Responding to Rape:

Contesting the Meanings of Sexual Violence in the United States, 1950-1980

BY

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DISSERTATION

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<th>Abbreviation</th>
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<tr>
<td>ACLU</td>
<td>American Civil Liberties Union</td>
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<tr>
<td>CWAR</td>
<td>Chicago Women Against Rape</td>
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<tr>
<td>CWPS</td>
<td>Center for Women Policy Studies</td>
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<td>DC RCC</td>
<td>Washington, D.C. rape crisis center</td>
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<td>DWAR</td>
<td>Detroit Women Against Rape</td>
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<td>FAAR</td>
<td>Feminist Alliance Against Rape</td>
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<td>LDF</td>
<td>Legal Defense and Educational Fund</td>
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<td>LEAA</td>
<td>Law Enforcement Assistance Administration</td>
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<td>NAACP</td>
<td>National Association for the Advancement of Colored People</td>
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<td>NIMH</td>
<td>National Institute for Mental Health</td>
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<tr>
<td>NYRF</td>
<td>New York Radical Feminists</td>
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<tr>
<td>SCLC</td>
<td>Southern Christian Leadership Conference</td>
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<tr>
<td>SFWAR</td>
<td>San Francisco Women Against Rape</td>
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<tr>
<td>SPLC</td>
<td>Southern Poverty Law Center</td>
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<td>WASP</td>
<td>Women Armed for Self Protection</td>
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SUMMARY

Between 1950 and 1980, extraordinary and unprecedented changes occurred in the legal, medical, and social understandings and responses to sexual violence against women in the United States. During the 1950s, significant race and gender biases in the law left most black and white women rape victims vulnerable to injustice. Mid-century psychiatry supported long held legal fears that women frequently falsely accused innocent men of rape. Most victims of sexual assault, therefore, found themselves to be the ones on trial when alleging rape and successful prosecutions were extremely difficult. A significant race bias, however, also left many black men vulnerable. Rape was punishable by death in states across the South and alleged black rapists faced disproportionately harsher sentences as compared to their white counterparts. Sexual violence did not figure prominently in the larger cultural concerns and there were few resources available for survivors. By the late 1970s, much had changed. Sexual assault became a topic of serious public debate, widespread social concern, and was the target of sustained public policy. Over 400 rape crisis centers dotted the country, providing empathetic services and support to survivors of sexual violence. Empathetic views of rape victims began to replace the pathological views perpetuated by mid-century psychiatry. The federal government established the National Center for the Prevention and Control of Rape, which provided millions of dollars for research into the causes and consequences of sexual violence. In 1977, the Supreme Court outlawed the death penalty for rape and by 1980, every state in the nation had approved or was considering some form of pro-victim rape law reform.
The incredible amount of changes in understandings and responses to sexual violence were largely driven by social movement activism around rape. This dissertation focuses on how social movement understandings of race and gender informed activism around and proposed solutions to rape. In the 1950s, civil rights activists politicized rape as a tool of racist aggression used by whites and a white-dominated state to oppress blacks. In the early 1970s, the women’s liberation movement took up rape as a feminist issue. White radical feminists politicized rape as the most exaggerated form of patriarchal oppression of women. Both of these movements constructed sexual violence as a significant piece of their liberation struggles.

“Responding to Rape” disrupts traditional narratives of anti-rape activism that focus either solely on the civil rights or the feminist movement response to rape. Between 1950 and 1980, social movement understandings of race and gender manifested in complicated ways. I argue that anti-rape activism of the time period is characterized by complex intersections of movement politics around rape. The dissertation also highlights how social movements make change as activists negotiated one another’s politics on race and gender and negotiated and responded to significant state limitations and frameworks.
CHAPTER I
INTRODUCTION

When I began this dissertation, I imagined it as a study of the second-wave feminist anti-rape movement. In the early 1970s, white radical feminist activists launched an anti-rape movement in response to the severely inadequate resources for and hostile responses to survivors of sexual assault from doctors, police, the courts, and society at large. Over the next few years, rape became a major feminist battleground for white, black, liberal, and radical feminists alike. Across the nation, feminist activists demanded change. They stormed city halls and district attorney’s offices; they demonstrated in the streets, and held speak-outs, conferences, and workshops; they created first of their kind rape crisis centers and hotlines to assist survivors of violence. Some of them took up arms, claiming their bodies as their own and angrily declaring they would defend themselves and other women by any means possible.¹ After a decade of sustained agitation around rape, the world looked significantly different from what feminists had faced in 1970. Federal legislation established the National Center for the Prevention and Control of Rape and President Carter signed the Rape Victim Services Act in 1980, providing federal funding for victims.²


² The National Center for the Prevention and Control of Rape was housed within the National Institute for Mental Health. Its stated purposes included the study of: the effectiveness of all levels of rape law, the causes of rape, the impact of rape, as well as the implementation of programs to respond most
health officials established victim-supportive protocols for treating sexual assault survivors across the country. Empathetic views of rape victims began to replace the dismissive or pathological views perpetuated by mid-century psychiatry. By 1980, all 50 states had revised or were considering revisions to their rape laws.\(^3\)

By most accounts, the women of the second wave had initiated and sustained a movement against violence that continues to this day. The commonly told history of the second wave anti-rape movement begins with feminism, giving the impression that white radical feminists had brought sexual violence out of hiding, and, in effect, discovered rape as a major social problem. In her history of the women’s movement, for example, Ruth Rosen writes that “before the women’s movement rape… had been a shameful secret” and refers to sexual violence as a “hidden injury.”\(^4\) Former feminist activist Susan Brownmiller writes, “That women should organize to combat rape was a woman’s movement invention.”\(^5\) Second wave feminists are credited with first publicly exposing sexual violence and prompting the first significant response to it. With this narrative in mind, I pursued this study, inspired by the activists of the second wave. I decided to research this movement and the massive changes activists had made in the span of less than a decade.

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effectively to these issues. See: Maria Bevacqua, *Rape on the Public Agenda: Feminism and the Politics of Sexual Assault* (Boston: Northeastern University Press, 2000), Appendix 3.


The more I researched, the more I realized that the story of anti-rape activism in the late twentieth century did not begin or end with the second wave. Indeed, second wave feminists were neither the first, nor the only, significant actors to articulate a political understanding of rape.

The literature on African-American history from the postbellum to the civil rights era disputes the 1970s-centric narrative. Scholars of African-American women’s history have uncovered a substantial record of black women’s testimony of their sexual abuse at the hands of white men. Beginning in the 19th century black women bravely testified and spoke out about interracial sexual violence inflicted against them.6 In her 1972 documentary history, Black Women in White America, for example, historian Gerda Lerner included the 19th century testimonies of black women who spoke before the House of Representatives and a Joint Congressional Committee about the sexual abuse they experienced at the hands of white men and the KKK during the Reconstruction period.7 Continuing in this tradition, black women activists involved in the anti-lynching campaign of the late 19th century first articulated an understanding of “sexual assault as a

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systematic abuse of women,” connecting white violence against black men to white sexual violence against black women. Anti-lynching crusader Ida B. Wells bravely spoke out on interracial assaults against black women in her 1895 anti-lynching pamphlet, *A Red Record*. Speaking to the hypocrisy of so-called white southern chivalry which justified the lynching of alleged black rapists, Wells wrote,

> True chivalry respects all womanhood, and no one who reads the record, as it is written in the faces of the millions of mulattoes in the South, will for a minute conceive that the southern white man had a very chivalrous regard for the honor due the women of his own race or respect for the womanhood which circumstances places in his power.\(^9\)

Black clubwomen also spoke out on the issue of interracial sexual violence against black women during this time period, although often in veiled terms. Speaking at the 1893

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\(^8\) Bevacqua, *Rape on the Public Agenda*, 21.

\(^9\) Ida B. Wells, *A Red Record in Southern Horrors and Other Writings: The Anti-Lynching Campaign of Ida B. Wells, 1892-1900*, ed. Jacqueline Jones Royster (Boston: Bedford Books, 1997). Similarly, suffragist, clubwoman, and former National Association of Colored Women president Mary Church Terrell sharply critiqued a system that condoned the lynching of alleged black rapists while allowing impunity for whites who raped black women. Responding to a 1904 article that justified the lynching of black men, Terrell wrote, “Throughout their entire period of bondage colored women were debauched by their masters. From the day they were liberated to the present time, prepossessing young colored girls have been considered the rightful prey of white gentlemen in the South, and they have been protected neither by public sentiment nor by law” (Lerner, *Black Women in White America*, 210). Scholars have produced a considerable amount of literature on lynching over the course of the century. See for example: Arthur F. Raper, *The Tragedy of Lynching* (Chapel Hill: University of North Carolina Press, 1933); Robert Zangrando, *The NAACP Crusade Against Lynching, 1909 – 1950* (Philadelphia: Temple University Press, 1980); William Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930* (Urbana, IL: University of Illinois Press, 1993). Scholars have also focused on the connections between lynching, rape, and sexual violence against women. This inseparability between the rape of black women and the lynching of black men was a focal point of Jacquelyn Dowd Hall’s seminal piece, “‘The Mind That Burns in Each Body’: Women, Rape, and Racial Violence,” in *Powers of Desire: Politics of Sexuality*, ed. Ann Snitow, Christine Stansell, and Christine Thompson (New York: Monthly Review Press, 1983), 328-49. Here, Hall argued that, “rape reasserted white dominance and control in the private arena as lynching reasserted hierarchical arrangements in the public transactions of men” (Hall, 333). Both the institutionalization of rape of black women, begun under slavery, and the excessive violence done to black men were part of the “web of connections among racism, attitudes toward women, and sexual ideologies” (Hall, 331). See also: Angela Davis, “Rape, Racism and the Myth of the Black Rapist,” in *Women, Race, and Class* (New York: Random House, 1981), 172-201; Crystal Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge: Harvard University Press, 2009). In the 1930s, white activist Jesse Daniel Ames formed the Association of Southern Women for the Prevention of Lynching, a group that echoed the arguments and concerns of black clubwomen. See: Jacquelyn Dowd Hall, *Revolt Against Chivalry: Jesse Daniel Ames and the Women’s Campaign Against Lynching* (New York: Columbia University Press, 1974).
World Columbian Exposition in Chicago, clubwoman Fannie Barrier Williams refuted widely held beliefs that black women were sexually immoral and suggested, rather, that they needed protection from white men. She told the audience, “I do not want to disturb the serenity of this conference by suggesting why this protection is needed and the kind of man against whom it is needed.”

Educator and clubwoman Anna Julia Cooper, whose white slave owning father had raped her enslaved mother, echoed Williams’ sentiments when she remarked on “the painful, patient, and silent toil of mothers to gain title to the bodies of their daughters.”

Responding to dominant white cultural beliefs about their sexual immorality, black women bravely spoke out about their excessive and unpunished sexual exploitation at the hands of white men.

Black women’s tradition of speaking out against interracial sexual violence continued into the civil rights era. The story of black women’s resistance to white sexual violence during this time period is only beginning to be heard. Danielle McGuire’s landmark work, *At the Dark End of the Street*, exposes this forgotten history. McGuire tells the history of black women’s struggle for justice in cases of interracial rape during the civil rights era, arguing that these forgotten campaigns profoundly shaped the movement for black freedom.

Looking at the significant mobilizations around black rape survivors like Recy Taylor (1944-45), Betty Jean Owens (1959), and Joan Little

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10 Paula J. Giddings, *When and Where I Enter: The Impact of Black Women on Race and Sex in America* (New York: Bantam Books, 1984), 86. Williams further commented, “It is a significant and shameful fact that I am constantly in receipt of letters from the still unprotected colored women of the South, begging me to find employment for their daughters… to save them from going into the homes of the South as servants, as there is nothing to save them from dishonor and degradation” (Lerner, *Black Women in White America*, 165).

11 Giddings, 87.

(1974-75), McGuire demonstrates that black women continued to organize against and politicize rape throughout the mid-to-late-twentieth century.

As the late-nineteenth century campaigns against lynching make clear, the black community also had a significant history of organizing around rape on behalf of black men, both those who were falsely accused of raping white women and those who were more severely punished than their white counterparts for convictions of raping white women. Activists organized major campaigns on behalf of alleged black rapists who were convicted and sentenced to death for raping white women such as the Scottsboro Boys (1931-1937), Willie McGee (1945-1951), and the Martinsville Seven (1949-1951). Additionally, in response to the discrepancy in death sentences for black versus white men convicted of rape, the NAACP Legal Defense and Educational Fund (LDF) launched a campaign against capital punishment in 1963. Over the next fifteen years, the LDF saved dozens of convicted rapists from execution. This literature, therefore, suggests a much longer trajectory of responses to rape that began decades before the advent of second-wave feminism.

13 In the Scottsboro case of 1931, two white women accused nine black youth of rape on a train travelling from Chattanooga, TN to Abbeville, AL. Eight of the nine were convicted and sentenced to death on very little evidence in a mob-like atmosphere. See: Dan Carter, Scottsboro: A Tragedy of the American South (Baton Rouge: Louisiana State University Press, 1969) and James Goodman, Stories of Scottsboro (New York: Pantheon Books, 1994). In 1945, Willie McGee was accused of raping Wilmette Hawkins, a white housewife, in Laurel, Mississippi. The state of Mississippi executed McGee in 1951 for this crime. See: Alex Heard, The Eyes of Willie McGee: A Tragedy of Race, Sex, and Secrets in the Jim Crow South (New York: Harper Collins, 2010). In the Martinsville Seven case, seven black men were executed in 1949 for the rape of a white woman in Martinsville, Virginia. See: Eric Rise, The Martinsville Seven: Race, Rape, and Capital Punishment (Charlottesville, VA: University of Virginia Press, 1998).

Two quotes perfectly encapsulate the conflicting narratives of the modern anti-violence movement. In her 1999 memoir of the women’s liberation movement, feminist activist Susan Brownmiller recalls the 1971 New York Radical Feminists Speak-Out, the event credited with launching the anti-rape movement. Brownmiller writes, “The bold idea of summoning women to gather in public to talk about rape, as authorities, to put an unashamed face on a crime that was shrouded in rumors or whispers, or smarmy jokes, had never been attempted before, anywhere.”\(^{15}\) Speaking to the same event over a decade later, historian Danielle McGuire counters this narrative of the 1970s movement when she writes in her history of black women, rape, and the civil rights movement, “White feminists in New York finally caught up with their African-American sisters by testifying publicly about rape in 1971.”\(^{16}\) Neither of these interpretations, however, is entirely adequate. As McGuire suggests, Brownmiller does not acknowledge the history of black women’s public response to rape. Sources included in Gerda Lerner’s documentary history *Black Women in White America* (1972) challenged Brownmiller’s interpretation even at the time that Brownmiller wrote.\(^ {17}\) Yet while McGuire’s statement disrupts the 1970s feminist-focused narrative and calls for a much more complicated reading of the history of anti-rape organizing in the twentieth century, hers also suggests that second wave feminist anti-rape activism was exclusively white and that by extension black women did not participate. In fact, black women did speak out that day in January 1971, with some sharing their stories of rape by men of color. With stories like these, black

\(^{15}\) Susan Brownmiller, *In Our Time: Memoir of a Revolution* (New York: Random House, 1999), 199.

\(^{16}\) McGuire, *At the Dark End of the Street*, 212.

\(^{17}\) Brownmiller wrote *Against Our Will* between 1971-1975.
women in the 1970s broke the silence around intra-racial rape and politicized sexual violence as a black community issue.

The contrasting statements by Brownmiller and McGuire reflect a trend in the literature to focus on a single movement’s response to sexual violence, rather than considering the larger context of movement organizing against rape in the mid to late twentieth century. The scholarship on black community organizing and protest against rape focuses exclusively on the African-American response to interracial rape including those narratives that extend into the 1970s, a time of intense feminist agitation around sexual violence. While this emphasis is understandable in the context of the struggle for racial justice, it has the effect of continuing the silences around black women’s experiences with intra-racial sexual violence. The feminist narrative, on the other hand, begins in the 1970s, rarely addressing the history of African-American protest that both preceded and significantly impacted second wave organizing around sexual violence. This provides only a partial understanding of the situation that both black and white feminists of the second wave faced as they mobilized against rape throughout the decade.

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19 See for example: Brownmiller, In Our Time; Rosen, The World Split Open; Schechter, Women and Male Violence.
The story of these two movements has always been told separately. My study is the first to consider both civil rights and feminist responses to rape, contextualizing the second wave in a larger history of social movement response to sexual violence. My dissertation focuses on how issues of race and gender manifested in complex and complicated ways throughout the time period, informing social movement understandings and responses to rape.20

In discussing the 1970s second wave of feminism, this dissertation both benefits from and adds to the recent and growing scholarship that disputes the stereotypical narrative of “a white, middle-class, politically rigid movement.”21 Scholars today have

20 Because of the intense political history of interracial rape between blacks and whites, this dissertation focuses almost exclusively on African-Americans when discussing race. As Susan Brownmiller rightly commented in her 1975 publication *Against Our Will,* “No single event ticks off America’s political schizophrenia with greater certainty than the case of a black man accused of raping a white woman” (Brownmiller, *Against Our Will*, 230). The history of the interracial rape charge framed civil rights responses to rape and had a significant impact on feminist organizing in the 1970s.

noted that since the 1980s, this “homogenized narrative” has dominated studies of second wave feminism, discounting or ignoring the coalitions that were formed across race and class lines, “whitewashing” activism by women of color and creating an image of a “singular feminist movement.” As Stephanie Gilmore argues, the women’s movement and its activists have thus become lodged in an inaccurate and “ahistorical amber.” My understanding and use of “second wave feminist activism” of the 1970s draws heavily on this scholarship and particularly on the work of Benita Roth who, in her study of Black, Chicana, and white feminist movements suggests multiple feminisms to describe the second wave. Countering the standard narrative of a white, middle-class feminist movement which emerged out of two-branches (radical and liberal), Roth traces the emergence and development of organizationally distinct racial and ethnic feminisms, arising out of the Left, in the late 1960s. Roth argues that a more accurate understanding of feminist protest during the second wave is one that by definition includes multiple feminist mobilizations, feminist movements, and feminisms. My use of the term “feminist” is informed by this scholarship. Unless qualified, I use the words “feminist(s)”


22 Evans, foreword to Feminist Coalitions, viii; Benita Roth, Separate Roads to Feminism: Black, Chicana, and White Feminist Movements in America’s Second Wave (New York: Cambridge University Press, 2004), 7.


24 Roth, Separate Roads to Feminism.
and “second wave feminism” to refer to the variety of feminists, feminisms, and women activists who politicized sexual violence during the time period including radical, liberal, socialist, white, and black. Unless absolutely necessary, I’ve avoided using qualifying labels since, more often than not, the differences between feminists working in the anti-rape movement were blurred. There were radical feminists who supported law reform, a liberal measure; and there were liberal feminists who supported rape crisis centers, a radical solution. There were black feminists who supported law reform, despite the inherent racism of the criminal legal system; at the same time there were white feminists who harshly critiqued the effectiveness of incarceration as a measure to counter rape. While there indeed were differences in approaches and suggested responses to rape among feminists, these did not always neatly align with racial politics or political ideology.

Although 1970s feminist anti-rape activism originated in white, radical feminist identified circles, the issue quickly took off in liberal feminist, socialist-feminist, and feminist of color groups. In her work on coalition politics in the anti-rape movement, for example, Maria Bevacqua argues that, “rape served as a bridge issue that brought together radical, liberal, African American, and white feminists in a shared struggle to address sexual violence.”25 While Angela Davis argued in the late 1970s that black women were “conspicuously absent from the ranks of the anti-rape movement,” Loretta Ross, a black activist who served as the director of the DC Rape Crisis Center beginning

in 1978, argues that women of color were very much involved in anti-rape activism.\(^{26}\) As Ross explains, “the problem is not a lack of black women’s participation… but a lack of documentation of that participation.”\(^{27}\) Throughout the decade, small groups of women of color became involved in the anti-rape movement, organizing in DC, Los Angeles, Philadelphia, Detroit, New York, and Chicago. As Nancy Matthews documents in her study of the feminist anti-rape movement and the state, Latina women founded the East Los Angeles Rape Hotline in 1976 to provide bilingual and culturally appropriate services to Latina and Chicana women in that area of the city.\(^{28}\) Similarly, the Washington, DC rape crisis center became a hub of women of color organizing during the mid-1970s. Examples like these, however, were more exceptional than the norm, and the movement remained primarily white.\(^{29}\) Despite their small numbers, women of color played a critical role in expanding the anti-rape movement analysis of sexual violence. Bevacqua demonstrates that women of color pressed white feminists to pursue a politics of rape that incorporated poverty, racism, and imperialism as well as male dominance into their analysis.\(^{30}\) Additionally, when black feminists politicized rape as a black


\(^{29}\) While there were certainly many reasons for this (i.e. perceived racism in the movement, lack of outreach, connection, or accessibility to women of color, etc.) this also reflects the racial demographics of the United States at the time. As Benita Roth comments in her study of Black, Chicana, and white feminist movements of the second wave, “it is important to note that most feminists in the 1960s and 1970s were white because most people in the United States were white” (Roth, 7).

\(^{30}\) Bevacqua, “Reconsidering Violence Against Women.” Importantly, some white anti-rape feminist activists, coming out of racial justice movements of the 1960s, also pushed this analysis. As one
community issue, they demanded that the black freedom movement incorporate their experiences with intra-racial sexual violence into the broader struggle for liberation.

Narrowly defined understandings of race and gender informed how social movements framed sexual violence as a political problem and whom these movements identified as victims. For the civil rights movement, only instances of interracial sexual violence fit the analysis of rape as racial oppression. Black women assaulted by white men, and black men falsely accused or more severely punished for raping white women, were the focus of the civil rights activism around rape. This analysis excluded black women victimized by black men. The feminist movement, on the other hand, understood rape as the result of male domination and therefore prioritized all women’s experiences of assault, white and black, interracial and intra-racial. This analysis, however, excluded the historical victimization of black men. While there were sites of unity between the two movements (both politicized interracial white-on-black rape, for example), there were also many sites of tension based on their understandings of race, gender, and rape. Therefore, I argue that 1970s anti-rape activism is characterized by complex intersections of movement politics around rape. The complicated tensions that arose in the 1970s were not simply the result of a vaguely defined racism on the part of (white) second wave feminists, but a collision of civil rights and feminist politics of rape. These collisions would have a significant impact on the reach and limits of second wave feminist anti-rape activism.

white anti-rape activist explained in an interview, “coming out of the Left and the politics of civil rights and Black Power, when [white] women started organizing around women’s issues, it’s not like they dropped their analysis of race or class” (Deb Friedman, in a phone interview with the author, Dec 9, 2011).
The dissertation opens in the 1950s. In chapter two, I argue that both a significant race bias and a significant gender bias operated in the legal discourse on sexual violence, leaving most black women, white women, and black men vulnerable to injustice before the law. Dominant, sexualized constructions of black and white women were particularly problematic for most rape victims. The laws of rape required excessive proof to convict, essentially putting the prosecuting witness on trial rather than the defendant. Yet, despite a legal system that was generally hostile to women complainants, legal scholars writing in the nation’s law journals were consumed with protecting innocent defendants from false allegations. Mid-century psychiatric beliefs about female sexuality reinforced a centuries-long legal tradition of doubting women’s allegations of rape. This tradition was so powerful that it could sometimes have a protecting effect for black men, even in cases of interracial rape. Yet the legal claims of universality were at times undercut by racial practice. While black men found protection against claims by white women in some cases, they found excessive punishment in others. Sexualized constructions of black masculinity resulted in significant levels of contradiction in the law. In cases of interracial rape, convicted black rapists faced significantly higher punishments than their white counterparts. Additionally, Southern white violence against alleged black rapists continued to surface in interracial rape cases. During the mid-twentieth century, then, constructions of gender and race manifested themselves in complex ways. This chapter

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31 These co-existing extremes speak to the elasticity of segregation. Historians have argued that despite the seeming rigidity of the rules of segregation, in practice they assumed much more flexibility and malleability. In her research on black-and-white rape in twentieth century Virginia, Lisa Lindquist Dorr concluded that: “Despite segregation’s seemingly rigid rules, the boundaries around cross-racial and cross-gender interactions remained elastic. They could expand to accept or excuse some interactions between certain white women and certain black men, and they could contract to punish others” (Dorr, 244). See: Lisa Lindquist Dorr, *White Women, Rape, and the Power of Race in Virginia 1900-1960* (Chapel Hill, NC: University of North Carolina Press, 2004).
shows that significant gender and racial biases informed laws, legal practices, social understandings, and responses to rape.

In response to the significant oppression faced by black men and women in cases of interracial rape, the civil rights movement took up the issue of rape as a tool of racial oppression. Chapter three looks at how a race-based framework informed understandings and strategies to respond to sexual violence. First, the chapter tells the story of the NAACP Legal Defense and Educational Fund’s (LDF) campaign against capital punishment, initiated in response to the discrepancy in punishment between white and black convicted rapists. The LDF pursued a constitutional challenge to the death penalty, arguing that its race-based application violated the 8th and 14th amendments of the Constitution. Second, and separately from the LDF, a growing chorus of voices capitalized on longstanding legal suspicion of women who alleged rape and embraced the rhetoric of the lying white woman in their defense of alleged black rapists. This rhetoric gained increasing currency in circles outside of social justice movements and by the 1960s, mainstream white liberals embraced the idea that most (if not all) white women who alleged rape against black men were lying. Third, civil rights activists campaigned in defense of black women who were raped by white men. Black women’s experiences of assault by black men, however, were not included in civil rights discourse on sexual violence.

Chapter four recounts the emerging second wave feminist response to rape. During the early 1970s, radical white feminist activists in the women’s liberation movement conceptualized rape as a tool of gender oppression, arguing that sexual violence was the most exaggerated form of patriarchal control. The chapter charts the
nationwide surge of anti-rape activism by feminists, white and black, and of multiple ideological backgrounds, as they created rape crisis centers and hotlines, demonstrated in the streets, and demanded justice for victims of sexual assault. In organizing an anti-rape movement, feminists reacted partly to the hostility of the legal and medical systems, outlined in chapter one, which left the majority of rape victims vulnerable. They harshly criticized the inadequacy of the legal system, arguing that rape had essentially been decriminalized. At times, feminists also found themselves in opposition to the civil rights framework, which focused exclusively on interracial rape and supported the beliefs that women lied about rape, a belief which feminists strongly disputed. Black women who spoke out about intra-racial sexual violence bravely parted from their predecessors, exposing sexual violence within their own communities. As civil rights activists continued to employ the trope of the lying white woman in the 1970s, feminist activists called attention to the sexist assumptions that underlay this rhetoric.

Chapter five focuses on the Joan Little rape-murder trial. In August 1974, Joan Little, a black prisoner in a small North Carolina jail, killed Clarence Alligood, the white jailer who attempted to rape her. Her case became a cause célèbre of the civil rights, feminist, and prisoner’s rights movements. Resonating with the political agendas of these three rights-based movements, the Little case speaks to how these social movements defined sexual violence differently, under what circumstances it was deemed problematic, and what needed to be done around it. The Little case therefore also demonstrates that feminists were not the only significant group politicizing sexual violence during the 1970s. In fact, this instance of interracial sexual violence became known as one of the most important civil rights cases of the decade. Little’s defense team
leaned heavily on the image of a defenseless, black woman seeking justice against a historically unjust “Old South” system. This focus on race and the history of racism in the criminal justice system proved effective. On August 15, 1975, after a five-week trial, a jury acquitted Little of all charges. The verdict was unprecedented and served as a symbol of significant change from a past wrought with injustice for all of the movements that supported Little.

By the mid-1970s, the state became increasingly involved in anti-rape work. Chapter six discusses how anti-rape work quickly moved from a grassroots-based, politically motivated radical analysis to a state-dominated, reform-oriented response to sexual violence. While many feminists supported state-based solutions, such as law reform, as important measures in the fight against rape, many others fiercely contested this strategy, remaining in line with original movement politics that rejected state-based solutions or interventions of any kind. Reform of the criminal justice system, many argued, would not address the root causes of rape and was therefore antithetical to movement goals. In the context of increasing state domination of anti-rape work, feminists fought to maintain their political commitments to ending sexism. An examination of the controversy within the feminist anti-rape movement over the appropriate relationship between women’s liberation and the state counters dominant historical narratives which cast the movement as solely interested in the needs of white, middle-class women. Indeed, my research shows that many activists expressed serious doubts about whether a state that they viewed as exclusively concerned with protecting the interests of wealthy white men could protect women in general from sexual violence.
In 1975, Susan Brownmiller published her monumental study on the history of rape, *Against Our Will: Men, Women, and Rape*. Brownmiller was a radical white feminist, active in the women’s liberation movement, and an early participant in the anti-rape movement. Her writing reflected her radical feminist perspective and she argued that rape played a critical role in the historical subjugation of women and the maintenance of patriarchy. The importance of Brownmiller’s 1975 publication cannot be overstated. *Against Our Will* was not only the first major publication on rape to reach a mainstream audience—it was an instant bestseller and, eventually, became a feminist classic—but it also demonstrated that rape was a topic that warranted serious scholarly inquiry. Chapter seven tells the story of Brownmiller and the writing and reception of *Against Our Will*. While the book received wide acclaim, it also provoked intense criticism from prominent racial justice advocates, such as Angela Davis and Anne Braden. These activists rejected Brownmiller’s reform-minded solutions and accused her of racism and allying herself with “law and order” conservatives. These critiques reflected feminist concerns over the increasing presence of state-based interventions into anti-rape work. The book therefore serves to highlight the contestations and conflicts among and between social movement politics of rape.

The dissertation ends with a look at the substantial legal reform that took place over the course of the 1970s. The LDF, which began its campaign against capital punishment in cases of rape in 1963, celebrated a significant victory in 1977 when the Supreme Court ruled in *Coker v. Georgia* that the death penalty constituted cruel and unusual punishment for a crime that did not involve the loss of life. In an ironic twist, it was the case of a white convicted rapist sentenced to death in Georgia that ultimately
overturned the death penalty as punishment for rape, putting an end to a history of extreme racial discrimination. By the end of the 1970s, feminists and their allies had also made significant gains in terms of rape law reform. Feminist-oriented legal scholars published articles in leading law journals that countered longstanding legal traditions of doubting women’s allegations. These pro-feminist legal articles are significant in that they point to a considerable change in legal perspectives about rape law and they demonstrate that the feminist understanding of sexual violence was having a substantial impact on legal theory. Out in the streets and in the legislatures, feminist activists organized to reform rape laws nationwide. As feminists agitated for rape law reform that benefitted the accuser, they encountered significant resistance from defenders of black men, civil liberties, and defendants’ rights. Oftentimes, this resistance significantly limited the extent of feminist reforms. Questions of race, therefore, continued to have a significant impact on conceptualizations and strategies in response to rape and for a number of reasons, feminist legal reforms were ultimately not as far-reaching as activists had once imagined.

Taken together, the chapters demonstrate that social movement response to sexual violence did not begin in the 1970s, nor was 1970s anti-rape activism limited to a narrowly defined group of white, middle-class second wave feminists. Between 1950 and 1980, unparalleled changes in the legal, medical, and cultural understandings and responses to sexual violence took place in the United States. These changes were largely fueled by social movement activism around rape, namely the civil rights and second wave feminist movements. Social movement understandings of race and gender informed the kinds of activism and proposed solutions to sexual violence: who was deemed a victim,
how rape was defined, what instances of sexual violence were politically salient, and how social justice communities should respond. The history of responses to sexual violence in the late twentieth century, therefore, largely results from the complicated divisions between and intersections of movement politics around racial oppression and gender oppression.

The research for this dissertation draws on a broad range of primary and secondary sources. My primary source base is largely made up of manuscript collections, including organizational papers such as the Giles-Johnson Defense Committee records; the James Reston collection (a principle reporter from the Joan Little case); and the New York Women Against Rape papers. Collections like these allowed me to closely examine group organizing and agitation around sexual violence, both in terms of how groups politicized individual cases as well as how groups understood sexual violence as a larger issue. Other archival sources include the collections of individuals, such as the Susan Brownmiller papers and the Elizabethann O’Sullivan papers. Like the organizational records, these collections of former participants gave me invaluable insight into the passion and politics of activists at the time. Larger women’s liberation movement collections held at Smith College’s Sophia Smith Collection and Northwestern University’s Special Collections allowed me to understand feminist anti-rape activism within the context of the broader feminist movement. Additional primary source material includes social movement newsletters and publications, legal journals, posters, ephemera, mainstream newspapers, Supreme Court records, and state court records. I was also fortunate to interview several key figures involved in feminist anti-rape activism during the 1970s including Susan Brownmiller, renowned author of Against Our Will; Robin
McDuff, longtime former member of Santa Cruz Women Against Rape; and Deb Friedman, longtime former member of the Washington, DC Rape Crisis Center and founding member of the Feminist Alliance Against Rape Newsletter. I also had the privilege of interviewing David Kendall, lead counsel in Coker v. Georgia (1977), where the Court ruled that death was cruel and unusual punishment for the crime of rape. These interviews were incredibly helpful in piecing together the many strands of stories included in this dissertation. In addition to primary sources, I used secondary sources to contextualize and ground my research. As my bibliography reveals, secondary source material included anthologies and monographs on the civil rights movement, second wave feminist movement, crime and criminal justice, the history of the death penalty, and the history of sexual violence.
CHAPTER II
RAPE, GENDER, AND RACE IN THE MID-TWENTIETH CENTURY UNITED STATES

During the 1950s, the laws of rape in the US remained virtually unchanged from their origins in 18th century British common law. In the 18th century, British theorist William Blackstone defined rape as “carnal knowledge of a woman forcibly and against her will.”¹ Lawmakers carried this definition almost verbatim into American criminal codes and it remained intact over the next two centuries.² In the United States, the traditional common law definition of rape followed the familiar formula of a man engaging in carnal knowledge “with a woman not his wife; by force or threat of force; against her will and without her consent.”³ What distinguished rape as a crime, therefore, were a lack of consent and a show of force. Additionally, according to this definition, the crime of rape was applicable only to non-married persons and was the act of a man against a woman.⁴

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¹ Steven Schulhofer, Unwanted Sex: The Culture of Intimidation and the Failure of Law (Cambridge: Harvard University Press, 1998), 18. Throughout this chapter, “rape” refers to the rape of an adult woman and does not include statutory rape, which had its own legal responses and problems, separate from common law rape.

² While the definition of common law rape remained fairly consistent until the late 1960s, laws about sex crimes in general had seen a certain amount of change over the course of the century.


⁴ One legal scholar writing in the Stanford Law Review in 1954 explained the legal impossibility of rape between husband and wife as follows: “Rape is a category ill-suited to marriage” because “in the ordinary marriage relationship… the parties have at times been very intimate, and the possibilities of serious social, physical or mental harm from a familiar, if unwanted, conjugal embrace are rather small”. See: "Rape and Battery between Husband and Wife: Criminal Law. Husband and Wife. Rape. Battery," Stanford Law Review 6, no. 4 (1954): 725, 724.
The assumptions about rape and rape victims also carried over from Britain to the United States. England’s Lord Chief Justice Matthew Hale declared in the 17th century that a rape accusation is “easily to be made and hard to be proved, and harder to be defended by the party accused, tho’ never so innocent.” Since that time, legal scholars and judges warned of the lying woman, and courts took special precautions to protect innocent men against her. In the United States, Hale’s statement held enormous influence and provided a foundation for the majority of discussions and legal decisions on rape into the late twentieth century. Until the 1970s, for example, jury instructions for rape cases in California, for example, read:

A charge such as that made against the defendant in this case is one which is easily made and, once made, difficult to defend against, even if the person accused is innocent. Therefore, the law requires that you examine the testimony of the female person named in the information with caution.

With examples like these, modern day legal scholars and historians have repeatedly demonstrated how the laws of rape in the US have historically been based on “the deep distrust of the female accuser.” Indeed, among all the variables in the history of sexual

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violence against women, the suspicion of women who alleged rape has remained most consistent.

**Resistance to the Utmost: Proving Rape in the 1950s**

Fears of false allegations translated into stringent requirements for a woman to prove rape in most cases. Historically, the victim needed to show both the use of force and a lack of consent for effective prosecution of a rape charge. The courts believed that a victim’s resistance to the assault demonstrated this. As the Nebraska Supreme Court commented in a 1947 rape case, “whether carnal knowledge was forcible and against her will or with her consent, is ordinarily indicated by resistance or lack of it by the woman.”

By imposing this special burden to fight back, rape law focused on the victim’s behavior rather than that of the attacker. As law professor Vivian Berger has noted, this stood in sharp contrast to a crime like robbery, where the law “inquires whether the accused took something from another person by violence or intimidation” without necessitating a particular response from the victim to validate that an actual crime was committed. In relying on the resistance standard, the law did not judge the alleged attacker to determine whether or not his behavior was legitimate, but rather judged the victimized woman to deem whether her response was substandard. Legal scholar Susan Estrich further argues that in using this method “the common law courts chose the course most punitive toward the woman victim.”

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9 Berger, 8.

10 Estrich, 32.
Patriarchal assumptions about women and gendered notions of femininity and female sexuality fueled the resistance requirement. The assumption was that a woman would resist to the utmost to prevent this “fate worse than death.” Legal scholar Debran Rowland explains this as the longstanding belief that, as men saw it, “virtuous women will fight with every fiber of their being to avoid, if not the physical violations, then certainly the social shame of rape.”¹¹ Men, and not women, decided and described what women’s responses to rape should be. As Estrich comments, “The resistance requirement may have been more accurate as a description not of the reactions of women, but of the projected reactions of men to the rape of their wives and daughters.”¹² Men explained utmost resistance as a “natural response” of a chaste woman. Anything less was suspect. Women who alleged a completed rape, therefore, were cast as automatically suspicious for not resisting enough.

Racialized assumptions of chastity and virtue excluded black women from the group of believable rape victims. Longstanding myths of promiscuity and hyper-sexuality fueled the denial of the rape of black women that began under slavery and continued well into the 20th century.¹³ In an unusually candid statement concerning race and sexuality, for example, a Florida court commented in a 1918 opinion,

What has been said by some courts about an unchaste female in our country being a comparatively rare exception is no doubt true where the


¹² Estrich, 31.

population is composed largely of the Caucasian race, but we would blind ourselves to actual conditions if we adopted this rule where another race that is largely unmoral constitutes an appreciable part of the population.\textsuperscript{14}

During the post-war period, stereotypes of immoral black female sexuality continued to dominate white understandings of black rape victims. In her study of African-American rape victims in Chicago courtrooms during the 1950s, historian Dawn Rae Flood explains that “many believed it unlikely that they [black women] would have refused sexual advances from anyone, thereby negating rape allegations that required resistance as a matter of law.”\textsuperscript{15} According to the stereotype, black women were “unrapeable.” As Flood describes it, “The ‘bad’ black woman was eager for sexual exploits: she was neither chaste nor likely to be sexually violated.”\textsuperscript{16} In her analysis of intra-racial rape cases in Chicago, Flood found that by the 1950s the state was willing to view black women who accused black men of rape as “true victims.” However, while the prosecutorial system took some black women’s complaints against black men seriously, defense attorneys continued to cling to stereotypes about black women to discredit their testimony on appeal. Unable to make arguments based on racial discrimination for their clients, defense attorneys cast black victims as sexually promiscuous “bad” women. Similarly, in terms of interracial rape, Lisa Lindquist Dorr found that although white men increasingly faced criminal charges for raping black women in the 1950s, gendered and racialized stereotypes held strong. Trials rarely resulted in a conviction. If they did, sentences were

\begin{footnotes}
\item[14] Dallas v. State, 76 Fla. 358 (1918), 79 So. 690.
\item[15] Dawn Rae Flood, “‘They Didn’t Treat Me Good’: African American Rape Victims and Chicago Courtroom Strategies During the 1950s,” Journal of Women’s History 17, no. 1 (Spring 2005): 42.
\item[16] Flood, 42.
\end{footnotes}
insignificant.\textsuperscript{17} During the 1950s then, black women continued to face insurmountable odds when prosecuting rape against both white and black assailants.

For black and white women, the resistance requirement generally created significant barriers to successful prosecution. In a 1947 ruling, the Nebraska Supreme Court neatly outlined the generally accepted understanding of resistance as follows:

the general rule [of resistance] is that a mentally competent woman must in good faith \textit{resist to the utmost} with the most vehement exercise of every physical means or faculty naturally within her power to prevent carnal knowledge, and she must persist in such resistance as long as she has the power to do so until the offense is consummated.\textsuperscript{18} (italics mine)

According to judicial opinion, utmost resistance entailed a full physical response to the assault. In another ruling in favor of the defendant, the Supreme Court of Nebraska commented, “Nature had given her hands and feet with which she could kick and strike, teeth to bite, and a voice to cry out; all these should have been put in requisition in defense of her chastity.”\textsuperscript{19} Similarly, the Supreme Court of Wisconsin stated that victims are “equipped to interpose most effective obstacles by means of hands and limbs and pelvic muscles.”\textsuperscript{20} Although these rulings came in the late 19\textsuperscript{th} and early 20\textsuperscript{th} centuries, they provided important precedence; over forty years later, courts in the 1950s cited these judicial opinions when reversing rape convictions on appeal.


\textsuperscript{19} \textit{Oleson v. State}, 11 Neb. 276 (1881), 9 N.W. 38

\textsuperscript{20} \textit{Brown v. State}, 127 Wis. 193 (1906), 106 N.W. 536
State courts frequently reversed rape convictions on appeal if the defense could show that the woman did not resist enough.\textsuperscript{21} In the 1950 ruling of \textit{People v. Scott}, the Supreme Court of Illinois reversed the conviction of Maurice Scott, sentenced to 15 years for the forcible rape of Helen Trepack, due to Trepack’s inadequate show of resistance. The court believed Trepack’s testimony that she had gone to Scott’s apartment “reluctantly, became frightened while there, called for help out of a front window, [and] was beaten for ten minutes and threatened by death with plaintiff in error.” Yet because she did not physically resist Scott’s sexual advances when he later made them, Trepack had not legally been raped. “It is also fundamental,” the court reasoned in reversing the conviction, “that voluntary submission by the female, while she has the power to resist, no matter how reluctantly yielded, amounts to consent and removes from the act an essential element of the crime of rape.”\textsuperscript{22} The court found that Trepack indeed had yielded and the judgment was reversed.

Fifteen years later, the Illinois Supreme Court cited \textit{People v. Scott} when overturning the conviction of Walter DeFrates for forcible rape.\textsuperscript{23} DeFrates, a heating and air conditioning engineer, had called the complainant at 2:45 a.m. on the morning of April 12, 1962 insisting that he come over and do work that her husband had requested (the husband was away on a business trip at the time). The complainant allowed him to

\textsuperscript{21} In her exhaustive legal history of women’s rights in America, \textit{The Boundaries of Her Body}, legal scholar Debra Rowland, Esq. cites dozen of cases where a woman’s failure to adequately resist in the eyes of the court resulted in either acquittals or reversals of convictions on appeal in the 19\textsuperscript{th} and 20\textsuperscript{th} centuries. One example cited by Rowland is \textit{State v. Killingworth} (1950), where a Texas court reversed a conviction of rape, reasoning that, “‘feigned and passive resistance’ on the part of the victim was not enough to sustain the charge” (Rowland, 673). See Rowland, pgs. 668-678.

\textsuperscript{22} \textit{People v. Scott}, 407 Ill. 301 (1950), 95 NE 2d 315.

\textsuperscript{23} \textit{The People v. DeFrates}, 33 Ill.2d 190 (1965), 210 N.E.2d 467.
come in and after doing some work, DeFrates attempted to kiss the complainant in the kitchen. She resisted and, according to her testimony, he “starting choking her until she could not breath.” He forced her to have sex multiple times before she managed to run to a neighbor’s house with her children who had been sleeping down the hall. Originally sentenced for ten to twenty-five years, DeFrates saw his conviction reversed on appeal. The Supreme Court of Illinois, citing Scott, ruled that the complainant had eventually yielded to DeFrates’ advances and thereby consented.²⁴ Proof of utmost resistance typically barred most women victims from obtaining justice in the courts.

Despite a legal system that was overwhelmingly hostile to complainants in cases of rape and made convictions extremely difficult to obtain, legal scholars writing in the nation’s law journals during the mid-twentieth century were consumed with fears of false allegations and the protection of defendants. The broad range of conduct included and prosecuted under the legal term “rape” particularly troubled them. As one oft-cited scholar argued in a 1952 Yale Law Journal article, “the crime covers factual situations ranging from brutal attacks familiar to tabloid readers to half won arguments of couples in parked cars.”²⁵ Legal scholars understood true forcible rape in its “classical type” as “the ambush of a lone woman by one or more strangers in a deserted place at night.”²⁶ This was the most serious form of sexual aggression, as it entailed unprovoked violence or extreme use of force, by a stranger, against an unsuspecting woman. Legal scholars

²⁴ Likewise, in 1968 the court would cite People v. Scott in their decision to overturn convicted rapist Ernest Hayes’ sentence for the same reasoning. See: People v. Hayes, 93 Ill. App.2d 198 (1968), 236 N.E.2d 273.


believed the law was designed to punish forcible rape in this “classical type.” With the exception of statutory rape, however, the law did not distinguish between kinds of rape.\textsuperscript{27} This was particularly troubling to legal scholars who made clear distinctions among a set of sexual acts, only some of which they considered actual rape. Some acts of sexual misconduct were deemed more problematic than others, therefore requiring different responses by the courts. In a letter to the Stanford Law Review, Visiting Professor H.H.A. Cooper wrote, “what is commonly comprehended by the term ‘rape’ is really a number of quite distinct offenses… all deserving of careful, separate designation.”\textsuperscript{28} Other types of sexual offenses, such as situations where a woman knew her alleged attacker or believed him to be someone else (termed “sexual intercourse by deceit”\textsuperscript{29} or “rape by fraud”\textsuperscript{30}), required different responses. As law student Roger B. Dworkin argued, “a sentence of three years to life, or even capital punishment, may be appropriate for a man who leaps from the bushes and rapes a woman at knifepoint and yet be an

\textsuperscript{27}Statutory rape was defined as sexual intercourse with a girl whose consent was “legally inoperative” due to her young age or a mental disability. Age of consent differed between states, varying from 14 – 21 years (see: ”Forcible and Statutory Rape,” 64). Statutory rape laws were originally enacted to protect the purity and morality of young girls from “dangerous” older men. While statutory rape entailed legal non-consent, the purposes for statutory rape law and forcible rape law were understood as distinct and separate. As one scholar argued, forcible rape entailed “dangerous propensities” and a potential “risk to human life.” Statutory rape, on the other hand, resulted in “moral harm” and was not necessarily “eminently dangerous to human life” (Joseph Nadel, “Statutory Rape and the Felony-Murder Doctrine,” Dickinson Law Review 60 (1956): 179-190).


\textsuperscript{29}Roger B. Dworkin, “The Resistance Standard in Rape Legislation,” Stanford Law Review 18, no. 4 (1966): 687. According to Dworkin, sexual intercourse by deceit included instances where a woman was “deceived into submission by husband-impersonation.” In these cases, he argued, “only mild penalties are in order, for there is little difference between the conduct of the male and that of an ordinary Don Juan” (Dworkin, 687).

\textsuperscript{30}“Forcible and Statutory Rape,” 63. The author argued that cases of rape by fraud included instances where “the woman agrees to the act because of the man’s false representations—that sexual intercourse was a necessary medical treatment or that he was her husband.” He cites an 1867 and an 1883 case of medical treatment and for husband-impersonation a 1910 and 1916 case.
overly stern fate for the clever seducer who convinces a lady that he is her spouse.”

While a show of resistance was required to prove rape, for example, it was particularly relevant in cases of non-stranger rape as legal scholars and judges believed the issue of consent to be most unclear in these situations. A 1952 Yale Law Journal article commented that in circumstances “when the parties were previously acquainted, perhaps to the extent of a ‘dating’ relationship, and the encounter occurred in an apartment to which they both went willingly—one cannot so easily assume the woman’s attitude of opposition.”

This logic typified a legal culture where some sexual assaults were deemed much more problematic than others and some women were deemed more worthy of protection than others. As Estrich recently argued in her study of late 19th and 20th century appellate court decisions of rape cases, “all women and all rapes are not treated equally.” Extra caution was necessary to offset the likelihood of conviction for situations that scholars believed did not merit such harsh punishments. The belief in different types of sexual misconduct was a driving force behind discussions of rape in the nation’s law journals.

31 Dworkin, 681. Dworkin’s “clever seducer” is a man who tricks a woman into believing that he is her husband. For example, the California penal code’s definition of rape included situations where “the defendant induces a belief that he is the woman’s husband and thereby gains her submission” (Dworkin, 680).

32 “Forcible and Statutory Rape,” 66.

33 Quote: Estrich, 29. Estrich looks at the history of 19th and 20th century appellate court decisions in rape cases to determine how the law distinguished between aggravated rape (“stranger rape”) and “simple” rape, “where no ‘aggravating circumstances’ such as force or violence are present, or where the victim has a prior relationship with the offender” (Estrich, 20). She argues these distinctions ultimately led to the dismissal of simple rape as “real rape” and thus further victimizes women victims.
“Female types of excessive or perverted sexuality”34: Psychiatry and Rape Law

During the 1950s and 1960s, law journals and judicial opinions nationwide reinforced Hale’s beliefs that rape accusations were difficult to defend against and that false accusations were an all-too-frequent occurrence. Indiana Judge J. Emmert asserted in a 1957 dissenting opinion: “From the time of Blackstone, the dangers of a female’s false accusations of rape causing an innocent victim to lose his life or liberty have been clearly recognized by all well considered authorities.”35 That same year, Luther C. McKinney wrote in a University of Illinois Law Forum article, “some women are capable of falsifying their version of a sexual experience to the extreme of bringing erroneous criminal charges.” This was particularly dangerous for innocent men because “if the prosecutrix is capable of fabricating a story she may be equally capable of convincing the jury that it is true.”36 Articles in leading law journals repeatedly cited the belief that “the sexual nature of the crime is conducive to false accusation”37 and that more than any other crime, false claims were “perhaps greatest with sexual offenses.”38 Often basing their assertions on Hale’s centuries old statement, mid-twentieth century legal scholars and judges were particularly concerned with the protection of innocent male defendants. This suspicion applied to adult women as well as young girls. By the mid-1960s, some


35 Wedmore v. State, 237 Ind. 212 (1957), 143 N.E.2d 649. Emmert’s dissent in Wedmore (which upheld a conviction of statutory rape), would be cited in the years that followed when courts sought to prove that women frequently lied when alleging rape.

36 Luther C. McKinney, “Pre-Trial Psychiatric Examination as Proposed Means for Testing the Complainant’s Competency to Alleged a Sex Offense,” University of Illinois Forum (1957): 651.

37 “Forcible and Statutory Rape,” 56.

legal scholars showed increasing distrust of rape accusations by young girls, arguing that not all girls deserved protection under statutory rape laws. As one scholar argued, “the purpose of the [statutory rape] statute is to protect the emotionally and sexually immature rather than all females under a certain age.”\textsuperscript{39} Fears of false accusations consumed legal scholars, informing beliefs and practices in rape law.

During the 20\textsuperscript{th} century, psychiatric constructions of women’s sexuality further reinforced long held legal suspicions of rape victims. John Henry Wigmore’s influential 1940 treatise on evidence, \textit{Evidence in Trials at Common Law}, gave authoritative legal weight to the lying woman by using psychiatric constructions.\textsuperscript{40} Wigmore was the “leading commentator on the laws of evidence”\textsuperscript{41} and his treatise “defined the rules of evidence used in the United States legal system.”\textsuperscript{42} Wigmore conveyed his thoughts on female complainants in cases of sexual assault in section 924a of \textit{Evidence}, titled “Woman complainant’s chastity in a charge of sexual crime.” Here, he warned readers of the pervasiveness of lying young girls and women and the extra judicial steps necessary to protect innocent defendants against them.

