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**RHETORICS OF RAPE:**

**FEMINIST RHETORICS AND POSTFEMINIST DISCOURSE OF RAPE AND SEXUAL**

**ASSAULT**

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## ABSTRACT

This thesis interrogates feminist rhetoric of rape. As such, this project first investigates the history and rhetorical strategies of the rape reform movement, a decidedly feminist movement, before looking ahead to the burgeoning postfeminist discourse of “gray rape.” I recount the arguments of the rape reform movement and landmarks moments in the history of the movement as a watershed moment where the language used to describe rape changed in order to shift the perspective of rape as an assault that happens between strangers to an assault that more commonly exists between acquaintances, friends, and dates. I then look at the specific language created by the rape reform movement, the terms “acquaintance rape” and “date rape,” as feminist counterformulations of rape and the rhetorical dimensions of these terms. Finally, I look at the postfeminist discourse of “gray rape” as reiteration of rape myths, the “virgin”/“vamp” dichotomy, and the singular discourse of “stranger rape” and how this discourse, if left unchecked, is detrimental to serious public discussion about rape.

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## CHAPTER 1

### FEMINIST RHETORICS OF RAPE

*Rape.* Few words evoke such visceral and emotional responses. The word implies the most heinous of crimes and the gravest of personal violations: forcing intercourse or other sexual acts upon an unwilling individual. The history of rape is long (one only has to look at Gorgias' *Encomium of Helen* or the myth of Zeus' "ravishment" of Hera for a rough estimate of how long the concept of "rape" has been active in our greater collective memory<sup>1</sup>) and has served as the basis for many of the conversations surrounding the rights of women both in and out of the courtroom. In more recent memory, popular and scholarly discourses that surround such high-profile rape cases like the Kobe Bryant pre-trial hearings and the Central Park Jogger trial not only demonstrate the spectacle that often envelops instances of rape, but also the controversial issues that come part and parcel with an accusation of rape.<sup>2</sup>

These myriad and conflicting discourses make rhetorics of rape difficult to locate and interrogate. However, just because something is difficult to talk about does not mean it should be ignored. Further examination of the rhetoric surrounding rape presents an opportunity to understand how these discourses influence the way rape is perceived. The perception of the word "rape" has changed throughout history, but its long and complicated past presents many challenges to any attempt to pinpoint a definitive understanding of what action constitutes the name "rape." While the imprecise character of the word "rape" can be frustrating, the inherent vagueness of the term allows considerable space for rhetorical inquiry. By locating moments where the word "rape" underwent significant transformation, I believe much can be learned

about the rhetorical dimensions that compose one of the most contentious issues in human memory.<sup>3</sup>

Yet locating watershed moments in the history of the word “rape” is not the difficult element of this study. There has been no lack of scholarly inquiry, government investigation, and media coverage surrounding rape. The challenge in locating the *whys* and *hows* of rape lies in the debate over the word itself. In this way, the debate surrounding the word “rape” can be most directly compared to the debates surrounding abortion rights. Both are controversial, divisive, and abound with legal and social ramifications. I find Celeste Michelle Condit’s study of abortion rhetoric to be crucial in understanding how to approach discourses of rape. Condit suggests the story of controversial social issues — like abortion — is not a conventional history. Instead, it is a history of public discourse and how it changes, supports, challenges, and creates the arguments that surround and define an issue.<sup>4</sup> To examine this path one has to set aside the “cause” of such debates and focus on the debate itself. By focusing on the arguments that surround controversial social issues, it is possible to describe “the flows of public discourse” that “shift the meaning” of “terms, practices, and laws” connected to the discourses.<sup>5</sup>

Setting aside the causes of the debate surrounding the word “rape” is a difficult task. Beyond the raw emotion that accompanies the word “rape,” the debate over the definition, existence, and criminality of instances described as “rape” originate in the vagueness of the term itself. Indeed, it is almost impossible to set aside the causes of the debate because rhetorics of rape are built on the foundational belief that rape is *caused* by women. In order to follow the “flows of public discourse” surrounding instances of rape, the cause of the debate over the word “rape” cannot be completely ignored. The challenge of investigating “rape” is not attempting to strip it of its controversial, emotional, and difficult roots, but trying to navigate the tangled

rhetorical landscape of causal claims, moral arguments, and legal implications. Accordingly, many of the arguments this thesis will investigate will blur the line Condit draws between the “cause” of debates and the debates themselves.

The danger of blurring Condit’s line when investigating “rape” is getting lost in the long history of the word “rape” and the generation of “causes.” Such a project would be an admirable and welcome addition to the literature but is beyond the scope of this thesis. In order to avoid stepping into a study that is too large, I will focus on the efforts of the rape reform movement in the late 1970s and early 1980s to shift the meaning of rape from the narrow conception of “stranger rape” to a broader conception of sexual assault that had been ignored for centuries. To this end, I will apply a rhetorical lens to what I will call feminist rhetorics of rape in an attempt to examine how the rape reform movement shifted the perception of “rape.” By looking closely at these moments in the long history of rape rhetorics, it is my intent to suggest that the inherent vagueness of the word “rape,” while at times infuriating, is essential in understanding how perception of “rape” develops.

I focus on the rape reform movement’s effort to shift the perception of “rape” as a means for navigating the long history of the term. It is almost impossible to discuss “rape” without taking into consideration the collective memory of the term. As Barbie Zelizer suggests, collective memory “refers to recollections that are instantiated beyond the individual by and for the collective” by encompassing “recollections of the past that are determine and shaped by the group.”<sup>6</sup> Collective memory presumes “discussion, negotiation, and often, contestation” are inherent within historical entrenched debates. The collective memory of rape is constantly held up as an example of what rape *should* look like. Zelizer claims that these memories become a part of the historical consciousness that becomes “wedged in-between the official markings of

the past and ourselves in the present.”<sup>7</sup> I suggest that no collective memory is quite so “wedged in-between” the past and present than that of rape.

In order to make sense of the long and “wedged between” collective memory of “rape,” there must be some pattern applied to the term. Edward Casey proposes that perception is necessary to provide a pattern to the chaotic “sense data” of memories.<sup>8</sup> This pattern, in turn, can create a “vague totalized Gestalt” in which “each part is implied by all the others and is what it is perceived to be only in reference to these parts.”<sup>9</sup> Perceiving such a multifaceted concept like “rape” as patterned provides structure, but also a perception of “rape” that is only “real” rape if it makes reference to the history in which it is built. The rape reform movement attempted to shift the perception of “rape” that was built on the narrow discourse of “stranger rape” and a host of “rape myths” to a more nuanced and accurate perception of “rape” embodied in feminist rhetorics of rape.

### **Feminist Rhetorics of Rape**

The designation “feminist rhetorics of rape” was not chosen idly and entails more than just a useful category. The phrase “feminist rhetorics of rape” is central to my investigation and as such deserves some unpacking. Primarily, the ungrammatical nature of the phrase may be confusing upon first reading. The lack of the article “the” preceding the designation was intended to differentiate between the broader collection of opinions, perspectives, and positions encompassed by feminist rhetorics of rape and the singular discourse of “stranger rape.” Similarly, the plurality of the word “rhetorics” is used to imply an inclusivity that is constructed of many different points of view, voices, and attitudes.<sup>10</sup>

Throughout this thesis, the terms “discourse” and “rhetorics” are being used to demonstrate a specific, singular argument (discourse) and a broader use of language that encompasses many arguments meant to persuade (rhetorics). I find this distinction to be helpful in navigating the rhetorical landscape of the word “rape” because it allows distinctions to be drawn between the “traditional” perception of “stranger rape” and the broader perception the rape reform movement attempts to create and disseminate. Samuel Delany makes a similar observation in his book, *Shorter Views*, by recounting that the word “discourse” has its etymological roots in Latin and refers to “an old, oval, Roman race track.”<sup>11</sup> Accordingly, at a discourse one enters and leaves at specific pre-determined positions.<sup>12</sup> The discourse of “stranger rape” is similar; beginning and ending with the belief that women are to blame for rape. Feminist rhetorics of rape attempted to break this cycle and provide a broader perception of “rape.”

In this thesis, the word “rhetoric” is used in the academic sense to mean persuasion by argument and other means. However, beyond this very basic understanding of rhetoric it is important to grasp how rhetoric shapes the way one perceives the world. Thomas W. Benson suggests that rhetoric is a way of knowing, being and doing:

Rhetoric is a way of knowing the world, of gaining access to the uniquely rhetorical probabilities that govern public policy and personal choice for oneself and others; it is a way of constituting the self in a symbolic act generated in a scene composed of exigencies, constraints, others, and the self; it is a way of exercising control over self, others, and by extension the scene.<sup>13</sup>

Feminist rhetorics of rape suggest a way of knowing, acting, and participating in the world that is much different from the discourses of “stranger rape.” By using a critical rhetorical lens, it is

possible to interrogate how rhetorics of rape have evolved from a singular discourse to broader, feminist rhetorics that, in turn, affected the way rape is perceived.

With this rhetorical lens in mind, I will investigate how “feminist” rhetorics shape rhetorics of rape. Particularly, I will focus on the rape reform movement’s creation and implementation of the terms “acquaintance rape” and “date rape” and how these phrases shifted the perception of rape from the narrow discourse of “stranger rape” to broader feminist rhetorics. A rhetorical point of view allows an examination of this language, to paraphrase Adrienne Rich, from a new critical direction and with fresh eyes.<sup>14</sup> In the case of feminist rhetorics of rape, fresh eyes are sorely needed. As Karlyn Kohrs Campbell states in her foundational article “The Rhetoric of Women’s Liberation: An Oxymoron,” feminist movements are difficult to define because they are very rarely, if ever, one “cohesive historical-political movement,” but a “state of mind” of which most of their “major manifestations has been rhetorical” and therefore should be studied as such.<sup>15</sup>

Bonnie Dow’s study of how feminism is represented in popular television shows since 1970 is also helpful in understanding how feminist rhetorics shape feminist rhetorics of rape.<sup>16</sup> Dow believes that feminist rhetorics have the “capacity to engage our thinking about the political implications of discursive practice” and how these practices “bring into being *new* meanings and *new* subjectivities.”<sup>17</sup> Much like Campbell, Dow finds the strength of feminist rhetorics in the inclusivity of the rhetorics and the ability of the arguments to shine light on issues, people, and places that have been previously ignored. However, Dow’s project strays from the traditional rhetorical landscape of speeches and movements to look at how feminist rhetorics are represented (and not represented) in popular culture. By expanding the arena where feminist rhetorics of rape can be studied, Dow opened the door for interrogations of feminism as it is

represented and perceived by a larger audience. While the majority of this thesis focuses on the rhetorics of the rape reform movement, it will also take into consideration how the arguments were disseminated through popular magazines and mainstream newspaper articles. These examples will demonstrate how terms like “acquaintance rape” and “date rape” shifted the perception of rape.

