of the state. Nonetheless, this feminist-inspired lens emerges as the dominant framework within which the defense attorneys must work.

Their sophisticated views of sexual victimization affect how the prosecutors do their work. Prosecutors take steps to both minimize secondary victimization that survivors might experience and to educate jurors about sexual violence. First, many prosecutors work with rape crisis workers (including investigators, forensic interviewers, and sexual assault nurse examiners); these professional collaborations enable them to collect evidence in ways that are thought to lessen the survivor's distress. For instance, investigators may video-record interviews so the survivor does not have to repeat her story many times to different people, and nurses who conduct medical exams have training and resources that enable them to collect the corporeal evidence in a humane fashion.³ The extent of these professional collaborations between different types of rape workers varies by county, but nearly all the prosecutors reported some degree of collaboration. Second, prosecutors educate potential jurors during jury selection about common rape myths. For instance, they explain why a survivor might delay reporting her victimization to police, or they might explain why a survivor's behavior prior to the assault does not justify the crime. Many prosecutors develop a provocative strategy to challenge the rape myths in which jurors may believe. One common tactic was to have jurors imagine what it would be like to narrate their last sexual encounter in great detail to the entire courtroom. This exercise is intended to help jurors understand the behavior and emotional reaction of the survivor as they testify; survivors may act in unexpected ways because the situation is so awkward. These

³ The effects of these procedural reforms are contested. For instance, Rose Corrigan shows how the forensic exams can evolve into yet another traumatic obstacle that sexual assault survivors must endure when they report their victimization (2013).

prosecutorial strategies represent profound shifts in terms of how state actors understand the sexual assault victim's trauma.

Defense attorneys react to the dominant logics of sexual violence as laid out by the prosecutors. Within this field in which allegations of sexual violence are taken seriously, they are cautious about appearing too brutish in the courtroom. One Michigan defense attorney describes how perceptions of the complainant's vulnerability affect his cross-examination style: "In the courtroom, the defense attorneys have to be very careful. You could be perceived by a jury as being a bully. The way I approach that is to be very respectful, very patient, but still make the inquiries that need to be made." This approach is notably different from historical defense strategies in which the primary objective was to directly tarnish the complainant's credibility (Larcombe 2002). Rather than smearing the complainant's sexual reputation, defense attorneys are now more likely to reveal inconsistencies in her allegations by posing hard questions to other witnesses or by challenging the physical evidence.

Although there have been profound shifts in how American prosecutors and defense attorneys think about sexual violence, there remains much variation across individual-, office-, county-, and state-levels. First, individual attorneys are motivated by different factors, and this motivation affects how they approach their work. Some are galvanized by a strong sense of justice, especially for vulnerable populations, while others approach the work as more of a respectable job that requires excellent interpersonal and analytical skills. Second, office structure, particularly in prosecutor's offices, is important (Levine & Wright 2012; Miller & Caplinger 2012). Many prosecuting attorneys' offices process CSC cases vertically, which means that one prosecutor follows each case from beginning to end (Beichner and Spohn 2005). The logic in this model is that the prosecutor can develop a relationship with the complainant,

and over time he can cultivate the unique skill set that CSC prosecutions require. Third, the cultural, economic, and political dynamics at both county and state levels affect how sexual violence is prioritized and understood. For instance, Michigan's Wayne County, which includes Detroit, confronts many other social problems, not the least of which is a high rate of violent felonies and unsolved homicides, so the resources available for CSC prosecutions are fewer.⁴ On a broader scale, scholars like Michael A. Smyth and Kitty Calavita, respectively, demonstrate through the examination of outlier cases how cultural norms affect how the state addresses sexualized crimes (Smyth 2006; Calavita 2001). Despite these multi-level variations, the dominant legal framework is one that recognizes the alarming frequency of sexual violence and the trauma of victimization.

Despite the seeming success of rape law reforms, judicial processes are still structured in a way that disadvantages rape victims, both legally and psychologically. These sources of disadvantage arise from organizational structures that do not favor gendered witnesses. Matoesian and Taslitz both demonstrate how the linguistic structure of the courtroom marginalizes women-victims by restricting the ways that they can narrate their experiences of sexual assault (1993; 1999). Lawyers, especially defense attorneys, strategically design series of close-ended questions that hamper the witness's ability to tell her story in her own words and rhythm. Even when defense attorneys are cautious, as described above, about being perceived as a bully, the public articulation of sexual trauma can still be profoundly trying for survivors. Konradi argues that the fundamental method for trying rape crimes is at odds with a victim-

⁴ Although it should be recognized that Wayne County prosecutor, Kym Worthy, has demonstrated excellent leadership in generating the political and financial momentum to analyze the thousands of unprocessed rape kits that were shelved in a Detroit Police Department storage facility. The rape kits, which are used to collect forensic evidence from the body of a sexual assault complainant, were discovered in 2009, and some were 25 years old.

centered approach (Konradi 2007). Because rape is tried as a crime against the state – state actors do not serve as the victim’s advocate; she is merely a witness to the crime against her body – the judicial process can be alienating to victims. Konradi writes, “Rape causes serious damage to an individual’s personal and social identity and the legal transfer of the ‘injury of rape’ from a victimized individual to the state is fundamentally at odds with how humans socially experience such damage” (2007: 191). Spohn and Horney argue that cohesive courtroom workgroups result in increased plea bargains rather than criminal convictions (1992). Their research suggests that an adversarial courtroom is actually better for survivors because judges, prosecutors, and defense attorneys have structural incentives to work for the interests of the victim rather than the cohesion of the local courtroom workgroup. These empirical observations demonstrate the myriad ways that courtroom organizational structures and processes shape the processing of sexual violence, oftentimes to the detriment of rape survivors.

Men on the Agenda

Because of their gender, male sexual victims are a unique class of victims (Graham 2006). It is too simplistic to map the experiences of female sexual victims onto those of male victims, as MacKinnon and other feminists do (1991; Cahill 2000). Even as male sexual victimhood follows many of the patterns described by female victims – rape may leave men feeling untrusting, depressed, shameful, or guilty (Myers 1989; Scarce 1997; Walker *et al.* 2005) – male victims report additional sources of harm. After sexual assault, many men describe damaged masculinity and self-perceptions of gayness, especially if they identified as heterosexual prior to the assault (Mezey and King 1989). This is interesting because female victims do not report a corresponding loss of femininity or a questioning of their sexual identity. Cultural understandings of male rape parallel these experiential data. In two different studies of

college students, respondents believed that male victims of female perpetrators were likely to enjoy the assault, and another group attributed more blame and responsibility to homosexual victims (Smith *et al.* 1988; Mitchell *et al.* 1999). This evidence suggests that, at least in the case of male sexual victimhood, masculinity and sexual identity play important roles in the individual experience and cultural construction of sexual assault. Yet there remains little information about how this comes to be, the effects of these dynamics, or how legal actors engage with these perceptions.

The historical evolution of the legal and cultural meanings of rape create a set of conditions in which men can be seen as potential sexual victims. Prior to this discursive transformation, male sexual victims, although they certainly did exist, could not be recognized as such because men were perceived to be exclusively sexual aggressors rather than victims. There are several specific conditions that enable the possibility of seeing male bodies as sexual victims. First, there is now an adequate legal infrastructure in place. This shift operates on two levels. Many states now have sexual assault laws that are gender-neutral, so men are now formally protected across much of the United States. Moreover, the anti-rape and child sex abuse social movements have successfully built networks of social service agencies to address sexual violence, which means that there is significant social, cultural, and financial capital on the ground in communities to recognize all sorts of cases of sexual assault. The child sex abuse movement, in particular, opens the door for the recognition of male victims since boys are generally perceived to have similar risk levels as girls of being sexually victimized. Second, homosexuality is much less stigmatized now than it has been historically. Although there remains important debate about just how inclusive American society is regarding marginalized sexual identities, there is nonetheless now much more visibility as well as significant legal and

policy shifts that have occurred (Gross 2002; Walters 2003; Brewer 2007; Frank 2014). Because male rape is associated with homosexuality (although this association is certainly not inevitable), it follows that a decrease in gay stigma also opens the door for recognizing male victims because the stigma of victimization would be somewhat diminished. Third, the men's rights movement, which has gained significant traction in the last 25 years, crafts a rhetorical framework for imagining men as victims in general. The men's rights movement is largely a backlash against the gains of feminism, and it frames men as being the most marginalized group in post-industrial Western societies (Messner 1998). Of course, the rhetoric of victimization does not match empirical realities, but it does nonetheless give voice to a sense that many men have of being marginalized. Notably, the most active voices in this mobilization come from white men who, as a group, retain significant amounts of privilege. Regardless of the validity of the arguments put forth by men's rights activists, their framing of men as victims of capitalism and gender simultaneously opens a discursive possibility for imagining them as sexual victims as well. In sum, these are the three social conditions – institutionalized sexual assault laws and policies, decreased stigma of homosexuality, and the men's rights movement – that enable the potential recognition of adult male sexual victimization in the public sphere.

Despite the possibility of recognition of male rape, there remains to date little cohesive social mobilization around the issue, which is significantly different than the original anti-rape movement. For the most part, mobilization has occurred around separate types of cases, without rendering a cohesive broader agenda. For instance, the ongoing Catholic priest scandals, in which the church systematically covered up the actions of a number of priests who committed sexual assaults against many victims for many years, highlights male victimization, especially of boys and younger men, because they were often the targets. In addition, because many of these

cases were prosecuted long after the sexual assaults, it was grown men who testified about their sexual victimization, both at trial and in media outlets, many years after the fact. Thus, for the most part, it was men speaking about sexual injury on their own bodies. There are also been some public recognition of sexual assault in jails and prisons. Although this context is often taken as a cultural joke or a warning to boys or men on the brink of incarceration, in recent years, there have also been policy shifts around the issue. For instance, former President George W. Bush signed the Prison Rape Elimination Act (PREA) in 2003, which, similar to VAWA, earmarked federal funds for studying, preventing, and seeking justice in relation to sexual assault in spaces of incarceration. There has also been some global recognition of sexual violence against men used as a tactic of war (Sivakumaran 2007; Gettleman 2009).

The issue of adult male sexual victimization is now a plausible social problem, and indeed, there are some specific types of cases around which mobilization occurs. Moreover, there are discursive and institutional pathways to make sense of the problem. Despite these significant changes, however, there is not systematic mobilization around these victims, and the crime has not been normalized in the legal field. David Sudnow describes a “normal crime” as one around which criminal justice actors hold specific ideas and to which they react in predictable ways (1965). This process of normalization occurs within criminal justice institutions as they become more sophisticated and bureaucratized, ultimately making the potentially complicated work simpler because it offers limited options for how to assess and categorize any given set of allegations. Because male rape is not yet normalized within criminal justice institutions, prosecutors then approach each case as if in a silo. Broadly, they categorize male victims under the rubric of sexual assault, a type of crime that has certainly been normalized in the past couple of decades, but without explicitly recognizing the unique dynamics that emerge in a sexual

assault case involving a man, which is due to constructions of hegemonic masculinity, rather than any sort of innate characteristics of the crime. In sum, this creates a unique set of conditions in which there is the possibility of legal recognition of male rape, yet at the same time, the prosecutors and defense attorneys who encounter these cases still need to do much cultural work to make sense of them.

Conclusion

The gendered relationship between victim and perpetrator is more significant in male-male rape trials than it is in male-female rape trials (Graham 2006). In male-female rape trials, legal actors take for granted the gender difference between the victim and the perpetrator. Indeed, this gendered power differential is precisely what the legal crime or dispute hinges on: Did *he* rape *her*? In male-male rape trials, however, both the victim and perpetrator are men, and so legal actors must create perceptions of gendered difference and power in order to establish that a sexualized crime occurred (Graham 2006). For his case to be successful, the male victim must construct a normative gender identity in relation to the deviant or excessive gender identity of the perpetrator. The heterosexual matrix shapes this gendered dyad between the victim and perpetrator (Butler 1993). Because gender and sexuality are inextricably linked, sexual identity becomes a relevant factor – although this need not necessarily be the case – in adjudicating sexual harms between men because the element of gender difference is largely absent.

Even though legal statutes now provide for the possibility of male rape, the empirical existence of such victims runs counter to commonsense understandings of sexual violence. The sexual violence paradigm is undergirded by the strong assumption of male perpetrators and female victims. The most critical, if informal, debate at trial becomes the explanation of how a man could be sexually victimized. Before jurors even consider the legal evidence, they must first

believe in both the possibility and plausibility of adult male sexual victimization. Prosecutors attempt to teach jurors about the realities and dynamics of male rape during voir dire and their opening statements, whereas defense attorneys try to discredit the notion. One Georgia prosecutor reported that the likelihood of conviction on sexual assault or child molestation cases increases significantly if there is a “plus one.” Although corroborating evidence is no longer legally required, forensic evidence, an eyewitness, or a defendant with a known history of sexual predation are perceived to help tip a jury beyond a reasonable doubt. In addition to the standard “plus one,” cases involving an adult male sexual complainant also need a plausible explanation of how a man could be criminally victimized in such a manner. Findings indicate that masculine sexual vulnerability is rendered plausible through the vectors of age and disability status.

As I have shown in this chapter, meanings of sexual violence changed significantly over time. These transformations occurred in both the cultural, legal, and experiential realms. Throughout these evolutions, however, the dominant way of understanding sexual violence has been one in which men attack women. It is a gendered crime that organizes the actors involved by the social identity of gender. Moreover, gender is conceptualized as dichotomous and hierarchical. In short, the sexual violence paradigm is both an enduring and evolving cultural framework that reflects, refracts, and reproduces power dynamics at any given moment in history. Adult male sexual victims disrupt this normative model of the sexual violence paradigm. As we will see in the coming chapters, there are now legal and cultural pathways for recognizing male rape, but the uniquely gendered dynamics of the crime render it challenging for attorneys to process.

Bibliography

- Beichner, Dawn, and Cassia Spohn. 2005. "Prosecutorial Charging Decisions in Sexual Assault Cases: Examining the Impact of a Specialized Prosecution Unit." *Criminal Justice Policy Review* 16 (4): 461–98.
- Bevacqua, Maria. 2000. *Rape On The Public Agenda: Feminism and the Politics of Sexual Assault*. Boston: Northeastern Press.
- Brewer, Paul R. 2007. *Value War: Public Opinion and the Politics of Gay Rights*. Lanham: Rowman & Littlefield Publishers.
- Brownmiller, Susan. 1993. *Against Our Will: Men, Women, and Rape*. Reprinted edition. New York: Ballantine Books.
- Cahill, Ann J. 2001. *Rethinking Rape*. 1st edition. Ithaca: Cornell University Press.
- Calavita, Kitty. 2001. "Blue Jeans, Rape, and the De-Constitutive Power of Law." *Law & Society Review* 35: 89.
- Dunn, Jennifer L. 2001. "Innocence Lost: Accomplishing Victimization in Intimate Stalking Cases." *Symbolic Interaction* 24 (3): 285–313.
- D'Emilio, John and Estelle B. Freedman. 2012. *Intimate Matters: A History of Sexuality in America, Third Edition*. 3rd edition. Chicago: University Of Chicago Press.
- Frank, Walter. 2014. *Law and the Gay Rights Story: The Long Search for Equal Justice in a Divided Democracy*. New Brunswick, New Jersey: Rutgers University Press.
- Gardner, Carol Brooks. 1995. *Passing By: Gender and Public Harassment*. Berkeley: University of California Press.
- Gross, Larry. 2002. *Up From Invisibility: Lesbians, Gay Men, and the Media in America*. New York: Columbia University Press.
- Herdt, Gilbert. 2005. *The Sambia: Ritual, Sexuality, and Change in Papua New Guinea*. 2nd edition. Belmont, CA: Cengage Learning.
- Lancaster, Roger N. 2011. *Sex Panic and the Punitive State*. Berkeley: University of California Press.
- Martin, Patricia Yancey. 2005. *Rape Work: Victims, Gender, and Emotions in Organization and Community Context*. 1st edition. New York: Routledge Press.
- Messner, Michael A. 1998. "The Limits of 'The Male Sex Role' An Analysis of the Men's Liberation and Men's Rights Movements' Discourse." *Gender & Society* 12 (3):
- Rubin, Gayle S. 1984. "Thinking Sex: Notes for a Radical Theory of the Politics of Sex." In *Pleasure and Danger: Exploring Female Sexuality*, edited by Carole S. Vance, 267–319. New

York: Routledge Press.

Smyth, Michael A. 2006. "Queers and Provocateurs: Hegemony, Ideology, and the 'Homosexual Advance' Defense." *Law & Society Review* 40(4): 903–30.

Spivak, Gayatri Chakravorty. 1988. "Can the Subaltern Speak?" In *Marxism and the Interpretation of Culture*, edited by Cary Nelson and Lawrence Grossberg, 271–313. University of Illinois Press.

Spohn, Cassia, and Katharine Tellis. 2012. "The Criminal Justice System's Response to Sexual Violence." *Violence Against Women* 18 (2): 169–92.

Walters, Suzanna Danuta. 2003. *All the Rage: The Story of Gay Visibility in America*. Chicago: University of Chicago Press.

Chapter 3: Legal (Frame)Works

In the new millennium, there have been two significant changes in how the United States federal government recognizes adult male sexual victimization. These federal changes serve as a bellwether for subtle evolutions that are occurring at the state and local levels in terms of understanding adult male sexual victimization. First, in 2003, former President George W. Bush signed the Prison Rape Elimination Act. This bill, which remains in effect, provides federal resources to analyze why and how sexual assault occurs in spaces of incarceration. Although the bill does not specifically address male victims, they are disproportionately interpolated in the attending rhetoric precisely because jails and prisons are populated mostly by men. Second, in 2012, the Federal Bureau of Investigation (FBI) changed its definition of rape to include adult male victims by defining the crime as gender-neutral. Previously, the FBI defined rape as the “carnal knowledge of a woman,” which was the dominant legal language prior to rape law reforms that swept the country in the late 1970s and 1980s. Now, the FBI defines rape as “the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” This is not a legal change, but it affect how the FBI counts crime in its annual Uniform Crime Reports, which are influential aggregates of criminal patterns across the country. Changing the language of the aggregate data is significant because it better reflects state laws and empirical patterns of sexual violence.

The boundaries of a crime are determined by the characteristics of the legal field in which the allegations emerge. The legal field is always shifting and in-process; there is no such thing as

a static law. Nonetheless, it is important to examine the anchor points in legal structures, institutions, and processes to fully understand the contemporary contours of any given crime. Which people, behaviors, and fact patterns are included under the rubric of the crime? In turn, which ones are excluded? In this chapter, I analyze the current legal field that responds to allegations of adult male sexual victimization in the US. Much of the discussion examines the legal processing of criminal felonies and sexual assault more broadly because these are the prosecutorial categories under which male victims fall. Analysis proceeds in three parts: laws on the books, law in action, and legal labor. By taking each of objects of analysis in turn, I provide a comprehensive picture of the public space that meets male rape allegations.

Part 1: Laws on the Books

The laws on the books are an essential component of the legal process. In fact, they are what most people, including most legal analysts, think of in relation to the law. Statutes and case law provide the scaffolding around which legal action subsequently occurs. In this section, I examine the statutes and case law that are relevant to adult male sexual victimization.

Sexual Assault Statutes

Most sexual assault cases are processed using state laws by county-level prosecutors. Occasionally, they are processed in other jurisdictions. For instance, the federal government may intervene in sex trafficking cases that cross state borders, and the military and Native American tribes operate their own criminal courts. Nonetheless, the vast majority of sexual assault prosecutions in the US are prosecuted at the state level by county prosecutors. In this section, I describe the current state laws in the three states that address sexual violence. Each state has one primary law or sets of laws as well as some peripheral ones that can also be invoked when relevant.

Historically, male bodies were not protected from rape by the state. Men were categorically assumed to be sexual aggressors, which was not necessarily understood as a bad thing, and women were sexual victims, although their propensity for true sexual victimhood varied by how many other social privileges they enjoyed. However, male sexuality was interpolated by the state in other ways. Sodomy laws were the principle domain through which male bodies and sexualities were covered. But sodomy laws, especially their historical implementations, were much broader and written with a much different purpose than sexual assault, or even rape, laws. Sodomy laws are biblical in nature, and so they are written with a moral tone. They are intended to regulate and punish deviant socio-sexual behavior. Although they vary by jurisdiction, they tend to be written rather vaguely, and thus they cover a wide range of actual behaviors. The behaviors covered under historical sodomy laws often include oral and anal sex, sex between two people of the same gender, sex with animals, sex with young children, and so on. Essentially, the behaviors are linked as any sort of sexual behavior that does not have the potential to create a child. In essence, sodomy laws protect the community from what is deemed by the legal regime as problematic sexual behaviors. Notably, from a historical perspective, this is not about problematic sexual identities; the focus on sodomy and gay sexuality emerged later in the mid-twentieth century. The formulation of sodomy laws do not contain elements of violence, force, or consent. These concepts all emerge in the much more recent sexual assault laws. In sum, sodomy laws do interpolate male bodies, but their focus is much more directly on community-level protections from deviant sources of harm that are based in immorality. Of course, within this framework, violent or unwanted rapes of men could potentially be prosecuted on the ground. But sodomy laws are not designed for that purpose, and those cases, historically, would be the aberration rather than the norm.

Michigan was the first state to reform its rape laws in 1974. It oriented its sex crime laws all under one category that is called “criminal sexual conduct,” or CSC. The crime of CSC includes four degrees, the first three of which are felonies and the fourth of which is a misdemeanor. The degrees are distinguished between the type of behavior that occurred and the relationship between the perpetrator and the victim. In other words, unwanted sexual touching is differentiated from sexual penetration, and perpetrators who have a power differential – whether they are teachers, law enforcement officers, adults, and the like – are held to more exacting standards. Within this vertical rubric, most sexual offenses do fit. Notably, the victim’s gender is irrelevant within Michigan’s definition of CSC. Many states followed Michigan’s lead and established some sort of gender-neutral, vertically-oriented sexual assault laws. Notably, the shift from rape to sexual assault meant that more violent or coercive acts are included in the frame, whereas the defacto definition of rape has been solely forced penile-vaginal intercourse, often including physical violence or intimidation. So Michigan’s rape law reform included an expansive definition of sexual violence all arranged within a vertical criminal code.

In great contrast, Georgia made few reforms to its rape laws. All its sex crime laws are arranged in Chapter 6 of its criminal code, entitled Sexual Offenses, which also includes victimless crimes like prostitution and bigamy. Not only is it gender-specific, meaning that only women can be defined as victims, but it also retains antiquated language. “A person commits the offense of rape when he has carnal knowledge of a female forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ.” Here, the criminal code explicitly defines the perpetrator as a male, the victim as a female, and the action as forced vaginal intercourse. This framework completely excludes men from being potential victims. So from a legal standpoint, men cannot be raped in Georgia.

However, there are other parallel laws that can be invoked in such circumstances. The most common charge when men complain of sexual assault is aggravated sodomy. “A person commits the offense of aggravated sodomy when he or she commits sodomy with force and against the will or the other person.” Here, sodomy is defined as a “sexual act involving the sex organs of one person and the mouth or anus of another.” Interestingly, this aggravated sodomy law is completely gender neutral, where either the perpetrator or victim could be a man or a woman. Georgia also has a sexual battery statute, but it is a misdemeanor, so it is used much less frequently. The rape and aggravated sodomy laws carry the same mandatory minimum sentence of 25 years imprisonment. In Georgia, there are seven felonies classified as the “seven deadly sins,” which all come with stiff punishments. This has interesting effects on the prosecution of these sex crimes. In effect, they are taken seriously by the state by forcing confinement of convicts for many years. At the same time, it means that there is little maneuvering space for offenses that are clearly perceived as criminal but perhaps not worthy of 25 years imprisonment, by most ordinary standards. Georgia is representative of many states that retain gender-specific rape laws, although the precise wording of its statute remains one of the most archaic in the country.

Idaho’s sex crime laws in general are organized more like Georgia, in that there are a patchwork of related laws that exist horizontally, rather than the Michigan model in which most all of the sex crime laws are organized vertically under the CSC statute. Most notably, Idaho has a law that specifically addresses male rape. It is the only of its kind in the country. “Male rape is defined as the penetration, however slight, of the oral or anal opening of another male, with the perpetrator’s penis, for the purpose of sexual arousal, gratification or abuse.” There are several interesting things about the language of this statute. First, the punishment for both rape and male

rape in Idaho are the same: imprisonment in state prison for at least one year and up to a lifetime, at the judge's discretion. Second, the perpetrator is defined as a man because a penis is required to commit this particular criminal act. The criminal act is defined by the gendered configuration of the body. Here, it should be noted that sexual assault laws in general do not take into account the variability of gendered bodies or transgenderism at all. Sexual assault laws assume that human bodies can be divided into dichotomous categories of male and female. Of course, a criminal model like that of Michigan makes it possible to include transgender victims, even though it was not written with this gender variability in mind. Third, unlike Idaho's female rape law, its male rape law includes "the purpose of sexual arousal, gratification, or abuse" as one of its criminal elements. This means that prosecutors must prove that the defendant achieved either sexual arousal, gratification, or abuse from the assaultive act. This is an interesting inclusion in the law that interpolates desire and pleasure into the concept of sexual violence. In addition to the content of Idaho's male rape law, its existence is also peculiar. Idaho did not reform its rape laws until the late 1980s, much later than most states. Because Idaho reformed its laws late in the game, there were many models out there for how legislators might address the rewriting process. Moreover, it is right next to Washington State, which has a code that is similar to Michigan's. Nonetheless, Idaho legislators chose this peculiar route of adding a law to specifically address adult male sexual victims. The best I can piece together what happened – based on talking to some key actors in the reforms and tracking the legislative archives – is that someone in the early committee meetings proposed adding men into a protected category. No one objected, and it was done. Interestingly, compared to other contemporary proposals, the male rape one was barely discussed and not contested at all. So it seems as if it was nearly a legislative/historical accident.

Regardless of its origin, however, the existence of the male rape statute provides Idaho prosecutors with a crucial tool when confronted with a sexual allegation from a man.

Case Law

Case law is one of the frameworks through which legal actors, including judges and attorneys, do their work. It is one rubric, or set of rules, through which legal work is done. Just like state- and federal-level statutes, it has important influence on how criminal prosecutors and defense attorneys proceed through a criminal prosecution. Case law is the interpretation of statutes. Politicians and policymakers write statutes, but they need to be interpreted along the way. These judicial interpretations over time become case law and then future legal actors use them as guidelines as to what is and isn't possible, given any particular statute, down the road. In this section, I will discuss several important legal cases – at both the state and federal levels – that set precedent for how criminal cases of adult male sexual victimization are processed. Now, just because this body of case law exists does not mean that every prosecutor and defense attorney engages with each case all the time, but it does set a broad legal landscape – what is in the air, if you will – that indirectly shapes how local level cases may proceed. Note that many of the themes include privacy, sexual identity, sodomy, and consent.

One of the most important foundational legal decisions regarding men and sexuality is *Lawrence v. Texas* (2003). This case went to the US Supreme Court. The case facts were roughly that police in Texas were called to a private residence on account of neighbors hearing arguments. The police officers observed two men engaging in sexual activity, and they arrested them for sodomy. The key legal issue became: Did these men have a right to engage in consensual sexual activity in a private residence? Or, does the state have an interest in protecting the community from what was arguably perceived as deviant and problematic behavior.

Ultimately, the Supreme Court agreed with the privacy argument – these men do have a right to not have state interference with their consensual sexual activities. It was a huge victory for the gay rights movement as well because it essentially struck down all state-level consensual sodomy laws. Although some states still technically have these on the books, they are no longer constitutional. Although this case does not address non-consensual same-sex activity, it does shape how those kinds of criminal allegations might be processed. Historically, there was no legal distinction between sexual violence and consensual sexual encounters among men. It was all roughly part of the same category. From the historical state’s perspective, men did not need protection from sexual violence, and they should not be engaging in sexual activity with other men.

Part 2: Law in Action

The laws on the books provide the structural scaffolding for the legal process, but it is equally important to examine how laws are implemented, understood, and contested by legal actors as well as the general public. Socio-legal scholars call this object of study “law in action.” In this section, I describe the unique dynamics of rape processing. Since the implementation of rape law reforms, a vast array of institutional networks have arisen at county and state levels to specifically address the crime of sexual assault. Then, I describe the ways that sexual consent, a core concept to the legal definition of sexual assault, is gendered in ways that are often unrecognized.