With section 924a of \textit{Evidence}, Wigmore firmly reiterated Hale’s 17\textsuperscript{th} century warnings of women and girls who falsely alleged rape. He cautioned readers against the “behavior of errant young girls and women coming before the courts” and found that their “psychic complexes” were “multifarious [and] distorted” and often led to their


\textsuperscript{41} Estrich, 48.

“contriving false charges of sexual offenses by men.”\textsuperscript{43} As a result of the assumed very high percentage of false accusations by “female types of excessive or perverted sexuality,” Wigmore strongly advised that “no judge should ever let a sex offense charge go to the jury unless the female complainant’s social history and mental makeup have been examined and testified by a qualified physician.”\textsuperscript{44} Wigmore cited psychiatric and medical practitioners to “convince any doubter” of the likelihood of injustice if a complainant were not subjected to “careful psychiatric scrutiny.”\textsuperscript{45} In a 1933 letter, Dr. Karl A. Menninger of the Menninger Clinic of Psychiatry and Neurology in Topeka, Kansas wrote, “fantasies of being raped are exceedingly common in women, indeed one may almost say that they are probably universal… Of course, the normal woman who has such a fantasy does not confuse it with reality, but it is so easy for some neurotic individuals to translate their fantasies into actual beliefs.”\textsuperscript{46} Similarly, Dr. W.F. Lorenz, Director of the Psychiatric Institute at the University of Wisconsin wrote in a 1933 letter, “We, who have had extensive criminal experience among the mentally ill, know how frequently sexual assault is charged or claimed with nothing more substantial supporting this belief than an unrealized wish or unconscious, deeply suppressed sex-longing or thwarting.” Therefore, Lorenz believed that a psychiatric examination “was imperative in every case where sexual assault is charged.”\textsuperscript{47} Finally, Wigmore cited a 1938 report by

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\textsuperscript{44} Wigmore, \textit{Evidence}, 737. \\
\textsuperscript{45} Wigmore, \textit{Evidence}, 740. \\
\textsuperscript{46} Wigmore, \textit{Evidence}, 744. \\
\textsuperscript{47} Wigmore, \textit{Evidence}, 745-46.
\end{flushright}
the American Bar Association’s Committee on the Improvement of the Law of Evidence to support his claims. The committee argued,

Today it is unanimously held (and we say “unanimously” advisedly) by experienced psychiatrists that the complainant woman in a sex offense should always be examined by competent experts to ascertain whether she suffers from some mental or moral delusion or tendency, frequently found especially in young girls, causing distortion of the imagination in sex cases.48

The importance and influence of Wigmore’s work cannot be overstated. As historian Carol Groneman writes, “generations of law school students studied Evidence, hundreds of appellate court decisions cited it, and scores of legal scholars referred to it with reverence.”49 During the 1950s, legal scholars and judges extensively cited 924a when discussing both rape law and making decisions in individual cases of rape. Wigmore’s assertions about women’s false accusations and his understanding of the lying and sometimes pathological rape victim saturated the legal literature and case law.

Although concerns of protecting innocent men consumed legal scholars, there is no indication that this reflected the same concern that many civil rights lawyers and activists had about black men who they believed to be unjustly convicted on false charges of raping white women. Since the 1930s, communists and civil rights activists had called national attention to notorious black-on-white rape allegations in the South.50


49 Groneman, 97.
these cases, a white victim (or victims) claimed rape with very little evidence under extremely suspicious circumstances. Black defendants were charged, convicted, and sentenced to death by a racist Southern legal system. The infamous Scottsboro case of 1931 served as a vivid example. In this case, two young white women accused nine black youth of rape on a train heading from Chattanooga to Memphis, Tennessee. Stopped in Paint Rock, Alabama, the accused were indicted in nearby Scottsboro on charges of rape. Within a month of the accusation, in a mob-like atmosphere, an all-white jury sentenced eight of the accused to execution. Despite enormous efforts by the American Communist Party to overturn the convictions, as well as the retraction of testimony by one of the accusers, the majority of cases dragged on in the courts. Ultimately the “Scottsboro Boys,” as they became known, spent between six and nineteen years in prison for a crime widely believed never to have occurred.\footnote{In her late 19th century campaign against lynching, Ida B. Wells was perhaps the first to comment, in writing, on false rape allegations by white women against black men. Wells first exposed the lying white woman in her groundbreaking 1892 pamphlet against lynching, \textit{Southern Horrors, Lynch Law in All Its Phases}. Here she told the story of Mrs. J.S. Underwood, a white minister’s wife, who had consented to sexual relations with William Offett, a black man. Afraid both that her neighbors had seen Offett in the house and that she may be pregnant with his baby, Mrs. Underwood fabricated a rape charge. Offett was found guilty and sentenced to fifteen years in jail. “Some time afterwards,” Wells explained, “the woman’s remorse led her to confess to her husband that the man was innocent” (Royster, 54). Offett was eventually released from prison. Wells concluded that, “there are thousands of such cases throughout the South” (Royster, 55). She repeated her findings in her 1895 publication \textit{A Red Record}. See: Jacqueline Jones Royster, ed. \textit{Southern Horrors and Other Writings: The Anti-Lynching Campaign of Ida B. Wells, 1892-1900},(Boston: Bedford Books, 1997).}

In their writings on the frequency of false allegations, however, legal scholars never mentioned the race of defendants, nor did they include any disguised references to race-based rape allegations, such as discussions of “mob violence” stemming from a false allegation.

In his stern caution against lying women, Wigmore also failed to make reference to race or those notorious Southern cases where likely innocent black men were

convicted of rape by white women. The only exception to this is a one paragraph citation in section 924a from a 1933 letter written by Dr. William White of St. Elizabeth’s Hospital in Washington, D.C. White’s discussion of mob violence resulting from rape accusations appears to be a veiled comment on both legal injustice and lynchings in cases of alleged black-on-white rape in the South. Writing two years after the Scottsboro allegations, White commented:

Many well known cases which have attracted wide public interest and which have resulted in mob violence have indicated, or should have, the extreme prejudice which may be mobilized against an accused person, often quite without anything that could be properly called adequate evidence of their guilt… I am sure I have known of a number of cases where the most terrible injustice resulted from false accusations. Some such cases have been tried in court; others have never reached trial.52

The remainder of White’s letter, however, did not address race or indicate a concern with racial justice. The virtual neglect of race in the entirety of Section 924a indicates that Wigmore’s fears of false allegations did not stem from a race-based understanding of rape allegations. Without explicitly saying so, Wigmore and his fellow legal scholars were mostly concerned with protecting white men from rape allegations of white women.

52 Wigmore, Evidence, 745. Writing two years following the Scottsboro allegations, White’s early comment on “mob violence,” most likely referring to mob violence against blacks accused of raping white women, is rather exceptional for its time. During the 1930s, the majority of writings on the injustice to alleged black rapists derived from the civil rights community, including communists.
Legal scholars writing in the nation’s leading law journals echoed Wigmore’s warning and suggested pre-trial psychiatric screenings of rape complainants to ensure the protection of those charged.\(^{53}\) Articles in the *Indiana Law Journal* (1950), *Iowa Law Review* (1958), and *Villanova Law Review* (1958) all recommended psychiatric evaluations because of the belief that false allegations were commonly and easily made.\(^{54}\) In a 1957 *University of Illinois Law Forum* article, for example, Luther C. McKinney wrote that “some women are capable of falsifying their version of a sexual experience to the extreme of bringing erroneous criminal charges.” This was particularly dangerous for innocent men because “there is always the possibility that a plausible tale will be readily accepted as credible because the judge and jury are untrained in matters of mental disorders.”\(^{55}\) A psychiatric evaluation, on the other hand, could detect a lying woman and therefore protect the innocent. Despite the enthusiasm of Wigmore and many legal scholars, no state legislature ever approved a mandatory pre-trial psychiatric examination for complainants in rape cases.\(^{56}\) This may be explained by the fact that most of the legal requirements necessary to prove rape already performed the function of intensely scrutinizing the woman complainant.

\(^{53}\) McKinney, 651.


\(^{55}\) McKinney, 651.

\(^{56}\) Nor did the courts explicitly support the suggestion of a pre-trial psychiatric evaluation either. In *Burton v. State* (1953), the Indiana Court “approached” the position that the state should require a psychiatric exam in doubtful cases. However, this was overruled 4 years later in *Wedmore v. State* (1957).
As is evidenced in Wigmore, popular mid-century psychiatric understandings of women’s sexuality served to support legal fears of false rape accusations. Relying on a somewhat tenuous alliance that had developed over the 20th century between psychiatry and the law in cases of rape, defense lawyers could discredit a complainant’s testimony by claiming she was a “nymphomaniac” and therefore consented to sex. In the early 20th century, psychiatrists created the category of the “psychopathic personality” as a new diagnosis for a broad range of supposedly abnormal behaviors. Who exactly a psychopath was or what defined a psychopathic personality, however, was never quite clear. As scholar Elizabeth Lunbeck comments, “among themselves psychiatrists admitted that psychopathy was not a well-defined entity and that it could mean little more than that the individual in question was not normal.”

The category encompassed a broad range of people including “criminals and delinquents, sex perverts and prostitutes, lazy men and promiscuous women.” The “hypersexual” or “over-sexed” nymphomaniac, a “young, attractive, and willfully passionate woman who purportedly could not control her desire for sexual pleasure” was one such psychopathic personality.

Although making her debut in US medical journals in the mid-19th century, the nymphomaniac remained relatively obscure outside of medicine until the mid-20th century popularization of psychiatry and Freudian principles in the larger American

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58 Lunbeck, 56.

culture. As Carol Groneman has argued, during the 1940s and 1950s, “Freudian-influenced ideas exercised enormous influence over American notions of sex.” Popular family-oriented magazines, such as Coronet, Ladies Home Journal, and Reader’s Digest published psychoanalytically oriented articles. It was at this time that the nymphomaniac became culturally understood. While the nymphomaniac gained broad cultural legibility, she also surfaced in the legal record. Deeming her an “erotic liar,” psychiatrists argued that the nymphomaniac was particularly dangerous. As both a pathological liar and a sex pervert, her fantastic stories could put innocent men in jail.

These popular psychiatric understandings of women’s sexuality served to support legal fears of false rape accusations. For a legal system already suspicious of women’s rape allegations and fixated on protecting mainly white men, an easy alliance developed between the law and psychiatry when it came to sex crimes. As Elizabeth Lunbeck argues, during the 20th century, “lawyers were happy to defer to psychiatric testimony that whittled away at the reality of rape.” The psychiatric construction of the delusional or vindictive lying woman supported centuries-old legal fears of women’s false allegations.

The suspicion of women became so deeply embedded that it even extended to some cases of interracial rape. In her study of the legal responses to black men charged with interracial rape during the twentieth century, Lisa Lindquist Dorr shows that by the 1950s juries were more suspicious of white women’s accusations, even when lodged against black men: “The idea of neurotic women falsely crying rape to hide their sexual

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60 Groneman, 76.
61 Lunbeck, 61.
shenanigans became more widely accepted, while the myth of the black beast rapist began to fade.” Additionally, in her study of the interracial rape myth in the twentieth century, Lillian Robinson argues that the myth of the false claim has been as powerful a construction as that of the “black beast rapist” since at least the 1930s. The outcomes of black-on-white interracial rape trials reflected this increasing suspicion of white women. Dorr has found that by the postwar period sensationalized cases like Scottsboro were the exception. The legal system did not support all white women’s allegations and most convicted black rapists escaped with their lives. Indeed, of the fifty-nine black men who faced a Virginia court on charges of sexual relations with white women between 1946-1960, more than half received little or no punishment. By the late 1950s growing segments of the population viewed white women who charged rape against black men as automatically suspect. This created a complex dynamic in interracial rape cases and a vexing set of cultural beliefs in which gender and race were played against each other.

While psychiatric medicine delegitimized women’s allegations of rape, general practitioners assumed a legal function in cases of alleged rape, collecting evidence for criminal prosecution as their primary role. Indeed, mid-twentieth century medical journal articles that dealt with the practitioner’s response to rape victims focused on evidence collection, and not on providing care for the patient beyond her observable injuries. Law enforcement depended on the medical doctor / examiner to provide circumstantial evidence of the sexual encounter and thus determine whether rape had occurred. As one

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62 Dorr, 207.


64 Dorr, 206.

65 For a fuller discussion of this point, see chapter 2.
1951 author in the *British Medical Journal* commented, “The investigation of cases of alleged rape throws a great responsibility on the medical man, for the authorities are likely to give considerable weight to his report before proceeding with a charge.”

Typical of the majority of commentary relating to medical aspects in rape cases is a 1940 article by Dwight Rife, MD, a medical examiner for the New Mexico state police. Rife spoke only to the collection of evidence in cases of alleged rape and outlined the appropriate protocol for responding to the victim. This included a careful examination of the victim’s clothes and body to look for evidence of substances, bruises, or abrasions, collecting fingernail scrapings, and a washing of the vulva, vagina, and perineum of the victim for microscopic inspection. Such was the expected role of the medical doctor well into the 1960s.

Beyond the investigative protocol, there was little established protocol for medically treating or responding to the needs of the victims of sexual assault. In a 1958 article in a Catholic medical journal, author John Connelly commented that he was “surprised… at the silence of treatises on obstetrics and gynecology regarding the subject [rape].” State hospitals were not legally mandated to provide emergency services to rape victims and many hospitals turned women away. Those hospitals that did admit rape victims and many hospitals turned women away.


68 Rife also strongly recommended a complete physical examination of the alleged rapist, when possible, for an ideal investigation.

69 During the 1970s, one major area of rape reform legislation was mandating medical services for rape victims.

70 John R. Connelly, S.J., “Emergency Treatment of Rape Cases,” *Hospital Progress* 39, no. 8 (August 1958), 64.

71 Leigh Bienen, “Rape III—National Developments in Rape Reform Legislation,” *Women’s Rights Law Reporter* 6 (1980), 179. During the early 1970s, for example, activists found that most hospitals in Chicago refused to treat rape victims. See: Andra Medea and Kathleen Thompson, *Against Rape* (New
victims rarely gave consideration to the needs of the patient beyond their observable physical symptoms.\textsuperscript{72} One victim who sought care at DC General Hospital in 1965 following her assault told researchers that “‘the medical search for evidence coldly ignores the patient’ and that the entire medical procedure was inhumane.”\textsuperscript{73} Likewise, medical journals focused mainly on the treatment of sex offenders, rarely addressing the longterm needs of rape victims. In a 1962 article appearing in the \textit{Journal of the American Medical Association}, Dr. Seymour Halleck lamented that while society and the medical profession made “painstaking efforts to understand the sex offender, the victim of the sex crime has been less intensively studied.”\textsuperscript{74} During the 1950s, rape victims faced a medical landscape where treatment was geared towards the goals of the legal investigation and individual victim needs were often overlooked. This approach was in keeping with the general legal skepticism towards rape victims. Doctors were charged with determining if rape actually happened, rather than assuming the patient before them needed medical care.

\textbf{Black Men, White Victims: Race and the Laws of Rape}

While the law demanded shows of resistance and absolute proof of rape for most convictions, racialized practice significantly contradicted a legal tradition that claimed

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\textsuperscript{72} Public health authorities began questioning this approach and advocating for change in the mid-1960s.


universality. Indeed, the levels of racial contradiction in legal practice were immense. While the idea of women lying was so powerful and ingrained that it served to protect some black men from conviction, racialized fears also made black men vulnerable. Unlike their white counterparts, black men confronted stereotypes about sexualized black masculinity which could and did have a significant impact on the outcomes of interracial rape trials. Likewise, as a group, black men accused of raping white women faced significantly harsher punishments as compared to whites.

During the mid-twentieth century, rape was a capital crime in eighteen states and Washington, D.C.; all were Southern and border states.\footnote{In 1965, the following states allowed the death penalty for rape: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Washington, D.C. In Nevada, not a Southern or border state, the death penalty for rape had not been applied in over 40 years. Donald Partington, “The Incidence of the Death Penalty for Rape in Virginia,” \textit{Washington and Lee Law Review} 22 (1965): 53.} Criminologists at the time spoke openly about the connection between race and capital sentencing for rape. Writing in the \textit{Journal of Criminal Law, Criminology, and Police Science} in 1951, law professor Robert Bensing commented on the retention of the death penalty for rape in Southern states. “The most plausible explanation for this phenomenon, perhaps,” he wrote, “is that for the most part, these were slave states and have always contained a large percentage of the Negro population, and it would be quite natural for a white legislature in such state to include a death sentence.”\footnote{Robert Bensing, “A Comparative Study of American Sex Statutes,” \textit{The Journal of Criminal Law, Criminology, and Police Science} 42, no. 1 (May-June 1951): 59.} Four years later in the same journal, University of Pennsylvania law student Richard Reifsnyder agreed that “capital rape statutes of the southern states… seem aimed chiefly at the Negro.”\footnote{Although the death penalty became
an increasingly rare punishment for rape in the postwar period, the discrepancies in punishment between white and black men were alarming as the toll fell almost exclusively on black men. Between 1930 and 1965, 455 men were executed for rape in the United States. Of those, 405 were black. Statistics from Florida are typical of most Southern states at this time. Between 1940-1965, Florida executed 29 of 48 convicted black rapists while executing only 1 of the 6 white men originally sentenced to death for rape.\textsuperscript{78} During this same period, not a single white man was sentenced to death for the rape of a black woman in Florida. Additionally, the New Orleans-based Southern Conference Educational Fund discovered that 93 percent of men executed for rape in thirteen Southern states between 1938 and 1948 were black.\textsuperscript{79} Criminologists and statistics alike confirmed that capital punishment for rape in the South had an undeniable racial slant. Defenders of black men coined the term “legal lynching” to speak to the excessive punishments and obvious discrepancies between sentencing for whites and blacks.\textsuperscript{80}

The unwarranted and almost exclusive use of the death penalty against convicted black rapists was exemplified for mid-twentieth century observers by the case of the


\textsuperscript{78} Michael Meltsner, \textit{Cruel and Unusual: The Supreme Court and Capital Punishment} (New York: Random House, 1973), 77. After Reconstruction, Southern rape statutes were crafted with broad latitude for punishments specifically to permit juries and judges considerable discretion in meting out harsher sentences for blacks and more lenient sentences for whites.


\textsuperscript{80} For scholarship on the connection between lynching and legal executions see: Charles J. Ogletree and Austin Sarat, eds. \textit{From Lynching Mobs to the Killing State} (New York: New York University Press, 2006).
Martinsville Seven. In this case, seven black men were accused and convicted of gang-raping a white woman in the town of Martinsville, Virginia. The guilt of the men was never in question; the victim, Ruby Floyd, had sustained serious injuries as a result of the rapes and it took her several months to recover. All seven men were charged, convicted, and sentenced to death. In appealing the sentences of the men, Richmond-based NAACP attorney Martin A. Martin, with the assistance of NAACP Virginia State Conference legal staff, Samuel Tucker, Roland Ealey, and Jerry Williams, boldly challenged the race-based application of the death penalty in cases of rape. In preparing their appeal, the defense team relied on systematic studies from the 1940s that proved racial disparities in capital sentencing. In his study of homicide sentencing in Virginia, North Carolina, and Georgia, for example, University of North Carolina ethnographer Guy Johnson found that blacks convicted of murdering whites were more likely to be sentenced to death and executed than blacks who murdered blacks or whites who murdered either blacks or whites. Defense team members Tucker and Ealey pursued their own research into the execution patterns of the Virginia State Penitentiary. They discovered that since 1908, the state of Virginia had executed 45 black men for rape. During that same time period, not a single convicted white rapist had suffered a similar fate. Recalling their surprise at discovering this undeniable racial discrimination, Roland Ealey remembered that the evidence struck the defense team “like a bolt of lightning.”

Denied clemency by the governor, the Martinsville Seven petitioned for a writ of habeas corpus before the Richmond city court on September 30, 1950. Martin argued

81 For an excellent history of the Martinsville Seven case see: Eric Rise, *The Martinsville Seven*.

before Judge M. Ray Doubles that although the Virginia legislature had repealed statutes that provided different punishments for black and white rapists following the Civil War, the courts had since then provided immunity from the death penalty only for white rapists while their black counterparts faced death. With Tucker’s statistics as evidence, Martin argued that the Virginia rape statute had “been applied and administered with an evil eye and an unequal hand.”

Commenting on the widely held belief that black rape of white women was deemed more heinous than white rape of either white or black women, Samuel Tucker argued that a dual system of justice existed in Virginia, fueling the belief that “Negroes should be punished by one standard and white persons punished by another where the crime of rape is committed.”

Unconvinced by the evidence, Judge Doubles denied the petition. Doubles argued that there was too much variation amongst juries to suggest systematic discrimination. In his words, “Certainly 54 different juries sitting over a period of 42 years in localities from all over the state cannot be said to be acting under any concerted action, policy or system for which the state is responsible.”

The strategy of proving discrimination by documenting racial disparities in sentencing practices had not worked. In a final attempt to save the men’s lives, the attorneys petitioned the Supreme Court. The Court rejected the writ of certiorari. After two years, six trials, five stays of execution, ten opportunities for judicial review, and two denials of executive clemency, the Martinsville Seven had lost their battle. The state of Virginia executed all seven men in February 1951.

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83 Rise, 122.
84 Rise, 123.
85 Rise, 124.
Historians and scholars have long held that the “Southern rape complex” fueled the excessive responses to black men’s actual and fabricated behavior. Wilbur Cash coined the term “rape complex” in his 1941 publication Mind of the South to describe white sexual anxiety and fears of black male sexuality, which led to the belief that all black men were intent on raping white women. This prompted excessive responses by whites to allegations of black on white rape. Although Southern women’s historians argue that “white southerners did consider issues other than race when they confronted white women’s accusations against black men” and that despite the rhetoric of the rape complex, “not all whites were equal, and not all white women were worthy of protection,” the Southern rape complex continued to have deadly consequences for some black men in the mid-twentieth century.

The Groveland case is another case in point. In July 1949, a white woman accused four black men of rape in rural Lake County, Florida. Accused under very questionable circumstances, three of the men, Walter Irvin, Samuel Shepherd, and Charles Greenlee were indicted and convicted of rape by an all-white jury. The fourth, Ernest Thomas, was shot and killed 200 miles north as he attempted to flee the authorities after the accusation. At their trial, the jury sentenced Irvin and Shepherd to death and recommended mercy for Greenlee, a minor, who received a life sentence. The trial had all the markings of stereotypical Southern justice. Mob violence dominated, the men were

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87 Dorr, 3 and 7.

convicted on falsified evidence, and a Lake County sheriff shot Irvin and Shepherd while in transport from the prison to the county seat (Shepherd died as a result). \(^{89}\) Franklin Williams, an attorney with the NAACP Legal Defense and Educational Fund who organized the defense team, commented that the trial had “all the characteristics of a dime store novel... A perfect frameup.” \(^{90}\) Despite repeated efforts, the lawyers for the case were unable to convince court judges of Greenlee’s and Irvin’s innocence. Both remained incarcerated until the 1960s. Combined, they spent 32 years in prison for a crime they did not commit. \(^{91}\) Cases like Groveland confirmed for many that Scottsboro-type prosecutions were representative of a discriminatory white Southern legal tradition that continued well into mid-century. Former LDF staff attorney Michael Meltsner explains the outcomes of interracial rape trials at the time: "overwhelmingly white southern juries didn't need to have anything written in the lawbooks to tell them what to do when rape charges were brought before them." \(^{92}\)

While Meltsner’s description suggests a rigid and unyielding Southern legal system bound by strict racial codes, rape prosecutions at mid-century were more typically characterized by a complex interaction of gender and race-based assumptions. Accusers and accused confronted a legal landscape where both a significant gender bias and a significant race bias operated. White female accusers of black men, for example,

\(^{89}\) See Michael Meltsner, The Making of a Civil Rights Lawyer (Charlottesville: The University of Virginia Press, 2006), 199. The conditions of the case were so similar to the Scottsboro case that it became known as “a little Scottsboro.” See James W. Ivy, “Florida’s Little Scottsboro: Groveland,” Crisis 56 (October 1949) as cited in: Lawson, Colburn, Paulson, “Groveland: Florida’s Little Scottsboro,” 3.

\(^{90}\) Franklin Williams, as cited in Lawson, Colburn, and Paulson, 14.

\(^{91}\) Greenlee was paroled in 1962. Irvin, who had his death sentence commuted in 1955, was paroled in 1968.

\(^{92}\) Meltsner, The Making of a Civil Rights Lawyer, 199.
sometimes found protection in Southern courts based on their race privilege. Judges and juries were more likely to convict alleged black rapists and sentence them with harsher penalties than accused white rapists. Yet a longstanding legal tradition of doubting all women’s accusations of sexual violence also left many other white women vulnerable, even when they accused black men. Constructions of gender and race manifested themselves in complex ways during the mid-twentieth century, and generally there were no guaranteed outcomes for interracial rape trials.

During the mid-twentieth century, stereotypes and constructions of racialized gender alternately left black women, black men, and white women vulnerable to hostility and injustice before the courts and suspicion and disdain in the eyes of the dominant society. Rape laws and legal practices victimized these different groups based on a complex negotiation of gender and race-based assumptions and biases. These gendered and racialized biases informed laws, legal practices, social understandings, and responses to rape.
CHAPTER III

RAPE AS RACIAL INJUSTICE:
CONFRONTING INTERRACIAL RAPE IN THE CIVIL RIGHTS MOVEMENT

Between the mid-1950s and the early 1960s, racial justice jumped into the center of public political consciousness as activists of the civil rights movement vehemently pursued racial justice and insisted on equal rights for African-Americans. Through direct action protest, non-violent resistance, and legal battles in state and federal courts, the civil rights movement drew nationwide attention to the severity of racial injustice in the United States and demanded change.

Direct action campaigns were a cornerstone of the civil rights movement. The first major campaign of the movement was the Montgomery bus boycott of 1955-56. On December 1, 1955, Montgomery NAACP secretary Rosa Parks refused to give up her seat to a white passenger on a city bus. City police arrested her and she was convicted for disorderly conduct. In response, Parks and other black community leaders organized a citywide bus boycott. A majority of the city’s African-Americans participated and the city finally relented, desegregating the public busses in November 1956. Direct action protests like this took place across the South. On February 1, 1960, four black students in Greensboro, North Carolina initiated the first lunch counter sit-in in response to Woolworth’s segregationist policy. Students in the South followed suit and sit-in protests took place in Nashville, TN; Richmond, VA; and Atlanta, GA. In the face of extreme hostility and verbal and physical abuse by whites, student demonstrators practiced non-violence, an extremely effective method that demonstrated to the nation the white aggression and abuse of African-Americans in the South. In 1961, students working with
the Congress of Racial Equality participated in the Freedom Rides to test a Supreme Court ruling that had called for desegregation of interstate travel.¹ The first group of black and white Freedom Riders left Washington, D.C. on May 4, 1961 en route to New Orleans. The riders faced extreme hostility and brutality at the hands of white mobs along their journey. One bus was firebombed in Anniston, Alabama, and a group of whites initially prevented riders from disembarking the bus. In Birmingham and Montgomery, several Freedom Riders were severely beaten by whites; one CORE member required 50 stitches as a result. Despite life-threatening circumstances, the Freedom Rides continued and multiplied over the next seven months. Eventually the federal government demanded that the Interstate Commerce Commission issue a new desegregation order. In November 1961, busses and terminals (including washrooms, drinking fountains, and restaurants) were desegregated.

Direct action protest often went hand-in-hand with legal battles, another major tactic of the movement. The desegregation of the Montgomery buses, for example, came as a result of a class action lawsuit filed against the city by an NAACP legal team. The case made its way to the Supreme Court and resulted in the November 1956 ruling that bus segregation was unconstitutional. Civil rights activists vigorously and successfully pursued legal remedies to racial injustice throughout the time period. A major victory came with the 1954 Supreme Court ruling Brown v. Board of Education of Topeka. NAACP legal counsel Thurgood Marshall argued before the Court that school segregation violated the equal protection laws guaranteed by the Fourteenth Amendment. The Court agreed. Brown would be one of a series of legal victories for the civil rights

movement against racist practices including the desegregation of public universities, the desegregation of busses and bus terminals, the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

As part of the campaign against racial injustice, the civil rights movement also turned their attention to the issue of sexual violence and politicized rape as a tool of racist oppression. Racial politics fully informed civil rights activism around sexual violence and the movement took up rape as a cause within this context. As a result, only interracial manifestations of sexual violence were politically relevant to the movement. Responding to interracial sexual violence, on behalf of both black men accused of raping white women and black women victimized by white men, became a major focal point in the fight against racial oppression.

Civil rights activists rallied to the cause of black men who, when accused of raping white women, were historically victimized by whites and a white-dominated legal system, particularly in the South. In the early 1960s, in response to the discrepancies in death sentences between black and white convicted rapists, the NAACP Legal Defense and Educational Fund (LDF) initiated and sustained the first systematic constitutional challenge to the death penalty. LDF lawyers sought stays of execution for all convicted black rapists on death row and the organization pursued a campaign to abolish the death penalty. Separately from the LDF, many civil rights activists in the postwar era increasingly took on the rhetoric of the false rape claim in their defense of black men accused of interracial sexual violence. Over the next two decades, the belief in the ubiquity of the false claim gained growing support outside of movements organized for racial justice. By the late 1960s a new consensus was formed about white women who
alleged rape against black men as liberal, non-leftist whites embraced the belief that most, if not all, white women who alleged rape against black men were lying.

At the same time, civil rights activists also organized in response to interracial rape of black women, protesting their dismissal by the criminal legal system and the impunity granted their white male attackers. Black female victims of white male violence were constructed as victims of racist oppression and activists mounted significant campaigns in their defense. Black women who were victimized by black men, however, remained under the radar of the black freedom movement. Intra-racial rape did not fit the paradigm of sexual violence from a race-based perspective and the civil rights community remained silent on the issue, marginalizing many black women’s experiences.

**Not By Chance Alone: The LDF Campaign Against Capital Punishment**

Sustained legal action on behalf of black convicted rapists came in the early 1960s from the NAACP Legal Defense and Educational Fund (LDF). Created in 1939, the LDF began with a budget of ten thousand dollars and a full-time legal staff of one: future Supreme Court Justice Thurgood Marshall. By the late 1950s, the LDF had grown to a full-time legal staff of five, had a budget close to a half million dollars, and operated as an organization of civil rights lawyers separate and independently of the NAACP, although retaining the name. According to former staff attorney Michael Meltsner, the organization by this point “maintained a virtual monopoly over civil rights litigation,” and financially and legally supported the work of the civil rights movement.² LDF money

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financed civil rights trials and local protest movements across the south and LDF lawyers defended protesters such as the Freedom Riders and those arrested at lunch counter sit-ins. They represented major civil rights movement leaders including Medgar Evers, Ralph Abernathy, and Martin Luther King, Jr., and sued major civil rights opponents such as Birmingham’s notorious Commissioner of Public Safety, Eugene “Bull” Connor and Alabama governor George Wallace. The LDF litigated and achieved major civil rights victories, including the 1954 *Brown v. Board of Education of Topeka, Kansas* ruling. LDF lawyers assisted or otherwise worked in cooperation with southern black lawyers, many of whom volunteered their time with their respective state chapters of the NAACP.  

In some instances, New York-based LDF lawyers traveled to Southern states to make up for the lack of civil rights lawyers practicing there. During the early 1960s, for example, there were only three black lawyers practicing in the entire state of Mississippi. Lawyers Constance Baker Motley and Derrick Bell made up the organization’s Mississippi team, travelling to the state and assisting and litigating there. As Meltsner explained, Motley and Bell “carried federal law to Mississippi twice a month, via jet.”

As the premiere civil rights litigation organization of its time, LDF took up the issue of the death penalty for rape as a civil rights issue, akin to segregated schools and housing covenants. As scholar Eric Muller explains, “A campaign to abolish a penalty for rape which had, since 1930, chosen blacks as ninety percent of its victims turned so

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3 The overlap between the LDF and the NAACP was often complicated. As Michael Meltsner explains in an email, “A black lawyer who also was a local NAACP officer might be working with an LDF staff member and also have the litigation supported by LDF financially while at other times he might just be acting as an NAACP lawyer.” (Meltsner, in an email to the author, September 16, 2012).

4 Meltsner, *Cruel and Unusual*, 12.

unmistakably on racial issues that the Fund could justifiably consider itself uniquely suited to handle the matter.”

The perceptions and lived experiences of LDF staff and Southern civil rights lawyers at the time demonstrated a continuation of extreme injustice and draconian punishments for black defendants who faced a rigid Jim Crow system. LDF staff litigated or otherwise assisted in some of the most notorious interracial rape cases of the mid-twentieth century. In the 1949 Groveland case, for example, white mobs immediately gathered in response to the white victim’s accusation of black rape. The day after the alleged rape, as word of the accusations spread, some 200 cars carrying up to 600 men arrived in Groveland looking to exact revenge on the defendants. When the sheriff lied and claimed the defendants were at the state penitentiary, the mob returned to Groveland, setting fires and shooting inside black homes. Governor Fuller Warren called in the National Guard to restore order. The white reaction to the Groveland case resonated so clearly with Scottsboro-type Southern injustice that the Crisis reported on the case in October 1949 with an article titled, “Florida’s Little Scottsboro: Groveland.” In response to the extreme atmosphere, the president of the Orlando branch of the NAACP requested that LDF lawyers fly in from New York to litigate the case, which they did. The trials extended over the next two years. Indicative of the overall atmosphere, LDF lawyer Jack Greenberg had to barricade his hotel room with a table one night in November 1951

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when a white mob collected around the building, waving Confederate flags and yelling.⁸ Experiences like these confirmed for LDF attorneys that in cases of interracial rape accusations, Southern justice still reigned and black men’s lives remained under immediate threat.

Decades of LDF experience together with the experiences of Southern civil rights lawyers in litigating capital rape cases prompted the LDF to take action on behalf of convicted black rapists sentenced to death. Yet it was an unusual development in the Supreme Court that prompted the organization to aggressively pursue a constitutional challenge to the death penalty. In October 1963, Supreme Court Justice Arthur Goldberg wrote a dissenting opinion to the Court’s decision to deny review of two capital rape cases. Two convicted black rapists, Frank Jimmy Snider, convicted and sentenced to death in Virginia for raping a child in 1956, and Frank Lee Rudolph, convicted and sentenced to death in Alabama for raping a white woman in 1961, submitted writ of certiorari to the Supreme Court, contesting their death sentences. The Court denied them both. In his dissenting opinion, Rudolph v. Alabama, Goldberg, joined by Justices William J. Brennan and William O. Douglas, argued that he would have granted certiorari to both Rudolph and Snider, “to consider whether the Eighth and Fourteenth Amendments to the United States Constitution permit the imposition of the death penalty on a convicted rapist who has neither taken nor endangered human life.”⁹ The brief Rudolph opinion included three critical points. First, citing a United Nations study of 65 countries that showed the United States as only one of five nations that permitted the death penalty as punishment for rape, Goldberg asked if the death penalty violated

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⁸ www.columbia.edu/cu/alumni/Magazine/Fall2008/feature5.html

⁹ Goldberg, Rudolph v. Alabama 375 U.S. 889 (1963)
“evolving standards of decency”? Second, Goldberg questioned if the death penalty for a crime that did not involve the loss of life conflicted with constitutional proscriptions against excessive punishments. Finally, he cited statistics from Canada showing that since that country had abolished capital punishment in cases of rape in 1954, the rates of rape convictions had decreased. Therefore, he reasoned that severe criminal sanctions were not necessary to reduce the rates of rape. Goldberg, asking if the aims of punishment (e.g. deterrence and rehabilitation) could be achieved by punishing rape less severely than by death, wrote, “does the imposition of the death penalty for rape constitute ‘unnecessary cruelty’?” The Rudolph opinion came as a great surprise to LDF lawyers, already contemplating a strategy to challenge capital punishment in cases of rape. Although Goldberg made no mention of race or racial disparities in death sentencing for rape, the opinion energized LDF lawyers to move forward with their campaign. With almost no legal precedent with which to attack the death penalty in court, the LDF took up the challenge.10

In their campaign against capital punishment, the LDF pursued a two-part strategy. First, LDF lawyers sought a moratorium on the death penalty and pursued stays of execution for every black rapist on death row. Postponing executions would allow the LDF time to gather the statistics needed to make an effective constitutional challenge to the death penalty. Second, LDF lawyers had to develop a strategy to prove that capital punishment in cases of rape violated the Equal Protection Clause of the 14th Amendment and was thus unconstitutional. Simply proving that blacks received a higher proportion of all death sentences would not suffice to abolish capital punishment. To make an effective

argument based on the Equal Protection Clause would require a “complicated factual
inquiry” that showed “not only the sentencing disposition made in a statistically
significant number of rape cases, the race of each defendant and the race of his victim,”
Michael Meltsner explained, “but [also] the background of each defendant and, most
critically, the nature of judicial proceedings in each case which might have affected
sentencing.”

Prior to the LDF campaign, Southern black lawyers who defended
convicted black rapists had unsuccessfully attempted to prove discrimination in the
application of the death penalty. NAACP lawyers had used this approach for the first
time when appealing the punishments of the defendants in the 1949 Martinsville Seven
case. Although this approach had failed for the Martinsville Seven, the LDF believed if
they had a substantial data set, covering multiple counties in multiple states, attorneys
could prove systematic discrimination in the application of the death penalty across the
Southern states. With the assistance of Anthony Amsterdam, LDF lawyer and chief
architect of the capital punishment campaign strategy, University of Pennsylvania
professor Marvin Wolfgang, regarded as the leading criminologist in the United States,
undertook the study during the summer of 1965.

Wolfgang selected thirty law students to travel to eleven southern states during
the summer of 1965 and collect data on 3,000 rape convictions from the previous twenty
years. The goal of the study was simple: to “determine whether race was associated
with the imposition of the death penalty for persons convicted of rape.” But more

11 Meltsner, *Cruel and Unusual*, 76 and 78.


13 The eleven states selected were: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.
importantly, Wolfgang explained, the researchers “were interested in determining whether nonracial factors could account for the expectedly higher proportion of blacks sentenced to death.”

Filling out detailed 28 page questionnaires for every case record they found, the law students took note not only of the race of the defendant, the race of the victim, and the sentence, but also variables such as the degree of force used by the offender, injury done to the victim, the relationship between the victim and the defendant, the character of the defendant, and the character of the victim. This kind of comprehensive analysis was necessary to ensure that there were no non-racial factors that could influence the outcomes of rape trials. For example, Wolfgang explained, if black men as a group used more force against their victims than did white men, this could explain why blacks were subjected to harsher penalties.

The results did not surprise LDF lawyers. Wolfgang found that 36% of convicted blacks whose victims were white were sentenced to death. In all other racial combinations of defendant and victim, only 2.1% of those convicted were sentenced to death. In other words, Wolfgang argued, “a significantly higher proportion of blacks are sentenced to death upon conviction for rape in these states because they are black, or, more particularly, because they are black and the victims are white.”

Additionally, Wolfgang found that not one of the non-racial factors “withstood the tests of statistical significance.” Non-racial factors were “irrelevant in the courts’ decisions to impose a death sentence,” and the evidence thus proved that blacks were sentenced to death not

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15 Wolfgang, 115.

16 Wolfgang, 115.
because of aggravating circumstances when they committed their crimes but because of their race. The statistical probability of the disparity in sentencing between blacks and whites happening by chance alone was less than one in one thousand. Wolfgang concluded that for the period 1945-1965, “there has been a systematic, differential practice of imposing the death penalty on blacks for rape, and, most particularly, when the defendants are black and their victims are white.” Armed with this information, the LDF pursued a challenge to the death penalty by arguing, as Micheal Meltsner explains, that “not that every juror in every interracial rape case acted with bias but that the states had created a system of law and practices that one way or another produced racial results that could not have come about by chance alone.”

The first direct challenge to the death penalty came in 1966, with the case of convicted rapist William L. Maxwell. The LDF had taken up dozens of capital cases prior to Maxwell. Yet, as Meltsner explains, when LDF lawyers took on a death case, “they raised all available legal claims. As a result, many of the men whose cases the Fund entered in order to challenge capital punishment won their appeals on grounds that had nothing to do with the death penalty.” Convicted black rapist Louis Moorer, Jr., for example, won his appeal in the South Carolina courts by proving his confession had been illegally obtained. With Maxwell, the LDF was able to take the question of racial discrimination in sentencing for rape all the way up to the Supreme Court. In 1962, 22-

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17 Wolfgang, 116.
18 Wolfgang, 120.
20 Meltsner, Cruel and Unusual, 88.
year-old Maxwell was convicted of the 1961 rape of a 35-year-old white woman in Hot Springs, Arkansas and sentenced to death. Sentencing patterns in Arkansas reflected discriminatory patterns found throughout the South. Since 1913, Arkansas had executed twenty-two convicted rapists; nineteen of those men were black. All of the victims were white. Yet despite the statistics and Wolfgang’s data that proved racial discrimination in sentencing patterns, the lower courts and the Supreme Court refused to consider race as a causal factor in Maxwell’s sentence. As Meltsner explains, although Maxwell ultimately escaped death, the federal courts refused to “bring themselves to announce that in the second half of the twentieth century Americans still engaged in racial sentencing.”

While rape remained a capital crime in many jurisdictions throughout the decade, the LDF successfully maintained a moratorium on the death penalty until the mid-1970s.

“Frame-ups by white women”: Civil rights and the false claim

While the LDF campaign gained momentum, another set of beliefs on interracial black on white rape gained increasing currency outside of civil rights agitation for racial

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24 The last execution for non-homicidal rape in the United States took place on May 8, 1964. The state of Missouri executed Ronald Wolfe, a white man, 34-years-old at the time of his death. In February 1960, Wolfe was tried and convicted of raping an 8-year-old child on October 18, 1959. The U.S. Court of Appeals Eighth District denied Wolfe’s writ of habeas corpus in 1963. See Wolfe v. Nash, 313 F. 2d 393 (1963). Having exhausted all other legal remedies, Wolfe was put to death the following year.

By 1965 the LDF sought the complete abolition of the death penalty, no matter the crime or the race of the accused. As Eric Muller explains, “Once the Fund formulated a viable argument which attacked the imposition of death on Eighth Amendment grounds and which seemed to interest courts sufficiently for them to grant stays of execution while they considered that argument, there was no ethical way of denying it to any convict facing execution” (Muller, 168-169). Muller further quotes Michael Meltsner who explained, “once the lawyers knew the legal theories that could win stays of execution, they felt morally obliged to use them” for all convicts on death row, regardless of race or crime (Meltsner, as quoted in Muller, 169). A moratorium on the death penalty lasted from 1967 until 1977.

equality. Many civil rights activists boldly relied on the trope of the lying white woman, most famously articulated by Ida B. Wells in her late-nineteenth century campaign against lynching, to defend alleged black rapists. During the post-WWII era, black papers became much more adamant about denouncing white women’s accusations of black rape. Beginning in the late 1940s, the black press frequently (and sarcastically) referred to cases of black-on-white sexual violence as “Negro-Did-It” crimes.26 The Chicago Defender, the nationally distributed and the most influential black weekly since WWI, echoed this.27 In speaking to charges of black-on-white rape, a 1960 Defender article cited the report of a commission’s study on lynching that found “girls and women who had posed as victims [of rape] made these charges to… divert suspicion from some white man, to reconcile their parents, to attract attention, or ‘just to have a little excitement’”28 Similarly, a 1961 Defender article reported that many African-Americans “have been lynched for reportedly raping white women… in numerous cases, however, rape charges were fabrications of whites attempting to cover their own misdeeds.”29 Further buttressing the myth of the false claim, a 1967 Defender article declared that “Lawyers representing Negroes in rape cases note that often the cases are frame-ups by white women who agreed to have relations with Negro men in an effort to get them into trouble. In other cases, the white women simply scream ‘rape’ to cover up their own


27 Over two-thirds of the Defender’s readership was outside of Chicago. See the Chicago Defender website at: http://www.chicagodefender.com/


29 George Daniels, “Lynching Rare Now, But Hate Isn’t,” Chicago Defender, May 9, 1961.
dereliction—to which they had more than willingly consented.”

Building on long-standing legal traditions that viewed all women’s accusations of rape with suspicion, activists for racial justice explicitly racialized her; they created an identity for the accuser in which her whiteness verified the assumption that she was lying.

While scholars have extensively studied the existence and repercussions of the Southern rape myth, there has been hesitation to consider seriously the equally potent counter-myth of the false claim. Historians have generally dismissed white women who alleged rape against black men as liars, without any further engagement. As Diane Miller Sommerville points out, it would appear contradictory that the study of a topic as gendered as rape could give anything less than equal treatment to females. However, black-on-white rape has been so politicized during the twentieth century from the vantage point of racial oppression that the historical scholarship has firmly cast white women as false accusers only. Given the history of violence against black men, it is no wonder, Sommerville contends, that historians “react empathetically to the accused and antagonistically (or at least indifferently) to the accuser.” In the context of white fears and obsession of perceived black male criminality, which often resulted in extreme violence and oppression of black men, this is not surprising.

By the mid-twentieth century, the trope of the lying white woman was no longer exclusive to civil rights circles. Following the prompt of the civil rights movement, a vocal group of scholars, authors, activists, and intellectuals sought to debunk the myth of


32 Sommerville, 245.
the black rapist—the long held white Southern belief that black men were intent on raping white women—by relying on the myth of the false claim—the belief that women lied or exaggerated about sexual violence, “crying rape” in order to hide their own transgressions. These authors and intellectuals provided the legitimacy to push the lying white woman into mainstream consciousness.

Swedish economist Gunnar Myrdal’s highly acclaimed and influential 1944 study of black-white race relations in the United States, *An American Dilemma*, spoke directly to the false claim. Myrdal wrote, “the Negro rape rate is fallaciously high; white women may try to extricate themselves from the consequences of sexual delinquency by blaming or framing Negro men; a white woman who has a Negro lover can get rid of him or avoid societal ostracism following detection by accusing him of rape.”\(^{33}\) While Myrdal did allow for some instances of actual black-on-white rape, he argued these were most likely extremely rare. As he wrote, “real cases of Negro raping of white women probably involve only psychopathic Negroes, at least in the South, for punishment is certain and horrible.”\(^{34}\) The corresponding belief that no black man would be so crazy as to rape a white woman further supported the trope of the lying white woman.

Freudian psychoanalytic views of women who claimed rape further buttressed beliefs in the false claim. In her 1944 two-volume publication, *Psychology of Women*, Freudian disciple Helene Deutsch described the hysterical, masochistic woman who misunderstood her “rape fantasies” and reacted to them as though they were real. On

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34 Myrdal, 973.
interracial rape Deutsch wrote, “My own experience of accounts by white women of rape by Negroes… has convinced me that many fantastic stories are produced by the masochistic yearnings of these women.” As scholarship emerged denouncing the Southern rape myth, the counter myth of the lying white woman gained authoritative legitimacy.

Also indicative of the changing climate towards interracial rape was the reception of Harper Lee’s 1960 novel *To Kill a Mockingbird*. Set in a rural Alabama town during the 1930s, the story follows Atticus Finch as he defends a local black man, Tom Robinson, against an accusation of rape by Mayella Ewell, a poor white woman. As the story unfolds, the reader learns that the rape charge is in fact false. Once Ewell’s sexual relationship was discovered by her father, she “cried rape” to cover her own shame and guilt. Tom Robinson narrowly escapes death by a lynch mob while awaiting trial, and is ultimately convicted of rape by an all-white jury. He is sent to prison and later shot when he attempts to escape. *Mockingbird* became a best seller and was widely acclaimed for its honest portrayal of racial injustice and social issues. Two years later the book was made into a film, reaching millions more Americans. It would become the “best known fictional representation of a false rape charge brought by a white woman against a black man in a southern town” and arguably helped to support the assumption that most, if not all, cases of black-on-white rape were fabrications. By the 1960s, as authors and

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scholars gave additional legitimacy to the false claim, the trope of the lying white woman became a potent myth in the American imagination. 

“An incredible record of sexual promiscuity”\textsuperscript{38}:
\textbf{The Use of the False Claim in the Giles-Johnson Case}

The case of James V. Giles, John G. Giles, and Joseph Johnson, three young black men convicted of raping a 16-year-old white girl in Montgomery County, Maryland in 1961, speaks to the new potency of the false claim. Within 17 months of the accusation, all three were convicted of rape and sentenced to death by lethal gas. In response, a group of mostly white Montgomery County residents formed the Giles-Johnson Defense Committee, a group initially focused on reducing the sentencing for the three. After some investigations, however, the committee became convinced that the three were innocent and deserved freedom. Alongside the defendants’ lawyers, other concerned citizens, and religious leaders, the Giles-Johnson Defense Committee fought tirelessly for the next seven years to acquit the trio. Relying on the popular notion that white women fabricated charges of rape, the Giles-Johnson Defense Committee sought to discredit the prosecuting witness, Joyce Roberts, by portraying her as mentally unstable, promiscuous, and falsely alleging rape to cover her own bad behavior. When mainstream liberal, non-leftist whites, described by Giles lawyer Hal Witt as “not civil rights people,”\textsuperscript{39} rallied to the cause, this marked a significant change from earlier decades when civil rights agitation around cases of interracial rape was limited to politically radical groups like communists in the 1930s or leftists and civil rights activists in the 1950s. The trope of the

\textsuperscript{38} Harold Knapp in the radio program, “In Your Hands…” An Appeal for Justice to the Governor of Maryland, WWDC Radio Documentary Analysis, Oct 2, 1963, box 10, folder 5, Archives of the Giles-Johnson Defense Committee, Special Collections, University of Maryland Libraries, hereafter GJDC.

lying white woman had gained enough credibility outside of social justice movements that by the time of the Giles-Johnson case, it showed signs of holding sway in white public opinion in a border state.

Exactly what happened in the late evening and early morning hours of July 20 and 21, 1961 will never be known, although some degree of sexual coercion clearly took place. The incident happened at the dead end of Batson Road—a quiet, sparsely settled road that served as an entry point to the Paxutet River’s Rocky Gorge reservoir. Young people regularly used the reservoir for fishing and swimming. The wooded and fairly secluded area was also a popular lover’s lane.

Joyce Roberts, the state’s 16-year-old prosecuting witness, and her 21-year-old companion, Stewart Foster, both white, had been to the reservoir earlier that evening with two other male friends. Their car, which was parked along Batson Road, had run out of gas. Foster and Roberts were waiting in the car as their two friends went to get gas. John and James Giles, 22 and 19 years old, and Joe Johnson, 23, had also spent the evening at the reservoir fishing and swimming with some of their friends. The three young men were walking home when they saw Foster and Roberts in their car. They reached the car and, after an exchange of words, a fight broke out between them and Foster, leaving Foster with a bloody lip and semi-conscious outside of the car. Roberts ran into the nearby woods. John Giles ran after her, followed shortly by James and Joe Johnson. At that point, a sexual encounter of some sort took place. Meanwhile, Foster had run to the nearest house on Batson Road and called the police. When the police arrived on the scene, the Giles brothers and Johnson had fled and Roberts was found crying, wearing only her blouse. Over the course of the next 24 hours, the police located both of the Giles
brothers and Johnson. Roberts later identified them in separate police line-ups and the police charged the three with rape and held them without bond. A grand jury indicted the three on charges of rape in October 1961. Two months later, an all-white jury found John and James Giles guilty as charged and both were sentenced to death by lethal gas. Joe Johnson, tried separately in a neighboring county, was convicted of rape by a jury of ten whites and two blacks in September 1962 and also sentenced to death.