Despite the work of feminist rhetorical scholarship that suggests the importance of locating, investigating, and understanding feminist rhetorics, the rhetorical discipline has been conspicuously quiet on the matter of feminist rhetorics of rape. With the exception of Rosa Eberly’s examination of Andrea Dworkin’s novel *Mercy* and reactions to Dworkin’s attempt to represent rape in a literary public sphere, very little work has been done within the communication discipline to interrogate the rhetorical dimensions of rape and sexual assault.<sup>18</sup> This, however, does not mean that there is a dearth of information on the subject. Law, philosophy, literature, women’s and media studies have all written extensively on the subject or rape in different capacities, but there is very little scholarship that focuses on the rhetorical dimensions of the words used to describe rape.<sup>19</sup>

The nearest scholarship has come to examining the particular problem with the words used to describe instances of rape and sexual assault is philosopher Eric Reitan’s essay “Rape as an Essentially Contested Concept.” Reitan identifies the definitional debate over the meaning of rape as a “game” that plays with the inherent vagueness of concepts, prior knowledge of “facts,” and evaluative significance that provides space in which to alter and claim a definitive meaning of what it means to perpetrate or be the victim of “real” rape.<sup>20</sup> Although Reitan’s article gives a comprehensive analysis of rape as an essentially contested concept and how this frame allows for more than one definition of rape within public discourse, he stops short of fully interrogating

how feminist rhetorics rape not only added definitions for the word “rape,” but shifted the perception of what acts were considered “real” rape.

One major way that feminist rhetorics of rape shifted the perception of rape was giving the word “rape” new meanings. An interrogation of the rape reform movement and phrases like “acquaintance rape” and “date rape” offer a fertile ground for teasing out the rhetorical dimensions of these new meanings and how they broadened the perception of rape. The rape reform movement’s “new meanings” were achieved in the 1970’s and 80’s and created phrases to describe an experience that previously did not have a name. The terms “acquaintance rape” and “date rape” did not supplant the traditional notion of rape, but suggested that the terms and phrases available to describe instances of rape needed to be expanded to include instances of sexual assault that fall outside the rigid discourse of “stranger rape.” Rhetorically, “acquaintance rape” and “date rape” are similar to Kenneth Burke’s notion of “casuistic stretching” or the introduction of a new principle that theoretically remains faithful to old principles, but stretches the meaning in such a way that it comes to embody a whole set of values and claims.<sup>21</sup> By shifting the scene, to remain with Burke’s terminology for a moment, of “rape” to the conception of “date rape,” feminist rhetorics of rape kept the familiar definitional aspects of rape while simultaneously questioning the validity of such a narrow definition. The result is terms that are both familiar and uncomfortable; calling into question the validity of the narrow notion of “stranger rape.”

### **Moving Beyond “Stranger Rape”**

It should surprise no one that the history of the rhetoric of rape is as long and complicated as the history of rape itself. As mentioned above, this history is both a blessing and curse;

literally, it provides generations of material to be investigated, but all of that history can be overwhelming. It is important to contextualize rape in relation to its history in literature, art, myth, religion, and other forms of canonized discourse that provide the foundation for perceptions of and reactions to feminist rhetorics of rape. However, I will limit my contextual examination to the rape reform movement and to female assault in dating situations, more commonly known as “acquaintance rape” or “date rape.” Narrowing the scholarly focus of my thesis will have bearing on both the historical and conceptual implications on this project. Historically, the reason for narrowing my contextual analysis to the rape reform movement, beyond the sheer magnitude of a project that investigates the entire rhetorical history of rape, is to focus on the feminist attempt to change rhetorics of rape, and therefore the *reality* of rape.<sup>22</sup> Since the goal of the movement was explicitly aimed at introducing the terms like “date rape” and “acquaintance rape” into popular and legal discourse, I recognize the rape reform movement (and the larger feminist movement at the time) as a watershed moment where rhetorics of rape substantially changed from a narrow discourse to broader rhetorics.

Conceptually, a focus on “date rape” allows for a more detailed examination of the particular notion of consent that feminist rhetorics of rape are attempting to (re)define. Admittedly, my focus on feminist rhetorics of rape precludes many important aspects of rape and feminist rhetorics of rape (issues of male rape,<sup>23</sup> marital rape,<sup>24</sup> and how questions of consent are contested, constructed, or ignored in these cases), but in order to interrogate feminist rhetorics of rape these facets will be excluded from my chapters and case studies. However, it is important to have a basic understanding of what feminist rhetorics of rape were attempting to challenge. Central to this argument is the notion of “stranger rape” as the only kind of “real” rape. The narrative is familiar and compelling: A modestly dressed woman is attacked out of the blue (or

black, as night is the where the scene usually takes place), threatened with a weapon, puts up a fight, and loses to a larger and more dangerous assailant.<sup>25</sup> Stranger rape is a real and dangerous facet of rape, but in a 2000 national study funded by the Department of Justice it was found to account for less than 5 percent of completed rapes among college-aged women.<sup>26</sup> Before feminist rhetorics of rape, the “stranger rape” discourse was the only way rape could be spoken about if it was spoken about at all. The result was a blanket disregard for of all other rapes or sexual assaults as misunderstandings, bad sex, or overreactions.

The roots of the “stranger” rape discourse can be found by examining how rape is spoken about as the impetus, byproduct, and weapon of war. Historically, martial rape has been seen as a matter of course. General George S. Patton aptly, and perhaps inadvertently, describes the attitude toward martial rape in his memoir *War as I Knew It*, “[I]n spite of my most diligent efforts, there would unquestionably be some raping.”<sup>27</sup> The *unquestionable* nature of martial rape constructs the foundation for the narrow discourse that rape is always an unavoidable act of extreme violence.<sup>28</sup> The presence of martial rape in the early literature of the Greeks and Romans suggests that the connection between war and rape has been a long-standing one.<sup>29</sup> The most notable example of the venerable connection between war and rape is the story of Helen of Troy and the Trojan War. Greek philosophers and rhetoricians struggled with the question of Helen throughout ancient literature: Did Paris kidnap and rape her? Did Helen choose to go willingly with Paris? How large of a role did the gods play in sparking the relationship that began the Trojan War?

Gorgias puzzled through these questions in his *Encomium of Helen* with little success.<sup>30</sup> Only the acknowledgement that if a woman is raped “by violence and illegally assaulted and unjustly insulted, it is clear that the raper, as the insulter, did the wronging, and the raped, as the

insulted, did the suffering. . . . It is just therefore to pity her but to hate him.”<sup>31</sup> Note that there is no punishment suggested for the “raper” in this passage, only the suggestion of pitying the victim for being taken against her will and permission to hate the “raper” for doing so. This very early attitude about rape in wartime reflects many of the difficulties in talking about *any* instance of rape. Men either get so overwrought with passion and bloodlust or crazed from chastity that they take women by force. The complicit attitude of Gorgias’ *Encomium of Helen* is a precursor not only to the excuses given by generations of soldiers in wartime, but of “normal” men in dating situations for years to come.<sup>32</sup>

The “boys will be boys” attitude that is seen in the *Encomium of Helen* was made explicitly clear in the creation of government-maintained “comfort stations” in Japan during World War II. A euphemism for military brothels staffed with “comfort women,” the policy was in response to the Rape of Nanking, a gruesome eight-week period after the Japanese Imperial Army captured the city of Nanking and killed over 300,000 people. During this time between 20,000 and 80,000 women were raped, tortured, and killed.<sup>33</sup> In response to the Rape of Nanking, the Japanese high command organized the vast network of “comfort stations” as a strategy to “prevent further mass rape of conquered populations.”<sup>34</sup> According to Chung Hyun-Kyung, most of the comfort women were abducted from their homes (often in Korea) and forced to “clean military bases, wash soldiers clothing,” and “receive Japanese soldiers” any time they were approached.<sup>35</sup> If the women struggled or refused, they were beaten and humiliated and most comfort women died of starvation, exhaustion, or venereal diseases.<sup>36</sup> Comfort women were a blanket acceptance of what Susan Brownmiller calls man’s attitude toward the inevitability of martial rape: “When men are men, slugging it out among themselves, conquering new land, subjecting new people, driving on toward victory, *unquestionably* there shall be some raping.”<sup>37</sup>

The acceptance of martial rape as an inevitable aspect of war that can only be controlled by providing state-sponsored sex slavery ruined the lives of almost 200,000 comfort women.<sup>38</sup>

Comfort stations also demonstrate the foundation attitude that rape is something that cannot be stopped, just controlled.

More recently, rape has been used as a method of ethnic cleansing. Alexandra Stigmayer offers a compelling account of martial rape using the “boys will be boys” attitude as a strategic move in aiding the genocide in Bosnia-Herzegovina.<sup>39</sup> Stigmayer offers a comprehensive and detailed account of how rape was used as a tactic to “intimidate, humiliate, and degrade [women] and others affected by her suffering. The effect of rape is often to ensure that women and their families will flee and never return.”<sup>40</sup> Beyond displacing the native population of the country, the Serbian army also placed Muslim women in “rape camps” where they were forcibly impregnated and made to carry the child until term.<sup>41</sup> Stigmayer suggests that these camps were designed as a tool for genetic imperialism and were an attempt to weaken the Muslim race by producing half-Muslim, half-Serb children.<sup>42</sup>

The rhetoric of martial rape operates on the premise that rape is an inevitable byproduct of violence and cannot be stopped, only controlled (the comfort women in Japan) or channeled into a specific end (the rape camps in Bosnia-Herzegovina). Approaching rape as something that is beyond reproach and out of the control of everyone, including the perpetrators, dovetails with the discourse of “stranger rape.” As will be discussed in more detail in chapter two, feminist rhetorics of rape challenged the notion of stranger rape by targeting “rape myths” that had been propagated throughout history and were taken as the truth about rape. One of the most pervasive myths is that a rapist can only be a “perverted, ugly, seedy, or insane” stranger who does not have control over his actions.<sup>43</sup> The myth that stranger rape is the only kind of “real” rape

undergirded the belief that rape is an isolated incident caused by a deranged individual that could be avoided if women followed general rules of decorum.<sup>44</sup>

The narrow discourse of stranger rape paired with the historical understanding of rape as an uncontrollable product of extreme, warlike violence produced a powerful dichotomy that was routinely applied to female survivors of rape. Helen Benedict identified this dichotomy as the “virgin” or “vamp” dilemma.<sup>45</sup> Through her study of how the news media covers sex crimes Benedict found that survivors of rape are characterized in only two ways; as a virgin or a vamp. The “virgin” image, Benedict explains, is used to paint the man as “a depraved and perverted monster” who sullied an innocent victim, who, in turn, becomes a “martyr to the flaws of society.”<sup>46</sup> The “virgin” image is equally as destructive as the “vamp” because “it perpetuates the idea that women can only be Madonnas or whores” and “paints women dishonestly.”<sup>47</sup> It also perpetuates the myth that only perverted or crazy men can be guilty of rape.