Rape Processing

Sexual violence was a key mobilizing issue for second wave feminists, and they arguably achieved the most widespread and enduring reforms of the movement with this issue (Bevacqua 2000). They theorized rape as the primary mechanism through which men dominated women

(Brownmiller 1975). Even if an individual woman did not experience rape, they argued, her life was always shaped by the mere threat of violence, which was made public through behaviors like cat-calling and the objectification of women's bodies (Gardner 1995; Cahill 2000). The reforms that resulted from this theorizing are two-pronged. First, feminists sought to improve the social support services for rape survivors by training medical and criminal justice personnel, funding domestic violence shelters, and operating rape telephone hotlines (Matthews 1994; Bumiller 2008). Second, feminists sought to reform rape laws by orienting judicial procedures and evidentiary norms to the needs to survivors and the unique dynamics of this criminal act. Theorists like MacKinnon and Pateman argue that legal logics and procedures are based on masculine standards which necessarily and violently exclude women from adequate legal protections and engagement (1991; 1988). Empirical studies support these claims. For instance, Schneider shows how standards of reasonable behavior in the case of battered women who kill their abusers in self-defense are determined from a masculine point of view (2000). Ignoring the perspective of the woman-victim, who often endured sexual assault as well as physical battery, renders her actions in the face of domestic abuse irrational and unreasonable, which, in turn, cripples her criminal case. Consequently, feminist attorneys developed the battered woman homicide defense, which legally frames the defendant's actions as self-defense rather than pre-meditated murder. Thus, the legal field is a key arena in which anti-rape activists have focused their attention. Despite the successes of the anti-rape movement, however, sexual assault continues to be a major social problem. Scholars propose a variety of reasons why the changes implemented have not had their intended consequences.

Rape crisis workers are generally the first set of state authorities with whom complainants interact after disclosing an experience of sexual assault. These paraprofessionals

have been funded and institutionalized through both the grassroots feminist networks as well as significant federal funding through VAWA (Seghetti and Bjelopera 2012). They are comprised of a variety of different groups, and their tasks are variable and specialized. Some rape crisis workers are based in rape crisis centers with an entire workload related to sexual assault, whereas others are based in medical or criminal justice institutions with only a portion of their work time devoted to sexual assault cases. Their tasks include evidence collection, conducting interviews, and victim advocacy. They facilitate the prosecutorial process by supporting victims and by completing some of the tasks that prosecutors need done before, during, and after filing criminal charges. In theory, rape crisis workers are meant to make the criminal justice process smoother and less traumatic for rape complainants. The roles were crafted by radical feminists who observed that the criminal justice process was often just as traumatic for victims as was the initial attack (Madigan and Gamble 1991;). In practice, however, they can inadvertently reproduce power hierarchies due to poor training, lack of resources, or lack of institutional legitimacy. Moreover, their efficacy is highly variable depending on the local contexts of their jurisdiction. For instance, Rose Corrigan and Sameena Mulla, respectively, show how rape crisis workers may not be able to produce the outcomes of care and compassion that the roles were designed to do (Corrigan 2014; Mulla 2014). Importantly, however, all of this work occurs mostly before prosecutors even see the cases, and these important actors implement the expansive visions, on a day-to-day level, of the anti-rape movement.

There have been significant positive changes in how the prosecutors in my sample reported responding to sexual assault cases. They have relatively sophisticated views of sexual victimization that affect how they do their work. In my sample, many of the prosecutors (although certainly not all of them) reported taking at least some of the following measures.

Prosecutors take steps to minimize secondary victimization that survivors might experience and to educate jurors about sexual violence. First, many prosecutors work with rape crisis workers (including investigators, forensic interviewers, and sexual assault nurse examiners); these professional collaborations enable them to collect evidence in ways that are thought to lessen the survivor's distress. For instance, investigators may video-record interviews so the survivor does not have to repeat her story many times, and nurses who conduct medical exams have training and resources that enable them to collect the corporeal evidence in a humane fashion.⁵ The extent of these professional collaborations varies by county, but nearly all the prosecutors reported some degree of collaboration. Second, prosecutors educate potential jurors during jury selection about rape myths. For instance, they explain why a survivor might delay reporting her victimization, or they might explain why a survivor's behavior prior to the assault does not justify the crime. Many prosecutors develop a provocative strategy to challenge the rape myths. One common tactic was to have jurors imagine what it would be like to narrate their last sexual encounter in great detail to the courtroom. This exercise is intended to help jurors understand the behavior and emotional reaction of the survivor as they testify; survivors may act in unexpected ways because the situation is so awkward. These prosecutorial strategies represent profound shifts in terms of how state actors understand the sexual assault victim's trauma.

Despite the measures listed above, the literature still indicates that the criminal justice response to sexual assault allegations is lacking. This discrepancy is most likely explained by the vast variation across jurisdictions. Sexual assault allegations initiate responses from a variety of institutional actors including rape crisis counselors, medical personnel, police investigators, and

⁵ The effects of these procedural reforms are contested. For instance, Corrigan shows how the forensic exams can evolve into yet another traumatic obstacle that sexual assault survivors endure when they report their victimization (2013).

prosecutors. In addition to the victim's needs, the pretrial responses of these actors are shaped by organizational work structures and cultural stereotypes. District attorney offices are often underfunded, and their staff may not be trained to work with rape survivors. So prosecutors have limited resources of time and money that they must distribute amongst multiple allegations (Kerstetter and Van Winkle 1990). In addition, prosecutors are elected public officials, so they have incentives to win cases. Both of these structural factors compel prosecutors to pursue cases that they predict will have the greatest likelihood of success at trial. They either drop remaining charges, or negotiate plea bargains. Frohmann shows how these structural constraints push prosecutors to draw on cultural stereotypes when assessing the validity of a survivor's claims (1991; 1997). She found that prosecutors predict the jury's reception to a rape allegation – how it will fare “downstream” – based on the victim's age, class, feminine behavior, and geographic location. For charges that they do pursue, prosecutors may not have the time, training, or emotional stamina to adequately prepare survivor-witnesses for the challenges of repeating her story at pretrial hearings (Konradi 1997). Finally, Dunn reveals how the survivor's behavior during the investigatory period affects prosecutors decisions (2001). In cases of intimate stalking, victims who are too assertive or aggressive – i.e., not performing in an appropriately feminine manner – are deemed less credible. On the other hand, cooperation of the victim is an important component of a successful case (Spohn et al. 2001), so survivors are left walking a fine line between performing appropriate victimhood and asserting their legal violation. Each of these social factors affects the pretrial legal processing of sexual violence cases.

Judicial processes are structured in a way that disadvantage rape victims, both legally and psychically. These sources of disadvantage arise from organizational structures that do not favor gendered witnesses. Matoesian and Taslitz both demonstrate how the linguistic structure of the

courtroom marginalizes women-victims by restricting the ways that they can narrate their experiences of sexual assault (1993; 1999). Lawyers, especially defense attorneys, strategically design series of close-ended questions that hamper the witness's ability to tell her story in her own words and rhythm. Konradi argues that the fundamental method for trying rape crimes is at odds with a victim-centered approach (2007). Because rape is tried as a crime against the state – state actors do not serve as the victim's advocate; she is merely a witness to the crime against her body – the judicial process can be alienating to victims. Konradi writes, "Rape causes serious damage to an individual's personal and social identity and the legal transfer of the 'injury of rape' from a victimized individual to the state is fundamentally at odds with how humans socially experience such damage" (2007: 191). Spohn and Horney argue that cohesive courtroom workgroups result in increased plea bargains rather than criminal convictions (1992). Their research suggests that an adversarial courtroom is actually better for survivors because judges, prosecutors, and defense attorneys have structural incentives to work for the interests of the victim rather than the cohesion of the local courtroom workgroup. These empirical observations demonstrate the myriad ways that courtroom organizational structures and processes shape the processing of sexual violence, oftentimes to the detriment of rape survivors.

In sum, there have been significant institutional transformations in terms of how sexual assault allegations are dealt with by the criminal justice system. The efficacy of these reforms varies significantly by jurisdiction, according to legal regimes, local cultures of gender, and prosecutorial office structure. There is much scholarship addressing the efficacy of rape processing, but the main point here is that there is an institutional structure in place for addressing sexual assault specifically, and this local structure extends to male victims as well.

Engendering Sexual Consent

Although it is a legal element of the crime of rape, consent is also a gendered process. Legally, consent was added to rape laws because feminists were pushing the idea that rape was not just about a man using brute force but that sexual interactions also needed to include an affirmative consent – in theory, by both parties, but in practice, the notion of consent often flows from the woman to the man. The legal concept is based on notions from contract law; the sexual interaction is an activity that both parties enter into agreement by their own free will. Therefore, the concept of consent is meant to be a gender-neutral category that renders the potential future sexual interactions of all men and women safer and more equitable. In legal practice, however, consent is a gendered concept. Notions of consent are undergirded by cultural expectations of masculinity, femininity, and normative sexual interactions. Of course, what counts as a normative sexual interaction varies widely across time, space, and from individual to individual. Nonetheless, most people there is a range of normality within which most people would agree that a particular sexual behavior or interaction is normal. This is like Gayle Rubin's charmed circle of sexuality: although what is inside and outside the charmed circle varies over time, at any given point in time, there is some agreement on what fits where. And this sense of agreement emerges clearly in allegations of sexual wrongdoing and shapes how those cases move forward.

Consent is a gendered concept in multiple ways. First, in practice, consent is often presumed to flow from the woman to the man. *He* asks *her* for permission to proceed forward with a sexual advance. This is clearly coming from a long historical space whereby men as a group did dominate women as a group. So on the one hand, it makes sense because women have historically had much less power to define the nature of their sexual interactions. On the other hand, by presuming that men and women still do not enter the sexual marketplace as equals, we run the risk of reinscribing the power differential that rape law reforms were meant to dissipate.

In other words, women and men both need to be seen as dynamic sexual beings, individuals who have the knowledge, capacity, and space to say either yes or no to sex. The point here is that sexually protective laws, that were developed with the best of intentions and in theory make sense, may in practice create conditions in which certain bodies are still not sexually autonomous, which in turn, renders them more vulnerable to sexual assault.

Part 3: Legal Labor

Laws on the books are implemented by real people. The legal field is an elite profession, and even though the prosecutors and defense attorneys in my sample are relatively low status within the profession, in terms of their salaries and prestige, their professional decisions have profound impacts in their communities. Moreover, attorneys' decision-making logics are shaped by the institutional and bureaucratic contexts in which they work. In this section, I examine those work contexts and the actual tasks that must be completed to keep the criminal justice system moving forward.

Professional Structure and Work Contexts

There are multiple factors that shape prosecutorial processes and outcomes when it comes to sexual assault cases in general. First, some offices have a separate unit or team that handles all the sexual assault cases. This is called vertical prosecution, and the logic is that the sensitive nature of these charges renders it important for victims to work with a consistent team. In horizontal prosecution, a different prosecutor may show up for each stage of the process, including the investigation, pre-trial preparation (if there is any), preliminary hearings, plea negotiations, and the trial. As many rape crisis workers have noted, this can be difficult for complainants because they not only have to repeat their traumatic story many times, and they must do that and establish rapport with many different people in the criminal justice system. This

impersonal process can lead to secondary victimization for the complainants, whereby the legal process becomes just as strenuous, arduous, and traumatic as the sexual assault itself. Because of these concerns, many prosecutor's offices that are big enough decide to create a special team or unit to working on such cases. In addition to the continuity for individual complainants, the prosecutors also develop an expertise in sexual assault crimes that, in theory, makes them better at their jobs. In fact, many respondents noted that the sexual assault units had emerged as somewhat elite within their workspace; a rotation where an ambitious young prosecutor could hone really important legal and trial skills (precisely because these are crimes with little "hard" evidence so they take extra work and creativity to prosecute successfully) that they could then apply in other legal arenas throughout their career. Of course, the drawback for the professionals is that they become burned out from working such emotionally arduous cases day in and day out. Most offices are careful to not let prosecutors stay on the sexual assault rotation for more than a couple of years. Interestingly, based on my informal observations from the respondents, it seemed that the type of prosecutor who could last for a long time in the sexual assault unit, as much as two decades or more, tended to be a woman who identified herself as a feminist and who envisioned herself as being on professional and moral crusade against sexual violence. This vision did not completely insulate them from the emotional toll, but it did enable them to continue on for many years. It was only a couple respondents who fit in this category, but they thought of the complainants as "their victims," and this discursive framing, even if a bit infantilizing, did enable them to pursue these cases with enormous and unending vigor. Notably, the emergence of separate sexual assault units was the result of anti-rape activists trying to change the ways that sexual assault cases were prosecuted. In the wake of these changes,

researchers have begun to investigate how these institutional changes have shaped prosecutorial outcomes.

Individual and interactional dynamics also shape how prosecutors approach sexual assault cases. Virtually all my respondents reported learning little about sexual assault – either as a phenomenon or as a legal issue – in law school. At best, they might have learned the criminal elements of rape and even that was not a given. Notably, most of my respondents (and indeed, most of those that end working as a county-level prosecutor) attended second- and third-tier law schools, so we would likely expect the more elite law schools to have even less, as criminal law tends to be considered low-end law, not comparable with the high status corporate law that the more elite schools tend to focus on. So when a young lawyer begins working at the county prosecutor’s office, he (I say he because most of my respondents were men) likely has little knowledge – either professional or personal – of sexual assault. Thus, one big factor that shapes their learning curve is the training opportunities within and outside of the offices. Some offices have informal mentoring, especially if there are one or two senior prosecutors who believe strongly in the prosecution of sexual assault crimes. Informal mentoring might include sharing “tricks of the trade,” informal teaching opportunities over lunch or coffee, and feedback and consultation on various cases. Many prosecutor’s offices also offer to pay for their staff members to attend off-site training workshops. Many of these are put on by the state’s prosecuting attorneys association (Michigan has an especially robust organization) or by national organizations like the National Child’s Advocacy Center in Alabama, through which many prosecutors reported attending multi-day training workshops. These brief workshops give prosecutors the opportunity to learn new strategies and ways of locating and presenting evidence, and they also give them the opportunity to interact with attorneys from other jurisdictions, so

there is the potential for a fruitful exchange of ideas. Without such opportunities of intellectual exchange, professional practices within any given office can become static. In recent years, the economy has declined and so county prosecutors may have less money to spend on training, but there has also been a parallel rise in technology, so some offices are opting to do web-based trainings. Although this misses the personal interactional exchange, there remains the opportunity for young prosecutors to learn important facts and strategies regarding the prosecution of sexual assault that they likely never covered in law school. These types of training opportunities – whether formal or informal, in-house or off-site – greatly shape how young prosecutors approach sexual assault cases. Without this information and mentoring, they may not have the skills or motivation to pursue what are otherwise often difficult cases.

Another important condition for the effective prosecution of sexual assault cases is how much it is prioritized in the office work culture. To some extent, this prioritization needs to come from top-down because the elected prosecutor can set the tone for enabling the more informal, small-group training opportunities described above. Thus, if the elected prosecutor at minimum agrees that prosecuting sexual assault is a top priority, then it is much more likely to be taken seriously by the lower-level prosecutors. Usually in these cases, the elected prosecutor is more of a manager, and he has a front-line lieutenant who does the actual work of dealing with the cases and organizing that particular unit. The elected prosecutor then has the power to establish special sexual assault units, provide them resources for training opportunities, and to afford them higher status within the office work culture. Certainly, this has not always been the case. Historically, prosecuting sexual assault cases was considered the drudge work (and still is today in some jurisdictions, although much less so). Interestingly, working on domestic violence prosecutions, another significantly gendered crime, is still considered to be a low status rotation for

prosecutors. In counties where the more senior prosecutors do not prioritize sexual assault cases, it becomes much more difficult and unlikely for a younger prosecutor to be able to consistently, if ever, pursue any except for the most egregious cases. In other words, so many sexual assault cases are difficult to prosecute because of the types and absence of compelling evidence, so they are fairly easy to dismiss in the absence of a strong political will within the office culture. In sum, part of the promising conditions for prosecuting sexual assault crimes come from senior level and elected prosecutors who prioritize the issue. In turn, their will to prioritize this issue comes from a more general public sentiment that this is an important issue. Sex crimes have emerged as an important issue since the 1980s, with many state and federal laws having been written with particular victims in mind, like “Amber’s Law,” “Megan’s Law,” “Jessica’s Law,” and so on. Public support tends to be galvanized after the especially horrendous rape and murder of a child, usually a girl, which is ultimately a statistically rare crime. As Corrigan argues, it remains debatable as to how effective these new sex offender laws are, but what is certain is that it has opened the door for continued public recognition of sexual assault crimes long after the surge of the anti-rape movement, which, in turn, keeps the issue on the agenda of local county prosecutors.

Another important factor in how sexual assault cases are processed at the local level is the relationship of the prosecutor’s office with any rape crisis centers in the area. By now, most areas of the country have rape crisis centers (with important exceptions in rural areas), which offer a variety of services including counseling, outreach and advocacy, victim’s advocates, telephone hotlines, health services, forensic exams, and the like. These organizations emerged as a direct outgrowth of the feminist anti-rape movement (Matthews YEAR; Martin YEAR). As they have become more institutionalized and connected with the state, some scholars have

critiqued their abilities to do strong feminist, progressive work (Bumiller 2008). But nonetheless in practice, they offer a strong support and motivation to prosecutor's offices, many of which start out reluctant to deal with the issue of sexual assault. Many of the older prosecutors who had worked in the field for twenty years or more could remember the days when their local rape crisis center just started, and often the relationship between the two organizations was antagonistic and gendered, with the prosecutor's office being staffed mostly by men and the rape crisis center being staffed mostly by women. Over time, however, the prosecutors came to see the rape crisis centers as a resource. After all, they were equipped and motivated to do a lot of the emotional labor and the collection of sensitive evidence that prosecutors were either unwilling or unable to do due to their focused skill sets and busy schedules. Because rape crisis workers can actually offer important services to prosecutors (although they probably do not see their work in quite this way, it is nonetheless an important service for the prosecutors), it enables prosecutors to pursue more cases of sexual assault because they have more hands to help do the actual work of prosecution, which includes gathering evidence, preparing witnesses, and creating a local culture that is supportive and aware of such gendered injustices.

The fee structure for legal professionals is important to note here because it shapes the external motivations of the attorneys involved. For instance, the prosecutor above works on a fixed salary, so if he works overtime to prepare for a lengthy or intensive trial, he does so out of his own motivation rather than any external rewards. Public defenders operate under the same financial incentive structure. Private defense counsel, on the other hand, earn their fees in proportion to how much they invest in a case. Some work from a retainer an hourly fee schedule, whereas others charge a flat fee to be their client's legal representation from beginning to end of

the process. However, because sexual assault cases tend to be more involved and less predictable than other kinds of felonies, most defense attorneys work on an hourly fee schedule.

Administrative Tasks

Attorneys have several tasks to accomplish when they go into a criminal trial, and because of the way that our criminal justice system is organized, both the burden and advantage goes to prosecutors. It is the burden of the state, as represented by prosecutors, to prove that the crime occurred beyond a reasonable doubt. Defense attorneys need not even present a defense, and usually criminal defendants in sexual assault cases do not even testify on their behalf. Therefore, prosecutors tend to set the stage in terms of how the case is framed based on the state's theory. Their most critical task is to present evidence for each criminal element of all the charges. This is their explicit task. But skilled prosecutors, and defense attorneys as well, will present implicit evidence to bolster their case. This evidence is usually built upon community norms about what is right and wrong, subtle information that everyone just "knows" is right. In fact, this sort of subtle information often makes or breaks a case. After all, prosecuting crime is a social process; it is far from the case that every crime that is committed is charged, tried, and convicted. So prosecutors must first make the judgement call that a crime occurred and then convince the jury that this is, in fact, a crime and something worthy of their civic concern. This dynamic is all the more important in the case of male rape because it is such an under-recognized phenomenon that jurors need to be shown that it can happen. This is all to say that there are many, many decision points that the attorneys, and especially the prosecutors, cross when trying a criminal case. Often, the skilled prosecutors do not even give much thought to their decisions because they are second nature. But cumulatively, these decisions points have a big effect in terms of defining how masculinity gets understood at trial.

Criminal trials require an enormous amount of labor from the prosecutor and defense attorney. Their compensation varies according to their position in the legal field. In turn, the degree and structure of compensation provide external motivations – or disincentives, as it were – for the attorneys. Prosecutors work on a fixed salary, so if they work overtime to prepare for a lengthy or intensive trial, they do so out of their own motivation rather than any monetary gain. Public defenders operate under the same financial incentive structure, and depending on the jurisdiction, they may be poorly compensated and highly overworked. Private defense counsel, on the other hand, earn their fees in proportion to how much they invest in a case. Some work from a retainer and hourly fee schedule, whereas others charge a flat fee to be their client’s legal representative from beginning to end of the process. One Georgia defense attorney explained why he charges a flat fee for felonies. “I don’t ever want a client to decide they can’t go to trial because they can’t afford it. That just scares me. It makes me feel like I’m not doing my job right if a client looks at me and goes, ‘Can I afford to go to trial?’ I always want to go, ‘No, that’s not what you need to be thinking about right now. You need to be thinking about did you do it or not and can we defend it or not and not can you afford to pay me to go try this case.’” However, this attorney also reported that he focuses primarily on misdemeanor offenses because sex crime cases are extremely time consuming. The stakes are high for both the prosecutor and the defendant – respectively, their professional and personal reputations are on the line – so each side tends to be reluctant to settle. Thus, most defense attorneys work on an hourly fee schedule for sexual assault cases because they are more involved and less predictable than other kinds of felonies. Although there are additional nuances between states and counties in terms of fee structure and professional status, these broad differential fee structures shape the attorneys’ willingness and ability to advocate strongly at trial.

Trial outcomes are difficult to predict because teams of twelve strangers can so easily sway one direction or the other. Nonetheless, skilled trial attorneys do everything they can in advance to minimize as many variables as possible. By this point in the process, they have already invested much time in the case from the investigation to the preparation of witnesses to crafting how they will present the case. Preparing for trial is a unique point in the process, and it requires a variety of skills as well as much focused work. The attorneys described a variety of ways that they approached the trial preparation process. One Michigan prosecutor creates what he calls “trial books,” which include all the documents related to the case organized chronologically in a three-ring binder. Here is how he describes the administrative preparation for trial.

The vast majority of work in trial is done before the trial ever starts. You need to sometimes hit a curve ball during a trial, but I totally believe that almost all the time trials are won and lost before they ever get started. If you’re prepared and you have anticipated everything and you’ve got everybody prepped and you do all those kinds of things. Unless something unforeseen happens, generally it’s won or lost before you ever get started. It’s very stressful obviously, but it’s not like I’m standing up there not knowing what I’m going to ask or what’s next or anything like that. It’s all very well planned out.

Although trials are notoriously unpredictable – you never know which way a jury will roll – skilled trial attorneys do everything they can in advance minimize as many variables as possible. Preparing for trial is a unique point in the process, and it requires a variety of skills as well as much focused work. As the “trial books” strategy indicates, advocating at trial requires much more than simply a flair for courtroom drama. There is a significant amount of tedious background work that occurs before the attorneys ever step foot in the courthouse.

The attorneys do a lot of work at managing and coaching the witnesses prior to the trial. They meet with them, prepare them for what they can expect in the courtroom, and generally develop a rapport so that the witnesses feel comfortable with their legal advocate. The attorneys

also work to guide the witnesses into meeting the expectations of courtroom decorum. These expectations revolve around self-presentation, methods of story telling, and general demeanor. Most witnesses have simply not spent much time in courthouses, so they are unfamiliar and intimidating environments. In addition to coaching them on how to dress – many attorneys compare courthouse attire to church attire – they also coach their witnesses on how to compose themselves in the courtroom. One Michigan prosecutor describes how she politely yet firmly encouraged a heated complainant to refrain from unnecessary antagonism toward the defendant. “You can’t curse. You definitely cannot give the rude gestures. You have to show respect for the court. You don’t want the jurors to get the wrong impression of you based on the language you’re using because you are not that person.” Things like inappropriate language, casual dress, rude gestures, and antagonistic affect can all decrease the witnesses credibility with the jury. It is crucial that the complainant maintains credibility with the jury because if the complainant is not a likeable and sympathetic individual, the jury will be less likely to convict.

In addition to visual presentation, the attorneys also work with the witnesses on how to tell their stories. The attorneys have to prove that all relevant criminal elements occurred, via the testimony of the witnesses. However, lay people do not automatically frame their experiences in a legal format, so they need some guidance on which details are important and which are irrelevant. Sarat and Felstiner describe how this process of legal narration works in relation to divorce lawyers and their clients. When people experience a traumatic personal experience, like divorce or sexual assault, they include many extraneous details. It is the attorney’s job to swiftly and diplomatically focus the narrative on the most legally relevant details. In addition to the formal criminal elements, at trial the attorneys have an increased opportunity to spin the narrative in more subtle ways. As one Michigan prosecutor notes, “Trials, oftentimes really

they're about where you put the spotlight." To shine the spotlight most effectively, the attorneys need to walk in lockstep with their witnesses. However, the pre-trial coaching is a fine line to walk because the attorneys also widely agreed that they do not want a witness who sounds overly coached because then the jurors might become skeptical that they are not telling the truth.

Prosecutors often also have the support of crime victim advocates to prepare witnesses, particularly the complainants, for their testimony. Crime victim advocates are para-professionals whose job it is to support and guide the witnesses through what can often be a bewildering judicial process. An Idaho prosecutor, who was an early proponent of funding this role in his jurisdiction, describes their function, "Victim coordinators comfort people, and a victim coordinator is like a guide in the criminal justice system. They're your guide. They tell you what's going to happen, what's around this bend in the river, what to expect." Crime victim advocates are often federally funded through acts like the Violence Against Women Act or the Crime Victim's Rights Act. Their roles are significant, as Konradi reveals, in research from the 1990s, how victims are often woefully underprepared for the criminal justice process (1996; 1997). In actively preparing complainants for trial, crime victim advocates and prosecutors minimize the likelihood of the "second assault" or "secondary victimization" (Williams 1984; Madigan and Gamble 1991; Martin and Powell 1994).

Gender and Emotion in Rape Processing

Sexual assault cases generate intense emotions. Although the attorneys are agents of the law, which is understood as rational and unemotional, they do become emotionally invested in the judicial process and outcome. Their emotional labor is arguably just as important as their administrative and legal labor. In fact, their ability (or lack thereof) to manage the emotional labor can have profound effects on the durability and longevity of their careers. Here is how a

public defender in Georgia describes the effects of the emotional intensity of his work. “I’m not going to lie to you. I burned out a couple of times in this job because it’s just so much. Since I took the job I’ve been diagnosed diabetic. I have got high blood pressure. I gained a bunch of weight. I’ve been trying to lose it. Part of that’s my lifestyle and part of that’s this job. It gets to you. There are cases that that tear you up, and there are cases that will just stay with you.” As this attorney’s experience demonstrates, the emotional intensity of sex crime cases affect the attorneys’ health and wellbeing. Although few volunteered as significant health effects, some did intimate that the emotional stresses of the work led to heavy drinking, familial difficulties, or depression.

Learning to manage the emotional labor of trying sexual assault cases is one of the informal lessons that attorneys learn on the job. Most of the attorneys learn to practice a professional detachment to ward off burn out. A defense attorney in Michigan describes how she puts up an emotional “brick wall” to maintain her focus on defending her client. “You keep your personal feelings out of it. Sometimes it is really hard as a parent when you have a complainant that’s so young. Especially when you have a client who’s a predator who has set them up – made friends with their parents and invited them over for the evening and then all of a sudden. It is very difficult but you just learn to – you don’t think about that part. It’s what’s in his file and what needs to be done.” Most attorneys who chose to work sex crime cases for many years reported a coping mechanism akin to this attorney’s. Some also maintained a “sick sense of humor” or a “Gallows humor” to manage the challenging emotions. Regardless of their specific strategy, many attorneys managed their emotions at trial by cultivating an intentional distance from the people involved and the subject matter.

The attorneys also engage in emotional labor as they prepare for trial. As stated above, going to trial requires an enormous amount of work, a much more intensive kind of work than the more bureaucratic processes that occur in the pre-trial phase. At this point, the attorneys are usually emotionally invested in the case, and many report that this emotional investment makes them do their job more effectively. Here is how one Michigan defense attorney describes the strategic component of his emotional investment in his client's case. "One thing you learn as a trial attorney is that you're not effective unless you suffer with the defendant. That's why it's difficult. You've got to suffer with them and go with what they're going through. And then that comes through on your closing argument at the end. Your passion. And you can't get that passion unless you suffer with them." He suffers with his client, at the stress of moving through the criminal justice process, to do his job better. However, this strategic process of sympathy is a fine line to walk. The attorneys have many criminal cases in any given year, and sexual assault cases are emotionally taxing. So if they become too emotionally involved and suffer too greatly, they face an increased likelihood of burn out. Notably, in the quote above, the emotional suffering is strategic; this attorney engages in co-suffering to generate passion for his closing argument. Indeed, even during the research interview process, the attorneys who displayed some degree of anger or outrage over what had happened (even if it was feelings of injustice over the allegations on behalf of the defendant) were the ones who were most compelling to speak with. So the key for attorneys in this process of emotional labor is to be able to generate the perception, whether or not it is based in genuine feeling, of passion and convey that to the jury while also maintaining some professional boundaries and personal stability.