Within a year of the Giles brothers sentencing, a group of mostly white middle class Montgomery County residents rallied to their side, forming the Giles-Johnson Defense Committee in July 1962. Montgomery County resident Frances Ross, for whom James and John Giles’ mother worked as a maid, spearheaded the committee. Ross explained in a newspaper editorial:

The committee had been organized at a meeting of individuals who had been invited by other individuals. It was not summoned or sponsored by any church or organization of any kind. The meeting stemmed from conversations among a number of us who have employed the parents of the Giles brothers, including the former assistant pastor of Marvin Memorial Church, where the parents worked for 13 years.40

In the past, Ross had some involvement in political campaigns but nothing close to the enormity of what became the work of the defense committee. A liberal Democrat, she was an active member of the League of Women Voters and chaired her church’s commission on social concerns. This commission worked in the community for better

40 Mrs. Howard Ross, “Clarification,” unknown newspaper source, box 12, folder 3, GJDC. Date probably close to August 1963.
race relations, penal reform, and better schools, and had a strong anti-capital punishment stance.\textsuperscript{41} Indeed the harsh sentencing initially caught Ross’ attention and prompted her to action. Believing that the men were guilty but that the death sentence was far too harsh a punishment, Ross explained:

The first thing I did was to call the lawyer who had defended the boys, and ask him if this was a customary sentence in Montgomery County… the lawyer assured me that this was unusual even for Maryland as a state… I felt that something should be done to try to get this sentence changed.\textsuperscript{42} 

Most defense committee members also joined in response to the severity of the punishment. Key defense committee member Alice Alt, who also volunteered with the NAACP, was “passionately opposed to capital punishment.”\textsuperscript{43} The severe sentencing prompted her to become intimately involved in the defense. In fact, without the imposition of the death penalty, the Giles brothers and Johnson may have never received any outside attention at all. A 1967 \textit{Time} magazine article reported, “though the three hardly thought so then, they were actually lucky to get the death sentence. The punishment was so severe that a group of white citizens began their own investigation.”\textsuperscript{44} 

A campaign to save three convicted criminals from death row would not have seemed particularly out of place in the 1960s. Numbers of execution steadily dropped


\textsuperscript{42} “In Your Hands…,” GJDC.

\textsuperscript{43} Francis Strauss, \textit{Where Did the Justice Go? The Story of the Giles-Johnson Case} (Boston: Gambit, Inc., 1969), 47.

\textsuperscript{44} “Lucky Death Sentence,” \textit{Time}, November 10, 1967.
from one hundred and five in 1951, to fifty-six in 1960, and finally to seven in 1965.\textsuperscript{45} Gallup polls reported declining public approval for the death penalty over that time. Historian Stuart Banner attributes this to changing beliefs about criminals and criminality. Beginning at the turn of the twentieth century, criminologists and doctors asserted that criminals acted on biological or social forces beyond their control, rather than free will. Once criminals were seen as “genetically or environmentally predisposed to commit crimes,” Banner argues, “the death penalty correspondingly ceased to be seen as just punishment.”\textsuperscript{46} By mid-century, Supreme Court justices also shared a growing belief that the death penalty itself was unwise and wrong. Justice Robert H. Jackson reportedly commented that capital punishment “completely bitches up the criminal law.”\textsuperscript{47} Finally, in October 1963 Justice Arthur Goldberg wrote the \textit{Rudolph} minority dissent.\textsuperscript{48} In this context, the Giles-Johnson Defense Committee mounted a campaign to save the lives of the three young men.

Although Frances Ross faced “some hostility and much apathy” in the early stages of her campaign, she found “natural allies in the county among those newer suburbanites” whom one reporter described as “Washington-oriented and Washington-sophisticated.”\textsuperscript{49} Ross found several important allies among the membership of

\textsuperscript{45} Stuart Banner, \textit{The Death Penalty: An American History} (Cambridge: Harvard University Press, 2003), 244.

\textsuperscript{46} Banner, 209.

\textsuperscript{47} As quoted in Meltsner, \textit{Cruel and Unusual}, 22. Jackson believed that capital punishment unnecessarily multiplied trials and appeals, and sentimentalized and sensationalized the entire judicial process.


Montgomery County’s Committee for Democratic Practices, a group which organized in response to statements by members of the county Commission of Human Relations that there was “no Negro problem” in Montgomery County. Defense committee member Frances Strauss reported that those who began meeting were either moved by “pity and rage against this injustice” or a strong sense of political partisanship. As Strauss explained in her documentation of the case, “the county’s casual disposal of the Giles brothers… was such a dramatic instance of the old-line courthouse attitude toward Negroes that a fight to save their lives became a fight against that attitude.”

Described in a *Washington Post* article as a group “headed by a housewife and composed of church workers, civil libertarians, those interested in better race relations and an assortment of concerned residents,” the Giles-Johnson Defense Committee listed 75 members by July 1964.

Although empathetic to the plight of the Giles brothers and Johnson, the NAACP did not dominate the defense efforts for the accused. Mary Giles, mother of James and John, had contacted the president of the Montgomery County NAACP in February of 1962. The organization provided some financial assistance and support for the trio, and suggested Hal Witt, a young idealistic lawyer from Washington, D.C. and Joseph Forer, volunteer counsel with the NAACP, to independently represent the Giles brothers and Johnson. During the spring of 1962, Witt agreed to take the case pro bono (Forer would

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50 Strauss, 42.

51 Strauss, 45.


53 The NAACP had a strong history of representing black men accused of rape by white women. Southern black lawyers volunteered their time and litigated dozens of these cases during the 1930s-1960s.
join shortly thereafter). Frances Ross also strategically decided to keep the NAACP in a lesser role. When she invited the organization to speak at her church, she heard grumblings from conservative church members about “that communist organization.” Ross decided that a majority white citizens committee would be the most effective group to fight this racial injustice. Still, the NAACP supported the Giles-Johnson Defense Committee. The local Baltimore chapter, for example, held prayer vigils and NAACP representatives also attended occasional defense committee meetings.

Montgomery County resident Harold Knapp, an analyst for the Pentagon who joined the committee in early 1963, quickly became a “prime mover” of the group and pushed the committee toward the goal of reversing the conviction. A liberal Democrat in the mold of Adlai Stevenson, Harold Knapp first read about the case in the Montgomery County Sentinel, a weekly community newspaper, and found the death sentences overly severe. His interest piqued, Knapp read the transcripts of both the trials. He noticed several contradictions between the testimonies given at the two trials by Joyce Roberts and Stewart Foster, and pursued his own investigation into the case. By October 1963, Knapp had compiled a 150-page report based on his extensive research, investigative work, and interviews with principal actors in the case, including Stewart Foster and other youth who associated with Joyce Roberts. The report cast considerable doubt on the credibility of Roberts and argued for the acquittal of the accused.

In their defense of the Giles brothers and Joe Johnson, the legal team and the citizen’s committee portrayed Joyce Roberts as an implausible rape victim. They argued

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54 Smith and Giles, 138.
55 Strauss, 98.
that it was not Roberts but the Giles brothers and Johnson who were the victims of injustice. As Harold Knapp wrote in a 1963 *Montgomery County Sentinel* editorial, “by an extraordinary chain of events, three peaceful citizens of Maryland who had been spending an evening swimming and fishing near their homes ended up on death row, convicted of the heinous crime of rape. And in no small part it happened because a 16-year-old sexual adventuress, out of parental control, was 11 miles from home at midnight, in the back seat of a parked car with a 21-year-old known troublemaker.”

The Giles-Johnson defense capitalized on mainstream legal approaches to women rape victims, casting Roberts as a distrustful and deceitful girl.

Following the convictions of the Giles brothers and Joe Johnson, the defense sought clemency and eventually full acquittal based on Roberts’ history of sexual promiscuity, bad behavior, and potential mental health issues. In early 1963, after several failed appeals for the three, the defense committee looked to Maryland’s governor for clemency. The Committee launched a campaign to collect signatures and pressure the governor to grant clemency, arguing that based on “the circumstances in this case… the extreme penalty ordered for these three young Negroes is much too severe.”

In preparation for the October 1963 hearing with the governor, Harold Knapp and other committee members compiled a 150-page report that portrayed Roberts as a girl of loose morals with a history of sexual promiscuity. Knapp even attempted to track down the 16-17 boys that, according to John Giles’ testimony, Roberts had had sex with the

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56 “Full Pardon Asked for Giles-Johnson Case Defendants” *Montgomery County Sentinel*, July 26, 1963, B1, GJDC.

57 “Wanted! Your Signature and Your Support!,” unidentified newspaper source, Box 12, folder 3, GJDC.
week of the alleged rapes. The report included multiple testimonies by area residents who spoke poorly of Roberts’ history. John Patrick Stephens, who had testified at Joe Johnson’s trial about Roberts’ bad reputation, wrote, “I think she is just one of those type of girls that after she got a feel of sex she wanted a lot of it. About all she was known for around our town was for sex.”

The legal defense was unaware of the extent of Roberts’ history of sexual promiscuity at the time of the original trials and therefore did not present it before the jury as evidence. Committee members believed that had the jury known of Roberts’ sexual history, they would have acquitted the Giles brothers. When speaking publicly about the case, the committee underscored Roberts’ poor reputation as evidence of her false allegation. In an October 1963 radio broadcast, for example, Knapp commented that Roberts had “an incredible record of sexual promiscuity,” as though that itself offered proof of Roberts’ false claim.

On October 24, 1963, Governor J. Millard Tawes commuted the sentences of all three defendants to life imprisonment. However, he refused to question their guilt, stating, “the accused were represented by able counsel, they were tried in accordance with due process of law, and their convictions have been upheld by the Maryland Court of Appeals… in my considered opinion, the guilt of these three persons has been established through the judicial process.” Although their hopes for full acquittal were

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58 Appendix 3, The Giles-Johnson Defense Committee Documentation of the Case, GJDC.

59 This reasoning was supported by the fact that several jurors, after learning from committee members of Roberts’ sexual history, signed letters stating that they would have urged for acquittal had this information been known to them at the time of the trials.

60 Harold Knapp in the radio program, “In Your Hands…,” GJDC.

61 Cover letter, The Giles-Johnson Defense Committee Documentation of the Case, GJDC.
not met, the Giles-Johnson defense saw clemency as a major victory and they continued to fight for full acquittal.

While the defense committee had set about characterizing Roberts as a sexual adventuress, a liar, and a delinquent, the legal team also based its arguments in court on Roberts’s history of sexual promiscuity to discredit her credibility as a witness. Relying on the alliance that had developed over the twentieth century between psychiatry and the law in cases of rape, defense lawyers alleged that Roberts was a “nymphomaniac” and thus mentally unfit to testify.\(^6^2\) In a May 1964 post-conviction petition to the Circuit Court of Montgomery, the Giles’ defense attorney argued for a new trial based on denial of due process. In their petition, the defense attorneys argued that the “prosecutrix was sexually promiscuous, habitually engaged in sexual intercourse with many men, including persons not known to her, and had frequently participated in oral sodomy.”\(^6^3\) The defense argued that had this information been known at the time of the original trial, it would “in all likelihood have resulted in the acquittal of petitioners.”\(^6^4\) While the lower court agreed and granted the Giles brothers a new trial, the Maryland State Court of Appeals reversed the decision in July 1965. Faced with this ruling, the Giles-Johnson defense appealed to the U.S. Supreme Court. In a 5-4 split decision, the U.S. Supreme Court vacated the decision of the Maryland Court of Appeals.\(^6^5\) The case would be re-tried in the Maryland state courts.


\(^{63}\) Ibid.

\(^{64}\) Ibid.
In October 1967, the Giles brothers finally saw their case re-tried before the Circuit Court of Montgomery County. Joyce Roberts, who had moved to Florida and was pregnant at the time, refused to return to Maryland. At an extradition trial in Florida, Roberts testified:

For six years this has been repeatedly brought into my life. It has caused friction; it has caused my children to be upset; it has caused my first marriage to break up... I have testified many times, as I have said, for the state of Maryland as their witness, and I have tried very hard to cooperate with them for a long, long time; and what I got out of this was a great deal of humiliation, my reputation destroyed. Nothing but harsh publicity on my side, and the defendants in this case have been released on bond, as I understand it, and no one gives me any encouragement that I will be protected when I go there, and my physical and mental stability and safety will be assured, and also they do not give me any encouragement that these people will receive any punishment for their crime.  

A Florida judge ruled that Roberts did not have to return to Maryland. Having no witness, the state of Maryland could not effectively prosecute the case. On October 30, 1967, the state dropped the case and, after almost six years in prison, John and James Giles were free men. Joe Johnson was released from prison shortly thereafter on February 10, 1968, following a full pardon by Maryland’s governor.

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65 Giles et. al. v. Maryland, 386 U.S. 66; 87 S. Ct. 793 (1967)

66 Joyce Roberts, as quoted in Smith and Giles, 277.
The story of the Giles-Johnson case is a complex interplay of both racialized and gendered constructions. The seeming ease of conviction and the excessive punishment for three young men whose crime lacked excessive brutality suggests what a *Washington Post* journalist recently described as the “old Montgomery” complete with a Southern court and judge “brought up in the atmosphere of paternalistic acceptance of the racial norms of the time.” Yet as much as the Giles-Johnson case was about race, there were gendered dynamics also at play. The defense relied on mainstream legal proscriptions of proper gendered behavior to dismiss Roberts’ claims and capitalized on the longstanding legal trend of doubting women’s allegations of rape. Significantly, the mostly white, mainstream citizen’s committee also embraced the trope of the lying woman in their public pronouncements defending the three black men against a white woman’s accusation.

“*We don’t have time for this*”\(^{68}\): Black Women and Intra-racial Rape

Civil rights responses to black women’s allegations of sexual violence were entirely based on the race of the attacker. Black women attacked my white men found much support within the civil rights community. Their experiences resonated with the civil rights framework of rape as a tool of racist oppression. During this time activists launched major campaigns in defense of black women who had been assaulted by white men. Indeed, as historian Danielle McGuire argues, the civil rights movement began in

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\(^{67}\) Snyder, “When Racial Justice Was Young.”

\(^{68}\) Gwendolyn Zoharah Simmons as quoted in: “No! The Rape Documentary,” DVD, directed by Aishah Shahidah Simmons (USA: AfroLez Productions, 2006).
part out of organized protests against the ritualistic rape of black women. Yet this is only part of the story of black women’s experiences with rape during the time period. While the politicization of interracial rape as racist oppression may have served black women victimized by white men, the silences around black women victimized by black men continued. Within the context of a movement against racial oppression, which understood sexual violence as a tool of racial oppression, there was no room for black women’s experiences with black male sexual violence. Responding to sexual violence as gendered oppression within the community was incongruous to a movement that sought to counter white racist constructions of black male sexuality and criminality.

Instances of organizing around intra-racial sexual violence within the black community were all but absent. In one rare exception, SNCC student volunteer Gwendolyn Zoharah Simmons was the first and possibly the only project leader during Mississippi Freedom Summer to explicitly establish a policy that barred sexual abuse of any kind amongst her volunteers. Simmons had started as an undergraduate student at Spelman College in the fall of 1962 and began working as a student volunteer for SNCC that year. As a student volunteer she, like many others, admired SNCC leadership, particularly the Mississippi Field Secretaries who were regarded as “the storm troopers on the front lines, battling the Ku Klux Klan and all these incredible violent white people who were out to kill them.” During her second year of school, Simmons met a well-known and respected black Mississippi field secretary, whom she described as “one of our heroes.” She accepted his invitation back to the dorms and he raped her, despite her

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70 Gwendolyn Zoharah Simmons as quoted in: “No! The Rape Documentary.”
struggle and resistance to his advances. When she reported her assault to a SNCC leader, he replied, “we don’t have time for this, this is nothing, you should have given him some anyway.”\textsuperscript{71} While the civil rights movement had politicized sexual violence as a tool of oppression, this was only legitimated in cases of interracial rape. Simmons, as a black woman attacked by a black man, was not considered a victim since her rape could not be constructed as a tool of racism.

The following year, Simmons was assigned as a Council of Federated Organizations project director in Laurel, Mississippi. As a result of her own assault and the sexual abuse of women she witnessed in the movement, Simmons made it an explicit point during her project orientation that “no sexual abuse of any kind would be tolerated and any infringement of that would be grounds for being expelled from the project.”\textsuperscript{72} In response, SNCC men jokingly referred to Simmons as an Amazon and many refused to join her project.

Despite a lack of collective efforts to organize against intra-racial sexual violence, African-American women did bring legal charges against black men who raped them. Dawn Rae Flood’s work on African-American women victims in Chicago courtrooms during the 1950s demonstrates that many women did assert their rights as individuals deserving of justice after intra-racial attacks regardless of the fact that the “the broader minority community remained conspicuously silent about their allegations.”\textsuperscript{73} Unable to

\textsuperscript{71} Ibid.


\textsuperscript{73} Dawn Rae Flood, “‘They Didn’t Treat Me Good’: African American Rape Victims and Chicago Courtroom Strategies During the 1950s,” Journal of Women’s History 17, no. 1 (Spring 2005), 42.
make arguments based on racial discrimination for their clients, defense attorneys in cases of intra-racial rape relied on these racist stereotypes of black women, casting them as unbelievable rape victims. In so doing, Flood argues, defense attorneys “undermine[d] civil rights activism, by verbally abusing black women in court even while they defended black men against criminal accusations.”\textsuperscript{74} The conceptualization of rape as a form of racial oppression allowed for this seemingly ironic situation where black women victims were subjected to excessively harsh treatment. Indeed, the politics of race and rape created a striking contradiction where black women found support from the larger civil rights community in some manifestations of rape, but were completely undermined in others.

Motivated by race politics, civil rights activists in the mid-twentieth century defined interracial rape as an arena of significant racial oppression. In so doing, the movement used sexual violence as a tool to advocate for racial justice. Rape was politicized not as a crime of a man against a woman, but of a \textit{white} man against a \textit{black} woman, or of a white dominated state against black men (as in the cases of black-on-white rape). This emphasis is understandable, particularly in the context of an oppressive and racist white society. Yet this limited approach also proved to have problematic consequences. First, in their defense of black men, some civil rights activists capitalized on longstanding skepticism of women who alleged rape and reinforced a legal tradition that was very hostile to women. By relying on the trope of the lying white woman, civil rights activists underscored the belief that \textit{all} women lied about rape. This contributed to the continuation of a hostile environment for women, both white and black, who brought

\textsuperscript{74} Flood, 41.
charges of rape before the courts. Second, by focusing solely on interracial sexual violence, civil rights activists neglected the majority of black rape victims: black women who were assaulted by black men.\(^7^5\) Rape as a force of oppression was only made visible in the context of an interracial assault, and therefore the full range of black women’s experience was not acknowledged.

\(^7^5\) In a study of reported rapes in Philadelphia, 1958-1960, criminologist Menachem Amir found that rape was largely an intra-racial act. Black women accounted for over 80% of the victims of black rapists. See: Menacham Amir, *Patterns in Forcible Rape* (Chicago: University of Chicago Press, 1971). Similarly, in a 1967 study of rape in Baltimore, researchers found that of the 629 cases brought to trial, 550 were intra-racial, and 449 were black-on-black. See: Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975), 237.
CHAPTER IV
“RAPE IS A POLITICAL CRIME AGAINST WOMEN”¹
AN EMERGING FEMINIST ANALYSIS OF RAPE

As civil rights activists battled in the streets and in the courts throughout the early 1960s, a majority white youth movement also began organizing in response to racial injustice, protesting the US invasion of Vietnam, and rebelling against middle-class conformity. Calling themselves the New Left (to distinguish themselves from the socialists and communists of the 1930s and 1940s Left), these activists emphasized the connections between personal oppression and the larger political and social landscape, and advocated for liberation from social oppression. White women and women of color activists within the various protest movements of the 1960s began pushing for the civil rights and New Left analysis of liberation to incorporate gender oppression specifically.²

Many white women were particularly disturbed by their treatment in civil rights and New Left organizations and began challenging the male supremacy that they experienced inside these movements. These women argued that they were relegated to tasks of movement “housewifery,” exploited as sexual objects, and denied access to public leadership roles.³ Reflecting the language of racial equality, they argued for “women’s liberation” from male dominance and sexism. Contrary to New Left politics, these activists understood women’s oppression not as the result of capitalism, but rather, as historian Alice Echols explains, that “women constituted a sex-class, that relations

¹ Flyer, New York Radical Feminists Speak-out on Rape, box 14, folder 1, Susan Brownmiller papers, Schlesinger Library, Radcliffe Institute, Harvard University (hereafter Susan Brownmiller papers).

² Benita Roth documents this history in Separate Roads to Feminism: Black, Chicana, and White Feminist Movements in America’s Second Wave (New York: Cambridge University Press, 2004).

³ See Roth, 53.
between women and men needed to be recast in political terms, and that gender rather than class was the primary contradiction.” 4 Men in the movements mocked and resisted this analysis, arguing that class and race struggles were paramount to gender. In response, many of these white women abandoned New Left groups and developed separate radical feminist groups and organizations. 5 Drawing on New Left theorizing, these feminist activists organized under the banner of “the personal is political,” and formed the radical feminist arm of the emerging women’s liberation movement.

Rape on the Feminist Agenda

White radical feminists were the first to politicize sexual violence within the 1970s second wave of feminist activism. Sexual violence fit squarely into a larger analysis of male dominance and personal politics. Taking a very different approach from civil rights activists, these feminist activists defined all sexual violence as the ultimate expression of the patriarchal oppression of women. As radical white feminists in New York began discussing rape in consciousness-raising groups in the fall of 1970, they realized “rape is not a personal misfortune but an experience shared by all women in one form of another. When more than two people have suffered the same oppression, the


5 See: Roth, Separate Roads. Women of color also agitated against women’s oppression within racial justice movements. On black women and black feminism specifically see: Kimberly Springer, Living for the Revolution: Black Feminist Organizations, 1968-1980 (Durham: Duke University Press, 2005). Springer explains that, “sociopolitical conditions and social movements of the late 1960s gave rise to an unprecedented growth in black feminist consciousness” (Springer, 1). These women’s voices and visions fell “between the cracks” of civil rights and feminist organizing, and they created their own organizations to speak as black women with feminist consciousness.
problem is no longer personal but political—and rape is a political matter.\textsuperscript{6} This feminist politicization of rape came up against longstanding beliefs about rape, its victims, and its perpetrators. Feminists asserted that rape was a political act of terror and violence against women, and not simply an act of sex; rape was the result of sexist cultural norms perpetuated by the stereotype of men as aggressive and superior and women as passive and inferior; and rapists were “normal” men, not deranged or maniacal perverts. Feminists argued that because of misconceptions about rape, society and its legal and medical systems had failed women victims to an extraordinary degree. Based on their understanding of sexual violence against women, the New York Radical Feminists concluded that rape “is a matter to be dealt with in feminist terms for female liberation.”\textsuperscript{7}

The first radical feminist writings on rape to have a reverberating impact appeared in the July 1970 issue of Berkeley’s \textit{It Ain’t Me Babe}.\textsuperscript{8} Founded by several members of Berkeley Women’s Liberation, but operating as an independent feminist newspaper, \textit{Babe} ran for one year and published its inaugural issue in January 1970. It was the first national women’s liberation newspaper, with subscribers throughout California and across the country. In issue 10, \textit{Babe} printed the firsthand account of an unnamed local artist who was raped on her way home from a women’s liberation meeting in the East Bay. As she hitchhiked her way back across the bay, two GIs home twenty days from


\textsuperscript{7} Manhart and Rush, “New York Radical Feminists Manifesto.”

\textsuperscript{8} White feminists had published articles on rape prior to this. The Cambridge, MA-based radical feminist group Cell 16, for example, published their first article dealing with rape and violence against women as a political issue in the November 1969 of their journal, \textit{No More Fun and Games}. The article, titled “More Slain Girls,” critiqued the media and society’s understanding of sex crimes and advocated women’s self-defense. I highlight the \textit{Babe} articles here because they launched a national feminist conversation about sexual violence.
Vietnam offered her a ride. Sitting in the truck, the author remembered “the split second conspiracy vibe” between the men and the realization that they intended to rape her. After a failed attempt to steer the truck into traffic (resulting with a knife to her throat), the author realized there was nothing she could do. The two men raped her, apologized for what they had done, and dropped her off at a local bus depot.  

Babe ran the story under the title “Anatomy of a Rape.”

The response to the woman’s rape by her boyfriend and male friends, the police, and medical authorities was typical of what feminists encountered in the early 1970s and what enraged them and prompted them to action. The day following her rape, the author’s boyfriend came to her house saying, “Two of them! You must’ve been nice and slippery, wish I’d been here when you got back.” Their friend Jerry followed a few hours later nonchalantly saying, “Hi, how was your rape?” as he sauntered into the house. She phoned the “women’s number” she had received at the women’s liberation meeting the night before to get info on the police. “I was told that the cops would gloat and tease me ‘did you dig it?’ just like a famous Berkeley male radical, Bob Scheer, had recently said to a woman... who had just been raped by two black men in L.A.” Indeed the police were not particularly helpful—the female line operator told her that her local precinct couldn’t do anything until she went to the precinct where the incident happened. “‘I, in my bruised condition, lady?’ ” she asked. The line operator responded, somewhat helplessly, “That’s the law.” She next called a local VD clinic and arranged an appointment with the doctor there for the following day. When she arrived without any symptoms the nurse chastised, “Why I made a special appointment for you because I thought you were having

symptoms!" The indifferent, unempathetic, and callous responses of friends as well as legal and medical authorities were commonplace reactions to sexual violence against women at the time. As feminists in consciousness-raising groups began talking about their personal experiences with rape, they realized the ubiquity of the problem.

The articles on sexual violence first published in Babe ignited the feminist anti-rape movement. “Anatomy of a Rape” was printed alongside two other short pieces on rape, one titled “Fight!,” and the other “Disarm Rapists,” which would quickly become a movement motto. These July 1970 articles as well as a Sept 1970 article titled “Jack the Raper,” which recounted the story of a group of feminist women who attempted to confront a rapist at his wedding, were circulated across the country and “led to a national dialogue about rape.” As Babe founder Bonnie Eisenberg remembers, “the paper lasted only a year but it had a major impact on the women’s movement.” On the east coast, Diane Crothers, a member of the New York Radical Feminists (NYRF) brought the Babe articles to her local consciousness-raising group in the West Village. Members read the articles at a weekly meeting that fall and shared their personal stories of attacks and near misses from sexual violence. Their consciousness raised, the women decided that rape was an important new feminist issue that needed further exploration. Following in the feminist footsteps of the Redstockings who hosted a speak-out on abortion in 1969, NYRF decided to use the power of personal testimonials and hold a speak-out on rape as soon as possible, to be followed by a conference several months later. The NYRF speak-

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10 Ibid.


12 Eisenberg, et. al. “It Aint Me Babe.”
out and conference are remembered as the founding events of the second wave feminist anti-rape movement.

The New York Radical Feminists held their Speak-Out on Rape on January 24, 1971, organizing under the slogan “Rape is a Political Crime Against Women.” The speak-out was held at St. Clement’s Episcopal Church at 423 W 46th Street in the Hell’s Kitchen neighborhood. Nestled amongst a row of brick buildings, St. Clement’s was recognizable by the two rows of gothic style stained glass windows that line its two-story facade. A pointed archway marked the entrance to the church, which had been reconfigured in 1962 to include a theater on the second floor. In this theater space, forty women spoke before an audience of over three hundred about their experiences of sexual assault. The method was so effective that NYRF included another speak-out as part of their conference on rape three months later. Held at Washington Irving High School in Union Square, the New York Post reported that the April 17 conference was likely “the world’s first conference on rape.” Two hundred women attended the all-day event, which included workshops on rape and the law, health and medical issues, rape and psychiatrists, incest and child molestation, and a speak-out. According to NYRF, the act of speaking out on rape served “to define one’s own experience” and described the “real-life situation of women.” In the context of a world where men almost exclusively defined

13 In a 2010 interview, Brownmiller remembered both black and white women speaking out that day. The audience was mostly women, but some men also attended (Susan Brownmiller, in an interview with the author, May 13, 2010). As Brownmiller recounts in her memoir of the women’s liberation movement, In Our Time: Memoir of a Revolution, admission to the speak-out was free for women and $2.00 for men. Men had to be accompanied by a woman to gain entry. Brownmiller took tickets at the door that day and collected between thirty and sixty dollars. See Susan Brownmiller, In Our Time: Memoir of a Revolution (New York: Random House, 1999), 199.


15 Flyer, Rape Conference, box 14, folder 1, Susan Brownmiller papers.
women and their experiences, speaking out was a radical act of self-empowerment. By
telling their own stories, women were “breaking the male myths that have defined their
situation as women and kept them silent.”16 With their personal testimonies, women
began to counter popular misconceptions about rape and revealed the widespread injury
they felt at the hands of the law, medical providers, and society.17 Collectively, their
stories underscored the urgent need for a feminist response.

Stories of abuse ran the gamut from attacks by acquaintances, friends, and trusted
authorities to attacks by strangers in the middle of the night. One woman told of the
depantsing ritual she and her friends suffered as young girls in elementary school. “It was
a symbolic rape. If we tried to fight back, we were beaten… We were grabbed and
dragged into a vacant lot. The boys tore off our pants, spread our legs, and looked. We
couldn’t avoid it… We couldn’t tell our parents. We would be punished and it would be
called protection.”18 Another woman was raped by her fiancée the night before he
shipped out with the Navy. She was 17 years old at the time. “He kept begging me to
have intercourse and I kept saying, ’No, not yet. It’s not right.’ On our last date he pushed
me in the back of his car and held me. I just gave up. After all, wasn’t I supposed to defer
to him for everything?”19 One woman was gang-raped in Beverly Hills when she was 17.
Her parents did not prosecute because the assailants were “neighborhood boys.” Instead,

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16 Connell and Wilson, Rape: The First Sourcebook for Women, 27, 28, 29.
17 The following testimonies come from the NYRF Speak-Out on Rape and the NYRF Conference
on Rape. Most of the available sources do not specify which testimonies came from which of the two
events.

18 Personal Testimony in Connell and Wilson, Rape: The First Sourcebook for Women, 31.

19 Testimony in Susan Brownmiller, Against Our Will: Men, Women, and Rape (New York:
Simon and Schuster, 1975), 393.
she was sent to analysis.\textsuperscript{20} One woman went on a date arranged by her mother with an NYU medical school intern. He raped her. “We got to his room and he threw me in the bed and raped me, just like that. Afterwards he got up as if nothing had happened… I kept thinking about my mother, she’d never believe it.”\textsuperscript{21} Another woman shared her story of assault while hitchhiking in southwestern Connecticut. She took a ride from a truck driver, thinking that was a safer option. “My father used to drive trucks when he was young, and my cousin was a truck driver,” she explained, “they must be good people to take rides from, you know?”\textsuperscript{22} Very quickly she realized she was in trouble and thought to jump out of the truck as they drove. “I think he realized that this was on my mind because at that moment—we were on the highway—he started to attack me while he was driving. He started to beat me down and rip off my blouse. He unzipped his pants and started to beat my mouth and head down on his penis.”

Several women spoke-out about the damaging influence of psychiatry, as well as abuse by psychiatrists. One woman remembered the harmful repercussions of psychiatry in popular culture and the normalization of abuse during her college years. “In psychiatric literature they always write that struggle is a component of the sex act. I think in college I must have met 15 men in my senior year who were really into that. The more you protested, the more determined they were to make love to you in the Sig Ep parking lot.”\textsuperscript{23} Another women told of her abuse by her psychiatrist. “I was figuratively raped by my analyst,” she told the audience. She came from a strict Roman-Catholic family and

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\textsuperscript{20} Testimony in Brownmiller, \textit{Against Our Will}, 406.
\textsuperscript{21} Testimony in Brownmiller, \textit{Against Our Will}, 402.
\textsuperscript{22} Testimony in Brownmiller, \textit{Against Our Will}, 391.
\textsuperscript{23} Testimony in Brownmiller, \textit{Against Our Will}, 393.
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went to see an analyst for her depression at age 18. “I was a virgin, repressed. He [the analyst] asked, Do you masturbate? To a Catholic this is a sin of self-abuse. I said, No. He insisted, Do you know how? I said, Yes. He said, Do it here. In front of me. I couldn’t. My whole therapy was like that.”

Women described the shame and terror of their assaults as well as the hostility they typically faced in the aftermath. The inadequacy of the police and their degradation at the hands of law enforcement was a common feature in their stories. One woman told of her experience waking up in the middle of the night in her Chicago apartment, her hands pinned down and a razor at her throat. “There was this terrible fear of being in the middle of a nightmare that seemed more realistic than ordinary and I couldn’t break it up,” she told the audience. The intruder raped her and disappeared off her balcony. She called the police 45 minutes later.

I got a rather immediate response from about two or three cops and thereafter. They must have started coming about three in the morning and they continually came. I had at least—oh, between—twenty or thirty cops in that night just coming in out of curiosity just to see what the victim looked like. Most of them were extremely rude; they were talking about the mud on the sheets, he certainly was a filthy son-of-a-bitch, did you douche, the questions [were] very brutal at the time. I am not exactly sure who was supposed to be doing the interviewing but they all got in on it.

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And they fixed coffee and sat around my kitchen table until it was time for them to get off work which was at six in the morning.  

She went to the police station later that morning for more questions. “The questions at the station were much more brutalizing than had been in my apartment,” she explained, “They asked me how long the man’s penis was. I really didn’t know. I had no idea.” In the end, the police never found the rapist. Several months after the incident a detective came to her apartment with photographs of suspects, none of whom she could identify. Before the detective left, he asked her on a date.

Another woman told of being gang raped by four men outside of Boston after hitching a ride home with one of them. She had believed his story that he was on his way to visit an uncle in the town she needed to get to. Having missed her bus connection, she took the ride with the man. Three of his friends showed up and got in the car. “I was told to be quiet or I’d be buried here and no one would know. Since I chose to save my life, I decided to cooperate, all along beating myself up for the idiocy of buying such a classic story,” she recounted. After the rapes, the men took her to an apartment where she managed to escape and ran to the local police station. “When I reported the rape, I was coherent, and the police said ‘You’re so clear, are you a sociologist? How come you can tell us everything?’ The police didn’t believe me; they treated me like a criminal. I got disgusted with their questions and slow typing and asked to type my version of the report. They permitted this... The police asked me personal questions especially geared toward

\[25\text{ Testimony at General Meeting, Rape Conference, box 31, folder 2, Susan Brownmiller papers.}\]
my part in the ‘seduction’ or my academic ambition. There was no sympathy for my ordeal, my fear—only the questions pointing to accusations at me… It was unreal.”

The stories women shared stood in stark contrast to the depictions of sexual violence that legal experts and psychiatric authorities had touted in the 1950s and 1960s. Rather than finding an empathetic legal system quick to convict any accused man, almost every woman shared a story of dismissal or additional trauma from legal authorities.

As women publicly told their stories, the cultural acceptance and ubiquity of violence against women became clear. Radical feminists realized the urgency and necessity of galvanizing around rape. Susan Brownmiller, a member of NYRF, remembers that the words of the speakers at St. Clement’s that day “were to reverberate far beyond the confines of the tiny church. So many varieties and aspects of rape had been revealed at St. Clement’s… All of us were reeling from the new knowledge.”

Armed with a new awareness, NYRF and feminists across the country made rape the next major movement issue.

The radical feminist analysis of rape focused on gendered cultural norms as the causal factor in sexual violence against women. On their flyer announcing the speak-out, for example, the New York Radical Feminists declared, “RAPE is the logical result of women being told to be submissive to the dominant male.” In her 1971 landmark article, “Rape: An All-American Crime,” published in Ramparts magazine, Susan Griffin powerfully explained the feminist position. As Griffin argued, the dominant cultural norms…

26 Personal Testimony in Connell and Wilson, Rape: The First Sourcebook for Women, 33-34.

27 Brownmiller, In Our Time, 200.

28 Flyer, New York Radical Feminists Speak-out on Rape, box 14, folder 1, Susan Brownmiller papers.
“interpretation of rape is a product of our conception of the nature of male sexuality. A common retort to the question why don’t women rape men, is the myth that men have greater sexual needs, that their sexuality is more urgent than women’s. And it is the nature of human beings to want to live up to what is expected of them.”29 This construction of male sexuality co-existed with the construction of passive female sexuality and the “companion myth” that all women secretly wanted to be raped. These cultural expectations of aggression for men and passivity for women both condoned and created the conditions for rape to occur. The New York Radical Feminists argued that “the act of rape is the logical expression of the essential relationship now existing between men and women.”30 Drawing from this, feminists argued that the rapist was a “normal” man, and not a maniacal, deranged aggressor. The dominant portrayal of the rapist as somehow abnormal failed to recognize the extent of the problem as well as society’s complicity in promoting sexual violence against women. Indeed, as Griffin argued, “not only does our culture teach men the rudiments of rape, but society, or more specifically other men, encourage the practice of it.”31 As the New York Radical Feminists declared, “the violent rapist and the boyfriend/husband are one. The friend and lover commits rape every bit as much as the ‘fiend’ prowling the streets.”32 In calling for a re-conceptualization of rapists, feminists insisted on the ubiquity of rape and its centrality in US culture. They argued that rape was sexism carried to its logical conclusion. Effective solutions to rape required the undoing of the broader sexist culture

29 Susan Griffin, “Rape: The All-American Crime,” Ramparts 26 (September 1971), 27.


31 Griffin, 30.

and gendered expectations that made men dominant and women subordinate. Sexist beliefs and practices, as the root of the problem, had to be confronted head-on if rape was to be eliminated. As Griffin concluded, “Rape is not an isolated act that can be rooted out from patriarchy without ending patriarchy itself.” Feminists called for nothing short of a social revolution.

By taking women seriously, radical feminists forged an entirely new approach to rape victims. This was true both in terms of the broader cultural understandings of sexual violence and within Left political groups. Coming out of Left movements, many white women who joined the women’s liberation movement struggled with male attitudes towards women and their dismissal of women’s oppression. These attitudes extended to sexual violence. During the 1960s many male leaders and members of the Left regarded sexual violence against women as a joke. In their publications, feminists offered anecdotal evidence of this view. Some Leftist men perpetuated the belief that rape was nothing more than sex, rather than an act of violence or terror against women. In a July 1970 It Ain’t Me Babe article titled “Fight!,” author Erin sarcastically commented on men’s expectations of women’s sexual availability when she wrote, “Our long haired, bearded friends who are searching for a pure and just world seem to feel women can contribute to this beautiful world by being available to men at any time.” Forced sex was one way to guarantee this availability. Erin quoted a male radical who wrote, “The only

33 Griffin, 35.

34 The current historiography on the second wave feminist anti-rape movement fails to address this issue. While scholars of second wave feminism often point to the emergence of the women’s liberation movement partially as a reaction to the male oppression and sexism in Leftist and student-led movements of the 1960s, the feminist politicization of the issue of rape specifically is not historicized in this way. This omission is problematic in that it gives an incomplete picture of the circumstances out of which the feminist politicization of rape arose. Feminists were responding not just to larger cultural conditions, but also the hostility and negligence of the men who were supposed to be their allies in social revolution.
problem I might have is not having a pussy around when I got one up. And that’s no
problem a little rape won’t cure.”

Similarly, women participants in the radical
movement in Seattle commented on the callous remarks of their male counterparts. The
women reported that one of the male leaders “could talk about the availability of a
woman for his bed and joke, ‘Well boys, I guess it’ll take gang rape for this one.’”

In disregarding rape as a serious issue, the male Left perpetuated sexist beliefs, including
the female fantasy of rape. An advertisement in the Berkeley Barb, the most influential
paper of the underground counter culture, stated, “Now, as all women know from their
daydreams, rape has a lot of advantages. No preparation necessary, no planning ahead of
time, no wondering if you should or shouldn’t.” With comments like these, male leftists
reinforced popular beliefs rooted in psychoanalytic theory that women fantasized and
subconsciously wanted to be raped. Responding to this, one workshop participant of the
NYRF April 1971 rape conference commented, “We don’t need the fantasies; it’s real
enough. Rape is real enough.”

When an incident of rape did occur, Left men disregarded it as a serious issue. In
October 1970, former women members of the Seattle Liberation Front (a radical Marxist
group organized in January 1970), reported on this in Iowa City’s feminist newsletter,
Ain’t I a Woman? In August 1970, the authors explained, the SLF sponsored the Sky
River Rock Festival. At the event, three women were gang raped, one of whom was
stabbed attempting to escape, and a fourth woman barely evaded attack. When brought

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36 “Women Inspired to Commit Herstory,” Ain’t I a Woman?, October 9, 1970.
37 Berkeley Barb advertisement, as quoted in Griffin, “Rape: The All-American Crime,” 27.
38 Sue, from an NYRF Rape Conference workshop, in Connell and Wilson, 12.
to their attention, the male leadership of SLF dismissed the attacks. According to the authors, one male leader responded with, “Well, it depends on the circumstances, but I never saw anything wrong with a little fucking myself.” The women continued that “most of the men brushed it off: ‘I don’t believe there were any gang rapes…’ ‘the women got what they deserved.’”

In focusing seriously on the victims of sexual violence, second wave feminists parted drastically from male Left attitudes. Writing on the novelty of the feminist politicization and grassroots organizing around rape that began in the early 1970s, feminist author Susan Brownmiller commented, “none of it had been predicted, encouraged, or faintly suggested by men anywhere in their stern rules of caution, their friendly advice, their fatherly solicitude in more than five thousand years of written history. That women should organize to combat rape was a women’s movement invention.”

This lack of attention came equally from men on the Left who, many feminists argued, served to reinforce women’s oppression and subjugation rather than work as allies in revolutionary struggles.

This radical new politicization of rape also set feminists apart from earlier social movements that focused solely on interracial violence and otherwise dismissed rape as a serious political problem. In so doing, feminists parted from civil rights activists in two significant ways. First, they viewed intra-racial rape as well as interracial rape as cause for serious concern. Second, in contrast to the civil rights emphasis, white feminists for the most part did not take up the cause of black men falsely accused of rape. In keeping

39 “Women Inspired to Commit Herstory,” Ain’t I a Woman?, October 9, 1970. Charged with federal conspiracy for sponsoring a violent protest at the Federal Courthouse in downtown Seattle in February 1970, the leaders of SLF became known as the Seattle Seven and protests were mobilized in their defense that year.

40 Brownmiller, Against Our Will, 446-447.
with a gendered analysis of sexual violence, feminists focused their attention not on the alleged attackers in cases of rape but on the victims of assault. This general lack of attention to black men’s victimization would come under heavy critique from leftist women in the racial justice movement later in the decade.

Although 1970s feminist anti-rape activism originated in white radical circles, feminists of color as well as ideologically diverse feminists actively participated in and transformed the feminist anti-rape analysis. As Maria Bevacqua argues, “antirape organizing crossed over the ideological and racial boundaries and served as a bridge issue to unite feminists.”41 Black feminist activists came to the anti-rape movement with a distinct historical relationship to sexual violence, both in terms of defending black men accused of raping white women and speaking out against white men’s attacks on themselves. Supported by racial justice movements, black women had a long history of organizing in response to interracial rape. In the 1970s, black women set themselves apart from their predecessors when they focused on the intra-racial violence within their own communities.

In 1973, black feminists politicized sexual violence as a black community issue. Organized in New York in May 1973, the National Black Feminist Organization sought to address the marginalization of black women in both the women’s liberation and civil rights movement. In November of that year, members organized their first regional conference where they held workshops on a range of concerns including women’s liberation, politics, lesbianism, and rape. NBFO member Essie Green Williams organized

the rape workshop. In an interview she commented, “the very fact that women were in
the workshop meant that rape was an issue for black women. There was a sharing of
different political perspectives and our emotional experience. One woman said she
thought rapists should be hung, and some women in the workshop were not prepared for
that kind of anger.” The following year, on August 25, 1974, NBFO and NYRF co-
organized a speak-out on rape. Held at Junior High School 104 located outside of
Stuyvesant Town in Manhattan, the Joint Speak-out on Rape and Sexual Abuse included
a consciousness-raising session in the morning, followed by an open mike for the
audience, workshops, and self-defense demonstrations in the afternoon. Here, black and
white women shared their stories of abuse and the degrading treatment they faced in the
aftermath.

Exposing violence within their communities was challenging for many black
women in the context of a racist society that criminalized black people. In an interview
with two members of the New York Radical Feminists, Essie Green Williams expressed
this difficulty. Seeing it as an issue that would produce “some very sharp clashes”
Williams explained,

Rape is one of those issues that are (sic) going to have to be
addressed in the black community as more women become aware
of what the [women’s liberation] movement is all about, but as an
issue it is going to touch on some aspects that you don’t want out
there. It will be very difficult, very painful to address, because

42 “Interview with Essie Green Williams,” in Connell and Wilson, 246. For scholarship on the

43 “Speakout fler,” August 1974, box 14, folder 1, Susan Brownmiller papers.
what you’re talking about is violence against each other… So some people in the black community will feel that the whole issue of rape is a put-down and that these problems within the community should not be exposed.44

In the context of the continuing black freedom struggle, black women’s responses to intra-racial rape proved particularly problematic. Women who were active in black liberation struggles sometimes found themselves at a crossroads when it came to responding to violence from within the community. The testimony of one woman at the April 1971 NYRF Rape Conference emphasizes this. In her testimony, the speaker, a self-identified third world person and Black Nationalist, recounted her rape by another third world person (a Puerto Rican man). Following the rape, she chose not to go to the police. In her words,

I didn’t report this to the police. Nationalism was all mixed up in this. It was partly being a Nationalist and the police were white, I felt I would be guilty in turning in another Third World person who had raped me… that I shouldn’t do that, that it would be somehow wrong for me to do that, it was wrong for me to retaliate against another Third World person.45

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44 “Interview with Essie Green Williams,” in Connell and Wilson, 243. Speaking to this issue almost twenty years later, scholar Kimberlé Crenshaw points out that “black women who raise claims of rape against Black men are not only disregarded but also sometimes vilified within the African-American community.” See: Kimberlé Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color” Stanford Law Review 43, no 6 (July 1991): 1241 – 1299. Quote p. 1273. In her discussion of rape and racism, Crenshaw argues that there has been an overemphasis within the black and civil rights community on defending black men, thus leading to a neglect of black women. Crenshaw says, “This disregard for Black women results from an exclusive focus on the consequences of the problem [sexual violence] for Black men” (Crenshaw, 1272).
In the context of the black freedom movement and its attendant focus on black nationalism, race politics at times kept women of color silenced about their victimization. For some women, it proved very difficult to raise questions of women’s rights, gender, power, and sexism within the male-identified black nationalist movement. Yet others pushed for a feminist analysis. “We used to argue that we support the movement for self-determination, we support the black freedom movement,” Loretta Ross explained in an interview, “but the black freedom movement is not going to succeed if the black community is at war with itself.”

Black anti-rape activists also faced the critique, common at the time, that women’s liberation was a white woman’s movement and not relevant to the African-American community. In speaking to this concern in the early 1970s, Essie Green Williams explained that black feminists would need to keep pushing the issue. “If we keep pushing,” she argued, “a lot of brothers will become more aware of how feminism is a part of the struggle for the liberation of all people and how these issues such as rape work into that pattern.” Other black women were able to connect their feminist and anti-racist work. In an interview published in the Feminist Alliance Against Rape newsletter, Michele Plate, who joined the DC RCC as Community Education Coordinator in 1975, explained that her work with the center did not contradict her work for racial equality. When asked about the response of the black community to her work with the center, Plate explained, “that hasn’t been a problem. My friends think I’m dealing with a

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45 Transcript of Testimony at General Meeting, Rape Conference, by Two Rape Victims, Box 31, folder 2, Susan Brownmiller papers.


47 Connell and Wilson, 246.
problem that is important to the community… They could also see that the Center focused on the Black community so they didn’t see me ignoring Blacks, but working on another issue that affects Blacks – rape.”

Nekenge Toure, who joined the staff of the DC RCC in 1975 as its General Administrator, echoed Plate’s experience. Before joining the RCC staff, Toure spent many years as an activist for black liberation, co-founding Save the People and joining several other black liberation organizations. In an interview, Toure explained, “I haven’t had that problem… I believe the Black people need to be free. I believe we need a nation of our own. At the same time, I believe that Black women need to live up to our potential.” Both Plate and Toure agreed that rape was not exclusively a middle-class white woman’s issue and that all women needed to unite under common cause.

While pushing the black freedom movement to incorporate intra-racial rape within its analysis of oppression, black feminists also pushed the existing feminist analysis of sexual violence to recognize the connections between racial, economic, and sexual violence, and thus be relevant to larger communities. In her study of second wave feminism and black liberation in Washington, D.C., Anne Valk argues that under the leadership of African-American women, the DC RCC created connections to the larger community and “connected the sexual violence movement to demands for racial

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49 Ibid.

50 See: Anne Valk, Radical Sisters: Second-Wave Feminism and Black Liberation in Washington, D.C. (Urbana, University of Illinois Press, 2008). Similarly, in her essay on coalitional politics in the antirape movement, Maria Bevacqua explains that “black women within the antirape campaign brought a new perspective to the movement” advancing the analysis to incorporate gender, race, and poverty as significant factors in the prevalence and impact of sexual violence (Bevacqua, “Reconsidering Violence Against Women,” 172).
liberation and economic justice.”

Black women leaders in the city’s anti-violence movement pushed organizations to change their internal practices, spearheaded projects directed toward neglected groups, and created new frameworks for understanding sexual violence and its impacts. For example, in 1975 members of the DC RCC began working with “Prisoners Against Rape,” a group of male prisoners that included confessed rapists, who were imprisoned at the Lorton Detention Center in Virginia. Prisoners Against Rape analyzed the role of homosexual rape in prison and argued that rape was “the product of the racist and repressive ills tied into the American way of life which is ingrained into the masses from the cradle.” In working with Prisoners Against Rape, RCC members advocated allying with men to prevent sexual violence, rather than seeing men primarily as the enemy. In the context of communities of color engaged in racial liberation struggles, working and connecting with men of color rather than rejecting them allowed for feminists to “treat sexual violence as an issue that could not be separated from other community concerns or understood apart from racism and poverty.” As feminists organized in the early 1970s, both white and black women participated in building a movement that adequately served the needs of all survivors of violence.

51 Valk, 171.

52 Valk, 174-175.


54 Valk, 175.
Disarm Rapists, Smash Sexism: Feminists Organize Against Rape

Following the NYRF’s Speak-out and Conference on Rape, women began organizing against rape nationwide, protesting what they saw as the complete failure of society and the legal and medical systems to protect women from violence and adequately respond to victims’ needs. Anti-rape activists confronted police who consistently doubted women’s credibility, indifferent district attorneys, ineffective rape laws that criminalized the victim and not the attacker, and conviction rates in most American cities as low as 30%, and in some as low as 10%. The medical system was equally problematic. Feminists critiqued a system that lacked standardized emergency room procedures for victims, had unempathetic medical providers, overall disregard for the psychological needs of victims, lack of training for medical personnel on the specific needs of rape victims and, more common than not, a view of rape victims as a bureaucratic nuisance rather than a population in need of medical treatment. The New York Radical Feminists, for example, discovered that there was no protocol followed by city hospitals in cases of rape. An RN in the gynecology department at a large city hospital told an NYRF member that her department had no knowledge of medical procedures for rape victims. In Chicago, many hospital emergency rooms refused to admit rape victims. Catholic hospitals, for example, denied treatment because they could not provide pregnancy prevention. Private hospitals often turned away patients to avoid perceived potential legal entanglements, such as doctors having to testify in court.


56 Connell and Wilson, 201.
Faced with inadequate medical and legal responses and pervasive societal sexism, feminists launched a mass mobilization against rape that quickly gained momentum nationwide.