The “vamp” image portrays a woman who “by her looks, behavior or generally loose morality, drove the man to such extremes of lust that he was compelled to commit the crime.”<sup>48</sup> The “vamp” image is often used to “explain away” rape by painting the woman as impure, wanton, and “asking for it.”<sup>49</sup> The “vamp” side of the dichotomy suggests that if a woman pursues a man, agrees to go home with him, or acts in a sexualized manner in public, she could not have been raped because she brought it on herself. Both sides of the “virgin”/“vamp” dichotomy reinforces the idea that “normal” men—friends, brothers, husbands, fathers, and so on—cannot have perpetrated rape. The woman must have been a helpless victim of a disturbed individual or provoked the rapist through untoward sexual advances.

The “virgin”/“vamp” dichotomy is not something that the feminist rhetorics of rape were able to replace completely. The singular discourse of “stranger rape” and the unfair

categorization of rape survivors can be seen in almost all media coverage of high-profile rape cases before and after the rape reform movement. Since both are equally damaging to the efforts of moving away from the traditional perception of stranger rape as the only kind of “real” rape. It is helpful to see this dichotomy in action. The “vamp” image can often be seen in the defensive strategies of rape trials. One of the most notable recent uses of the “vamp” image was in the very well publicized pre-trial hearings of basketball star Kobe Bryant. On June 30, 2003, Bryant was arrested for the sexual assault of a 19-year-old woman who worked in the Colorado Hotel in which he was staying. The woman claimed that Bryant held her by the neck and forced intercourse after she had made it clear in several ways — trying to leave the room, saying “no” several times — that she did not want to have sex with him. She claimed that he used enough force to “bruise her neck” and “make her bleed.”<sup>50</sup> During the pre-trial hearings Bryant’s attorney, Pamela Mackey, referred to the woman’s promiscuity several times, most memorably by suggesting that the woman’s “penetrating genital trauma” was “consistent with a person who had had sex with three different men in three days,” insinuating that the accuser was promiscuous and therefore not trustworthy.<sup>51</sup>

Mackey’s statement is a textbook example of painting a rape survivor as a “vamp” in an effort to discredit her. Although rape shield laws did not allow Mackey to continue questioning Bryant’s accuser’s sexual history, Mackey was able to focus on the woman’s behavior on the night in question. Mackey systematically analyzed the night the rape allegedly occurred, carefully painting the woman as the aggressor. According to Mackey, she took it upon herself to stay late at work when she found out Bryant was coming; she was the one who picked Bryant’s room and made sure it was in an empty part of the hotel; she initiated suggestive conversation; and she entered his hotel room even knowing he was going to try and “put a move on her.”<sup>52</sup>

Mackey used the “vamp” image to suggest that Bryant is the victim of an immoral woman who premeditated their meeting in order to falsely accuse him of rape in order to benefit from his celebrity and wealth.

Admittedly, the “vamp” image is the more visible of the “virgin”/“vamp” dichotomy, but the representation of rape survivors as a virgin is no less damaging to efforts to broaden rhetorics of rape. Perhaps the most well-known use of the virgin image can be found in the Central Park Jogger case in late 1980s. On April 20, 1989, Trisha Meili (she has since released her name), a 29-year-old investment banker, went for her nightly jog in Central Park. While running she was attacked, raped, and beaten into a coma by as many as twelve assailants.<sup>53</sup> Benedict found that mainstream media treated Meili with an unprecedented level of “reverence and discretion,” did not blame her for provoking the rape, and characterized her as a “virgin.”<sup>54</sup> While Meili was not accused of lying about the rape, dressing suggestively, or “asking for it,” the media used the “virgin” image to paint her as naïve and foolhardy. Why would she be alone in Central Park at eleven o’clock at night?<sup>55</sup> She was an intelligent, successful woman and should have known better than to think that she would be safe in that environment.

Even in a clear-cut case of stranger rape, the prevailing discourse was that although Meili was not to blame for the attack, she was to blame for not protecting herself (and her virtue) from the *possibility* of an attack. The *New York Post* ran the most pointed attack on Meili’s failure to perceive the danger in Andrea Peyser and Jim Nolan’s article, “She Didn’t Know Fear, Popular Exec on Her Way to the Top”:

Just another night. She got into her T-shirt and laced up her Saucony running shoes, like so many nights before, and headed for the park. It’s not safe, people always told her. She laughed. This woman . . . who accomplished so much so

young through sheer determination and discipline wasn't afraid of what lurked in the shadows. She would jog.

Within a few hours, the woman's well-ordered existence would change forever. Raped and beaten in a senseless, random attack by a gang of young thugs, her stellar life would hang by a thread. The woman who was so secure in her routines, so confident in her safety, became — possibly for the first time — completely helpless.<sup>56</sup>

The article's tone and overly dramatic language places just as much blame on Meili as on the "gang of young thugs" that perpetrated the assault. Unlike Bryant's accuser, however, Meili was not accused of lying, orchestrating the attack, or being promiscuous. Instead, she was blamed for her lack of concern over her own safety. It was through her "carelessness" that those "thugs" were able to sully her "stellar life."

The Bryant and the Central Park Jogger cases are drastically different, yet in both the "virgin"/"vamp" dichotomy supports the notion that stranger rape is the only kind of "real" rape. In the case of Bryant's accuser, she was eventually forced to drop her charges against Bryant because a judge ruled her sexual history could be admitted as evidence.<sup>57</sup> Her "vamp" image overcame all the physical evidence that a rape had occurred and the case never went any further than the pre-trial hearings. Meili, whose assault was a clear-cut stranger rape scenario, reinforced the notion that rape is something that can be avoided only through careful adherence to social norms. Yet, even then, one never knows what "lurked in the shadows."

## Preview of Chapters

In order to counter the singular discourse of “stranger rape,” the rape reform movement needed to find a way to talk about rape that was familiar enough to be instantly recognizable but controversial enough to spark conversation. Feminist rhetorics of rape, particularly the terms “acquaintance rape” and “date rape,” did this by stretching the meaning of “rape” to include types of sexual assault that were ignored or blamed on women. To accomplish this the rape reform movement embarked on a campaign that spanned academic, legal, and popular publications to change the way that rape was spoken about both in and outside the courtroom.

In the second chapter, I delve into the arguments and strategies of the rape reform movement and its efforts during the late 1970s and early 1980s. I am specifically interested in the initial rhetorical campaign of the movement to have the term “date rape” recognized by the courts and the public as a legitimate and prevalent form of rape.<sup>58</sup> In this chapter, I look at the arguments that the rape reform movement used to create and disseminate “acquaintance rape” and “date rape” into public discourse. In particular, I outline the rape reform movement’s stack of “rape myths.” Then, drawing on Richard Sennett’s notion of “posthole” history, I will recount several key moments in the history of the rape reform movement’s effort to broaden the language available to describe rape.<sup>59</sup>

In the third chapter, I focus solely on the terms “acquaintance rape” and “date rape” and their rhetorical dimensions; in order to fully understand the how feminist rhetorics of rape shifted the narrow discourse of stranger rape to broader rhetorics of rape. I look at “acquaintance rape” and “date rape” as examples of skillful casuistic stretching, perspective by incongruity, and ironic synthesis of terms. Through this analysis, I suggest that it was through these rhetorical

strategies that “acquaintance rape” and “date rape” came to be generally accepted as a way to describe and perceive rape.

Finally, while the rape reform movement and feminist rhetorics of rape were successful in broadening the language of rape to include assaults that previously went unacknowledged, it was far from universally accepted. The fourth chapter will look ahead to a new burgeoning discourse of “gray rape” that is a reiteration of rape myths, the “virgin”/“vamp” dichotomy, and the singular discourse of “stranger rape.” “Gray rape” utilizes many of the same rhetorical strategies as feminist rhetorics of rape to create a singular postfeminist rhetoric of rape that masquerades as a “new,” more accurate perception of rape.

A rhetorical analysis of feminist rhetorics of rape has the potential to offer insights into how “acquaintance rape” and “date rape” changed the way rape is spoken about, but also how rape *should* be spoken about. By looking beyond the causes of the debate over what constitutes rape and focusing on the words that is used to describe the assaults, the perpetrators, and the survivors it becomes clear rhetorics of rape are still as conflicted as they were in the *Encomium of Helen*. However, to borrow Donna Haraway’s phrase, it is only when one asks questions that “stay with the trouble” and works through the tangles of language that any answers can be found. The question of “rape” provides no lack of trouble and it is my hope that this thesis will be follow that trouble and illuminate why the words used to describe, discuss, and deliberate rape and sexual assault are of vital importance.

## CHAPTER 2

### LOOKING FOR THE WORDS: THE RAPE REFORM MOVEMENT

Attempting to recount the history of rhetorics of rape is a daunting task. Any attempt to trace the usage of the word “rape,” the values ensconced in the single syllable, and the shifting meaning of the word is bound to be left wanting. While “What is rape?” seems to be a simple question of definition at first glance, the answer (“forcing sexual intercourse or any sexual activity on an unwilling person”<sup>1</sup>) gets lost in a gestalt of perspectives and a spectrum of contested definitions. Indeed, as Susan Brownmiller states in what is still the definitive feminist historical investigation into rape, *Against Our Will*, rape is older than its name and is steeped in history that, in turn, illuminates and obscures any definitive understanding of one of the most heinous violations that can occur to a person.<sup>2</sup>

For this reason, it is imperative to the understanding of feminist rhetorics of rape to first understand *some* of the history behind rhetorics of rape, which is what this chapter will endeavor to accomplish. Instead of attempting to recount the long and complicated history of rhetorics of rape, I will concentrate on rhetorics of the rape reform movement. I focus on the rape reform movement because it acts as a snapshot of the conflicting narratives at work in rhetorics of rape at a time they were in the process of changing. Sarah Projansky has suggested that the terms created and disseminated by the rape reform movement — “acquaintance rape,” “date rape,” “marital rape,” and “sexual harassment,” to name a few — “literally changed language” and provided different perspectives of rape and sexual violence against women that had not previously been available.<sup>3</sup> Examining the arguments and background of this movement and how its rhetoric took shape is an integral step in understanding how feminist rhetorics of rape countered the singular discourse of stranger rape.