Conclusion

The legal structure, institutional contexts, and professional norms of law significantly shape how sexual assault cases are prosecuted. These patterns apply to cases involving male complainants as much as they do to ones involving females. In the following three chapters, we will see how these structural dynamics influence specifically the processing of male rape allegations in, respectively, the investigation, pre-trial, and trial stages of the criminal justice process.

Bibliography

- Belknap, Joanne. 2010. "Rape: Too Hard to Report and Too Easy to Discredit Victims." *Violence Against Women* 16(12): 1335–44.
- Sandahl, Carrie and Philip Auslander. *Bodies in Commotion: Disability and Performance*. 2005. Ann Arbor: University of Michigan Press.
- Chen, Yingyu, and Sarah E. Ullman. 2010. "Women's Reporting of Sexual and Physical Assaults to Police in the National Violence Against Women Survey." *Violence Against Women* 16(3): 262–79.
- Clay-Warner, Jody, and Callie Harbin Burt. 2005. "Rape Reporting After Reforms Have Times Really Changed?" *Violence Against Women* 11(2): 150–76.
- Davis, Lennard J. 2013. *The Disability Studies Reader*. 4th edition. Routledge.
- Tolman, Deborah L. 2005. *Dilemmas of Desire: Teenage Girls Talk about Sexuality*. Cambridge, Mass.: Harvard University Press.
- Kuppers, Petra. 2003. *Disability and Contemporary Performance: Bodies on the Edge*. 1st edition. New York: Routledge.
- D'Emilio, John and Estelle B. Freedman. 2012. *Intimate Matters: A History of Sexuality in America, Third Edition*. 3rd edition. Chicago ; London: University Of Chicago Press.
- Konradi, Amanda. 1996. "Preparing to Testify: Rape Survivors Negotiating the Criminal Justice Process." *Gender & Society* 10(4): 404–32.
- . 1997. "Too Little, Too Late: Prosecutors' Pre-Court Preparation of Rape Survivors." *Law & Social Inquiry* 22(1): 1–54.
- Martin, Patricia Yancey, and Marlene R. Powell. 1994. "Accounting for the 'Second Assault': Legal Organizations' Framing of Rape Victims." *Law & Social Inquiry* 19(4): 853–90.
- Mueller-Johnson, Katrin, Manuel P. Eisner, and Ingrid Obsuth. 2014. "Sexual Victimization of Youth With a Physical Disability An Examination of Prevalence Rates, and Risk and Protective Factors." *Journal of Interpersonal Violence* 29(17): 3180–3206.
- Olofsson, Niclas, Kent Lindqvist, and Ingela Danielsson. 2015. "Higher Risk of Violence Exposure in Men and Women With Physical or Sensory Disabilities Results From a Public Health Survey." *Journal of Interpersonal Violence* 30(10): 1671–86.
- Pascoe, C. J. 2011. *Dude, You're a Fag: Masculinity and Sexuality in High School*. 2nd Edition. Berkeley, Calif.: University of California Press.
- Martin, Karin A. 1996. *Puberty, Sexuality and the Self: Girls and Boys at Adolescence*. New York: Routledge Press.

Seghetti, Lisa M., and Jerome P. Bjelopera. 2012. *The Violence Against Women Act: Overview, Legislation, and Federal Funding*. CreateSpace Independent Publishing Platform.

Madigan, Lee and Nancy C. Gamble. 1991. *The Second Rape: Society's Continued Betrayal of the Victim*. New York: Macmillan Publishing.

Weiss, Karen G. 2009. "‘Boys Will Be Boys’ and Other Gendered Accounts: An Exploration of Victims’ Excuses and Justifications for Unwanted Sexual Contact and Coercion." *Violence Against Women* 15(7): 810–34.

———. 2011. "Neutralizing Sexual Victimization: A Typology of Victims’ Non-Reporting Accounts." *Theoretical Criminology* 15(4): 445–67.

Williams, J.E. 1984. "Secondary Victimization: Confronting Public Attitudes About Rape." *Victimology: An International Journal* 9: 66–81.

Wolitzky-Taylor, Kate B., Heidi S. Resnick, Jenna L. McCauley, Ananda B. Amstadter, Dean G. Kilpatrick, and Kenneth J. Ruggiero. 2011. "Is Reporting of Rape on the Rise? A Comparison of Women With Reported Versus Unreported Rape Experiences in the National Women’s Study-Replication." *Journal of Interpersonal Violence* 26(4): 807–32.

Young, Iris Marion. 1990. *Throwing Like a Girl: And Other Essays in Feminist Philosophy and Social Theory*. Bloomington: Indiana University Press.

Chapter 4: Discovery of Victimization

“One woman who came with her boyfriend, who was outside the door when this happened, whipped my legs for ten minutes and then stripped my clothing and proceeded to rape me. There were hundreds of people in line when she walked out with disheveled hair and smudged lipstick. It was no good, not just for me but her man as well. On top of that my girl was in line to see me, because it was Valentine’s Day and I was living in the gallery for the duration of the event – we were separated for five days, no communication. So it really hurt her as well, as I guess the news of it travelled through the line. When she came in she asked for an explanation, and I couldn’t speak, so we both sat with this unexplained trauma silently. It was painful.”

— Actor Shia LaBeouf

In 2014, Hollywood actor Shia LaBeouf announced that he had been a recent rape victim in a media interview with *Dazed* magazine. The shocking allegation came nearly one year after the alleged sexual assault. LaBeouf stated that he was sexually assaulted while executing a five-day performance art piece in a Los Angeles gallery. Titled “#IAMSORRY,” the art exhibit featured LaBeouf sitting quietly in a room while spectators selected a prop and sat with him. LaBeouf wore a paper bag over his head with the handwritten message, “I am not famous anymore.” Spectators entered the room one at a time, giving them a degree of intimacy with the subject. According to LaBeouf’s artist collaborators, British Luke Turner and Finnish Nastja Säde Rönkkö, they conceived the exhibit as a public reflection on the nature of identity, fame, and media. One of the spectators, an unidentified woman, allegedly raped LaBeouf, and he stayed in character, enduring the trauma until she chose to leave the gallery.

A media circus ensued following LaBeouf’s frightful allegations. Reactions were contested, and they revealed a deep unease with the possibility of male rape. Commentators on Twitter debated the authenticity of his claims and wondered how a man could be sexually victimized by a woman and in public, no less. Piers Morgan, a media personality, posted a

particularly controversial tweet that mocked LaBeouf's manhood. "Shia LaBeouf's claim to have been 'raped' is truly pathetic & demeans real rape victims. Grow up, you silly little man... a Hollywood actor sitting with a paper bag over his head who did nothing as he claims a woman 'raped' him has not been raped..." Morgan goes on to suggest that LaBeouf fabricated the allegations for "cheap publicity" and challenges him to file a police report. Responses to Morgan were varied. Some raised the same points of skepticism, whereas others defended any claim of rape, regardless of the complainant's gender, as authentic. Regardless of the public commentary, however, there has been, as yet, no police investigation or criminal charges filed in relation to LaBeouf's sexual allegations.

Although the fact patterns of this case are unique, LaBeouf's allegations raise bigger questions about public responses to and perceptions of sexual allegations from male complainants. These immediate responses are important because the issues invoked provide some insight into how investigators and prosecutors might perceive male complainants. Can a man experience sexual assault? If so, how and why does this occur? Why would a man not fight off a sexual attack? What are appropriate male responses to sexual assault? The questions generated by LaBeouf's allegations indicate that male sexual victimization generates much confusion and may be dismissed as "utterly ridiculous," as Morgan characterized LaBeouf's claims. However, my findings reveal that male rape is actually seen as especially egregious during the investigation phase. There remains much cultural confusion about the cases, but ultimately investigators take the claims seriously precisely because the sexual victimization of a male body challenges the structure of gender. First, in contrast to women, men are expected to have the unquestioned ability to move through the world without threat to their physical integrity. Second, male rape, especially of younger victims, is perceived as an initiation into

homosexuality, which requires swift intervention from the state, particularly in conservative communities. In this chapter, I show how legal actors construct the significance of this gendered crime in the investigation phase.

In this chapter, I examine how sexual assault cases involving adult male complainants are investigated by police officers and prosecutors. This is an important point in the criminal justice process because, depending on how these early responders react to the allegation, the evidence collected at this stage shapes the strength of the case with which prosecutors have to work at later stages in the process. The investigation stage includes multiple angles, including the emotional reaction of law enforcement actors to the complainant's allegations; the collection of forensic evidence from the crime scene and the victim's body; interviewing witnesses; and following up on other relevant leads. This point in the criminal justice process is also important because it reveals how law enforcement actors approach an unfamiliar type of crime. Most crimes that are reported fit into a predictable rubric of what David Sudnow calls a "normal crime" (1965). This means that investigators and prosecutors apply predetermined cultural frames to expedite their workflow. Each office processes significant quantities of criminal allegations and charges, and it is difficult, if not impossible, for them to realistically approach each kind of case as if it is a first. Male rape does not fit within a predetermined rubric. These investigators must do this cognitive legwork as they go. First, they must determine whether or not the allegation in question was a probably instance of sexual assault. Second, they must sort out how the gendered identities of the complainant and defendant, in relation to one another, affect how they understand this case. Importantly, the investigators and prosecutors ask this not just of themselves, but they are "thinking downstream," trying to anticipate how potential jurors will react to the fact pattern. Given these external and internal conditions, it is not readily

apparent just how legal actors will react to allegations of male rape. In fact, one might hypothesize that the most likely response would be one of incredulity and then dismissal because legally legitimating the sexually victimized male body might challenge structures of hegemonic masculinity.

Part 1: Collection of Evidence

Reluctance to Report

A report to state authorities is what initiates a sexual assault investigation. Typically, the victim reports his victimization to police officers by filing a crime report. Although victims may also first present at medical institutions, rape crisis centers, or even schools, as all these organizations are now looped into the criminal processing of sexual assault. Moreover, occasionally someone else may report the victimization to authorities in cases where the victim is not able to advocate for himself, either because of temporary shock, immaturity, or disability. Research shows that sexual assault is a crime that is significantly under-reported (Clay-Warner and Burt 2005; Belknap 2010; Chen and Ullman 2010). Victims refrain from reporting for a variety of reasons, including fear, shame, shock, embarrassment, and concern that their allegations will not be taken seriously (Weiss 2009; 2011; Wolitzky-Taylor et al. 2011). Even though most sexual victims, on average, probably have not had not much lifetime experience with the criminal justice system, they still have an intuitive sense that reporting their victimization will likely be a challenge. This intuitive sense is reflected in the low reporting rates for rape across the country.

Male victims may be particularly reluctant to report sexual crimes because of the ways that the association sexual victimhood is perceived to challenge their masculinity and heterosexuality. The attorneys believe that men are reluctant to report sexual crimes because

male bodies are not associated with sexual victimhood. Here is how a Michigan prosecutor explores the notion that men may be reluctant to report sexual crimes.

It's not great for a female to have to go through that, but I think females are less...I don't know how to phrase it. I don't know what it is. Females will report, and males won't. Socially, I guess it's okay to be a female victim? I don't know. I don't want to say it's okay. There's less social stigma for being a victim? I don't know. But they'll report more often than the males do. Even when I know they're a victim, a male's a victim, I will still get them saying, 'Oh, no, I'm not. I'm not going into court, and I'm not going to pursue this.'

During her explanation, this prosecutor paused and stammered frequently. She had a hard time articulating the point, and her stammers point to just how strong the association is between femininity and sexual victimhood. An Idaho defense attorney expands on her thought process and adds the element of homosexuality. "Rape is one thing. But if you were raped by some other male, you're not going to report it because then you're gay. And you might as well be dead than gay in this type of community." This attorney describes men's perceived reluctance to report in a more blunt and concise manner. Here, the social stigma of male sexual victimhood is also associated with homosexuality. Embedded in this worldview is the assumption that if a man files a criminal report alleging sexual victimization, then not only will his masculinity be called into question, but he will also be considered homosexual. The association with homosexuality is particularly stigmatizing; in fact, according to the Idaho attorney, the stigma is so strong that dying would be a better alternative. Admittedly, he was being somewhat hyperbolic, but the exaggeration nonetheless illuminates the alarming strength of the stigma.

The empirical patterns of adult male sexual victimization generally follow those of their female counterparts. And although they may have heightened reluctance to report their sexual victimization, men experience similar kinds and levels of trauma. Male victims usually know their assailant; the assault often occurs in a private residence (notably, not necessarily in a jail or

prison, as is frequently assumed); and the trauma of the assault may leave male victims unable to defend themselves and unwilling to report the event to friends, family, or state authorities.

Moreover, the effects of the sexual assault may have a long lasting impact on the male survivor's life. At a 1995 trial (*Michigan v. William Henry Carlyle*), the complainant's brother-in-law testified about how the complainant reacted in the immediate aftermath of the sexual assault.

Q: How did [complainant] appear to you when you first saw him after opening the door?

A: He was scared.

Q: Why do you say that?

A: I could tell it just by the way he was looking. That he had a – just like he seen a ghost. He was – like he – he was scared.

Here, the complainant, who was in his late teenage years, lived with his sister, brother-in-law, and cousin in a small one-bedroom apartment. So when his cousin sexually assaulted him, there were witnesses who could corroborate that something had happened. Although corroboration is not legally necessary in Michigan, it does help prosecutors present strong cases. As can be seen in this excerpt from the trial transcript, this complainant reacted to the sexual assault in a physically visible way. Thus, the immediate, visceral reaction of male victims to sexual trauma appears to be quite similar to that of female victims, although, as we shall see, the social construction of this trauma diverges in important ways.

Disclosures of Panic

In addition to forensic evidence, criminal investigations include the collection of witness statements. Witnesses in sexual assault cases are most often the complainant and alleged perpetrator, given that sexual assault is usually a crime that occurs in private spaces between just two people. Although there are rarely eye witnesses beyond the complainant and alleged perpetrator, investigators often interview other people who may have information about the crime, such as individuals who saw one or both parties just before or after the alleged attack, or

who have knowledge about the nature of the relationship between the two involved. Investigators ask a series of questions to determine as best they can what occurred during the alleged incident, and in doing so, they try to ascertain whether or not the action was criminal. It is important to note, however, that although police work is often perceived to be rational and bureaucratic, there are not necessarily objective facts just waiting for investigators and prosecutors to uncover. Rather, I argue that the questioning process is more Foucauldian, in the sense that facts and criminal realities only emerge *through* the investigative process (1995). There are not a priori facts. In turn, the investigative process itself generates knowledge about what it means for a man to be sexually victimized. In this section, I describe the dynamics of the interview process and argue that allegations of male rape elicit high anxieties and gendered panics. Notably, these panics occur with all parties involved.

There are specific skills associated with interviewing sexual assault victims. These skills and processes have been institutionalized in police precincts and prosecutors offices across the country since the 1980s. Although there remains significant variability in how frequently and successfully they are implemented, interviewing standards are much better than they were prior to the anti-rape movement. Here is how a former Georgia prosecutor (working as a defense attorney at the time of the research interview) describes his method for building rapport with sexual assault victims.

The victims, you would just have to meet with them. You'd establish a relationship with them so that they know that you're not just some jerk who's going to not talk to them the right way. There's also some really good classes. There's a great week long class called "Finding Words" here in Georgia. I know a lot of officers who took it, and I saw distinct improvements in how they interviewed people.

As this respondent describes, he first meets with the victims in person, and he would take steps to ensure that he is not perceived as "some jerk." Elsewhere, this respondent describes how he

met multiple times with one complainant who was severely disabled. Along with the police investigator, he went to the complainant's place of residence multiple times during the pretrial phase to create a familiarity and trust with the complainant. While this prosecutor exhibited a great deal of compassion for this complainant, his visits were also strategic, as he wanted to ensure that the complainant would feel comfortable, and thus convincing, while testifying at trial. He mentions a training workshop on forensic interviewing, "Finding Words," with which many of the Georgia prosecutors were familiar and had attended. The "Finding Words" workshop, and others like it, train interviewers in interview structure, interpersonal demeanor, and trauma responses (some of which are counterintuitive) that sexual victims may exhibit. The name of the workshop is revealing. It is as if the attorneys must coax the complainants into finding words to name a visceral experience for which they would otherwise not be able to articulate. They are bringing the criminal experience to life at the linguistic level in and through the forensic interview process. Even though the techniques taught at such workshops are more victim-centered and seemingly compassionate, the prosecutors ultimately have a bureaucratic job to complete. They need to collect information from and about the victim. They need to determine the veracity of the complainant's allegations; which, if any, sort of crime may have occurred; and assess the credibility and strength of the complainant. These are complex interpersonal assessments that prosecutors, especially skilled ones, move through rapidly and reflexively in the interview process. Most prosecutors reported that they do not actively chart out all these factors; they are much too busy to do that with each case. Instead, they bring intuitive assessments to the case as they absorb the case facts and assess what kind of person the complainant is.

Sexual assault cases usually hinge on the testimony of the complainant. Other witnesses and evidence may corroborate his allegations, but his narration of victimization is ultimately

what shapes the plausibility of the supposed fact pattern. Thus, in their interviews with complainants, prosecutors are both assessing his credibility and also determining which criminal statutes may have been violated. As we will see in the following chapter, prosecutors have a great deal of discretion in charging cases, but they at least need to assess the range of charging options during the interview phase. In conducting the interviews, prosecutors must move through a line of questioning that may feel awkward or traumatic for sexual assault survivors, especially for men because there is little cultural framing for understanding the physicality of sexual victimization in relation to male bodies. Here, an Idaho defense attorney describes how forensic interviews with male survivors can be confusing for all involved. Although he did not conduct this interview, he had access to the archived police interviews and worked them frequently during the course of his case. He also questioned the complainants in pretrial hearings. In the following quote, he toggles back and forth between the question posed to the complainant and how the complainant responds.

“He tried to stick his fingers in my butt.” “Well, and did it go in your butt?” “Well, yeah.” “Well, you mean between your cheeks?” “Yeah.” And so then I’m trying to talk to him about, you know, “Do you understand your anal sphincter, where your butt hole is? Does it go in your butt?” “Oh, yeah, it went in my butt hole.” “Well, how far did it go in?” “Well, I don’t know.” “Does it go in, or is he just [clapping hands together, to indicate smacking motion]?” You’re trying to get an explanation from a 17-year-old kid that doesn’t have a great understanding of physiology. To him, your butt is probably the bottom of your gluteus maximus to your tailbone and anywhere between your cheeks.

This case involved allegations of sexualized hazing amongst high school athletes. So police investigators conducted many interviews with complainants, defendants, and witnesses in an attempt to figure out what happened and who was involved. All the interviews were just as vague as this one. No one felt comfortable discussing male bodies in such explicit ways, and yet prosecutors needed this level of detail to determine which crime might have occurred. For

instance, the difference between male rape, penetration with a foreign object, and assault is significant in Idaho. Thus, while the complainant interview is a crucial component of a sexual assault investigation, the subject matter of sexually vulnerable male bodies elicits awkward reactions from the actors involved.

The panic of sexual victimization extends to the defendants during the investigation process. While complainants may have a difficult time articulating what happened to them due to embarrassment and shame, the alleged perpetrators also react in a defensive fashion. This defensiveness is a result of the fact that associations with homosexuality may be perceived to tarnish the defendant's identity as well as the complainants. This defensiveness is particularly sexed and gendered, as opposed to a general anxiety about being investigated for committing a crime. Two defense attorneys from the Idaho hazing case, described above, describe how their clients were extremely upset about being accused of sexually assaulting other young men because it would imply that they were gay.

These kids are so conservative. They're anti-gay. Just to be thought of doing something sexual to some other guy is just extremely offensive to them [defendants]. They're like, "I'd never touch some guy's junk." They're just incensed by it. You could have called them rapists and said they raped every single girl in the school, and they'd be upset but they'd go along with that. It's not that deep internal, ingrained resentment of some type of male sexual behavior with another male.

Here, a single accusation of male rape worse than "raping every single girl in the school."

Elsewhere in the interview, the attorneys also report that a charge of homicide would have been more palatable to the defendants than one of male rape. The logic here is similar to what C.J. Pascoe describes in *Dude, You're a Fag* (2011). For young men, their burgeoning masculine identity is deeply entwined with the adamant disavowal of homosexuality. So an allegation of male rape, perhaps especially against a younger man, is not just a problem in relation to a single

criminal event. Rather, an allegation of male rape is experienced as a long-term insult against the core identity of the defendant. In turn, his defense strategies are not just about minimizing the criminal exposure but also about shoring up his manhood and community reputation.

The attorneys are well aware of the unwanted exposure to homosexuality that complainants and defendants face during the investigation process. This recognition is probably heightened since most respondents are men. Although I did not inquire about their own sexual identity during the research interview, none of them made a disclosure of being gay or presented as such. Regardless of their own sexual identity, they all seemed to be aware of the stigmatizing potential of a male rape investigation. Moreover, they take subtle steps to reaffirm the complainant's (perceived) heterosexuality during the interview process. Here is how a Georgia prosecutor describes how he attempts to minimize any sexualized anxieties that complainants, especially younger men, may feel.

It was real hard initially to get these boys to talk about it, especially to another male. I had an investigator, a very attractive blond and young, in her 20s. Being a guy, I would sit them privately and say, "Look, I know you've got a lot of worries now about your sexual identity. I understand that. I can appreciate that. But just remember this: your eyes are in your head, and they're not below your belt. You can't tell if this is a man's hand, a woman's hand, a man's mouth, or a woman's mouth. It feels good. Thank God, or we wouldn't be here. Now let me just ask you a personal question. If tonight you had a choice, would you rather have sex with me, or would you rather have sex with Lisa?" And they said, "Lisa, Lisa. Mr. Johnson, do you think we can arrange that?" I said, "No, no, no. We're just talking hypothetical here."

This prosecutor creates a masculine atmosphere of safety, intimacy, and disclosure with complainants, who might otherwise be reluctant to reveal the details of his sexual victimization. His objective in this pseudo-therapeutic method is precisely to collect information about the alleged crime. Notably, his method for encouraging the complainants to relax is based on affirmations of his heterosexuality. Moreover, his well-practiced scenario is done in such a way

that it acknowledges potential concerns about homosexuality in a proactive way, without actually requiring the young man to say much of anything other than passively engage with the hypothetical scenario. Of course, this heteronormative strategy would not work if the complainant identified as gay prior to the attack. In sum, the attorneys are mindful of potentially negative associations with homosexuality, and they take strategic steps during the investigation process to mitigate these issues, in the interest of crafting forthcoming and cooperative witnesses.

The interview process in male rape cases is contentious because it generates moments of gendered panic. There is a tension between the bureaucratic objective of collecting objective facts and the experiential disgust, from both complainants and defendants, at being embroiled in a crime that is highly associated with a stigmatized sexual identity. So the interview process becomes both a way to collect the “facts” that are then deployed in later stages of the criminal justice process, and it is also a space where the specter of homosexuality first emerges over the complainant’s allegations. As we will see in the next part, this specter of homosexuality significantly influences how the attorneys assess and narrativize the cases.

Part 2: Professional Assessments

Prosecutors and defense attorneys have a two-pronged objective during the investigation process. (Note that prosecutors initiate and lead the investigation process, but defense attorneys usually also conduct a parallel process of information-gathering, unless they are severely underfunded public defenders, in which case they may not have adequate resources.) The ostensible objective is to collect facts related to the allegations, but there is an equally important second and more subtle objective. This second objective is to begin crafting assessments about the plausibility of what may have occurred and how they may frame the case in later stages. The

attorneys typically acknowledge the importance of the second objective, but they minimize its process and the specific skill set that it requires. They describe it as intuition or instinct, which does not require much analytical work. However, I argue that this instinct about what makes a strong or weak case is actually based on a specific gendered order of the world. Moreover, the attorneys' assessments of male rape allegations actually show that they perceive this crime as particularly egregious and problematic. Rather than dismissing, silencing, or ignoring it, as might be expected given the cultural silence around the issue, the attorneys actually see this particular gendered sexual victim as especially deserving of justice. As I argue in Part 2, these professional assessments are based on the idea that men have much more latitude in engaging in risky behavior than do women and that the sexual harm – due to perceptions about diminished manhood and initiation into homosexuality – are more severe than what women experience.

Risky Behavior

A significant portion of rape prevention strategies focus on modifying the behavior of the potential victim. Historically, survivors were reprimanded – in both the legal and cultural realms – for any behavior that was perceived to have precipitated the sexual assault by sending a message of sexual availability. For instance, defense attorneys routinely questioned the complainant's behavior leading up to the alleged sexual assault, her manner of dress, and her prior sexual history. *The Accused*, a 1988 film by Jonathan Kaplan, captures brilliantly this process of victim-blaming. Based on a true story, Jodie Foster plays a young woman who is gang-raped by a group of bawdy men at a Massachusetts bar. Because she had known the men, flirted with them, wore provocative clothing, and drank alcohol, prosecutors were reluctant to pursue her allegations. Anti-rape activists have taken a multi-pronged approach to address these problems. Legal reforms prohibit defense attorneys from bringing out the complainant's prior

sexual history at trial, and public service campaigns encourage self-defense courses for young women.

Yet these social reactions and movement strategies are undergirded by a gendered paradigm whereby men are assumed to be sexual agents who can expect corporeal safety as they move through the public and private spheres. In contrast, women are assumed to have different expectations of sexual desire and corporeal safety – indeed, they are taught as young girls to discipline their bodies and restrict their movements (Young 1990; Martin 1996) and to manage their sexuality (Tolman 2005). Thus, a paradox emerges when men report an experience of sexual victimization to state authorities. Given that men are assumed to be sexual agents who are able to protect themselves from harm, how are their behaviors leading up to the sexual assault understood? Are they held to the same rigid expectations as their female counterparts? Or not?

The cases in my sample indicate that men are not accorded the same degree of blame. The cases involve men who drank considerable amounts of alcohol, walked alone late at night, invited strangers into their home – all reasonable activities but ones that would call into question a female complainant's credibility. A 2006 case (*Michigan v. Lee*) involved a defendant who was in his mid-20s and who would meet men at bars and fraternities in a college town. According to the prosecutor, he had a history of befriending men who were drinking heavily and engaging in sexual activities with them late in the night. The issue at trial was whether or not these encounters were consensual. Charges were brought in relation to two complainants, one of whom invited the defendant to his apartment in the middle of the night and second one who drank a combination of beer, Jell-O shots, and jungle juice at a house party that he blacked out. Notably, the defense attorney did not even try to insinuate at trial that the complainants' behaviors were dubious or that the heavily intoxicated complainant might not be the most reliable eye witness.

This is not to suggest that sexual assault victims *should* bear the responsibility for a perpetrator's criminal actions; I make the point simply to highlight the different expectations of how men and women are thought to move through the social world and how this affects rape trials. Male sexual complainants have a greater degree of latitude in their behavior leading up to the assault because it is assumed that men are and should be able to move about in the social world without risking their safety or bodily integrity.

Sexual Harm: Diminished Manhood and Initiation into Homosexuality

Although prosecutors file criminal charges on behalf of the state, the harm, especially in personal violence cases, falls more squarely on one individual. The victim experiences the sexual harm. Yet the definition of sexual harm is not static, even though it may be perceived culturally as a fixed trauma reaction, especially due to recent developments in the psychological and self-help literatures. Historically, sexual harm was primarily understood in relation to the victim's reproductive capacity, whether because of the pregnancy potential or simply the sully of her morality and, by extension, her community standing and that of her family's. In the twentieth century, dominant understandings of sexual harm have shifted to an individual-based harm that affects the psychological stability and integrity of the victim. Current understandings are much more individual-based. In cases involving male victims, understandings of sexual harm are enhanced because he is perceived to have diminished manhood and initiation into homosexuality after a sexual attack from another man. The diminished manhood is associated more with disabled complainants, whereas the initiation into homosexuality is associated more with younger complainants. Here, I describe how prosecutors and defense attorneys construct these understandings of sexual harm in relation to male complainants. This construction of sexual

harm occurs a result of the interaction of the investigation process and gendered cultural categories that the actors bring to the process.

Disability status emerges as mechanism to explain and normalize adult male sexual victimization. Men are perceived and idealized to be macho, brave, and aggressive – all qualities that are contrary to the state of sexual victimization. When constructed as disabled, however, a male body is more readily conceived as a plausible sexual victim. The masculinity of adult male sexual victims can be restored, or at minimum stabilized, through his disability. This process is somewhat counterintuitive because disability status is also incongruent with masculinity. Yet within the bounded space of the criminal justice process, masculine disability actually becomes a strong narrative opening for explaining male sexual victimization. A disabled man is not expected to have the same capability of protecting himself against sexual aggression as an able-bodied one is expected to have. Thus masculine disability is an explanation that prosecutors can offer to jurors about how a man could be sexually vulnerable in the first place.