Beginning in the early 1970s, feminist activists organized and responded to rape in a variety of ways. Many formed “Women Against Rape” (WAR) groups, which cropped up in cities across the country, including Tucson, Detroit, Chicago, the Bay Area, and New York. These groups and others sought to support women victims by publicly politicizing rape from a feminist perspective, holding speak-outs and workshops on rape, setting up legal and medical advocacy programs, escorting women to hospitals and police, or publishing rape handbook and survivor manuals. In their statement of purpose, for example, the Chicago Women Against Rape committed themselves to “1-defeat the myths about rape and make rape a public issue, 2-pressure institutions to support and assist women after rapes have occurred, 3-work for women’s self-defense.”

Feminists also took to the streets with public protests and demonstrations to get their message across. In Berkeley, where some of the earliest grassroots anti-rape organizing occurred, a group of 150 women crowded into a Berkeley City Council meeting in December 1970 demanding a “public hearing ‘at which all the raped women of Berkeley can finally speak.’ ” Organized as “Women of the Free Future,” the group made a series of demands including free and frequent public transportation for all women from dusk until dawn, improved lighting in all neighborhoods, landlords provision of effective locks


58 Chicago Women Against Rape tri-fold, Women’s Ephemera Collection, McCormick Library of Special Collections, Northwestern University Library (hereafter WEF Collection).
on all doors and windows in Berkeley apartments, and self-defense training for all girls in the Berkeley school systems.59 In Miami, over 100 women rallied on the city’s courthouse steps in October 1971 to protest what march organizer Roxcy Bolton called the “continuing ineffectiveness of law enforcement leadership” to make the streets safe for women.60 Commenting on the increase in rapes in downtown Miami that year and the lack of police response, Bolton said, “We can no longer tolerate the destruction of women in this community.” Armed with their particular understanding of rape, feminists sought to bring renewed, far-reaching attention to the epidemic of sexual violence against women.

Anti-rape groups produced a significant amount of literature on rape, which they circulated mostly amongst themselves across the country. In 1971, Detroit Woman Against Rape produced the first feminist handbook on sexual violence, simply titled “Stop Rape.” This 50 page booklet included essays on the facts of rape, the institution and psychology of rape, what to do after a rape, and a 20 page illustrated section on self-defense. Stop Rape was distributed to women across the country and, according to Chicago Women Against Rape, inspired anti-rape activities in many communities.61 The New York Radical Feminists and the Chicago Women Against Rape both created similar book-length manuals in 1974, and both were distributed by publishing houses (Plume Books and Farrar, Straus, and Giroux, respectively). The NYRF and CWAR books gave a much more extensive and in-depth coverage of the feminist perspective on rape.

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59 “No More Rape: Berkeley Women Confront City Council,” Liberation News Service, December 5, 1970, WEF.


61 Medea and Thompson, Against Rape, 126.
Feminists shared their new knowledge on rape through issue-specific newsletters, such as the *Feminist Alliance Against Rape* newsletter, and articles in local and national feminist publications, such as *Off Our Backs*.

In 1972 women in Washington, D.C. created the nation’s first rape crisis center. A major feminist innovation, the rape crisis center provided a hotline and counseling, and sought to serve the needs of rape victims with empathy and support. The Washington, D.C. Rape Crisis Center (DC RCC) was originally located in one member’s house and had an all-volunteer staff. The RCC model was rooted in the grassroots feminist tradition of women supporting other women. The statement “I do for you, you do for others,” typified this position; many women who created the DC RCC had been victims of rape themselves and wanted to support other women.62 During that first year, DC RCC member Elizabethann O’Sullivan created the booklet “How to Start a Rape Crisis Center,” in response to nationwide requests for information. The booklet was ready in August of 1972, and O’Sullivan mimeographed 500 copies in response to national demand.63 Six months later, “How to Start a Rape Crisis Center” was reprinted with a run of one thousand.64 It was circulated to anti-rape groups across the country and used as a model for centers and hotlines nationwide.

As the urgency and necessity of anti-rape activism became clear, feminists responded with a massive outpouring of energy and organization efforts. By the end of

62 Elizabethann O’Sullivan, “How to Start a Rape Crisis Center” (1972), Folder: Rape – Washington, DC Rape Crisis Center, WEF Collection.

63 Brownmiller, *In Our Time*, 208.

64 Rape Crisis Center minutes, Feb 28, 1973, Box 3, Folder—Rape Crisis Center-DC Elizabethann O’Sullivan papers, Schlesinger Library, Radcliffe Institute, Harvard University (hereafter O’Sullivan papers).
1972, feminists had established local crisis response services from coast-to-coast including an emergency switchboard in the Bay Area, advocacy programs in Palo Alto, CA, on-call counselors in Tucson, AZ, a crisis clinic in Seattle, WA, rape crisis centers in Chicago, Minneapolis, and Ann Arbor, MI, a woman’s assault hotline in Chapel Hill, NC, and women in Providence, RI were in process of setting up a hotline there.65 By 1974, there were one hundred feminist-run crisis centers throughout the country. By 1976, that number would come close to four hundred.66

**Militancy in the Movement**

Feminists pursued self-defense as one major strategy to stopping rape. During the early 1970s, a self-defense movement took shape within women’s liberation, promoting women’s self-awareness and ability to protect themselves. This movement sought to subvert dominant cultural constructions of woman’s “natural” inferiority and weakness.67 Self-defense fulfilled the larger women’s liberation goal for women to control their own lives and bodies. Self-determination was the goal; self-defense was the practice. This was particularly relevant in terms of anti-rape activism and followed in the spirit of women taking matters into their own hands. Activists understood self-defense as a key strategy in preventing rape and disrupting the social expectations of women as objects of attack. The April 1971 NYRF rape conference, for example, included a well-attended self-defense workshop. Workshop chairwoman Mary Ann Manhart told the all-female audience, “It’s

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65 Rape Crisis Center Newsletter (Nov/Dec 1972), Box 3, Folder—Rape Crisis Center-DC, O’Sullivan papers.


high time we stopped being victims.” Self-defense transformed women into agents of force. Manhart continued, “We’ve got to change the image of women as being totally defenseless.” In 1971, Betsy Warrior, a member of the Cambridge-based radical feminist group Cell 16, drew what one activist remembered as the “antirape movement’s most riveting poster.” The widely distributed poster showed a woman in process of a fierce punch to the jaw and kick to the groin of a man. The man was shocked and falling backward. Surrounding the drawing were the words, “Disarm Rapists, Smash Sexism.” Printed in the July 1971 issue of Cell 16’s journal, *No More Fun and Games*, the poster epitomized the feminist goals of self-defense and self-sufficiency as well as the larger project of dismantling sexism in order to end rape.

Self-defense sat on a continuum of proposed physical responses to sexual assault. More militant solutions called for women to take up arms as well as calls for retaliatory violence against male aggressors. In their newsletters, some feminist groups gave praise to stories of women who fought back and/or killed their boyfriend/husband/male attackers. A September 1970 issue of *Babe* included a page titled “Women in Revenge” featuring such stories: A man shot to death by his wife in a San Francisco bowling alley; a 13-year-old girl who shot a 16-year-old boy in the neck with a .22 caliber after he slapped her; a woman who shot her husband at their home in Houston during a late night fight. At the bottom of the page, the editors of *Babe* included a cartoon of a woman sitting behind a pile of human bones. “Male Chauvinists, TAKE WARNING” the header


69 Brownmiller, *In Our Time*, 205.

of the cartoon read. The bottom caption followed: “He asked me to eat him and I did.” Many feminists agreed that justified violence, such as self-defense, was a necessary and important step in women’s liberation. These calls for violence speak to the sense of urgency and overwhelming anger held by many anti-rape activists.

Some of the more militant responses came in the form of all-woman anti-rape squads. Evidence of anti-rape squads first appeared in the feminist press in late 1970, on the eve of the nationally organized movement. In response to a serial violent rapist in their city, a group of women from East Lansing, Michigan who called themselves “Pissed Off Pink” announced their plan to form anti-rape squads during the fall of 1970. In their words, these would be “groups of feminists dedicated to avenging the rape or other kinds of harassment perpetrated on our sisters by male supremacists.” Pissed Off Pink announced this plan “in conjunction with our sisters in Berkeley” where anti-rape squads were also forming. In an October 1970 issue of Berkeley’s It Ain’t Me Babe, the Berkeley anti-rape squad asked women hitchhikers to send the license plate numbers of any cars that picked them up and gave them trouble. The Berkeley women would use that information to retrieve and publish the name and address of the offender “for sisters in the area to use as they see fit.” Later that year, in a December 1970 issue of Babe, the editors re-published an article from the San Francisco Chronicle documenting a rape case. At the bottom of the re-print, the editors of Babe wrote, “attention anti-rape squads.

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Above article… contains the addresses of two rapists.”74 Presumably, this was intended to suggest some type of retaliatory action.

Anti-rape squads were also intended to prevent rape. The Detroit Women Against Rape (DWAR) suggested that groups of women patrol the streets at night as one way to combat the institution of rape. In their 1971 Stop Rape booklet, DWAR members explained, “Groups of women (4-8) are not hassled by men on the streets… These four to eight women can break into smaller groups of two or three and walk through blocks in their neighborhood and can do much more than enjoy the exercise and freedom of the evening walk. They can make the streets safe for other women.”75 These groups could both escort single women to their destinations and also watch for “any man behaving suspiciously… Or they can try to stop any man who has already started to attack a woman.”76 In making the streets safe for women, DWAR understood anti-rape squads as “part of a first big step in regaining our rights and depriving the rapist of his.”77 A December 1972 Off Our Backs article discussed anti-rape squads in the context of the legal system’s failure to properly address rape. Women were therefore “devising and acting on other ways to stop rape-namely, by stopping the rapist.”78 Author Fran Pollner explained, “Women armed with self-confidence and self-defense have formed anti-rape squads, patrolling rape-prevalent areas in the cities, providing escort for women working graveyard shifts. They also serve to take care of the rapist after the fact: since the attacker

74 It Ain’t Me Babe, Dec 1, 1970, 2.
75 Detroit Women Against Rape, “Stop Rape” (1971), 43. WEF Collection.
76 Detroit Women Against Rape, “Stop Rape,” 44.
77 Ibid.
is often known to the victim, the squad visits him after his crime has been committed.”

Evidence of anti-rape squads also surfaced in the mainstream press. A Reuters article published in both the Washington Post and the Chicago Tribune in December 1972 reported that, “the Los Angeles anti-rape squad has a special plan for dealing with rapists. They say they will work with the victim to track down the man, jump him, shave his head, pour dye on him, take photographs and use them on a poster saying, ‘This man rapes women.’”

Time magazine reported in 1973 that the Los Angeles squad had adopted a “counter-harassing strategy: when a woman called to complain that a neighbor followed her whenever she went out, squad members followed the follower for three days.” Time further reported that the East Lansing, MI squad were said to have “scrawled ‘rapist’ on a suspect’s car, spray painted the word in red across a front porch, and made late-night warning telephone calls.”

It is not clear how widespread or effective anti-rape squads actually were. At a 1972 University of Maryland speech, radical feminist Robin Morgan claimed that anti-rape squads were putting “rapists in hospitals all over the country.” She further argued that, “rapists think twice about committing rape again after six weeks in traction.”

Outside of statements like these, there is no evidence of the impact (or the prevalence) of the squads. In their 1974 survivor’s manual, Chicago Women Against Rape members

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79 Pollner, “Rape in the Courtroom.”
82 Ibid.
Andra Medea and Kathleen Thompson reported that the Detroit squads disbanded when the “women decided that this approach was not a very practical one in terms of the time and emotional energy expended.”84 They further reported street patrols on the West Coast who tried to apprehend rapists that the police did not arrest were also typically abandoned for other activities. Unlike other forms of feminist action, such as rape crisis lines or legal advocacy services, anti-rape squads were not a mainstay of the movement. At the 1971 NYRF conference on rape, for example, anti-rape squads were not mentioned at the workshop on feminist action.85 What the coming together of anti-rape squads does speak to, however, was the belief that women needed to take matters into their own hands. In the context of what they perceived as a failed legal system, some women felt they had no other choice.

While the formation of anti-rape squads may have been somewhat peripheral to the larger movement, the calls for violent resistance resonated with many women, particularly in the early movement years. At the January 1971 NYRF Speak-Out, one speaker suggested castration as an appropriate punishment for rape. According to event organizers, her suggestion was met with “wild applause” from the almost all-female audience.86 Feminist author Phyllis Chesler, who spoke on Rape and Psychotherapy at the April 1971 NYRF Conference, shared this sentiment. “We should take the weapons away from the offenders,” she said, “and another level of penalty should be castration.” The audience here also applauded. After discussing marital rape and the lack of legal recourse

84 Medea and Thompson, Against Rape, 126.


she firmly concluded her speech, “I would like to go on record for being in favor of
castrating convicted rapists or non-convicted rapists. Thank you.”

The sense of collective rage is clear. In 1973, one woman wrote in Iowa City’s feminist newsletter, *Ain’t I a Woman*, “I want to wake up in the morning and hear on the news that a man was found castrated in an alley everytime [sic] I hear that a woman has been raped.”

Violent retaliation against rapists often went along with a call to arms and self-defense. Between 1970 and 1974, the Iowa City collective who published *Ain’t I a Woman* regularly featured drawings and instructions for women on how to use guns. A September 1970 issue, for example, included a series of six drawn pictures that showed how to hold and shoot a pistol. A January 1971 issue had a cartoon of a women confidently pointing and shooting a gun. The word bubble next to her said, “Sisterhood is” with a large blank space following.

In 1974, six women in Dallas formed WASP: Women Armed for Self-Protection. Dissatisfied with what they saw as the (reformist) approach of the Dallas Women Against Rape, the women of WASP separated and pursued more radical alternatives. Group member Nikki Craft explains, “In a world where we saw no justice, it was no longer useful to restrict our work to the confines of the law.”

The group’s first leaflet declared, “WE ARE WOMEN… WE ARE ARMED. WE SUPPORT IMMEDIATE AND DRASTIC RETALIATION AGAINST ALL RAPISTS.” WASP graffiti at a busy intersection in Dallas read “Women—Castrate your rapist—let him

87 Phyllis Chesler, NYRF Rape Conference, April 17, 1971, Reel 3, T-326, Susan Brownmiller papers.


89 “Sisterhood is” cartoon, *Ain’t I a Woman*, v 1, no. 11, Jan 29, 1971, 3.

know women don’t enjoy being raped.” While the group faced much criticism, Craft claims that they received letters of support from women across the country. Four women from Chicago even travelled to Dallas to meet with WASP members to share ideas and discuss strategy. “Many women were ready for defiance,” Craft explains, “They wanted to channel their anger and were ready to hear what we had to say, even if it was rhetorical and rigid.”91 With the energy and outrage of the anti-rape movement behind them, many feminists sought radical means to respond to rape.

Certainly not all feminist anti-rape activists supported violence and some opposed extra-legal retaliatory action. Susan Brownmiller, who saw law reform as one appropriate response to rape, commented in her 1975 book on rape, “Since ‘Castrate Rapists’ has become a slogan in certain circles, I guess I should say on the record that I am not ‘for’ castration any more than I am ‘for’ cutting off the ear of an informer or cutting off the hand of a thief.”92 Additionally, calls of castration undoubtedly failed to appeal to many African-American women, considering the history of violence and terror against black men and specifically, the brutality of lynchings which often involved castration in cases of allegations of sexual violence against white women. Yet while calls for castration speak to a potential short-sightedness on the part of some feminists, this response vividly portrays the sense of overwhelming anger that was felt throughout the anti-rape movement.

Some survivors of sexual violence themselves publically expressed this anger. At the NYRF speak-outs, one survivor testified, “People always say, you know, ‘time heals

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92 Brownmiller, Against Our Will, 426.
all wounds,’ ‘things get better with age,’ et cetera. *I hate that fucker more today than I did when it happened to me.*”\(^{93}\) Another woman reflected on her changing responses to her assault. “About six months to a year later some of the vulnerability disappeared,” she said, “It was replaced by rage. Oh, I wish now I had hit him. Or killed him.”\(^{94}\) In their stories and responses, activists and survivors shared a sense of outrage and injustice. This underscored the urgency and necessity of a feminist response to sexual violence.

**“Hopelessly incapable of providing real justice”**\(^{95}\): Feminism, Rape, and the Law

The legal system proved particularly vexing to feminists in their fight against rape. According to feminists, the entire legal system, from the local level to the state courts, reflected the rampant sexism that both caused and perpetuated sexual violence against women. The feminist response to the legal system ranged from total rejection in the early years of organizing to an increasing push for reform. As a result, the legal system often served as a site of conflict within feminism and between feminist and other social movement groups in a way that other institutions, such as hospitals, did not.

In the early 1970s, the legal system failed to protect most women from sexual violence. As one form of activism, feminist legal scholars published articles in the nation’s leading law journals attesting to the failures of the legal system. In a 1973 California Law Review article, for example, legal scholar Camille LeGrand found that, based on the FBI’s Uniform Crime Reports for 1970, in cases where a man rapes a


\(^{94}\) Ibid.

\(^{95}\) Medea and Thompson, *Against Rape*, 112.
woman and she then reports it to the police, that man “has roughly seven chances out of eight of walking away without any conviction.” Vivian L. Berger echoed this dismal assessment. Writing in the *Columbia Law Review*, Berger showed that based on Uniform Crime Reports for 1974, only 50% of perpetrators of rape were caught; of those, only 60% were charged; and of those, only 35% were convicted of rape. In other words, Berger argued, “a person reasonably suspected of the crime of rape stands a seven in ten chance of walking away a free man.” The literature produced by feminist legal scholars stood in stark contrast to that written by male legal scholars less than twenty years earlier who, with almost no evidence, wrote of high rates of conviction of innocent men in cases of rape.

The legal hostility to women rape victims began with the police. Hundreds of firsthand accounts by victims and activists attested to this. In a videotaped dialogue between four rape victims, one participant, Sandra, told of her encounter with a policeman following her rape in the early 1970s. “So I went to a police station… and as I went to the desk, I explained I wanted to report a rape,” Sandra explained. “They said, ‘Whose?’ and I said, ‘Mine.’ The cop looked at me and said, ‘Aw. Who’d want to rape you?’” One woman testified at the NYRF Speak-Out, “When it happened to me, one cop said, ‘Tell me the truth, don’t all women secretly want to get raped?’” In response to the degradation and harassment she experienced at the hands of the police, a Berkeley

96 LeGrand, 927. See her footnote 42.


98 Connell and Wilson, 46.

A rape victim said, “The rape was probably the least traumatic incident of the whole evening… If I am ever raped again I will not report it to the police.” Stories like these saturated the feminist literature on rape, attesting to the level of hostility within the police force.

Police mistreatment was compounded for women of color, who were particularly vulnerable to dismissal because of dominant sexualized and racialized constructions about them. A self-identified Third World woman told the story of her rape in 1968 at the NYRF Speak-out. She decided not to report to the police because, as she explained, “I was sure that if I went to the police that (1) they weren’t going to do anything and (2) they weren’t going to protect me. We never see any policemen in [my] neighborhood and the man would just come back and get me for it if I turned him in. And (3) black women are supposed to be whores anyway. They wouldn’t believe it and they would jeer and I would be humiliated.” Another black woman who was raped by a black man in Jacksonville, Florida encountered exactly this situation. A stranger attacked her at gunpoint outside of a Greyhound bus station at 3 a.m. while she was making her connection. The attacker also stole $70 from her. The police arrived thirty minutes later and dismissed her complaint entirely. “I’m on the floor, completely paranoid and crying,” she recalled. “They took me back to what they call the scene. Eventually they said that the guy was my boyfriend and that everything was okay between us until he took my money.” Class-based racialized stereotypes made black women vulnerable to

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100 As quoted in Griffin, 32.
101 Connell and Wilson, 44.
102 Testimony in Brownmiller, Against Our Will, 412.
mistreatment at the hands of both white police and policemen of color. Michele Plate of the DC RCC commented, “Black policemen, they’re chauvinistic just like the white policemen.” Arguing that class and gender stereotypes trumped racial loyalties, Plate continued, “If a Black woman goes to the police and she’s from a lower class they’re going to say, ‘Well, honey, what are you coming in here crying about because I know how you women are.’ They already have their myths. All men live by myths. I don’t care what race they are.”

These class-based assumptions put women and girls who lived in poor communities of color at a particular disadvantage. In a June 1971 New York Times article, for example, author Angela Taylor reported on her visit to a police precinct in a Bronx ghetto, which was one of five precincts with the highest reported rapes in the city. Her interview with a detective there exemplified the belief held by many police of the “so-called easy morality of ghetto areas.” The detective told her, “Junkies don’t commit rape… In the ghetto, a man doesn’t have to commit rape to get a woman… Around here, it’s mostly love, boy and girl stuff. Then the girl gets pregnant, and the mother says she’s been raped.”

The injustice women faced at the hands of individual police stemmed from larger cultural beliefs that fueled police attitudes. Women frequently confronted police who did not believe that rape actually existed. Brownmiller remembered a personal experience in 1972 when she gave a talk about rape at the New York Police Academy. As she spoke about rape in front of an audience of police lieutenants training for promotion to captain,

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she was “met with a chortle of hoots and laughter from the thirty assembled men. ‘Honey, you don’t believe there is such a thing as rape, do you?’ a lieutenant called out.”

Women victims also encountered prevailing police attitudes that they were partially responsible for their own rapes. In his 1967 study of forcible rape, *Victim-Precipitated Forcible Rape*, University of Pennsylvania criminologist Menachem Amir argued that women who “played at being bad” (defined as accepting rides or drinks from strangers, swearing, drinking, or flirting), often unknowingly precipitated their own assaults. According to Amir, not all rape victims were so innocent. Supporting Amir’s conclusions in an August 1971 *Chicago Daily News* article, Commissioner William Keating of the Chicago Police Department’s homicide-sex unit, commented, “It’s what we’ve been saying for years… but some women just don’t listen.” Keating further stated that “suspicions that the victims share guilt probably account for the hundreds of men arrested on rape charges here [Chicago] but never convicted.”

Cultural beliefs about women’s culpability in their own victimization resulted in their frequent dismissal by the police and the larger criminal justice system.

Police attitudes were one piece of the legal system’s much larger failure to protect women against violence. In the majority of states during the 1970s, rape laws looked exactly as they had in the 1950s. Rules of evidence unlike those in any other crime, such as a show of resistance, corroborating evidence, and scrutiny of the victim’s sexual history, continued to be standard in rape cases. The rape law in New York stood as one of

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the most notorious examples of this. In a January 1972 *New York Times Magazine* article, free-lance writer Martha Weinman Lear explained that New York had the most stringent corroboration rule in the country, making it the most difficult state in which to successfully prosecute sexual assault. The New York law required that “every material element of a rape—penetration, force and the identity of the rapist—must be corroborated by evidence other than the victim’s testimony.”

Under such conditions, successful prosecution was virtually impossible. In the case of an unwitnessed rape, for example, or where the attacker left no marks, the prosecutor would be unable to provide the necessary corroborating evidence for conviction. In a pointed critique of this, Lear titled her article, “Q: If You Rape a Woman And Steal Her TV, What Can They Get You For in New York? A: Stealing Her TV.” In 1972, fifteen states had some form of corroboration requirement and most states had other forms of equally problematic provisions that kept prosecution rates extraordinarily low. Chicago Women Against Rape charged that under the circumstances, the law was “hopelessly incapable of providing real justice.”

Feminist activists and legal scholars alike argued that the laws of rape were weighted in favor of the defendant, making successful prosecutions all the more exceptional. At the same time, rates of forcible rape in the United States were rapidly increasing. Between 1967 and 1972, for example, rates of reported rape increased 62%. In this climate,

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108 Martha Weinman Lear, “Q: If You Rape a Woman And Steal Her TV…”


110 Medea and Thompson, *Against Rape*, 112.

111 Largen, 69.
feminists sharply critiqued the state for its inability to effectively respond to the crisis of sexual violence, arguing that rape had essentially been de-criminalized.

Feminists termed the insensitive and often excessively harsh treatment of rape victims by police and the judicial system as the “second rape.” Feminists argued that navigating the judicial system after a sexual assault was often as harmful as the assault itself and constituted another violation of the victim. In October 1970, a 23-year-old woman was forced at gunpoint to get into a car with 36-year-old Jerry Plotkin and three of his friends. The four men took the woman back to Plotkin’s apartment, raped and otherwise sexually abused her repeatedly throughout the night, and set her free the next morning. The woman pressed charges. At the April 1971 trial, the defense attorney portrayed Plotkin as a Playboy and the young woman as both a sexual libertine and willing participant based on her previous sexual encounters with men. In his brutal cross-examination, the defense attorney asked about her drinking habits, her sexual history, and her former employment as a cocktail waitress, in an effort to destroy her credibility. In response, feminists who had been closely monitoring the trial passed out leaflets on the courthouse steps announcing, “rape was committed by four men in a private apartment in October; on Thursday, it was done by a judge and a lawyer in a public courtroom.”112 Throughout the early years of the anti-rape movement, feminists continued to invoke the rhetoric of the second rape. Michigan activist and rape crisis counselor Jan Ben Dor explained in a 1974 forum for rape law reform in that state that victims of sexual assault “had not only suffered the violence of rape but also a second rape in the courtroom. It was clear that a good part of this legal rape was due to the state law which dates from

112 Quoted in Griffin, 32.
1857 and from the attitudes of those who have made the case law by their decisions as judges.”

Similarly, in their 1974 victim-centered manual for survivors, Against Rape, A Survival Manual for Women: How to Avoid Entrapment and How to Cope with Rape Physically and Emotionally, the Chicago Women Against Rape included a chapter explaining the legal and medical procedures following a rape case. The authors explained, “When you getaway, or the man leaves, the ordeal isn’t over.”

The chapter was titled “I Thought the Rape Was Bad…” Feminists unanimously agreed that the legal system had failed women to an extraordinary degree. How to respond effectively to that failure, however, proved much more complicated. Over the decade, questions of reforming the criminal legal system proved particularly vexing amongst anti-rape feminist activists.

“You cannot fight racism by perpetuating the myths that allow rape to exist”: Challenging the Male Left and Civil Rights Approaches to Rape

In pressing for a victim-centered understanding of rape, feminists confronted not only a problematic legal system but also found themselves in opposition to Leftist traditions that politicized rape solely in cases of interracial assaults and mostly from the perspective of accused black men. When feminists advocated on behalf of the prosecuting witness, they faced a history of significant social justice organizing on behalf of the accused. As Brownmiller remembers in her memoir of the movement, “back then it...
was novel to be on the side of the prosecution.”¹¹⁶ Some feminists challenged the male Left’s reliance on sexist beliefs about rape, as this reinforced the hostility that all women victims faced, particularly in the legal system. The Left adherence to a strict race-based approach and resistance to integrating a gendered analysis troubled many feminist anti-rape activists. According to a 1972 DC RCC newsletter, “Many movement lawyers are defending rapists, especially if they are black men who’ve raped white women… [These men] are saying that men are oppressed by laws and racism, and they are ignoring the sexist implications.” Furthermore, because of deeply held Left beliefs in the ubiquity of the lying white woman, many feminists encountered allegations of racism in response to their defense of women rape victims. Members of the DC RCC continued, “We must emphasize what the white men are doing to us—and not be afraid to deal with male left accusations of racism when we say we are concerned with rape.”¹¹⁷ Indeed, the feminist analysis of rape offered an entirely different perspective on rape politics, one which many Left and civil rights activists were reluctant to embrace.

The case of the Tarboro Three – three young black men convicted and sentenced to death for the rape of a white woman in Tarboro, North Carolina in August 1973 – illustrates the competing tensions in understandings of rape from the civil rights and feminist perspectives. From a black rights perspective, this was yet another case of a white woman falsely alleging rape against a black man. The convictions of all three reflected a racist legal tradition, historically hostile to black men and protective of white interests. From a feminist perspective, while the racism implicit in the case was

¹¹⁶ Brownmiller, In Our Time, 218.

¹¹⁷ Rape Crisis Center Newsletter, November/December 1972, p. 9. Box 3, Folder—Rape Crisis Center-DC, Elizabethann O’Sullivan papers.
problematic, so too was the movement response to the alleged victim that reflected a cultural tradition of suspicion and hostility towards all women who came forward following sexual assault.

On the evening of August 5, 1973, 22-year-old Vernon Brown, 23-year-old Bobby Hines, and 23-year-old Jesse Lee Walston offered a ride to a young white woman whom they found walking down a road just outside of Tarboro. The 22-year-old woman – who remained nameless in all published accounts – had previously had an argument with her boyfriend, left his car, and was walking alone. She willingly accepted the ride. While in the car, all three of the men had sexual intercourse with the woman. They then dropped her off near her home and she took herself to the emergency room of Edgecombe General Hospital and claimed rape.

At the December 1974 trial, Brown, Hines, and Walston did not deny having sex with the woman. The three claimed that, “she made advances toward them… [and] she willingly submitted to sexual intercourse.”\(^{118}\) The accuser, however, claimed that while she had willingly accepted the ride, the sex was not consensual and “she did not fight them because she was afraid of being killed.”\(^{119}\) On December 9, 1973 a jury of eleven men and one woman found the three guilty as charged. Under North Carolina’s then-mandatory death penalty sentencing structure, all three were sentenced to death. As one New York Times reporter commented, presiding Judge John Webb, “had no choice but to pronounce the death penalty.”\(^{120}\) The executions for all three were scheduled for January 10, 1974.


\(^{119}\) Lopez, 38.
Mobilization efforts to save Brown, Hines, and Walston began shortly thereafter. The NAACP Legal Educational and Defense Fund and the Southern Poverty Law Center assumed the legal defense. The Tarboro Three found additional support from individuals and groups across North Carolina including Tarboro’s black community, the Commission for Racial Justice of the United Church of Christ, and the Southern Christian Leadership Council. Following letter-writing campaigns and organized protests and rallies in Tarboro and Raleigh, North Carolina Governor Jim Holshouser granted last-minute stays of execution to the three convicted men. Over the course of the next eighteen months, the legal defense relentlessly appealed the convictions in the North Carolina courts.

During the appeals process in 1974, the Southern Poverty Law Center campaigned on behalf of the Tarboro Three. In a fundraising letter, SPLC president Julian Bond explained that “three innocent men have been sentenced to die in North Carolina’s gas chamber” accused of a crime “which stirs up the ugliest depths of anti-black hatred and prejudice—the rape of a white woman.”

Bond insisted on the innocence of Brown, Hines, and Walston. As evidence of this, he wrote that the three had dropped the woman off within a block of her home. Bond asked his readers, “Why would men who had supposedly just raped a woman extend such a courtesy to their alleged victim?” Additionally, in contrast to what Bond termed “the usual victim of..."
rape,” the woman showed no signs of physical injury upon examination at the hospital. Finally, Bond commented that the day after the alleged rape, all three men “went about their normal activities.” He asked, “Is this how the perpetrators of such a terrible crime would behave?” From Bond’s perspective, this was yet another case of a white woman’s false claim and a legal system’s racist response.

Nancy Baker of the Eugene, Oregon Rape Prevention Center wrote a letter in response to Bond. The two letters were printed one after the other in the April/May 1975 issue of the Feminist Alliance Against Rape newsletter. These two letters speak to some of the tension between varying interpretations of rape within movements for racial and gender justice. Speaking on behalf of the Eugene Rape Prevention Center (and perhaps the entire feminist movement against rape), Baker began by assuring their support and solidarity with Bond’s view against racism and racist oppression in the courts. She disagreed, however, with Bond’s views of rape. In her words, it was “necessary to confront you on the sexist ideology and myths about rape that you present in your defense and appeal for support regarding this case.”

122 Reiterating that she did not support the execution of the three men, Baker commented that in their case, “rape is not even being dealt with. It seems to be a pawn in the death game of 3 black men.”

123 Baker was concerned with the myths about rape that she believed Bond perpetuated in his letter. In response to Bond’s assertion that real rapists would not “courteously” drop off a woman near her home, Baker argued that rapists could indeed be courteous and “most men believe it is their right to rape a woman.” Secondly, taking issue with Bond’s characterization of a “usual” victim of rape, Baker asserted that physical injury did not

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123 Baker, 11.
prove or disprove consent. She explained, “In rape cases (especially when more than one rapist is concerned) a woman will many times ‘give in’ to avoid any physical harm which may come to her should she resist.” The fact that this woman had no physical injuries, therefore, did not discredit her allegation. Finally, Baker rejected Bond’s conclusion that all three were innocent because they went about their normal activities the following day. Baker asked, “Since when is rape traumatic for the rapist? ... If men believe it is normal and their right, why should they act ‘out of ordinary’ once they have committed a rape?” Baker’s feminist analysis of the case sharply contrasted with Bond’s proofs of innocence. It was necessary, Baker concluded, to look at “both of the issues realistically, seeing not only the overt racism in the case but the whole problem of rape and sexism as well, [which] would make it easier to attack the crux of the problem which is racism, by dealing with the deviously intertwined rape.” The racist myth of the black rapist came from the same system of thought as did sexist rape myths, argued Baker, a system “that permits and encourages the oppression of all people who are not white middle class men.” Commenting that myths were used as tools of oppression, Baker wrote, “we cannot use those tools against each other.” There is no indication that Bond ever replied to Baker’s letter.

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124 Baker, 12.
125 Baker, 12.
126 Ibid.
127 Ibid.
128 Following months of protests and legal battles, the North Carolina state Supreme Court granted Brown, Hines, and Walston a new trial. On May 19, 1975, the defense reached a settlement. The three young men pleaded no contest to the charge of assault with intent to rape. They each received a six year suspended sentence and on August 8, 1975 the three were released from prison.
As Bond’s letter and the campaign on behalf of the Tarboro Three indicate, feminists were not the only voices politicizing sexual violence during the 1970s. Feminist anti-rape activism emerged alongside a long-standing history of social movement agitation around interracial rape. Often finding themselves at odds with the civil rights politicization, feminists sought to reveal the gendered assumptions that underlay beliefs about false allegations.
CHAPTER V

“IT WASN’T THE SYSTEM THAT SET ME FREE. IT WAS THE PEOPLE:”¹
THE JOAN LITTLE RAPE-MURDER CASE

A steady rain fell over Raleigh, North Carolina on Monday, July 14, 1975. The bad weather didn’t stop the 300 to 500 protestors, some of whom had travelled from Chicago, Richmond, Norfolk, and Baltimore, as they marched from the Women’s Correctional Center, through the streets of downtown Raleigh, and finally gathered on the steps of the Wake County Courthouse. Flanked by police in riot gear, the demonstrators carried banners that reflected their diverse political agendas: “Stop Slave Labor in NC prisons,” “Black Panther Party demands freedom for Sister Joanne Little”, “Drop the charges,” and “Women have a right to self defense.”² The demonstrators had gathered for the first day of the Joan Little trial, a story that had captured nationwide and international attention over the previous 10 months.³

On August 27, 1974, 20-year-old black inmate Joan Little escaped from Beauford County Jail in the small town of Washington, North Carolina, after killing Clarence Alligood, a white officer at the facility. Another officer found Alligood dead in Little’s cell, naked from the waist down with ejaculate on his thigh. Little was gone. When she turned herself in to the State Bureau of Investigation one week later, Little claimed that she had acted in self-defense, stabbing Alligood eleven times with an ice pick that he had

¹ Dennis A. Williams, “Trials: It was the people,” Newsweek, August 25, 1975, 29.

² Raleigh News and Observer, July 15, 1975, 5-B.

³ Little’s first name was spelled differently depending on the source. Sometimes Joan, JoAnne, or Joann. I use “Joan” here as that is the spelling used in the legal record. The name is pronounced Jo-Anne.
brought into her cell so he could sexually assault her. The state of North Carolina charged
Little with first degree murder, a crime that held a mandatory death sentence.

With a major outpouring of support from the civil rights, prisoners’ rights, and
women’s liberation movements, the Little case gained nationwide attention over the
course of the next 11 months. By the time of the trial in July 1975, nearly every major
newspaper in the country was covering it, dozens of demonstrations for Little’s
innocence had taken place in North Carolina and across the country, and the case had
even garnered international notoriety. As a Time Magazine article explained, “What
began as an obscure slaying in a small-town Southern jail has burgeoned into an
expensive legal struggle and an emotional national controversy.”4 In a February 1975
interview, prosecuting attorney William Griffin, Jr. told reporters in disbelief, “I don’t
understand it… I’ve had dozens of cases better than this and no one came running down
for those.”5 So what was it about the Little case that called forth such a response?

The circumstances of the Little case sat at a very particular crossroads of race,
sex, and class. Joan was young, black, female, indigent, and imprisoned. Her attacker was
white, male, and her captor. This set of circumstances, perhaps more than the attempted
rape itself, resonated with the political agendas of the civil rights and prisoners’ rights
movements. Had Alligood not been white, for example, the civil rights movement would
not have rallied around this case of sexual violence as they did. Similarly, had Little not
been incarcerated at the time of her assault, the prisoner’s rights movement would not
have mobilized in her defense. Along with women’s liberation, these movements

4 “A Case of Rape or Seduction?” Time July 28, 1975.
politicized Little’s rape and subsequent indictment for murder from their particular vantage points, and the case became a cause célèbre for all three of these social justice movements. The Little case also emerged at a time when rape had developed into a viable political issue. The civil rights and feminist movements each had a considerable history of taking up sexual violence as a political issue, both in terms of organizing around individual cases and confronting sexual violence as a social problem. As a result of this increased activism and attention, by the mid-1970s rape was widely understood as a significant legal, medical, and social concern.

The Little case is unique because of the convergence of political agendas around this single victim. As Time magazine reported in a July 1975 article, a “spontaneous coalition of feminists, civil rights and prison-reform advocates” supported Little throughout the course of the trial, demonstrating through the streets of Raleigh, gathering on the courthouse steps, and holding demonstrations in cities across the country in her defense.  

Ultimately lead lawyer Jerry Paul’s defense of Little leaned heavily on constructing an image of a defenseless, black woman seeking justice against a historically unjust “Old South” system. This focus on race and the history of racism in the criminal justice system proved effective – on August 15, 1975, after a five-week trial, a jury acquitted Little of all charges. The ruling was unprecedented. For racial justice advocates who faced a history of impunity for white men who assaulted black women, Little’s acquittal was a significant departure from the past and stood as a symbol of change. Likewise for feminist activists, Little’s act of self-defense served as vindication that all women had the right to protect themselves from sexual violence. Finally, the prisoner’s

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rights movement applauded Little’s victory for exposing the vulnerabilities of prisoners and their rights to protection. During the 1970s, rights-based social movements rallied around cases of rape that resonated with their particular political agendas. Cases like that of Joan Little highlight how different movements defined sexual violence, under what contexts those movements deemed it problematic, and what needed to be done about it.

“Southern Justice on Trial—Again”⁷: Civil Rights and the Defense of Joan Little

In June 1974, Joan Little began serving time at the Beaufort County jail on charges of breaking, entering, and larceny. By this time, she was no stranger to trouble with the law. In fact, when commenting on Little’s legal record and various political movements’ veneration of her during the course of the 1975 murder trial, District Attorney John Wilkinson told a reporter, “They could not pick a more unlikely character for sainthood than her.”⁸ Little’s legal problems began in 1969 at age 15, when a judge declared her a truant and committed her to a Training School for girls. At this time, she ran away from home. Her name resurfaces in the legal record in 1973, when she was charged with possession of stolen goods and a sawed-off shotgun (not belonging to her) was found in her car. The case was never prosecuted. In January 1974, police arrested Little on two counts of shoplifting, first in Washington and 6 days later in Greenville, North Carolina, for which she received a 6-month suspended sentence. Finally, on January 14, 1974, police arrested Little for breaking into three mobile homes in Washington, NC and stealing almost $1400 worth of goods. Two months later, a jury

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indicted Little on charges of breaking, entering, and larceny. Little received a sentence of 7-10 years in prison. She began serving her time in Beaufort County jail on June 4, 1974. Eighty-one days later, Little’s cell would hold only the lifeless body of Clarence Alligood and she would be missing.

The week following her escape, Little spent 6 days hiding in her former neighborhood, a squalid section of Washington called “Back of Town” and characterized by one news journalist as “easily the slummiest housing in Washington, if not the Southeast.” During that time, Little hid in the 15x30 foot cinderblock home of Ernest “Paps” Barnes, a middle-aged man who agreed to let her stay with him as soon as she came running up to his door in the early morning hours of August 27. Over the next week, while Southern authorities scoured the neighborhood with rifles in hand, Little safely hid under an old feather mattress in Barnes’ home.

Through a network of acquaintances and civil rights activists, Little’s situation was brought to the attention of Jerry Paul, a white lawyer originally from Washington, NC who often worked for the Southern Christian Leadership Council. Paul lived in Chapel Hill where he practiced law. Arrangements were made for Little to be put in his custody before she turned herself in.

On the night of Sunday, Sept 1, 1974, Paul picked Little up in the parking lot of Mr. Ed’s, a restaurant which sat along Highway 264 just outside of town. A full moon hung in the sky over Washington as Joan Little, wearing a wig, ran out of a car of family and friends and into Jerry Paul’s car. Paul drove her quickly out of Beaufort County and to his home in Chapel Hill where she would spend the next two nights. Paul negotiated

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9 Reston, *The Innocence of Joan Little*, 35.
Little’s surrender with the State Bureau of Investigation and at 3 p.m. on Sept. 3, 1974, Little turned herself in to the authorities in Raleigh, saying that she had acted in self-defense. As a condition of her surrender, Little was not returned to the Beaufort County Jail. Instead, she was taken and held at the Women’s Correctional Center (WCC) in Raleigh, North Carolina to await her trial.

Civil rights activists and organizations spearheaded the efforts to defend and acquit Little. Very quickly, the story of this young black prisoner who saved herself from her white jailer’s attack and was then subsequently hunted as a fugitive and charged with murder caught the attention of civil rights leaders. Activists and allies from across the black rights political spectrum rallied in defense of Little, arguing that race was the crucial issue in the case. Here was the story of a black woman defending herself against a white man in a deeply racist South. The legal system, in turn, prosecuted her. The case quickly moved from being “a simple case of murder and escape by a woman inmate,”10 to a symbol of the African-American struggle for justice in the United States.

Perhaps the most important of Little’s support groups was the Joan Little Defense Fund (JLDF), formed by a group of civil rights activists (black and white, male and female) in the week following Little’s surrender. The Defense Fund became the central organizing group for Little, raising an unprecedented $350,000 for her defense by the time of the trial. The JLDF was largely supported by the Southern Poverty Law Center (SPLC). Formed in 1971 of black and white leadership, the Montgomery, Alabama-based SPLC was a black rights organization, which sought to “wage a ‘war against the

economic caste system in America” 11 through legislative reform. As civil rights leader and SPLC president Julian Bond told the New York Times, “as long as a man’s wealth continues to be a vital factor in his fate when he’s on trial, poor people will continue to be deprived of equal rights.” 12 For the SPLC, Joan Little’s case reverberated with the many issues they sought to confront in American law in terms of both civil rights and rights for the poor. As a black rights-based organization at the forefront of the fundraising and legal defense, the SPLC firmly planted the case within the history of the black freedom struggle.

From a black rights perspective, the Little case symbolized the historic injustice of white oppression against blacks, particularly in the South, and black women’s struggle for justice against white male sexual violence. Black rights organizers cultivated an image of “Southern Justice on Trial,” contextualizing the Little case in the history of the “Old South” where blacks were consistently denied due process and faced systematic oppression. Would the legal system continue with antiquated practices and prejudicial attitudes or would colorblind justice prevail? For many, the former was the expected standard and the Little case stood as the challenge. Indeed, much of the rhetoric around the Little case invoked the history of racism and violence against African Americans in the southern United States. Syndicated columnist and prominent black journalist Carl T. Rowan most explicitly expressed these viewpoints in a January 1975 [newspaper title] op-ed. “Dear God,” Rowan wrote, “help Beafort [sic] County, North Carolina, to prove that it is a trifle more enlightened than it was in that tragic era when the lynch mob was


12 Ibid.
the law and a black woman’s body could be violated at the will of the lowliest white scoundrel who could get near her.”\(^{13}\) Using allusions to the historical struggle of African-American people, the black rights movement firmly situated Little in the centuries-long efforts for black liberation. From this perspective, the rape and subsequent prosecution of Joan Little demonstrated the continuation of white oppression.

In January 1975, the SPLC began the mass mailing of some two million letters to raise funds for Little’s defense. Signed by former SNCC leader and now SPLC president Julian Bond, the letter described Little’s ordeal as “one of the most shocking and outrageous examples of injustice against women on record.”\(^{14}\) According to Bond, the case raised several “extremely important issues,” including the right of all women to defend themselves against sexual attack, the poor prison conditions for women, the discriminatory use of the death penalty, and the right of a poor person like Little to an adequate defense. The SPLC also focused heavily on the question of whether Little, as a poor, black woman, could get a fair trial in Beaufort County, North Carolina. If tried there, the jury would be selected from people of neighboring counties. As Bond explained, “pitifully few black people of either sex are called to serve on juries in these counties. This could badly hurt Joanne [sic], who lives in a region where many white people hold the worst sort of prejudices against black women.” The legal defense team had prioritized moving the trial out of Beaufort County, and funds were needed to conduct research proving overt racism in that part of the state.

\(^{13}\) Carl T. Rowan, as quoted in “Ripples of Publicity Became a Wave,” Raleigh News and Observer July 13, 1975. Rowan was a syndicated columnist for The Washington Post and the Chicago Sun-Times and one of the most prominent black journalists of the 20th century.

The funding letter succeeded in raising significant amounts of money. On February 26, 1975, Little was released from Women’s Correctional in Raleigh on a $115,000 bond, $100,000 of which was the bond set for the murder charge and paid for by the SPLC. The additional $15,000 was the bond for the appeal of Little’s breaking and entering charge, the reason she was being held at Beaufort County Jail prior to Alligood’s death.\(^\text{15}\) According to the black weekly the *Atlanta Daily World*, Little “burst into tears in the arms of her mother… as she walked out of women’s prison.”\(^\text{16}\) In a printed statement, Little stated, “I just feel good in being free once again—I thank God most of all that he has set me free.”\(^\text{17}\) Following her release, Little planned to make public appearances to raise additional money and support for her defense. Over the next two months, the legal defense team ardently worked to have the trial moved out of Eastern North Carolina due to racial hostilities there and relocated to Raleigh, the state capital. Preliminary hearings were set for April 14 at the Beaufort County Courthouse in Washington, North Carolina.

For many, Little’s story fit the scenario of a black defendant powerless against the law in a stereotypically racist, small Southern town. With a population of 9,000, Washington, North Carolina—referred to as “No Place, North Carolina” by some media outlets—epitomized one such town.\(^\text{18}\) Washington still had a clear color line cutting it in half ten years after its forced integration by federal mandate in 1965. Blacks made up 3,000 of the town’s total residents, many of whom lived along the dirt streets of “Back of

\(^\text{18}\) Reston, *The Innocence of Joan Little*, 5.
Town.” Despite the court ordered integration, de facto segregation continued with a stark separation between black and white. Views on the Little case reflected this division. In an interview with CBS news, the editor of the local Washington Daily News asserted that most blacks in Washington believed that Little had acted in self-defense. Most whites, however, believed that she had lured Alligood into her cell with a plan to murder him and escape. 19

Amidst a culture where, as one reporter put it, “cracker and racist comments by local citizens” were “easy enough to hear,” locals sought to defend their town. 20 Many residents of Washington refuted the deep South characterization. In a statement published in the local Beaufort-Hyde News, Sheriff Red Davis spoke to the media distortion of Washington. Davis argued that the typical out-of-town journalist came to Washington with their story already written, and “all he wants from us is a dateline, a few names to tag to his bad grammar quotes, and a picture or two of our slums.” 21 Davis further told one reporter, “naturally I’m offended when I read a story that pictures us as ignorant rednecks living on Tobacco Road.” 22 Beaufort-Hyde News editor David M. Milligan joined Davis in this critique. According to Milligan, the stereotyped picture presented to the nation was: “This is the South. Here’s a rinky-dink town with its shacks and shanties.


22 Reston, The Innocence of Joan Little, 13.
You get this old redneck sheriff and this old redneck jailer and this pore little ole colored girl… Well,” Milligan continued, “that’s not the story at all.”

While Washington Mayor Max Roebuck lauded the progress and benefits of integration, perhaps the reality of 1975 Beaufort County lies somewhere between the extremes. As one white resident interviewed for the New York Times commented, “This is not Meridian, Mississippi…. But of course, it’s not New York either.” In a similar vein, Louis Randolph, the sole black city councilman in Beaufort County, told reporters that Washington had “progressed as much as any small Southern town.” Regardless of the accuracy of a racist, backwards “Old South” in Beaufort County, the image reigned. The movement to defend Joan Little, the legal defense, and large sectors of the media touted this image and it decisively shaped the legal approach to the trial.

The rape of a black woman by a white man in a Southern town resonated for black rights activists in light of a long history of unpunished abuse by white males against black women. As a result, the call to defend black womanhood became a widespread slogan of the movement to free Joan Little. Little’s act of self-defense against Alligood became symbolic of the thousands of black women who had suffered before her. In his fundraising letter, for example, Julian Bond firmly situated Little in this historical struggle of black women. Describing Little’s response to Alligood’s advances in her jail cell, Bond wrote, “centuries of repression and abuse against black women must


25 Ibid.
have welled up inside her that night.” Speaking directly to this history of unpunished white violence, an article in Freedomways, the quarterly review of the black freedom movement, explained, “One of the brutal realities in the history of this country and in the struggles of the Afro-American people for their liberation has been the denial of the Black woman to the basic right to self-defense against would-be violators and to seek justice in the face of violation.” Defending Little meant taking a stand to stop this legacy of abuse.

Civil rights activists contextualized Joan Little’s ordeal within the history of false accusations against black men and the lack of justice for black women in cases of interracial rape. These violations were often paired together and understood as two sides of the same racist coin. A Chicago Defender article argued that the Little case exposed the double standard of “old white hang-ups about black women as sexual objects and the unwritten law that implies that it is all right for a white man to have relations with a black woman, but it is a capital offense for a black man to have sexual intercourse with a white woman.”

Black women’s resistance to interracial sexual violence was indeed a crucial battleground of the civil rights movement, and Joan Little was the latest in a long history of women who resisted white racial oppression.

At an April 4, 1975 march through Washington, NC to support Little, SCLC president Rev. Ralph Abernathy told reporters, “Our job is to go in the streets with

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28 “Joan Little’s freedom fight” The Chicago Defender, June 18, 1975, 9.

demonstrations to show that we are sick and tired of abuse of black women by old white males.” The Los Angeles Sentinel reported that speakers at the rally further lambasted a “white racist system,” arguing that, “black women have the right to defend themselves.” The march, which took place on the anniversary of MLK’s assassination and had over 150 participants, culminated in a demonstration at the Beaufort County Courthouse.

Reactions to Abernathy’s April 4 demonstration highlight the disagreements amongst black rights activists around the Little case. Potentially facing a jury pool made up of mostly white Beaufort County residents, the Southern Poverty Law Center (SPLC) insisted that demonstrations like Abernathy’s march through Little’s hometown of Washington, NC, “were hampering their efforts and could have polarized feelings between local blacks and the 6,000 whites who made up two-thirds of the town’s population.” In response to the demonstration, Joseph Levin, co-founder of the SPLC and a member of Little’s legal defense team, said, “I’m not concerned about a demonstration in Washington, D.C…. but I am concerned about a demonstration in Washington, N.C.” Wall Street Journal reporter Bernard Garnett described the disagreements between the SCLC and the SPLC as “some of the bitterest conflicts of opinion” in the Joan Little trial.