This chapter will be devoted to the arguments of the rape reform movement and a selective history of how it disseminated these arguments. Like many feminist movements, it is difficult to point to a single instant as the beginning, end, or defining moment of the cause.<sup>4</sup> Yet the public nature of the rape reform movement presents an opportunity to trace the instrumental and symbolic changes that were achieved in the late 1970s and early 1980s. These changes can be seen by the movement's use of public events, popular publications, full-length books, and systematic social investigations. However, given the unconventional nature of feminist movements in general and the rape reform movement in particular, I will be drawing on Richard Sennett's method of "posthole" history to highlight the moments of the rape reform movement that pertain to the circulation of their arguments.<sup>5</sup> In the *Fall of Public Man*, Sennett describes "posthole" history as a method that "depicts the sweep of historical forces" while simultaneously emphasizing "the richness of detail which comes from delving into a specific moment."<sup>6</sup> By following the "posthole" method, I will be able to focus on how the rape reform movement's argument was deployed to change both the instrumental character of the word "rape" in legal proceedings and the symbolic nature of the word "rape" as it is used in popular discourses. Additionally, the "posthole" method permits a thorough investigation of landmark moments in a far-flung and amorphous movement.

In this chapter, I will first outline the arguments of the rape reform movement. In particular, I will focus on how the movement countered the singular discourse of "stranger rape" by drawing attention to the inadequacy of the discourse through what they called "rape myths." I will then discuss three moments in the history of the rape reform movement that are representative of the strategies used by the movement to circulate the inadequacy of the

discourse of “stranger rape” and pave the way for the broader rhetorics of “acquaintance rape” and “date rape.

### **The Rape Reform Movement’s Arguments**

The phrase “simple rape” may best express the core of the rape reform movement’s argument against the narrow discourse of “stranger rape.” “Simple rape” has its roots in the legal distinction recognizing the difference between aggravated assaults, in which weapons are used and are usually considered a felony, and simple assaults, in which there are no weapons used and is likely to be considered a misdemeanor.<sup>7</sup> The simple/aggravated distinction is a major organizing principle in criminal justice practice, but the oxymoronic character of the term “simple rape” paired with the legal assumption that such a sexual assault would be considered a misdemeanor raised questions about what types of rapes were “real rapes.”<sup>8</sup> Does a sexual assault have to be at gun point to be considered rape? Does real rape only occur between strangers? What is so “simple” about rapes that occur between friends, family, or acquaintances? Is the use of “aggravated” force what qualifies an assault as rape, or do alcohol, verbal threats, and unrelenting pressure to conform to gender stereotypes play a role?

Perhaps the best illustration of how the simple/aggravated rape distinction affected survivors of rape comes from Susan Estrich’s book *Real Rape*. Estrich’s book, which was published in 1987, opens with an account of her own rape in an attempt to illuminate the way that rape is perceived, described, and understood. Recounting her interaction with police after her rape she remembers the officers asked only three questions: was the assailant a “crow” (a derogatory term for an African American), did she know him, and did he take any money.<sup>9</sup> It was only when her answer to all of these questions were “yes” that the officer got on the radio to

report an armed robbery because it was “much better than rape.”<sup>10</sup> They told Estrich that she was “lucky”<sup>11</sup> because she had been “really raped.” “[T]he most important thing was that he was a stranger; that he approached me not only armed but uninvited; that he was after my money and car, which I surely don’t give away lightly, as well as my body.”<sup>12</sup> Estrich’s experience demonstrates, as she calls it, a “clear cut” instance of rape in the eyes of law enforcement, the law, and the general public.<sup>13</sup> She was attacked by an unknown man in the parking lot of her apartment building, was threatened with an ice pick, and was robbed as well as physically assaulted — the very definition of an aggravated rape.

“I am lucky,” Estrich claims, “because everyone agrees that I was ‘really’ raped. . . . No one suggests that I was ‘asking for it.’ No one wonders, at least out loud, if it was really my fault. No one seems to identify with the rapist. . . . As one person put it: ‘You really didn’t do anything wrong.’”<sup>14</sup> However, most rape cases are not as “clear cut” as Estrich’s assault and fall under the legal purview of “simple rape.” The three questions that Estrich was asked at the police station the night she was raped (with the possible exception of the race of the assailant) are still likely to be the first questions a woman will be asked when reporting a rape.<sup>15</sup> If the woman answers that she had no prior relation to the assailant and there was a weapon involved, then the rape becomes “simple,” even though it is anything but.

The notion that there is any such thing as a “lucky” rape survivor or a case of “simple” rape led to creation of a “powerful, although perhaps ill-matched, coalition” of feminists, politicians, crime control advocates, and lawyers that became known as the rape reform movement.<sup>16</sup> This far-flung group banded together in an effort to change the way rape was perceived, and through that perception, spoken about and understood. To achieve this, the rape reform movement employed instrumental and symbolic tactics. Instrumentally, those in the

movement attempted to change the statutory definition of rape, and through those definitions, the criminality of “simple” rapes. By moving away from the narrow simple/aggravated legal standard and recognizing other types of sexual assaults outside of “stranger rape,” the rape reform movement attempted to broaden what assaults were considered “real rape.”<sup>17</sup>

Symbolically, the rape reform movement focused on changing the terms available to describe rape, emblematically broadening the spectrum of assaults that could be considered “real rape.”<sup>18</sup>

To meet this end, the rape reform movement produced language like “acquaintance rape” and “date rape” to, almost literally, shine a light on instances of rape that had been hidden for decades. These terms challenged the notion that there were only two types of rape and were provocative reminders that the language available to describe rape (“simple,” “aggravated,” “stranger,” and so on) was inadequate. Both the instrumental and the symbolic strategies were built upon the identification and explanation of rape myths. Many of the full-length books published by notable members of the rape reform movement (among them Brownmiller, Estrich, and Robin Warshaw) were organized around rape myths and how reversing them was key to achieving both the instrumental and symbolic goals of the movement.

Brownmiller’s work was particularly important in the early identification of rape myths. In *Against Our Will*, she described rape myths as “beliefs that most men hold” and “have managed to convince many women” are true.<sup>19</sup> Brownmiller identified the key rape myths to be: “She was asking for it,” “if you are going to be raped, you might as well relax and enjoy it,” “all women want to be raped,” and “no women can be raped against her will.”<sup>20</sup> The centrality of these myths to the effort to fight the narrow discourse of stranger rape is clear, according to Brownmiller, because these myths not only impede discussion about rape, but have been “absorbed” by popular culture and place all the blame on women.<sup>21</sup>

After Brownmiller's early observations of rape myths, Martha Burt conducted an empirical study of rape myths and the implication they have on the way society perceives rape. Burt's results support Brownmiller's thesis and states that rape myths are "prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists" that create a "climate hostile to rape victims."<sup>22</sup> Burt's study found that most Americans believed women are at fault for most instances of rape and rape myths are connected to the other "pervasive attitudes such as sex role stereotyping, distrust of the opposite sex, and acceptance of interpersonal violence."<sup>23</sup> The respondents in Burt's study reported that they believed most women "asked for [rape]" through her dress or attitude, lied about a rape to "cover up an illegitimate pregnancy" or to "get back" at a man, and that women who were known to have casual sex in the past were "fair game."<sup>24</sup>

After Brownmiller and Burt's early investigation of rape myths other active members of the rape reform movement began to identify different myths and the danger of allowing them to continue unchecked. Rape myths are too varied and extensive to list here, but below is a summary of the seven most pervasive and influential myths that the rape reform movement identified and attempted to change.

### *Rape is Sex*

"Rape is sex" is the most powerful myth about rape and lies at the root of all others. The belief that rape is the same thing as sex "ignores the fact that rape is a physical attack" and facilitates the "mistaken belief that rape does not hurt the victim any more than sex does."<sup>25</sup> The "rape is sex" myth is the underlying principle that lead to remarks like the one made by Clayton Williams, a candidate for governor of Texas in 1990, which suggested rape victims should "just relax and enjoy it."<sup>26</sup> Included in this myth are Brownmiller's "all women want to be raped" and

“no women can be raped against her will” myths as they both suggest that rape is, in one form or another, “just” sex that women felt guilty about afterwards.<sup>27</sup>

The “rape is sex” myth is also the foundation for the disregard of rapes that happen between two people who know each other. In what is sometimes called the “seduction” myth, once again a rape is considered “just” sex that the woman regrets the morning after. The “seduction” myth suggests that it is the role of men to overcome feminine objections to sex.<sup>28</sup> Very often this myth is used to explain away cases of acquaintance rape or date rape. It is believed that if a woman agrees to one type of intimacy (like kissing) she is also agreeing to other forms of intimacy (intercourse or oral sex), but must be “convinced” to continue because women say “no” when they means “yes” in order to their reputation.<sup>29</sup>

#### *The Assailant is Perverted, Crazy, and a Stranger*

This myth supports the narrow discourse of “stranger rape” as the only kind of *real* rape. It usually consists of a narrative that paints the rapist as “perverted, ugly, seedy, or insane” and ignores the fact that the majority of rapists are “normal” men who know their victim.<sup>30</sup> Very often referred to as the “stranger” myth, it was at the center of the rape reform movement’s arguments to change the perception of rape from an isolated, unavoidable act of violence to an attack that can occur between friends, dates, and acquaintances.