Although disability status is a risk factor for sexual victimization, less is known about the historical dynamics of the intersection between sexual violence and disability than is known about other identity categories like race and age. Disabled individuals face increased risk of sexual violence, and their subsequent traumas may be magnified due to their disability (Mueller-Johnson 2014; Olofsson 2015). Yet “disability” is an umbrella concept that includes a wide array of symptoms and individuals. A disability can be chronic or temporary, and it can be cognitive or physical. Moreover, as many queer scholars of disability argue, the state of disability is a social construction that is predicated on normative notions of how the human body should be (Davis 2013).

Disability is also a legalized identity-based vulnerability in male rape processing. Following the Americans with Disabilities Act (ADA) of 1990, disability became a legally protected status in discrimination law. The ADA is in the civil arena, of course, but it nonetheless creates a legal terrain in which disability is formally understood as a protected category. Moreover, disability is written directly into some state's sexual assault laws. For instance, the Michigan CSC statute includes the clause: "The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless." Interestingly, this clause essentially means that all people who experience cognitive disabilities in the state do not have the ability to consent to sexual activity; they are essentially treated as children in relation to their sexuality. The Georgia and Idaho sexual assault statutes do not directly include disability status, but Idaho criminal code includes a "vulnerable victims" statute that prosecutors can add onto a criminal charge when appropriate. These linguistic nuances of criminal code are crucial to defining the boundaries around what is legally considered an acceptable versus unacceptable sexual interaction. Below, we will see how each state's respective construction of criminal code shapes the attorneys' work as well as the narratives that emerge at trial.

Prosecutors learn about the disability status of the complainant in multiple ways. First, complainants who have chronic disabilities are often already marked as such by their enrollment in various state-based programs. For instance, one complainant lived in an adult foster home for disabled people.⁶ Another received support services for obtaining and maintaining a low-wage job. Yet another used A-Ride, a public transportation service for disabled people, and had a

⁶ I use pseudonyms for the names of the sexual assault complainants. Although their identities are public information, they are not easily accessible. One would have to track down original court documents, which I have, to learn their identities. Therefore, I follow standard journalistic and academic protocol in protecting the identities of sexual assault survivors.

network of social workers who helped organize his life. Some complainants became marked as disabled in the educational system, and this status follows them into the criminal justice system. These characteristics are clear markers of disability status; upon learning these facts, prosecutors and defense attorneys begin to figure their impression of the complainant and his allegation. Second, for complainants who have a temporary disability, this often becomes an important element of the fact pattern. For instance, complainants who were under the influence of drugs or alcohol during the sexual assault, prosecutors learn of this temporary disability status from reading the police report and, if taken, the forensic exam notes. Sometimes these inebriated states were strategically planned by defendants to facilitate the attack. Regardless of how they learn of the complainant's disability status, once known it becomes an important mechanism to determine both that the events in question were, in fact, potentially criminal and to explain the complainant's sexual vulnerability during the alleged sexual assault.

Disability status is performative. Disability scholars theorize how the category is socially constructed, and this observation is particularly relevant in male rape cases (Kuppers 2003; Sandahl and Auslander 2005). Once the fact of disability is established in the investigatory and early prosecutorial stages, there are multiple opportunities for the disability status to become known in more informal ways. However, just because these ways of knowing are informal (as opposed to a formal institutional marker), they are critical to the success of the disability narrative. Prosecutors are more likely than defense attorneys to recognize the complainant's disability in social interactions because they have more opportunities to meet and work with the complainant. A Michigan prosecutor described his initial impression of a complainant who had a traumatic brain injury. He described the complainant as having a flat affect and dressing somewhat oddly in billowy windbreaker jackets, spandex biker shorts, and "Coke bottle glasses."

Through the complainant's demeanor, style of interaction, and personal dress and grooming habits, prosecutors learn of and assess the complainant's disability. This first-hand knowledge lays on top of and complicates the external facts of disability described above. Cases in which the prosecutor's impression of the disability aligns neatly with the external facts are those most likely to have a coherent trial narrative.

Complainants themselves also contribute to external perceptions of their disability. Although prosecutors and defense attorneys have disproportionate influence over case trajectories, the complainant's behavior also has significant influence on the case trajectory. Criminal cases become much more difficult if the complainant is not cooperative. Legal actors define cooperative witnesses as those who show up for appointments, tell truthful stories, testify appropriately at trial, and refrain from too frequent or irksome contact with attorneys. Konradi describes how sexual assault survivors find these expectations challenging, especially if they are unfamiliar with the criminal justice system (2007). In addition to their actions, the complainant's demeanor matters. They must walk a fine line between demonstrating their victim status, which requires vulnerability and passivity, and advocating for themselves in the legal system, which requires independence and assertiveness (Dunn 2001). When prosecutors identify disability as an important legal fact, the complainant must perform his disability in accordance with normative social expectations of what counts as a disability. Although I use the word "perform," I do not mean to suggest that the complainants are necessarily conscious or intentional about this behavior. In fact, they are probably more convincing when they are not thinking about their behavior. Nonetheless, their demeanor of disability is a performance of sorts, especially in the courtroom, as jurors are evaluating the credibility of their story through the lens of the complainant's self-presentation.

Complainants first perform disability during the investigatory process. During their initial contact with criminal justice actors including police officers, rape crisis counselors, and Sexual Assault Nurse Examiners (SANEs), the complainant may intentionally or inadvertently reveal his disability status. Sometimes the complainants clothing stands out – one tended to wear spandex shorts with a puffy track shirt – which may be read by others as odd and ultimately wrapped up with others’ perceptions of his disability. These individuals piece together the facts of the allegation; they interview witnesses, and they collect evidence. Some of this information is related to the identities of the complainant and alleged perpetrator. Although my data cannot speak to this fact, it is likely that the complainant’s disability status affects how these criminal justice actors perceive and process the victim. For instance, the presence of an identifiable disability in regards to a male complainant may compel these criminal justice actors to take the complainant’s allegation more seriously because they perceive him as more vulnerable than other adult men. This is an important avenue for future research because the perceptions and actions of these investigators affect the evidence that is later available, or not, to prosecutors. Indeed, these criminal justice actors have the authority to dismiss cases that they perceive as weak, and this is one reason why the attrition rate for sexual assault cases remains so high.

One of the reasons why adult male sexual victimization is perceived as particularly bad is because of its associations with homosexuality. Even though feminists have long argued that rape is about violence and power rather than sexual pleasure, people still often associate male rape with homosexuality, which is a little peculiar then because homosexuality is about sexual identity – i.e., to whom one’s sexual desires are targetted – which would imply that the sexual assault of a man *is* about sexual desire, at least in terms of general public perceptions. This can probably be attributed to the construction of hegemonic masculinity which is defined by the

rejection and disavowal of homosexuality. In other words, part of the stigma of male rape is its association with homosexuality. In turn, the perceived social harm is not just the unwanted sexual contact and bodily intrusion but also the perception that the victim might be initiated into the world of homosexuality, which is constructed as an alternate, marginalized, problematic space. Concerns about initiation into homosexuality are particularly salient – for both the complainants and lawyers – for victims who had previously identified as straight men and especially for younger victims. Notably, this is an identity-based harm, rather than the reproductive-based harm that has characterized rape historically.

Age is an important identity category through which the prosecutors construct male sexual vulnerability. Youthfulness, in particular, is a salient way for prosecutors to establish that the male complainant is plausibly vulnerable. Age is both a legal and cultural vulnerability, in that young people under a certain age (it varies by state) cannot legally consent to sexual activity. The logic here is that children are sexually innocent, even for a number of years after puberty. During this period of sexual innocence, young people need to be protected by the state from sexual predators. This notion is largely uncontested for younger children, but the lines are much thornier when teenagers are involved. Teenagers are perceived to be potentially sexually active – even if they have not yet had what psychologists call their “sexual debut,” they are physically mature enough for sexual encounters. Indeed, it was quite normative for older teenagers to be sexually active and even married in different historical eras (D’Emilio and Freedman 1998). As I discuss in Chapter 2, the possible “sexual baggage” of teenagers makes it more difficult for prosecutors to definitively establish the credible sexual vulnerability of a younger complainant. Yet when the complainant is a young man, the chronological window of sexual vulnerability is

extended because it is not assumed that a young man would willingly consent to sexual activity with another man.

The trope of age as vulnerability is constantly mediated by prevailing cultural assumptions of aggressive male sexual desire, even at young ages. Once boys hit puberty, there are assumptions that they will welcome and seek out sexual activity. Although there is still great stigma surrounding homosexuality in younger populations (Pascoe 2011), many of the attorneys noted that sometimes youth will engage in sexual exploration that does not necessarily reflect on their sexual identity. Here is how one Idaho defense attorney describes the interaction between youthfulness, sexuality, and male vulnerability.

Male rape is still designed to get at violent acts. For the most part, you've got two 17-year-olds who are having consensual experimental sex. Probably nobody's going to complain. Unless it goes too far, and even then, you're not going to go tell somebody unless you're walking down the street and somebody jumps on you and rapes you kind of thing.

In this hypothetical formulation, sexual vulnerability for young men is plausible only when combined with an act of physical violence. Similarly, the experimental sex described above might also be perceived as criminal if one of the actors was significantly older and could then be plausibly framed as a sexual predator. Despite these nuances of how age is understood culturally as a vulnerability, it is nonetheless a key tool in the prosecutor's toolkit for establishing male sexual vulnerability. My sample only examines cases involving complainants who are over the age of consent, but nonetheless a savvy prosecutor can play up the complainant's youthfulness and naivete as plausible explanations as to why he did not consent to the sexual interaction in question.

Male bodies at either end of the age spectrum – either the young or the very old – are more readily constructed as sexually vulnerable than those of middle-age men. For younger

victims, prosecutors have more options for their charging decisions. But just as important are the cultural stereotypes associated with age. Younger men are perceived to be on the cusp of manhood, so they may not know any better and be vulnerable to covert attack by older men, especially those who are already occupying marginal social positions. Older victims are perceived as unable to protect themselves because of their weakened bodies.

Conclusion

Findings indicate that male sexual victims are, counterintuitively, actually perceived as especially egregious during the investigation process. As the legal actors collect evidence about the allegations, they tend to perceive of these cases as terribly problematic and actually more severe and urgent than cases involving female complainants. Notably, this pattern occurred across all three states. The effect of state-level differences in legal statutes does not kick in until the next stage in the criminal justice process. I argue that these perceptions of severity are a result of an interaction between sexual risk and harm as understood in relation to masculinity. First, men are not perceived to embody much sexual risk; it is culturally understood that men can move about in both the public and private spheres without fear for their bodily integrity. Thus, challenges to these perceptions of the absence of sexual risk are understood as particularly affronting. Second, one of the most serious elements of the harm that male sexual victims experience is perceptions that they have been initiated into homosexuality by the defendant. This is especially true for the younger, disabled, or physically smaller complainants. Homosexuality is still a stigmatized status, especially for men, and while public acceptance of gay rights has increased tremendously in recent years, the notion that gay men might be “recruiting” otherwise straight men is still perceived as problematic. Through this interaction between the sexual risk and initiations into homosexuality, then, moral outrage emerges in relation to cases of male rape,

which motivates the legal actors to invest in the cases. As we will see in the next chapter, this interaction between risky behavior and sexual harm creates a set of conditions in which prosecutors mobilize the law on behalf of male victims, despite many good reasons that they might covertly dismiss such unfamiliar cases.

Bibliography

- Belknap, Joanne. 2010. "Rape: Too Hard to Report and Too Easy to Discredit Victims." *Violence Against Women* 16(12): 1335–44.
- Chen, Yingyu, and Sarah E. Ullman. 2010. "Women's Reporting of Sexual and Physical Assaults to Police in the National Violence Against Women Survey." *Violence Against Women* 16(3): 262–79.
- Clay-Warner, Jody, and Callie Harbin Burt. 2005. "Rape Reporting After Reforms Have Times Really Changed?" *Violence Against Women* 11(2): 150–76.
- Davis, Lennard J. 2013. *The Disability Studies Reader*. 4th edition. New York: Routledge Press.
- Tolman, Deborah L. 2005. *Dilemmas of Desire: Teenage Girls Talk about Sexuality*. Cambridge, Mass.: Harvard University Press.
- Dunn, Jennifer L. 2001. "Innocence Lost: Accomplishing Victimization in Intimate Stalking Cases." *Symbolic Interaction* 24(3): 285–313.
- D'Emilio, John and Estelle B. Freedman. 2012. *Intimate Matters: A History of Sexuality in America, Third Edition*. 3rd edition. Chicago: University Of Chicago Press.
- Foucault, Michel. 1995. *Discipline & Punish: The Birth of the Prison*. Translated by Alan Sheridan. 2nd edition. New York: Vintage Books.
- Konradi, Amanda. 2007. *Taking the Stand: Rape Survivors and the Prosecution of Rapists*. Westport, Conn: Praeger.
- Kuppers, Petra. 2003. *Disability and Contemporary Performance: Bodies on the Edge*. 1st edition. New York: Routledge Press.
- Mueller-Johnson, Katrin, Manuel P. Eisner, and Ingrid Obsuth. 2014. "Sexual Victimization of Youth With a Physical Disability An Examination of Prevalence Rates, and Risk and Protective Factors." *Journal of Interpersonal Violence* 29(17): 3180–3206.
- Olofsson, Niclas, Kent Lindqvist, and Ingela Danielsson. 2015. "Higher Risk of Violence Exposure in Men and Women With Physical or Sensory Disabilities Results From a Public Health Survey." *Journal of Interpersonal Violence* 30(10): 1671–86.
- Pascoe, C. J. 2011. *Dude, You're a Fag: Masculinity and Sexuality in High School*. 2nd edition. Berkeley, Calif.: University of California Press.
- Martin, Karin A. 1996. *Puberty, Sexuality and the Self: Girls and Boys at Adolescence*. New York: Routledge Press.
- Sandahl, Carrie, and Philip Auslander. 2005. *Bodies in Commotion: Disability and Performance*. Ann Arbor, Mich.: University of Michigan Press.

Sudnow, David. 1965. "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office." *Social Problems* 12(3): 255–76.

Weiss, Karen G. 2011. "Neutralizing Sexual Victimization: A Typology of Victims' Non-Reporting Accounts." *Theoretical Criminology* 15(4): 445–67.

Wolitzky-Taylor, Kate B., Heidi S. Resnick, Jenna L. McCauley, Ananda B. Amstadter, Dean G. Kilpatrick, and Kenneth J. Ruggiero. 2011. "Is Reporting of Rape on the Rise? A Comparison of Women With Reported Versus Unreported Rape Experiences in the National Women's Study-Replication." *Journal of Interpersonal Violence* 26(4): 807–32.

Young, Iris Marion. 1990. *Throwing Like a Girl: And Other Essays in Feminist Philosophy and Social Theory*. Bloomington, Ind.: Indiana University Press.

Chapter 5: Mobilizing the Law

“If it’s legitimate rape, the female body has ways to try to shut the whole thing down.”

— Todd Akin, Former Missouri Congressman

“A mentally challenged person. A physically challenged person. If you’ve got a nursing home and you’ve got a guy who is raping old men who are bed ridden, or raping mentally handicapped children or Down Syndrome kids, or people with diseases that keep them from being ambulatory, that would be something. A pattern where it’s more than one victim repeated. All of those things would be important. It’s possible that you take a case where all you have is one person, and they tell you it happened. It depends on the facts and how they fit together with what’s reasonable.”

— Idaho Prosecutor

Former Congressman Todd Akin made a tremendous political blunder when he distinguished between “legitimate” and illegitimate rape on a St. Louis television program in 2012. He hypothesized that a female victim’s reproductive potential following unwanted sexual intercourse was contingent on whether or not the rape was legitimate. His comments came in August, just as the presidential election cycle was heating up, and they generated significant backlash due to their inaccuracy and lack of compassion. The following day, President Barack Obama denounced Akin’s remarks from the White House, arguing that it does not make sense to be “parsing and qualifying and slicing what types of rape we’re talking about.” Clearly, the backlash, which came from all sides of the political spectrum, was warranted. Yet defining different types of rape as legally legitimate or not is what American prosecutors do every day. Allegations that prosecutors perceive as legitimate – and, importantly, winnable at a potential trial – are validated as such by the state through the filing of criminal charges against the perpetrator. Criminal charges demonstrate the state’s symbolic support of the victim’s allegations and elevate the claim from a private injury to a public problem.

The Idaho prosecutor above reveals the parsing and qualifying and slicing process that he goes through when making sense of a male rape allegation. He identifies various characteristics of a male victim's story that would make him more likely to file criminal charges. Here we see how the legal characterization of a rape as "legitimate" or "reasonable" is by no means an objective process. Prosecutors draw on gendered understandings of desire, vulnerability, and bodily integrity as they determine whether or not to file criminal charges against an alleged perpetrator. In this chapter, I examine the decision-making process that prosecutors use when determining whether or not to mobilize the law on behalf of male rape victims.

In this chapter, I examine what is arguably the most important point in the criminal justice process: charging decisions and plea bargain negotiations. Here, the allegations are defined as valid (or not) and criminally constructed as either a misdemeanor or a felony. This point in the criminal justice path is wholly determinative of what the case outcome will be. Moreover, this is the point at which the different state laws emerge as most influential. If prosecutors are on the cusp of making a criminal charge, then they believe that a crime has occurred and that the case has a reasonable chance of success (prosecutors define this differently, but they each have relatively consistent thresholds for charging a case). However, they still must determine *how* to charge the case; in any given case, there are often many permutations for how it might be charged. This is where prosecutorial decision-making discretion emerges as important. Moreover, I argue that the process of determining which criminal charge to file is an often overlooked moment in criminology. This point is significant because it determines a finite range of possible case outcomes. It also sets in motion how the case will be handled as it gets closer to resolution. For instance, if a prosecutor files a number of aggressive charges, because he believes the case is egregious, it is likely then that the defendant will be convicted of at least

one felony. On the other hand, if the prosecutor under-charges because he is not as confident in the case, then it is more likely that the defendant will be acquitted or convicted of relatively minor charges. Of course, it is the prosecutors' ethical and professional obligation to not intentionally over- or under-charge a case, as that would be unjust, but nonetheless, there is still a relatively wide parameter of charging discretion within which they work. Once charges are filed, however, the case trajectory becomes much more narrow. Here is where the alleged sexual victimization is defined and legitimated by the state. This is significant because case outcomes are ultimately what are counted in federal crime statistics, and when sex crimes are charged as non-sex offenses (as sometimes happens), then our understanding of crime is skewed.

I focus primarily on the prosecutors in my sample because defense attorneys are less active participants at this stage in the criminal justice process. The charging decisions and plea bargain negotiations also have gendered components. Each of the three states writes gender and sexual desire into the laws differently, and prosecutors must navigate the nuances of the criminal elements when fitting the case into state laws. Findings indicate that, counterintuitively, states like Idaho, which have the most obvious category of male rape in its penumbra of sex crime laws, are actually the most difficult states in which to proceed. Instead, the sexual assault laws that call the least attention to masculine vulnerability and do not highlight any perceived associations with homosexuality are most likely to result in a conviction. Moreover, savvy defense attorneys can direct plea bargain negotiations by drawing on commonsense understandings of gender to suggest the implausibility of the allegations.

Part 1: Legal Mobilization

Legal mobilization requires an applicable criminal code, financial resources, and institutional resolve. The intersection of these conditions is not necessarily as likely as is often

assumed. Significant attrition rates in the criminal justice process attest to the fact that criminal prosecutions do not represent the path of least resistance. Prosecution of sexual assault allegations are especially tricky, even considering the twin successes of the anti-rape and crime victims' rights movement, because they involve fear, shame, sexuality, and (usually) scant evidence. Thus, we might expect that prosecutors would be even less likely to mobilize the law for sexual assault cases involving non-normative complainants. Yet prosecutors do file criminal charges when the occasional case involving a man crosses their desks. This is an unlikely outcome, especially given that there is not a vocal social movement advocating for male victims of sexual assault. So why do prosecutors mobilize the law for unfamiliar victims of sexual assault? In this section, I argue that a unique interaction between gendered assumptions about sexual consent and moral outrage create a set of conditions in which prosecutors are highly motivated to pursue sexual assault cases involving male victims.

Sexual Baggage and Potential Consent

Sexual assault allegations turn on whether or not the prosecutor identifies the complainant's story as reasonable. Prosecutors' initial assessments are profoundly influenced by cultural ideas about normative and appropriate sexual interactions (Frohmann 1997; Levine 2006; Oberman 2013). Most do not explicitly recognize the impact of these cultural ideas about sexuality because they view this element of their work as more bureaucratic, and, following the recommendations of anti-rape activists, they have been trained to view sexual assault as a solely violent act, having nothing to do with sexuality more broadly. Nonetheless, sexuality figures prominently in their assessments. One Georgia prosecutor encapsulates this idea in the phrase sexual baggage. He identifies this logical process more explicitly than many of his peers, but it highlights the patterns of knowledge that they all use. Here he distinguishes between prosecuting

a sexual assault case involving a young child versus an older one. “They [older children and teenagers] come with more baggage because a lot of those kids are already sexually active. It’s more difficult for them to convince a jury. One of the things that we use with small kids, in terms of corroborating what they’re saying, is age-inappropriate knowledge. You lose that with older kids who have experienced sex with peers.” Age of the complainant is the distinction between which sexual allegations become more or less reasonable. The logic is that once an individual has reached sexual maturity, whether or not she engages in sexual behavior with other people, she might consent to sexual activity. This hypothetical possibility opens the door to a consent defense. Thus, “sexual baggage,” whether real or imagined, figures prominently in prosecutors’ minds as they make early assessments about the validity and strength of a complainant’s story.

The concept of sexual baggage is predicated on notions of what I call potential consent. Consent emerged as a formal element of legal rape definitions following the anti-rape social movement. The legal definition of consent is based in contract law and mandates that individuals willingly and affirmatively enter into sexual behaviors. In practice, though, consent is highly mediated by cultural understandings of appropriate sexual interactions, which vary across time and space. Age is a particularly salient distinction in sexual assault prosecutions as young people under the age of consent are not legally able to agree to sexual interactions, especially with much older people. This is largely because children in the US are seen as completely asexual and innocent beings, although of course, there are also real concerns about coercion and problematic power dynamics, especially with the youngest children. The idea of *potential* consent, as opposed to simply consent, is a crucial distinction in terms of how we understand sexual assault prosecutions. Consent is a gendered concept because what it means to consent to sexual behavior is shaped by cultural expectations about sexual agency, desire, and attraction. Importantly, it also

frames our understanding of male victims. In some potential sexual pairings, there is thought to be an always-already form of consent happening – depending on the identity and relationship of the two actors involved – whereas in others, consent seems to be an impossibility. Again, the logic here goes back to what we assume to be normal displays of sexual agency, desire, and availability. Whereas consent, is understood simply in direct relation to the alleged sexual assault, potential consent adds an intersection of an identity- and time-based modality to the concept. In other words, potential consent includes elements of the complainant’s sexual history and sexual identity in the prosecutor’s assessment of the credibility of the claims. However, potential consent is deployed by the attorneys in a slightly different fashion than historical methods of sullyng the complainant’s reputation as a means of discrediting her criminal allegations. Rather than an aggressive attack on the complainant’s character, prosecutorial assessments of potential consent function as more subtle ways of piecing together the facts and assessing their validity. In cases involving adult male victims, prosecutorial assessments of potential consent are three-pronged.

The first question that prosecutors ask when assessing potential consent is whether or not the complainant would ever, under any conditions, engage in sexual activity with another man. This question gets at the complainant’s sexual identity, and as such, it is absent from cases involving children or women. This is because children are presumed to never have potential consent, and women are presumed to always have potential consent because of the heterosexual imperative. In other words, because American society is heteronormative, it is assumed that women would potentially engage in sexual activity with men. In stark contrast, it is not automatically assumed that a man would sexually desire another man. For instance, a Michigan case involved a young man who became very drunk at a college party. He began talking with a

slightly older man who did not attend the university. The younger man was so intoxicated that he did not remember many of his actions or behaviors from several hours over the course of the night. He testified at trial that he had only the haziest memories of the defendant performing oral sex on him. Despite his temporary lack of cognitive and physical faculties, he also testified that he was certain that he would never consent to having sex with another man because he was heterosexual. He testified, "I would never ever do that, no matter how drunk I was." This complainant believes that he would categorically never consent to this sexual interaction. There is a fine distinction operating in his explanation. It is not that he did not consent to this particular sexual encounter; it is that he would "never, ever" consent to that whole class of sexual behavior (homosexuality). Although his testimony was riddled with vagueness because of his intoxication, the jury ultimately convicted the defendant, which is surprising given what we know about how juries often judge harshly sexual complainants' prior sexual histories and immediate behavior (even if they are not legally supposed to). This conviction reveals that the jury was convinced of the complainant's somewhat weak testimony. Likely, this is because they believed that a young heterosexual man, who presented in a conventionally masculine way, indeed would not engage in a homosexual encounter. The notion is so implausible that it absolutely must be that it was a forced sexual encounter. Had the complainant in this case been a woman, it is highly likely that a jury would have been much more skeptical of her allegations – even under the exact same conditions of victimization – precisely because the sexual encounter matched normative masculine courtship rituals of men pursuing women. Similarly, had the complainant in this case been a gay man, the jury might also have been more skeptical. Therefore, consent is both a sexed and gendered process. It is not simply a matter of: Did this complainant consent or not to this sexual encounter? It is much more complicated than that. It is more like: Based on what we know

about normative expectations regarding gender and sexuality, would this complainant ever potentially submit to such a sexual encounter? In other words, the propensity for any given individual's consent is based on normative cultural patterns of gender and sexuality.

The second question that prosecutors ask when assessing potential consent is whether the male complainant would engage in sexual activity with that particular man. Although the first question is an enormous hurdle, which automatically bolsters the complainant's allegations in most cases, this second step in the logical process is more akin to the standard process of assessing potential consent that prosecutors go through with female complainants. This question is fitting in cases in which the complainant either openly identifies as gay or bisexual, or he presents in such a way that brings up ambiguity about his sexual identity by, for instance, exhibiting a feminine self-presentation. This second question in the logical sequence of potential consent associates the complainant with homosexuality. Despite the remaining social stigma surrounding homosexuality, however, associations with homosexuality do not necessarily preclude recognition from the state. At least two cases involved openly gay complainants, and in neither of those cases did the complainant's sexual identity create obstacles for a conviction. In fact, in one of those cases, which occurred in Michigan, the complainant used his status as an HIV-positive person, as proxy for gayness, as an explanation for why he would not have consented to sexual activity with the perpetrator. His explanation was that his chronic illness made him too ill to engage in the drug and sexual activity that the defendant claimed they did together. The case went to trial, with the complainant's homosexuality out in the open, and the jury ultimately convicted the defendant.

The third question that prosecutors ask when assessing potential consent is whether the male complainant would engage in sexual activity with that man and under those particular

circumstances. Although none of the cases in my sample included this scenario, it is a hypothetical one. The parallel with standard rape cases is dating or marital rape, and the conditions are where the complainant and defendant had a prior and continuing sexual relationship, but the complainant regardless did not consent to that particular sexual interaction. Statistics indicate that this is a relatively common scenario with men and women, even though it is rarely prosecuted, so it is likely that this also happens with men, even though my data do not show evidence of it. One reason why this hypothetical scenario does emerge in my dataset may be that men who live in gay communities are reluctant to report instances of sexual victimization perpetrated by other gay men to police investigators because their communities are already stigmatized enough that they do not want to attract additional negative attention from authorities.

The perceived severity of an allegedly criminal behavior is contingent on the ways that the complainant's and defendant's identities co-mingle. Some of the cases in my sample involve obviously egregious sexual crimes, while others are much more mild and arguably prosecutors probably pursued them precisely because of the fact that two men were involved in sexual behavior. This is not to say that the complainant did not experience harm as a result of the interaction – defendants in homosexual advance murder cases may well genuinely feel harm – but this does not necessarily mean that it is a criminal justification. In charging cases, prosecutors must balance considerations between the victim's harm, public safety, punishing wrongdoers, and maintaining community standards of behavior. Several cases in my database include fact patterns in which, had the complainant been a woman, it likely would have never been remarked upon in the first place. For instance, one Michigan case involved a defendant who was a middle-aged professional and who made a sexual advance to a man in his twenties. They knew one another casually, and the defendant was casually socializing at the complainant's home

because they had were both friends with another roommate. The defendant made a sexual advance that was both verbal and he touched the complainant's penis. He stopped all sexual behavior immediately upon the complainant's request. Had this been a woman whose breast was touched in the course of a sexual advance, jurors would likely perceive that defendant's behavior as totally normative and expected. Depending on how closely he aligned with dominant constructions of masculinity, they might even have understood him as a good man because of his sexual assertiveness. The defendant's actions were perceived as especially egregious, even though they were well within the range of normative masculine courtship rituals, precisely because the interaction involved two men.

