

Sexual Assault Law and Policy Reading Group

Spring 2015

Working Syllabus

This reading group will survey areas of historical change and ongoing reform in sexual assault law and policy. The organizers hope to open the reading group to all interested 2L and 3L students, offering participants the option to complete one or both of the following components:

1) seminar-style weekly discussions of the materials listed on this syllabus, with professor and outside guest speakers, for one credit, and

2) optional additional supervised research for one credit, for students who want to do work on campus related to the prevention of gender based misconduct.

The supervised research credit may consist of organizing trainings on consent, bystander intervention, and similar topics; collaborating with student groups to organize topical panels on sexual assault and the law; collecting student feedback on resources and mandatory student trainings; and carrying out research related to Columbia University's Gender Based Misconduct policy and prevention materials. Students who opt to pursue both credits are encouraged to write a policy reform proposal or reflection applying the readings to their own projects for publication in a participating CLS journal or blog. The reading group will be open to 1Ls and students from other Columbia programs on a voluntary basis.

Class One: History of Sexual Assault Law

- 1) Lewis Field, *The Fear of the Vindictive Shrew: Using Alternative Forms of Punishment to Change Societal Sentiment About Rape Laws*, 17 *J. Gender Race & Just.* 515 (2014) (See Dropbox)
 - a) Section II: "Brief History of Rape Laws and Reform Movements"
- 2) Mary Block, "An Accusation Easily to be Made" : A History of Rape Law in Nineteenth-Century State Appellate Courts (1992) -- University of Louisville Masters Dissertation (See Dropbox)
- 3) Chapter 4 ("Rape") in Kadish, Schulhofer, Steiker and Barrow, *Criminal Law and Its*

Processes: Cases and Materials, Aspen Publishers, 9th. Edition, 2012

- a) Section B. Statutory Frameworks
 - i) p. 338-342, 342-347, 351-362, 363-368, 376-383, 400-401,403-404. 405-407, 408-410
- 4) Vivian Berger Excerpts (p. 355; 377) -- Counterargument that overprotective sexual assault laws enfeeble, rather than empower women
- 5) Benjamin Porat “Lethal Self-Defense Against a Rapist and the Challenge of Proportionality: Jewish Law Perspective” Columbia Journal of Gender and Law Vol. 26.1

Class Two: Theories of Sexual Assault

Note: Each student will each take on 3-4 of these readings, rather than the entire group reading the entire list.

- 1) Ann Cahill, Rethinking Rape, pp. 1-49 [chapters on the problem of rape and feminist theories of rape], and 109-166 [chapters on rape as embodied experience and a phenomenology of fear]
- 2) Diane Richardson, “Constructing Sexual Citizenship: Theorizing Sexual Rights” Critical Social Policy Vol 20.1
- 3) Alexandra Wald, “What’s Rightfully Ours: Toward a Property Theory of Rape” Columbia Journal of Law and Social Problems Vol. 30
- 4) Francis Shen, “How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform” Columbia Journal of Gender and Law Vol. 22.1
- 5) Ben McJunkin “Deconstructing Rape by Fraud” Columbia Journal of Gender and Law Vol. 28.1
- 6) Catherine MacKinnon, Sexuality, Pornography and Method: Pleasure Under Patriarchy, Ethics, Vol. 99, Np. 2 (Jan 1989)
- 7) Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, U. Chi. Legal F. 139 (1989)
- 8) Kimberle Crenshaw, Race, Gender and Sexual Harassment, 65 S. Cal. L. Rev. 1467 (1991-1992)
- 9) Interview with Judith Butler: Gender is Extramoral:
<http://www.egs.edu/faculty/judith-butler/articles/gender-is-extramoral/>

- 10) Lynn Schafran, Rape is a Major Public Health Issue
- 11) Elaine Meyer, The Public Health Crisis of Sexual Violence, The 2 x 2 Project (Feb. 11, 2013),
<http://the2x2project.org/the-public-health-crisis-of-sexual-violence/>
- 12) Elizabeth Lopatto, Rape Culture is a Public Health Issue, Forbes.com (May 24, 2014)
- 13) Campbell, Dworkin and Cabral, An Ecological Model of the Impact of Sexual Assault on Women's Mental Health. *Trauma, Violence & Abuse* 10, 225-246 (2009).
- 14) World Health Organization, Understanding and Addressing Violence Against Women (background doc- international org approach to analyzing sexual violence)
- 15) Laura Hengehold, An Immodest Proposal: Foucault, Hysterization and the "Second Rape," *Hypatia* Vol. 9 No. 3 (Summer 1994)
- 16) Judith Butler, Contingent Foundations: Feminism and the Question of "Post-Modernism," in *Feminist Contentions: A Philosophical Exchange* [focus on 49-54]
- 17) Kelly, How Women Define their Experiences of Violence, in *Feminist Perspectives on Wife Abuse* (1988), pp. 114-132, abstract available at
<https://www.ncjrs.gov/App/publications/abstract.aspx?ID=142232>