#### *Rape is a Crime of Passion*

The “rape is a crime of passion” myth considers rape as a crime of passion, not power. It suggests that men with normal sex lives do not need to rape women and ignores the fact that rape is historically a crime that seeks to “dominate, punish, or degrade” another person.<sup>31</sup> The word “passion” suggests rape that outside of the perpetrator’s control and is an action that a person with full control of his faculties would never commit. Therefore, a rape could never happen

between people who are a part of a “normal,” healthy relationship. “Rape is a Crime of Passion” dovetails with the “stranger” myth as it is assumed that only a man “perverted, ugly, seedy, or insane” would be unable to control such an overwhelming emotion.<sup>32</sup>

#### *Women Provoke Rape*

Because rape is perceived to be sex, victims are believed to have provoked the action by their dress, acting a certain way, or simply being a woman. This myth is so ingrained that it can (and has) been used to explain away countless number of rapes by the courts and women themselves.<sup>33</sup> The “provoking” myth is often represented in phrases like “Did you see what she was wearing?” or “What did she expect? She went back to his place.”<sup>34</sup> This myth removes any responsibility for the attack from the man and places it on the woman and the “poor” choices that she made.

#### *Women Deserve Rape*

The “women deserve rape” myth is similar to the “women provoke rape” myth as both function as a way to alleviate men’s responsibility for rape place it on the woman.<sup>35</sup> However, the difference is that the woman is being punished for “deviating from the traditional female sex role of being at home with family or children.”<sup>36</sup> This myth, like the “women provoke rape” myth, focuses on the woman’s behavior, dress, or gender and uses it as an excuse to place the blame of the attack onto the woman or justify the attack.

#### *Only “Loose” or “Slutty” Women are Raped*

This myth is as old as sexual mores and suggests if a woman is not a virgin then an attack is not really rape.<sup>37</sup> This myth supports the “second rape” that stop many women from reporting rape in fear that their sexual history will be submitted as evidence in the courtroom. Unfortunately, the belief that sexually active women cannot be raped is very pervasive and has

its roots in the puritan principle that if a woman has had sex before, they are likely to do it again.<sup>38</sup> It is this myth that was at the center of the rape reform movement's efforts to change the laws that considered a woman's sexual history as acceptable form of character evidence in rape trials.

### *Women Lie*

This myth is almost as pervasive as "rape is sex" and rests on the masculine fear that women will "cry rape" in order to exact revenge on men. Brownmiller describes this myth with outstanding clarity and historical detail:

The most bitter irony of rape, I think, has been the historic masculine fear of false accusation, a fear that has found expression in male folklore since the Biblical days of Joseph the Israelite and Potiphar's wife, that was given new life and meaning in the psychoanalytical doctrines of Sigmund Freud and his followers, and that has formed the crux of legal defense against a rape charge, aided and abetted by the set of evidentiary standards (consent, resistance, chastity, corroboration) designed with one collective purpose in mind: to protect the male against a scheming, lying and vindictive women.<sup>39</sup>

The "women lie" myth is often present in accusations that women bring charges of rape against men in order to "get their money" or to get their "fifteen minutes of fame."<sup>40</sup>

Rape myths are completely intertwined and constantly at loggerheads with the instrumental and symbolic battle for change that the rape reform movement waged during the 1970s and 80s. The language of "acquaintance" and "date rape" were introduced to counter these myths and demonstrate the prejudicial attitudes toward rape and rape survivors. The rape reform movement focused on debunking as many of these rape myths as possible, exposing them as

hypocritical, dangerous, and key to changing the way rape was perceived.<sup>41</sup> By and large, the members of the rape reform movement were successful in achieving the instrumental goals and helped change rape laws in all 50 states. The symbolic battle, however, was a more difficult one to win. In the following section I will give a brief overview of the legal reform the rape reform movement was able to achieve, focusing on the specific legislative conditions of rape that were steeped in rape myths.

### **The Rape Reform Movement and Rape Laws**

Rape myths were at the heart of the rape reform movement's instrumental goals to broaden the language of rape — and therefore the perception of *real* rape — in rape legislation. The goals of the rape reform movement were straightforward: shift the narrow language of rape statutes away from the discourse of “stranger rape” to broader rhetorics of rape that included instances of “acquaintance rape” and “date rape.” However, owing to the long history of the discourse of “stranger rape” and the rape myths that supported it, there were several significant barriers to this goal. The primary challenge was removing four discriminatory requirements that all rape legislation shared: corroborating injuries, evidence of resistance, proof of nonconsent, and the permissibility of past sexual history as evidence.<sup>42</sup> These legal requirements are all rooted in rape myths and are the first arena in which the rape reform movement found some measure of success.

While the amorphous nature of the rape reform movement makes it difficult to pin down a single person or group responsible for these instrumental victories, it is not difficult to find the place where the rape reform movement was first successful. The earliest success of the rape reform movement was in Michigan.<sup>43</sup> The law, referred to as the Criminal Sexual Conduct Code

(CSC), became effective on April 1, 1975, and created a model for rape reform in the United States.<sup>44</sup> According to Jan BenDor, the coordinator of the Michigan Women's Task Force on Rape, if it were not for the group of "dedicated feminists" who lobbied tirelessly for the bill, Michigan might never had made the "first comprehensive attempt by a state to break away from the century-old myths and legal traditions."<sup>45</sup> The CSC established "gradual steps or degrees" of criminal sexual conduct that exploded the simple/aggravated dichotomy and broadened the instances of sexual assault that were punishable by law. The degree structure created by the CSC detailed many different types of sexual assault that included "forcible rape," (previously the only kind of rape punishable under Michigan's original law), "assault with intent to commit rape," "indecent liberties," "carnal knowledge of a female ward by guardian," "incest," "debauchery of youth," and "ravishment by a female patient in an institution for the insane."<sup>46</sup> According to Jeanne C. Marsh, Alison Geist, and Nathan Caplan the CSC provided a "comprehensive definition of assaultive behaviors that eliminate the overlap and omission problematic under multiple statutes" and provided a more nuanced code to fit the breadth of rape and sexual assaults.<sup>47</sup>

The CSC also removed the discriminatory requirements of corroboration, resistance, consent, and sexual history. The removal of these requirements changed the way that rape cases were tried and how survivors of rape were treated in courtrooms. The early success of the rape reform movement in Michigan paved the way for instrumental changes throughout the country and demonstrated the influential nature of the campaign against rape myths. Owing to the Michigan code's role as a legal model, it is helpful to observe just how the removal of the corroboration, resistance, consent, and sexual history requirements countered rape myths and furthered the arguments of the rape reform movement.

### *Corroboration*

Corroboration had been a long-standing issue for the rape reform movement. The legal requirement stated that a woman must bear corroborating injuries to back up any claim of rape. These injuries could take the form of “vaginal injuries, deep scratching or wounds on the woman or man’s body, torn clothing,” testimony from a witness about “hearing screams for help,” or some other form of evidence that suggest a rape occurred.<sup>48</sup> According to Susan Caringella, requiring “corroboration in addition to a [survivor’s] testimony is unique to rape” and is not necessary “for the prosecution if virtually any other crime.”<sup>49</sup> The need to verify an accusation of rape through a third-party (whether it be a doctor, a law officer, or a witness) made it difficult, — and at times impossible — to bring a charge of rape to court.

The corroboration requirement finds its roots in several rape myths, particularly the “women lie” myth. The anxiety over the possibility that a woman would falsely accuse a man of rape to exact revenge or protect her reputation is as old as rape laws themselves. Indeed, in 1676, Chief Justice Matthew Hale wrote in *The History of the Pleas of the Crown* that while rape “is a most detestable crime” and “ought severely and impartially to be punished with death” it is “an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent.”<sup>50</sup> Estrich points out that Hale’s oft-cited opinion on how “easily” a charge of rape is to make is a result of masculine anxiety over the “dishonest” nature of women.<sup>51</sup> Since, according to Estrich, “it is so difficult for the man to establish his innocence, far better to demand that a woman victim prove hers.”<sup>52</sup> Under Hale’s approach, the woman must first “prove” is what raped through corroborating injuries and evidence of resistance.

In Michigan there was no law on the books that required corroboration of a rape charge, but “it was so universally applied that reformers determined such a requirement really did operate in the criminal justice system.”<sup>53</sup> BenDor and the Michigan Women’s Task Force on Rape lobbied for a provision within Michigan’s CSC explicitly stating that corroboration was not required: “A jury can find that there has been a sexual assault based on the testimony of the victim alone, where the jurors are convinced beyond a reasonable doubt that the victim is telling the truth.”<sup>54</sup> The explicit statement was a first in rape legislation and provided a for future rape reform.

### *Resistance*

Like corroboration, resistance requirements are unique to rape cases.<sup>55</sup> The legal roots of the resistance requirement can be found in common law definitions of rape that described it as “carnal knowledge of a female, forcibly and against her will.” According to Cassia Spohn, carnal knowledge included “only penile-vaginal penetration” and did not include any attacks on males, spouses, or assaults other than intercourse.<sup>56</sup> Integral to any rape trial was the notion that “any good woman who didn’t want the intercourse to occur would fight it off with every bone in her body.”<sup>57</sup> A woman could only “prove” rape, in the sense that Hale and other common law statutes suggested, by “resisting to the utmost” for the duration of the attack and having the corroborating injuries to back up her claims.<sup>58</sup>

The emphasis common law placed on the amount of force used during a sexual assault suggests all rapes are violent in a defensible manner. The resistance requirement is supported by several rape myths. Like corroboration, the “women lie” myth is used to justify the need for evidence beyond the testimony of the survivor. However, the resistance requirement also used the “stranger” myth to buttress the claim that rape always has to be a traditionally violent crime

that can be avoided or resisted. The resistance requirements left very little room for the use of power, intimidation, or fear to keep a survivor from resisting to the “utmost.” Also, by remaining faithful to the definition that rape is “carnal knowledge of a female, forcibly and against her will” only intercourse was considered rape.

The Michigan CSC expanded the definition of rape from “the carnal knowledge of a woman not his wife forcibly and against her will” to a gender neutral definition that included “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal opening of another person’s body, but emission of semen not required.”<sup>59</sup> This new definition of rape, the slow removal of the requirement for corroborating evidence, and the removal of the obligation for the woman to have “resisted to the utmost” were prompted by the understanding that rape was not “just” sex, but a crime of violence, domination, power, and that the damage of a rape was not always visible to the naked eye.<sup>60</sup>

### *Consent*

Similarly, the Michigan CSC reevaluated how to prove rape was “against her will.” Consent was largely determined by the amount of corroborating injuries and proof of resistance were present; however, the requirement also mandated proof that the woman made it vehemently clear before, during, and after the attack that she was *not* consenting.<sup>61</sup> The level of her verbal resistance (saying “no” over and over again, screaming, and so on) had to be determined to be, once again, to the utmost. Nonetheless, even when such clear and vocal nonconsent was present the woman was found to have consented to the encounter on the sheer notion that the female gender was often “confused and ambivalent” when it comes to sexual relationships.<sup>62</sup>

The need for continued and recordable nonconsent is immersed in the “seduction” myth. For example, according to a 1966 *Stanford Law Review* article, women consent to “simple” rape even when she verbally states that she does not:

Although a woman may desire sexual intercourse, it is customary for her to say, “no, no, no” (although meaning “yes, yes, yes”) and to expect the male to be the aggressor. . . . It is always difficult in rape cases to determine when the female really meant “no”. . . . The problem is compounded when, in fact, the female had no clearly determined attitude—that is, her attitude was one of ambivalence.<sup>63</sup>

When used in conjunction with corroboration and resistance, the attitude that women are being demure when they are demonstrating nonconsent placed women in a double bind that was almost impossible to fight against. Consent still remained an issue in the Michigan CSC, but the removal of the corroboration and resistance requirement greatly improved the probability of proving nonconsent in Michigan courts.