Moral Outrage at the Unthinkable

The unique intersection between perceptions of sexual baggage and potential consent mean that prosecutors are more likely to feel higher degrees of moral outrage at sexual assault cases involving complainants who are men. Sexual violence against men is perceived to be both so unlikely and especially egregious. The resulting emotional outrage means that in some cases, prosecutors will mobilize the law precisely because they believe that a great injustice has occurred. This outrage does not result in all the cases, but in the ones that it does, it can be especially powerful. In this section, I highlight one case in which the prosecutor's deep sense of injustice compelled him to fight hard and ultimately win a conviction on behalf of the victim.

Although guided by legal structures, prosecutions are initiated and motivated by individual people. Police investigators and prosecutors have choices as to whether and to what degree (in terms of how many resources they invest) they pursue an allegation of sexual assault. Moral outrage looms large in a handful of the cases, and in these, it is what largely motivates what may be initially seen as a hopeless case. A Georgia case involved a defendant who was a

certified nursing assistant at a nursing home in central Georgia. One of his coworkers walked in on a scene that appeared to be the defendant having anal sex with a patient. Although the witness did not actually see the defendant's penis entering the victim, she did see bare skin, and it was clear, based on the position of their bodies, that they were engaged in some sort of sexual contact. The coworker did not report what she saw for two days because she was so shocked. So although a rape kit was taken, it did not yield any DNA evidence because too much time had passed since the alleged sexual assault. However, the medical examiner did discover that the victim's anal sphincter was weak; she could not say whether this was a result of his medical condition or the result of repeated, long-term trauma to his anus. All along in the early stages, though, it was assumed that the sexual encounter was not consensual because the victim was nearly physically immobilized – he could only move his head and arms slightly – and he was almost non-verbal. He was only a middle-aged man, but he had suffered a stroke, and as the prosecutor noted, “obviously life had been harder on him.” Interestingly, some of his family members thought he had been poisoned by an ex-fiance, a peculiar side bit.

This was a weak case from a prosecutor's standpoint, and so it initially languished. This particular jurisdiction is small enough that prosecutors tend to work fairly closely with their investigators as well as the judges and public defenders. It was a weak case because although there was an eye witness, which is rare in sexual assault cases, there was no physical evidence, and, importantly, it was not clear that the victim could verbalize what had happened to him. This was significant due to the way that Georgia laws are written. The prosecutor had to charge it as a sexual assault and aggravated sodomy because rape laws in Georgia only apply to cases involving female victims and male perpetrators. In Georgia, aggravated sodomy is defined as committing sodomy with force and against the will of the other person. So even though there was

an eye witness, the prosecutor also needed evidence to prove that the victim did not consent to the sexual contact. That statement about lack of consent needed to come from the victim; the eyewitness might assume that there was no consent, due to the circumstances, but unless the victim could verbalize that, it would not stand up as credible legal evidence under the statute it was being charged as. Based on the eyewitness testimony alone, the defense could have argued that it was a consensual sexual encounter.

Thus, the prosecutor and his investigator invested a good amount of time to preparing this case for trial. In fact, the prosecutor saved the case from near dismissal because it was originally in the hands of a senior assistant D.A. who had trouble getting the victim to verbalize anything. The prosecutor who eventually tried the case expressed intrigue with the allegations and evidence, enough such that he asked if he could have it. It would be the first sex crime case he had ever tried in his early legal career. Here is how he explained his curiosity.

[This case] was outside of anything I had ever encountered. He and I [other D.A.] sat down and talked about it just because I was so curious about it. I was like, "I've never seen anything like that. What are you going to do with it?" He said, "Nothing. I don't know how I'm going to do this." So finally, I just looked at him and said, "Well, can I have it?" Because I was just so intrigued by it.

This ambitious young prosecutor saved this case from dismissal, as would have occurred with the more senior prosecutor. His intrigue with the case came from the fact that it was a male victim with a unique set of fact patterns. Given the intense workload in prosecutor's offices, this is certainly a rare outcome. It would have been much simpler, and more likely, for both prosecutors to simply dismiss this case due to insufficient evidence.

The prosecutor's initial intrigue evolved into a strong sense of moral outrage at what had happened to the victim. This moral outrage propelled him to work hard on the case. One of the themes that he brought up over and over again in the interview was that he wanted to maintain

the dignity of the victim throughout the legal process. This sentiment and his subsequent follow-through is somewhat remarkable given the literature on just how hard prosecutors can make the criminal justice process for victims (usually not intentionally but because of a lack of knowledge and the ways that their work is structured). Here is how he described his personal motivation and objective of maintaining dignity for the victim. “I wanted justice for [victim]. I felt like the defendant had stalked him, had chosen, him, had singled him out. They find an isolated victim who they don’t think will or can stand up. I just didn’t want that to happen. I just desperately wanted that jury to find him guilty.” Prosecutors are typically not this emotionally invested in a case, even when it does involve the heart-wrenching details of so many sexual assault narratives. Yet the gender and heightened vulnerability, which taken together even further escalated the crime’s perceived severity, motivated the prosecutor to mobilize the law. Ultimately, a jury convicted him of aggravated sodomy and sexual assault. The latter was later overturned on appeal, because of a charging inaccuracy, but the defendant was still sentenced to 25 years in prison. In this case, the counterfactual emerges clearly. The different path trajectories – case dismissal versus conviction with a 25 year prison sentence – were equally likely early on in the investigation. But one prosecutor, who was motivated by a sense of gendered injustice, completely changed the outcome.

Part 2: Prosecutorial Charging Decisions

Prosecutors have an enormous amount of discretion in deciding if and how to charge criminal allegations. There is much debate as to whether they have too much discretion because unlike in other areas of government, there is little oversight into how they make their professional decisions. Moreover, in an era of mass incarceration and tough-on-crime rhetoric, prosecutors’ power is magnified because they are key gatekeepers in shuffling people into or out

of incarceration. There is clear and compelling evidence that communities of color, and especially their men, are disproportionately affected by these structural dynamics. Despite the enormous power of prosecutors, there is little research into how they make criminal charging decisions. Moreover, much critique of the criminal justice process focuses on the dubious constitutionality plea bargains, which have far exceeded the number of jury trials, rather than the arguably more important point of charging decisions. My findings indicate that charging decisions have disproportionate impact because once a felony charge is filed, its existence shifts the negotiating plane. Although charges may be reduced during plea bargain negotiations, it is less likely that prosecutors completely dismiss charges, and felony charges in my sample almost always resulted in a felony conviction, rather than a downgrade to a misdemeanor. In this part, I show precisely *how* prosecutors mobilize the law once they have determined that legal mobilization is important and necessary. First, I start with how they produce “fact patterns,” or how they narrativize and legally frame the evidence that investigators collected. Second, I describe how prosecutors determine exactly which criminal charges to file against the defendant.

Producing Fact Patterns

Once the criminal evidence is collected during the investigation phase, prosecutors need to establish a cohesive narrative of what they think occurred. They narrativize the often disparate facts that emerge during the investigation. This is a frequently overlooked, yet crucially important, phase of prosecution. There are no objective social facts in criminal prosecutions. All evidence is “spinnable,” and the ability to narrativize facts in their favor is the mark of a good attorney. The narrativization at this phase is important because it shapes how the core elements of the case are articulated at the trial and appellate phases. Moreover, effective narrativization

can shift the parameters of plea bargain negotiations. Prosecutors produce fact patterns according to predictions about what would be most compelling and plausible to local standards.

Prosecutors assess the various facts gathered during the investigation phase based on normative understandings of gender and sexuality. Most of this evidence is interview-based because there is often a dearth of forensic evidence in sexual assault cases. Even when DNA is collected successfully from a rape kit, which is infrequent, it often has little effect on prosecution outcomes (Mulla 2014). One Michigan case involved a bisexual perpetrator who was allegedly targeting straight men in party settings. He had been charged previously with a similar crime in a prosecution that was not successful. This second trial involved two separate victims with similar fact patterns. However, even though this defendant had been previously charged with similar crimes, the prosecutor still had to piece together the current facts and identify how the two current cases were similar. Here is how the prosecutor describes his immediate impressions of the defendant's statement to the police. The defendant voluntarily participated in a police interview without an attorney.

So when I read his statement, my impression was, "Here is someone who is trying to completely oversell a position. It's obvious, and it conflicts with the victims and other witnesses." Contrived. I got the sense it was his imagination and fantasy like, "This is what happened to me. I'm at the bar and this guy comes up to me and he calls me "a cute little teddy bear" and he starts touching me and flirting with me. And he says – what was the phrase? – "I am hetero-something. Heteroflexible." Which is a term that if you listen to that victim testify, he would never say. It was completely in conflict with that victim's character.

In his statement to the police, the defendant described how he was socializing with the victim at a bar. He reported that they were flirting, dancing, and touching for several hours before going with a group of acquaintances to someone's apartment. Sexual assault cases are difficult to prosecute precisely because they are notoriously he-said-she-said (or, in this case, he-said-he-said) cases. Prosecutors and juries typically find it difficult to definitively determine whether the

complainant or the defendant is telling the truth. Moreover, because the stakes are so high in sexual assault cases, this often means that attrition rates are high because people are reluctant to convict a defendant of such a significant crime unless they are absolutely certain that he did it. Thus, it is notable that in this case, the prosecutor immediately believed the complainants, without any hesitation or skepticism. On the surface, he simply had two different perspectives as to what happened on the nights in question. In essence, the complainants' reporting of events became so compelling and "obvious" because of the way that their heterosexual identities and normative presentations of masculinity interacted with the defendant's queer identity and presentation. This is a crucial moment because as prosecutors begin to distinguish the obvious from the fantastical in the various forms of evidence, they begin to place a narrative structure on the facts. That this narrative structure is embedded with commonsense understandings of gender and sexuality reveals how sexual assault prosecutions are not at all a collection of objective facts and testimonials. In the case below, we see how some cases do not lend themselves to obvious and immediate interpretations, although gender and sexuality are still at the center of the meaning-making and decision-making processes.

Blackfoot is a small city on the far eastern side of Idaho, nearly to the Montana border. Although small and rural, it is relatively prosperous because there is a nuclear facility that provides solid employment opportunities. The local culture is a mash-up of rugged cowboy individualism and Mormon conservatism – quite an interesting mix, fairly different from the rest of the state, and taking a bit of time for an outsider to understand the local ways. These influences shape gender relations. Local presentations of masculinity, in particular, are important and obvious. It's a man's world. In fact, two of my interviewees chewed tobacco during our interviews.

So the community was rocked in 2010 when rumors emerged that some sort of sexual abuse had occurred repeatedly among the high school boys' athletic teams – including the football, basketball, and baseball teams. These allegations were especially contentious for multiple reasons. They emerged during an anti-bullying workshop at Blackfoot High School. Apparently, some students in the back of the classroom began snickering, and when teachers pressed for information, some students reported that they had heard accounts of a handful of boys attacking individual boys, often younger ones, in physical and sexual ways. Except that everyone seemed to agree that there was physical interaction, but the sexual nature was quite contested. Hence emerged the saga of Blackfoot High School, a hazing case that received national media coverage and earned the high school the dubious reputation as the “Blackfoot Buttfuckers.”

Teachers reported the rumors to school officials, who quickly involved the police and local prosecutors. But the alleged events had occurred almost one year prior, so the prosecutor had a brief period of time to investigate and decide whether or not to file criminal charges. I have audio files from the interviews that police officers conducted during the investigation phase. What emerges most clearly is them trying to figure out what this shushing is. “Shushing” was the slang term for the incidents – so called because the aggressors would shush in the ear of their victim as they attacked him – the idea being that this would quiet him from crying out and attracting the attention of others. What is clear from the many police interviews, media reports, and judicial proceedings is the following. A handful of upperclassmen on the dominant athletic teams – probably about five young men – would periodically approach a single young man, usually an underclassman, hold him down by the arms and legs, cover his eyes with his sweatshirt, “shush” in his ear, and touch his pelvic region. The pelvic touching allegedly

included twisting of the testicles, pulling on the penis, and poking into the anus. The attacks, or “dogpiles” as some investigators referred to them, usually occurred in the locker room or on the bus on the drive home from an away game. During the attack, the victim was somewhat physically isolated from others – usually others noticed but weren’t quite close enough or brave enough to intervene – and on the bus, it was usually dark as the charged events occurred in December. The attacks were brief; victims reported that they usually lasted less than one minute. Most victims reported that they squirmed and fought back as best as they could, but because they were surprised, shocked and quickly overpowered, their attempts to immediately stop the unwanted behavior were not usually successful. Here is how one victim describes an attack on the bus to police investigators:

Q: “So it’s night, and you guys are all coming back, so how does this all come about?”

A: “They just decided to do it.”

Q: “Okay, so explain how they did it.”

A: “Explain how they do it?”

Q: “Did they tell you to stand up? Bend over? Or what?”

A: “No, they held me down.”

Q: “Okay, how’d they hold you down?”

A: “He, like, got me by the arms, and then [the other one] spread my legs open, and then I think it was [him] who did it. I can’t remember who did it though.”

Q: “Okay, and I’m just trying to get a picture of this. I’m a visual person, so. So [he’s] behind you? So he’s kind of got you over the seat, like that, kind of holding you?”

A: “Yeah.”

Q: “And [he] spread your legs and then what does he do?”

A: “I think he was [garbled].”

Q: “Was he pulling your pants down, or?”

A: “No, he left them on.”

Q: “Okay, how’d your pants get down though?”

A: “They weren’t down. He did it through them.”

Q: “What were you wearing?”

A: “Shorts. Basketball shorts.”

Q: “So through the basketball shorts he did it?”

A: “Yeah. And my underwear too.”

Q: “Was it ever skin-on-skin?”

A: “No.”

Q: "Okay. So there was clothing in between his finger and your butt?"
A: "Right."
Q: "Um...do you remember getting one finger? Two fingers? A hand?"
A: "Just one."
Q: "Okay. Did it hurt?"
A: "No."
Q: "What were they saying to you?"
A: "Nothing. I mean, they were just laughing."
Q: "What were you saying?"
A: "I was just laughing too."
Q: "Okay. Laughing cause you were scared, or...?"
A: "Yeah, cause I didn't know what to say."
Q: "And, so they didn't say anything, they were just laughing? You just kinda laughed you said because you were scared? You didn't wanna..."

Notably, this victim reports laughing during the attack. What else we can see during this exchange is an attempt to figure out what exactly happened on the bus – the specific actions. But the meaning that is made of these actions is contested. Was this a case of boys being boys – ordinary behavior for high-energy young male athletes? Was it hazing – inappropriate behavior designed to intimidate and initiate new individuals into an exclusive group? Or was it a crime – a traumatic case of sexual assault?

The contentious nature of these allegations became clear during the investigation process. In listening to more than 20 interviews that police officers did with witnesses, victims, and school officials, there seems to be little debate as to what happened. The debate centered around what these behaviors meant. In other words, it wasn't *if* the actions had occurred but rather *which meanings* get attached to the actions. In turn, which meanings were selected were of utmost importance to the community members and lawyers involved. How the actions were interpreted is so important because the stakes were so high in terms of defining local masculinity. First, a felony conviction of any sort would severely limit the future career prospects of the defendants, and even just the initial media coverage generated many negative reactions. The defense attorneys were concerned that the reputation smearing along might seriously harm the future

prospects as well as the current quality of life for the defendants. In fact, three of the original defendants later filed a civil suit alleging harm to reputation [confirm exact claim]. Second, the nature of the allegations was problematic for both the alleged victims and perpetrators. Naming this a *sexual* assault, as opposed to simply an assault or battery charge, implied that there had been some sort of sexual interaction, even if violent, between the high school boys. This challenges their masculinity. As C.J. Pascoe argues, the enactment of masculinity among teenage boys is accomplished through the prism of sexual identity (2011). Therefore, in the Blackfoot case, the victims were in a tight spot because they had the public shame of having been acknowledged as a sexual victim, which challenged their emerging manhood. Yet the perpetrators were also in a tight spot because were, in turn, accused of sexual activity with another man – a great threat to their manhood. In fact, they experienced the mere charge of sexual assault against another man as terribly horrific. One of the defense attorneys reported that his client would have had a much easier time dealing with rape allegations from a woman. Strange, but true. There was something particularly distressing and traumatic – for both alleged victims and defendants – to have been interpolated in this particular kind of sex crime charges.

Not surprisingly, then, this investigation was not prompted by a single complainant going to a police station. Rather, it was rumors at the high school that came to the attention of teachers, athletic coaches, and other school officials. Thus, the complainants were reluctant. Even the most forthcoming of them was still extremely mindful about the sensitive nature of their experiences. Indeed, emotional reactions from the complainants – interviewees identified twelve different boys who had been shushed, although it is certainly likely that many more experienced it because this hazing ritual spanned multiple athletic teams and multiple academic years – were quite varied. Based on their rapport in the police interviews, some were angry; some were scared; and

some were fine. In fact, because the assaults occurred within a large social network, many of the ties remained during and after the sexual assaults. The boys continued to socialize – some even traveled on a cruise together, and one complainant visited one of the defendants at college. To an outsider, it might appear peculiar to maintain contact with an individual who had been the source of considerable distress and pain. Yet this follows the patterns that many women follow who are involved in domestic abuse cycles. Even though the relationship may appear – and, indeed, be – pathological, there are still strong social bonds there. And in the Blackfoot case, I suspect that it was even more difficult for the complainants to disengage because there was so little clarity and consensus on what had happened to them and what it meant in the first place.

Ultimately, the Blackfoot defendants pled guilty to disturbing the peace, a misdemeanor charge that was considerably less serious than the original felonies with which they were charged. They were on the cusp of a trial just when the prosecutor and defense attorneys reached an agreement. Interestingly, some of the defendants even thought that was ridiculous but could not risk the financial implications of a trial. What is more is that one of the defense attorneys represented his client pro bono, and he became emotionally involved in the case even though he had a successful, lucrative niche in the legal field. In other words, he had no financial incentive to work on this case, so his motivation was exclusively to right the moral wrong that he perceived to have occurred with the filing of the criminal charges.

Fitting Facts into Criminal Codes

After a criminal investigation is completed, prosecutors decide whether or not to file criminal charges against the alleged perpetrator. Filing criminal charges is based on whether the prosecutor believes that the alleged perpetrator committed the crime and, importantly, whether he has the evidence to prove it beyond a reasonable doubt. The relative importance of the former

and latter clauses depends on the leadership of the elected prosecutor, his overarching priorities, and the office culture. Determining how to charge a case is more than a bureaucratic process; it requires judgment, discretion, and includes a combination of formal and informal factors.

Moreover, it is a significant moment in the criminal justice process because this is when the hypotheses and narratives that emerged in the investigation process are organized in the available legal categories. At this pivotal moment, the loose narratives become solidified and, moving forward, all the involved actors must then engage with this official narrative, as defined by the selected criminal charges. In this section, I describe the decision-making process that prosecutors go through as they determine which criminal charges to file. Prosecutors have a great deal of discretion in deciding which criminal charges to file.

Once a prosecutor establishes that a crime has occurred, next he decides which criminal charges to apply to the case. This is a significant responsibility that they enact as representatives of the state. Their professional decisions at this point in the criminal justice process have potentially profound effects on the respective lives of the complainant and defendant. Although they have an ethical obligation to neither over- nor under-charge a case, there often remains a significant amount of latitude in the charges that they select. Legal structures, as embodied by the state's criminal code, offer planes of possibility within which prosecutors make their charging decisions. In this section, I show how prosecutors engage with legal structures as they charge criminal cases.

Criminal codes do not always capture the full range of crimes that occur in reality. They are a bureaucratic taxonomy of hypothetical criminal behavior based on historical precedents, empirical patterns, and legislative logics, but they are not exhaustive. Moreover, they may be quite limited because they are imbued with cultural assumptions, especially gendered ones. In

Georgia, rape is defined as “carnal knowledge of a woman,” and this is further broken down into penile penetration of the complainant’s vagina by the perpetrator. Thus, the state does not formally recognize adult male sexual victimization. Here is how one Georgia prosecutor evaluates the bind that the legal parameters place on charging decisions.

There is no rape. Because that’s what we kept trying to make it into. We kept trying to call it a rape because it was a penetration. It was a forced penetration against the will of the victim. But you can’t rape a man. I can remember all of us saying that a million times, “You can’t rape a man in Georgia.” This is a very gender specific statute. The defendants have to be male, and the victims have to be female. No ifs, ands, or buts about it. No wiggle room in there at all.

This prosecutor expressed frustration with the language of Georgia’s laws because he felt strongly that his case was rape. The case involved anal penetration of an incapacitated victim, so there was no question about consent. He eventually charged the defendant with aggravated sodomy and sexual assault. The latter is a lesser offense in Georgia, and in this particular case, it was eventually vacated by the court of appeals on a technicality. The prosecutor decided to add the sexual assault charge because the aggravated sodomy charge required testimony from the victim, who had severe health challenges, and the prosecutor was concerned that the victim may not have been physically able to testify at trial. At the same time, he wanted to ensure that at least some criminal charge stuck with the defendant because he believed strongly that significant wrongdoing had occurred. Ideally, however, he would have been able to charge the case as a rape. As described above, he continually talked with his colleagues about how to make a rape charge work, but it was simply not possible. In the end, the defendant was convicted of aggravated sodomy, which carries a 25-year prison sentence in Georgia, but the prosecutor was still not convinced that the conviction accurately reflected the crime that occurred, even though he believed that the punishment was appropriate. The application of Georgia sex crimes law, as seen through this case, reveals how gender is interpolated by the state. Definitions of rape reveal

the gendered relationship of individuals to the state. Defining rape victims as only female aligns sexual victimization with femininity and paternalistic protection with masculinity. As we will see below, however, more inclusive rape statutes also delineate the gendered relationship of individuals to the state.

Part 3: Case Dismissals and Plea Bargain Negotiations

An examination of why and how prosecutors mobilize the law on behalf of male sexual victims would not be complete without a parallel examination of the conditions in which they do *not* mobilize the law. The lack of mobilization can occur in several ways, including not filing criminal charges, dismissing criminal charges after the fact, and negotiating a plea bargain. The last option may still be considered successful from a prosecutorial perspective, but a plea bargain, by definition, almost always results in some sort of a reduced conviction. Similar to other stages in the process, the prosecutorial logic at this stage is thoroughly interwoven with their understandings of gender and sexuality, and especially how these cultural norms align with the legal structure. In this section, I argue that these moments of non-mobilization, or reduced mobilization, turn on whether or not the complainant performs credible masculine vulnerability.

Structural Constraints and Considerations

Felony criminal trials require an enormous amount of work in advance from the prosecutor and defense attorney. By this point in the process, they have already invested much time in the case from the investigation to the preparation of witnesses to crafting how they will present the case. This looming administrative monster is a huge source of consideration that prosecutors bring to the table when evaluating whether or not to offer a plea bargain. One crucial component at this juncture is the independent motivation of the prosecutor and defense attorneys, especially the former. They, more than any other actors involved, are the ones who are really

pushing the case forward. If they can orchestrate a settlement, most will do so for a variety of related reasons. First, it is less work for them and requires fewer resources from the county and the defendant's pockets. Second, it spares the witnesses what is often the anguish of testifying about traumatic events in a public setting. Because the attorneys hold powers of persuasion that can usually avoid a trial, when they do push for one, it often means that the circumstances are extraordinary and that they have a particular passion for the case. Attorneys have different philosophies as to whether they will push for a trial, and these philosophies are informed by their office culture and the local politics of the jurisdiction. Here a Georgia defense attorney articulates his propensity for going to trial, which is a relatively rare stance, and in doing so, he reveals some of the more common fears that may push other defense attorneys to avoid trials at all costs. "See the problem with most attorneys is that they are afraid to go to trial. They are afraid to ask the questions; they are afraid to put the facts out as they really are. They're afraid that that might convict their client. He's probably going to get convicted anyway. What have you got to lose?" The ability of most defense attorneys, especially public defenders, to follow through on this cavalier stance is limited, however, because their caseloads are simply too big to go to trial on every one. One public defender in Idaho reported that he might be juggling a couple hundred cases at any point in time. Although the caseload varies significantly by jurisdiction, it is clearly not feasible to invest in at least a half-day trial on every case for an attorney with such a massive caseload.

Another important factor that attorneys take into account when determining a plea bargain option is the quality of their witnesses. The testimony of witnesses is crucial to either making or defending the legal case. Despite what crime shows on television suggest, most sexual assault cases do not include extensive, if any, forensic evidence. Most of the evidence is eye-

witness testimony, and since most sexual assaults occur in relative privacy, usually the only witnesses to the alleged crime are the complainant and the defendant. Sexual assault cases are difficult to prove without the testimony of the complainant, so he almost always testifies at trial. Criminal defendants, on the other hand, are not required to make an affirmative defense, so they usually do not testify. Most defense attorneys concur that putting the defendant on the stand is too risky. It is widely considered that the defense narrative is more easily controlled by a skilled defense attorney than by the defendant himself. Thus, determining the quality and reliability of witnesses is a crucial factor, and prosecutors also want to minimize the involvement of complainants as much as possible because they believe that testifying in public about their sexual victimization may be traumatic. Here is how one Michigan prosecutor describes the logical process in a case involving a fraternity sexual assault.

The police reports come in, and I issued that case. I read the police reports and then analyzed, "Does that satisfy the elements of the charge?" It did. I charged third degree criminal sexual conduct, sleeping victim, penetration. Got it set for preliminary examination, and we pled it to attempted fourth degree criminal sexual conduct, which was an unwanted sexual touching. [JS: So no penetration?] Right. That validated the guy's complaint that he was sexually abused, but it didn't require him to testify. The other guy...I didn't look at his actions as noble or anything, but certainly not something that had to be...because everybody was drunk. Everybody acknowledged in the fraternity house that everybody was drunk. Some people didn't see, and some people didn't see other things happen, but it was all a little bit cloudy on the factual side.

Here, the prosecutor weighs the benefits of a more serious felony conviction with the turmoil of requiring the complainant to testify. He determined that the lesser misdemeanor conviction was an adequate trade-off in exchange for not compelling his victim to testify. He also takes into account his own assessment of the severity of the crime and corroborating evidence. All of these factors shape a prosecutor's inclination to settle a case or to further escalate and proceed to trial.

Credible Masculine Vulnerability

Masculinity and vulnerability, especially sexual vulnerability, are paradoxical concepts. Yet for the male rape case to be successfully prosecuted, prosecutors must be able to join these concepts in a plausible fashion. Cases in which the prosecutor is not convinced of the complainant's vulnerability – either based on his own opinion or on how he anticipates the jury will react – tend to be settled or dismissed to avoid the risk of trial with a victim who does not appear to be vulnerable.

One Michigan prosecutor described a case involving an unwanted sexual advance from a middle-aged professional to a disabled man in his twenties. The two men had an acquaintance, and during one of their social visits, the older one exposed his penis to the younger one and asked him to perform fellatio. The younger man was upset by the incident, said that he “didn’t like it, and immediately reported the incident to a staff member at his adult foster care facility. An investigation ensued, and prosecutors charged the older man with CSC 4 and gross indecency. Here, the complainant’s disability status was an essential element of the crime: it is what differentiated the action from an innocuous unwanted sexual advance and a crime. Disability was the central legal issue. Prior to trial, the defense filed a motion to quash the criminal sexual conduct charges on the grounds that the complainant was mentally capable enough to understand what had happened. The Michigan Court of Appeals ultimately agreed that there was sufficient evidence of the complainant’s disability. Despite this ostensible victory for the prosecution, the prosecutor decided to settle the case rather than take it in front of a jury. Here is how he explains his remarkable decision.

I’ll be candid with you. Part of the problem with the case if we would have gone to trial, I’m not totally convinced that a jury would have been comfortable finding that he [complainant] was mentally incapacitated. If you look at the definition for mentally incapacitated, I think that they might say that [he] was maybe not in that

category. So I think the gross indecency count between males probably would have been a good count in front of a jury. But what happened was the CSC 4th, I guess for the mentally incapacitated, that would have been tough in front of a jury... You could just talk to him and have pretty much a normal conversation with him. If you were talking to him, you would know from some of his mannerisms that he had some mental limitations but he was street smart. I guess that's the proper word I probably should have used and he would be able to just engage you in a conversation like anyone else. I knew it would have been an issue with the jury.