Class Three: Title IX

- 1) A lack of consequences for sexual assault, Center for Public Integrity Feb 2010
- 2) DCL Guidance on Title IX
- 3) DOE List of Open Title IX cases
- 4) In a Mattress, a Lever for Art and Political Protest, *NYTimes* Sept 21, 2014
- 5) *Roe v. St Louis University*, National Women's Law Center Amicus Brief, 2013 WL 2318009
- 6) *Simpson v. U of Colorado*, ACLU Amicus Brief, 2006 WL 2783574
- 7) *Mallory v. Ohio University*, 76 Fed. Appx. 634 (2003)
- 8) Report- CU gender-based misconduct prevention and response, Sept 23, 2014
- 9) Sherwin, Meet the Women who are starting a Revolution against Campus Sexual Assault
- 10) VAWA 2014 requirements re Education
- 11) CU Provost Welcome + Sexual Respect, Sept. 23, 2014
- 12) Repeat Offenders Reading: David Lisak & Paul M. Miller, *17 Victims and Violence* 73 (2002)
- 13) (Alan Berkowitz, *College Men as Perpetrators of Acquaintance Rape and Sexual Assault* (1992)

- 14) Judy Porter, Intimate Violence Against Underrepresented Groups on College Campuses
- 15) Jacqueline W. White, Paige Hall Smith, Sexual Assault Perpetration and Reperetration: From Adolescence to Young Adulthood,
[http://libres.uncg.edu/ir/uncg/f/P_Smith_Sexual_2004\(MULTI%20UNCG%20AUTHORS\).pdf](http://libres.uncg.edu/ir/uncg/f/P_Smith_Sexual_2004(MULTI%20UNCG%20AUTHORS).pdf)
- 16) Antonia Abbey and Pam McAuslan, A Longitudinal Examination of Male College Students' Perpetration of Sexual Assault, 72 Journal of Consulting and Clinical Psychology 5 (2004),
<http://psycnet.apa.org/psycinfo/2004-19094-001>

Class Four: Teaching Criminal Law

- 1) Nancy S. Erickson, Final Report, "Sex Bias in the Teaching of Criminal Law," 42 Rutgers L. Rev. 309 (1990)
- 2) Nancy C. Erickson & Mary Ann Lamanna, Sex Bias Topics in the Criminal Law Course: A Survey of Criminal Law Professors, 24 U. of Michigan J. of Law Reform 189 (1990)
- 3) McMunigal, Reducing the Risks and Realizing the Rewards: An Approach to Teaching Rape Law, 34 San Diego L. Rev. 519
- 4) Susan Estrich, Teaching Rape Law, 102 Yale L.J. 509 (1992)
- 5) James Tomkovicz, On Teaching Rape
- 6) Is the Law Male?
- 7) Materials from Prof. Dershowitz's 1L Criminal Law Students, Compiled for their Own Presentation on Sexual Assault (~50 pages)
 - a. Acquaintance Rape on Trial
 - b. Andrew Abrams, Asking for Consent is Sexy
 - c. Katie Koestner, The Perfect Rape Victim
 - d. Joanne Archambault, So How Many Rape Reports are False?
 - e. Bill Ingram, What We're Not Hearing about the Kobe Trial
 - f. Successfully Investigating Acquaintance Sexual Assault: A National Training Manual for Law Enforcement
 - g. Robert Jensen, The Cruel Edge: The Painful Truth about Today's Pornography- And What Men Can Do About It
 - h. Lynn Schafran, Trying to Conquer Sexism Through Casebooks

Class Five: Intersection with Race

- 1) Kimberle Crenshaw: Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women
- 2) Judy Porter, Intimate Violence Against Underrepresented Groups on College Campuses
- 3) Shelton, Nicole. Chavous, Tabbye. “ Black and White College Women’s Perceptions of Sexual Harassment. Sex Roles. Vol. 40. 1998
- 4) Anne Crossins, Saints, Sluts, and Sexual Assault: Rethinking the Relationship between Sex Race and Gender
- 5) Aisha Gill, Violence against women in South Asian communities in the UK, in McGlynn and Munro, Rethinking Rape Law, pp. 308 – 321