### *Sexual History*

The introduction of a rape survivor’s sexual history as evidence of during a rape trial was a common defense tactic that led to many women not pressing rape charges. A woman’s entire sexual history was considered admissible as character to prove her sexual promiscuity and therefore erroneous charge of rape. The obvious root of this requirement is the myth that “loose” or “slutty” women cannot be raped because they “deserve it” or lie. Legal scholar Michelle Anderson sums up the attitude behind the sexual history requirement astutely: “A woman’s lack of chastity was thought to speak to two important issues: credibility and consent. Courts believed that unchaste women lie.”<sup>64</sup> Beyond the proclivity of defense attorneys to play to the puritanical nature of juries, a woman’s sexual history was often used to suggest that if the woman had

consented to sex in the past, it likely that she would consent to sex again, thereby negating the charge of rape.

The sexual history requirement, often described as a “second rape” of the survivor,<sup>65</sup> led to the most frequent rape reform: rape shield laws.<sup>66</sup> Rape shield laws protect the survivor from having their sexual history placed on trial. Any previous sexual or romantic partners are not admissible as character evidence or proof that the woman consented to sex. Michigan’s CSC was the first law to state a survivor’s sexual history was “irrelevant” and therefore inadmissible in court.<sup>67</sup> If the defense does want to introduce this type of evidence a private meeting must be held with the judge who then determines if the evidence is relevant according to the CSC, which states that:

- (1) To the extent the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:
  - a. Evidence of the victim’s past sexual conduct with the actor.
  - b. Evidence of specific instances of sexual activity showing the source of origin of semen, pregnancy, or disease.<sup>68</sup>

Michigan’s code is an example of the more restrictive shield legislations that “create a general prohibition” with “allowable exceptions.”<sup>69</sup> Not all rape shield laws are so restrictive, often leaving all matters of sexual history to the discretion of the judge.<sup>70</sup>

Between 1976 and 1978 thirty-six states changed their rape statutes to coincide with the arguments of the rape reform movement, and by the early 1980s virtually all states had amended their rape legislation.<sup>71</sup> The instrumental goals of the rape reform movement were simple: change the narrow nature of most rape statutes and the reliance of these statutes of rape myths. The

Michigan CSC pinpointed many of the problems with “traditional” rape laws by highlighting the discriminatory requirements of corroboration, resistance, consent, and sexual history. The nuanced degree structure was a huge step in rape reform and a victory for the rape reform movement. However, as Susan Caringella suggests, the “sweeping” legal reform that was achieved in the early 1970s caused the “salience of rape as a social problem to dwindle” because it was assumed that the reformed laws would “fix” the problem of rape.<sup>72</sup> The symbolic work of the rape reform movement, changing the language that was used to describe rape outside the courtroom, was occurring simultaneously with the instrumental success of the movement and is much more difficult to pin down. The remainder of this chapter will recount the symbolic strategies used by the rape reform movement and how they contributed to feminist rhetorics of rape.

### **The Rape Speak Out and Rape Conference**

The symbolic strategies of the rape reform movement are more difficult to trace, but are no less important than the instrumental reform that they made to the rape reform laws. One difficulty in tracing the symbolic strategies of the rape reform movement is the nature of feminist rhetorics not to abide by a single discourse to define its existence.<sup>73</sup> However, because of the very public venues in which much of the debate over rape reform took place, it is possible to locate several strategies that the rape reform movement used to change the perception of rape and the language in which it is described.

The first symbolic effort of the rape reform movement took place on January 24, 1971. Following in the footsteps of the abortion speak outs that began in the 1960s, The New York Radical Feminists (NYRF) organized a Rape Speak Out.<sup>74</sup> Held in St. Clement’s Episcopal

Church in New York City, the event was the first public occasion where women not only spoke about their rapes and sexual assaults, but also attempted to counter the perception that rape was something that happened between strangers. More than three hundred people attended the event — women as well as men, although men had to be accompanied by a woman and were charged two dollars — as well as reporters.<sup>75</sup> Over thirty women ended up speaking at the event, twenty-eight women testifying spontaneously from the audience.<sup>76</sup> The stories ranged from women being raped by strangers, husbands, and dates to “depantsing” rituals (where “grade-school boys forcibly removed the underpants of little girls”) and being raped during a gynecological visit.<sup>77</sup>

The NYRF made their purpose and the goals of the Rape Speak Out clear:

It is no accident that the New York Radical Feminists, through the technique of consciousness-raising, discovered that rape is not a personal misfortune but an experience shared by all women in one form or another. When more than two people have suffered the same oppression the problem is no longer personal but political — and rape is a political matter.<sup>78</sup>

The NYRF believed that speaking out and raising awareness that rape does not only refer to instances described by the narrow discourse of “stranger rape,” but a crime of power and intimidation.

In an attempt to better understand rape the NYRF organized a Rape Conference in April, 1971. The conference dealt with “the political, social, and psychological point of views” of rape and came to the conclusion that a “friend and lover” that “commits rape” is as much a “fiend” as the stranger who is “prowling the street.”<sup>79</sup> The conference provided more testimonies from women who had been assaulted, several academic paper presentations interrogating rape through a feminist lens, and roundtable on how to approach rape reform.<sup>80</sup> Perhaps, the most lasting

legacy of the 1971 rape conference was the publication of *Rape: The First Sourcebook for Women*.<sup>81</sup> This text compiled, for the first time, testimonies of woman (taken from the Rape Speak Outs); scholarly articles on rape, rape law, and rape culture; and resources for women who have been raped.

The Rape Speak Out and Conference marked the beginning of the symbolic work of the rape movement. With the *Rape: The First Sourcebook for Women* the phrases “acquaintance rape” and “date rape” began to be used to describe what was previously considered “simple” rape. The NYRF’s actions also raised the visibility of the rape reform movement and began to move the conversation into more mainstream outlets. One outlet in particular, *Ms. Magazine*, played a large role in the symbolic battle to change the language available to describe rape. In the next section, I will discuss the landmark study that *Ms. Magazine* commissioned on rape on college campuses and how the findings of the report changed the way the public spoke about rape.

### ***Ms. Report on Rape***

Another landmark moment in the timeline of the rape reform movement was the *Ms. Magazine Project on Campus Assault*. Funded by the National Center for the Prevention and Control of Rape (NCPCR) the study surveyed over 6,100 undergraduate women and men on 32 college campuses about their sexual experiences.<sup>82</sup> Published in 1988, the study was conducted by Mary Koss of Kent State University and confirmed much of the rape reform movement’s rhetoric: rape is not something that only happens between strangers, but something that happens between friends, dates, and family.

The *Ms. Magazine Project on Campus Assault* focused on college campuses because of the nature of its funding (the NCPCR falls under the purview of the National Institute of Mental Health), but managed to create a large random sample that represented most of the United States.<sup>83</sup> According to Koss, the goal of the study was to represent the “universe of the U.S. college population.”<sup>84</sup> As a result, both women and men were surveyed and the spectrum of colleges ranged from Ivy League institutions to large public universities. The study consisted of a 71-page self-report questionnaire that asked questions regarding past situations, experiences, and relationships that included questionable sexual contact.<sup>85</sup>

The word “rape” did not appear in the questionnaire because of concerns that the emotional significance of the term would bias respondent’s answers.<sup>86</sup> Instead, the survey asked about sexual situations that occurred “against one’s will.”<sup>87</sup> However, unlike previous investigations into the frequency of rape and sexual assaults, the phrase “against one’s will” was not limited to physical violence. The survey also included questions concerning sexual contact which occurred because one felt intimidated by a person’s “position of authority,” the presence and consumptions of “alcohol or drugs,” and “continual arguments and pressure” from another person.<sup>88</sup> The results of the study indicated that 83 out of 1,000 women had been involved in a sexual encounter of some sort against her will and for various reasons did not consider the assault rape.<sup>89</sup>

The findings of the *Ms. Magazine Project on Campus Assault* further advanced the rape reform movement’s argument that the public perception of rape had to change. The majority of the women in the *Ms.* study said that they had been coerced into having sex with someone through continual argument or pressure and alcohol or drugs.<sup>90</sup> Even when Koss reevaluated her data to calculate the number of women in the survey whose assaults fit the FBI’s legal definition

of rape at the time (“forcible actual or attempted vaginal intercourse with a woman against consent by force of through of force”<sup>91</sup>) she found that one in every four women had been raped.<sup>92</sup> This number greatly exceeded the FBI’s number of reported rapes in 1985 and confirmed the rape reform movement’s argument that rape is an underreported and misunderstood crime.<sup>93</sup>

The *Ms. Magazine* Project on Campus Assault was originally published in scholarly journals and books, but the results reached a much larger audience thanks to *Ms. Magazine*. According to Amy Erdman Farrell, *Ms. Magazine* was created in 1972 to be the voice of the women’s movement.<sup>94</sup> The magazine emphasized “ways that women differed culturally and biologically from men” and focused on issues that brought women together as a group to foster a sense of sisterhood and community.<sup>95</sup> This central goal undergirded much of the issues reported in the magazine: eating disorders, violence against women, and rape.<sup>96</sup> In fact, the term “date rape” first appeared in the September 1982 issue of *Ms.* and reiterated much of the rape reform movement’s concern over the inadequacy of the language available to describe rape.<sup>97</sup> Like much of the reporting that is endemic to *Ms.*, the article focused on informing women about the “hidden” rape and how one could recognize, prevent, and seek help for such assaults.<sup>98</sup>

After the publication of Koss’ study, *Ms. Magazine* released a book that presented the findings in a manner that could be easily digested by the public. The book, *I Never Called it Rape* by Robin Warshaw, took several approaches to unpacking the dense statistical information from Koss’ study. First, the book presents the information in narrative form, providing examples and true stories of other women’s rapes in addition to the statistics from the *Ms. Magazine* Project on Campus Assault. For example, when explaining that the study found that 87 percent of women were raped by a person that they knew and that 57 percent of those rapes happened on

a date Warshaw recounted the story of “Lori.” “Lori” was raped by a blind date at a party, but did not report the attack to the police because she feared that the man would blame her.<sup>99</sup> Lori’s story was one of the over 30 rape narratives included in the book. These narrative do not only act as clarifying tools, but also as a way for readers to identify with the widespread nature of acquaintance and date rape.