Monday, April 14, 1975 marked the opening day of the preliminary hearings for the Joan Little murder trial. Larry Little (no relation to Joan), head of the Black Panther

30 “SCLC Supports Joan Little” Los Angeles Sentinel April 10, 1975.
31 “SCLC Supports Joan Little” Los Angeles Sentinel April 10, 1975.
33 Ibid.
Party in North Carolina, had organized a demonstration in support of Little’s defense. Busloads of youth from Winston-Salem and Fayetteville, North Carolina collected before the courthouse chanting, “One, two three, Joan Little must be set free! Four, five, six, Power to the ice pick! Seven, eight, nine, We’re gonna blow your mind!” Inside the courthouse, the legal defense team had submitted a series of motions to the court. In addition to a motion to drop the charges against Little entirely, the defense presented a motion for a change of venue. Citing the circumstances of the murder, the enormous publicity the case had received, and the “strong implications in this case of an inter-racial sexual assault which has created considerable controversy in Beaufort and neighboring counties,” the defense argued that a “fair and impartial jury trial cannot be held in Beaufort County or any adjacent county.” In the months prior to the hearing, the defense hired a battery of experts to conduct extensive sociological studies and interviews to prove that urban areas west of Beaufort County were less racist than the rural counties of eastern North Carolina. Presenting this evidence to the bench, the defense made the case that the Little trial must be moved to the state capital.

On May 1, 1975, the defense saw its first major victory when a state superior court granted the change of venue. The trial for the Joan Little murder case was scheduled to begin on July 14, 1975 at Wake County Courthouse in Raleigh, North Carolina. While a significant breakthrough for the Little defense, the change of venue also marked the first time in the history of North Carolina that a trial had been moved for

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34 Reston, The Innocence of Joan Little, 173.

35 Motion for a change of venue, folder 343, in the Hamilton H. Hobgood Papers #4246, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill. (hereafter Hobgood papers)
reasons of racist attitudes in order to ensure a fair process. Many considered this a
guarantee of Little’s acquittal, yet the Joan Little Defense Fund viewed this success much
more cautiously. As a letter from the JLDF to the citizens of Wake County stated, “The
realism of the twentieth century and the cruelty and inhumane nature of a death sentence
cannot allow the Joann Little Defense Team to regard the change of venue as the final
victory.” Little still faced a Southern jury, albeit a less racist one, as well as the death
penalty, should she be found guilty. The movement to free Joan Little continued in its
efforts, mobilizing countless protests and soliciting funds for Little’s defense.

In May 1975, Judge Hamilton H. Hobgood expected to spend a fairly calm,
routine summer. As he told a group of reporters later that year, he had “a beautiful
program” for those upcoming months that didn’t involve too much work. With 19 years
of experience as a judge, Hobgood had four more years on his term and then he “planned
to quietly fade away, like General MacArthur.” All that went asunder when Hamilton
was appointed to preside over the Joan Little murder trial that July in Wake County. His
life would soon become completely consumed by the case.

The five-week trial opened on Monday, July 14, 1975 to hundreds of
demonstrators rallying on the courthouse steps. In response to the outpouring of support
and the extensive media interest around the case, and perhaps as a warning to the media
and activists present in the courtroom, Hobgood declared in his opening statement that
day, “The Court expects the trial to be an orderly trial… The defendant is entitled to have

36 Undated letter from Patricia Chance for the JLDF, Inc., folder 344, Hobgood papers.

37 Hamilton H. Hobgood, Speech before the 13th Annual North Carolina Press-Broadcasters Court
her case tried in the calmness of a courtroom and not the spectacle of an arena.³⁸ Bomb threats came in for the first four days of the trial, and Hobgood had an FBI agent accompany him at all times (except for the bathroom, although he probably would have, Hobgood joked) for the entire duration of the hearings. By the end of the ordeal, Hobgood had several death threats made against him and had collected over a dozen liquor boxes full of papers, editorials, and write-ups on the case, sent to him from people in 36 states as well as Germany, France, Sweden, and Italy. In addition, Hobgood had received over 1200 letters throughout the five-week period from “judges, lawyers, people of all sorts.”³⁹ Everyone from legal professionals to white supremacists, feminists, students, and self-described housewives felt compelled to write their praise or their dissent to Hobgood on everything from the issues raised by the case, to the behavior of the lawyers, to thoughts on Little herself. The case had indeed grabbed the nation’s attention and countless people felt invested in its the outcome.

**Exposing the “brutal conditions which exist for female jail inmates”⁴⁰: The Little Case and the Prisoners’ Rights Movement**

Civil rights organizers were not the only ones politicizing this rape case. The issue of prisoners’ rights stood alongside civil rights at the forefront of organizing around Little. Indeed one of the first articles on the case to break into the major mainstream press was a Dec 1, 1974 *New York Times* article titled, “Killing of Carolina Jailer, Charged to Woman, Raises Question of Abuse of Inmates.”⁴¹ Alligood’s abuse of his unfettered

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³⁸ Opening statement of the trial judge, July 14, 1975, folder 348, Hobgood papers.


⁴¹ King, “Killing of Carolina Jailer.”
access to Little and her vulnerability to him as a prisoner under his guard were particularly germane to a movement that sought reform efforts targeted at humane treatment and basic civil rights for prisoners. This isolated case, therefore, spoke to larger movement criticisms about the prison system nationwide and the call to defend Little served as a call to continue in the struggle for justice for all prisoners.

The modern prisoners’ rights movement grew out of the social activism of the early 1960s. Prior to the 1960s, prisoners were legally regarded as “slaves of the state” and denied their constitutional rights as a matter of course. 42 Behind bars and out of the public eye, prisoners were a largely invisible group. Out of this atmosphere, the prisoners’ rights movement emerged. Consisting of those who were imprisoned as well as a far-reaching network of advocates “on the outside,” the prisoners’ rights movement sought to redefine the moral, political, economic, and legal status of prisoners in a democratic society. 43 Since a majority of prisoners at the time (and still today) were black and poor, it is no surprise that a generation who came to consciousness during the civil rights era claimed citizenship rights for those behind bars as well. As a result, there was much overlap in political ideology between the movements for black freedom and prisoners’ rights.

The new consciousness and awareness produced by the prisoners’ rights movement galvanized inmates and their allies. Throughout the 1960s, inmates brought hundreds of suits before the federal courts, challenging the practices and conditions in the


43 Jacobs, 431.
nation’s jails. This unprecedented turn to the courts picked up momentum following the 1964 landmark victory of *Cooper v. Pate*. In *Cooper*, the Supreme Court ruled that Muslim prisoners had the right to worship; a denial of this right amounted to religious discrimination. For the prisoners’ rights movement, this signaled that “prisoners had constitutional rights; prison officials were not free to do with prisoners as they pleased… [The ruling] spelled the end of the authoritarian regime in American penology.” As a result, the courts saw increased numbers of prisoners demanding their rights using legal channels. The number of inmate civil rights filings in federal district courts, for example, rose dramatically during the 1970s. In 1970, inmates filed approximately 2200 civil rights complaints before the federal district courts. By the time of the Little trial in 1975, this number had increased almost 300% to just over 6500 filings. Figures like these attest to inmates’ increasing empowerment to claim their rights over the decade.

By the time of the July 1975 Little trial, prisoners had made significant legal gains on the local and federal levels. The movement had reached a high point a year prior with the Supreme Court ruling in *Wolff v. McDonnell* (1974), which declared prison abuse unconstitutional. Wolff, an inmate at a Nebraska prison, brought charges against prison

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45 *Cooper v. Pate*, 378 U.S. 546 (1964)

46 Jacobs, 434.

47 Margo Schlanger, “Inmate Litigation,” *Harvard Law Review* 116, no. 6 (April 2003): 1583. The increase in civil rights filings is not simply the result of increased rates of incarceration during the 1970s and 1980s. Growing percentages of prisoners sought legal recourse throughout this time, and the increase in civil rights filings outweighs the increase in prisoner population. In her counts of civil rights filings in federal district courts, 1970-2001, Schlanger shows that in 1970 there were 6.3 filings for every 1,000 inmates. In 1975, this number increased to 15.8. And by 1980, there were 24.6 filings for every 1,000 inmates.
officials, partially arguing that disciplinary proceedings at the prison violated due process. Wolff won his case, and the majority opinion provided a “clarion statement that could serve as a rallying call for prisoners’ rights advocates.”  

In the majority opinion, Justice White wrote, “Though his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country.” (italics mine)  

Along with increased social awareness and understanding of conditions behind bars, legal victories like Wolff contributed to the strength of a nationwide network of prisoners’ rights activists as they continued to mobilize.

In 1975, prisoners were no longer an invisible minority and prison conditions (and the push for reform) was in the air. In addition to court-based reform, major prison riots put prisoners and their needs squarely into public consciousness. The rebellion at Attica prison (Attica, NY) in September 1971 demonstrates the changes both in prisoner consciousness and a new willingness to make their demands heard. The rebellion originated from a confrontation between several inmates and a guard on the morning of September 9. One of the prisoners had struck a guard and, as a result, was taken to a disciplinary cellblock that evening. The following morning, several prisoners spontaneously retaliated against the guard and within hours a full-scale rebellion had broken out. While not all inmates participated in the rebellion, those who did expressed their right to humane treatment. In his telling of the Attica Riot, Richard X. Clark, a key leader in the rebellion, stated that the guards who were taken hostage by the rebelling

48 Jacobs, 441.

prisoners were fed, called by their names, and given extra blankets to keep warm. “We treated the hostages the way we had always wanted to be treated,” Clark recounted, “Had they done the same for us, there wouldn’t have been a riot, in all probability.”

Prisoners also saw themselves as united in their shared oppression, despite racial differences. As one leader told the crowd, “We are all in this together… There are no white inmates, no Black inmates, no Puerto Rican inmates. There are only inmates.” Statements like these show that prisoners understood themselves as a significant minority group, deserving of civil rights and humane treatment. In this context, the Joan Little case made nationwide headlines.

The conditions of Little’s imprisonment became a major rallying point for prisoners’ rights activists. The Beaufort County jail was an all-male facility with a separated two-cell area for women. For reasons of staying close to home and working to raise her $15,000 bond, Little had specifically requested to stay at the jail, awaiting an appeal on her case, rather than being transferred to the Women’s Correctional Center in Raleigh. Unlike a women’s jail, Beaufort County jail had no matrons and all the guards were men. Thus, Little was under the supervision of men at all times during her stay.

When defending Little’s actions, prisoners’ rights advocates focused on her vulnerability in this all-male facility. As the SPLC’s Poverty Law Reporter explained, “Women imprisoned in the Beaufort County jail had no privacy while bathing, changing clothes or using toilet facilities. Prior to Alligood’s death, they were under 24-hour surveillance by closed circuit television cameras which male personnel, or anyone in the

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51 *Attica: The Official Report* (1972) as quoted in Useem and Kimball, 94.
jailer’s office, could watch.”  

Prisoners’ rights activists argued that the state was at fault for failing to protect its prisoners from mistreatment. In other words, the prison itself created the situation that led to Little’s act of resistance; she was the victim, the circumstances of her imprisonment were criminal. The Norfolk, Virginia-based Prisoners Solidarity Committee (PSC) rallied to Little’s defense. The PSC had several dozen members in Norfolk and self-defined as a “national organization of ex-prisoners, inmate families, and other community supporters of prisoners demands for humane treatment.” According to the PSC, it was not Little but the state which should be criminalized. In an August 1975 press release, the PSC argued, “the real criminal here is the state of North Carolina and a prison system which perpetrates brutality against women and men prisoners as part of its daily routine.”

Little was subjected to an abusive penal system and the conditions of her imprisonment victimized her. Echoing this sentiment, the Southern Poverty Law Center (SPLC) reported that Little’s emotional and mental anguish following her attack “would not have occurred had she been provided adequate care and supervision while incarcerated in the Beaufort County Jail.” For prisoners’ rights advocates, the issue was not Little’s act against Alligood but rather the conditions that led up to that incident.

For a movement that politicized guards’ abuse and mistreatment of inmates, rape was a political issue (at least in the Little case) insofar as it reflected that dynamic. The


53 PSC Press release, August 7, 1975, Hobgood papers.

54 Ibid.

Little case, therefore, served as a platform to call attention to the widespread problem of sexual abuse of women inmates. Reginald Frazier, a black North Carolina lawyer, petitioned the US Attorney General in November 1974 to investigate the abuse of female prisoners. According to the New York Times, Frazier argued that there was “serious evidence that hundreds of women, both black and white, have been subjected to illegal and immoral sexual assaults by jailers and jail trusties where they were confined.”

The Little case also became a platform from which the prisoners’ rights movement could call attention to the multiple abuses, not just sexual, that women inmates faced. Following her September 11 grand jury indictment on charges of first-degree murder for the death of Alligood, Little was taken and held at the Women’s Correctional Center (WCC) in Raleigh, North Carolina. This prompted significant interest in the conditions for inmates at WCC. In November 1974, Celine Chenier, a member of the board of directors for the Joan Little Defense Fund, called a rally at the WCC to protest the conditions of the prison. While several of the 100 demonstrators held “Free Joan Little” signs, the main purpose of the rally was to protest the hazardous conditions of the prison laundry as well as the lack of adequate medical care for women inmates. Seven months later, the situation had not significantly changed. On June 15, 1975 some 200 inmates at WCC participated in a 4-day protest on prison grounds for both improved health care and

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56 Prisoner-on-prisoner rape would be politicized later with the founding of the group People Organized to Stop the Rape of Imprisoned Persons by former federal inmate Russell Dan Smith in 1980. POSRIP was soon renamed Stop Prisoner Rape and continues to exist today under the name Just Detention International.

57 King, “Killing of Carolina Jailer.” It is unclear (although doubtful) if the Attorney General ever followed through – I was unable to find any further record of this petition.

58 Reston, The Innocence of Joan Little, 105-106.
working conditions. The protest culminated in a riot on June 19 when the National Guard and local police violently ended the otherwise peaceful demonstration.

When prisoners’ rights activists rallied on the Wake County Courthouse steps to stop prisoner abuse they spoke not only to the plight of Little but also to the abuse of all inmates, locked up in prisons nationwide. Connecting Little’s ordeal with those of prisoners nationwide, and the larger goals of the prisoners’ rights movement, SPLC president Julian Bond stated, “Joan must go free… but the hundreds of other unknown Joan Littles must also receive the attention of the American people.” Little stood as a symbol of all that was wrong with the United States penal system, from the excessive punishments of the law to the oppressive and abusive conditions of the prisons themselves.

**Power to the Ice Pick: The Women’s Liberation Movement and the Little Case**

Feminist support for Little came fairly quickly following her indictment. Indeed, when strategizing in October 1974 how to attract attention to their small-town case, the legal defense team sought out women’s groups in Washington, D.C. (in addition to major media outlets and civil rights groups). The nationally disseminated, D.C. based newsletter, *Feminist Alliance Against Rape* first reported on the case in their Nov/Dec 1974 issue, urging their readers to support Little “because of the many political and legal issues the case raises.” Other feminist media outlets picked up the story and reported on


61 Reston, *The Innocence of Joan Little*, 118.
the case, from nationally focused journal *Off Our Backs* to locally-based journals like Denver’s *Big Mama Rag* and Iowa City’s *Ain’t I A Woman*.

When politicizing the Little case, feminists confronted what they understood as two major failures of the criminal legal system. First, in cases of rape the legal system criminalized the victim and not the rapist. And second, the law did not support a woman’s right to self-defense. Feminists believed that self-defense against rape functioned as a crucial piece of women’s liberation—that is, that women had the right to control their own bodies and lives. The acquittal of Joan Little, therefore, would set a critical precedent for women’s rights nationwide. Additionally, when supporting Little’s defense, feminists invoked the concept of sisterhood. Like any other potential woman rape victim, Little was a sister and feminists identified with her based on their shared sex. Indeed, the overarching feminist position on the Little case was that her sex (and not her race) was the primary issue.

Feminists criticized a criminal legal system that they believed criminalized the victim, not the attacker, in cases of rape. This was most obvious in cases where women used self-defense against their rapists and were then punished for doing so. In these self-defense cases, feminists argued that the real criminal was not the woman who fought back but the man who had raped, or attempted to rape, her. The Little case clearly resonated with this perspective.

When Little’s feminist supporters sat in the back of the Wake County Courthouse courtroom wearing t-shirts that read “Power to the ice pick,” they were continuing a tradition within the women’s liberation movement of asserting a woman’s right to self-

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defense. In a Feminist Alliance Against Rape article titled “Killing With Just Cause,” Sue Lenaerts, a self-defense instructor at D.C. Rape Crisis Center, claimed all women’s right to self-defense and linked this to larger movement goals. “We consider women found guilty of murder in a self-defense case to be political prisoners,” Lenaerts wrote. “Supporting women who fight back is politically crucial for feminists. Any time the criminal justice system prosecutes a woman for fighting for her life and dignity, all women stand to lose. Structures for this kind of support need to be analyzed and created by feminist organizers.” Feminists in the San Francisco Bay Area sent a clear message that women should and would defend themselves by any means possible. They chose a large, brightly lit Smirnoff Vodka billboard rising above a department store in downtown Berkeley for their message. Feminists made their way up to the billboard in the middle of the night and changed the original wording from “What’s an Ice Pick? Smirnoff Vodka,” to “What’s an Ice Pick? 1 Answer to Rape!” The San-Francisco based women’s newspaper Plexus featured a photo of the feminist-edited sign on the cover of their September 1975 issue.

Outside the Wake County Courthouse, women carried picket signs with the slogan: “Why have a trial – the criminal is dead.” According to the feminist perspective, the only crime committed was the rape and “the case had no business coming to trial in the first place.” The criminal legal system wrongly portrayed Little’s killing of Alligood

64 Sue Lenaerts, “Killing With Just Cause,” Feminist Alliance Against Rape, July/August 1976, 8-9.
65 Wayne King, “Trial gives new twist to old racial issue.”
as murder, rather than the act of self-defense that it actually was. This was fundamentally unjust. As a November 1974 article in the feminist newsjournal *Off Our Backs* simply explained, “In North Carolina JoAnne Little faces a first degree murder charge for defending herself against rape.” Justice could only be served, therefore, if the trial was called off. This viewpoint was made clear in a petition circulated by The Chicago Women’s Committee to Free JoAnne Little, which urged the governor of North Carolina to drop all charges. The petition stated, “It is abundantly clear that the death [of Alligood] resulted from his own crime of attempted rape. The criminal is already dead.” Further highlighting their clash with the legal system’s depiction of Little’s actions, the Chicago Women’s Committee printed an 11x17 poster that stated: JUSTICE WANTED for JoAnne Little. “Crime”: Self defense against rape. In the eyes of the law, the crime was the murder of Alligood. In the eyes of the feminists, the crime was the rape. Rather than prosecuting the rapist, the legal system put the victim on trial.

Feminists contextualized Little’s case within a series of other high-profile self-defense cases from the early 1970s. As one of several women who fought back against sexual attack, Little was a sister in the struggle. Of the several other women whose acts of self-defense against rape made headlines during the early 1970s, perhaps the most notable of these was Inez García. On March 19, 1974 (5 months prior to the Little incident), García was beaten and raped by two men, Louie Castillo and Miguel Jimenez, outside of her home in Soledad, CA. Jimenez held García down while Castillo raped her.


68 “Free JoAnne Little,” Folder—Rape-Joanne Little. Women’s Ephemera Collection, McCormick Library of Special Collections, Northwestern University Library (hereafter WEF Collection).

69 “Justice Wanted,” Folder—Rape-Joanne Little, WEF Collection.
Following the assault, García returned to her home and loaded her son’s .22 caliber rifle. Less than twenty minutes later, García found the men. She retaliated against her rapists, killing Jimenez with the shotgun but missing Castillo completely. The State of California indicted García on charges of first-degree murder and she was brought to trial in September 1974.70

For feminists nationwide, García epitomized the rape victim who unapologetically fought back. García’s actions following her assault were perceived as a sign of strength. A November 1974 *Off Our Backs* article stated, “Within a patriarchal society, women who ‘take the law into their own hands’ are defying their assigned role of passivity, and to break from an established role is a political act.”71 The trial also served as an attack on “the double standard of justice which they [feminists] associate with the male dominated police and courts in which the acts of a man who killed after seeing his wife raped… would be accorded leniency.”72 Women who asserted their right to protect themselves, on the other hand, were vilified for their actions.

A jury found García guilty of second-degree murder and on October 4, 1974, she received a sentence of five years to life imprisonment. This verdict reinforced multiple feminist contentions with the criminal legal system. In an article in the *Feminist Alliance Against Rape* newsletter, the Oakland-based Inez Garcia Defense Committee stated, “Inez acted to defend her life and her integrity. Her conviction demonstrates that women are not expected, and indeed are forbidden, to actively defend themselves. It further

70 Unlike the Little case, Garcia did not receive substantial support from movements for racial justice. This is likely because Garcia’s attackers were also men of color and her case therefore did not align itself with a politicization of rape as a tool of racist oppression.

71 Janover, “Rape is a political act.”

informs rapists that women are still fair game under the law.”

This perspective was also echoed by the Yvonne Wanrow Defense Committee, a group based in Seattle, Washington, that supported the defense of a Native American woman who killed a known sex offender in 1972 as he attempted to break into her home. In 1973, a jury convicted Wanrow of murder and she was sentenced to 25 years in prison. Several years later, a brochure produced by the Wanrow Defense Committee plainly stated, “In defending themselves, women run the risk of prosecution by the state for a violent crime. As a result women often find themselves facing two violent situations: the first being the physical assault, and the second, a legal assault leading to possible imprisonment.”

The fact that there were a growing number of these cases during the mid-1970s only underlined the feminist contention that the criminal legal system was antagonistic to the needs of women. The women’s liberation movement, therefore, had the responsibility to continue to support these women. One year after Garcia’s conviction, the Free Inez Garcia Committee wrote in a feminist news journal, “Inez still remains a political prisoner at the California Institute for Women. Neither her case has disappeared nor the ideals for which she and many women have struggled—that is, a defense for Inez that supports her and all women in their attempts to become self-determining.”

In claiming her right to self-defense, Joan Little stood as the most recent in a group of women who demanded their right to control their own lives and bodies.


74 “Free Yvonne Wanrow,” Box 1, Nkenge Touré papers, Sophia Smith Collection, Smith College, Northampton, Mass.

75 Letter to the editor, Big Mama Rag, Vol 3-A, no 5 (July 1975): 17.
“Joan Little is like Rosa Parks”\textsuperscript{76}: Strategizing a Legal Defense

In the months leading to the trial, the legal defense team embraced the multiple political perspectives offered by the civil rights, prisoners’ rights, and women’s liberation movements. In an effort to gain the support of these social movements, lead defense lawyer Jerry Paul keenly cast the case in terms of civil rights and Southern justice, prisoners’ rights and oppressive prison conditions, women’s rights and the right to self-defense. While all these issues were raised, the image of racist oppression in the Old South came through most consistently. The majority of press accounts conveyed the message of “Southern Justice on Trial—Again” and while this theme was, as one news journalist later reported, “both tired and unoriginal,” it was effective.\textsuperscript{77} Mark Pinsky, a free-lance journalist who helped break the story and closely covered the case for several major news services, commented that, much to the chagrin of many feminists, “sexism lost out to racism in the reporting.”\textsuperscript{78} The defense team strongly encouraged the view of a freedom fight in the face of the Old South and relied on it when strategizing Little’s legal defense. So much so that the day before the trial began, the Washington Star declared it “the biggest civil rights trial of the ‘70s.”\textsuperscript{79} London Daily Mail journalist Jane Gaskell echoed this sentiment when she reported several weeks later that, “the trial is one of the most controversial cases ever heard in America’s deep south.”\textsuperscript{80} While this

\footnotesize{\textsuperscript{76} Jerry Paul closing argument, in the James Reston Collection, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill. (hereafter Reston collection)


\textsuperscript{78} Pinsky, “Reflections,” 30.

\textsuperscript{79} Lyle Denniston, “Joan Little Case: Biggest Civil Rights Trial of ‘70s,” \textit{Washington Star}, July 13, 1975.}
characterization may have been somewhat of an exaggeration, it speaks to how strongly the case resonated with the civil rights struggle for legal justice and equality for African Americans.

Little and her team of lawyers invoked the history of injustice against African Americans in cases of interracial rape to cultivate an image of Little’s innocence. During the days of the trial, Little walked up the Wake County Courthouse steps with a copy of *To Kill a Mockingbird* strategically peeking out of her purse. Similar to the story of the wrongful accusation of a black man for the rape of a white woman in *To Kill a Mockingbird*, the Little case also stood at the crossroads of rape and race. As *New York Times* correspondent Wayne King reported, Joan’s supporters saw her trial as “old-fashioned lynch law turned on its head … This was the reverse of the racial coin—a black woman who said no to a white man, a descendant of slaves, claiming the same right of protection accorded to white Southern womanhood.”

Originally facing a death sentence if charged, Little’s story resonated with a history of black men put to death for interracial rape. Little’s use of *Mockingbird* conveyed a clear message: Like the black protagonist in the novel, she too was innocent yet facing a racist legal system in the South.

Joan Little took the stand on August 11, 1975. Following her attorneys’ gentle prompting, Little relayed the story of what had happened to her in her jail cell almost one

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81 King, “Trial Gives New Twist to Old Racial Issue.”

82 On August 7, 1975, during the fourth week of the Joan Little murder trial, Judge Hobgood ruled that the state had not sufficiently proven a charge of first-degree murder. The charges were dropped to second-degree murder (which carried a maximum sentence of life) or involuntary manslaughter. No longer facing death if convicted, yet still facing potential lifelong sentencing, Joan Little told the press following that day’s proceedings, “I feel some little joy” (Jane Gaskell, “Judge saves girl in jail rape case from the death penalty,” *London Daily Mail*, August 7, 1975). See also: Wayne King, “Joan Little Death Sentence is Barred, But Judge Lets Lesser Sentence Stand,” *New York Times*, August 7, 1975.
year prior, in the early morning hours of August 27, 1974. In a soft, emotionally-laden voice that was at times difficult to hear (Judge Hobgood had to ask her to speak up on several occasions), Little testified that Alligood came into her cell, took off her gown while she cried, and began to force himself on her. At this point, she noticed the ice pick in his left hand. Alligood grabbed Little behind the neck with his right hand, pushed her to the floor, and, in Little’s words, “he was telling me that he wanted me to suck him, and I told him no that I’m not gonna do it. He threatened me with the ice pick and I then did what he told me to do.” Following 3-5 minutes of this, Alligood loosened his grip on the ice pick. It fell to the floor and both Little and Alligood reached for it. Little testified, “I got to the ice pick first and when I grabbed the ice pick up and I hit at him, he fell backwards…” A struggle ensued where Little stabbed Alligood multiple times with the ice pick. Alligood fell to the floor on his knees and Little ran to the adjoining cell, grabbed her jeans, blouse, and pocketbook and ran out of the women’s section of the jail. As she looked back, Little testified she saw Alligood standing outside of her cell. In her words, “I just remember seeing his face and seeing that grin that he had on his face.” Little then took the ring of keys from the door leading to the women’s cellblock and made her way out of Beauford County jail.

According to the state, there was no rape at all. Rather, Little had murdered Alligood as part of her plan for jailbreak. Earlier during the evening of the attack, Little had been left alone and unsupervised briefly in the jailer’s office. According to the state, it was at that time that she had taken the ice pick from the top, left drawer, brought it

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83 Testimony of Joan Little, p. 82, Reston papers.
84 Testimony of Joan Little, p. 85, Reston papers.
85 Testimony of Joan Little, p. 92, Reston papers.
back to her cell, and waited to lure Alligood into her cell so she could kill him and escape. Contrary to Little’s testimony, the state argued that Little knew Alligood was dead when she left the women’s cellblock. On cross-examination, the prosecution hoped to find contradictions in Little’s testimony. Prosecuting attorney William Griffin had Little repeat all of the details of what had happened to her that night in her prison cell. Rather than the desired outcome, the state only succeeded in increasing juror empathy for Little’s ordeal.

Paul had to counter this image of a violent and scheming seductress and he quickly realized that Little had to be a sympathetic and respectable victim to win. In his words, “She had to take the approach: ‘I don’t like to kill people. I don’t believe in capital punishment. I don’t believe in killing. Maybe I shouldn’t be punished in court for killing this person, but I still have to suffer with it.’”\footnote{Reston, The Innocence of Joan Little, 113-114.} Paul further commented, “If I had tried to sell Joan with the stance, ‘I did a brave thing, I killed the old lecher and I’m glad of it,’ I’d have blown it.”\footnote{Reston, The Innocence of Joan Little 114.} Paul’s approach was indeed effective. Little’s poignant and tear-filled testimony brought at least one juror to tears.

The legal defense relied on the construction of the Old South when making claims for Little’s innocence. As one news journalist commented,

Paul played to a synthetic nostalgia that the nation had for the Old South:

the South of one-dimensional good and evil, racist towns, redneck sheriffs
and jailers, railroading prosecutors telling n**ger and Jew jokes, black
shantytowns, quintessential, slavelike victims, and civil-rights crusaders.  

While Paul relied on a feminist understanding of rape in making the case for Little’s
innocence, reminding the jury that rape was “a crime of violence and assault, not a crime
of sex… It’s a crime designed to humiliate, to hurt and to assault the victim,” his closing
arguments centered on race and the history of racist oppression in the South and the
criminal justice system. He constructed Little as the latest in a series of civil rights
heroes, battling against antiquated, segregationist forces that wanted to keep blacks
oppressed. “Joan Little is like Rosa Parks,” Paul told the jury. Like Parks, she had stood
up for what was right and then “had the courage to come back and talk about it.”
The state, on the other hand, believed in segregation and inequality between whites and
blacks. Referring to the prosecution, Paul argued, “These same people that said Dr. King
was a criminal because he marched and spoke for freedom and was a freedom fighter are
the same people that’s trying to put Joan Little in jail.” Indeed, Paul argued that the
prosecution and defense were “locked in a death struggle” between justice and equality
for blacks on the one hand and the continuation of an oppressive, segregationist system

88 Reston, The Innocence of Joan Little 333.
89 Jerry Paul closing argument, p 12, Reston papers.
90 Jerry Paul closing argument, p 37, Reston papers.
91 Jerry Paul closing argument, p 34, Reston papers.
92 Jerry Paul closing argument, p 40, Reston papers.
on the other.\textsuperscript{93} The Little case, therefore, was not just about an individual woman’s right to self-defense, but about the current state and future of the entire South.

On Friday, August 15, 1975, following a 78-minute deliberation, the jury for the Joan Little murder trial acquitted the defendant of all charges. According to the jury, the state had not proven its case. Little walked out of the Wake County Courthouse that day to the celebration of some 100 protestors as they cheered, “Freedom, freedom, freedom!”\textsuperscript{94} As she left the courtroom, Little told reporters in regards to her acquittal, “It feels good.”\textsuperscript{95} She later announced, “It wasn’t the system that set me free. It was the people.”\textsuperscript{96} Blazoned across the front page of the Raleigh News and Observer the following day read the headline “Wake Jury Acquits Joan Little, Says State Didn’t Prove Its Case.”\textsuperscript{97}

Little’s acquittal brought victory not only to Little herself but also to the multiple political movements that supported her. For many, the media coverage of the case as well as the acquittal served an important symbolic role. In terms of prisoners’ rights, the \textit{Poverty Law Report} commented that the case brought to “widespread public attention the brutal conditions which exist for female jail inmates.”\textsuperscript{98} From a feminist perspective, National Organization of Women president Karen DeCrow hailed the verdict as the first

\textsuperscript{93} Jerry Paul closing argument, p 36, Reston papers.


\textsuperscript{95} Dennis A. Williams, “Trials: It was the people,” \textit{Newsweek}, August 25, 1975, 29.

\textsuperscript{96} Williams, “Trials: It was the people,” 29.

\textsuperscript{97} \textit{Raleigh News and Observer}, August 16, 1975, A-1.

“legal precedent for a woman’s right to self-defense.” Celine Chenier, a founding member of the Joan Little Defense Fund, believed Little’s acquittal would indeed encourage women to fight back. Following Little’s acquittal Chenier said, “I don’t think it’s going to be that easy to rape anybody anymore—in prisons or out. Joan Little has inspired me and countless other women to deal with any rapist. Yes, power to the ice pick.” A significant departure from the past, Little’s acquittal held enormous meaning for the movements that rallied around her. For all, the case served as a major milestone in a history of overwhelming injustice. At long last, the state had upheld the rights and protections due to a victim of sexual assault.

99 Williams, “Trials: It was the people.”

100 Reston, The Innocence of Joan Little, 92.
CHAPTER VI
DEBATING STRATEGIES AND SOLUTIONS:
FEMINISM, THE STATE, AND THE CHANGING NATURE
OF ANTI-RAPE WORK

On September 28, 1971, New York City’s THE FEMINISTS held a
demonstration at the Criminal Courthouse Building in downtown Manhattan to protest
the court’s refusal “to indict a self-confessed rapist of two little girls who identified him
as their assailant.”1 Three months earlier, in June 1971, 16-year-old Hector Medina had
assaulted an 11-year-old and a 14-year-old girl in New York City’s Stuyvesant Town.
Although Medina confessed to the rapes, he was not indicted on those charges at trial
because of a lack of corroboration of identity. He pleaded guilty to a lesser misdemeanor,
which carried a maximum penalty of three months imprisonment. The September 28
court date was a sentencing hearing and THE FEMINISTS had reason to believe that
Medina’s sentence would be suspended and the victims would see no justice. They
organized to protest Medina’s impunity and in their press release declared their intention
“to gain support to replace the present rape laws with ones that will protect women, and
to pressure the police and the courts to apprehend and prosecute offenders.”2 The Court’s
treatment of Medina validated larger feminist claims that the rape laws only protected the
rapists. Between fifteen and twenty women gathered on the courthouse steps at 9 a.m.
Later that morning, the protestors learned that some women objected to their action.
Collette Price, who demonstrated with the women that day, recounted the story in the
feminist newsletter Woman’s World. Price wrote that following a radio announcement

1 Press release, Sept 28, 1971, box 14, folder 2, Susan Brownmiller papers, Schlesinger Library,
Radcliffe Institute, Harvard University (hereafter Susan Brownmiller papers).

2 Ibid.
publicizing the protest, “there was mention made of not getting involved in the prosecution of a minority group member—Medina is a Puerto Rican.” Despite his race, THE FEMINISTS believed Medina should face repercussions for his actions. Price continued, “Feminists feel he is a rapist first by demonstrated actions, a Puerto Rican merely by birthright. If he rapes women, we want him prosecuted to protect our lives.”³ THE FEMINISTS believed that crimes against women had to be dealt with seriously and severely, regardless of the perpetrator’s race, if women were ever to be free. To the satisfaction of THE FEMINISTS, the judge ultimately ruled against Medina and he received the maximum ninety-day sentence for his crime.

When Price left the court room, a young woman who worked at the court building asked about the case, expressing concern over Medina’s incarceration and “saying society is all messed up and that’s what need to change.” In response, Price asked her why it was that women always seemed to be the victims of the “messed up society.”⁴ For Price and other members of THE FEMINISTS, the concerns over the oppression of men of color too often came at the expense of all women, regardless of their race.

From the earliest years of feminist organizing, the search for solutions to rape provoked complicated debates over strategy and tactics. The Medina story suggests some of the tensions over race and the criminal justice system that would vex the feminist anti-rape movement over the course of the decade. These debates occurred in a context where by the mid-1970s, local, state, and federal authorities, empowered by a pervasive tough-on-crime political agenda, took an increasingly active role in anti-rape work and

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⁴ Price, “Bringing Rapists to Trial.”
promoted an exclusively reform-oriented agenda. At the same time, growing numbers of professionals came to the movement without necessarily having the political analysis which originally motivated feminists in the early 1970s to pursue anti-rape work. Many professional social workers and counselors, for example, saw themselves as social service providers who would help survivors after the fact, rather than seeking to revolutionize gender roles or dismantle the broader sexist culture. As a result, feminists saw their once radical vision of social revolution overshadowed by increasing efforts at state and reform-based solutions to the problem of sexual violence.

Although feminists may not have anticipated the degree of state involvement in anti-rape work that would take place within less than five year’s time, many did vocalize an analysis that cautioned against and contested state-based reform. These internal tensions are an important yet often neglected piece of the history of the 1970s feminist anti-rape movement. Narratives of the movement typically tend to focus on its successes, particularly the feminist-backed rape law reforms that took place over the course of the decade. Yet the feminist anti-rape movement was anything but unanimous in its support for state-based solutions and many activists expressed serious doubts about whether a state that they viewed as exclusively concerned with protecting the interests of wealthy white men could protect women in general from sexual violence. Proposed strategies for


6 In highlighting these tensions, my research adds to the recent scholarship that counters dominant historical narratives that cast the 1970s feminist movement as solely interested in the needs of white, middle-class women. See: Stephanie Gilmore, ed. Feminist Coalitions: Historical Perspectives on Second-Wave Feminism in the United States (Urbana: University of Illinois Press, 2008); Benita Roth, Separate Roads to Feminism: Black, Chicana, and White Feminist Movements in America’s Second Wave (New
responding to rape and the disagreements over those strategies did not always neatly align with ideological perspective or racial background. For example, many radical white feminists supported reforming the police (a liberal solution) as one significant measure in the fight against rape. Many black activists agreed and also advocated for better police protection, despite that community’s experiences with police racism and police brutality.

This chapter highlights the differences within the feminist anti-rape movement and the complicated debates over strategy and tactics provoked by the search for solutions to rape. These debates speak to the complexities faced by a political movement which sought in the immediate to provide urgent and desperately needed services for victims of rape (and therefore daily confronted the inadequacies of the legal and medical systems), while also attempting to theorize and strategize the most effective methods to eradicate sexual violence in the long term. Although all feminists agreed that sexual violence was a serious social concern, there remained no consensus on how to respond most effectively to the problem of rape.

**Law and Order in the 1970s**

The feminist attention to rape emerged at a time when local, state, and federal authorities were aggressively pursuing a “tough on crime” agenda. Beginning in the 1960s, conservative politicians such as Barry Goldwater, George Wallace, Ronald Reagan, and Richard Nixon made the issue of crime a national priority and pursued a

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rigorous campaign against crime that continued unabated into the 1970s. In the face of powerful social movements, grassroots protest, the decay of urban centers, and growing civil strife, particularly the race riots which exploded out of urban ghettos, conservative politicians used a “law and order” approach to exploit the public’s concerns over rising crime and civil unrest. Conservative Barry Goldwater is credited with first raising the “crime in the streets” issue in his 1964 run for presidency. In his acceptance speech at the Republican National Convention in July 1964, Goldwater declared, “the abuse of law and order in this country is going to be an issue [in this election]—at least I’m going to make it one because I think the responsibility has to start some place… Security from domestic violence, no less than from foreign aggression, is the most elementary form and fundamental purpose of any government.” Although Johnson won the election by a landslide and publicly paid little attention to the emergence of law and order, according to scholar Michael Flamm, the administration was “deeply worried by it.” In the fall of

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7 Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York: Cambridge University Press, 2006), 33. Gottschalk summarizes the law and order explanation for the rise of the carceral state on pgs 33-34. While the 1960s gave rise to a “tough on crime” political agenda, concern with crime and criminality has been a feature throughout United States history. In her study of the rise of the modern carceral state, Marie Gottschalk finds that the growing “angst about crime, violence, and disorder” that characterized the ascendancy of the “law and order” political agenda is not unique to the last forty years. Rather, she argues “the country has an anxious past.” The system of mass incarceration in the modern United States has its origins in the periodic reform movements or crusades against crime since the country’s inception, which significantly “contributed to the consolidation of carceral power” during the 1970s (Gottschalk, 75).


1964, Johnson cast his War on Poverty as a War on Crime. In a speech one year later he declared, “I will not be satisfied... until every woman and child in this Nation can walk any street, enjoy any park, drive on any highway, and live in any community at any time of the day or night without fear of being harmed.”

Very quickly, the focus on crime rose to the forefront of national politics.

This renewed focus on crime and protection led the federal government to establish several national commissions to study the problem of crime and criminals. President Johnson’s Commission on Law Enforcement and Administration, 1965-1967, for example, investigated crime, held national conferences, and issued studies on crime and criminal justice that called for increased education, training of police, and research on crime. The Commission also carried out three significant pilot studies of victims in 1965. These studies found that crime was going both unreported and unprosecuted and therefore, the criminal justice system was both inefficient and needing of improvement.

Findings like these prompted the federal government to action.

Prior to the 1960s, little federal money was spent on crime control; the law and order agenda dramatically changed that. As a result of the recommendations of the 1960s crime commissions, federal criminal justice expenditures doubled between 1955 and 1971. The majority of these increased funds went to local police. By 1974, the police received 57% of the nation’s $15 million criminal justice budget, an 800 percent increase over what they had received only ten years earlier. Additionally, police forces nationwide increased by 40% between 1965-1975, with even larger increases in big cities such as

10 Flamm, 32.

11 Johnson, as quoted in Flamm, 51.

Los Angeles. During the 1970s, police reorganized and diversified and, as scholar Anthony Platt observes, “transformed into a much more disciplined and militarized occupation, loyal to the state but little else.”

In 1968, Congress passed the Omnibus Crime Control and Safe Streets Act, also known as the “master plan for the national war on crime.” Responding to the recommendations of President Johnson’s Commission on Crime, the 1968 Act created the Law Enforcement Assistance Administration (LEAA), housed in the US Department of Justice. According to scholar Marie Gottschalk, the “central mission of the LEAA… was to fund projects that would improve the criminal justice system’s handling of victims and witnesses.” In the service of this mission, the LEAA channeled vast amounts of federal money to state and local law enforcement agencies using a block-grant structure. With an initial budget of $68 million in 1968, the LEAA had a nearly $1 billion annual budget at its peak in the 1970s.

The “tough on crime” agenda intensified in the 1970s under President Nixon who had successfully run on a “law and order” platform in 1968. Indeed, law and order was one of the decisive issues of the 1968 presidential campaign and Time magazine reported that it was the number one issue of the year. This agenda characterized Nixon’s presidency. A 1972 Department of Justice report declared, “The Federal Government has undertaken at the direction of President Nixon the most massive and sustained attack on

13 Platt, 6-7.

14 Gottschalk, 85. See Gottschalk’s discussion of the LEAA and the rising victim’s rights movement on pgs. 85-91.

15 Flamm, 162.
crime in the history of the Nation.”\textsuperscript{16} Under the Nixon Administration, the federal government significantly increased funding to state and local authorities, strengthened the laws on organized crime, drug trafficking, and criminal activity overall, expanded crime reduction programs, and dramatically increased the numbers and funding for local law enforcement. Underscoring the need for federal intervention against crime, President Nixon stated it was “the right of all citizens to feel safe on the streets and secure in their homes… It is a right on which this Administration has placed a new and major emphasis.”\textsuperscript{17}

By the 1970s, the law and order agenda had firmly taken hold at all levels of government. Never before had local, state, and federal authorities been so focused on crime, criminals, and punishment. In this context, the women’s movement raised rape as an issue of serious concern, critiquing the leniency for assailants under the criminal legal system, and demanding justice for women.

**The State and Anti-rape Work**

During the early 1970s, feminists agreed that the legal system had failed women to an extraordinary degree. How to respond effectively to that failure, however, proved complicated. With roots in the New Left and counterculture of the 1960s, many radical feminists in the early anti-rape movement articulated an anti-state position and chose to


\textsuperscript{17} U.S. Department of Justice, *Attorney General’s First Annual Report*, 1.
deal with the problem of sexual violence on their own. Feminist rape crisis centers, for example, originally sought to counter the ineffectiveness and seeming indifference of legal and medical institutions by providing empathetic victim-centered counseling and support for women without relying primarily on the state. One of the first decisions made by the women who organized the DC RCC was not to work directly with the police. They saw their work as separate and often at odds with the goals of the criminal justice system. As former DC RCC member Deb Friedman recounted in an interview, “We as feminists felt that doing anti-rape work was about women taking power over their own lives. Period.” This empowerment model ran contrary to the criminal justice approach that focused on punishment and where, feminists argued, women lost all agency in the prosecutorial process. As DC RCC members explained in their 1972 publication How to Start a Rape Crisis Center, at the first organizing meeting “the most important decision… was to focus on counseling and serving the needs of rape victims. Police and medical liaisons were to be made insofar as it was necessary to be effective in helping the women we would be working with.” This approach to the state reflected feminist political beliefs that rape was the most extreme manifestation of sexism and men’s oppression of women. With men controlling state institutions (e.g. police, hospitals, courts), many feminists doubted that there could be any change in the treatment of victims from within

18 As sociologist Nancy Matthews points out, “many feminist anti-rape activists saw their work as an alternative to relying on or being involved with the criminal justice system” (Matthews, xii). See: Nancy Matthews, Confronting Rape: The Feminist Anti-Rape Movement and the State (New York: Routledge, 1994).

19 Deb Friedman, telephone interview by author, Dec 4, 2011.

20 Elizabethann O’Sullivan, “How to Organize a Rape Crisis Center” (second printing), p. 5. Women’s Ephemera Collection, McCormick Library of Special Collections, Northwestern University Library (hereafter WEF Collection).
those institutions. D.C. rape crisis center members, for example, found that other groups who had worked on reforming either police or hospital procedures had spent a lot of energy for only minimal changes. In line with this perspective, the Detroit Women Against Rape asked in their 1971 Stop Rape pamphlet, “Will the instance of rape be lowered by: A. the police, B. the rapists, C. the courts, D. none of the above.”\textsuperscript{21} The answer was clear. Women alone would solve the problem of rape.

In light of the abysmal treatment of women victims of sexual assault, however, other groups such as THE FEMINISTS did seek reform of legal institutions, both the people in them (the police) and the laws that guided them. Overhauling state rape laws, for example, became a major goal for many feminists in the movement, both black and white, who believed that a law-centered strategy could have much broader implications for social change. Rape law reform, many argued, was as much about changing social attitudes about women as it was about rape prevention and victim justice. Feminists sought to prioritize and legitimate women’s perspective and experience of rape in the eyes of the law and, by extension, in the eyes of society. As the New York Radical Feminists explained, “We do not want to make rape laws more punitive, but we do want the courts to recognize the rights of women to a fair and equitable trial as a first step in eliminating sexism in our legal system. The laws as they stand now only reflect suspicion and mistrust of the victim.”\textsuperscript{22} Generally, feminists who supported law reform saw it as one piece of a much larger struggle, and not as the panacea to the rape epidemic. Susan

\textsuperscript{21} Detroit Women Against Rape, “Stop Rape” (1971), 5.

\textsuperscript{22} Noreen Connell and Cassandra Wilson, eds., Rape: The First Sourcebook for Women (New York: Plume, 1974), 125.
Brownmiller, who came out of the radical feminist tradition and was one of the best-known anti-rape activists of her time, explained that rape would continue as long as society accepted and encouraged “the known man who presses his advantage, who uses his position of authority… who will not take ‘No’ for an answer, who assumes that sexual access is his right-of-way and physical aggression his right-on expression of masculinity.” Under these circumstances, Brownmiller wrote, “The most perfect rape laws in the land, enforced by the best concerned citizens, will not be enough to stop rape.”

Feminists believed that law reform and other state-based solutions could only make a difference alongside a major restructuring of the cultural norms around sex roles and sexual socialization.

As feminist anti-rape activism intensified in the early 1970s, state agencies, including government, law enforcement, and medical providers, became involved in anti-rape work. Elements of the feminist demand for change, such as improved services for victims, a more effective and efficient prosecutorial process, and repercussions for assailants, aligned themselves with the goals of the law and order agenda, which sought to more effectively prevent and respond to crime. The intersection of both intense feminist agitation and tough-on-crime policy interests prompted the state to begin to take sexual violence seriously. The state response is partially indicative of the anti-rape movement’s success in re-casting rape as a major social problem that required large-scale attention. As sociologist Nancy Matthews points out, the anti-rape movement successfully redefined rape as a crime of violence and not an act of pure sex or uncontrollable lust. In so doing, Matthews argues, feminist activists “placed

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23 Brownmiller, Against Our Will, 450.
responsibility squarely with the state as the institution responsible for controlling violence.”  

This was effective in a context where responding to crime had become a national priority.

State involvement in anti-rape efforts took place on the national and local levels.  

Often working in coalition with local feminists, for example, city councils developed task forces to combat rape and advocated pro-feminist reforms. Between 1973 and 1976, state and local groups created 300 task forces in response to rape nationwide.  

In 1973, the Washington, D.C. Public Safety Committee Task Force on Rape, for example, held hearings on the city’s rape laws and agitated for reform. In the Midwest, the Committee on Sex Offenses in St. Paul, Minnesota planned to redesign a comprehensive rape treatment program for the county. In December 1974, the Chicago City Council voted in favor of an ordinance that improved medical treatment of rape victims, providing victims with privacy at hospitals and training gynecologists and social workers to respond empathetically to victim needs. Earlier that year, the Los Angeles City Council task force on rape proposed significant changes in police and medical procedures in response to rape victims as well as self-defense training in schools.

In response to feminist demands, police departments across the country initiated new programs to respond to rape survivors more effectively. Many established special rape investigation units within their departments, and majority-women units also became

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24 Matthews, Confronting Rape, 153.

25 For a detailed discussion of local and federal developments see: Maria Bevacqua, Rape on the Public Agenda: Feminism and the Politics of Sexual Assault (Boston: Northeastern University Press, 2000). See especially pgs 138-147.

26 Gottschalk, 124.

popular. In 1972, the New York City police placed Lieutenant Julia Tucker as the commander of that department’s rape squad. The predominantly woman unit was heralded as a success with rates of reports and arrests in cases of rape increasing by over 35% over the next year. Tucker attributed this to the willingness of victims to talk with a woman investigator rather than a man. “The average victim finds the woman investigator has more sensitivity,” she explained at a September 1973 Chicago City Council hearing on a proposal to establish an all-woman rape investigation unit in the Chicago Police Department.28 Similarly, the Newark Police Department and Essex County Prosecutor’s Office in New Jersey established a sexual assault and rape analysis unit in July 1975 with the goal of encouraging more victims to report. While Newark’s was not an all-woman unit—the squad had four men and one woman—it was modeled on the New York City example. This included having women authorities integral to the reporting and prosecuting process. Assistant prosecutor Gloria Murphy, who had extensive experience with victims, was chosen to direct the training of special investigators and prepare investigations for trial. According to the New York Times, the unit proposed to have women authority figures available to victims, and be “constantly at their side throughout the investigative and prosecuting process.”29 In addition, police departments nationwide initiated training programs for their officers in how to handle sexual assault cases and survivors with sensitivity and professionalism. They also led community self-defense demonstrations and workshops.


Responses to rape also came from the federal level. The Law Enforcement Assistance Administration (LEAA), charged with funding projects to improve the criminal justice system’s handling of witnesses and victims, began granting money towards anti-rape projects in the early 1970s. Focusing on rape as a criminal problem, the LEAA funded anti-rape work that was rooted in or otherwise improved the efficiency of the criminal justice process. Responding to immense lobbying efforts by the National Organization for Women, Senator Mathias of Maryland and Congressman Heinz of Pennsylvania co-sponsored a bill to establish a National Center for the Prevention and Control of Rape within the National Institution of Mental Health (NIMH) in 1974. Enacted in July 1975, the Mathias Bill, as it was known, focused on rape as a social or health problem, rather than a criminal problem. Mary Ann Largen, coordinator of NOW’s National Task Force on Rape, played an integral role in drafting the bill and the NIMH served as an additional funding source for rape crisis work. Early NIMH money funded majority research projects, often by feminist-oriented scholars. From the local to the federal levels, the government began to respond to sexual violence.