Class Six: Intersection with LGBT

- 1) Bennett Capers, Real Rape Too, 99 Cal. L. Rev. 1259 (2011)
- 2) Lauren Paulk, Sexual Assault in the LGBT Community, National Center for Lesbian Rights (April 30, 2014), <http://www.nclrights.org/sexual-assault-in-the-lgbt-community/>
- 3) Dexter Mullins, In Epidemic of Campus Sex Crimes, LGBT Cases Often Neglected, Al Jazeera America (October 30, 2013), <http://america.aljazeera.com/articles/2013/10/30/sexual-assault-ahiddenissueamonglgbtcommunity.html>
- 4) Michael Munson, Transgender Sexual Violence Survivors are Slipping Through the System, Huffington Post (April 8, 2014 11:19 AM), http://www.huffingtonpost.com/michael-munson/transgender-sexual-violence_b_5111237.html
- 5) Pandora’s Project, Dealing with Rape as a “Hate Crime” Within the Lesbian Community, <http://www.pandys.org/articles/rapeasahatecrime.html>
- 6) Also see:
 - a) <http://www.wcsap.org/lesbian-gay-bisexual-transgender-queer-community>
 - b) http://www.pcar.org/sites/default/files/TAB_2013_Fall_ServingTransSurvivors.pdf
- 7) Going Off-Shore, 23 Colum. J. Gen & L. 302 (2013)
- 8) Rumney and Hanley, The Mythology of Male Rape: Social Attitudes and Law Enforcement, in McGlynn and Munro, Rethinking Rape Law, pp. 294- 307
- 9) Steger and Lind, Violence and Its Alternatives:

- a) pp. 121- 128, Claire Renzetti, Violence in Lesbian and Gay Relationships

Class Seven: Challenges of Criminalization

- 1) Fed. R. Evid. 412 (Federal Rape Shield Law)
- 2) I. Bennett Capers, Real Women, Real Rape, 60 U.C.L.A. L. Rev. 826 (April 2013)
- 3) Richard Klein, An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness, 41 Akron L. Rev. 981 (2008)
- 4) Judges Tell: What I wish I had known before I presided in an adult victim sexual assault case
- 5) Janice Du Mont and Deborah White, World Health Organization, The Use and Impacts of medico-legal evidence in sexual assault cases: A global review [Excerpt]
- 6) McGlynn and Munro, Rethinking Rape Law:
 - a) pp. 30- 43, Herring and Dempsey, Rethinking the criminal law's response to sexual penetration: On theory and context
 - b) pp. 281-293, Ellison and Munro, Jury Deliberation and Complainant Credibility in Rape Trials

Class Eight: Sexual Assault in Prisons

- 1) Prison Rape Elimination Act of 2003
- 2) The Urban Institute, Preventing Violence and Sexual Assault in Jail: A Situational Crime Prevention Approach (2011)
- 3) GAO Report to Congressional Requesters, "Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse" (November 2013)
 - a) Corollary: MALDEF Complaint About Sexual Abuse in Karnes Detention Facility, http://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf
- 4) Jerita L. DeBraub, Prison Rape: Have We Done Enough? And In-Depth Look Into the Adequacy of the Prison Rape Elimination Act, 50 How. L. J. 203 (Fall 2006).
- 5) Farmer v. Brennan, 511 US 825 (1994)
- 6) Recent Reporting:
 - a) Jessica Testa, A Transgender Woman Says She was Locked in a Cell with Her Rapist, BuzzFeed News (Sept. 26, 2014), <http://www.buzzfeed.com/jtes/a-transgender-woman-says-she-was-locked-in-a-cell-with-her-r>

- b) Jessie Burkett, The US Prison System May be Exposing Transgender Prisoners to Rape, Vice News (Oct. 4, 2014), <https://news.vice.com/article/the-us-prison-system-may-be-exposing-transgender-prisoners-to-rape>
- 7) See Just Detention International:
 - a) articles/reports: <http://www.justdetention.org/en/articlesandlinks.aspx>
 - b) fact sheets:
 - <http://www.justdetention.org/en/Advocate-Resources/fact-sheets.aspx>
- 8) Valerie Jenness and Michael Smyth, The Passage of the Prison Rape Elimination Act: Discursive Politics and the Reconstitution of Prisoner Rape in a Culture of Control (2007) [Excerpt]
- 9) Valerie Jenness, Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault (2007) [skim 1-10, read 26-64]