This prosecutor opts for a settlement with the defense rather than risk a trial, and he makes this decision not because of a lack of evidence but because of the presentation of the complainant, who is also the key witness to the crime. As the prosecutor describes, the complainant had “street smarts” that may have made it difficult for the jury to believe that he was disabled. Thus, the disability status of the complainant – and, importantly, his skill at convincingly presenting this characteristic to the jury – is a critical factor in the legal and discursive construction of male sexual victimization.

Savvy defense attorneys can also exploit this paradoxical tension between masculinity and vulnerability when advocating for their clients. One Georgia case involved a peculiar set of facts. One young man allegedly coerced another young man to spend multiple days with him in a hotel room and perform oral sex on him. The defendant had met the complainant through church, and he had offered the complainant a spot in his Christian rock band. The defendant allegedly got the complainant to engage in sexual activity with him through an elaborate ruse. He claimed that his sister, who did not actually exist, wanted to date the complainant but that he must first have sex with her brother. The hoax went so far that the defendant allegedly even impersonated the fake sister in phone conversations with the complainant. By all accounts, the facts of this case were unique, almost to the point of being unbelievable. However, the prosecutor did file criminal charges of aggravated sodomy and aggravated assault, the former of which carries a mandatory

minimum sentence of 25 years in prison. The defense attorney, who was an experienced former prosecutor, was able to effectively harness the narrative at the preliminary hearing in such a way that highlighted the incredulity of the complainant's allegations, even though they may well have been true, if the defendant was a master manipulator. What the defense attorney did was to use humor in order to paint the complainant as gullible rather than vulnerable. Here is how he described his strategy, which was extremely effective even though it was innate to him due to his long legal experience.

At the preliminary hearing and the bond hearing, we were able to make light of the case and make light of the charges. At which point the prosecutor is just anxious to somehow make it go away, and we're just "We're not going to plead into any jail time. I mean you can't be serious on his case"...the circumstances of how it happened and the manner and tone that you project is like it's almost laughable. The judge in question, he was kind of going along with like, "This is kind of comical. This is not for real." At one point, I was asking the detective questions about what the alleged victim did or didn't do during the course of this incident, and the prosecutor even stood up, and he actually helped me in this regard, and he said, "Your Honor, I object. [Defense attorney] is having too much fun"...I've created an impression in the judge's mind and in the prosecutor's mind as to what this case is and they don't think much of it.

This defense attorney went on to say that he wanted to settle the case swiftly after creating this comical impression in the minds of the judge and prosecutor (the latter of whom was not the charging prosecutor, which meant that he had no personal investment in the case). Going to trial would have meant that the witness, and likely the defendant, would have testified. Their presentation in the courtroom could have completely upended the defense attorney's early narrative of the case as comical. If the complainant presented as vulnerable, or the defendant presented as peculiar, then the jury may well have believed the case facts, even though they seem odd on the surface. However, the case never went to trial; it was ultimately settled for probation, with the more serious charge of aggravated sodomy dropped, a far cry from the initial charges. The defense attorney described this strategy as de-escalation, and it was effective. Essentially

what this defense attorney did was to shift the narrative from one of a vulnerable man to one of a gullible man. In turn, a gullible man is humorous rather than pitiable, and, importantly, he is responsible for his own errors in judgment. The gullible man's poor choices and naivete do not require redress from the state. This is notably different from the male complainants who are seen as true victims and whose cases go to trial, as we will see in the next chapter.

Conclusion

“There are three rules of prosecution. One: strong cases plead guilty, weak cases go to trial. Two: you learn the most from the cases you lose. Three: trying cases is still the most fun you can have with your clothes on.”

—Georgia Prosecutor

As I have shown in this chapter, prosecutors mobilize the law on behalf of male sexual victims in particular circumstances. I have shown the why, how, and why not of conditions in which legal mobilization occurs. First, due to the unique intersection of sexual baggage and potential consent, male victims are perceived as especially egregious, in general, so prosecutors may be especially likely to mobilize the law, even though these types of sexual victims are so unfamiliar to them. Second, I showed exactly how prosecutors produce narrative fact patterns and then fit them into their state's existing criminal code. Third, I showed counter-examples in which prosecutor and defense attorneys strategically de-escalated cases because the complainant did not present credible masculine vulnerability. This evidence shows that the logics of legal mobilization of sexual assault cases in general is deeply imbued with cultural understandings of gender and sexuality, in particular masculinity and heteronormativity. In the next chapter, we will see what happens when cases cannot be resolved and proceed to a criminal trial. Although the vast majority of criminal cases are resolved prior to trial, the ones that do proceed forward are crucial to our understanding of this phenomenon because they reveal how masculine sexual injury is articulated on the male body in the public sphere.

Bibliography

- Frohmann, Lisa. 1998. "Constituting Power in Sexual Assault Cases: Prosecutorial Strategies for Victim Management." *Social Problems* 45(3): 393–407.
- Graham, Ruth. 2006. "Male Rape and the Careful Construction of the Male Victim." *Social & Legal Studies* 15(2): 187–208.
- Konradi, Amanda. 2007. *Taking the Stand: Rape Survivors and the Prosecution of Rapists*. Westport, Conn: Praeger.
- Levine, Kay L. 2006. "The Intimacy Discount: Prosecutorial Discretion, Privacy, and Equality in the Statutory Rape Caseload." *Emory Law Journal* 55(4): 691–758.
- MacKinnon, Catharine A. 1991. *Toward a Feminist Theory of the State*. Reprint edition. Cambridge, Mass.: Harvard University Press.
- Matoesian, Gregory M. 1997. "'You Were Interested in Him as a Person?': Rhythms of Domination in the Kennedy Smith Rape Trial." *Law & Social Inquiry* 22(1): 55–93.
- Mezey, Gillian, and Michael King. 1989. "The Effects of Sexual Assault on Men: A Survey of 22 Victims." *Psychological Medicine* 19: 205–9.
- Mulla, Sameena. 2014. *The Violence of Care: Rape Victims, Forensic Nurses, and Sexual Assault Intervention*. New York: NYU Press.
- Myers, Michael F. 1989. "Men Sexually Assaulted as Adults and Sexually Abused as Boys." *Archives of Sexual Behavior* 18(3): 203–15.
- Oberman, Michelle. 2013. "Two Truths and a Lie: In Re John Z. and Other Stories at the Juncture of Teen Sex and the Law." *Law & Social Inquiry* 38(2): 364–402.
- Pascoe, C. J. 2011. *Dude, You're a Fag: Masculinity and Sexuality in High School*. 2nd edition. Berkeley, Calif.: University of California Press.
- Puar, Jasbir K. 2004. "Abu Ghraib: Arguing against Exceptionalism." *Feminist Studies* 30(2): 522–34.
- Scarce, Michael. 2001. *Male On Male Rape: The Hidden Toll Of Stigma And Shame*. 1st edition. Cambridge, Mass.: Basic Books.
- Sivakumaran, Sandesh. 2005. "Male/Male Rape and the 'Taint' of Homosexuality." *Human Rights Quarterly* 27(4): 1274–1306.
- Walker, Jayne, John Archer, and Michelle Davies. 2005. "Effects of Rape on Men: A Descriptive Analysis." *Archives of Sexual Behavior* 34(1): 69–80.

Chapter 6: Spectacular Testimony

In the height of summer, 1997, a Brooklyn man accused four New York City police officers of a severe physical and sexual assault. Abner Louima, the complainant, had been socializing with friends and family members at a Haitian dance club called Club Rendez Vous. As the night wore on, a lively crowd gathered outside the venue, blocking traffic, and police were called to disperse the people. The police officers took aggressive measures; the crowd retaliated; and things turned violent quickly. At this point, Louima's cousin punched a police officer, and in the fray, police officers mistook Louima for his cousin. After a chase through the nearby sidewalks and alleyways, Louima was taken into custody in a police car. Louima alleged that the police officers stopped to beat him on the way to the precinct, and his subsequent physical injuries supported these allegations. Things deteriorated further at the Flatbush precinct. After taunting him and pulling down his pants at the front desk, two police officers led Louima to an isolated bathroom. One held him down while the second one beat him again and shoved a broken broom handle into Louima's anus. The attack was so violent that Louima sustained a perforated rectum and bladder, an injury that required multiple surgeries and months of recovery.

The assault of Abner Louima resulted in what is arguably the most significant male rape judicial proceedings in American history. Louima's allegations sparked citywide outrage over police brutality, and it led to three criminal trials and the largest civil settlement - \$8.5 million – in the history of the NYPD police officer's union. The first criminal trial was tried in federal court, and it spanned six weeks of testimony. It received extensive media coverage and captured the nation's attention. Unlike most felony cases that have little impact beyond the immediate

actors involved, the effects of this crime reverberated far beyond Brooklyn precisely because it tapped into sensitive political dynamics. The crime against Abner Louima became a cultural lightning rod for issues like police brutality, race, immigration, and masculine vulnerability. Moreover, it revealed starkly just how egregious is the symbolic horror of sexual brutality against a man, even given histories of sexualized violence against men of color. Years after his ordeal, Louima's story is still recognized around the country, and media reporters provide occasional updates on the key actors.

Male rape trials are extraordinary. Although not typically as spectacular as the Abner Louima proceedings, they nonetheless offer a unique opportunity to understand how meanings about adult male sexual victimization are constructed in a public setting. Male rape is saturated with what Sandesh Sivakumaran calls the "taint of homosexuality" (2005). In the absence of gendered difference between complainant and defendant, which undergirds conventional rape cases, heteronormativity is not assumed in cases involving two men (Graham 2006). While sexual identity is not a formal element of the crime, it nonetheless emerges as a salient and troubling issue when one man is accused of sexually assaulting another man. In this chapter, I examine how sexual injury is constructed on adult male bodies at trial. This is a crucial moment in the criminal justice process because it is when criminal narratives are first constructed in the public sphere. Although most criminal cases are resolved prior to trial, those that do make it this far reveal how attorneys, complainants, and defendants navigate tensions between masculinity and sexual vulnerability. Findings indicate that these legal actors deploy sexual identity in strategic ways. Although the literature would predict that male rape trials are overt spectacles of homosexuality, in fact, displays of sexual identity are often covert or altogether silenced. Moreover, narratives of sexual identity emerge as either disavowals of homosexuality or as

affirmations of heterosexuality, rather than as explicit associations with gayness. I argue that narratives of sexual identity emerge most starkly at trials involving fact patterns in which there is the possibility of potential consent. These findings are significant because they reveal how sexual identity threads through the legal field at the micro level.

Taint of Homosexuality

Male rape is theorized as a mechanism through which men dominate one another. Although her scholarship focuses primarily on women's subordination, Catharine A. MacKinnon suggests that male sexual victims occupy a similar role as that of their female counterparts; they are feminized in relation to the man who dominated them (1991). Most empirical scholarship on male rape examines homosocial settings that are perceived to facilitate sexual assault between men because of institutional characteristics that value aggression and dominance. The military and spaces of incarceration, like jails and prisons, have all been shown to exhibit higher rates than the general population of sexualized aggression amongst men (Cernak 2015; Sumner et al. 2014). These empirical patterns are theorized as mechanisms of hegemonic masculinity through which men establish and enforce hierarchies of power amongst one another (Connell and Messerschmidt 2005). Moreover, they are facilitated by the institutional contexts in which they occur. For instance, prison guards may use the threat of rape against younger or weaker inmates by their more dominate peers as a way, either tacitly or strategically, to maintain order (Hensley and Tewksbury 2002). Similarly, male rape has been documented as a strategy of warfare (Sivakumaran 2007; Gettleman 2009). Cases like Abu Ghraib, the notorious sexual assault of Iraqi prisoners by American guards in 2003, exemplify the intersection of these two institutional contexts (Puar 2004). For the most part, though, this theoretical and empirical research on male

rape does not closely examine the discursive role of sexual identity in shaping how the issue is understood.

In the absence of gendered difference, sexual identity figures prominently in cultural understandings of sexual violence between men. Sandesh Sivakumaran suggests that male rape is imbued with a “taint of homosexuality” (2005). He argues that connotations of gayness shape public perceptions of the crime and ultimately distract from rightfully understanding such allegations as ones of violence rather than sexuality. For instance, the ubiquitous prison joke about bending over for the soap bar in the shower illuminates the cultural unease that exists alongside ideas of male rape. Reports from male victims support this interpretation. Research indicates that male victims express significant concerns about emasculation or becoming gay after experiencing a sexual attack by another man (Mezey and King 1989; Myers 1989; Scarce 1997; Walker et al. 2005). The literature indicates no comparable concern for female victims. Although sexual identity is a central component in the discursive construction of male rape, it is not clear precisely how it works.

Rape trial narratives usually hinge on the gender difference between the complainant and defendant. The key question is: Did *he* rape *her*? Jurors evaluate the plausibility of the alleged crime based on how closely the female complainant and the male defendant – including their respective behaviors, identities, and public presentations – align with cultural expectations about how women and men should interact (Matoesian 1993). Although scholars examine how many other social identities (e.g., race, class, religion, and ability) affect rape processing (Hirsch 1994; Razack 1994; Frohmann 1998; McGuffey 2005), the element of gender difference is so ubiquitous and taken for granted that it remains virtually unexamined. Yet this crucial gendered difference falls away in cases involving two men. Because the complainant and defendant are of

the same gender, the trial cannot hinge on dichotomous notions of gendered social difference. Nonetheless, rape trials involving both a male complainant and defendant still represent and enact gendered power vis-à-vis a complex interplay between masculinity and sexual identity.

Researchers in the social sciences and humanities have long shown the relationship between race and sexual violence. Sexual violence is both a raced and racializing phenomenon. This means two things. First, empirical patterns of sexual violence are shaped by broader racial dynamics and hierarchies in any given society. For instance, in the United States women of color report higher rates of victimization, and their cases are more likely to be taken less seriously by criminal justice authorities (Frohmann 1998; Dylan et al. 2008). Moreover, men of color are more likely to be identified as perpetrators, at rates that are disproportionate to their share of the population. These dynamics are documented outside of the US (although the specific racial communities may vary, the reflection of the local racial power remains roughly the same) and at different time periods. Ida B. Wells fought tirelessly in the post-Civil War era to bring awareness to the social problem of lynching, which was perpetrated against African-American men who were (usually) falsely accused of raping white women (D’Emilio and Freedman 1998). Second, the aggregate enactment of sexual violence is a racializing phenomenon because it reproduces and reinforces racial hierarchies. This process occurs by terrorizing groups that are often already marginalized, which, in the process, bolsters the power of the terrorizers. This is seen frequently in societies that are characterized by high inequality and in war situations, whereby rape is actually used as a tool of war, right alongside other weapons.

Given this intricate relationship between race and sexual violence, it is surprising then that it is not played up as a salient factor in cases involving adult male sexual victims. In theory, race could be deployed as both as a subtle way to enhance the perceived guilt of the defendant or

as a way to enhance the perceived vulnerability of the victim. Frohmann shows convincingly how prosecutors use racial ideology to make sense of cases that cross their desk, and the racial ideology shapes their professional decision-making (1997). To be sure, she argues that prosecutors who do this are not necessarily racist (although we might argue that the effects of their actions are), but it is more that they are “thinking downstream” to what the juries will find plausible. And the prosecutors consider race as they anticipate what jurors will buy. It is also important to note that race cannot obviously be an explicit element of the crime because that would go against our civil rights laws, which prohibit discrimination based on race, among other status characteristics. But race could still be an implicit prosecutorial or defense strategy. Yet race rarely emerges as a salient issue in either the research interviews or in the archival documents.

This curious absence of race can be explained in several ways. First, the attorneys tend to be cautious about how they deal with race, both from an interpersonal and legal perspective. They did not want me to think of them as racist, and they were quick to note, when it came up, that their offices do not use race as any sort of deciding factor. Again, this can somewhat be attributed to the contentious history of race in the US and its protected status under federal civil rights law. However, I would also argue that race remains largely absent from this dataset because issues of masculinity and sexual identity are so extremely salient in the case of adult male sexual victimization. That is, these issues loom so large that race is simply not a necessary narrative thread to telling these legal stories in compelling ways. What this means more broadly is that, although race and sexual violence are entwined social problems, the tightness of their relationship is shaped by the other local factors.

One component of the administrative preparation is the development of the theory of the alleged crime. The attorneys then develop a theory of the alleged crime. This is where they fit the core case facts into a compelling plot, what I call the narrativizing of the law. The trial is a public spectacle, and the most successful attorneys are those who can harness the dramatic element of the courtroom space. At trial, the prosecutor attempts to prove beyond a reasonable doubt that the defendant did, in fact, commit all the criminal elements with which he was charged. This is the primary task, which the defense attorney, in turn, attempts to dispute. Yet both sides also have an equally important cultural task alongside their legal task. Courtrooms are social spaces, and the most effective trial attorneys are gifted storytellers. They examine the case facts and then place a narrative arc over them so that the jurors can understand how the series of events came to pass. In essence, the attorneys narrativize the events in ways that will, hopefully, resonate with the values of their community. This process of narrativization is much simpler when the fact pattern follows what David Sudnow identified as a “normal crime” (1965). A normal crime is one that has been fit within an informal type created by criminal justice actors; having a finite amount of case types to anticipate greatly simplifies their task when a new criminal allegation crosses their desk. That said, adult male sexual complainants do not readily fit as a “normal crime.” Thus, the attorneys must figure out how to place the male complainant within the range of sexual crimes that are understood as possible and plausible by members of their community.

In this chapter, I examine how sexual injury is constructed on the male body at trial. A small proportion of all criminal charges go to trial, but the few that do go to trial before a judge or jury are important because this is the first time that the nature of the crime is being articulated in the public sphere. Prosecutors and defense attorneys are no longer simply “thinking downstream;” now, they are directly addressing the case’s decision-makers. Aside from

differential treatment for marginalized women, gender in rape trials is not ordinarily examined critically. It is taken for granted that sexual difference, between the complainant and defendant, is the naturalized core component of a rape trial from which all other issues flow. Cases involving two men, however, undo the element of sexual difference and, in turn, highlight how rape trials are gendered. In other words, because the element of sexual difference falls away in cases involving both a male complainant and a male defendant, the gendered dynamics between these two actors comes to the fore. In turn, this illuminates how masculinity is “done” as an interactional process in the legal field. Analysis proceeds in four parts. First, I examine the jury selection process. Second, I show how the prosecutors and defense attorney develop trial strategies based on the case evidence and fact patterns. Third, I show how complainants, defendants, and other witnesses testify about male sexual assault. Fourth, I chart trial outcomes and punishment. Together, each of these stages illuminates how sexual identity is deployed strategically at male rape trials.

Fragility of Masculinity

Male rape trials expose masculinity as fragile. Masculinity is commonly perceived to be a state of agency, authority, and dominance. Second wave feminists focused on exploring the origins of male domination, and even recent scholarship on masculinity focuses on the negotiation of power between differentially situated groups of men (Connell and Messerschmidt 2005). Yet there is less research that explores the fragility of masculinity in the first instance. This exposure of fragility is fraught. On the one hand, prosecutors need to convincingly demonstrate the male complainant’s sexual victimization to prove their criminal case. On the other hand, this exposure of the sexually vulnerable male body has the potential to wreak havoc on the seemingly stable structure of gender. It is in these moments – where the masculinity of a

male subject is broken and brittle – that one begins to see how masculinity is contested, protected, and ultimately normalized.

The vast majority of criminal cases in the United States are resolved by plea bargain, and sexual assault cases are no different from this general trend (Devers 2011). Yet some cases do go to trial, either before a judge or jury, and this small pool of cases is important because collectively they show how the alleged crime is framed in relation to perceived community standards. Lisa Frohmann argues that prosecutors are always “thinking downstream,” anticipating the jurors’ attitudes, and this is the opportunity in which that downstream thinking is solidified into specific courtroom strategies (1998). Real jurors – not just imagined community members – now emerge as key decision-makers in the case. Although jurors are an important presence in the courtroom spectacle, they are passive observers, having little to no opportunity to directly influence the course of events. Yet ironically, they single-handedly determine case outcomes in their deliberations. In this section, I describe the jury selection process in male rape cases. I discuss how the prosecutors and defense attorneys anticipate how potential jurors will react to such cases, and I reveal how the attorneys, especially the former ones, use this as an opportunity to educate jurors about sexual assault. Ultimately, these cultural negotiations that occur just before the presentation of evidence work to prepare the jury pool for the upcoming case that will, by definition, expose fractures in the durability of masculinity.

The process of jury selection, or *voir dire*, varies by jurisdiction. Some judges pose a set of generic questions to all potential jurors, while other judges permit the prosecutors and defense attorneys to pose more tailored questions to individual jurors. The attorneys report that, on the whole, judges try to move the process along relatively quickly for ordinary felony trials. Regardless of how much time they have and their degree of latitude, the attorneys view the

process of jury selection as an integral moment in the framing of their case. This is the first moment they have to present themselves and their take on the crime. Here, they do the discursive work subtly, as this is not meant to be a time to present evidence of theories of the crime. Nonetheless, it is first taste that potential jurors have of both the prosecution and defense.

As the attorneys make administrative and rhetorical preparations for trial, they anticipate how the jury will react to the particular case. This process of jury anticipation is largely one of experienced guesswork, as juries are notoriously unpredictable. One Georgia prosecutor quips, “Sometimes you lose cases you don’t think you should have lost but you never know what a jury will do. There is an old saying: ‘There’s no such thing as a case that you can’t lose. But there is such a thing as a case you can’t win.’” Despite the unpredictable nature of juries, the attorneys are nonetheless attempting to anticipate how twelve randomly chosen members of their community will react to the case facts. Here, the imagined community standards are quite local, and they may vary significantly even between nearby counties. Thus, skilled trial attorneys need to have a strong gut sense of their community’s values, demographic characteristics, and attitudes toward hot button political issues, especially those regarding gender or sexuality since the crime at hand is sexual assault involving two men.

Male rape is an unfamiliar type of crime for the attorneys, so they have little to no previous experience in understanding how their fellow community members will react to such allegations. Concerns about perceptions of homosexuality and visceral disgust emerge as they speculate about possible reactions from jurors. A defense attorney from Georgia, who represented a homosexual client accused of stranger rape, expressed unease at how conservative jurors might react to his client. “I was concerned about getting a jury that would be able to listen to this evidence [nonconsensual sexualized interactions between men] without getting sick.” To

confront this issue head-on, he asked potential jurors if they would find his client less credible because of he was gay. Notably, this respondent conflates sexual identity, desire, and assault in this formulation. Because his client was accused of a violent assault against a stranger who identified as heterosexual, there was no possibility of a defense based on consent. Thus, it is not inevitable that the issue of homosexuality would appear here. An Idaho prosecutor further distinguishes how jurors might react differently to fact patterns involving potential consent from those that do not. “If somebody’s kidnapped and beaten and brutalized and tied to a bed and raped repeatedly, I’ll take any juror that comes down the street. If it’s a boyfriend-and-boyfriend thing and, he said no, but he forced me on a particular evening after we had too much Chardonnay – there’s no juror in town that’s going to convict on that.” Here, the prosecutor suggests that the scenario involving potential consent would be a tough sell to jurors. On the surface, his distinctions are similar to cases with female complainants; allegations involving alcohol and intoxication tend to be much less plausible to juries. Yet the language he uses to make the point, especially detail about the wine, implicitly references stereotypes about urban gay populations. This indicates that he believes that jurors would react particularly adversely to a fact pattern that included a male complainant and defendant who were in a romantic relationship.

Although juries are notoriously unpredictable, prosecutors and defense attorneys attempt to predict how various social identities might affect how a potential juror will view the crime. There are cottage industries of psychologists and jury consultants who also attempt to predict how the social identity and biography of a juror will impact their deliberations. Yet there remains much variation among the attorneys in how they predict different jurors might react to male rape. The following two quotes, although lengthy, exemplify the competing logics of what kind of person would make an ideal juror from the prosecution’s standpoint.

It would be an issue that I would raise during voir dire to see how jurors would react. For instance, I might reveal that both are men and ask if anyone has a problem with that. If you see a big, burly truck driver guy raise his hand, I'm not going to work with him. I'm going to think that he's going to sit back and say, "I don't want any part of this." I would think his inclination were to be not guilty versus guilty. But if a different type of person raised their hand and they had some concerns, I might talk it through. So it's certainly an issue I would bring up in voir dire to see a reaction.

—Michigan prosecutor

You'd try to get a jury of men because they would want to convict somebody that did that. Because they're going to identify with the victim. They're going to want to identify with the victim, so if a victim comes in and says, "He raped me anally and I was younger and he was much stronger and he overcame me" and, "I would never agree to this." They're going to identify with that, and they're going to say, "This person is a deviant and we need to convict." I think it'd be pretty easy. Because they are so intolerant of homosexuality, they are so repressive sexually to begin with, that it would be very easy to get a jury to identify with that.

—Idaho prosecutor

The two prosecutors articulate diametrically opposed hypotheses on whether or not men would make good jurors on a male rape case. The former suggests that a macho man would not make a good juror for the prosecution because he would be disgusted with the fact pattern. The latter suggests that conventionally masculine men would be ideal jurors because they would feel an affinity for the complainant's victimization (presuming that there was no indication of potential consent). Here, the affinity is undergirded by homophobia; the hypothetical male juror would be sympathetic primarily because of the crime's associations with homosexuality, rather than its characterization as a sexually violent act. Other respondents mirrored this continuum, and there was ultimately no consensus as to which social groups would make the most sympathetic jurors for a male rape complainant.

Advanced age renders a man plausibly vulnerable to sexual assault and shapes the attorneys' calculations of how jurors will react to the allegations. With an old victim, it is much easier for prosecutors to make the case that the sexual encounter was unwanted, due to

perceptions about asexuality among older folks. In addition, older victims are perceived to have not done anything to precipitate the violence. In Idaho, there was a case in which a younger man broke into the mobile home of an older military veteran. The two were acquaintances because the perpetrator's mother knew the older man, and she had previously helped the older man out. In addition, the younger man had previously done odd jobs for the older man, but at the time of the assault, he had not been invited to the older man's house. Although he had no previous criminal record or any indication of previous violence, he broke into the home to steal some money, and, as he described it in the police report, something came over him and he attacked the older man. He attempted to force the older man to perform fellatio on him, and when he wouldn't comply, he attempted to anally penetrate the older man. I asked the prosecutor who would have been a good juror for his case. Here is how he replied:

You look at it and go, "Somebody had sex with an 80 year old guy and broke into his house and tried to get him to blow him and then flipped him over and ass fucked him basically." I could have picked a jury full of people from the state hospital and got a conviction on it. And that's just the reality is there's certain crimes that people are going to be disgusted with.

Here, the prosecutor indicates that the crime was so horrific and egregious that it really did not matter who the jurors were; anybody – even someone without full mental capacities – would clearly see the criminal problem in this set of case facts. To be certain, part of this assessment is based on the prosecutor's perception that jurors might find male homosexuality to be disgusting, but age remains a critical factor in this formulation. He goes on to say that if both the complainant and defendant had been younger age peers, and especially if drugs or alcohol were involved, that such a case would have been much harder to prosecute, even given the same set of facts. So the fact that the victim was an old man made this case a slam-dunk for the prosecution. It should be noted that the fact patterns of this case are rare in that it includes a physically violent

attack between two almost strangers, one of whom is very old. This case is an outlier in terms of its facts, but it is still instructive because it reveals the significance of age in terms of anticipating the strength of cases.

The attorneys use the jury selection process to educate jurors about the upcoming facts. Many people are unfamiliar with dynamics of sexual assault in general, not to mention cases involving a male complainant, and so the attorneys, even defense attorneys to some degree, attempt to challenge common rape myths to prime potential jurors to be sympathetic to their theory of the crime. Prosecutors educate potential jurors during jury selection about rape myths. For instance, they explain why a survivor might delay reporting victimization, or they might explain why a survivor's behavior prior to the assault does not justify the crime. Many prosecutors develop a provocative strategy to challenge the rape myths. One common tactic was to have jurors imagine what it would be like to narrate their last sexual encounter in great detail to the courtroom. This exercise is intended to help jurors understand the behavior and emotional reaction of the survivor as they testify; survivors may act in unexpected ways because the situation is so awkward. These prosecutorial strategies were mostly developed in relation to conventional victims (women and children), but they also apply to male victims. They represent profound shifts in terms of how state actors understand the sexual assault victim's trauma.

Although they have much folk wisdom, personal strategies, and hypotheses about jury selection, prosecutors and defense attorneys do not ultimately have much control over the process. Most felony trials are not high profile or well resourced, and the cases in my sample are no different. So the attorneys do the best they can in a brief amount of time to select jurors they believe will be most sympathetic to their case. Then they educate them about dynamics of sexual assault. Despite this unpredictability, jury selection remains a significant point in the trial process

because jurors are the ultimate decision-makers, and it is the first time that the fact patterns are narrativized in a public setting. As we will see below, themes of masculinity and sexual identity, which first emerge during jury selection, grow more solidified during subsequent points in the trial process.