Yet state support for anti-rape work did not come without negative repercussions for the feminist movement. Within less than five years of the initial feminist agitation, the state moved from being the target of reform to playing an integral role in reform efforts. As a powerful and significant player, the state successfully redefined anti-rape work on its own terms, focusing almost exclusively on changes to law enforcement and dismissing feminist political commitments to ending sexism. Local, state, and federal government efforts in response to rape reflected the prevailing law and order agenda of the 1970s. Much to the chagrin of many grassroots activists, the broad feminist vision of wide-
reaching social change was narrowed to this single focus. In the mid-1970s, Mary Ann Largen critiqued this over-emphasis on the criminal justice system as inadequate to resolving the epidemic of sexual violence. “While the women’s movement continues to focus upon the societal sexism inherent in rape,” she wrote, “society itself is taking up the rape issue under the ‘law and order’ banner. The banner provokes emotion but fails to deal with the source of the problem; it is a Band-Aid solution to an injury which requires major surgery.”30 Additionally, funding provided for anti-rape work by the LEAA (in the early 1970s) and the NIMH (in the mid to late 1970s) went mostly to law enforcement, mental health centers, and academic research, and not grassroots feminists. In 1977, Mary Capps and Donna Myrhe of the New Orleans Rape Crisis Center commented that the funding priorities of the LEAA and NIMH “come at the expense of grass-roots women’s efforts, and at the expense of recognizing, understanding and dealing with the societal roots of rape.”31 As the state took more control of anti-rape work, the feminist analysis was slowly dismissed in favor of reforms to law enforcement policies in the aftermath of assault.

The contentious history between feminist anti-rape groups and the LEAA demonstrates the divide in anti-rape work and strategies as well as the state suppression of feminist political goals that occurred throughout the decade. Prior to the creation of the National Center for the Prevention and Control of Rape in 1976, the LEAA controlled all federal funding for rape projects. Early on most rape crisis centers and groups, with their


31 Mary Capps and Donna Myrhe, “Conference we have known and money we haven’t seen,” Feminist Alliance Against Rape, May/June 1977, 10.
radical anti-state positions, refused to apply for grants from the LEAA.\textsuperscript{32} Within several years of organizing, however, many volunteer-based rape crisis centers, run on shoestring budgets, found themselves desperate for financial support. The burden of under-funding pushed some groups to apply for LEAA grants individually or jointly with local non-feminist groups. In 1974, NOW’s National Task Force on Rape undertook an investigation of LEAA spending on rape-related projects.\textsuperscript{33} Mary Ann Largen reported that the LEAA showed significant bias against women’s groups and refused to fund autonomous women’s groups (such as rape crisis centers) unless they paired up with the local police department or hospital. Those women’s groups that chose to create coalitions with professional institutions, however, faced a series of problems. As Largen reported, funds were unevenly distributed, with the institutions receiving 80-90\% of the funding, and the women’s group the leftovers; the institutions generally took control of the project, dismissing the women’s groups as non-professional; institutional personnel lacked motivation and determination; and, finally, LEAA prioritized law enforcement over other feminist goals to eradicate rape. The LEAA disregard for the “expertise of women’s groups on the rape issue” in favor of professionalized or state-supported institutions, such as the police or hospitals, vexed grassroots feminist anti-rape activists.\textsuperscript{34}

The distribution of significant grants to non-grassroots organizations underscored feminist contentions with the LEAA. In 1974, the Center for Women Policy Studies (CWPS), a non-profit based in Washington, D.C., received a $250,000 LEAA grant to

\begin{footnotesize}
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\item \textsuperscript{32} Gottschalk, 126.
\item \textsuperscript{33} The National Organization for Women created their National Task Force on rape in 1973.
\item \textsuperscript{34} Mary Ann Largen, “L.E.A.A. rape funding review,” \textit{Feminist Alliance Against Rape}, Sept/Oct 1974, 11.
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undertake a project studying “rape and the improved treatment of rape victims by law enforcement and health services personnel, prosecutors and the courts.” Founded in 1972, the stated purpose of CWPS was to improve the economic and legal status of women. The organization had no prior connections to established feminist rape crisis centers, nor had they been active in the feminist anti-rape movement. Yet CWPS planned to research existing programs, mostly feminist rape crisis centers, as well as hospitals and police departments, to develop and field test “models of programs that can be used by citizens groups, hospitals, police, prosecutors, and victim compensation boards.”35 Feminists were resentful of the LEAA refusal to fund much-needed grassroots projects. Feminist anti-rape activist Jackie MacMillan, for example, pointed out the obvious discrepancy between CWPS receiving a quarter of a million dollars for a research project while most rape crisis centers, community-based and financially struggling, operated on budgets of under $20,000 a year. She further remarked that it was “typical of the bureaucracy to fund research as a priority over action-oriented projects” and that money was rarely made available for “sustaining on-going programs needed by the community.”36 These critiques were especially salient in the context of the larger changes taking place within the anti-rape movement. Grassroots activists felt themselves pushed aside as more professionals became involved in anti-rape efforts. As feminists struggled to provide supportive and desperately needed services to survivors of violence, they saw research grants like these


as particularly dismissive of the immediate crisis and the grassroots efforts which had initiated and sustained anti-rape efforts since the early 1970s.

On the other side of the country, the San Francisco Women Against Rape (SFWAR) vocalized their contentions with another LEAA grant. In 1974, the LEAA granted $100,000 for a year-long study of the problem of rape to the Queen’s Bench Foundation, an organization of women lawyers and judges in San Francisco. The research goals of the study focused exclusively on the aftermath of rape, looking at the impact of rape on the victim, the public health and criminal legal system’s handling of rape cases, the community services available, and why victims do not report rape. The Queen’s Bench Foundation published the preliminary research findings under the title “Rape Victimization Study.” SFWAR severely critiqued the study, especially as it neglected feminist political understandings of rape as rooted in sexist culture. “One wonders about the validity of formulating a rape-responsive program on the basis of a study structured to include information gained only after the fact of rape,” SFWAR wrote. “Can any rape research which ignores the power relationship between victim and rapist and fails to mention the sex-role stereotyping that destines women in our society for the role of victim be adequately grounded?” In a significant departure from grassroots feminist understandings of rape, the LEAA granted money to groups whose research focused primarily on improving the criminal justice responses to rape with almost no regard for prevention or community education.

The LEAA and the question of funding was one piece of a much larger feminist hesitation around state intervention into anti-rape work. A 1975 report on the first

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37 San Francisco Women Against Rape, “LEAA Research-West,” Feminist Alliance Against Rape, Fall 1975, 7.
national conference on rape reflects feminist concerns of allying with the state. The conference, titled “Rape—Research, Action, Prevention” and held at the University of Alabama on January 20-22, 1975, brought together feminist rape crisis center workers, law enforcement personnel, and rape researchers. In her report, Judy Smith of the University of Montana’s Women’s Resource Center commented on the very different approaches to rape taken by feminists and law enforcement personnel. While feminists had focused on the crime as symptomatic of male dominance and sexism, Smith explained, “law enforcement personnel, who have finally become concerned about rape, often see it as a problem of law and order or moral decay rather than a symptom of a sexist society.”

Similarly, Smith pointed to the major political differences in rape prevention. Law enforcement suggested women modify their behavior to avoid being raped, suggesting a list of “don’ts” that included don’t hitchhike and don’t be out late. Feminists, on the other hand, rejected this “rape schedule.” Smith explained, “If women organize their activities out of fear or rape, then their mobility is extremely limited.” Rather, feminists suggested prevention tactics such as anti-rape squads, self-defense classes, and curfews for men. Smith further reported concerns by “many feminists attending the conference [who] felt that the whole question of rape was being co-opted by the criminal justice system and the professional researcher.” As state agencies and what Smith described as “other non-feminist groups” sought to separate rape from a feminist perspective on sexism, the feminist analysis of sexual violence was under threat.


As Smith’s report makes clear, feminists were aware of and highly critical of the state co-optation of anti-rape work. Women working with the DC Rape Crisis Center, for example, began publishing the *Feminist Alliance Against Rape* newsletter in 1974 to promote and act “as an advocate primarily for grass roots feminist groups.” In their first newsletter, *FAAR* staff explained that, “because of the increased involvement of government agencies, politicians, etc., in the issue of rape, creating an organization which would represent the interests of feminists was seen as an immediate need.” In the face of growing state involvement in sexual violence, *FAAR* hoped to strengthen communication and support among community-based feminist anti-rape projects. *FAAR* accepted submissions from feminist activists across the country, and the newsletter served as one of the most consistent voices that questioned and critiqued the growing reliance on state-based solutions. These solutions, many argued, did not address the racism or elitism of the criminal justice system and were thus ultimately counter productive. As *FAAR* staff member Deb Friedman explained in an interview, “We were trying to push the issue to include a broader political analysis… seeing patriarchy and its connection to multiple oppressions.” *FAAR* had a national reach with subscriptions mostly from rape crisis centers and by the mid-1970s, domestic violence shelters. As Friedman recalls, *FAAR* had a fairly large readership and many feminist activists agreed with the critical stances advanced by the editorial staff.

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41 *Feminist Alliance Against Rape*, First newsletter, 1974. WEF Collection.

42 Deb Friedman, phone interview with the author, Dec 4, 2011.
While the majority of grassroots feminists would have agreed that state co-optation threatened the movement, there remained no consensus on how (or if) feminist groups should interact with the state. Some strongly believed that relying on the criminal justice system and pressing for increased incarcerations was counterintuitive to movement goals to eliminate rape. As the staff of the FAAR commented in 1974, “How is this after-the-fact action helping women? …if all men who had ever raped were incarcerated tomorrow, rape would continue.” Likewise, Linda Kupis, who helped organize a rape crisis center on Livingston College campus in New Jersey, critiqued the goal held by many city rape task forces to increase reporting of rape and, by extension, incarceration of rapists. If reports did increase, Kupis asked, what would be “accomplished by way of eliminating rape? Social statistics abound on the fact that prosecution and/or incarceration do not deter crime but rather perpetuate and perfect it… It is not enough to say that we can at least get them off the streets for a while; we seek elimination, not postponement.” She concluded that the movement needed to recognize the inadequacy and inequity of the criminal justice system. “It is not a matter of turning the other cheek,” she said, but of finding an alternative approach to end the epidemic of rape. Other feminists took issue with this position and argued that both the movement and individual women should pursue legal avenues in response to rape since criminal prosecution was the only viable option for victims. The San Francisco Women Against Rape (SFWAR) rejected a 1974 FAAR editorial that questioned whether the criminal prosecution of rapists advanced or diminished larger feminist goals. In their reader’s response, SFWAR members argued that, “women’s needs and rights come first with us

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and some social sanctions are necessary.” They further noted that criminal prosecution was the only means of redress for victims of sexual assault. If a woman wanted to pursue that, “we are not going to lay yet another guilt trip on her by labeling her behavior anti-revolutionary. Besides, by prosecuting a rapist in her own and other women’s defense, she is advancing her own revolution, which is our revolution.” The difficult crossroads of theory versus practice in the situation were clear. Faced with a lack of alternatives, members of SFWAR asked, “How can we move against criminal prosecution of rapists when this is the only sanction versus rape now possible in society as a whole?”  

Some feminists questioned whether the criminal justice system could be trusted to protect women as stories of policemen charged with sexual assault surfaced. In 1973, Seattle’s Radical Women worked in coalition with the Feminist Coordinating Council to draft a city ordinance to establish a “commission on crimes against women and a special protection unit independent of the Police Department” (italics mine). The necessity for a group separate from the police was made clear in the article’s opening: “A police officer charged with rape and convicted of third degree assault was allowed to return to his work and is presently serving in the Seattle Police Department,” the article declared.

Feminists in Chicago also brought attention to the abuse of power within that city’s police departments. In December 1974, a 17-year-old woman accused ten Chicago police officers of gang rape. The victim alleged that the policemen threatened her with curfew


46 “An Answer to Rape and Other Violent Crimes,” University of Washington Daily, January 24, 1974. The Radical Women were a socialist-feminist group launched by women activists of the New Left. In 1971, the group established a campus group at the University of Washington. The campus group published a column titled “Sexual Politics” in the UW Daily, where the cited article was printed.

47 Ibid.
violation and then assaulted her at a hotel on North Sheridan Road. Responding to this incident at an all-day rape conference in Chicago held the next month, feminist attendee Frances Chapman incredulously asked, “Do we really believe the police will protect us?” Writing in the feminist news journal *Off Our Backs*, Chapman further criticized the conference’s emphasis on working with the system. She wrote that the day’s events overwhelmingly focused on prosecution and liaisons with the police and lacked an approach that spoke to the Chicago Women Against Rape’s understanding of rape as a violent reflection of sexism in society.

Many feminists believed that anti-rape work driven by state interests would serve to fuel the racism inherent in the criminal justice system. Increased convictions, they argued, would target only a portion of rapists. As members FAAR commented, the criminal justice system “convicts primarily poor and non-white men for a crime that we know is *universally* committed by men.” Similarly, members of the Chicago Women Against Rape spoke directly to the difficulty of seeking increased justice for women within the criminal justice system on the one hand while also opposing racism on the other. In their reflections on organizing an anti-rape group, CWAR members Kathleen Thompson and Andra Medea wrote, “In this country, rape and racism are too closely intertwined to deal with one without the other. In many states the rape laws have been used almost exclusively to keep black men away from white women… Your demand [for more and better prosecution] may be answered only by more prosecution and conviction of black men… [We] warn against allowing your anti-rape group to be used as a tool of

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the racist and ‘law and order’ forces at work in our society.”

This warning speaks to the conundrum faced by many anti-rape groups, particularly rape crisis centers, as they sought to respond to the immediate needs of sexual assault survivors while also not losing sight of anti-racist politics. This often proved difficult, if not impossible. The “second rape” experienced by many survivors as they confronted the extremely hostile medical and legal systems compelled rape crisis advocates to reform those institutions, despite the inherent contradictions of working with the criminal justice system. As former DC RCC volunteer and FAAR staffer Deb Friedman explained in an interview, “what you did in the here and now, in the short term, often blended in with reformist goals…providing service meant having to reform the system.”

Faced with an overwhelming demand for services, many crisis center staff followed what Maria Bevacqua has termed “the ideology of putting the survivor’s needs first.” Friedman recalled that getting crisis center members to talk about or act on the broader issues was difficult due to the serious restraints placed on most RCCs, including lack of resources, the immediate need to provide services, and lack of staff available to meet the demand. Under these conditions, trying to theorize and strategize using a broader analysis was easier said than done. Because of the nature of rape crisis work, therefore, practice did not always reflect theory.

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51 Deb Friedman, phone interview with the author, Dec 4, 2011.


53 Deb Friedman, phone interview with the author, Dec 4, 2011.
Despite the reservations and critiques made by some feminists in the movement, many others regarded state-based solutions such as law reform as one important step in the fight against rape. In a 1975 essay titled “Ending Rape,” Jan Ben Dor, who led successful rape law reform efforts in Michigan, directly engaged in the debate. She tackled the question asked by anti-rape activists of “how to use a corrupt and racist criminal justice system to enforce the laws against sexual assault, without reinforcing corruption, racism, and classism.”

Ben Dor argued that rather than discouraging victims from reporting their rapes, “for fear of reinforcing the evils of the system,” the movement should implement “collective effort to bring change in the system itself… Through our imagination, we can challenge those with much greater resources to do better at preventing crime, until we ourselves control the institutions.”

Law reform, therefore, did serve a purpose, but was one step in a much larger mission which required serious overhaul of the legal system itself.

**The State Co-optation of Rape Crisis Centers**

Debates within the feminist anti-rape movement were particularly contentious in the context of increased state encroachment on anti-rape work and co-optation of feminist-controlled services. The state co-optation of anti-rape work is vividly demonstrated in the changing nature of rape crisis centers. These centers, originally a grassroots, radical alternative to state institutions for women victims, became

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54 Jan Ben Dor, “Ending Rape: a concept essay on strategies,” *Feminist Alliance Against Rape*, Jan-Mar 1975, 4

55 Ibid.
increasingly state-funded and began to focus mainly on providing professionalized social services to victims and dismissing feminist political goals to eradicate rape and sexism. Deb Friedman commented in a 1975 *FAAR* article that, “as more and more professionals are becoming involved in anti-rape work… there is an increasing tendency to defer to professional leadership in anti-rape projects.”

This model ran contrary to the origins of rape crisis centers, “developed originally by feminists as structures through which women can begin to take back control over their lives.”

The state intervention into anti-rape work happened exceptionally quickly. Feminist activist Susan Schechter remembered that this transformation took place “with infuriating speed and seemingly out of nowhere, [as] traditional agencies and professionals showed up to work on rape.”

In her memoir of the women’s liberation movement, anti-rape activist Susan Brownmiller writes that by 1975 few rape crisis centers “bore more than a faint resemblance to the original radical feminist model run by a volunteer collective of movement women.”

In very little time, Brownmiller writes, the majority of “rape crisis centers became part of the system, not a radical political force in opposition to the system.”

Many feminist rape crisis centers began relying on the state as a matter of survival. In general, after a few years of operation, rape crisis centers that were run by volunteers on shoestring budgets were desperate for support. As the years went by, the need for funds increased and grassroots, volunteer-based groups were unable to sustain

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56 Deb Friedman, “Professionalism,” *Feminist Alliance Against Rape* (Fall 1975): 1.

57 Ibid.


59 Brownmiller, *In Our Time*, 252.

60 Brownmiller, *In Our Time*, 252.
themselves without outside financial assistance. Former Santa Cruz Women Against Rape group member Robin McDuff explains the process. Remembering SCWAR as typical of many feminist run anti-rape groups, McDuff explained in an interview, “At the beginning most of the groups were like that [anti-system]. And one by one they got picked off. They decided they wanted money, got a grant, had to follow the rules of the grant… groups morphed into more professionalism and less political action.”

According to Schechter, many grassroots centers realized too late that the agencies and professionals they joined in order to continue services ignored the feminist analysis of rape, focused largely on the aftermath of assault, and denied individual and collective rights to self-determination. “‘Co-optation’ happened before many women understood the meaning of the term,” Schechter writes.

Through LEAA money and public financing, the government eventually absorbed or otherwise took control of the majority of rape crisis centers, placing more emphasis on reporting and prosecuting and less on peer support and self-help. The story of the Baton Rouge rape crisis center clearly illustrates how the state encroached on feminist anti-rape efforts and serves as an example of the sharp divide between feminist and state-based responses to rape. The feminist Stop Rape Task Force organized in Baton Rouge, Louisiana in May 1974 and began providing limited services to victims in November of that year. In early 1975, the Task Force began working with the District Attorney to

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62 Schechter, 42.

63 This intensified by the end of the 1970s. Gottschalk provides striking statistics of the move from feminist to government controlled rape crisis centers. In 1976, there were between 600-700 independent rape crisis centers in the nation. By 1981, only 200-300 of those were still in operation, one-third of which consisted only of a hotline (Gottschalk, 125-126).
develop an LEAA grant proposal for a rape crisis center. The LEAA granted $37,000 and the Stop Rape Crisis Center began operations in July 1975. Originally, the crisis center was a collaboration of feminist and state participants. Feminist Task Force member Virginia Ellis served as the crisis center’s administrator and District Attorney Ossie Brown served as the project director. In August 1975, Brown sent a memo to center staff directing them to withhold services to victims who did not report their assaults to the police as well as those whose cases had concluded in the system. Ellis objected. Prior to submitting the LEAA proposal, the District Attorney’s office had agreed to Task Force demands that the rape crisis center would prioritize victim counseling over convictions and that the D.A.’s office would separate itself from the center. Brown’s memo disregarded these agreements. Five days after sending the memo, in response to Ellis’ objections, Brown fired her. In solidarity with Ellis, the entire Center staff resigned. Brown replaced both paid and volunteer staff of the crisis center with employees of the criminal justice system.

The Task Force contacted the LEAA and demanded the grant be withdrawn from Brown. After an investigation, however, the LEAA determined that Brown’s actions were not in contradiction to the grant proposal, asserting that the Center’s LEAA funding had a “purely prosecutorial objective.”"64 Outraged Task Force members affirmed the right of women rape victims to receive services regardless of their decision to report. The D.A.’s coercion of victims completely undercut feminist principles of service provision to all rape survivors. In response, members of the DC-based Feminist Alliance Against Rape collective asserted, “we can’t rely on the criminal justice system to be concerned with the

64 “Baton Rouge, Louisiana” Feminist Alliance Against Rape, Sept/Oct 1976, 11.
needs of women.” Rather, they argued, the criminal justice system was only concerned with law enforcement.\(^65\) Despite feminist protest, the Baton Rouge Stop Rape Crisis Center continued under the operation of the District Attorney’s Office. Several years later, the LEAA deemed the Baton Rouge Crisis Center an “exemplary project” for its effectiveness in increasing reports and conviction rates.\(^66\) This praise further exemplifies the split between state and feminist perspectives on rape.

Independent feminist rape crisis centers were further jeopardized by financial struggles and federal distribution of grant money. As more professionalized groups became involved in anti-rape work, less and less money was made available to grassroots feminist rape crisis centers. In a 1976 essay, Mary Ann Largen explained that, “as rape continues to become a ‘popular’ national issue, institutions are surging to compete for the limited funds available for community services—often squeezing out the lifeline of rape crisis centers.”\(^67\) In the process, women’s expertise on rape was overlooked in favor of professional studies and approaches. In 1976, the National Center for the Prevention and Control of Rape began to award funding for rape-related projects. Feminist rape crisis centers, however, tended not to benefit from this funding as the first set of grants went specifically to researchers and not action groups. Center staff explained that the $3 million budget for the 1976 fiscal year could not support service or action programs. The Center chose to fund research with the intention that it would “generate specific knowledge that can be used to improve policies, practices, and services dealing with rape

\(^65\) Ibid,


\(^67\) Largen, “History of Women’s Movement,” 73.
prevention and treatment.” While feminists were pleased that the Center chose to fund several projects conducted by women’s groups as well as individual women researchers who had been involved in the anti-rape movement, the lack of support for action-oriented programs was a thorn in the side of struggling rape crisis centers. In a 1977 article feminist Freada Klein expressed this larger feminist contention.

What happened when the National Center for the Prevention and Control of Rape was established at NIMH [National Institute of Mental Health]? Did the money go to community, feminist rape crisis centers who had brought the issue to the fore? Were anti-rape activists given control of the budget after expending so much time and energy on revising the bill which created the National Center?

Well, not exactly. Money has gone primarily to professionals, often through universities, to explore research questions and produce materials. For example, the University of Alabama received $79,213 to produce an annotated bibliography and literature review.  

For understaffed and underfunded feminist rape crisis centers, bibliographies seemed like the least effective and most apolitical response to sexual violence. Furthermore, feminists had already produced many such bibliographies in the early years of organizing.

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The dismissal of grassroots centers as substandard and feminist anti-rape activists as untrained was a recurring problem. After years of struggling and creating the movement, feminist activists saw themselves as experts in rape crisis work and prevention. Government and professional agencies however, discounted their years of experience. “The issue of rape was not seized upon by academicians and professionals until after feminists struggled to bring it to the fore,” FAAR members wrote. Feminists needed to resist their dismissal. “It is necessary for us to struggle to maintain input and give criticism to non-feminists who purport to be knowledgeable about rape and who have control over most services and research dealing with rape.”

The choice of words is telling. Non-feminists “purported” to be knowledgeable, while feminist activists who had been active in crisis work actually were knowledgeable.

The clash between the YWCA Rape Crisis Center of greater Rhode Island and the Rhode Island Department of Health speaks to the conflicts that often arose between feminists and professional agencies. In an article titled “Rhode Island Rip-Off,” crisis center staff Kathleen Brueckner and Amy Leonard expressed their concerns about an $85,000 Rhode Island Department of Health LEAA proposal. In 1974, with a $6,800 grant, women from NOW, the Women’s Liberation Union, and the YWCA created the Rhode Island rape crisis center. Over the next year, the crisis center became a program of the YWCA, and provided a hotline, a Speakers Bureau, and training to law enforcement and medical personnel. Center volunteers provided emotional support to victims, legal and medical information, counseling services, and escorted victims to hospitals and police. The Center was well known and successful. In less than two years, the Speakers

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Bureau participated in ten television and radio programs, spoke to over 60 high school and college classes, as well as civic groups, nurses and social worker groups, and provided trainings to law enforcement in the Attorney General’s Office, police academies, and the Rhode Island Police Chiefs Association. By 1976, the Center had 75 volunteers working across the state.

In 1976, the Center worked with the Rhode Island Department of Health and the Women and Infants Hospital to draft an LEAA proposal for the Comprehensive Medical Care of Rape Victims. In the preparation of the final proposal, it became clear that there was a basic disagreement between the Crisis Center and the hospital and the Health Department on how to best meet the needs of rape victims. Brueckner and Leonard explained, “The disagreement amounted to: who is to be the primary rape care facility in Rhode Island – Women and Infants Hospital or the Rape Crisis Center.” Center staff argued that they were the most prepared to do this. “During the past two years, the Rape Crisis Center has established itself as the major resource for victims in Rhode Island. The Center has successfully worked with all the institutions which deal with victims, not only hospitals but also police departments and the Attorney General’s Office, and thus is able to provide comprehensive care to victims by supporting them at all stages of the process.”71 The hospital and Department of Health, on the other hand, proposed that grant money be used to establish a program that would train staff at only three Rhode Island hospitals and place two social workers at Women and Infants Hospital to provide victim services. The majority of the grant would go to salaries. Brueckner and Leonard argued

that this would “duplicate the services already being successfully provided by the Rape Crisis Center,” who already did trainings with the staff at the three proposed hospitals plus many others. Furthermore, by focusing on training in only three hospitals, the grant proposal denied competent medical treatment to women outside of those communities. “In essence,” they concluded, “the Health Department is requesting funding for a duplication of effort… they are requesting $85,000 to do less than the Rape Crisis Center is already doing with only $22,000.”

The Health Department’s favoring of professional social workers and paid staff to Crisis Center volunteers and activists speaks to what Mary Ann Largen described in her history of the anti-rape movement as the “subtle power struggle between professional and activists” when it came to rape crisis work.\(^\text{72}\) Independent feminist crisis centers were dismissed as para-professionals. State agencies sought to replace feminist activists with institutionally trained and degreed professionals. Susan Schechter vividly relates the frustration that she and many activists had over the dismissal of feminists and the co-optation of anti-rape work.

We had done the work, raised consciousness, killed ourselves over long hours of learning how to provide help, mastering how to work within the courts and police, manipulating money here or there to stay alive, and then when LEAA money or some other source opened up—groups who had never helped a victim and often weren’t feminists, although some women inside called themselves feminists, appeared. A key difference between us and them was our accountability to a movement, our deep involvement with women victims, our politics, vision, and our simultaneous belief in and skepticism about making institutions work better for women.\(^\text{73}\)


\(^\text{73}\) Schechter, 42.
By the mid-1970s, the face of anti-rape work had changed dramatically as feminists saw their movement co-opted by state and professionalized interests.

Feminists faced a very complicated situation as they organized to both eradicate rape and improve victims’ experiences in the aftermath. These activists confronted a severely flawed legal system that historically denied rights to accusers. To provide adequate services, many, including radical feminist groups who initially rejected state-based interventions, believed that the system needed to be reformed. Others critiqued this method for the larger implications it had for social justice overall. These debates intensified as the law-and-order driven state co-opted anti-rape work and feminists saw their once radical vision of social transformation dismissed in favor of reform-oriented solutions. In highlighting these tensions, this chapter counters notions of a singular or undivided feminist anti-rape movement. As activist Deb Friedman commented in an interview, it is difficult to describe the movement as a whole since there was so much variation. Speaking to the multiplicity of approaches, she says, “no one part of the movement should be seen as the movement.”\(^\text{74}\) Indeed, the search for solutions provoked complicated debates over strategy and tactics and there were no easy answers.

\(^{74}\) Deb Friedman, telephone interview by author, Dec 4, 2011.
CHAPTER VII

GIVING RAPE ITS HISTORY AND DENYING IT A FUTURE:
SUSAN BROWNMILLER’S AGAINST OUR WILL

By the mid-1970s, feminist activists had successfully recast rape as a serious concern requiring significant legal, medical, and social attention. State agencies, motivated by a law and order agenda, had begun to embrace the need for change, particularly in terms of legal and medical reforms. Yet it took the publication of Susan Brownmiller’s groundbreaking feminist text, Against Our Will: Men, Women, and Rape, to firmly put the feminist perspective on sexual violence into the mainstream. Published by Simon and Schuster in 1975, Against Our Will was an instant bestseller and is largely credited with putting rape into the public and popular discourse.¹

Against Our Will was a landmark work. Although feminists—most notably Susan Griffin—had previously published on rape, Brownmiller’s was the first book length manuscript to break into the mainstream press. In Against Our Will, Brownmiller traced the history of rape from biblical times to the modern day women’s movement, exposing the prevalence of sexual violence across world history and arguing that the reality and fear of rape had consistently oppressed women. Brownmiller argued that rape served as a central force in male domination and was critical to the maintenance of patriarchy. She concluded that “a male ideology of rape” existed across time and cultures, and that rape was “man’s basic weapon of force against woman, the principal agent of his will and her fear… It is nothing more or less than a conscious process of intimidation by which all

men keep all women in a state of fear.” \(^2\) In an atmosphere where rape was widely understood as a rare and unfortunate event, Brownmiller’s examination of rape as a significant social and political force in world history broke new ground. Prior to Against Our Will, work on rape as a subject of serious historical inquiry was virtually non-existent. \(^3\) Edward Shorter, a professor at the University of Toronto, commented that Brownmiller’s work served as a “substantive contribution to a subject hitherto as well known to conventional scholars as the dark side of the moon.” \(^4\) Indeed, as she researched, Brownmiller found that the card catalog at the New York Public Library had more entries for rapeseed than for rape. Not only her choice of topic, but also Brownmiller’s treatment of rape were unique. \(^5\) As she recalls, “It was so exciting to do the research because I knew no one had ever looked at these public documents from this perspective before. It was thrilling. I knew I was asking questions that nobody had ever asked before.” \(^6\) The years of research and writing paid off. The book and its prominence in the mainstream press were unprecedented.

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\(^3\) Against Our Will was not a historical work in the truest sense of the word—one set of reviewers commented that although Brownmiller “draws evidence from the past, she does not treat rape as a changing social force, as a dynamic in the social, sexual, and legal contexts of specific societies.” See: Heidi Hartmann and Ellen Ross, “Comment on ‘On Writing the History of Rape,’ ” Signs 3, no. 4 (1978): 932. The reviewers did go on to say, however, that when it was written, a “true historical study of rape … will be far more valuable if it follows Brownmiller’s lead, viewing rape not as a function of societies’ sex opportunities (for men) but of the politics of gender” (Hartmann and Ross, 935).


\(^5\) Hartmann and Ross, 932.

At the same time, the book provoked intense criticism from prominent women leaders of the movement for racial justice, such as Angela Davis and Anne Braden. These activists rejected Brownmiller’s reform-minded solutions and accused her of racism and allying herself with “law and order” conservatives. Although feminists had debated the efficacy of reforming the criminal legal system for years, Against Our Will, dubbed as the feminist book on rape, gave the impression that the movement was undivided on the issue. In reality, outside critiques of Brownmiller and the larger movement’s growing reliance on the state reaffirmed some of the central claims already made by many feminists active in the anti-rape movement. Against Our Will therefore also serves to highlight the contestations and conflicts among and between social movement politics of rape.

**The Road to Against Our Will**

Despite her engagement with social justice movements in the 1960s, it was not evident that Brownmiller would go on to write the major feminist publication on rape. Like many young, white women who embraced second wave feminism during the late 1960s, Brownmiller had previously aligned herself with leftist political ideology and participated in the anti-war and civil rights movements.\(^7\) She joined the Congress of Racial Equality in 1960 and was one of hundreds of white volunteers who participated in Freedom Summer in 1964. She opposed US participation in the Vietnam War and during the late 1960s in New York attended dozens of anti-war marches. Like many other leftists of her day, Brownmiller conceptualized sexual violence as a political issue only in

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\(^7\) Brownmiller’s experience was similar to many young white women activists who became involved in the women’s liberation movement. See: Sara Evans, *Personal Politics: The Roots of Women's Liberation in the Civil Rights Movement and the New Left* (New York: Random House, 1979).
Brownmiller’s political commitments to second wave feminism and her professional training as a journalist led to her decision to research and write *Against Our Will*. Her introduction to second wave feminism came one Thursday night in September 1968. At the urging of a friend, she attended a meeting of the New York Radical Women. It was here that Brownmiller had her first awakening to women’s oppression. As she recalls, “I got it smack in the face that very first night.” Still, Brownmiller did not become active in women’s liberation at that point; her consistent participation in the movement began two years later, when she joined the New York Radical Feminists.

Brownmiller’s professional background also perfectly positioned her to write a monumental feminist text. Trained as a journalist, by 1968 she was working as a network newswriter for ABC-TV, reporting for *The Village Voice*, and regularly contributing to well-known magazines like *Vogue* and *The Nation*. With strengths in both writing and reporting, Brownmiller had the necessary skills to effectively reach a mass audience. The combination of these professional and political commitments eventually led to *Against Our Will*.

Brownmiller first considered rape from a feminist perspective during the fall of 1970. She had recently joined a local consciousness-raising group, West Village-One.

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8 Brownmiller, *Against Our Will*, xii.

The group was one of many neighborhood-based groups that worked under the umbrella of the New York Radical Feminists.\textsuperscript{10} When other West Village-One members suggested raising rape as a political issue, Brownmiller hesitated. She embraced the dominant cultural perspective of rape as a “deviant, murky crime that any alert woman could avoid.”\textsuperscript{11} Furthermore, rape was a political crime only so far as it served to protect white interests by punishing black men in cases of false allegations and disregarding the systematic violation of black women by white men. With this political understanding, Brownmiller was very resistant when other members of West Village-One, prompted by accounts of rape published in the Berkeley Women’s Liberation newspaper, \textit{It Ain’t Me Babe}, brought the topic up for discussion. Brownmiller recalls, “I said with my liberal, Left perspective in place, rape isn’t a political crime. I really believed the Left definition of rape. That is, rape is a white woman falsely accusing a black man.”\textsuperscript{12}

Indeed, Brownmiller had written a piece on the Giles-Johnson case two years prior in 1968 for \textit{Esquire} magazine. Her partial portrayal of the Giles brothers and Johnson clearly cast the article in their favor. Brownmiller supported the defense committee’s depiction of Roberts as a promiscuous girl caught having sex and falsely accusing the Giles brothers and Johnson to save her own reputation. As she later recounted, she wrote the article with great suspicion toward the victim, and while she

\textsuperscript{10} Shulamith Firestone and Anne Koedt founded The New York Radical Feminists (NYRF) in the fall of 1969. They organized NYRF into a series of neighborhood-based consciousness-raising groups, which they called brigades. West Village-One was one such brigade. Brownmiller joined and West Village-One served as her “home base in feminism for the next four years” (Brownmiller, \textit{In Our Time}, 78). Firestone, Koedt, and seven others formed the leadership brigade of NYRF, calling themselves the Stanton-Anthony brigade after suffrage leaders Elizabeth Cady Stanton and Susan B. Anthony. Interestingly, they took this name in reaction to the Left, who critiqued the suffrage movement, belittling the movement as racist and elitist (Brownmiller, \textit{In Our Time}, 78).

\textsuperscript{11} Brownmiller, \textit{In Our Time}, 197.

\textsuperscript{12} Susan Brownmiller, in an interview with the author, May 13, 2010.
conducted many interviews for the piece, she never sought out or attempted to speak with Joyce Roberts.\textsuperscript{13} Listening to other members of her group that night, however, Brownmiller realized there was another side to rape. As she recalls, “it was women in my own consciousness raising group who had been raped... that made me realize how wrong I’d been... I had bought this whole thing that no woman could be raped against her will.”\textsuperscript{14} Brownmiller slowly embraced this newer feminist perspective on rape, seeing it in terms of gendered oppression and as a political crime against women.

With her newfound feminist understanding of sexual violence, Brownmiller helped organize the January 1971 NYRF speak-out. The day of the speak-out was a pivotal moment for Brownmiller and led to her decision to write a book on rape. As she remembers, “that was a wake-up moment for me actually because there I am, I am a journalist. I am a writer but I’m also helping to organize the first rape speak-out in history at St. Clement’s Church.” Gail Sheehy, a respected and well-liked journalist for \textit{New York Magazine}, was there to cover the speak-out.\textsuperscript{15} Brownmiller recalls, “And I thought, now what is my role in life here? Is my role to create interesting stories for other journalists? Or do I write?”\textsuperscript{16} Following the speak-out, the NYRF organized an April 1971 conference on rape and Brownmiller then firmly decided to write \textit{Against Our Will}. As she recalls, “the more I talked, the more I saw that workshops by themselves could not

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\textsuperscript{13} Brownmiller, \textit{Against Our Will}, xii.
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\textsuperscript{14} Susan Brownmiller, in an interview with the author, May 13, 2010.
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\textsuperscript{16} Susan Brownmiller, in an interview with the author, May 13, 2010.
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produce the comprehensive research that an analysis of rape deserved and required.”

Shortly thereafter, Brownmiller’s literary agent approached Simon and Schuster with her book proposal, and they offered her a contract. At the time, unaware of the enormity of the project, Brownmiller and her editor agreed she would produce the book manuscript in one year’s time: spending six months researching and six months writing. In the end, she spent the next four years crafting Against Our Will. Although there were already several short feminist articles on rape as a significant and serious social problem, Brownmiller’s was the first comprehensive feminist look at rape as a historical issue to appear in the mainstream press.

Brownmiller rooted her analysis of rape in the “basic truth that rape is not a crime of irrational, impulsive, uncontrollable lust, but is a deliberate, hostile, violent act of degradation and possession on the part of a would-be conqueror, designed to intimidate and inspire fear.” Citing evidence from biblical times to the present, Brownmiller showed how men in positions of power, whether they were patriarchs, husbands, fathers, or men of state or government, had used rape as a way to maintain power and control. Using this lens, Brownmiller took her readers across thousands of years of history, from ancient Babylonia to the 1970s. Drawing on historical evidence, she made a powerful case for the urgent necessity of wide-ranging legal, medical, and social reforms in regards to rape.

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17 Brownmiller, In Our Time, 201. Brownmiller has consistently credited the movement for her decision to write Against Our Will. In a 2000 interview, Brownmiller maintained that Against Our Will was “not an isolated work. It came out of a movement. I wouldn’t have thought to write about rape without that movement and it was the movement people who pushed it on the bestseller list.” See: Interview with Susan Brownmiller, bookreporter.com, May 26, 2000, http://www.bookreporter.com/authors/au-brownmiller-susan.asp (accessed June 10, 2011).

18 Brownmiller, Against Our Will, 439.
Brownmiller challenged the understanding of rape as an unfortunate act of lust, and instead viewed it as a significant force in history. When looking at the role of rape in military history, for example, she rejected the common belief that rape was simply a regrettable, yet inevitable, byproduct of war. Wartime rape from the First Crusades to Vietnam she argued, “is qualitatively different from a bomb that misses its military target, different from impersonal looting and burning, different from deliberate ambush.”19 Rather than reflecting the excesses of war, rape in wartime demonstrated male contempt for women, revealing “the male psyche in its boldest form, without the veneer of ‘chivalry’ or civilization.”20 Brownmiller also challenged the lack of serious historical attention given to rape in times of rioting, pogroms, and revolutions. Her documentation of how often and how much sexual violence was committed against women underscored the fact that rape was anything but tangential and inconsequential.

Brownmiller’s use of historical evidence to re-frame understandings of rape served as one of the great strengths of the book. Echoing the sharp criticisms of activists in the anti-rape movement, for example, Brownmiller discovered centuries of legal traditions wholly unconcerned with women victims. The laws of rape historically served the purpose of protecting male interests. From the Babylonian Code of Hammurabi, the first written code of law in human history, to modern rape laws, Brownmiller argued that the legal perspective of rape concerned itself very little with justice for women. In ancient Babylonia, for example, the rape of a patriarch’s virgin daughter was akin to theft, the “embezzlement of his daughter’s fair price on the market.”21 Almost four thousand


years later, while laws had changed considerably, Brownmiller found that, “modern legal perceptions of rape are rooted still in ancient male concepts of property… [and] as the laws of rape continued to evolve they never shook free of their initial concept—that the violation was first and foremost a violation of male rights of possession, based on male requirements of virginity, chastity and consent to private access as the female bargain in the marriage contract.”

This continuation of masculine concepts was partially reflected in the punishments for rape. Excessive sentences for rape convictions such as life imprisonment and capital punishment, were holdovers from ancient views of rape as an injury to man’s estate. The current legal system continued to ignore the rights and needs of women victims themselves.

Similarly, Brownmiller took aim at the seemingly universal disbelief in women’s accusations of rape. She found that this common misconception originated with the biblical tale of Potiphar’s Wife. According to the bible, the wife of Potiphar the Egyptian (who is not given a name in the bible) falsely claimed rape against Joseph, the Hebrew slave, when he refused her sexual advances. Joseph, in turn, was punished. According to Brownmiller, this “major rape parable” showed men’s lack of concern with women victims. Rather, it expressed “the true, historic concern and abiding fear of egocentric, rapacious men: what can happen to a fine, upstanding fellow if a vengeful female lies and cries that she has been assaulted.”

Brownmiller found variations of this story in sources as disparate as the Koran, ancient Egyptian folklore, Celtic myths, and the romantic histories of the Crusades. Several thousand years later, in the twentieth century United

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States, the suspicion and intense scrutiny of women who alleged rape remained strong as fears of false accusations flooded the legal literature on rape. Brownmiller used examples like these to link the past with the present and advocate for significant reform in her own day.

A substantial portion of the book focused on the 1960s and 1970s. Brownmiller sought to de-mystify commonly held stereotypes and misconceptions on everything from the “average” rapist and “average” victim to sexist beliefs that women asked for it and that rape did not actually happen. She included the powerful testimonies of rape victims given at feminist speak-outs. These included women raped by men they considered friends; stories of hostile and insensitive police who either did not believe women’s reports or asked victims if they liked it (Brownmiller included a personal anecdote where a police sergeant at her local precinct in Greenwich Village informed her that rape allegations were little more than “prostitutes who didn’t get their money”24); testimonies about incompetent and uncaring medical professionals who blamed women for their own victimization. With stories like these, Brownmiller exposed the reality of rape to readers nationwide.

Against Our Will received critical acclaim at publication. The book made the Time bestseller list, was named a New York Times Outstanding Book of the Year, and also a Book of the Month Club selection for that year. Following publication of the book, Time Magazine named Brownmiller one of its twelve Women of the Year in 1975.25

24 Brownmiller, Against Our Will, 409.

25 Brownmiller, In Our Time, 246. Every year since 1927, Time magazine has announced a “Man of the Year” in its year-end issue (prior to 1975, only three women had been recognized). In 1975, Time gave the title to “American Women.” The twelve American Women named included Brownmiller, Billie Jean King, and Betty Ford.
Reviewers and critics across the country hailed the book as monumental, eye-opening, overwhelming, and a soon-to-be classic. In her *New York Times* book review, Mary Ellen Gale wrote, “Against Our Will deserves a place on the shelf next to those rare books about social problems which force us to make connections we have for too long evaded, and change the way we feel about what we know.” Reviewer Jane O’Reilly echoed the sentiment in the *Chicago Tribune* when she wrote, “the book is a milestone in women’s history and mature feminist theory.” In September 1976, Bantam books released the paperback edition of *Against Our Will* and the book continued to be a sensation. Stuart Applebaum, Brownmiller’s publicity manager with Bantam, sent her the first two copies of the paperback edition with a letter stating, “may they be the first of a million.” He could not have been more right.

The Bantam edition sparked a major national tour. Beginning in New York on September 27, Brownmiller departed on a cross-country tour, stopping in cities like Chicago, Los Angeles, Seattle, Cleveland, Philadelphia, Knoxville, and Detroit. Local newspapers in large and small cities across the country, including the *San Francisco Bay Guardian*, the *Nashville Banner*, *The Charlotte Observer*, and the *Milwaukee Journal*, published articles and reviews on *Against Our Will*. Over the course of the next several years, Brownmiller spoke at dozens of college campuses and authored many articles on

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28 Applebaum letter to Brownmiller, Box 6, Folder 15, Susan Brownmiller papers, Schlesinger Library, Radcliffe Institute, Harvard University (hereafter Susan Brownmiller papers).

29 Book tour schedule, Box 6, Folder 15, Susan Brownmiller papers.
rape and violence against women in popular magazines such as *Family Circle*, *Glamour*, and *Mademoiselle*. The feminist perspective on rape firmly made its way into the mainstream. Years later, *Against Our Will* was included in the New York Public Library’s Books of the Century, alongside Simone de Beauvoir’s *The Second Sex*, Betty Friedan’s *The Feminine Mystique*, and Alice Walker’s *The Color Purple*.

Like Friedan’s *The Feminine Mystique* or de Beauvoir’s *The Second Sex*, many readers experienced *Against Our Will* as life changing. Over the years, hundreds of readers wrote Brownmiller testifying to the impact of her book. Letters poured into Brownmiller’s mailbox with stories of staying up late into the night, of readers unable to put the book down, and with most expressing great thanks. Typical of these is a November 1975 letter from reader Carol Stein who wrote, “I can’t shut-up about the book when I’m with people… Thank you, thank you, thank you. You have touched my life in a profound way.” Reader Frances Money wrote to Brownmiller to “extend my deepest sense of gratitude to you for your work.” Letters like these continued for years. Joan Druss wrote in an October 12, 1976 letter that Brownmiller had done “more to put rape in its prospective [sic] than anyone… You have done a great service for all women.” Another reader, Laurie Rapkin, told Brownmiller in a September 1977 letter, “I have just finished reading your book, *Against Our Will*, and must write to tell you that it has had

30 Article clippings, Box 9, Folder 17, Susan Brownmiller papers.
31 Carol Stein to Susan Brownmiller, November 1975, Box 8, Folder 2, Susan Brownmiller papers.
32 Frances Money to Susan Brownmiller, Box 8, Folder 2, Susan Brownmiller papers.
33 Joan Druss to Susan Brownmiller, October 12, 1976, Box 9, Folder 19, Susan Brownmiller papers.
one of the most profound effects on me of any book that I have ever read.”34 These letters, and many like them, demonstrate the revelatory effect of Against Our Will for women nationwide as they read about rape from a feminist perspective for the first time.

The wide acclaim for Against Our Will and the book’s popularity gave considerable legitimacy to feminist understandings of rape. By 1975, rape was no longer a taboo subject, and the feminist push for change was increasingly recognized as a necessity. As Chicago Tribune author Jane O’Reilly commented in her review, “Four years ago, when this book was begun, every premise in it would have been dismissed as absurd and strident.”35 While feminism had initiated a growing concern for rape amongst those in the criminal and health-related fields during the early 1970s, never before had the issue been set so squarely before the general public. Brownmiller’s analysis put a feminist understanding of rape firmly into the minds of thousands of readers nationwide. Her work further underscored the urgency of attending to rape on a massive scale.

Prioritizing Gender

Coming out of the radical feminist tradition, Brownmiller’s analysis prioritized gender as a primary category of analysis and she found herself in opposition to what she defined as the male Left’s political understanding of rape. Just as radical feminism had resulted partially as a reaction to the sexism of the Left, portions of Brownmiller’s analysis of rape are also clearly in reaction to, and critical of, decades of Leftist framing of the subject. Brownmiller rejected the Left portrayal of interracial rape as a weapon of

34 Laurie Rapkin to Susan Brownmiller, September 1977, Box 8, Folder 7, Susan Brownmiller papers.

35 O’Reilly, “The Longest Sustained Battle.”
capitalist class struggle. As Brownmiller explained in an interview with Carol Eisen Rinzler of the *Village Voice*, “the book sharpens conflicts—which should be sharpened—between feminists and the traditional left. After all, there is no way you can explain rape as a capitalist crime.”

*Against Our Will* demonstrates a significant shift from a Left, race-centered approach to rape to a victim and gender-centered approach. Speaking to this change in political orientation, *New York Times Book Review* author Mary Ellen Gale commented that Brownmiller had “traveled from the land of traditional liberalism, with its general sympathy for the criminally accused and its specific distrust of rape charges as the scourge of black men in a racist society, to a feminist country of understanding that rape and the fear of rape are the terrorist tools of male oppression.”

Brownmiller acknowledged this journey in her Personal Statement that opened the book. Here she simply and powerfully explained, “I wrote this book because I am a woman who changed her mind about rape.”

Brownmiller’s radical feminist understanding of the world as primarily divided between men and women is perhaps most evident in her consideration of the Emmett Till case. For black and white Americans nationwide, the 1955 murder of Till in Money, Mississippi, came to symbolize the treachery and severity of black oppression in the American South. Fourteen years old at the time, Till was in Money that summer from Chicago, visiting his uncle. One day, several of Till’s friends dared him to ask white storekeeper Carolyn Bryant out on a date. As the story goes, Till walked into the store

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37 Mary Ellen Gale, review of *Against Our Will*.

38 Brownmiller, *Against Our Will*, xiii.
and did just that. Carolyn Bryant chased him out with a pistol in hand and in response, Till “wolf-whistled” back at her. Bryant’s husband, Roy Bryant, and his half-brother J.W. Millam came for Till at his uncle’s shack at 2 a.m. the next morning. Till never returned.

Several days later, a fisherman pulled Till’s severely beaten body, with gunshot wound to the head and a face mutilated beyond recognition, out of the Tallahatchie River. An all-white, all-male jury acquitted both Bryant and Millam shortly thereafter.

Brownmiller condemned the murder of Till, commenting that “nothing in recent times can match it for sheer outrageousness, for indefensible overkill with community support.” Yet Brownmiller’s approach to the case took a significant turn from the usual race-centered analyses. According to Brownmiller, Till’s wolf-whistle, “was more than a kid’s brash prank and his murder was more than a husband’s revenge.” Focusing on the gendered dynamics at play, Brownmiller argued that the Till case exposed “the underlying group-male antagonisms over access to women.”

Acknowledging that a whistle was no justification for murder, Brownmiller argued that Emmett Till and J.W. Millam, “shared something in common. They both understood that the whistle was no small tweet of hubba-hubba or melodious approval for a well-turned ankle… it was a deliberate insult just short of physical assault, a last reminder to Carolyn Bryant that this black boy, Till, had in mind to possess her.” In other words, Till and his murderers shared a de-racialized male privilege and they both viewed Carolyn Bryant as property.

In attempting to explain the Till case in terms of sexual violence against women,

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Brownmiller deemphasized the racial context of a deeply segregated South. Brownmiller understood the “insult implicit in Emmett Till’s whistle” as the “depersonalized challenge of ‘I can have you’ with or without racial aspect.”

The three page section of Brownmiller’s manuscript that recounted the Till case was perhaps the most explosive and controversial of the entire book. In a 1978 essay on the myth of the black rapist, Angela Davis castigated Brownmiller for perpetuating racist ideology and depicting Till as “a guilty sexist—almost as guilty as his white racist murderers.” Davis further argued that Brownmiller’s interpretation “invites us to infer that if this fourteen-year-old boy had not been shot in the head and dumped in the Tallahatchie River after he whistled at one white woman, he would probably have succeeded in raping another white woman.” For Davis, who remembered feeling terrorized by the Emmett Till case as an eleven-year-old girl, analyzing this prominent civil rights case without a race perspective was inconceivable and dangerous.