Class Nine: Street & Workplace Harassment

- 1) Cynthia Bowman, Street Harassment and the Informal Ghettoization of Women, 106 Harvard L. Rev. 3 (Jan 1993)
- 2) Elizabeth Kissling, Street harassment: the language of sexual terrorism, Discourse & Society Vol. 2 (4) (1991)
- 3) Deirdre Davis, The Harm that Has No Name: Street Harassment, Embodiment, and African-American Woman, 4 UCLA Women's L. J. (2) (1994) [focus on 141-end]
- 4) Hawley G. Fogg-Davis, Theorizing Black Lesbians within Black Feminism: A Critique of Same-Sex Street Harassment, Politics & Gender (2) (2006)
- 5) Laura Beth Nielsen, Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment, 34 Law & Soc'y Rev. 1055 (2000)
- 6) Elvia Arriola, "What's the Big Deal?" Women in the NYC Construction Industry and Sexual Harassment Law, 1970-1985, 22 Colum. Hum. Rts. L. Rev. 21 (1990-1991)
- 7) Deborah Epstein, Can a "Dumb Ass Woman" Achieve Equality in the Workplace? Running the Gauntlet of Hostile Environment Harassing Speech, 84 Geo. L. J. 39 (1995-1996)
- 8) Cass Sunstein, Is Violent Speech a Right? In Steger and Ling, Violence and Its Alternatives, pp. 89- 92
- 9) Eugene Volokh, What Speech Does "Hostile Work Environment" Law Restrict? 85 Geo. L. J. 627 (1996-1997)

- 10) Current state of the law: http://www.stopvaw.org/law_policy_street_harassment
- 11) Discussion of potential legal reform:
<http://www.theatlantic.com/politics/archive/2014/11/would-an-anti-catcalling-law-afflict-the-weak-or-the-powerful/382439/>

Class Ten: Digital Era: Revenge Porn and Photo Leaks

- 1) State laws:
<http://www.ncsl.org/research/telecommunications-and-information-technology/state-revenge-porn-legislation.aspx#2014>
- 2) Steger and Lind, Violence and Its Alternatives:
 - a) pp. 129- 132, Andrea Dworkin, Pornography and Grief
 - b) pp. 133- 144, Cindy Jenefsky, Andrew Dworkin’s Reconstruction of Pornography as a Discriminatory Social Practice
- 3) Mary Anne Franks, Drafting an Effective “Revenge Porn” Law: A Guide for Legislators (July 2014)
- 4) John Humbach, How to Write a Constitutional Revenge Porn Law (Oct. 2014)
- 5) Amanda Levendowski (Student Note), Using Copyright to Combat Revenge Porn, 3 N.Y.U. J. of Intell. Prop. & Ent. Law 422 (Spring 2014) <http://jipel.law.nyu.edu/2014/05/using-copyright-to-combat-revenge-porn/>
- 6) Clay Calvert, Revenge porn and Freedom of Expression: Legislative Pushback to an Online Weapon of Emotional and Reputational Destruction, 24 Fordham Intell. Prop. Media & Ent. L.J. 673 (2014)
- 7) Charlotte Alter, Clicking on Jennifer Lawrence’s Nude Photo is Sleazy, But is it Really Sexual Assault? Time.com (Sept. 2, 2014), <http://time.com/3258898/jennifer-lawrence-kate-upton-naked-photos-icloud-hacking/>
 - a) Photo Hacking as a “Sex Crime”: <http://www.vanityfair.com/vf-hollywood/2014/10/jennifer-lawrence-cover>
- 8) United States Sentencing Commission, Report to the Congress: Federal Child Pornography Offenses, Ch. 5: Victims of Child Pornography (December 2012), [focus on pp. 112-114] http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Chapter_05.pdf
- 9) Laurel O’Connor, Celebrity Nude Photo Leak: Just One More Reminder that Privacy Does Not Exist Online and Legally, There’s Not Much We Can Do About It, Golden Gate

University Law Review Blog (Oct 21, 2014)

- 10) Nicole A. Poltash, Snapchat and Sexting: A Snapshot of Baring Your Bare Essentials, 19 RICH. J.L. & TECH. 14 (2013)