*I Never Called it Rape* also included the clearest explanations of rape myths and what they meant for women. Warshaw delineated and explained each myth, paying particular attention why these myths are dangerous to women — particularly if a man they know assaults them.<sup>100</sup> In a chapter titled “Why Women are ‘Safe’ Victims,” Warshaw suggests men have internalized rape myths and truly believe them, creating a difference in perception that is so wide it is virtually impossible to cross.<sup>101</sup> Yet Warshaw also explains the affect rape myths have on women and the way they perceive assaults, leading many women to react to rape with denial, disassociation, self-blame, and rejection that the rape occurred.<sup>102</sup> Once again, this information is couched in narratives of real women and uses easily digestible language to bolsters the arguments of the rape reform movement and makes it palatable for a mass audience.

Not only did *I Never Called it Rape* provide *Ms. Magazine* an outlet for an extended argument about “acquaintance rape” and “date rape,” but it also provided an audience for the Koss’ study that may have remained unfamiliar with her findings. While the *Ms. Magazine Project on Campus Assault* confirmed much of the rape reform movement’s argument, Warshaw and *Ms. Magazine* disseminated that argument to a wider audience, familiarizing the terms “acquaintance rape” and “date rape,” debunking rape myths, and providing a new perception of rape to the general public. The investigation of rape in the *Ms. Magazine Project on Campus*

Assault, *Ms. Magazine*, and *I Never Called it Rape* secured a major symbolic victory for the rape reform movement and paved the way for feminist perception of rape.

### **Looking for the Words: The Instrumental Success of the Rape Reform Movement**

The above is a snapshot of the successes, failures, and struggles of the rape reform movement. The full story of all the women, men, feminists, politicians, writers, lawyers, and countless other people who participated in the fight for rape reform can never be fully recounted; however, the effect of the movement on the instrumental and symbolic changes in the laws and rhetorics of rape demonstrates the importance and reach of the rape reform movement. Through legal reforms, consciousness raising, academic projects, and an overall attempt to change the language available to describe rape, the rape reform movement left an indelible mark on history.

Obviously, the work of the rape reform movement is not done. One only has to skim a newspaper to find a story of a rape trial where the rape shield laws have failed or commentators have suggested that rape survivor is “making it up,” “after his money,” or “a slut.”<sup>103</sup> Yet the language created by the rape reform movement has given rape survivors ways to speak about rape which were not previously available. In the next chapter, I will go into more detail about the rhetorical strategies involved in the symbolic victories of the rape reform movement. Rhetorically, many of their strategies relied on stretching the meaning of “rape” to take on a new definition while still being faithful to the old. A better understanding of how “acquaintance rape” and “date rape” were constructed will not only provide a richer understanding of the feminist rhetorics of rape, but also how the words used to describe rape changes over time.

## CHAPTER 3

### USING THE WORDS: FEMINIST RHETORICS OF RAPE

The rape reform movement's goal was to create terms that made "hidden" rape visible and change the perception of *real* rape from an attack by a stranger in a dark alley to a crime of power, intimidation, and violation that can (and does) happen in existing relationships.<sup>1</sup> To meet this end, the rape reform movement produced language like "acquaintance rape" and "date rape" to shine a light on instances of rape hidden under the narrow discourse of "stranger rape." As discussed in the previous chapter, members of the rape reform movement introduced specific arguments challenging the discourse of "stranger rape" and had significant instrumental success reforming rape statutes. However, the symbolic effort to change the words available to describe rape was a longer and more complicated process. Attempts by critics to counter and discredit the arguments of the rape reform movement proved to be substantial barriers in shifting the perception of rape.

These barriers are found in the word "rape" itself. On the surface, the trouble with the word "rape" seems to be one of definition: What *is* rape? What constitutes rape? Does a rape have to be "violent" in the traditional sense ("aggravated rape") to be a rape? Can a line be drawn to delineate neatly the difference between rape and consensual sex? If so, where *is* the line? In this area, rhetoricians have been notably quiet. Scholarship detailing feminist rhetorics, representations of rape in literature, and the psychology of the perpetrator are helpful, but give no analysis of the rhetorical dimensions — definitional or otherwise — of the words used to describe and label instances of rape.

However, the word "rape" has been particularly intriguing to philosophers. As Keith Burgess-Jackson explains, it is the "philosopher's task . . . to reconstruct the *idea* of rape,

showing that a particular understanding — that is, a particular location among allied concepts — illuminates the various objects or phenomena that fall under it.”<sup>2</sup> Attempting to locate the *idea* of rape often revolves around *defining* what rape is and is not. This is particularly true in the case of “acquaintance rape” and “date rape.” These terms were the first substantive changes to rhetorics of rape since Sir William Blackstone’s definition of “rape” as “carnal knowledge of a woman forcibly and against her will” in the eighteenth century.<sup>3</sup> Philosophers offer several convincing arguments of how “acquaintance rape” and “date rape” operate as a vehicle of social change; yet, I believe these arguments stop short of fully explaining the nuances of “acquaintance rape” and “date rape.”

Fleshing out these nuances is where rhetoric can lend a discerning eye. Any interrogation of feminist rhetorics of rape must consider definition, but I suggest broadening the approach in order to paint a full picture of the rhetorical dimensions of “acquaintance rape” and “date rape.” To this end, I draw on Lisa Cuklanz’s assertion that “acquaintance rape” and “date rape” are “coherent counterformulations of rape.”<sup>4</sup> As counterformulations of rape, these terms serve to critique the “traditional view of rape to the general public” and disseminate a “feminist viewpoint on the subject of rape” that offered a new “reality of rape.”<sup>5</sup> I believe the new reality of rape created through the feminist counterformulations can be best understood as an “ironic synthesis of terms” that create terms both familiar and uncomfortable.<sup>6</sup> By striking this balance, feminist rhetorics of rape succeeded in shining light on the breadth of sexual violence ignored for centuries.

I will first give a brief overview of the scholarship considering the feminist counterformulations of rape in order to familiarize the reader with investigations of “acquaintance rape” and “date rape” done outside the field of rhetoric. I will then argue that

“acquaintance rape” and “date rape” can better be understood as an ironic synthesis of terms and suggest how this stance presents a wider and more robust comprehension of how feminist counterformulations of rape changed the perception of rape. Finally, I will offer examples of the ironic synthesis in use in an attempt to demonstrate the uncomfortable familiarity created by “acquaintance rape” and “date rape” and the debate that ensued over the “new” feminist rhetorics of rape.

### **No Easy Definition**

The desire to find a definitive definition for “rape,” or at least a definition that *most* people can agree on, is an understandable starting point when discussing rape. Indeed, as Andrea Stewart points out, the Ancient Athenians, whose art and literature was “obsessed” with rape, did not have a single word for it.<sup>7</sup> Instead, it could be considered one of three acts: *moicheia* (adultery), *biasmos* (assault), or *hybris* (outrage). All three of these definitions had very different meanings for the society and consequences for the assailant, but shared a similar disinterest for the circumstances of the woman involved.<sup>8</sup> *Moicheia* and *hybris*, while differing in the details, both focused around protecting a husband’s exclusive sexual rights to his wife, the honor of the victim’s family, and the stability of the state.<sup>9</sup> The penalty for *moicheia* or *hybris* was death for the perpetrator and disgrace for the woman. *Biasmos*, however, was concerned with the assault of an unmarried woman and treated rape as a “battery.”<sup>10</sup> The recourse for *biasmos* was limited. The woman’s *kyrois* (legal guardian) could prosecute only in order to recover the cost of the woman’s “increased dowry” or her “living expenses should the effort to find a husband fail.”<sup>11</sup> All three of these “definitions” of rape have stood the test of time in one way or the other, but *biasmos* is at the heart of the narrow discourse of “stranger rape”: The belief that a forcible

rape should be treated as a “battery” and corroborating injuries should be present to prove the attack.<sup>12</sup> The long and contested history of rape makes it tempting to look to definitions to help explain the rhetorical work accomplished by “acquaintance rape” and “date rape.” The definition of rape has certainly been the focus of contemporary feminist advocates, conservative commentators, and scholars alike and has led to several helpful insights into the tangled rhetorics of rape.

Early rape reformers latched onto the notion of definition when defending “acquaintance rape” and “date rape” and identified their struggle as a quest to change the definition of “rape.” Cathy Roberts, an active rape reformer who focused on creating and maintaining rape crisis centers in London, found questions of definition to be at the heart of the conflict over “rape.”<sup>13</sup> Roberts suggests that women have changed the definition and understanding of rape: “If we [women] have not stopped rape, we have redefined it, we have faced it, and we have set up the structures to deal with it for ourselves.”<sup>14</sup> Roberts’ main concern is how rape is described and then tried in court. By making the word “rape” a legal term it is at the mercy of court definitions. Roberts was concerned that considering the word “rape” in such a cut and dry way (either one was guilty or not guilty) shifted the focus away from the larger societal implications of rape and suggested it was a “crime that needs to be dealt with” and then forgotten.<sup>15</sup> Feminists, in Roberts’ opinion, have changed the definition of “rape,” but need to work on changing the definition of “rapist” in the courts and general public.<sup>16</sup> To this end, she finds “acquaintance rape” and “date rape” to be helpful in “correcting” the “traditional” definition of “rape” by making it applicable to the majority of assaults in which women can be subject.