Yet it would be erroneous to suggest that Brownmiller disregarded race entirely in her treatise on rape. Reacting to a world where the reality of sexual violence against women was regularly cast aside and dismissed entirely, Brownmiller put a gendered analysis at the center, even when she discussed race. For example, she gave significant attention to the abuse of black women by white men throughout American history. In a section on American slavery, she argued that rape served as “more than a chance tool of violence. It was an institutional crime, part and parcel of the white man’s subjugation of a

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43 Brownmiller, Against Our Will, 273.


people for economic and psychological gain.\textsuperscript{46} She sharply critiqued economists Fogel and Engerman who had dismissed the sexual exploitation of black women under slavery as a rare occurrence.\textsuperscript{47} Brownmiller counteracted that the rape of black women was not only a common occurrence, but also central to the institution of white male patriarchal dominance. She was commended for seriously considering the history of white male abuse of black women.

Her treatment of black-on-white rape, however, did not receive equal applause. Brownmiller harshly criticized the use of the false claim in defense of black men. Using well-known and controversial interracial rape cases from the previous fifty years as examples, Brownmiller challenged what she considered the “tremendous distortions the Left was using” against white women to clear black men.\textsuperscript{48} According to Brownmiller, the use of the trope of the lying white women by the Left, liberals, and defenders of civil liberties reinforced a sexist legal tradition of “destroy[ing] the credibility of the complaining witness by smearing her as mentally incompetent, or as sexually frustrated, or as an over-sexed promiscuous whore.”\textsuperscript{49} From the biblical story of Potiphar’s Wife to modern psychoanalytic theory that made its way into legal doctrine, the lying woman loomed large in popular and legal understandings of rape. Brownmiller sharply criticized the Left for embracing this rape myth in their defense of black men.

\textsuperscript{46} Brownmiller, \textit{Against Our Will}, 165.


\textsuperscript{48} Susan Brownmiller, in an interview with the author, May 13, 2010.

\textsuperscript{49} Brownmiller, \textit{Against Our Will}, 262.
Brownmiller attributed the origins of the false claim argument in cases of black-on-white rape to the Communist Party (CP) of the 1930s. “Controlled and directed by white men,” she said, the Party would “slight the veracity of women… in its effort to clear the reputation of blacks.”\(^{50}\) The CP argued that interracial rape allegations were a tool of the ruling class to keep blacks and poor whites oppressed. Brownmiller condemned the party for thus perpetuating the belief that black-on-white rape never actually occurred. As Brownmiller pointed out, in Communist publications the word “rape was never written as rape but always in quotation marks as ‘rape’ and sometimes contained within the phrase ‘the capitalist rape lie.’”\(^{51}\) Brownmiller did not dispute the historical fact that black men faced much harsher penalties in rape prosecutions than their white counterparts. She also decried the history of lynching and violence against black men. However, her main attention was focused on women as victims and she sought to exonerate white women who, she felt, had unjustly taken the blame for the actions of white men. In her words, “As Southern white men continued to round up black men, lynch them or try them in a courtroom and give them the maximum sentence for the holy purpose of ‘protecting their women,’ Northern liberals looking at the ghastly pattern through an inverted prism saw the picture of the lying white woman crying rape, rape, rape.”\(^{52}\) As Brownmiller saw it, the Northern Left failed to recognize the root of the problem: white men. In her words, “It was not the charge of rape that was murderous and

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\(^{50}\) Brownmiller, *Against Our Will*, 251. My research shows that Ida B. Wells was the first voice to publish on white women and false rape claim. In a 2010 interview with the author, Brownmiller commented that she never found the name Ida B. Wells in her research for *Against Our Will* during the early 1970s.

\(^{51}\) Brownmiller, *Against Our Will*, 250.

\(^{52}\) Brownmiller, *Against Our Will*, 258.
genocidal to Southern blacks, it was the overkill retaliation at the hands of white men."\textsuperscript{53}

The focus and response to the individual white women in these cases reinforced a legal tradition that doubted the credibility of \textit{all} women who claimed rape, perpetuated the widely held belief that most rapes were false accusations, and kept rape conviction rates abysmally low. Brownmiller believed that the Left set black men against white women, with negative consequences for both. She wrote, “By pitting white women against black men in their effort to alert the nation to the extra punishment wreaked on blacks for a case of interracial rape, leftists and liberals with a defense-lawyer mentality drove a wedge between two movements for human rights and today we are still struggling to overcome this historic legacy.”\textsuperscript{54}

Brownmiller encountered significant backlash to her arguments regarding the false claim. “I was stunned at the response by the Left,” she says, recalling the harsh criticism.\textsuperscript{55} In \textit{Against Our Will} Brownmiller commented on this experience, “I remember the looks of incredulity and the charge, ‘Why you’re on the side of the prosecution,’ as if that \textit{per se} was evidence of racism and reaction.”\textsuperscript{56} Accused of setting back the cause of civil rights and civil liberties, Brownmiller’s advocacy for the rights of victims was poorly received in an atmosphere of growing liberal support for the rights of defendants.\textsuperscript{57}

\textsuperscript{53} Brownmiller, \textit{Against Our Will}, 261.

\textsuperscript{54} Brownmiller, \textit{Against Our Will}, 281.

\textsuperscript{55} Susan Brownmiller, in an interview with the author, May 13, 2010.

\textsuperscript{56} Brownmiller, \textit{Against Our Will}, 281.

\textsuperscript{57} In her memoir, Brownmiller recounts an instance when an old publishing acquaintance on the intellectual left approached her on the street thundering, “You… have set back the cause of civil rights and civil liberties ten years” (Brownmiller, \textit{In Our Time}, 247).
Prominent women leaders from the left wing of the racial justice movement stood amongst Brownmiller’s harshest critics in regards to the false claim. Most notably Angela Davis, who at the time firmly aligned herself with the Communist Party USA, argued in a 1978 *Black Scholar* article that Brownmiller’s arguments resuscitated “the timeworn myth of the Black rapist.” In a revised version of this essay, Davis further argued that Brownmiller’s “provocative distortion” of historical black-on-white rape cases was “designed to dissipate any sympathy for Black men who are victims of fraudulent rape charges.” Similarly, in a 1976 open letter to Southern white women, civil rights veteran and Southern Conference Education Fund organizer Anne Braden critiqued Brownmiller’s disregard for the “realities of racism.” With her personal experiences fighting against racial injustice in cases of black-on-white rape, Braden was particularly offended by Brownmiller’s views. Braden had been actively involved in the campaign to save Willie McGee, a black man accused and subsequently executed by the state of Mississippi in 1951 for raping a white woman. Braden would later join the campaign to free Thomas Wansley, a black man imprisoned in 1961 on a charge of rape by a white woman in Virginia. Braden saw the white female accusers of both McGee and Wansley as tragic women of the South, used as tools of hate, and pawns of a system that perpetuated the racist myth of black rape. In her open letter, Braden responded directly to Brownmiller’s views on the false claim arguing, “Racism is not some abstract concept invented by the Left for its own gain. It does exist. The ‘rape cases’ inspired action and

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became famous… because they exemplified the terrorism which upheld political and economic power relationships in the South.”61 While Braden acknowledged the benefits of Brownmiller’s broader analysis, she argued that her arguments on black-on-white rape could be used as “a weapon of racism.”62

Davis and Braden were particularly critical of what they deemed Brownmiller’s narrow, single-issue lens on rape. Davis critiqued Brownmiller’s—and by extension, the feminist movement’s—exclusive focus on women victims. Disturbed by “movement’s indifferent posture toward the frame-up rape charge as an incitement to racist aggression,” Davis argued that feminism had failed to combine “a fierce challenge to racism with the necessary battle against sexism.”63 For Davis, not recognizing and responding to the continued history of injustice for black men also failed black women. As one black audience member asked Brownmiller at a speaking engagement, “What you are saying may help me protect myself, but how can I protect my son?”64 In her published letter, Braden commented, “A movement that has no answer to that question ignores the fact that in a society anchored by racism, there can be no liberation for anyone until the race issue is met head on.”65

In truth, the feminist movement did not give significant focus to the history of the frame-up rape charge. In a legal and social atmosphere that overwhelmingly doubted the actual existence of rape and denied justice to white and black women as a matter of

61 Ibid.
62 Ibid.
64 Braden, “Open Letter.”
65 Braden, “Open Letter.”
course, Brownmiller and many feminist anti-rape activists had their focus solely on women as victims, and not black men. This focus on victims is perhaps not surprising considering that the FBI Uniform Crime reports estimated the rates of successful prosecution for 1973 at less than 14%.\footnote{Helene Sasko and Deborah Sesek, “Rape Reform Legislation: Is it the Solution?” \textit{Cleveland State Law Review} 24 (1975): 463. (total 463-503)} When asked why the feminist anti-rape movement did not rally around black men, Brownmiller replied, “We were doing one thing. We were saying ‘rape is real, it exists.’”\footnote{Susan Brownmiller, in an interview with the author, May 13, 2010.} In countering centuries of suspicion of most rape victims, Brownmiller and many other feminist activists could not conceive of supporting black men without undermining their own movement. The difficulty of integrating a feminist political analysis based on gender with a political analysis based on race was vexing for many. Overcoming this divide proved difficult. As feminist anti-rape activist and former member of Santa Cruz Women Against Rape Robin McDuff\footnote{Robin McDuff, in an interview with the author, Feb 24, 2010.} remembers, “we believed the women… and we also noticed historically the issue of how rape had been used against black men… You can’t really integrate those.” Further commenting on this impasse of political perspectives, McDuff points out the inherent contradiction in saying “women never were lying about rape except for this one little situation here.”\footnote{} With a single-focus on women as victims the feminist movement failed to develop an approach to combating rape that included both women victims and those falsely accused.
Reforming the Criminal Justice System

In her chapter, “Women Fight Back,” Brownmiller gave significant weight to allying with the criminal justice system, urging legal reform as an effective measure to counter rape. While this continued to be a divisive issue within the movement, by 1975, legal reform was dominating anti-rape work. Brownmiller’s substantial support for reforming the criminal justice system came at a time when feminists were already winning significant legal victories and fighting for more reforms in cities and states nationwide. Brownmiller never suggested that the criminal justice system was the sole solution to rape. However, in the context of increasing state dominance over and co-optation of anti-rape work, many believed that any support of legal reform would serve to further undermine the efforts and goals of radical feminism. By the mid-1970s, state-based, “after-the-fact,” professionalized services for victims dominated anti-rape work and the original feminist focus on prevention and societal reforms was increasingly muted. In this atmosphere, many viewed Brownmiller’s and other activists’ support for legal reform as particularly contradictory to original feminist goals and antithetical to ending rape.

Brownmiller had no reservations about heavily critiquing the shortcomings of the legal system. She outlined the current law’s limited and unrealistic definition of rape, the overly severe penalties for rape, which hindered convictions, and the excessive roadblocks women faced when pursuing prosecution. Parting from earlier radical anti-rape approaches that saw feminist work as separate from state-based solutions, however, Brownmiller believed that reforming the legal system, from the local to the state level,
could effectively make change. A reformed legal system would prosecute and punish those guilty of rape and thus deter the crime. Brownmiller argued that,

A system of criminal justice and forceful authority that genuinely works for the protection of women’s rights, and most specifically the right not to be sexually assaulted by men, can become an efficient mechanism in the control of rape insofar as it brings offenders speedily to trial, presents the case for the complainant in the best possible light, and applies just penalties upon conviction.  

From her point of view, a prison sentence served as “a just and lawful societal solution to the problem of criminal activity.” The problem was not that too many black men were going to jail, but rather that too few rapists overall were. Perhaps speaking directly to the prisoners’ rights movement, she commented, “Whether or not a term in jail is truly ‘rehabilitative’ matters less, I think, than whether or not a guilty offender is given the penalty his crime deserves. It is important to be concerned with the treatment offenders receive in prison, but a greater priority, it would seem, is to ensure that offenders actually go to prison.”

In seeking agency for women, Brownmiller argued for the full integration of women into law enforcement, from the police department to the state prosecuting attorney’s office. She saw this as a “revolutionary goal of the utmost importance” for the

69 Brownmiller, Against Our Will, 436.

70 Brownmiller, Against Our Will, 426.

71 Ibid.
women’s movement. Brownmiller believed that, as actors in the legal system rather than simply victims outside of the system, women would enforce and promote the equal treatment of other women. She reasoned that “the nation’s entire power structure… must be stripped of male dominance and control—if women are to cease being a colonized protectorate of men.” Her push for integration is reflective of her view of the world as primarily divided between men and women and is most clearly illustrated in her discussion of false claims. During the 1960s and early 1970s, the FBI Uniform Crime Reports estimated that between 15-20% of all rapes reported to the police were unfounded. In 1972, New York City established an all-woman rape investigation unit within the police department. Once women were in charge of interviewing complainants, Brownmiller reported, the rate of false reports fell to 2%. “The lesson in the mystery of the vanishing statistic is obvious,” Brownmiller wrote, “women believe the word of other women. Men do not.” From her perspective, centuries of male dominated law enforcement had produced a hostile and skeptical atmosphere for women victims, with “male authority figures whose masculine orientation, values and fears place them

72 Brownmiller, Against Our Will, 436.
73 Ibid.
74 Critics have since questioned the accuracy of this statistic. Scholar Edward Greer challenges the origin of this statistic, suggesting a local (and questionable) measurement has erroneously been applied nationally. See: Edward Greer, “The Truth Behind Legal Dominance Feminism’s ‘Two Percent False Rape Claim’ Figure,” Loyola of Los Angeles Review 33, no. 3 (April 2000): 947-972.
75 Brownmiller, Against Our Will, 435. Many feminists embraced the idea that hiring more women in the criminal justice system would make a significant difference in bringing justice to rape survivors. In 1973, activists in Chicago testified on behalf of a proposal for an all-women unit for rape investigations. They argued that “all rape cases should be investigated by women officers, prosecuted by women district attorneys, and heard by women judges” (Bevacqua, Rape on the Public Agenda, 141).
securely in the offender’s camp.”76 Women, on the other hand, could and would work for justice for other women.

Following her belief that justice could be served through prison sentences, Brownmiller also strongly encouraged women to report their rapes. She particularly critiqued white women’s reluctance to report attacks by black men to the authorities, stating that,

When the women’s movement first began to discuss rape as a feminist issue, those women who still identified themselves with the male left reacted like their brothers with noncomprehension and hostility… It was the interracial aspect, the fear of playing into the hands of racists, or an undifferentiated sympathy for the criminal as society’s victim that dictated their emotional response.77

She cited a psychiatric study of thirteen young white rape victims in Boston and Washington who were reluctant to report their rapes or prosecute their black rapists. One study participant understood the rape as “an extension of the social struggle of black against white or poor against rich.”78 Brownmiller, on the other hand, believed that excessive sympathy for the historic injustice to black men served to maintain all women’s oppression in the present. Calling on activists to remember how white men used the alleged rape of “their women” to act out against black men, Brownmiller also argued that rape in the present had to be understood “as a control mechanism against the freedom,

76 Brownmiller, Against Our Will, 434.
77 Brownmiller, Against Our Will 279.
78 Brownmiller, Against Our Will, 280.
mobility and aspirations of all women, white and black.” Remembering the history of white male response to black-on-white rape was important, but so too was justice for women in the present.

Social justice activists outside the movement took aim at Brownmiller’s promotion of legal reform. The Chicago-based group, Sojourner Truth Organization, for example, published a pamphlet titled *Rape, Racism, and the White Women’s Movement: An Answer to Susan Brownmiller.* In the pamphlet, author Alison Edwards warned that Brownmiller’s suggestion to reform the criminal justice system was a dangerous “law and order solution.” Given the history of racism and sexism and overall failure of prisons, Edwards argued that law and order solutions would be completely ineffective and counter-productive. In her words, “Law and order solutions won’t stop rape. Law and order solutions won’t liberate women. Law and order solutions will just create a police state in which no one will be free.”

Similarly, a group called the Chicago Women’s Defense Committee issued a poster criticizing Brownmiller’s solutions as reactionary. The poster announced, “Today’s cries of ‘crime-in-the-streets’ are raised to play on people’s fears, as justification for establishing a more and more repressive police apparatus in our cities.” Brownmiller’s solutions, the Defense Committee resolved, “directly reinforce the subjugation of black and other people of color in the U.S. by white

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81 Edwards, 17.

82 Edwards, 21.
people. Unless exposed, such solutions will serve to fan the fires of racism in this country."\(^83\)

Similarly, Angela Davis critiqued the elitism and racism of the criminal justice system. As she understood it, under the capitalist class system, privileged white men of the middle and upper classes were afforded impunity under the eyes of the law and generally were not held accountable for their actions. However, working class men and men of color were not afforded such privileges. Therefore, the majority of founded and prosecuted rapes were those committed by working class men and men of color. This gave a distorted view that black men were primarily responsible for the rape epidemic.\(^84\) The end result of depending on the criminal justice system was thus the continued oppression of disadvantaged men, rather than the eradication of rape. As Alison Edwards echoed, “The legal system in this country is an automatic railroad for black defendants. A solution to rape that calls for more prosecutions is a solution that is designed to put more black men in jail, whether or not they have committed any crimes."\(^85\)

Davis, Edwards, and other critics were thus responding not simply to Brownmiller but also to larger changes within the feminist anti-rape movement. In a 1976 *Freedomways* article, for example, Davis warned the feminist anti-rape movement against “objectively siding with the enemies of oppressed people and the working class… [rather than] intimately allying itself with the struggle against racist and economic exploitation.”\(^86\) This call did not go unheard. In fact, as discussed in the previous chapter, 

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83 “How do you like this plan?” poster, Box 9, Folder 1, Susan Brownmiller papers.


85 Edwards, 19.
feminists had been engaging in these debates since the early 1970s and many seriously doubted the effectiveness of legal reform and the potential for feminist control of state institutions.

Brownmiller and Against Our Will brought unparalleled attention to the feminist analysis of rape. For the first time, the major feminist theoretical beliefs about sexual violence were squarely placed before the mainstream public. Yet the publication of Against Our Will also arrived at a time when civil rights and prison reform activists had won long fought battles for defendants’ rights. Many understood her substantial approval of legal reform as highly controversial and contradictory of the successes of racial justice movements. Feminist anti-rape work was also transforming. By the time of Against Our Will the nature of anti-rape work had undergone considerable change since its origins as a grassroots, radical feminist-based call to action. As the years went by, anti-rape work increasingly became the purview of state-supported institutions and feminists found themselves marginalized. While firmly putting rape into the public consciousness, the publication of Against Our Will also serves as a moment that reveals ongoing divisions and debates around politics of rape during the 1970s.

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During the 1970s, the feminist and civil rights movements gained significant ground in the legal arena, successfully reforming laws around rape. These legal reforms varied in scope and impact and speak to the changing understandings and definitions of sexual violence advanced by both movements. The civil rights movement won a long-term legal battle when the question of the appropriate punishment for cases of rape came before the Supreme Court in 1977. Following almost fifteen years of a sustained campaign against capital punishment, the LDF presented the case of Ehrlich Anthony Coker, a white man convicted of rape and sentenced to death in Georgia in 1974. The LDF argued that death was a disproportionate punishment for a crime that involved no loss of life. Furthermore, the arbitrary, infrequent, and capricious application of the death penalty for rape violated the 8th amendment. The Court agreed. On June 29, 1977, Coker and six other men who sat on death row for rape in Georgia’s prisons were spared their lives. Not all of these men were black, yet the decision resonated strongly with a movement against capital punishment that originated out of the egregiously disproportionate sentencing for blacks convicted of raping white women. Speaking to the history of the application of the death penalty in cases of rape, the New York Times reported that the Court’s decision “wiped out one of the grosser remnants of racism in the United States.”

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Likewise, feminist activists agitated throughout the decade for substantial rape law reforms nationwide. Grassroots activists joined forces with groups such as the National Organization of Women’s National Task Force on Rape, as well as policy groups and conservative “law and order” groups as they lobbied in the legislatures and launched a massive assault on what they deemed archaic and ineffective rape laws. Seeking to hold men accountable for their crimes, many feminists believed law reform would be one way to control and combat sexual violence successfully. An examination of articles written by feminist attorneys and legal scholars in the nation’s law journals during the early 1970s demonstrates the grassroots feminist impact on legal theory. In a radical departure from previous commentators, these legal scholars legitimized central grassroots feminist claims and advocated feminist reforms. This helped propel the feminist agenda forward. As a result of feminist-based mobilization, by 1980 every state had considered and most had passed some form of rape reform legislation. The nature of these reforms was unprecedented. As legal scholar Leigh Bienen commented in the *Women’s Rights Law Reporter* in the late-1970s, “laws which had been sitting on the books for two hundred years were dusted off and re-examined, often with far-reaching results.” While the actual impact of the new laws was ultimately not as sweeping as Bienen had anticipated when she wrote, the reforms mark the considerable impact that feminism made on the mainstream understanding of rape and rape victims.

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“An extraordinarily unsavory history;” LDF and the campaign against capital punishment for rape

The late 1970s brought an important legal victory for the civil rights movement when the Supreme Court ruled that capital punishment in cases of rape constituted cruel and unusual punishment for a crime that did not involve the loss of life. The decision brought to a close a macabre chapter of legal history where Southern juries and judges disproportionately punished convicted black rapists with death as compared to their white counterparts. The NAACP LDF argued the case on behalf of Ehrlich Anthony Coker, a white convicted murderer and serial rapist in Georgia. Described by contemporaries as a “depraved human being” and a “serious menace to society,” Coker was indeed, as one scholar recently characterized him, “a one-man crime wave rolling through Georgia” during the early 1970s. Born in 1949, Coker was in his early twenties when he and an accomplice raped and murdered a young woman in Clayton County, Georgia in December 1971. Less than eight months later, he kidnapped and brutally raped a 16-year-old girl, beating her and leaving her for dead. Within a year, Coker was indicted and convicted of murder, rape, kidnapping, and aggravated assault for which he received the punishments of three life terms, two twenty-year terms, and an eight-year term to run

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4 David Kendall, in an interview with the author, 22 July 2011.


6 Coker’s actual age at the time of the assault is difficult to determine. According to Foster, he was 21 years old in December 1971. The Georgia Department of Corrections lists his birth year as 1949 (with no birth month). The Washington Post reported that Coker was 26 at the time of the Supreme Court ruling in June 1977. These two numbers don’t sync. If Coker was 21 in December 1971, he would be 27 years old in 1977.
consecutively, not concurrently. He was incarcerated in the Ware Correctional Facility in Ware County, Georgia on March 19, 1973. Yet Coker’s crime spree did not stop there. Eighteen months later, on September 2, 1974, Ehrlich Coker escaped from Ware Correctional Facility. At 11:00 that night, he walked into the home of Allen and Elnita Carver through an unlocked kitchen door. Coker tied up Allen in the bathroom, stole his money, and brandishing one of their kitchen knives told Elnita, “you know what’s going to happen to you if you try anything, don’t you” before he raped her. Elnita was 16 years old and had given birth to the couple’s first baby only three weeks prior. Coker then kidnapped Elnita in the family car and drove away. Allen Carver freed himself, called the police, and Coker was apprehended not long thereafter. Elnita Carver had not been further harmed in the interim. Coker was charged with armed robbery, kidnapping, motor vehicle theft, escape from prison, and rape. A grand jury found him guilty on all counts and he was sentenced to life imprisonment (robbery), a twenty-year prison term (kidnapping), a seven-year term (vehicle theft), a five year term (escape), and death (rape). At the time, the Georgia Code provided that a person convicted of rape could be punished by the maximum sentences of death or life imprisonment, or by minimum sentences of imprisonment for at least one but not more than twenty years. Furthermore,

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7 Foster, “Struck by Lightning.” According to the Georgia Department of Corrections website, Coker was also convicted of a murder that took place on September 21, 1972 in Taliaferro County, Georgia. The literature on Coker and the death penalty for rape never mentions this murder; perhaps because it is not attached to a rape.

8 Coker v. Georgia, 433 U.S. 584 (plurality opinion)

9 Brief of respondent in opposition to writ of certiorari, Coker v. Georgia, 433 U.S. 584

10 Georgia Code Ann. § 26-2001 (1972). This section of the code defined rape as having “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” (as cited in Coker v. Georgia (plurality opinion)
a death sentence for rape required one or more aggravating circumstances such as serious injury, use of a weapon, or during the commission of another capital crime such as armed robbery. In Coker’s case, the jury found two aggravating circumstances that warranted the ultimate penalty. First, he had a prior conviction for a capital felony and second, he raped Elnita Carver during the commission of another capital felony. Coker appealed to the Supreme Court of Georgia. The Court affirmed all the convictions and sentences, including the death penalty. Represented by the LDF, Coker took his case to the United States Supreme Court.

During the early 1970s, the LDF pursued full abolition of the death penalty with a renewed energy. After a decade of sustained legal battles against capital punishment, the LDF won a surprising and unexpected victory with the 1972 Furman ruling, where the Supreme Court invalidated capital punishment statutes in every state, ruling that the death penalty had been applied capriciously and arbitrarily and therefore violated the 8th Amendment. As a result, some six hundred inmates walked off death row, eighty of whom were sentenced to die for rape convictions. In Furman the Court instructed state legislatures to revise their statutes and a de facto moratorium on the death penalty went

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12 Coker v. State, 234 Ga 555, 216 SE2d 782 (1975)

13 Furman v. Georgia, 408 U.S. 238 (1972). The LDF brought a set of four cases before the Court, which would come to be known collectively as the Furman case. Two of those cases were instances of black men raping white women; Elmer Branch for non-aggravated rape in Texas and Lusious Jackson for aggravated rape in Georgia. The third case involved Earnest Aikens of California for two brutal rape/murders. Finally, William Henry Furman was convicted of murder for an accidental shooting during a break-in. All four men had been sentenced to death for their crimes. See: Stuart Banner, The Death Penalty: An American History (Cambridge, MA: Harvard University Press, 2002), 266. See also Joan Cheever, Back from the Dead: One Woman’s Search for the Men Who Walked off America’s Death Row (West Sussex, England: John Wiley & Sons, 2006).
into effect. Despite this seeming victory, the issue of the death penalty quickly consumed the LDF once again. Following the *Furman* decision, legislatures put tremendous energy into re-enacting their death penalty statutes. Death penalty historian Stuart Banner describes this as “the biggest flurry of capital punishment legislation the nation had ever seen.” By 1973, nineteen states had re-written their death penalty statutes in accordance with the guidelines set out in *Furman* and convicted criminals were once again committed to death row. Among these was Ehrlich Coker, one of a handful of men sentenced to die for non-homicidal rape.

David E. Kendall, counsel for the Legal Defense Fund, presented Coker’s case to the United States Supreme Court. Kendall had a long time commitment to civil rights issues; he joined hundreds of other white college students who participated in Freedom Summer 1964, registering black voters in Mississippi. When he joined the LDF as a recent law school graduate in July 1973, he had hoped to do a variety of civil rights litigation. Yet, with the deluge of capital punishment legislation following *Furman*, the death penalty regained its place as the number one priority for the organization. For Kendall, death penalty work quickly took precedence. As he explained, “As it turned out, the press of the burgeoning death penalty docket, almost by hydraulic pressure forced most of the other things off my desk.”

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14 This moratorium was short lived. With *Gregg v. Georgia*, 428 U.S. 153 (1976), the Supreme Court reaffirmed the use of the death penalty in the United States, finding that state legislatures had met the guidelines for applying the punishment as set out in the *Furman* decision. The first person executed following *Gregg* was Gary Gilmore, a two-time murderer who was killed by firing squad in Utah on January 17, 1977.


16 David Kendall, in an interview with the author, 22 July 2011.
The death penalty for rape, while no longer widely applied after Furman, remained an important issue on the LDF agenda. In 1971, sixteen states and the federal government allowed the death penalty for rape. Following the 1972 Furman decision, only six states re-enacted death penalty statutes in cases of rape. And by the time of the Coker decision, only three states allowed for capital punishment in cases of rape; Florida and Mississippi for cases involving children and Georgia for cases involving an adult female. While only a handful of men sat on death row for rape in 1977, sparing their lives remained a priority for the LDF. Likening the campaign against capital punishment to other civil rights struggles, Kendall explained, “you don’t just say, ‘well, gosh there are only a few kids in segregated schools let’s just abandon them.’ That’s just not the way that an organization like that [LDF] makes decisions.” Additionally, abolishing the death penalty for rape was one piece of the larger campaign for total abolition. Since the


18 Following Furman, Tennessee and Mississippi enacted the death penalty in the case of rape of a child under 12, Florida for the rape of a child under 11. North Carolina and Louisiana enacted mandatory death sentences for the rape of an adult woman. The Georgia legislature re-enacted a discretionary death penalty for the rape of an adult woman.


20 David Kendall, in an interview with the author, 22 July 2011.
LDF had not been successful in eliminating the death penalty completely, the organization strategized to limit its application as much as possible.

In September 1975, Kendall and the LDF submitted writ of certioraris to the United States Supreme Court on behalf of three men convicted and sentenced to death for non-homicidal rape in Georgia. Kendall submitted Ehrlich Coker’s writ alongside those of John Hooks and John Eberheart, both black men and both charged with kidnapping and brutally beating and raping a woman in July 1973 in Cook County, Georgia.\(^1\) The Court chose to grant cert only for Coker, the only white man on death row for rape, and held the cases for Hooks and Eberheart pending the Coker decision. In an interview, Kendall described the Court’s decision as “a great historical irony,” considering the use of the death penalty for rape against an almost all-black group.\(^2\) Yet the LDF did not hesitate at the Supreme Court’s decision. Kendall explained, “I don’t remember there being a discussion about Ehrlich’s race. We [the LDF] thought it was important to be the people who litigated the issue because we had many, many, many years of experience in litigating the issue.” In petitioning for the writ of certiorari, the LDF argued that Coker’s case presented four constitutional questions involving the sixth, eighth, and fourteenth amendments. From the four questions presented, the Court granted cert only on the 8\(^{th}\) amendment question of whether the death penalty for rape constituted cruel and unusual punishment where the life of a victim was not taken.\(^2\) This would be the first time that the Supreme Court dealt with this question.

\(^{21}\) See *Eberheart v. the State*, 232 Ga. 247, 206 SEd 12 (1974). In this ruling, the Georgia Supreme Court upheld the death penalty against John Eberheart for the crime of rape.

\(^{22}\) The writ of certiorari was granted on October 4, 1976.
Presenting his brief before the Court on March 28, 1977, Kendall made race a central piece of his argument. 

“"The death penalty for rape comes to this Court with a notorious and unsavory reputation for racial discrimination," Kendall told the Justices. Although Coker was white, Kendall argued, the death penalty for rape in the United States was "founded in invidious racial discrimination." He offered statistics to prove this; ninety percent of those executed for the crime of rape since 1930 in the United States had been black. During the same period in Georgia, 58 blacks had been executed for rape as compared to three whites. Kendall’s submission on behalf of Coker was two-fold. First, he argued that the death penalty for rape where the life of the victim had not been taken was excessive and disproportionate punishment when judged by relevant contemporary standards. Second, and more directly concerned with race, Kendall argued that the pattern of imposition of the death penalty in cases of rape in Georgia showed the same arbitrariness, infrequency, and capriciousness of application that the Court had deemed unconstitutional five years earlier in Furman. While Kendall recognized that rape was a serious offense akin to aggravated assault or attempted murder, he challenged the imposition of the ultimate penalty. Citing past Court decisions, Kendall argued that death was “qualitatively different from imprisonment” and that while rape should be stringently punished, the “unique and irreversible punishment of death” was excessive for a crime where there was no loss of life. Furthermore, Georgia’s death penalty statute was

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24 LDF counsel E. Kontz Bennett, Jr., Jack Greenberg, James M. Nabritt III, Peggy C. Davis, and Anthony G. Amsterdam joined him on the briefs.

25 Kendall, oral arguments, Coker.
unique in the United States, and also the world. “Georgia is the only American state and
virtually the only jurisdiction in the civilized world that now authorizes the death penalty
for the rape of an adult woman.” Even prior to Furman, Kendall pointed out, only a
minority of jurisdictions had historically held the death penalty for rape. In 1925, only
twenty U.S. jurisdictions authorized the discretionary death penalty for the rape of an
adult woman. By 1972, that number had dropped to sixteen states plus the federal
government. After the Furman decision, only six states re-enacted death penalty
statutes in cases of rape, three of which the Supreme Court deemed unconstitutional.
Kendall argued that the death penalty was seldom imposed and “an extraordinarily rare
punishment” for rape, commenting that Coker and the six other men on Georgia’s death
row were “members of an exclusive, but hapless fraternity.” Kendall and the LDF
sought the Supreme Court to deliver the final blow to capital punishment in cases of rape,
something already largely repudiated by society and legislatures.

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26 Kendall, oral arguments, Coker. In Woodson, a ruling that overturned the use of mandatory
death sentences, the plurality recognized that members of the Court had already acknowledged in Furman
“what cannot fairly be denied -- that death is a punishment different from all other sanctions in kind, rather
than degree.” Woodson v. North Carolina, 428 U.S. 280 (1976) (plurality opinion). Kendall also pointed to
the plurality opinion in Gardner v. Florida which stated that “five Members of the Court have now
expressly recognized that death is a different kind of punishment from any other which may be imposed in
this country… it is different in both its severity and its finality.” Gardner v. Florida 430 U.S. 349 (1977)
(plurality opinion)

27 Kendall, oral arguments, Coker. A 1965 United Nations study of 60 nations found that only the
Southern United States, Taiwan, South Africa, and Malawi allowed lawful execution for rape (without the
loss of life of the victim). See Michael Meltsner, Cruel and Unusual: The Supreme Court and Capital
Punishment (New York: Random House, 1973), 77. Following the Furman decision, only six of sixteen
states re-enacted death penalty legislation.

28 These 20 U.S. jurisdictions included 18 Southern and border states, Washington, D.C., and the
federal government.

29 See footnote 10 for the list of states.

30 Of the seven men on Georgia’s death row in 1977, five men (including Coker) faced death
solely as punishment for rape (“High Court Rules Out Execution of Rapists,” New York Times, June 30,
1977.)
Assistant Attorney General of Georgia B. Dean Grindle, Jr. argued the case for the state. In response Grindle argued that the Constitution did not designate what was and was not a capital crime, that condemning death for rape would have far-reaching consequences for the application of capital punishment in other non-homicidal crimes (like kidnapping and treason), and that the death penalty was necessary to prevent recidivism by violent offenders. “The question,” Grindle stated, “is simply what is society to do with the incorrigible recidivist who has not only demonstrated that he will rape again, but also demonstrated that he will likely kill or seriously injure those whom he rapes.”31 Pointing to Coker’s prior convictions, Grindle concluded, “death finally forecloses the possibility that a prisoner will commit further crimes, whereas life imprisonment does not.”32 In his rebuttal, Kendall once again stressed the importance of race, underlining the LDF’s position on the punishment for rape as a civil rights issue. Commenting that Grindle avoided the question of race entirely, Kendall told the Court that based on observations and statistics alike, the death penalty for rape “appears to be designed after the Civil War to punish black defendants who commit the crime of rape against white victims… This penalty does not come to this Court with an even-handed history of application.”33 Although arguing on behalf of a white defendant, Kendall maintained a focus on race. “We represented Coker, who was white, because we wanted to represent everybody,” Kendall explained in an interview. Regardless of the race of the defendant in this particular case, the LDF believed the death penalty for rape was largely


32 Grindle, oral arguments, Coker.

33 Kendall, oral arguments, Coker.
racially motivated. Kendall continued, “If a punishment is implicitly sanctioned for blacks, and it happens to hit a white every now and then, I don’t think it makes the punishment any less infected.”

The ACLU and the Center for Constitutional Rights filed an amici curiae brief on behalf of Coker. Future Supreme Court Justice Ruth Bader Ginsburg was one of the major contributing authors who signed the brief on behalf of the ACLU.34 Five women’s rights organizations, including the National Organization for Women, joined the primary authors of the brief, urging reversal of the death penalty in cases of rape.35 While not ignoring race by any means, the authors of the amici brief took a somewhat different approach than the LDF, focusing on women’s rights as their main impetus for abolishing the death penalty for rape. Amici argued that capital punishment reflected archaic views of women as men’s property, that the severity of the punishment resulted in both fewer convictions of the guilty and increases in evidentiary rules for the accuser, and that the unwillingness of juries to impose the death penalty showed that it did not meet the standards of the 8th amendment. Stating their “interest in effective enforcement of [the] laws against rape,” amici urged “that the death penalty for rape be invalidated because it stems from archaic notions which demean women and gross racial injustice and does not serve the goal of convicting and subjecting to criminal sanctions those who are in fact

34 Joining Ginsburg were Melvin L. Wulf, Kathleen Willert Peratis, Susan Deller Ross, and Marjorie Mazen Smith for the ACLU. Elizabeth M. Schneider and Nancy Stearns signed the brief on behalf of the Center for Constitutional Rights.

35 These organizations were: The National Organization for Women, the Women’s Law Project (a feminist law office in Philadelphia), the Center for Women Policy Studies (a D.C.-based non-profit dedicated to improving the legal and economic status of women), Women’s Legal Defense Fund (a D.C.-based non-profit seeking equal rights for women), and E.R.A., Inc. (a San Francisco-based non-profit that promoted equal rights for men and women under the law). Most of the organizations had been involved in anti-rape work prior to signing the amicus. The Women’s Legal Defense Fund, for example, served on the Washington, D.C. Task Force on Rape and through working with the D.C. RCC had represented rape victims in court. See: Brief Amici Curiae, Coker v. Georgia, 433 U.S. 584 (1977)
guilty of rape.”

Rather than protecting women, the death penalty served to benefit the guilty.

In many ways, the arguments put forward in the amici brief were a direct product of the women’s movement. The authors cited Brownmiller’s *Against Our Will*, Medea and Thompson’s *Against Rape*, as well as feminist critiques of rape law published in the nation’s leading law journals. Beginning with the historical origins of the death penalty for rape, the authors showed how the legal understanding of rape originated as a property crime between men. This had particularly insidious ramifications in the South as white men claimed exclusive sexual access to white women and took extreme measures against black men as a result. Black rape of white women was understood as a threat to the white man’s status. The rape of black women, on the other hand, was ignored. Male patriarchal views of women created legal ambivalence towards rape victims. The dual and contradictory views of victims as innocent virgins or seductive temptresses “produced a schizophrenic law of rape” characterized by overly severe penalties in some cases and special protections for the defendant in others. The authors concluded that “equitable enforcement of laws against rape” would be possible only when the law removed both the excessive penalties on the accused and the excessive requirements to prove guilt on the accuser.

Arguing that the death penalty for rape served as a “vestige of an ancient, patriarchal view of women as the property of men, as a reflection of social ambivalence

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37 Brief Amici Curiae, 22, *Coker v. Georgia*, 433 U.S. 584 (1977). The authors further commented that in states where rape was not punishable by death, penalties for the crime were also excessive, above and beyond the punishment for other serious, non-homicidal crimes. In California, assault with a deadly weapon or with force likely to create great bodily injury was punishable by a minimum one year and maximum ten year sentence. Rape under the same circumstances was punishable by a minimum three year and maximum fifty year sentence.
toward the woman victim, and as a barrier to proper and vigorous enforcement of rape laws,” the amici brief stated that rejecting this punishment would “eliminate a deplorable remnant of the historical stigmatization of women as a subordinate class.”

On June 29, 1977, the Supreme Court ruled in favor of Coker, arguing that death was a disproportionate punishment for the rape of an adult woman and therefore violated the 8th Amendment. Justice White, joined by Stewart, Blackmun, and Stevens announced the plurality opinion. In their ruling, the plurality argued that the death penalty for rape met two types of disproportionality: first, since not all murders were punishable by death, and murder exceeded rape in gravity, capital punishment for rape was unconstitutional. Second, death was an excessive punishment for rape since it did not involve the loss of life.

The New York Times hailed the decision as a victory for civil rights and the women’s movement, yet the holding failed to explicitly mention either race or women’s rights. The absence of race seems particularly striking given the centrality of racial discrimination to the petitioner’s claim. Yet the Court’s lack of attention to race in Coker was not particularly surprising to LDF lawyers. Debating on the basis of the 8th amendment and the question of proportionality was a strategic move as the LDF knew

38 Brief Amici Curiae, 9, 10, Coker v. Georgia, 433 U.S. 584 (1977)


41 In the 1972 Furman ruling, several of the Justices acknowledged race in their opinions. Scholars since Furman have commented that the Court’s critique of the arbitrariness and “randomness” of the application of the death penalty stood as code for racial discrimination (See Banner, The Death Penalty, 265). Still, as former LDF lawyer Michael Meltsner points out, in Furman race did not “rise to the level of a central decisional factor.” See: Michael Meltsner, The Making of a Civil Rights Lawyer (Charlottesville, VA: University of Virginia Press, 2006), 208. In the 1977 Coker decision, the Justices did not account for race at all.
that race alone would not convince the Court. As former LDF lawyer Michael Meltsner commented almost twenty years after the *Coker* decision, “if LDF were to wait until the Court was ready to confront overtly the role of race in capital sentencing… it would still be waiting.”

Despite the lack of attention to race in either the plurality or dissenting opinions, *Coker* was a significant victory for the LDF nonetheless. First, the Court ruled in favor of Coker and the LDF won the case, regardless of what the opinion did or did not say. As Kendall explained, “when that decision came down nobody was drinking champagne any less because they didn’t mention race. Although for us as civil rights lawyers it was deeply ironic to say the least…” Second, the *Coker* decision nullified the death sentences of LDF clients Eberheart and Hooks, and ultimately spared the lives of five men who sat on death row for non-homicidal rape in 1977. Finally, the Court’s decision forever prevented the possibility of more legal lynchings that LDF lawyers argued had characterized so many of the century’s black-on-white rape trials. In a statement to the *New York Times* the day after the Court handed down its decision, Kendall commented, “the Court’s decision brings to a close one of the most shameful and racist chapters in the history of this country’s criminal justice system.”

For Kendall and the LDF, whose campaign against capital punishment originated out of the discrepancies in punishment for blacks convicted of rape, the *Coker* decision was “a real victory.”

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42 Meltsner, *Civil Rights Lawyer*, 209

43 David Kendall, in an interview with the author, 22 July 2011.

44 Oelsner, “High Court Rules Out Execution of Rapists.”

45 David Kendall, in an interview with the author, 22 July 2011. The ruling was also a victory for those outside of LDF who also sought to abolish capital punishment. Former Justice Arthur Goldberg,
While the Court opinions did not explicitly mention women’s rights as the reason to outlaw capital punishment, the impact of over six years of feminist agitation and organizing against rape is clear in the Justices’ understandings of sexual violence. Citing a 1975 LEAA report titled “Rape and Its Victims,” as well as feminist legal scholarship on rape and rape laws, the plurality recognized the seriousness of rape as a crime. Rape, they contended, was “the ultimate violation of self… it is a violent crime because it normally involves force… and is very often accompanied by physical injury to the female and can also inflict mental and psychological damage.”

Justice Powell, concurring in part and dissenting in part, commented that the “deliberate viciousness of the rapist may be greater than that of the murderer.” Echoing feminist iterations on sexual violence, Powell wrote that, “rape is never an act committed accidentally. Rarely can it be said to be unpremeditated.” He further acknowledged the range of effects the crime could have on rape victims disagreeing with the plurality’s opinion that life was not beyond repair for the rape victim. Chief Justice Burger, with Rehnquist joining, dissented from the Court’s ruling. The death penalty was indeed an appropriate punishment, he argued, as “rape is not a minor crime.” Rape was destructive to the human personality and could have serious detrimental effects on the victim. Citing the threat of serious injury, Burger wrote, “rape is thus not a crime ‘light years’ removed from murder in the degree of its heinousness; it certainly poses a serious potential danger to the life and safety of innocent


46 Coker v. Georgia, 433 U.S. 584 (1977) (plurality opinion)

victims – apart from the devastating psychic consequences." The Justices didn’t tackle any of the more complex arguments offered in the amicus brief, such as the paternalism inherent in responding to sexual violence with capital punishment, or the role of race in punishing black offenders of white victims. Yet women’s rights advocates saw this as a victory nonetheless. Recalling the brief several years later, Ruth Bader Ginsburg argued that “the whole thrust of my brief [was] that this [rape] was made punishable by death because man’s property had been taken from him because of the rape of the woman.” In overturning the Georgia statute, the Supreme Court rejected this historically paternalistic response to violence against women.

Although a rare punishment by 1977, capital punishment for rape had consumed civil rights lawyers and launched the LDF abolitionist campaign in the early 1960s. The Coker decision finally foreclosed the possibility of race-based death sentencing for convicted black rapists. Only fifteen years prior to Coker, the Giles brothers and Joe Johnson found themselves on death row and nearly executed for rape. Following Coker, the same crime was no longer punishable by the ultimate penalty. For the LDF, the case marked an end to discriminatory practices in death sentencing for rape and finally closed a racially charged chapter of American legal history.

48 Coker v. Georgia, 433 U.S. 584 (1977) (Burger, C.J., dissenting). Justice Brennan and Justice Marshall, who concurred in the plurality opinion, wrote brief opinions stating that they continued to adhere to their view that the death penalty is cruel and unusual punishment in ALL circumstances, prohibited by the 8th and 14th Amendments.

**Challenging a “legal framework of myths”**

Civil rights lawyers were not the only legal activists challenging the laws on rape. Feminist-oriented attorneys and legal scholars also revealed the inadequacies of the criminal justice system and advocated for rape law reform, taking the battle against the legal structure to the pages of the nation’s law journals. In sharp contrast to commentators who wrote before them, feminist-oriented legal scholars argued for pro-victim law reforms based on grassroots feminist understandings of sexual violence. These pro-feminist legal articles are significant for several reasons. First, they point to a considerable change in legal perspectives about rape law. The most respected journals of the legal profession, many of which had published biased, anti-woman articles in decades prior, were now also publishing pro-feminist critiques of rape law. Second, these articles demonstrate that the feminist understanding of sexual violence was indeed impacting legal theory. This also underscores the connections and alliances activists outside the system made with those people inside the system, which was a crucial piece of how feminists got reforms pushed through the nation’s legislatures. Finally, pro-feminist law articles articulated the feminist position on rape law and those reforms deemed the most necessary with the expectation of bringing long awaited justice for victims of sexual violence.

In their articles, feminist legal scholars disputed the conventional wisdom on rape and reiterated the central claims of grassroots activists: rapists were “normal” men and not deranged sex maniacs; the majority of rapes were planned and they occurred between known persons; women did not secretly want to be raped; and false complaints were rare.

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The myths surrounding rape, they argued, had been codified into law and produced an extremely hostile climate for complainants, from the initial interactions with the police, to the district attorney’s office, and finally the trial itself. Writing in the *American Criminal Law Review* in 1973, Pamela Lakes Wood commented, “Due to the traumatic experience which a victim must go through in order to attempt to secure the attacker’s successful prosecution, it is amazing that any rape cases ever come to trial.”51 Echoing activists’ constructions of the “second rape,” legal scholars argued that women were victimized not only by their attackers but also by the social attitudes and legal approaches to rape in the aftermath of assault. Sally Ellis Mathiasen made this point clear with her choice of title in her 1974 *Willamette Law Review* article, “The Rape Victim: A Victim of Society and the Law.”

Echoing the feminist politicization of rape, feminist-oriented scholars argued that social and moral attitudes about female sexuality maintained rape laws that had devastating effects for rape victims. Camille LeGrand, in a 1973 *California Law Review* article titled, “Rape and Rape Laws: Sexism in Society and Law” argued that, “rape laws are not designed, nor do they function, to protect a woman’s physical integrity… rather than protecting women, the rape laws might actually be a disability for them, since they reinforce traditional attitudes about social and sexual roles.”52 Social attitudes and legal doctrine worked in tandem, reinforcing one another. LeGrand argued that while societal attitudes were responsible for constructing rape laws, the continued existence of the laws served to reinforce those attitudes. This resulted in the simultaneous rise in reported rapes

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52 LeGrand, 919.
alongside excessively low conviction rates, rules of evidence unlike any others in criminal law, excessive hostility and callousness towards victims, and a grueling experience for victims at all levels of the criminal justice system.

Feminist legal scholars argued that rape myths maintained barriers to justice. The belief that all women wanted to be raped and thus provoked or consented to the crime was one such barrier. Popular studies like Menachim Amir’s work on victim-precipitated forcible rape supported this theory. Camille LeGrand strongly challenged Amir’s use of the term. Victim precipitation, she argued, “hinges primarily on male definitions of expressed or implied consent to engage in sexual relations, and is shaped by traditional restrictive stereotypes of women.”53 Rather than giving any consideration to the victim’s intentions, LeGrand continued, a finding of victim precipitation “depends upon the perspective of the largely male police, prosecutors, and judges who appraise the case…. [and] becomes nothing more than a male view of the circumstances leading up to the incident.”54 In his study, Amir had included not only cases of what he deemed actual victim precipitation (a term which many feminists disputed and rejected all together), but also those cases that the attacker interpreted as victim-precipitated. In response, scholar Sally Mathiasen asked, “How does the assailant ‘interpret’ that a woman is agreeing to sexual relations? By the stereotyped belief that she means ‘yes’ when she says ‘no’? The belief that a woman wants to be raped is in reality a reflection of the assailant’s own desires.”55 In practice, the belief in victim precipitation contributed to low conviction

53 LeGrand, 929.

54 LeGrand, 929 and 930.

rates. Juries were likely to assess the victim’s behavior and blame her for “setting up” the rape rather than focus on the actions of the accused. Pamela Lakes Wood commented that the effect of this theory was to make the victim partly responsible for the crime and mitigate the guilt of the assailant. “The real danger of this victim-precipitation—assumption of risk doctrine,” Wood argued, “is its frequent extension to the point where the offender is freed from guilt.”

Citing examples from Kalven and Zeisel’s 1966 study of juries and judges, Wood showed that juries were more likely to sympathize with the defendant, particularly when the woman engaged in so-called “risky” behavior, such as drinking alcohol, going to a club, or accepting a ride from the assailant.

The double standard of sexual behavior for men and women served as another major myth that fueled hostile attitudes towards women rape victims in the courtroom. As Mathiasen explained, society “tolerates sexual aggression in the male and is suspicious of sexual activity in the female.” Women who had extramarital sex were deemed either more likely to consent to sex or more likely to fabricate a story of rape, and thus not be true rape victims. While the defendant’s prior sexual activity was never used to incriminate him, defense attorneys regularly used the alleged victim’s prior sexual activity and reputation to discredit her. Mathiasen sharply critiqued the lenient attitude towards the use of evidence of the victim’s sexual history in rape trials. The admissibility of this type of evidence created a distinct and problematic distinction between rape victims and victims of other crimes (where character evidence was largely impermissible

56 Wood, 341.


58 Mathiasen, 50.
at trial). Mathiasen argued, “no other evidentiary rules in our legal system are so oversolicitous of the defendant and so suspicious of the victim.” Feminist legal scholars agreed that the link between a woman’s chastity and her credibility reflected outdated 19th century understandings of “good” and “bad” women. LeGrand commented that the concept of chastity was the “most unrealistic aspect of rape law.” Acknowledging that contemporary women commonly had sex outside of marriage, feminist legal scholars agreed that condemning “a rape victim for unchastity places a significant amount of women beyond the protection of the law.” The use of a woman’s sexual history as evidence against her often had devastating consequences. Pamela Wood cited the 1970 Plotkin case, around which Bay Area feminists had launched major protests, as a case in point. The victim was brought to an apartment by four men at gunpoint who then beat, raped, and sodomized her. At trial, the defense attorney focused on the victim’s character, arguing that she was a divorcee with children in foster care, had had numerous extramarital affairs, and was living illicitly with a man at the time of the trial. Based on this evidence, the jury acquitted. The use of the victim’s chastity as evidence in court, feminist scholars argued, was one of many ways that rape laws primarily sought to protect men from unjust charges rather than protect women from rape. “These liberal rules,” Mathiasen argued, had such far-reaching influence that they resulted in “setting many guilty rapists free.”