Calculating Credibility

Male rape trials are remarkable because they display the sexually injured male body in a public setting. Prosecutors reveal the fragility of masculinity as they attempt to prove the defendant's guilt. In this section, I describe how the key groups at trial continually interact, anticipate one another, and ultimately craft vulnerable masculinity in the courtroom. Sexual injury against the male body materializes most starkly when the complainant testifies. This is when he narrates the alleged crime that he experienced in a public setting. It is arguably the most remarkable element of a male rape trial. Victimization by sexual assault is perceived as a feminized state, and accordingly complainants must navigate perceptions of damaged masculinity. Testifying at trial is notoriously difficult for complainants (Konradi 2007), and it may be even more so for men because they are perceived as such improbable sexual victims. In this section, I describe the gendered dynamics of testimony at the male rape trial, how it is orchestrated by the attorneys, and how these public utterances of harm shape the trial outcomes. Sexual complainants almost always testify at trial, because they are the strongest witness to the crime against their body. On the other hand, defendants do not usually testify because most defense attorneys believe that it is too risky to put them on the stand. They fear that the defendant will say something wrong and ultimately believe that they can craft a better defense on their own.

Witness credibility is a critical issue for attorneys at trial. Jurors decide a case based on how they perceive witnesses. Credibility is comprised of two components. First, a witness must be perceived as having accurate information. Second, a witness must be perceived as genuine, authentic, and without motive to distort the truth. These dynamics are particularly important in sexual assault cases because often the only witness to the crime is the complainant himself. Occasionally the defendant testifies as well, and if there are other witnesses, they usually testify to a secondary issue. The credibility of female complainants is notoriously contested because of the stigma associated with women's bodies and sexuality, which historically has been deeply entwined with representations of rape (Frohmann 1997). Interestingly, the attorneys hypothesized that jurors would perceive male sexual complainants as more credible than their female counterparts. Here is how an Idaho prosecutor explains the logic of enhanced credibility for male sexual complainants.

I think that any male complainant who finally actually makes it that far would probably be a pretty compelling witness. Because there aren't that many of them that get that far. If it's a stranger rape, everybody's with you. You know? "Whoa! Danger, danger!" Everybody's there. If it's a homosexual relationship where he's either at the bar and he gets picked up at the bar and then has too much to drink and then this guy takes advantage of him, I mean that guy's in the same place as the woman is. But maybe he's in a little bit more elevation in that it's that much harder to also say, "And I have been assaulted by another man."

This prosecutor addresses both of the most common sexual assault scenarios – stranger and acquaintance rape – and concludes that both instances would be more compelling in the context of a male victim. The case of an assault by a stranger is perceived as overtly dangerous, and the danger trumps any personal dynamics or demographics of the two individuals involved. The case of an assault by an acquaintance is perceived as comparable to that of a female complainant. However, the fact that the male complainant reported his victimization to authorities lends his allegation an enhanced degree of veracity. Male rape is so stigmatized that a man who reports

such a crime is perceived to be telling the truth because any benefits of a false allegation would not override the shame of the crime.⁷ Prosecutors and defense attorneys assess and strategize their cases based on the perceived enhanced credibility of male sexual complainants.

Articulating masculine sexual vulnerability is one of the greatest challenges of the male rape trial. Male bodies are perceived to be strong, hard, and impenetrable. Yet proving the crime of sexual assault requires that a man is shown to be just the opposite. Disability status, whether temporary or chronic, is a mechanism through which prosecutors construct plausible masculine vulnerability. Complainants perform disability while testifying at trial. Sexual assault complainants usually testify at trial because they are the primary witness to the attack on their body. This testimony is critical to the case even when there is additional evidence in favor of the prosecution. Jurors assess the complainant's testimony for consistency, credibility, and socially appropriate displays of victimhood. As a Michigan prosecutor explains, disabled complainants can either be really good or really bad on the stand.

When you deal with somebody who is either a child or has some sort of a disability, a lot of times they can be looked at as being horrible witnesses. Horrible witnesses. Or sometimes they can be the best witnesses in the world. I don't want to call it innocence, but they don't lie very well. I hate to generalize anything, but whether you call it a certain amount of innocence or you ask them a question, and they give you an answer. For some reason, there's just not that ability to come up with these crazy lies, to put all of this nonsense together.

According to this prosecutor, although they may be more easily confused, they may also be good in that they narrate sequences of events in a straightforward manner, and they are bad at lying.

⁷ False allegations are perceived to be a problem in sexual assault reporting. Criminal justice professionals as well as the general public believe that women and children have reasons to make false reports. Incentives for false allegations are often cited as custody battles, shame over a consensual sexual encounter ("buyer's remorse," as some attorneys jokingly noted), or a way to explain an unwanted pregnancy. However, research shows that false allegations of sexual assault are not nearly as prevalent as they are perceived to be (Belknap 2010; Lisak et al. 2010; Lonsway 2010; Saunders 2012).

Here, cognitive disability renders the complainant's speech and narrative patterns more believable because they are simple and straightforward. However, the jury is hearing more than just speech patterns. By seeing and hearing the complainant's disability, jurors assemble impressions of the complainant and alleged crime. Understanding the complainant as a disabled man likely makes his story of sexual victimhood more believable.

Disability emerges as a proxy for shattered masculinity. In the *Georgia v. Wilson* case, the complainant was not only a sexual victim, but he was also a severely disabled man. The prosecutor noted heightened concern about maintaining the complainant's "dignity" during the judicial process, and he emphasized in the interview that this was not a "normal victim." Indeed, the complainant testified in the courtroom from his hospital bed, wearing a medical gown and no socks since his nicer attire was soiled on the way to the courthouse. The prosecutor and defense attorney both agreed that this was one of the most dramatic trial moments they ever witnessed. Here is how the prosecutor describes his concerns about the complainant's dignity.

I wanted to make sure that no one used the word "stupid" or no one used the word "vegetable" or no one used any of those things that make us sit up and get a little tense. I wanted to make sure there was none of that. I wanted to make sure that when we got in there that everybody would understand that this is different. He's not going to take the stand. I didn't want to have an awkward moment where they said, you know, where the judge went, "Well, Mr. [Prosecutor], what is this? What are doing with my court room here?" Luckily that never happened. That was what I wanted to avoid was any sort of surprise that would make [his] disabilities painfully displayed before the jury.

The prosecutor was protective of the complainant, and he took multiple steps to ensure that the complainant would be treated with respect. Prior to the trial, he spoke with the judge and the defense attorney, alerting them to the complainant's limited physical abilities and the fact that he would need to testify while laying in his hospital bed. Yet this complainant's disabilities could not be hidden. The jurors saw the complainant provide brief testimony while laying supine in a

bed. The fragility of his manhood was on clear display in the courtroom. I suggest that the prosecutor's heightened concern about the complainant's dignity had less to do with his disability and more to do with the unique interaction between the visibility of his disabled status and the graphic narrative of his sexual victimization. The intersection of disability and sexual victimization virtually shattered whatever shreds of manhood – or dignity – that he had left in his life. He was at risk of slipping from the revered status of man to that of a mere vegetable. Nonetheless, the prosecutor was able to navigate successfully this risk by proving plausible sexual victimization while maintaining the complainant's masculine dignity as best as he could.

Prosecutors and their professional associates actively craft narratives of masculine sexual vulnerability. Witnesses testify as to the facts, but the facts are not necessarily self-evident. Rather, the attorneys must work to fit the complainant's narrative, which often includes extraneous details, into a legally viable format. In other words, the legal truth does not necessarily correspond perfectly with the complainant's perspective. In a Michigan case from 2007, prosecutors charged two men with sexually assaulting two teenaged boys. They had allegedly sexually assaulted a number of wayward boys and young men over many years, but these were the two for whom prosecutors had the strongest evidence. Both young men were just at the age of consent, and so they were coming into adulthood during the judicial process, which spanned several years. The prosecutor reported that it took a lot of work, even coaxing, to get the boys to disclose what the defendants had done to them. Here is how the prosecutor describes this essential process of disclosure.

It took a lot of counseling for them even to disclose. They would first deny, then they went to disclosing little bits and pieces, but denying other things and with the younger one, it was his counselor because he was in a program. His counselor working with him on a weekly basis until he finally got to the point where he disclosed everything and realized that it was wrong. The other one, I don't think he's ever gotten through that process because his mother never was there for him,

never met his needs, never gave him the attention. So he knows what they did was wrong, but he thinks it's wrong because they were trying to make him homosexual. He doesn't quite get the victimization part. He just says, "I am not homosexual and they were trying to make me that way." So his take on it is a little bit different.

This extensive process of disclosure spanned many months, and it required intensive work from multiple parties – the prosecutor, the complainants, and their counselors. Yet it was essential that the complainants articulate what had happened to them because the case included little forensic evidence. According to the prosecutor, both complainants eventually understood that they had experienced a harmful series of events, but they did not conceive the harms in the same way as the prosecutor and, by extension, the law. The core harm in the complainants' minds was being "made homosexual." However, the law conceives of sexual assault as an unwarranted invasion of one's body, as opposed to an unlawful challenge to one's social identity. Ultimately, this difference in the conception of harm did not thwart the case outcome; the prosecution was successful. Nonetheless, it illuminates the constructed nature of the complainant's testimony. It can take extensive work, especially with younger, disabled, or under-educated complainants, to train them how to narrate their experience of sexual assault in ways that align with the legal requirements and come across as plausible to jurors. This is not to suggest that the prosecutor took unethical steps or fabricated the truth in any way. Rather, it is to say that legal truths are always fragmented, constructed, and multiple (Ewick and Silbey 1998; Conley and O'Barr 2005).

Strategic Deployment of Sexual Identity

Rape trials are comprised of both legal and extralegal factors. Prosecutors must prove beyond a reasonable doubt that the defendant committed all the criminal elements of the statute with which they are charged. The process of narrativizing the crime, however, also introduces

extralegal factors that shape how the jury perceives the plausibility of the alleged crime (Matoesian 1993; Donovan 2005; Donovan and Barnes-Brus 2011). Sometimes the legal and extralegal factors converge, as in the cases of age or disability. Most states write youthfulness and disability status into their sexual assault laws in some way (with the latter being more variable), and culturally people perceive these characteristics to be sexual risk factors. For instance, young people are now widely understood to be sexually immature and vulnerable far past the point of puberty (Levine 2003; Moslener 2015; Spurlock 2015). Thus, in the cases of disability and especially age, the laws on the books are in step with dominant cultural paradigms (Smyth 2005). As described above, age and disability feature prominently in male rape trials as mechanisms to explain masculine sexual vulnerability. Surprisingly, however, sexual identity emerges in much more complex and subtle ways at trial than these other identity categories. In this section, I analyze the conditions under which sexual identity materializes in male rape trials. I argue that although male rape trials are saturated with homosexuality, the deployment of sexual identity – either as the disavowal of homosexuality or as an affirmation of heterosexuality – is done strategically by a variety of actors in the courtroom. The deployment of sexual identity functions to navigate contradictions emerging in the cultural construction of masculine sexual vulnerability.

The gendered dynamics of a rape trial involving two men work quite a bit differently because there is not that same undergirding of heterosexuality to shape the narrative interaction and proceedings. Whereas in a male-female rape trial heterosexuality shapes the narrative, often in subtle ways, in a male-male rape trial, relations of masculinity emerge as the dominant trope. Sexuality remains important, but the primary issue is negotiating identities of normative masculinity. In other words, the man (either the complainant or defendant) who best presents as a

“normal” man is more likely to have the upper hand in the proceedings. To be sure, the outcome of this negotiation does not eliminate the need for other compelling evidence, and it is informed by other case facts, including physical evidence, the interaction of other demographic characteristics, and so on. The strategic deployment of sexual identity largely emerges in two ways: a) the affirmation of heterosexuality, or b) the disavowal of homosexuality. Affirming heterosexuality is a less risky route because it does not play up the “taint of homosexuality.” Notably, sexual identity is not a formal element of the crime in any of the three states in my sample, which means that the attorneys have quite a bit of latitude in determining how and if they want to introduce narratives of sexual identity. Here is how a Michigan prosecutor describes his logic in introducing the complainants’ heterosexuality in his opening statement in subtle ways. This trial merged allegations from two complainants against a single defendant; the complainants had no prior knowledge of one another.

Before the case, the elephant in the room to be presented by the defense is: Well, these two victims, are they gay or are they experimenting? I didn’t think it helped our case at all to try and prove, for example, that they were straight. If you try and go into trial and prove that the victim is straight, what you’re really trying to do is prove a negative: that they’re not gay, or they weren’t experimenting. It’s very, very difficult to prove a negative. So given the theory of physically helpless, I mentioned in my opening statement that they were straight, and then I didn’t spend any time at all during trial on that issue. I didn’t ask the victims during their direct examination, either of them, whether they were straight or what their sexual orientation was, and I didn’t touch that in closing argument. The reason for that was, whether they were straight or gay, legally it didn’t matter.

Here, this prosecutor acknowledges the cultural significance of sexual identity in a male rape trial while also noting that it is legally irrelevant. This dynamic informs his choice to just quickly mention the complainants’ heterosexuality in the opening statement and then focus on their temporary disability during the sexual assaults (one was inebriated, and the other was sleeping). What is interesting, however, is that the complainants’ heterosexuality and the defendant’s

homosexuality did, in fact, emerge during the rest of the trial in overt ways. So although the prosecutor reports just a brief reference in the opening statement, narratives of sexual identity, especially vis-à-vis the gendered presentation of masculinity, saturated the rest of the trial as well.

Although narratives of heterosexuality emerge in overt ways at trial, the mechanisms of communication remain covert. Prosecutors do not elicit this information in direct ways. Rather than directly asking the complainant about his sexual identity, they pose questions that bring up the issue in roundabout ways. For instance, they might reference the complainant's wife and children, or they might reference his desire for women. Of course, such facts do not preclude having sexual desires for men as well; however, given such information, most jurors would then assume the complainant to be a heterosexual man. Here is how a different Michigan prosecutor describes his covert elicitation of the complainant's heterosexuality at trial.

I definitely elicited some testimony which made it very, very clear that [complainant] was a heterosexual male. If you look at his [transportation] records, he had kind of a girlfriend. According to him anyway. We had records where he would go over [to her house]. We were really under the guise of talking about how regimented he was. We would say, "On this date you went here. Jones Road. Where's that?" "That's my friend Jane." "Oh, and who's Jane?" "She's my girlfriend." I absolutely emphasized that he was a heterosexual male. Absolutely I did. [Did you come out and ask him directly on the stand?] Probably not. I tend to do things in a more hide-and-seek kind of a way. I tend to throw things out there and then connect the dots. You get the information out there, and hope they [jurors] can connect the dots. Then we connect the dots in closing argument.

This Michigan prosecutor acknowledges that he intentionally planned to identify the complainant as heterosexual through the invocation of a girlfriend. Similarly, when he questioned the complainant's ex-wife, who was testifying as a witness, he made sure to pose questions that had her admit that her reason for divorcing the complainant had nothing to do with his sexuality, thereby maintaining his heterosexual framing. Partly a stylistic trial strategy, this "hide-and-

seek” heterosexuality is also significant because it shows how sexual identity is deployed at male rape trials in particular and complex ways. Heterosexuality becomes a mechanism to re-establish the complainant’s normativity in the wake of a potentially tarnished sexual identity. These narratives of heterosexuality are important to note because they are not inevitable. They are extralegal narratives that work to establish the complainant as a sympathetic yet manly victim.

As described above, many respondents anticipate that jurors will be disgusted by the “taint of homosexuality” and thus more sympathetic to the supposedly emasculated complainant. According to this rationale, portraying the defendant as homosexual and thus deviant would be a logical prosecution strategy. However, under certain conditions, a prosecutor may intentionally refrain from sexualizing the narrative. An allegation of masculine sexual victimization is at the core of each case even though fact patterns differ widely across the cases. Prior to trial, prosecutors and defense attorneys determine how they want to navigate the existence of this fraught body. A central Georgia case exemplifies the framing decisions that prosecutors make as they progress through the judicial process (*Georgia v. Wilson*, 2003). In 2003, nursing home officials reported an allegation of sexual assault to county investigators. A certified nursing assistant (CNA) witnessed one of her male colleagues engaging in what appeared to be anal intercourse with an immobilized male resident. She observed exposed buttocks and a thrusting motion, but she was so shocked that she waited several days before reporting the incident to her supervisors. The complainant was a middle-aged white man who was permanently incapacitated due to a stroke. He had extremely narrow physical functioning: he could not walk, talk, or move much of his body. His cognitive abilities were unclear because his communication skills were limited to one word interactions, but he was ultimately deemed a competent witness at trial. The defendant was a middle-aged black with a long history of non-violent felonies. He was an out

gay man. Prosecutors charged the crime as aggravated sodomy and sexual assault, the latter of which is the lesser offense in Georgia.

Although sexual identity was a contentious issue in the *Wilson* case prior to trial, the issue waned during the trial. Before the trial began, the prosecutor filed a motion with the court to introduce evidence that the defendant was homosexual. The defendant had disclosed his sexual identity to coworkers, who would be testifying as witnesses, so it was a known fact. In the pretrial hearing, the prosecutor determined that this information was relevant and significant because it provided evidence as to the defendant's alleged motive in terms of why he selected this particular victim (as opposed to a woman). The prosecutor reported that he spent much time preparing his arguments for this hearing because he believed this evidence of gayness was hugely important. Despite his significant efforts and the judge's acquiescence, however, the prosecutor decided against this line of questioning once the trial began. Here is how he explains why he changed his mind.

That was just such a fine line to walk. I would have had to have argued that he didn't commit this because he was gay. He chose his victim because of his tendencies; he chose a male instead of a female because he prefers males over females. I just realized I didn't want to go there, and it certainly wasn't the way I looked at it. I just got really worried that that would be misconstrued as some sort of hate case. It's just a sensitive issue in America, and I decided I didn't want to mess with it. So I thought the evidence stood for itself just fine.

As he elaborates elsewhere in the interview, the prosecutor was concerned that overtly identifying the defendant as a gay man might politicize the case in distracting ways. Jurors might think consider it a hate crime rather than a sex crime, even though the distinction between the two can be murky (Jenness and Grattet 2004). Ultimately, he concludes that the other evidence was sufficient to prove his case. These claims are certainly plausible, yet I suggest that his explanation for why he suddenly changed course is unsatisfactory. First, central Georgia is

conservative. Even as gay rights have progressed significantly in recent years, most jurors from his county were unlikely to be offended to the point of acquittal based on a non-inflammatory identification of a homosexual defendant. Second, if the remaining evidence were so strong, the prosecutor would not have worked so hard in the pretrial hearing to introduce the evidence of the defendant's sexual identity. I suggest that portraying the defendant as gay is a risky strategy because it then implicitly emasculates the complainant by association. The complainant in this case was already a severely disabled man, and any association with gay sexual behavior, even if not invited by him, would have only further emasculated him. Furthermore, the prosecutor had a relatively strong case, including an eyewitness and an extremely vulnerable and sympathetic victim. Thus, the prosecutor calculated that a narrative of homosexuality would only work to further harm his complainant without really strengthening his case.

The attorneys are not the only ones in control of deploying sexual identity. Defendants and complainants also attempt to direct narratives of sexual identity, and they arguably have higher stakes in making the issue "stick" in their favor since it is their potentially stigmatized social identity that is on the line. One of the ways that masculinity is "done" or signaled in a rape trial is through sexual identity. Gayness becomes an indicator of non-normative masculinity. In one Michigan case that went to trial, the complainant was an out gay man, and the defendant presented as a beefy, macho man who was heterosexual. The difference of their respective sexual identities emerged as a significant theme at trial. The defendant forcibly entered the complainant's Detroit house late in the night. The complainant opened the door because he was expecting another friend, and once the door was open, the defendant pushed his way in. They had been loose acquaintances prior to the night of the sexual assault, having first met over ten years ago, but having crossed paths in the city only a couple of times since then. The defendant,

who was much bigger than the complainant, threatened him with a screwdriver and pushed him up the stairs to the bedroom. Once there, he continued to physically threaten and assault the complainant while forcing acts of oral and anal intercourse. Essentially, this was the classic stranger rape scenario. As far as rape cases go, the prosecution had a relatively strong case; although there was no DNA evidence, there was a disheveled crime scene, neighbors who witnessed the complainant's highly agitated state immediately following the attack, and clear, consistent police statements from the complainant. At the trial, the difference in sexual identity between the defendant and complainant was a significant subtle trope. The complainant presented as visibly gay, and during voir dire jurors were asked repeatedly if they would be biased against gay people or would have a hard time hearing information dealing with homosexuality. In contrast, the defendant presented as highly masculine during the trial. He denied that the sexual assault had occurred (his other option being that it was consensual), although he admitted to the physical assault, arguing that he was trying to get drug money from the complainant. His dominant displays of masculinity were so strong that the judge had to reprimand him multiple times for his laissez-faire attitude. Moreover, he distanced himself from homosexuality when he explained that he had not seen the complainant in a long time. He said, "But I don't associate with no fags, so I ain't seen him in years." Rather than simply stating that he had not seen him in a long time, he went out of his way to emphasize that he does not hang around with gay people, which, by extension, implies that he himself is not gay. In this case, the defendant's heterosexuality and the complainant's homosexuality emerged as important pieces of extra-legal evidence during the trial. Interestingly, the jury ultimately convicted the defendant of all criminal charges against him, which suggests that heterosexuality is not a complete privilege against unsavory outcomes. This case shows that defendants are also actively invested in the

deployment of sexual identity and that the deployment narratives of sexual identity is not contingent on any particular configuration of sexual identities between the complainant and defendant.

Restoration of Masculinity

The parade of evidence that materializes at a male rape trial exposes the fragility of masculinity, both in terms of its physical vulnerabilities and its potential defilement by association with themes of homosexuality. Thus, the actors involved attempt to restore the tarnished masculinity of complainants by reconstituting them as agentic, heterosexual men. In this section, I show the mechanisms by which they do this. It should be noted that while the restoration of masculinity occurs in obvious ways, it tends to be couched within other issues.

Rape trials are overdetermined by the polarity between masculinity and femininity. Scholars like Matoesian and Konradi have shown convincingly how these gendered poles emerge in tandem during the trial process. Conventionally, the female complainant is portrayed as feminine – in fact, it is just assumed – and the male defendant is portrayed as masculine. The value judgment associated with these gender statuses varies. For instance, the woman’s femininity might be valuable in bolstering the prosecution’s case if she fits within the rubric of what Connell calls emphasized femininity, namely if she is white, middle-class, youthful, good-looking, and/or behaving “appropriately.” On the other hand, if she does not fit within the categories of what counts as a “good” or respectful woman, then defense attorneys can subtly use her femininity to smear the credibility of her allegations. Matoesian reveals how this occurs at the linguistic level through the case of the William Kennedy Smith rape trial, whereby the woman’s behavior just prior to the alleged sexual assault was called into question (1993). The defense attorney essentially argued, through subtle lines of questioning and repetition, that her

behavior – leaving her young daughter at home, drinking alone at a bar, going home with the defendant, walking on the beach with him late in the night – indicated a willingness to engage in sexual intercourse. Masculinity in similar ways can be used to either smear or render credible the defendant. Either way, however, these gendered poles are significant elements in shaping rape trials beyond simply the presentation of the evidence. Notably, most attorneys will tell you that their job is simply to prove (or provide a reasonable doubt) the legal elements of the crime, even though they also all engage with this sort of cultural discourse in practice.

Objects of sexual desire figure prominently in male rape trials. The alleged crime contains a culturally inappropriate object of desire – that is, a man desiring another man.⁸ Acknowledgement of this fact pattern is a necessary condition to proving that the crime occurred, even though it simultaneously threatens the complainant’s manhood. Thus, prosecutors work to re-establish appropriate objects of sexual desire in relation to the complainant during the trial process to minimize the masculinity threat. In 1995, a Michigan man was accused of sexually assaulting several young men in his extended family (*Michigan v. Carlyle*, 1995). At trial, the defense attorney suggested that the defendant was innocent and that the complainant had simply dreamed the attack. The prosecutor obviously challenged this theory, and his counter-argument is revealing. Here is how the prosecutor questioned the complainant on re-examination.

Q: Is it fair that you dream of girls sucking your dick?
A: Yes.
Q: And you had dreams on Monday night, right?
A: No, I did not.

⁸ Second wave feminists made strong claims that sexual assault is about violence and not sexuality (Brownmiller 1975; Dworkin 1981; Estrich 1988; MacKinnon 1988; Warshaw 1994). However, there remains theoretical debate, and often the two components are muddled in public dialogue (Cahill 2001). My data show that sexual desire is an important component of how the attorneys understand adult male sexual victimization. So I discuss that as such here, even as I acknowledge that these alleged incidents of desire and violence were not met consensually by the respective complainants.

Q: But you've had dreams recently?

A: Yes, I have.

In this exchange, the prosecutor confirms succinctly that the complainant is a heterosexual man. In fact, his desire is so strong and a core component of his being that he even dreams of sexual interactions with women. Although it was important that he refute the defense's theory, it was not inevitable that he incorporated this narrative of heterosexuality into the refutation. That he did, however, functions to cure the complainant's sullied sexual identity in the ears of the jurors. Moreover, it eliminates the possibility of the complainant extending potential consent to a sexual interaction with another man – precisely because he is now framed as a man who desires women.

Multiple actors engage in the affirmations of heterosexuality. In fact, the complainants often play an active role in crafting this identity. Psychological research shows that anxieties about becoming gay often figure prominently in the minds of male victims in the aftermath of sexual assault (Mezey and King 1989; Walker 2005). So it follows that that might bring these anxieties about becoming gay into the criminal justice process. Here a Michigan prosecutor describes how a complainant framed himself as a heterosexual man in their professional interactions.

I never want to play the sexual game, but we certainly made it very, very clear [complainant] is pretty homophobic himself. Maybe that's not completely fair to say. I can't tell you how many times he said to me, "I would never do anything. That's just terrible. That's just icky." All of that kind of stuff. "I'm not like that. I like women." I can't tell you how many times how often he said, "Oh, I like women" and then he would see somebody and say, "Oh, she's pretty."

This complainant goes out of his way to articulate his heterosexual desires while simultaneously denigrating homosexual behaviors while working with the prosecutor. This narrative of heterosexuality is completely irrelevant to the legal elements of the crime (of which most crime victims are not highly cognizant anyways). Thus, these efforts at identity construction are

important because they reveal just how embedded sexual identity is in the prosecution of adult male sexual victimization.

The inculcation of normative masculine behavior is another way that prosecutors in tandem with complainants work to reestablish the masculine dignity of complainants. Through the complainant's testimony, his actions can be framed as fitting to how a man would be expected to react to an experience of sexual assault. Although they tend to exhibit the same range of trauma responses as their female counterparts, it is expected that men react to sexual assault in a particular way. Common cultural assumptions suggest that men should be able to defend themselves against sexual attacks, fight the perpetrator, and take aggressive action post-assault. In cases in which male complainants did this, prosecutors can emphasize these normatively masculine behaviors at trial to restore the complainant's masculinity. In a 2007 Michigan case, a man was sexually assaulted by a new acquaintance whom he had met while out at the bar scene in his college town. The fact pattern of the case followed the standard pattern of "date rape" cases, whereby the defendant sexually assaults the victim after a long night of drinking and socializing while the victim is incapacitated. In this case, he was asleep in his own apartment, and he woke up to the defendant performing oral sex on him. Immediately upon waking up to the sexual assault, however, the victim's reaction was agentic and authoritative. He demanded that the defendant leave his apartment, and he reported his victimization to police and sought services at his university's sexual assault prevention program. Moreover, he confronted the defendant several days later when they coincidentally ran into each other at a bar in town. The prosecutor opens a line of questioning at trial about the complainant's reaction in the guise of walking the jurors through the complainant's experience of sexual assault. However, by including details about the complainant's behavior relatively far out from the immediate assault, the prosecutor

effectively proves the masculinity of the complainant. Although he was temporarily victimized while sleeping, an egregious assault, he reacted swiftly in an agentic manner and effectively restored the appropriate order of gendered power, whereby straight men are superior to gay men, who are perceived as deviant and unsettling. Thus, the restoration of masculinity is done both through the affirmation of heterosexuality and by establishing the complainant as a masculine subject through his agentic and aggressive behavior.

The presentation of the above cases suggests that dominant masculinity is not automatically ascribed to either the complainant or the defendant. The process of constructing masculinity is relational. Based on all the pieces of potential evidence (after all, any given criminal case includes more pieces of legal and extra-legal evidence than what ultimately get deployed at trial), some get highlight, some get minimized, and some remain outside the scope of the courtroom narrative altogether. This means that there is not some inevitable way that defendants and complainants are portrayed in terms of their masculinity and how closely it aligns with dominant ideals.

