A *Law and Society Review* Past Article Collection: Sexual Assault and Law

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With the recent focus, across social and traditional media, on high profile cases of sexual assault and harassment, it is timely to pull together a collection of past articles from the *Law and Society Review* that add to this conversation. Articles in this virtual issue date from the last thirty years. They illuminate a range of issues, for example: legal officials' decisions about charging; challenges around conceptualizing sexual assault and its perpetrators; how juries are affected by evidence in sexual assault; and how women experience the criminal justice system.

The sexual assault case from a Stanford fraternity party in Palo Alto, California focuses attention on universities, sexual assault and the criminal justice system. Universities have been working on sexual assault complaint and prevention policy for a few years, driven by the federal government's Dear Colleague Letter challenging universities to do a better job handling sexual assault. The Stanford case also sharpens our understanding of how sexual assault cases too often follow an unexpected track. We expect admissions and apologies at the end of the process. Yet, this case resulted in neither. A father and friend who tried to tell one kind of story—to evoke sympathy for their friend or child—ended up as part of another story, one of gender, class, and racial privilege distorting the criminal justice system. A short sentence for a white offender appears unjust, especially when compared to the more punitive sentences given black defendants with similar criminal histories who have committed the same crime.

The letters to the judge are now part of the public story about the case. These documents join others from and about this case that have spread rapidly over the internet, fueling analysis of how the legal process works, how relatives and friends of people convicted of crimes should behave, and what universities should be doing about what many refer to as a campus rape culture. We are reminded of Jon Krakauer's book *Missoula*, describing in detail multiple campus sexual assaults, including the legal process in two campus rape legal cases. He tells of injustice, and it's the stories that persuade.

Individual legal cases are stories that instantiate legal process, that invite us to think more systematically about what we know about legal processes. A legal case focuses attention like no discussion of due process ever does (Silbey, 2005). A case allows us to mourn with the victim, or express outrage against a perpetrator or, now with the wide availability of documents on the internet, share complex concerns with friends and family.

Law and society scholarship is vital to understanding this. This scholarship, as evinced by the articles in this collection, has long pointed out that we need to know what people do with and how they experience legal rules. Thus, the Stanford victim's statement illustrates what law and society scholarship has shown so well: a survivor's experience of the criminal justice system can be horrible. Questions are humiliating, character is impugned, and the time the process takes debilitating. We often would not even see a legal complaint; in sexual harassment, as

Blackstone, Uggen and McLaughlin (2009) argue, those most likely to be victimized are those least likely to complain. To draw analogies from other areas of the law, perpetrators of intimate partner violence have become more likely to be charged (Dawson, 2004) but visibility is still an issue. Although rape reform laws now disallow evidence of the victim's past sexual history, as Greg Matoesian discusses in this collection, victims still experience their behavior as on trial. As Rose Corrigan (2013) explains, the nursing programs and rape care workers supporting victims do better than forensic processes once did. Spohn *et al* argue that sexual assault cases are most likely to be dismissed as unfounded when the victim recants, the victim is not credible, or the offense is not severe. They peg at 4.5 the percentage of rape complaints that are false. In an assessment from the 1980s of sexual assault trials, Reskin *et al* argue that jurors largely decide on the basis of the evidence, not extra-legal factors. We learn from Bachman, Paternoster and Ward, in a lab study from the 1980s, that the threat of punishment deters young men from saying they would commit sexual assaults. How this translates into actual deterrence is an open question but, certainly, if deterrence is to work, people have to know about successful prosecutions. Rose Corrigan (2013) argues that sex offender registries can make prosecuting sexual assaults more difficult because legal officials read long term registration as too severe a punishment. The article by Small focuses on research on legal officials' understandings of sexual offenders, arguing that prosecutors see sexual offenders as 'low class men"; 'sex offender' is thus an identity. If we see crimes as committed by a kind of person rather than as an act many could commit, some sexual assaults are harder to see. Is this what allows the assailant's friend in the Stanford case to describes rape without rapists? McMahon-Howard argues that women's economic power partly accounts for variation in the severity of rape laws in different states: greater women's economic power increases the likelihood of more severe rape laws in that jurisdiction. Context matters.

As a final word, the Stanford case has also raised issues of judicial competency, selection, and accountability. Gill and her co-authors argue that Bar Associations' ratings of the competencies of state judges discriminate on the basis of race and sex; yet, because gender, class and race figure so prominently in so many cases, it is important to have a critical mass of judges with diverse experiences and backgrounds. Judicial recalls are rare, but they happen over the flash points in American law and public policy. For example, in California, Justice Rose Bird was subject to recall from the California Supreme Court in 1978 based on anger about her rulings in death penalty cases (Kenney, 2013).

We have talked only about this issue from an American perspective, given the prominence of the Stanford case in the conversation right now. But, of course, a broader focus is possible. Canada, too, has currently been caught up in discussions around a highly publicized (unsuccessful) prosecution for sexual assault. And, in one of the articles we have assembled here, we see a similar discussion from the context of French women's objections to sexual harassment at work (Saguy, 2003).

We invite you to deepen your conversation about sexual assault and the legal process with the rich array of scholarship that follows this comment.

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