Class Eleven: Human Trafficking

- 1) Robert W. Peters, Laura J. Lederer, and Shane Kelly, “The Slave and the Porn Star: Sexual Trafficking and Pornography,” 5 The Protection Project J. Hum. R. & Civ. Soc’y 1 (2012)
- 2) Catharine A. MacKinnon, “Trafficking, Prostitution, and Inequality,” 46 Harvard Civil Rights-Civil Liberties Law Review 271 (2011)
- 3) Donna M. Hughes, “The Natasha Trade” The Transnational Shadow Market of Trafficking in Women, 53 Journal of International Affairs 2 (2000)
- 4) Susan E. Thompson; Prostitution – A Choice Ignored, 21 Women’s Rights L. Rep. 217 (2000)
- 5) Terry Coonan, Anatomy of a Sex Trafficking Case, 5 Intercultural Hum. Rts. L. Rev. 313 (2010)
- 6) Mohamed Y. Mattar, Comprehensive Legal Approaches to Combating Trafficking in Persons: an International and Comparative Perspective. The Protection Project at The Johns Hopkins University School of Advanced International Studies
http://www.protectionproject.org/wp-content/uploads/2010/09/PP_Chartbook_English.pdf (Pages 52-53).
- 7) Suzanne H. Jackson, To Honor and Obey: Trafficking in “Mail-Order Brides”, 70 Geo. Wash. L. Rev. 475 (2002)
- 8) Convention on the Rights of the Child (1989), Articles 34 and 35
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- 9) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>
- 10) United States v Pendleton, 658 F.3d 299 (3d Cir 2011)
- 11) William K. Rashbaum, “With Special Courts, State Aims to Steer Women Away From Sex Trade,” N.Y. Times, Sep. 25, 2013
<http://www.nytimes.com/2013/09/26/nyregion/special-courts-for-human-trafficking-and-prostitution-cases-are-planned-in-new-york.html>

- 12) State of New York Unified Court System Press Release. "NY Judiciary Launches Nation's First Statewide Human Trafficking Intervention Initiative: Statewide System of Dedicated Courts to Identify and Assist Offenders Who May Be Trafficking Victims in an Effort to Break the Cycle of Exploitation and Arrest." http://www.nycourts.gov/press/PR13_11.pdf

Class Twelve: Sexual Violence in War

- 1) McGlynn and Munro, Rethinking Rape Law, pp. 47- 91 (chapters on international criminal law and sexual violence, the Rwanda tribunal, and the force of shame)
- 2) Steger and Lind, Violence and Its Alternatives: pp. 146- 153, Ruth Seifert, The Second Front: The Logic of Sexual Violence in Wars
- 3) Catharine MacKinnon, Rape, Genocide, and Women's Human Rights, 17 Harv. Women's L.J. 5 (1994)
- 4) David Mitchell, The Prohibition of Rape In International Humanitarian Law as Jus Cogens: Clarifying the Doctrine, 15 Duke J. Comp. & Int'l L. 219 (2004-2005)
- 5) Kelly Askin, Prosecuting Wartime Rape and Other Gender- Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles, 21 Berkeley J. Int'l L. 288 (2003)
- 6) Janey Halley, Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict, 9 Melb. J. Int'l L. 78 (2008)
 - a. and/or Halley, Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law, 20 Mich. J. Int'l L. 1 (2008-2009)
- 7) Julie Mertus, Shouting from the Bottom of the Well: The Impact of International Tribunals for Wartime Rape on Women's Agency, International Feminist Journal of Politics 6:1 (2004)

Class Thirteen: International Comparisons

- 1) Background: World Health Organization, Ch 6: Sexual Violence
- 2) Frank et al, The Global Dimensions of Rape-Law Reform: A Cross-National Study of Policy Outcomes (2009)
- 3) Lucinda Vandervoort, Affirmative Sexual Consent in Canadian Law, Jurisprudence, and Legal Theory, 23 Colum. J. Gender & L. 395 (2012)
- 4) McGlynn and Munro, Rethinking Rape Law:

- a. pp. 92- 107, Edwards, *Everyday Rape: International Human Rights Law and Violence against Women in Peacetime*
 - b. pp. 139-181, 183-262 (chapters on sexual assault law and reform in England and Wales, Scotland, Croatia, Italy, Sweden, Australia, and South Africa)
- 5) Ajzenstadt and Steinberg, *Never Mind the Law: Discourse and Rape Reform in Israel* (2001)
 - 6) Benedet and Grant, *Sexual Assault of Women with Disabilities: A Canadian Perspective*, in McGlynn and Munro, *Rethinking Rape Law*, pp. 323- 334

Class Fourteen: Reform

- 1) Ann Cahill, *Rethinking Rape*, pp. 198- 207 (chapter on possibilities for resistance)
- 2) Discussion of student projects