Conclusion

Male rape is saturated with what Sandesh Sivakumaran calls the “taint of homosexuality” (2005). The sexual violence paradigm, which I describe in Chapter 2, presumes female victims and male perpetrators. This gendered dyad is undergirded by heterosexuality, but the dynamic is so completely naturalized that it is taken as unremarkable. In contrast, with sexual assault cases involving two men, sexual identity emerges as a salient issue. In fact, sexual identity is arguably the primary component in the cultural construction of male rape. Male victims report a preoccupation with concerns about becoming gay after a sexual assault by another man, and

historically gay men were perceived to be deviant sexual menaces (Lancaster 2011). Because of this association with homosexuality, male rape is understood as especially horrific and harmful.

Findings indicate that much cultural work occurs to make sense of this damaged masculinity. Rarely is the fragility of masculinity displayed so overtly in public, and yet it must be done in order for prosecutors to prove beyond a reasonable doubt that the crime occurred. In this chapter, I explore how prosecutors construct credible masculine vulnerability – and, conversely, how defense attorneys attempt to challenge these claims. I review the appropriate emotional responses from the complainants and argue that masculinity in the legal field is an interactional process. Case outcomes are not as easy to predict as might be assumed because the most convincing presentation of masculinity only occurs as an interaction between the complainant and defendant. The man who presents most closely to normative masculinity, as opposed to deviant or deficient masculinity, even if he is not at all aligned with hegemonic masculinity, comes across as most credible. Moreover, sexual identity emerges as an important extra-legal theme at trial, which is interesting because it has nothing to do with the crime at hand.

Although sexual identity, and particularly homosexuality, can be a powerful narrative in relation to adult male sexual victimization, the attorneys do not always use it. In fact, its power, rooted in the social stigma of homosexuality, make it a somewhat dangerous, unpredictable discursive tool. Therefore, the attorneys, especially the prosecutors, are quite mindful about if and how they bring this fact in at trial. Despite the taint of homosexuality, gayness rarely emerges at trial in overt ways. This omission is surprising because, given the strong stigma, one would expect that it would help strengthen the prosecution's case by increasing the plausibility of the crime having occurred and the perceived severity of the harm. Why, then, do the attorneys refrain from engaging with the taint of homosexuality as they narrativize the alleged crimes at

trial? One explanation is that it is not an element of the crime and so therefore it is not relevant. However, scholars show how extralegal factors like race, class, and gender frequently emerge at trial even though these demographic characteristics are not pertinent. Another explanation is that sexual identity is a politicized issue, and the attorneys are protecting against accusations of discriminatory conduct. However, sexual identity is not a formally protected category, and even though same-sex marriage advocacy has recently gained much political traction, queer discrimination is still not as much of a hot button issue as that of racial discrimination. (One Michigan prosecutor was adamant about not making any sort of racial distinctions even as he bandied about flippant comments about sexual identity in other portions of the interview. “We don’t try and play the race card. If anybody in this office tried to play a race card, we’d get fired the next day.”)

Moreover, this construction of masculinity is enacted by a multitude of actors. In the earlier stages of the criminal justice process, the legal events and trajectories are dominated by the attorneys’ actions, especially those of the prosecutors. The prosecutors have a great deal of power in shaping the criminal justice process, especially in the earlier stages. However, once a case goes to trial, many more people are involved in the public construction of the narrative. First, the judge has power in determining the tone of the courtroom, which is enacted by either encouraging or reprimanding the attorneys and witnesses, and by determining which pieces of evidence may be brought before the jury. These decisions have potentially huge impacts on the outcomes of cases. Second, the jurors have indirect power in that the attorneys are constantly “thinking downstream” as to how the jurors will react to information and theories about the alleged crime. So even though they sit passively in the courtroom and many attorneys claim to not try to read the jury, jurors nonetheless wield significant, indirect power in terms of shaping

how the evidence emerges at trial. Third, the witnesses, especially the complainant and defendant, now have great opportunity to explain their version of events. Usually, complainants testify at trial and defendants do not. The common wisdom among defense attorneys is that they can do a better job of managing information and narratives than the defendants can if they get on the stand and are vulnerable to damaging questions from the prosecutor. But even if they do not testify, their mere presence in the courtroom is a significant factor in how the jurors perceive the allegations. There is much research showing that jurors are highly aware of demographic characteristics like race, class, age, and gender when evaluating the plausibility of any given criminal charge. Of course, these factors are not supposed to be considered in a criminal trial, but the jurors are human and therefore subject to such bias. Oftentimes, if the defendant does not fit the dominant cultural stereotypes of who tends to commit such crimes (even if these stereotypes are empirically inaccurate), then they will not convict. Conversely, if the defendant does fit the dominant cultural stereotypes, then juries may be more likely to convict, even in the absence of strong evidence.

The strategic deployment of sexual identity during the trial phase of the criminal justice process sets the stage for the reproduction of gendered citizenship during the appellate phase. In the next chapter, we will see how themes of sexual identity, which first become publicly narrativized at trial, become fully instantiated during the appellate phase. This process effectively defines men, their bodies, and their vulnerabilities in the face of the law.

Bibliography

- Belknap, Joanne. 2010. "Rape: Too Hard to Report and Too Easy to Discredit Victims." *Violence Against Women* 16(12): 1335–44.
- Brownmiller, Susan. 1993. *Against Our Will: Men, Women, and Rape*. Reprinted edition. New York: Ballantine Books.
- Cahill, Ann J. 2001. *Rethinking Rape*. 1st edition. Ithaca, NY: Cornell University Press.
- Cernak, Stella. 2015. "Sexual Assault and Rape in the Military: The Invisible Victims of International Gender Crimes at the Front Lines." *Michigan Journal of Gender & Law* 22(1): 207–41.
- Conley, John M., and William M. O'Barr. 2005. *Just Words, Second Edition: Law, Language, and Power*. 2nd edition. Chicago, IL: University Of Chicago Press.
- Connell, R. W., and James W. Messerschmidt. 2005. "Hegemonic Masculinity Rethinking the Concept." *Gender & Society* 19(6): 829–59.
- Devers, Lindsey. 2011. "Plea and Charge Bargaining: Research Summary." Arlington, Virginia: Bureau of Justice Assistance, U.S. Department of Justice.
- Donovan, Brian. 2005. "Gender Inequality and Criminal Seduction: Prosecuting Sexual Coercion in the Early-20th Century." *Law & Social Inquiry* 30(1): 61–88.
- Donovan, Brian, and Tori Barnes-Brus. 2011. "Narratives of Sexual Consent and Coercion: Forced Prostitution Trials in Progressive-Era New York City." *Law & Social Inquiry* 36(3): 597–619.
- Dworkin, Andrea. 1981. *Pornography: Men Possessing Women*. New York: Perigee Trade.
- Dylan, Arielle, Cheryl Regehr, and Ramona Alaggia. 2008. "And Justice for All? Aboriginal Victims of Sexual Violence." *Violence Against Women* 14(6): 678–96.
- D'Emilio, John and Estelle B. Freedman. 2012. *Intimate Matters: A History of Sexuality in America*, 3rd edition. Chicago, IL: University Of Chicago Press.
- Estrich, Susan. 1988. *Real Rape*. Reprint edition. Cambridge, Mass.: Harvard University Press.
- Ewick, Patricia and Susan S. Silbey. 1998. *The Common Place of Law: Stories from Everyday Life*. Chicago, IL: University Of Chicago Press.
- Frohmann, Lisa. 1997. "Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decisionmaking." *Law & Society Review* 31(3): 531–56.
- . 1998. "Constituting Power in Sexual Assault Cases: Prosecutorial Strategies for Victim Management." *Social Problems* 45(3): 393–407.

- Gettleman, Jeffrey. 2009. "Symbol of Unhealed Congo: Male Rape Victims." *The New York Times*, August 5, sec. International / Africa.
- Graham, Ruth. 2006. "Male Rape and the Careful Construction of the Male Victim." *Social & Legal Studies* 15(2): 187–208.
- Hirsch, Susan F. 1994. "Interpreting Media Representations of a 'Night of Madness': Law and Culture in the Construction of Rape Identities." *Law & Social Inquiry* 19(4): 1023–56.
- Jenness, Valerie, and Ryken Grattet. 2004. *Making Hate a Crime: From Social Movement to Law Enforcement*. New York: Russell Sage Foundation.
- Konradi, Amanda. 2007. *Taking the Stand: Rape Survivors and the Prosecution of Rapists*. Westport, Conn: Praeger.
- Lancaster, Roger N. 2011. *Sex Panic and the Punitive State*. Berkeley, Calif.: University of California Press.
- Levine, Judith, and M. D. Joycelyn M. Elders M.D. 2003. *Harmful to Minors: The Perils of Protecting Children from Sex*. New York: Da Capo Press.
- Lisak, David, Lori Gardinier, Sarah C. Nicksa, and Ashley M. Cote. 2010. "False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases." *Violence Against Women* 16(12): 1318–34.
- Lonsway, Kimberly A. 2010. "Trying to Move the Elephant in the Living Room: Responding to the Challenge of False Rape Reports." *Violence Against Women* 16(12): 1356–71.
- MacKinnon, Catharine A. 1988. *Feminism Unmodified: Discourses on Life and Law*. Cambridge, Mass.: Harvard University Press.
- . 1991. *Toward a Feminist Theory of the State*. Reprint edition. Cambridge, Mass.: Harvard University Press.
- Matoesian, Gregory M. 1993. *Reproducing Rape: Domination through Talk in the Courtroom*. Chicago, IL: University of Chicago Press.
- McGuffey, C. Shawn. 2005. "Engendering Trauma: Race, Class, and Gender Reaffirmation after Child Sexual Abuse." *Gender and Society* 19(5): 621–43.
- Mezey, Gillian, and Michael King. 1989. "The Effects of Sexual Assault on Men: A Survey of 22 Victims." *Psychological Medicine* 19: 205–9.
- Mitchell, Damon, Richard Hirschman, and Gordon C. Nagayama Hall. 1999. "Attributions of Victim Responsibility, Pleasure, and Trauma in Male Rape." *The Journal of Sex Research* 36(4): 369–73.
- Moslener, Sara. 2015. *Virgin Nation: Sexual Purity and American Adolescence*. New York, NY:

Oxford University Press.

Myers, Michael F. 1989. "Men Sexually Assaulted as Adults and Sexually Abused as Boys." *Archives of Sexual Behavior* 18(3): 203–15.

Puar, Jasbir K. 2004. "Abu Ghraib: Arguing against Exceptionalism." *Feminist Studies* 30(2): 522–34.

Razack, Sherene. 1994. "From Consent to Responsibility, from Pity to Respect: Subtexts in Cases of Sexual Violence Involving Girls and Women with Developmental Disabilities." *Law & Social Inquiry* 19(4): 891–922.

Saunders, Candida L. 2012. "The Truth, The Half-Truth, and Nothing Like the Truth Reconceptualizing False Allegations of Rape." *British Journal of Criminology* 52(6): 1152–71.

Scarce, Michael. 2001. *Male On Male Rape: The Hidden Toll Of Stigma And Shame*. 1 edition. Cambridge, Mass.: Basic Books.

Sivakumaran, Sandesh. 2005. "Male/Male Rape and the 'Taint' of Homosexuality." *Human Rights Quarterly* 27(4): 1274–1306,1371.

———. 2007. "Sexual Violence Against Men in Armed Conflict." *European Journal of International Law* 18(2): 253–76.

Spurlock, John C. 2015. *Youth and Sexuality in the Twentieth-Century United States*. New York: Routledge Press.

Sudnow, David. 1965. "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office." *Social Problems* 12(3): 255–76.

Sumner, Jennifer, Lori Sexton, Valerie Jenness, and Cheryl Maxson. 2014. "The (Pink) Elephant in the Room: The Structure and Experience of Race and Violence in the Lives of Transgender Inmates in California Prisons." In *The International Handbook of Race, Class, and Gender*, edited by Shirley A. Jackson, 128–44. New York: Routledge Press.

Walker, Jayne, John Archer, and Michelle Davies. 2005. "Effects of Rape on Men: A Descriptive Analysis." *Archives of Sexual Behavior* 34(1): 69–80.

Warshaw, Robin. 1994. *I Never Called It Rape: The Ms. Report on Recognizing, Fighting, and Surviving Date and Acquaintance Rape*. Reprint edition. New York: Harper Perennial.

Chapter 7: An Unsettling Crime

“Other than the prison cases I discussed with you, I do not remember any other forcible male-on-male rapes occurring in the Mountain Circuit of Georgia other than that famous scene from the movie *Deliverance* where actor Ned Beatty was told to squeal like a pig. That movie was shot in Rabun County on the Chattooga River and in Tallulah Gorge which borders between Habersham and Rabun Counties of Georgia.”

— Email Correspondence from Georgia Prosecutor

Deliverance was released in 1972 to widespread critical acclaim. The film charts the evolutions in masculinity among four professional men from Atlanta. They break away from their suburban responsibilities for a weekend journey into the wilderness. Lewis, their fearless leader, is determined to canoe down the fictional Cahulawassee River before it is dammed and ruined by developers. As the quartet searches for an entry point to the river, they encounter the Appalachian locals. They are dirty, toothless, and possibly “genetically deficient.” The men greet them with a mixture of awe and suspicion. They navigate successfully through this first encounter, but as they paddle down the river, they collide with a much less hospitable pair of locals. The hillbilly duo attack Ed and Bobby, who have lost their way in the woods, seemingly without reason. They tie Ed to a tree with a belt around his neck, and they order Bobby to take off his clothing as they point a gun at him and hold a knife to Ed’s chest. As Bobby removes his clothing, one of the hillbillies verbally harasses him, making fun of his pudgy body, and chases the near-naked Bobby up a muddy hillside. He yells, “Hey boy, you look just like a hog! Give me a ride, boy!” He then forces Bobby to “squeal like a pig” just before he anally rapes him as Ed looks on from the tree. Just in the nick of time, Lewis rescues Bobby and Ed from near certain death by shooting and killing the rapist with an arrow.

This infamous male rape scene initiates a clash of manhood and morality. The friends must collectively decide what to do with the hillbilly's dead body. Do they quietly dispose of it in the forest? Or do they report the incident to authorities as an act of self-defense? Although the cinematic depiction of male rape was pioneering, even to this day, the focus of the plot quickly shifts back to the quartet's attempts to restore their manhood. The rape becomes simply a catalyst through which the second act's action, panic, and thrill flow. Indeed, once the scene closes, the victim displays no signs of trauma from his attack. The role of law figures prominently as they debate their options. Drew, who wants to report the episode to local authorities, argues, "It's a matter of the law!" Lewis screams in reply, "What law? Where's the law, Drew?" This fracture – between adherence to an external legal order versus an internal moral code – is what cripples the quartet. It sets in motion a series of catastrophic physical challenges and morally ambiguous decisions. Ed, the true protagonist, is the only one of the four to survive physically in tact, but the final scene reveals him in the midst of a guilt-ridden nightmare back in his suburban bed, suggesting that the weekend journey into a distant land and time will leave him forever psychically scarred.

As the men of *Deliverance* reveal, male bodies bear a complicated relationship to law, sexuality, and the state of vulnerability. It turns out that Lewis was correct to be skeptical about the power of the law to rectify their situation. In 1972, Georgia's rape law defined the crime as "carnal knowledge of a woman," and this language remains on the books over forty years later. Although the hillbillies could have been charged with aggravated sodomy, in theory, it is more likely that the city boys would have been charged, tried, and convicted of murder, given the local politics and the widespread disbelief of male rape. In this dissertation, I have examined the legal structures in Georgia, Michigan, and Idaho that protect men – or not, as it were – against sexual

violence. Each state defines adult male sexual victimization differently, and these linguistic variations at the statutory level produce vast differences in how such allegations are understood across jurisdiction. In turn, the legal structure creates different planes of possibility for processing crime at the local level in each state.

This dissertation lies at the intersection of sociological inquiry into law and society, criminology, and masculinity. I take sexual violence as a case through which to investigate how gendered vulnerability is understood and refracted through legal institutions. Specifically, I examine how prosecutors and defense attorneys construct sexual injury on adult male bodies. Despite public perceptions to the contrary, evidence informs that men experience sexual violence, ranging from sexual harassment to unwanted sexual touching to nonconsensual sexual penetration. In turn, these unlikely victims open an analytical window into how prosecutors and defense attorneys approach cases that do not fit into the rubric of what David Sudnow calls a “normal crime.” This is the largest systematic study to date on how legal actors define men as sexual victims. Ultimately, it reveals how the local processing of crime in the United States is shaped by an interaction between social identities and state law.

I deploy a comparative research design in this dissertation to maximize points of difference between the cases. The comparative research design controls for how the language of state laws shapes the planes of possibility for how cases proceed through the criminal justice system. I compare Georgia, Michigan, and Idaho because these states write gender into their sexual assault laws differently. Georgia’s code defines rape victims as women; Michigan’s code is gender-neutral; and Idaho’s code includes a “male rape” law alongside its female one. Within this comparative framework, I use a historical ethnographic approach to trace carefully how legal actors differentially construct male rape in dialogue with their respective legal language. Data are

two-pronged. First, I collected historical documents related to 67 cases of male sexual assault, including police interviews and reports, preliminary hearing documents, trial transcripts, and appellate decisions. Second, I conducted 75 in-depth interviews with prosecutors and defense attorneys who have worked on a criminal case involving an adult male sexual victim. In turn, each chapter examines a different point in the criminal justice process from the investigation to the trial to appellate phase. This chronological structure of analysis is a key innovation because much socio-legal research focuses exclusively on trial outcomes – the proverbial “tip of the iceberg” – while overlooking the equally consequential earlier points in the criminal justice process.

Significant dissertation results are twofold. First, the three state comparison reveals how statutory language gets applied at the local level. Through in-depth analysis of the attorneys’ decision-making logics, I show how the varying legal structures create different planes of possibility for how the cases proceed. Counterintuitively, statutes like Idaho’s that call the greatest attention to the sexual vulnerability of male bodies actually pose increased challenges to prosecutors. In contrast, prosecutors who have the option of fitting an allegation under the vague rubric of criminal sexual conduct, like in Michigan, can minimize public recognition of the sexually violated male body because gender and sexual desire are not elements of the crime. This is significant because it shows that legal reforms that are too out of step with cultural norms may not be as effective as intended. Second, although relatively rare, the sexual victimization of men is perceived as especially egregious. Whereas violence against women is anticipated, even if not condoned, sexual violence against men disrupts common expectations about men’s ability to move safely through public spaces and to determine their own sexual boundaries. A significant portion of the harm, particularly for younger complainants, is associated with perceptions that

the defendant initiated him into homosexuality and thus damaged his manhood. Prosecutors make their case by building on socially acceptable types of masculine vulnerability that the complainant may already exhibit, like youthfulness, smaller stature, or disability status. Moreover, statutory language that requires minimal recognition of the sexually vulnerable male body is most favorable to a successful prosecution.

These empirical findings reveal how adult male bodies are constructed as desiring, permeable, and vulnerable subjects in the shadow of the law. Men's physical bearing as well as their status as gendered citizens is literally brought into being through the criminal justice process of prosecuting allegations of male rape. Feminist legal scholars have made significant strides in understanding how women are both subordinated and engendered as citizens in the shadow of the law. Yet there is much less research on how this process occurs in relation to men. Historically, the law itself has been constructed as a dominant, masculine institution that distributes unearned privileges to men. While there is much evidence to support these feminist theories, the case for individual men and the range of masculinities suggests a greater complexity than has been heretofore recognized. Moreover, because the case of male rape inadvertently has the "taint of homosexuality," this analysis also illuminates the unique interaction of not just masculinity but also sexual identity in legal processes.

The empirical findings from this research will lead to better knowledge about under-recognized victims of sexual violence. The Prison Rape Elimination Act (PREA), a federal law passed in 2003, reveals that much male rape occurs in prison.⁹ Sexual assault in this institutional setting is especially likely to be motivated by masculine attempts at power (Lockwood 1980; Wooden and Parker 1982; Hensley and Tewksbury 2002). Moreover, rape in prison is likely to

⁹ <http://www.justdetention.org/pdf/PREA.pdf>

facilitate the transmission of HIV because condoms are scarce and anal intercourse is most conducive to viral transmission (Hensley 2002). Given that young men of color are incarcerated at disproportionate rates (Mauer 1999), this marginalized population may also bear a disproportionate burden of sexual victimization and subsequent sexually transmitted infections. In part, this research will execute the fact-finding mission proposed by the PREA. But by extending the scope of analysis outside the prison walls, this research will also reveal how the legal system processes allegations of male rape. Understanding the legal and extra-legal factors involved in decisions to prosecute or file civil suits will enable a broader group of victims to harness the law in pursuit of justice. Furthermore, the examination of male victims will enhance our knowledge about sexual violence in general. Male rape victims illuminate the intertwining roles of sexuality and masculinity in shaping cultural frameworks of sexual violence. These dynamics remain obscured in the case of female victims. Thus, this research promises broader impacts beyond the university: first, it will recognize marginal sexual victims; second, it will extend the agenda of the US government, as outlined in the PREA legislation; and third, it will enhance our general understanding about how the law processes sexual violence. Finally, the theoretical findings from this project will lead to greater knowledge about the relationship between law and masculinity. Male rape is an especially valuable case because sexual violence in general prompts discourse about sex, and male victims disrupt the heterosexual dyad that permeates most research on rape.

Bibliography

Hensley, Christopher. 2002. *Prison Sex: Practice and Policy*. Boulder, Colo: Lynne Rienner Publishers.

Hensley, Christopher, and Richard Tewksbury. 2002. "Inmate-to-Inmate Prison Sexuality: A Review of Empirical Studies." *Trauma, Violence, & Abuse* 3(3): 226–43.

Lockwood, Daniel. 1980. *Prison Sexual Violence*. New York: Elsevier Science Publishing.

Mauer, Marc. 2006. *Race to Incarcerate*. Revised edition. New York: The New Press.

Wooden, Wayne S. and Jay Parker. 1984. *Men Behind Bars: Sexual Exploitation In Prison*. New York: Da Capo Press.

Appendix A: Interview Recruitment Letter



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28 June 2012

[REDACTED]
Kootenai County Prosecutor's Office
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000

Dear Ms. [REDACTED]

I am a researcher at the University of Michigan in the departments of Sociology and Women's Studies. I am studying how legal actors make sense of adult male sexual victimization. Specifically, I am interested in how prosecutors – both at the trial and appellate levels – draw on rape laws and cultural knowledge to pursue allegations of male rape. This project is funded by the National Science Foundation.

I write to request an interview with you. I would like to discuss how you process male rape cases. This line of inquiry includes your decision-making processes in relation to pressing charges, developing courtroom strategies, and devoting scarce resources to competing cases. I am happy to provide further information about my research or the nature of the interview.

I appreciate that you are a busy professional with limited time. Yet your perspective is crucial to improving our understanding of sexual violence. You have tried important cases, such as *Idaho v. [REDACTED]* in addition, you work in Idaho, one of the few states with a rape law that specifically addresses male complainants. Thus, the combination of your professional expertise and your geographic location render your point of view indispensable to this research.

The interview will last 30-45 minutes, and I am available to meet in a location convenient to you. I will be in northern Idaho the week of July 23-27. I will follow up in early July to schedule an appointment. In the meantime, you may contact me via phone (734.707.6183) or email (jalsmall@umich.edu).

As you know, public recognition of male sexual victimization is a recent phenomenon. Accordingly, scholarly research in this area is relatively sparse. By participating in this study, you have the opportunity to shape how intellectuals and policy makers understand male sexual victimization. Knowledge about this subgroup may lead to greater justice for all survivors of sexual violence.

Thank you for your time!

Sincerely,

Jamie L. Small, M.A.

Appendix B: Interview Guide

1. Tell me about your background in the legal field.
2. How did you start working in the sexual violence subfield?
3. What were your views about sexual violence like before you started working in this area?
4. How have your views about sexual violence changed since you started working in this area?
5. How do you assess a sexual victim's story of rape?
6. How do you assess a male sexual victim's story of rape?
7. Can you walk me through the procedures and processes that you follow when first talking to a male sexual victim.
8. Who does the victim see?
9. What kind of questions do you ask the male sexual victim?
10. How do you assess the veracity of his statements?
11. How do you decide what steps to take after the first round of interviews?
12. How do you decide to file a legal case?
13. How do you decide which laws to use?
14. How do you learn about case strategies that other lawyers have used?
15. How do you determine case strategies?
16. How do you decide how much time to devote to a case?
17. How do you decide how much money to devote to a case?
18. How does the perpetrator affect the stories that you tell at trial?
19. Can you walk me through how trials usually go.
20. Can you remember something memorable at a trial on which you've worked?
21. How do you know when a trial is going well?
22. How do you decide when to offer a plea bargain?
23. What trial outcomes have surprised you?
24. In your experience, what do the trial outcomes usually look like?
25. How do judges tend to react to cases involving a male sexual victim?
26. How do juries tend to react to cases involving a male sexual victim?
27. How does the legal process typically affect the male survivor?
28. What motivates you to work in this field?
29. What do you find most challenging about this work?
30. How do cases involving male victims differ from those with female victims?

Appendix C: List of Cases

Georgia v. Anthony Stephen Allen
Georgia v. Thomas Berryhill
Georgia v. Paul Bettencourt
Georgia v. Andrew Blanch
Georgia v. Damar Leon Bishop
Georgia v. Troy Johnnie Brown
Georgia v. Marquce Butler
Georgia v. Isaac Lamar Chaney
Georgia v. Alan Joshua Eli Davis
Georgia v. Justin Jovonte Dukes
Georgia v. Luke Garrett Dyer
Georgia v. Shawn Fry
Georgia v. Charles Edward Gordon
Georgia v. Scott Greg Lombardi
Georgia v. Leo Martinez
Georgia v. Charles Mask
Georgia v. Meier
Georgia v. Fred Schneider
Georgia v. Juan Antonio Serna
Georgia v. Corey S. Smith
Georgia v. Melvin Rucker
Georgia v. Quinton Stinson
Georgia v. Rusty Toby Strickland
Georgia v. Michael Devern Terry
Georgia v. Maurice Tobler
Georgia v. Kontaye Williams
Georgia v. Ted Roy Williams
Georgia v. Williams
Georgia v. Larry Wilson

Idaho v. Kenneth Robert Beamer
Idaho v. Logan J. Chidester
Idaho v. Jack Keith Cook
Idaho v. Anthony Clarke

Idaho v. Sonny Novero Coley
Idaho v. Matthew Lee Craig
Idaho v. Nathan Paul DeWolfe
Idaho v. Victor Fehrenbach
Idaho v. Brian Hayes
Idaho v. Mark Francis Hible
Idaho v. Bert Jansen
Idaho v. Zachary William Jardine
Idaho v. Tyson W. Katseanes
Idaho v. Albert Martinez
Idaho v. Alejandro Medina, Jr.
Idaho v. Eric Christopher Parker
Idaho v. Kevin Mark Price
Idaho v. Jason Carrol Smith
Idaho v. Thomas M. Stamatakos
Idaho v. Cody Vealton Thompson
Idaho v. Nathan Anthony Walker
Idaho v. Ryan Josiah Wertz

Michigan v. Michael Dennis Batey
Michigan v. Donald Bowman
Michigan v. Charles Kevin Broussard
Michigan v. Tedd Butler
Michigan v. William Henry Carlyle, Jr.
Michigan v. Jeffrey Duane Cox
Michigan v. Gerald George Cumper
Michigan v. Ivery Cross
Michigan v. Ricky Duncan
Michigan v. Myron Lloyd Erickson
Michigan v. Emmanuel Espinosa
Michigan v. Duraid Haitham Fathi
Michigan v. Randall Lee Fields
Michigan v. Gerald Eugene Fletcher
Michigan v. Mark Robert Gisse
Michigan v. Lloyd Jenkins, Jr.
Michigan v. George Karvelis
Michigan v. Larry Deshawn Lee
Michigan v. Terry William Lint
Michigan v. James Keith Malcum
Michigan v. Samuel Maxwell

Michigan v. Dane S. McNulty
Michigan v. Donald Erich Mueller
Michigan v. Auguste Niyibizi
Michigan v. William Bartlee Olson
Michigan v. Edward Olszewski
Michigan v. Joseph Renney
Michigan v. Luke W. Roszczewski
Michigan v. Larry Donnell Smith
Michigan v. John F. Snyder, Jr.
Michigan v. Roosevelt Tidwell
Michigan v. Thomas James Tilson
Michigan v. Daniel VanderVliet
Michigan v. Thomas Gustav Westerlund