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60 LeGrand, 939.

61 Mathiasen, 51. Interestingly, the authors did not call attention to race in their critique of the good / bad woman divide.
According to feminist scholars, the misconceptions about rape produced contradictory and confusing laws and practice and thus rendered the entire legal process ineffectual. The resistance requirement served as a case in point. Pamela Wood criticized the excessive resistance required for conviction in many jurisdictions. She pointed to a February 1972 case in Washington, D.C. where 17-year-old Santionta Butler sodomized and raped two women students at George Washington University. Witnesses testified that the first victim was hysterical and visibly shaken-up with large red marks on her throat following the alleged attack. The second victim also screamed to the night manager of a nearby hotel following her attack. At the November 1972 trial, the jury found that neither victim had resisted enough to warrant a rape conviction in accordance with the D.C. Code. The Code required proof that “consent was induced by physical force, or by threats which put her in reasonable fear of death or grave bodily harm.” Following the acquittal, one juror told the Washington Post that, “the women [jurors] felt the two coeds could have used their teeth, fingernails and feet to resist ‘violence of this type.’” Having not fought back enough, the two victims had legally consented. Wood cited one of the victims who angrily told the Post following the acquittal, “I wasn’t on trial. I don’t see anything I did wrong. I screamed. I struggled. How could they have decided that he was innocent, that I didn’t resist. It’s preposterous.” The resistance standard put women in an extremely difficult situation. If a woman resisted, Wood argued, she was likely to

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62 Mathiasen, 43.


incur serious injuries. Such was the case of one woman in Central Park who fought back and needed 120 stitches on her face following the attack. Yet if a woman did not resist, prosecution was virtually impossible in many jurisdictions. Like most aspects of rape law, feminist scholars argued, the resistance standard did not protect women, but further put them in harm’s way.

Similarly, feminist scholars argued that the severe sentencing for rape was counterproductive and resulted in low conviction rates, thus contradicting the purpose of the law. LeGrand remarked, “high sentences probably serve more to deter victims from complaining and juries from convicting than they serve to deter rapists from raping.”

Fears of the “stereotypical maniacal rapist who leaps from the bushes with knife in hand” shaped the severe penalty structure for rape. Yet the majority of rapes did not happen this way, and juries and judges were resistant to impose such harsh sentences in these cases. LeGrand argued that when convictions did actually occur, the combined beliefs that rape resulted from a man’s uncontrollable sexual urges and that women precipitated their own rapes led to very light sentencing, and often on lesser charges. “Where attitudes about rape, based on misconceptions, lead judges to believe that the victims are always to blame, the sentencing of defendants is apt to be arbitrarily light,” she argued, further remarking that a disproportionate amount of rapists received probation rather than jail time.

With scathing critiques, feminist scholars argued that the belief in false charges that saturated legal doctrine and case law was rooted in unproven assumptions about

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66 LeGrand, 940.
67 LeGrand, 926.
68 LeGrand, 937.
women’s sexuality. These authors took previous legal commentators to task, altogether rejecting the obsession and fears that innocent men were often convicted on false charges. Pamela Lakes Wood argued that “these fears are largely groundless,” adding that Wigmore himself, whom dozens of legal scholars relied on to make their claims, had failed to “cite even one illustration of this having occurred.” LeGrand echoed this sentiment. Psychological theorizing had perpetuated the erroneous beliefs that women’s accounts of rape were unreliable and that false charges were easily constructed and often successfully prosecuted. LeGrand asserted, “virtually no evidence is offered in support of any of these beliefs.” Mathiasen also criticized the “lack of factual underpinnings to support the theory of fabrications,” citing in contrast the commander from the Rape Analysis Squad in New York City who estimated the rate of false reporting at 2%. With a basis in conjecture and no factual evidence as support, rape law was inherently flawed. LeGrand strongly asserted that an “entire legal framework of myths and stereotyped preconceptions unrelated to reality has been constructed… This gulf between myth and reality necessitates reevaluation of rape laws.”

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70 LeGrand, 935.

71 Mathiasen, 49. The two percent claim, widely cited by feminists in the 1970s, has since been contested. Legal scholar Edward Greer argues that the 2% claim, which has pervaded the feminist literature and legal discourse since the 1970s, has no basis in fact. See: Edward Greer, “The Truth Behind Legal Dominance Feminism’s ‘Two Percent False Rape Claim’ Figure,” Loyola of Los Angeles Law Review 33 (April 2000): 947-972.

72 LeGrand, 941.
Feminist legal scholars advocated pro-victim revisions to the nation’s rape laws. Protections were needed to offset widely held suspicions of women and jury sympathy with the defendant. Scholars agreed that the distinctions between rape victims and victims of other crimes should be abolished. This would therefore eliminate corroboration requirements and make inadmissible a victim’s prior sexual conduct. Rather than instructing juries on the likelihood of false allegations, Mathiasen argued, juries should be instructed that prior sexual relationships did not undercut a woman’s credibility. Scholars agreed that the laws also should be changed to include different degrees of sexual misconduct with different degrees of punishment. This would help to eliminate the all-too-common hesitation of judges and juries to convict because of excessive penalties. Alongside the written law, attitudes and understandings of the crime needed significant revision. The best solution, Wood argued, would be to effectuate a change in attitudes. Echoing the feminist, gendered understanding of rape, Wood suggested that effective reform entailed that “men see the crime from the victim’s point of view.”\textsuperscript{73} Social biases directly impacted the law’s effectiveness and therefore necessitated reform. The present system could be improved, she argued, once policemen sympathized with women rather than making sarcastic or callous comments, authors stopped perpetuating false beliefs in victim precipitation and focused instead on victimization, and juries followed the law rather than their own misconceptions about sexual property rights and blameworthiness. Mathiasen agreed, stating that “when the attitudes of the police, prosecutors, defense attorneys, and judges toward the rape victim change, the legal system will no longer be

\textsuperscript{73} Wood, 351.
upholding and reinforcing outdated social and moral attitudes. Perhaps then the feelings of society about women and the kind of women who get raped will change.”

“Justice after rape”\textsuperscript{75}: Feminism and Rape Law Reform

While feminist legal scholars tackled the inadequacies of rape law in the nation’s law journals, feminist activists agitated in the streets and in the legislatures for rape law reform. By 1980, feminists and their allies had successfully managed to push some degree of pro-victim reform through state legislatures in almost every state in the nation. Given the legal history, it is truly extraordinary that this degree of change took place. Yet legal reform on its own did not bring about the sweeping changes called for by the feminist movement. Nor was it expected to. The feminist vision demanded a wide-ranging strategy that included change in multiple arenas. Many feminists understood legal reform as one of many important and necessary elements to combat rape, not a singular solution to the epidemic. Others held high expectations for reform, which often fell short. Legal reform alone could not attain the radical vision feminists had set for the future. The often-disappointing outcomes of those reforms underscore the grassroots feminist argument that responding to rape required a comprehensive strategy with sustained energy on multiple fronts.

In 1974 the feminist movement celebrated a landmark victory when Michigan enacted the Criminal Sexual Conduct bill. Hailed as a feminist law reform, the Michigan

\textsuperscript{74} Mathiasen, 55.

statute was the first complete overhaul of a state rape law on record in the nation. As feminist anti-rape activist and law reform coordinator Jan Ben Dor commented, the enactment of the bill “represented the first comprehensive attempt by a state to break away from century-old myths and legal traditions surrounding the crime of rape.”

Michigan’s rape law dated from 1857 and, typical of most state laws at the time, followed the common law definition of ‘carnal knowledge’ as sexual penetration of a woman by a man, by force and against her will. Punishment for the crime ranged from one day to life imprisonment, based on the judge’s discretion. The 1974 Criminal Sexual Conduct bill radically changed that. In a significant departure from the previous law, the new statute defined four degrees of sexual assault with a sentencing structure ranging from 6 months to life maximum (depending on the severity of the crime), included a broader range of criminal sexual conduct so as not to limit the crime to vaginal penetration only, removed the burden of non-consent from the prosecution, eliminated the resistance requirement as proof of force, banned cross-examination of the victim’s chastity and sexual activities with persons other than the accused, and used sex-neutral language to include both men and women victims of assault. Under the new statute, no corroboration of the victim’s testimony was necessary, although the pre-existing law had also not required corroborating evidence.

The agitation for law reform in Michigan originated with the Michigan Women’s Task Force on Rape, a group formed by psychologists and counselors involved in rape crisis work in the southeastern part of the state. In June 1973, a group of twenty met at

76 Ben Dor, “Justice After Rape,” 149.

77 See Ben Dor, “Justice After Rape” and “National News Notes,” Feminist Alliance Against Rape, 1974. The Task Force did not succeed in removing the spousal exception from rape law, yet they were able to protect separated women from sexual assaults by their spouses. The Criminal Sexual Conduct law applied to persons who had filed for divorce or separation and were living apart.
the home of Jan Ben Dor, a feminist psychologist who worked at Ann Arbor’s Women’s Crisis Center, to discuss their frustrations with both the increasing rates of rape in the state and the maltreatment of rape victims by the criminal justice system. Like most other jurisdictions in the country, the situation in Michigan was bleak. In 1972 under the old statute, only ninety people were convicted of rape statewide. Of those, only fifty-five went to prison. During the same year, Detroit hospitals alone treated over 3,370 victims of rape and over 900 rapes were reported to the police. Statistics like these were not unusual and for activists nationwide represented the extent of the problem and the monumental amount of change required. Ben Dor and her allies decided to focus on law reform as a strategy for change and formed the Task Force. Virginia Nordby, the principal drafter of the Criminal Sexual Conduct bill, explained the decision to focus on law reform. “It was clear,” she conceded, “that considerably more than reforming the law would be required.” Other necessary changes ranged from improved medical treatment for victims to extensive training and re-education for police to thoughtful prison rehabilitation programs for offenders. “But,” Nordby argued, “we also needed to change the law because the existing statute, as interpreted, clearly was the single largest hurdle to advancement in these other areas and significantly undercut the benefits which might have been derived from such advancement.” Beginning in July 1973 and continuing over

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79 Ibid. Following the successful passage of Michigan’s Criminal Sexual Conduct law, activists involved in the effort published and spoke widely on their experience. Nordby’s essay was printed in a collection of papers from a conference on rape held in Australia in 1980, where efforts were underway to reform laws in that country.
the next twelve months, the Task Force launched a statewide campaign for law reform which concluded in the passage of the Criminal Sexual Conduct statute in July 1974.

As in most other states, the process of law reform in Michigan depended on feminist coalition building with other interest groups. Seeking to garner widespread support, feminists allied with politicians, lawmakers, influential individuals, and powerful organizations to push law reform from a proposal into a reality. While the Task Force served as the epicenter of the movement for rape reform, the driving force came from a statewide network of both feminist and non-feminist identified women’s organizations and influential individuals with expertise in law, politics, and organizing. Perhaps most significantly, the Task Force benefitted from the legal skills within their network. 80 Shortly after forming, the Task Force approached feminist lawyers for help in writing a reform statute. Virginia Nordby, the only woman on faculty at the University of Michigan law school at the time, responded enthusiastically. Nordby had earned a JD in law from Stanford University and, before moving to Michigan, had rewritten California’s entire educational code. Her experience in drafting legal language proved a tremendous

80 This expertise came largely from a new participant base of women in law. Prior to the women’s liberation movement, advanced degree programs were limited to women and women lawyers were rare. In their 1971 book about the burgeoning women’s movement, Judith Hole and Ellen Levine offered these statistics: By 1971, women made up only 3% of the nation’s lawyers; a 1966 survey found that of 2708 lawyers employed by the 40 top law firms in 6 major cities, only 186 were women; of the nearly 9700 judgeships in the U.S., only 200 women were held by women. See: Judith Hole and Ellen Levine, Rebirth of Feminism (New York: Quadrangle Books, 1971), 350. In the late 1960s, women law students began organizing on their campuses demanding women’s rights courses in their curriculum, that law schools actively recruit women students and actively recruit and hire women law professors, and that law schools stop cooperating with placement services that discriminated against women, such as those firms that flatly refused to hire women. (Hole and Levine, 354). Janice Goodman founded the National Women and the Law conference, the first conference of its kind, in 1970. The Women’s Rights Law Reporter, the first publication focusing specifically on women’s rights appeared in 1971. In 1972, Goodman founded the first feminist law firm in the country. The second wave feminist movement brought a dramatic increase in women law students and lawyers. By 1976, women made up 9.2 percent of the country’s lawyers. See: Maria Bevacqua, Rape on the Public Agenda: Feminism and the Politics of Sexual Assault (Boston: Northeastern University Press, 2000), 92-93. Also see: Barbara J. Love, Feminists Who Changed America, 1963-1975 (Urbana, IL: University of Illinois Press, 2006). This new wave of women lawyers offered new perspectives to legal questions.
advantage to the Task Force. During the fall of 1973, Nordby taught a course titled “Women and the Law,” the first course of its kind offered at the University of Michigan and one that Nordby herself had developed.\textsuperscript{81} Nordby’s students researched key legal questions regarding rape law reform as part of their coursework during the semester. These research papers strongly informed the Task Force reform proposal, drafted by Nordby in December 1973. The research efforts paid off. Following the passage of the new law the next year, one House Judiciary Committee member commented, “Of all the issues that have come before the committee recently, rape reform has been the best researched and best presented.”\textsuperscript{82}

Once Nordby had drafted the law reform proposal in December 1973, the Task Force sought the crucial support it needed from influential organizations and politicians to move forward. In February 1974, Senator Gary Byker announced his sponsorship of the proposal, turning the Task Force proposal into Senate Bill 1207. Byker claimed he had received an anguished letter from one of his constituents regarding a sexual assault on a young woman. As a result, he became aware of what he considered “the grossest distortion of justice ever witnessed by any society that has claimed to be civilized.”\textsuperscript{83} Byker’s administrative assistant, Carole Living, may have also influenced his decision. Living was an active member and essential political ally of the Task Force, and she spoke

\textsuperscript{81} The first Women and the Law course offered in the U.S. was at the University of Pennsylvania in 1969. Feminist lawyer Diane Schulder planned and taught the course, which was offered by the university on a non-credit basis (Hole and Levine, 352).

\textsuperscript{82} Jeanne C. Marsh, Alison Geist, and Nathan Caplan, Rape and the Limits of Law Reform (Boston: Auburn House, 1982), 18.

\textsuperscript{83} Byker, speaking at April 23\textsuperscript{rd} Joint Senate and House Judiciary Committee meeting, April 23, 1974. Michigan Women’s Task Force on Rape papers, Arthur Neef Law Library, Wayne State University (hereafter MWTFR papers).
on the senator’s behalf at almost all conferences, forums, and debates over SB 1207. In March, Michigan’s Governor William Milliken offered high-ranking support when he publicly endorsed the bill. In an April 4 statement to the legislature, Milliken argued that rape reform legislation “would provide a more realistic and humanistic deterrent to the violent crime of rape than our present archaic law provides” and urged the legislature to give the reform proposals “utmost consideration.”

While the governor’s reasons for supporting SB 1207 are not definitively known, his daughter Elaine was a student in Nordby’s “Women and the Law” course. Nordby used Elaine’s research paper “Force and Resistance” to craft the reform proposal in December 1973. The support of high-ranking non-feminist political figures like Byker and Milliken added legitimacy to the campaign and law reform emerged as a priority issue for the state that merited serious consideration.

Over the course of their twelve-month campaign, the Task Force sought to appeal to a wide range of constituents. Task Force members presented rape law reform not only as a women’s rights concern, but a civil rights and human rights priority. “The threat of rape,” the Task Force announced early in the campaign, “now constitutes a major infringement on the civil liberties of all citizens living in our state.”

In other instances, the Task Force appealed to law enforcement officials; Ben Dor argued that reform would benefit legal agencies and restore public faith in the criminal justice system. The police agreed. At a June 1974 forum on rape, Dearborn Heights Deputy Police Chief Ray Collins advocated for the new law, asserting, “we need the law to get back the confidence

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84 Task Force newsletter, April 12, 1974, MWTFR papers.
of the people… The people feel there’s no sense in reporting a crime if the police aren’t going to do anything about it.”

The Task Force strategy was effective. By May 1974, support for rape law reform came from a wide range of groups and individuals including the Detroit Rape Crisis Line, Detroit Police Women’s Division, Michigan Clergy Counsel, and Women’s International League for Peace and Freedom. Broad appeal allowed rape law reform to maintain critical support statewide.

Despite all of the support, the Task Force and their allies also faced intense criticism for their reform proposal. The Prosecuting Attorneys Association, a statewide group, vehemently challenged the bill. These prosecutors argued that logistically prosecution would be too difficult under the new bill and it would create rather than solve legal problems. In May 1974, Oakland County Prosecutor Brooks Patterson sent a letter to legislators, arguing that the bill’s “ultimate effect would be to obstruct prosecution and protect the rapist.” He believed that the bill would increase the burden of proof on the prosecution, and the defense could easily exploit such a complex law. He insisted that the complicated bill would confuse jurors, allowing for easier acquittals. Joan Clark of the Wayne County Prosecutor’s Office agreed, arguing that, “the average juror in Detroit with a fifth or sixth grade understanding won’t be able to understand it.”

In response, the Task Force accused their opponents of advancing their own self-interest and having a “self-complacent lack of concern.” Carole Living told the State Journal that


prosecutors, who were reluctant to try rape cases in general, would not like the proposed law because it would increase their caseload.\textsuperscript{90} In a letter to Senator Byker, Task Force members chastised Prosecutor William Calahan, a strong opponent of the bill, arguing “If the women of his [Calahan’s] county come to know their rights, he will no longer be able to justify prosecuting only the most outrageous cases. The real burden which SB 1207 will place on prosecutors is… the burden of effective law enforcement.”\textsuperscript{91}

Despite challenges from the Prosecuting Attorneys Association and other groups, the Task Force succeeded in reforming Michigan’s rape law. Following an all-night Michigan State Senate session that lasted into the morning of Saturday, July 13, the Task Force bill was finally passed at 5:30 a.m. In their final newsletter to constituents, the Task Force credited the work of hundreds of citizens organizing together for the success of the reformed law. “The new law is not a prosecutor’s law, not a defendant’s law, nor is it even a lawyer’s law… This law belongs to the people of Michigan.”\textsuperscript{92}

Michigan was one of many jurisdictions where feminist activists and their allies sustained significant campaigns for rape law reform. In Ohio, feminist reformers succeeded in pushing through revisions to their state law on rape one year after Michigan. Ohio had enacted a new criminal code effective January 1, 1974. Activists critiqued that while making some revisions to rape law in the new criminal code, the legislature’s efforts “failed to deal with several critical aspects of the rape problem,” as the new law maintained the need to prove resistance, corroboration requirements, and the

\textsuperscript{89} Letter, Task Force to Senator Gary Byker, no date. MWTFR papers. This letter was written after the June 6 Senate pass of SB 1207.

\textsuperscript{90} “Rape Bill to Aid Rapist – Calahan” \textit{The State Journal}, May 28, 1974. MWTFR papers.

\textsuperscript{91} Letter, Task Force to Senator Gary Byker, no date. MWTFR papers.

\textsuperscript{92} Task Force newsletter, July 22, 1974, MWTFR papers.
admissibility of the victim’s prior sexual conduct with persons other than the accused. Reformers advocated for amendments to the existing rape law that overturned all of the above and, in addition, provided paid medical examinations for victims, removed the spousal exemption in cases of separation or divorce, and added minimum sentencing for repeat offenders. The reformers succeeded. On August 27, 1975 Ohio’s governor James A. Rhodes signed the Ohio rape law reform bill into law.

Likewise, in 1972 feminist activists in New York mounted a fierce campaign against that state’s corroboration requirement. At the time, New York state law required corroboration of every material element of a rape—penetration, force and the identity of the assailant—by evidence other than the victim’s testimony. Other crimes, such as robbery or assault, did not require this kind of corroborating evidence. This resulted in the virtual impossibility of successful prosecution of rape cases in New York. Citing the example of a woman attacked in her apartment by two assailants, journalist Martha Weinman Lear wrote in the New York Times Magazine that to satisfy the corroboration requirement of a rape charge, the woman “would have had to be beaten severely—clearly beyond the degree necessary to subdue her—for the assault charge to stand alone.” If the assailants stole her TV, however, they could be charged for that crime without any corroborating evidence. Beginning in 1971, feminists in New York City organized to repeal the corroboration requirement. The next year, a coalition of groups came together that eventually included the New York Radical Feminists, the New York Women Against

93 Sasko and Sesek, 465.
95 Lear, “Q. If You Rape a Woman And Steal Her TV.” See also: “The Rape Corroboration Requirement: Repeal Not Reform,” Yale Law Journal 81, no. 7 (June 1972): 1365-1391.
Rape, the Manhattan Women’s Political Caucus, and the National Black Feminist Organization. The coalition campaigned, held workshops and conferences, and received much press attention. Feminists and their allies succeeded in repealing New York’s corroboration statute in late 1973.96

The surge of interest and activism around rape laws took off very quickly in the early 1970s. By 1975, thirty-five jurisdictions had amended their rape laws in response to feminist demands, almost all tending to improve the victim’s status in the criminal justice process.97 Varying from state to state, these changes included the elimination of corroboration requirements, jury instructions that did not include commentary on credibility or warnings of false allegation, and most states rejection of “utmost resistance” requirements in favor of standards of conduct relevant to each particular circumstance.98

Most feminists understood law reform as one important element of a much broader vision of substantial social change. While law reform alone was not the solution to rape, these feminists argued that revisions to rape law would serve an important purpose and had much larger social implications. They believed that changing the laws would initiate changes in some behaviors and practices on the part of police, investigators, hospital personnel, and court clerks, for example. Feminists further argued that laws that were no longer hostile and suspicious of women would also serve to change public opinion on rape. In their support for rape law reform in Ohio, legal scholars Sasko

96 See Bevacqua, Rape on the Public Agenda, 94-96.

97 Bienen, “Rape II,” 136.

and Sesek wrote in the *Cleveland Law Review* that while “rape reform legislation does not provide a total solution to the problem, it should be enacted since it will, at the very least, establish a strong public policy in support of the rape victim.” 99 They believed that law reform would counteract the historical biases against victims and encourage the reporting and successful prosecution of assault. Finally, even if the law completely failed at increasing convictions, feminist legal scholars insisted that legislative change was still worthwhile. In 1980, Bienen commented, “even if no rapist is convicted who would not have been convicted under the old law, the fact that some form of rape reform legislation has been passed by most state legislatures is itself a significant social comment.” 100 For Bienen and many others, if the legal establishment changed the laws on rape, it would set a precedent of support for women, in significant contrast to the perceived centuries of hostility and dismissal of women’s claims of sexual violence.

The most widespread and controversial legal changes concerned admissibility of evidence at rape trials. Throughout the decade feminists advocated for “rape shield laws” which were “designed to control or even prohibit the use of evidence respecting the rape complainant’s chastity.” 101 Feminists argued that shield laws were necessary to protect victims from biased judge and jury perceptions that linked a woman’s prior sexual activity to her credibility as a witness. This was based on two prevailing cultural beliefs about women’s sexuality. First, the law assumed that an unchaste woman was more likely to lie than a chaste woman. As legal scholar Vivian Berger explained, impeaching

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101 Berger, 32.
a victim’s story by proving that she had “loose morals” followed the syllogism “(1) An unchaste woman is apt to lie; (2) the prosecutrix is an unchaste woman; (3) thus, she is probably lying now.” The second formulation held that an unchaste woman was more likely to consent, with anyone at anytime, than a more virtuous woman. As Berger explained, “If she did it once, she’d do it again.”

Feminists argued that rape shield laws were necessary to counteract these widely held prejudicial understandings of women’s sexuality and provide justice for victims in the courts. In advocating for rape shield laws, feminist reformers sought to eliminate the “second rape” victims often faced in the courtrooms. They argued that with shield laws in place, victims would be more likely to report their assaults to the police, resulting in an increase in arrests, prosecutions, and convictions for rape.

Despite the seeming tidal wave of reforms initiated by feminist mobilization, legal change did not come easily and feminists encountered considerable resistance to changes in the evidentiary provisions from the legal community and supporters of defendants’ rights throughout the 1970s. Legal scholars argued that rape shield laws erroneously sought to protect women at the expense of the accused. Legal scholar and law professor David Rudstein argued in the *William and Mary Law Review* in 1976 that the rape shield statutes raised serious constitutional concerns. While acknowledging that the statutes had a “meritorious goal,” he argued that limiting the admissibility of evidence of the alleged victim’s prior sexual conduct infringed on a criminal defendant’s sixth amendment right to confront a witness against him and his fourteenth amendment right to a fair trial, as

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102 Berger, 55.
guaranteed by the due process clause. The rape shield statutes precluded defendants from introducing relevant evidence in their defense and therefore curtailed cross-examination. While Rudstein agreed that a woman’s chastity had no bearing on her likelihood to tell the truth—and therefore he agreed with feminists and rejected the formulation that evidence of prior sexual activity could be used to challenge the complainant’s veracity—he maintained that a woman’s chastity was relevant to the issue of consent. Rudstein rejected feminist critics who argued that the connection between a woman’s past sexual behavior and her likelihood to consent again were irrelevant and based on archaic sexual norms. Calling the feminist interpretation “specious,” Rudstein asserted that, “Regardless of the prevailing sexual mores of society, it is still reasonable to conclude that a woman who never has engaged in sexual intercourse will be less likely to consent to intercourse on a particular occasion than a woman who is not a virgin.”

Evidence of a woman’s prior sexual conduct therefore did have probative value and should be introduced at trial. This “trustworthy evidence,” Rudstein argued, was highly relevant and critical to the defense of the defendant and any limitations on its introduction to prove consent could deprive the defendant of both his right to a fair trial and his right of confrontation.

Writing in the *University of Pennsylvania Law Review* several years later, law professors J. Alexander Tanford and Anthony Bocchino supported Rudstein’s

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104 Rudstein, 22.

105 Interestingly, Rudstein made a distinction between an unmarried woman who had sex only with her boyfriend and a woman “who is willing to engage in indiscriminate sexual activity” with multiple partners. According to Rudstein, the woman who had monogamous sex outside of marriage did not have a “bad character for chastity” while the non-monogamous woman did. See: Rudstein, 23.
assertions. They argued that the rape shield statutes, meant to repeal antiquated rules of evidence, “establish[ed] a new rule in some cases as extreme as the old one.” In sharp contrast to feminist commentators, Tanford and Bocchino argued that the belief that rape victims were subjected to a “second rape” in the courtroom was an “emotional premise” that resulted in rape shield statutes which unnecessarily and unjustly provided special protections for rape victims. In limiting the defendant’s right to present evidence of his accuser’s sexual history, the state unconstitutionally restricted the defendant’s sixth amendment right to confront witnesses against him. Echoing the convictions of 1950s legal scholars, Tanford and Bocchino argued that the legal system needed to maintain focus on justice for the accused, for “whatever indignities are suffered by the complaining witness in any criminal trial, they do not compare with those a convicted defendant must suffer.”

In response to the constitutionally troubling rape shield statutes which restricted evidence of the complainant’s sexual history, some scholars proposed pre-trial hearings, closed to the public, with the presiding judge to determine the relevancy of an alleged victim’s prior sexual conduct. This would allow for a judge to determine whether the probative value of the evidence outweighed its inflammatory or prejudicial nature. If an alleged victim’s prior sexual conduct proved relevant to the question of her consent, the


107 Tanford and Bocchino, 545.

108 Ibid. This is a surprising statement considering the amount of research which proved that unlike all other criminal trials, in rape cases jury bias and empathy sided with the defendant. Researchers found that defendants in rape cases had a greater chance of being acquitted or having their case dismissed than defendants of other violent crimes. See: Hubert S. Feild, “Rape Trials and Jurors’ Decisions: A Psycholegal Analysis of the Effects of Victim, Defendant, and Case Characteristics,” *Law and Human Behavior* 3, no. 4 (1979): 261-284.
judge could allow for it to be presented before the jury.\textsuperscript{109} Tanford and Bocchino agreed that fairness to the rape victim and control of potentially prejudicial evidence could be accomplished using a pretrial hearing to determine the relevance of the sexual history evidence. While Rudstein admitted that a pre-trial hearing would not provide complete protection from embarrassment for the complainant and did not entirely eliminate jury bias against her, it did provide “the maximum possible protection for the victim consistent with a criminal defendant’s constitutional rights to a fair trial and to confront the witnesses against him.”\textsuperscript{110}

Organizations such as the ACLU shared legal scholars’ hesitation, finding that rape shield statutes that totally excluded evidence of the victim’s prior sexual conduct infringed on the constitutional rights of the accused. At their February 1976 meeting, the ACLU Board of Directors adopted a policy on the use of prior sexual history in rape trials. The Board of Directors asserted that first and foremost “the right to a fair trial should not be qualified,” and agreed that closed hearings to determine the relevance of the evidence of past sexual history sufficed to guarantee both the defendant’s rights to a fair trial and the prosecuting witness’ right to privacy.\textsuperscript{111} State ACLU chapters did not always agree with the national policy. The Maryland ACLU, for example, rejected any bills that would place any limitations on the admissibility of evidence at rape trials. The risk to defendants was too great. The director of the Maryland ACLU looked to the Giles-

\textsuperscript{109} Several state rape shield statutes, already followed this formula. In his Fall 1976 article, Rudstein listed ten states that required a pre-trial hearing to determine the relevance of evidence of prior sexual conduct. See his notes 50 and 51, on pages 10 and 11. Rudstein outlined all of the different statutes in effect nationwide in 1976 on pages 9 – 14.

\textsuperscript{110} Rudstein, 46.

Johnson case as a case in point where, many believed, evidence of the prosecuting
witness’s past sexual behavior would have proven the innocence of the defendants.\textsuperscript{112}
Indeed, as historian Leigh Ann Wheeler points out, the Giles case cast a long shadow on
the ACLU’s approach to rape laws. In ACLU discussions of rape laws during the 1970s,
Wheeler writes, “references to the Giles case were frequent… the case served as
shorthand for the relevance of the complainant’s sexual history to determining
consent.”\textsuperscript{113}

Fears of false allegations, particularly by white women against black men, drove
some of the hesitation to rape shield laws. This is a significant change from the 1950s
when race was almost entirely absent from legal scholars discussions around the need for
stringent rape laws that protected the accused. When feminists in the 1970s suggested law
reforms that favored the accuser, they countered not only long-standing skepticism of
women accusers, but also the newer construction of the lying white woman. As members
of the New York Radical Feminists explained, beginning in the early 1970s “feminists
were often told that rape laws should not be changed because black men would be falsely
accused of rape. In short, women were once again being told, this time by ‘Liberals,’ that
the possibility of falsely convicting a man was more important than a fair trial for
women.”\textsuperscript{114} According to legal scholar Vivian Berger, “the pervasive liberal fear that
white women will ‘frame’ innocent black defendants by falsely crying rape” continued
into the late 1970s. Writing in the \textit{Columbia Law Review} in 1977, Berger commented

\textsuperscript{112} See: Leigh Ann Wheeler, \textit{How Sex Became a Civil Liberty} (forthcoming, Oxford University

\textsuperscript{113} Wheeler, 344.

\textsuperscript{114} Noreen Connell and Cassandra Wilson, eds., \textit{Rape: The First Sourcebook for Women} (New
that due to the history of oppression against black men in the criminal legal system, it was perhaps no surprise that “rape law reforms designed to respond to the needs of victims meet gut reservations in the liberal community over and above the usual suspicion of any change in the criminal law that would weight the balance yet more heavily against the accused.”

In discussions about rape law reforms, ACLU members reinforced the tradition of suspecting all women’s allegations. Several members argued that women fantasized about sexual assaults and others believed white women “charged black men with rape after enjoying consensual sexual relations with them simply to escape the condemnation of racist friends and family members.”

These hesitations, not surprisingly, also came from the black community. National Black Feminist Organization member Essie Green Williams explained, “One of the concerns of many black men when we were lobbying for the change in the rape law was that accusations of rape was one of the ways of hanging black men. They wanted to know what kind of protection would be left in a new rape law.”

In advocating on behalf of women, feminists confronted the civil rights construction of the lying white woman, built on centuries of mainstream legal discourse regarding women victims in general. This discourse would impact the reach of legal reform, impacting both white women and black women who sought justice before the courts.

Feminists and their allies rejected the objections to the rape shield laws, arguing that they did not infringe on the defendant’s right to a fair trial nor did they put black men at risk. Jan Ben Dor, who spearheaded efforts for law reform in Michigan, commented

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115 Berger, 4.

116 Wheeler, 351.

117 Interview with Essie Green Williams in Connell and Wilson, 246.
that limiting the use of the victim’s prior sexual history in court “does not interfere with
the defendant’s rights, but merely assures that highly inflammatory and arguably
irrelevant matters will not be injected.” She did admit that the evidentiary provisions
would indeed take something away from defendants, that is the opportunity “unique to
rape cases, to escape punishment by smearing the victim’s reputation and by making her
personal life the key and deciding issue of the case.” The evidentiary provisions did
not, however, take away any of the traditional safeguards against false charges accorded
defendants in all other types of crimes. Legal scholars Helene Sasko and Deb Sesek
echoed this sentiment in the Cleveland State Law Review writing, “Rape defendants will
still have all the opportunities now accorded persons charged with other crimes, since
reform legislation will simply take away a right improperly given to rape defendants
alone—a right to make the victim’s prior sexual conduct the key to his defense and
deciding issue in the case.” Black men would not be unduly punished under reformed
laws. Essie Green Williams explained, “I won’t say that this [false allegations] isn’t a true
concern for black men, because they do not expect to find justice in the courts, especially
when they are accused of a crime against a white person. But in dealing with the statistics
you find that most rapes are not interracial—that most black women are raped by black
men and white women by white men. And it’s still going to be really difficult to prove
rape, so that affords some protection for black men.” Rape shield statutes were
necessary to provide protection for victims of rape within a system that showed marked

118 Ben Dor, “Justice After Rape,” 157.
119 Ibid.
120 Sasko and Sesek, 485.
121 Interview with Essie Green Williams in Connell and Wilson, 246.
prejudice and bias against them. Defendants, on the other hand, were sufficiently protected not just by the laws but also by society’s bias against alleged rape victims.

While many feminists imagined that legal reform would have a significant impact, others cautioned against having such high expectations. Writing two years after the Michigan bill passed, Jan Ben Dor commented that the reformed law was “an experiment in which we hope to learn how a major revision to the criminal code can deter, control, publicize, and equalize the treatment of a very destructive set of acts against human beings.”\(^\text{122}\) She further pointed out that the new statute came with no guarantees that decision-makers, including prosecuting attorneys, judges, and jurors, would understand it or apply it competently. Ben Dor’s caution was well founded. Rape law reform, while fairly widespread, did not always have the far-reaching consequences reformers had hoped for. The rape shield laws are a case in point. By 1980, over forty states had enacted statutes that limited the admissibility of evidence of a victim’s prior sexual history.\(^\text{123}\) Yet feminist legal scholars questioned the effectiveness of the shield laws, particularly as legislatures tended to pass diluted versions of statutes that originally held for total exclusion of all evidence of a victim’s prior sexual history, both with the defendant and third parties. Leigh Bienen pointed to the example followed by many states where the rape shield provisions called for a pre-trial hearing to determine the relevancy of evidence of prior sexual conduct. Oftentimes, evidence pertaining to the victim’s sexual history was admitted as a result. This left many supporters who sought total exclusion unsatisfied. Legal scholars Sasko and Sesek commented on the contradictory outcomes of

\(^{122}\) Ben Dor, “Justice After Rape,” 150.

\(^{123}\) Bienen, “Rape III,” 196.
reforms that called for a pre-trial hearing. “Judicial discretion has traditionally been biased against the rape victim,” they wrote, “…in most cases highly prejudicial and inflammatory evidence which is neither relevant not material is admitted. It is to correct such abuse of discretion that stringent evidentiary restrictions should be enacted.”124 Yet most state legislatures approved and passed bills that tended to be anything but stringent. Additionally, many states selectively limited the admission of a victim’s sexual history for only a particular purpose and allowed it for another. Such was the case in Ohio where that state’s rape reform statute did not allow for evidence of past sexual conduct to prove consent but did allow it to attack the victim’s credibility.125 In other words, as Sasko and Sesek commented, “the protection accorded the victim in one provision is taken away in another.”126 Regardless of the stated purpose of providing the victim’s sexual history, feminists argued, it would serve only to increase jury bias against her and therefore negate any protection afforded the victim.

While most feminists never suggested law reform as the singular solution to the rape epidemic, many did have high expectations about the potential outcomes of those reforms. Researchers who studied the impact of the new rape laws in the years that followed, however, tended to find dismal results, both in terms of actual impact and social change. One of the first studies to examine the impact of rape law reform surveyed the five years following the enactment of Michigan’s Criminal Sexual Conduct statute. In this study, researchers Marsh, Geist, and Caplan found that reformer’s expectations fell

124 Sasko and Sesek, 498.
126 Sasko and Sesek, 483.
short. Reformers had argued that the visibility generated by the reform effort and the redefinition of the crime “would initiate a process by which the concerns of the rape victim as well as the women’s movement would be legitimized.” Reformers expected that this would begin to change cultural attitudes surrounding rape. Unfortunately, Marsh, Geist, and Caplan wrote, “Our findings tend to disprove both sets of expectations.”

Over the course of five years the reformed law did make a small impact on crime statistics. Yet, based on extensive interviews, Marsh, Geist, and Caplan found that reform efforts failed to substantially change officials’ attitudes within the criminal justice system. Nor did it change people’s views of rape or of women in general. Similarly, in a long-range study covering fifteen years of rape prosecutions in six urban jurisdictions, researchers Cassia Spohn and Julie Horney found that the ability of rape law reform to produce instrumental change was extremely limited. In fact, in most of the jurisdictions studied they found that the reforms had no impact at all. Considering the literature on legal impact, which shows that reforms aimed at the court system tend to chronically fail, Spohn and Horney commented that they were not surprised at their findings. “Rape law reforms,” they found, “placed few constraints on the tremendous discretion exercised by

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127 Marsh, Geist, and Caplan studied archival crime data in Michigan for the period January 1972 – December 1978. They also looked at the records for all sexual assault crimes in Detroit processed between August 1975 – May 1979. See: Jeanne C. Marsh, Alison Geist, and Nathan Caplan, Rape and the Limits of Law Reform (Boston: Auburn House, 1982).

128 Marsh, Geist, and Caplan, 105.

129 Marsh, Geist, and Caplan, 106.

decision makers in the criminal justice system”\textsuperscript{131} and most officials did not change their behavior, despite the new laws. Officials in every jurisdiction continued to believe that victim resistance and corroboration of her story were significant and necessary factors for successful prosecution. The relevance of a victim’s sexual history with the defendant was rarely questioned, despite rape shield statutes, and commonly admitted at trial. Reforms also did not, as feminists had hoped, produce an increase in convictions. In only one of six jurisdictions did Spohn and Horney find that the reforms produced an increase in reports and indictments.\textsuperscript{132} In terms of actual, instrumental change, therefore, the enactment of pro-victim rape laws seems negligible. Yet, taking an optimistic approach, Spohn and Horney insisted that the reform legislation “sent an important symbolic message regarding the treatment of rape cases and rape victims,” which they believed “started a process of long-term attitude change,” not easily measured in their study.\textsuperscript{133}

The lack of substantial change resulting from rape law reforms confirms the concerns that many feminists and critics had about the ability of the legal system to produce meaningful results. Those feminists and critics who cautioned against making legal change the main focus of rape reform efforts presaged these disappointments. Yet most feminists never suggested law reform as the panacea to the rape epidemic. On the one extreme, the earliest grassroots activists had rejected state-based solutions altogether. As the movement gained momentum, more participants sought legal reform as one necessary element to combat rape. Over the course of the decade, feminists launched major campaigns in virtually every state in the nation to overturn archaic laws. However,

\textsuperscript{131} Spohn and Horney, 173.

\textsuperscript{132} Spohn and Horney, 159-160.

\textsuperscript{133} Spohn and Horney, 175.
the feminist vision of sweeping social change always demanded a wide-reaching strategy that included but was certainly never limited to legal reform. Writing in 1982, Marsh, Geist, and Caplan commented that their findings underscored the “critical importance” of other strategies including victim assistance programs, hot lines, speak-outs, and demonstrations. These researchers pressed for continued efforts in other arenas, concluding, “Michigan’s criminal sexual conduct law was clearly a necessary condition for the progress that has been made, but far from a sufficient one.” These conclusions fell in line with the original grassroots feminist approaches to rape, which called for a broad-based campaign against sexual violence. Ultimately, a feminist theoretical approach called for institutional reforms alongside efforts to confront and dismantle oppressive cultural values.

By the end of the decade, the legal world of rape looked very different from what civil rights and feminist activists confronted in the early 1970s. The Supreme Court hammered the last nail in the coffin of the death penalty for rape, once wielded by white male Southerners almost exclusively against black men. A major victory for LDF, the Coker ruling brought an end to this unsavory history and brought the organization one step closer to total abolition. Throughout the decade, feminist activists agitated for sweeping legal reforms that benefitted the accuser, whom they argued faced excessive hurdles to prosecution and rarely saw justice. Feminists argued that the laws of rape were too heavily weighted to benefit defendants and reform was necessary to ensure that women victims received equal protection under the law. Yet despite hopes for far-
reaching reforms, feminists achieved only a fraction of what they had hoped for.

Ultimately, state-based reforms failed to fulfill the goals of widespread social revolution that feminist activists had imagined when they began organizing against rape in the early 1970s.
CHAPTER IX
CONCLUSION

Between 1950 and 1980, extraordinary and unprecedented changes occurred in the legal, medical, and social understandings and responses to sexual violence against women in the United States. During the 1950s, most women faced significant barriers when prosecuting rape charges. Over 300 years after British Lord Chief Justice Matthew Hale first declared that rape accusations were easily made and hard to defend against, US courts and lawmakers continued to view rape victims with suspicion and hostility. Indeed Hale’s sentiment saturated US rape laws and legal discussions about sexual violence. Many legal scholars writing in the nation’s top law journals were convinced that women regularly lied about allegations of sexual violence and innocent (white) men needed additional legal safeguards to protect them. As a result, rape law required that women victims prove the attack by establishing their resistance to the utmost. Unlike in any other criminal trial, the behavior of the prosecuting party became the determining factor, rather than that of the offender. While all women faced this grim legal environment, black women, historically constructed as lascivious and hypersexual, were particularly vulnerable to abuse in the courts. White men typically found complete impunity from the courts in cases of white-on-black rape, extending a legacy of unpunished sexual violence against African-American women that began in slavery. The significant gender biases of the law, therefore, left most black and white women vulnerable to injustice.

Medical responses to women rape victims at the time ranged from inadequate to hostile. Mid-century psychiatric constructions of women’s sexuality buttressed legal
skepticism towards women rape victims. Psychiatric experts advanced the belief that “neurotic” women and girls who couldn’t tell the difference between fantasy and reality often falsely alleged rape and successfully prosecuted innocent men. Legal authorities cited these psychiatric findings when making arguments about rape law and advocated for pre-trial psychiatric testing of all woman rape complainants. While not as overtly hostile to women victims as psychiatry, general medicine also proved problematic. Medical practice in response to sexual violence was largely focused on criminal investigation, rather than patient care. Likewise, articles in medical journals focused mainly on the treatment of sex offenders, rarely addressing the medical or long term psychological needs of rape victims.

While women faced excessive hostility when prosecuting their attackers, one group of defendants generally did not benefit from the privileges afforded to most: black men. This was true particularly in cases of interracial rape. While historians have shown that most black men did escape with their lives when facing rape allegations by white women, and that most cases of black-on-white rape looked nothing like the notorious Scottsboro trials of the 1930s, black men did have to contend with a significant race bias in the law. Black men made up the overwhelming majority of those men executed for rape between 1930-1965 in the United States and they generally faced harsher punishments for rape as compared to their white counterparts. Although legal scholars advocated for protecting defendants in cases of rape, there is no evidence to indicate that it was black men who they had in mind. Therefore, black men throughout this time period remained vulnerable to injustice before the law.
By the late 1970s, much had changed in the discourse about rape and the institutional responses to it. Indeed the world of 1980 would have been unimaginable to the previous generation. The understanding of sexual assault as a significant problem in women’s lives entered the mainstream and sexual assault victims became a topic of widespread social concern. Over the course of a decade, feminist collectives created and maintained over 400 rape crisis centers nationwide, providing counseling, a safe environment, and additional forms of support for survivors who had once faced a hostile legal and medical landscape alone.¹ Some of the obstacles rape victims faced when prosecuting their attackers began to weaken. This was true for black women especially. For many, the 1975 acquittal of Joan Little, who killed the white man who attempted to sexually assault her, “signaled the death knell of the rape of black women that had been a feature of Southern race politics since slavery.”² Law journals began publishing pro-victim analyses of rape and rape law, refuting mid-century constructions of rape victims as liars who easily prosecuted innocent men. By 1980, every state in the nation had approved or was considering some form of pro-victim rape law reform. A particularly significant legal change came with the 1977 case of Coker v. Georgia, where the Supreme Court deemed the death penalty unconstitutional in cases of rape of an adult woman and thus put an end to decades of racialized legal practices that overwhelmingly executed black men as punishment for rape.

By the mid-1970s, the crime of rape was the target of sustained public policy and the state increasingly took a role in rape prevention and response efforts. Across the


² McGuire, xxii.
country, state-based groups like city councils, police departments, and prosecutor’s offices launched initiatives such as public safety task forces, self-defense programs, and police training in an effort to more effectively respond to the needs of rape survivors. The federal government established the National Center for the Prevention and Control of Rape (housed within the National Institution of Mental Health) in 1975. The Center provided millions of government dollars for anti-rape research. Additionally, medical professionals increasingly responded to victim needs, developing protocols and practices for rape victims beyond an investigatory function and providing victim-centered care. For an observer in the late 1970s, the legal, medical, and cultural understandings and responses to rape had made a radical and undeniable shift from thirty years prior.

The incredible amount of change in understandings and responses to sexual violence were largely driven by social movement activism around rape. In the 1950s, civil rights activists politicized rape as a tool of racist aggression used by whites and a white-dominated state to oppress blacks. According to this framework, whites used sexual violence against both black men and black women; activists were keenly aware of the connections between the sexual abuse of black women by white men (and the impunity afforded those white men) and the extralegal and excessive punishments of black men alleged to have raped white women. This history and continuation of abuse and injustice demanded a community response. This was clearly expressed by activist

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3 Angela Davis would later describe this connection as “the historical knot binding Black women—systematically abused and violated by white men—to Black men—maimed and murdered because of the racist manipulation of the rape charge.” See: Angela Davis, “Rape, Racism and the Myth of the Black Rapist,” in Women, Race, and Class (New York: Random House, 1981), 173. Historian Sharon Block refers to this intersection of rape and race in American history as the “American racialization of rape.” See: Sharon Block, Rape and Sexual Power in Early America (Chapel Hill: University of North Carolina Press, 2006), 4. See in particular Block’s chapter 5, “Constructing Rape and Race at Early American Courts.”
Charlie Cobb who in 1964 wrote, “This is the generation that has silently made the vow of no more raped mothers—no more castrated fathers; that looks for an alternative to a lifetime of bent, burnt and broken backs, minds, and souls.”

In response, activists pushed back against a historically racist and white-dominated legal system and mobilized in defense of black women assaulted by white men and black men who were either falsely accused or excessively punished for raping white women. Activists pursued justice in the courts on behalf of black women victims of white sexual assault. Also pursuing a legal strategy, the LDF sought to put an end to the discriminatory application of the death penalty in cases of rape and launched a campaign against capital punishment in the early 1960s. Understood as a method of racial oppression and abuse, sexual violence figured significantly in the fight for civil rights.

In the early 1970s, the women’s liberation movement took up rape as a feminist issue. At this time, white radical feminists politicized rape as the most exaggerated form of patriarchal oppression of women. According to this model, all women were subjected to oppression by all men. Men used sexual violence as a tool of control, intimidation, and power over women. The legal and medical systems along with a larger culture that was largely hostile to women victims became the target of sustained feminist efforts against rape. Feminists took to the streets and battled in the courts in defense of women victims and challenged popular conceptions of rape; how it was defined, understood, and responded to. They created rape crisis centers to serve women, historically neglected and scorned by legal and medical institutions, advocated for pro-victim rape law reform, and

demanded justice for victims of sexual assault. In so doing, they created an active and effective anti-rape movement and sexual assault became a major feminist battleground.

Social movement understandings of race and gender significantly informed activism around and proposed solutions to rape. The civil rights movements took up sexual violence as a cause within the context of a much larger revolt against racial oppression. Therefore, only particular manifestations of rape were deemed problematic or politically relevant to the civil rights cause. Rape was an injustice only when it involved a white attacker / black victim or a black attacker / white victim. Under this framework, the abuse of black women by black men was not recognized as an issue requiring a political response. In addition, the conception of rape as a tool of racist oppression allowed some activists to capitalize on and reinforce mainstream legal suspicions of women who alleged rape, a suspicion that was used equally against black women who alleged rape against white men. By focusing on rape in terms of the people involved, rather than on the actual act itself, the civil rights response to sexual violence unintentionally maintained the silences and oppressions of some groups of women victims (white and black) of sexual violence.

Likewise, feminist activists who initially understood rape as a tool of sexist oppression, focused solely on women as victims of sexual assault. In a context where the majority of women survivors were largely denied both empathetic medical care and legal support, many feminist activists focused exclusively on providing services to counteract this history of hostility and neglect for rape survivors. The feminist politicization of rape therefore excluded black men’s experiences of victimization under a white-dominated legal structure. While many feminists in the anti-rape movement advocated for an
approach that made race and class politics central, many others were consumed with the immediate work of supporting women survivors by any means necessary. Ultimately, the 1970s did not see the development of an intersectional approach to sexual violence that incorporated both those who were victims of assault and all of those who were victimized by the systems responding to assault.

Social movement mobilizations against sexual violence were also framed by the larger contexts in which they operated. Civil rights activists politicized interracial rape in the context of increasing mainstream recognition of racial injustice in the country. As the civil rights movement drew nationwide attention to the magnitude of racial oppression faced by blacks in most areas of their lives, particularly in the South, portraying accused black rapists as victims of racial injustice became more plausible. Pursuing a legal strategy, as the LDF did in its systematic constitutional challenge to the death penalty, made sense in the context of a series of civil rights successes such as school desegregation, desegregation of public transportation, and the defeat of racially restrictive housing covenants. By the 1960s, civil rights activists found that they could at times use the white-dominated legal system to advance racial justice.

Similarly, feminists found state support for their demands for increased justice for women victims in the legal system. The pervasive law and order agenda of the late 1960s and early 1970s supported feminist demands to reduce criminality and improve the experiences of criminal defendants throughout the legal process. As the institution responsible for responding to violence, the state invested significant amounts of resources into reform-oriented anti-rape measures. By the mid-1970s, feminists found that they could rely on the state for certain reform efforts. State involvement, however,
significantly shifted the nature and breadth of anti-rape work and feminists saw their once broad vision reduced to much more limited reform-oriented goals.

As this dissertation shows, the work of social movements is difficult, complex, and sometimes seemingly contradictory. As activists in the civil rights and feminist movements sought justice in cases of sexual violence, they confronted one another’s politics on race and gender and they had to negotiate and respond to significant state limitations and frameworks. While the world of 1980 would have been unrecognizable to an observer from 1950, the processes of change were not self-evident and activists struggled within their particular contexts to move towards their goals to end oppression and find justice for men and women victimized by sexual violence.
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