Unsurprisingly, opponents of the counterformulations “acquaintance rape” and “date rape” take issue with the feminist “redefinition” of “rape.” Norman Podhoretz, editor of

*Commentary Magazine* and noted neo-conservative, represents much of the criticism of “acquaintance rape” and “date rape” in his 1992 article “Rape and the Feminists”:

The definition of rape, which has in the past always been understood to mean the use of violence or the threat of it to force sex upon an unwilling woman, is now being broadened to include a whole range of sexual relations that have never before in all of human experience been regarded as rape.<sup>17</sup>

Podhoretz’s concern is that the new feminist definitions of “rape” have broadened “rape” “to include a whole range of sexual relations that have never before in all of human experience been regarded as rape” is an anxiety echoed by many opponents of “acquaintance rape” and “date rape.” Key in his complaint is the concern that feminist counterformulations of rape leave no room for the “art of seduction” because they include “verbal and psychological” coercion as well as threats with knives and guns:

[O]vercoming a woman’s resistance by “verbal and psychological” means has in the past been universally known as seduction, it will immediately become clear that we are in the presence of nothing less than a brazen campaign to reduce seduction as a form of rape, and more slyly to identify practically all men as rapist.”<sup>18</sup>

Podhoretz lumps all actions that could possibly change a woman’s mind in the category of seduction. From more mundane and harmless acts, like taking a woman out to dinner, to the more dangerous and calculating, like continued and relentless pressure for sex. Concerns like Podhoretz’s lead to several influential scholarly works — particularly among philosophers — about the legitimacy of the broadened definition of “rape.”

Podhoretz's concern over the "feminist definition of rape" was one of the exigencies for Keith Burgess-Jackson's article "Rape and Persuasive Definition."<sup>19</sup> In this article, Burgess-Jackson investigates what the word "rape" means and how the words "acquaintance rape" and "date rape" have changed that definition. Burgess-Jackson builds off Charles Leslie Stevenson's notion of a persuasive definition as "one which gives a new conceptual meaning to a familiar word without substantially changing its emotive meaning, and which is used with the conscious or unconscious purpose of changing, by this means, the direction of people's interest."<sup>20</sup> Persuasive definition is used to investigate the "meaning and logical status" of questions of rape and suggests a type of stipulative definition that aims at "altering the descriptive meaning of a term without altering its emotional meaning, thus directing the emotion toward a new object" and therefore attempting to "change people's opinions."<sup>21</sup>

The traditional sense of persuasive definitions involves a level of conscious manipulation on the part of the speaker to exploit emotions in order to convince people to identify with a particular opinion, idea, or ideology.<sup>22</sup> However, Burgess-Jackson's interrogation of the "acquaintance rape" and "date rape" suggests that the feminist counterformulations of rape are more than just an emotional appeal. While Burgess-Jackson agrees that persuasive definitions attach emotive meanings to language in order to meet an end goal, he does not find persuasive definition as pejorative as many of his philosophical counterparts.<sup>23</sup> Instead, Burgess-Jackson conceives persuasive definitions as a helpful strategy to clarify vague words or concepts — particularly when concepts have such long histories of ambiguity. Burgess-Jackson defines persuasive definition in the following way:

There is a person, T, who has a certain attitude (negative or positive) toward some object (construed broadly to include physical objects, persons, events, actions,

states of affairs, and other entities). Let us call this object ‘O,’ and let us suppose that T has a negative (unfavorable) attitude toward O (toward the object, not the name of the object). Let us also assume that T wishes to cause one or more other individuals to share this negative attitude towards O. One strategy T may adopt is to select a word (call it ‘W’) that has a negative emotive meaning, but that does *not* denote O. T defines ‘W’ in such a way that it *does* denote O; in other words, T assigns to ‘W’ an intension that has the effect of bringing O within its extension. If successful — and presumably not all [persuasive definitions] are successful — other people develop a negative attitude toward O. T has exploited, in the normatively neutral sense of taking advantage of, W’s negative emotive meaning.<sup>24</sup>

Using his reworked notion of persuasive definition, Burgess-Jackson examines “acquaintance rape” and “date rape” in an attempt to discover whether Podhoretz and other critics were correct in their belief that feminist counterformations expanded the definition of “rape” to “include a whole range of sexual relations that have never before in all of human experience been regarded as rape” and “redefine[d] seduction as a form of rape” in order to “more slyly to identify practically all men as rapists.”<sup>25</sup> Burgess-Jackson found the feminist counterformulations changed the definition of “rape,” but this redefinition was not malicious or illegitimate. On the contrary, he found that acquaintance rape” and “date rape” were necessary changes.

For Burgess-Jackson, persuasive definition is a strategy that is not always objectionable; instead, it depends on the “(re)definer’s purpose.”<sup>26</sup> He suggests that “acquaintance rape” and “date rape” do legitimate logical work by further examining the vague concept of rape.<sup>27</sup> When a concept is vague, persuasive definitions act as a means of characterizing “borderline cases” in

the “gray area of concepts,” not only making the persuasive definition legitimate but also providing a “precising definition” that assists in strengthening the definition of “rape.”<sup>28</sup> Although his argument is lucid and convincing for why differing and evolving definitions of “rape” are important to consider, Burgess-Jackson stops short of fully interrogating “acquaintance rape” and “date rape” in favor of spending more time evaluating the notion of persuasive definition. However, “Rape and Persuasive Definition” had a lasting influence on the way rape was examined within the academic community.

In response to Burgess-Jackson’s analysis of the definition of “rape,” philosopher Eric Reitan suggests “acquaintance rape” and “date rape” only characterize “borderline cases” of rape because these terms *created* those borderline cases.<sup>29</sup> Reitan believes that the definition of “rape” is what is at stake in the debate over the feminist counterformulations of “acquaintance rape” and “date rape,” but the definition can only be found within the “gray area of concept.”<sup>30</sup> Reitan’s approach to interrogating the definition of “rape” is to consider “rape” an essentially contested concept and suggests “acquaintance rape” and “date rape” *created* the “gray area” in which the “new” feminist definition of “rape” operates. Drawing on both Max Black’s conception of the vague concept<sup>31</sup> and W.B. Gallie’s essentially contested concept,<sup>32</sup> Reitan argues that the definition of “rape” (particularly in the case of date rape) can be best understood as a contested concept:

I wish to suggest that when we say that “rape” is a vague concept, we mean that it is an essentially contested concept; and once we see “rape” as essentially contested, we will see that fluctuations in the gray area of the concept — most notably expansions of that gray area — are to be expected, and may even be required, when new voices enter the moral discourse which the concept helps to

frame.<sup>33</sup>

Reitan conceives this gray area as a space for feminists to avoid excluding the law of violating the middle while still allowing a broader definition of “rape” to include sexual assaults that fell outside the narrow discourse of “stranger rape.”<sup>34</sup>

Since Reitan believes that the feminist counterformulations of rape created the gray space where the definition of “rape” can be contested, he limits his investigation to benefits and disadvantages of the “new” definitions of “acquaintance rape” and “date rape.” While Reitan’s general premise moves beyond Burgess-Jackson’s notion of persuasive definition, he stops short of fully exploring how they function as a cohesive rhetoric. I locate the limits of Reitan’s analysis in ignoring the definitional questions that are asked in the “gray area” of an essentially contested concept. Since he focuses predominantly on the contestability of the *charge* of rape, Reitan fails to acknowledge how the discourse of “stranger rape” makes no such allowances for the broadening of this “gray space.” As result, the “gray space” of the concept is narrow, constraining the meaning of feminist rhetorics of rape and the type of definitional questions that can be asked of “acquaintance rape” and “date rape.” Only questions of consent, the slipperiest and most challenging aspect of rape, are asked: Did the woman say no? Did the woman say yes? Was the woman capable of consent at the time of the assault? While consent certainly cannot be ignored in any interrogation of “rape,” it is not the only aspect that the “acquaintance rape” and “date rape” challenged. Without considering other questions included in the gray area of the concept these questions are closer to what Burgess-Jackson called the “precising definitions” that act as a way to clarify “borderline cases” not necessarily an essentially contested concept.<sup>35</sup>

Using definition to interrogate “acquaintance rape” and “date rape” is an excellent starting point for investigating how the feminist counterformulations of rape, as Lisa Cuklanz suggests,

changed the “reality of rape,” but is not enough to fully explain the rhetorical impact of these terms.<sup>36</sup> In the following section I will suggest that looking at “acquaintance rape” and “date rape” as an ironic synthesis of terms not only provides a more complete and coherent understanding of the feminist counterformulations of rape, but also builds on the definitional interrogations of “acquaintance rape” and “date rape.”

### **Ironic Synthesis of Terms**

Both Keith Burgess-Jackson and Eric Reitan offer cogent arguments for how the feminist counterformulations of “acquaintance rape” and “date rape” changed the *definition* of “rape,” but I suggest rhetoric offers more effective point of view in the effort of unraveling the tangled rhetorics surrounding “rape.” Of course, definition cannot be completely ignored; indeed, according to Chaim Perelman and Lucie Olbrechts-Tyteca questions of definitions operate as the foundations of arguments and suggest the “facts” and “truths” that are looking for agreement from the audience.<sup>37</sup> To control the definition of a word or concept is a powerful persuasive tool. Indeed, Edward Schiappa suggests that definitions — particularly “contested definitions” like those enveloped in the word “rape”— are “strategies of social influence and control” and insinuate “when it is ‘proper’ or ‘correct’ to use words in a particular way and, in doing so, they tell us what is in our world.”<sup>38</sup> When considered through that lens, it makes a certain amount of sense to interrogate “rape” along the lines of Burgess-Jackson and Reitan as persuasive or contested definitions. However, when these theories are pushed a bit further and considered in tandem with the rhetorical notion of irony, a more detailed picture emerges of the rhetorical dimensions of “acquaintance rape” and “date rape.”

In *A Grammar of Motives*, Kenneth Burke suggests “to tell what a thing is, you place it in terms of something else.”<sup>39</sup> Balancing contradiction and juxtaposition is a major focus of Burke’s theory of rhetoric. He articulates this point clearly by naming “irony” one of his four master tropes of human symbolic activity.<sup>40</sup> Unlike Burke’s other master tropes —metaphor, metonymy, and synecdoche — irony places a premium on a “properly formed” dialectic that takes into consideration “perspectives of perspectives” and “casuistries” that “appear” in “the unique cases of history.”<sup>41</sup> Irony is a balancing act that allows the “interaction of terms upon one another, to produce a *development* which uses all the terms. . . . They are all voices, or personalities, or positions, integrally affecting one another.”<sup>42</sup> Beyond the function of allowing terms to interact with each other in an attempt include the most voices; irony also performs a kinship function, by acknowledging a differing (or “enemy,” as Burke phrases it) opinion. The kinship function of irony recognizes that within every contradiction, there is a “kinship with the enemy” in even speaking about the same topic.<sup>43</sup>

Also key to understanding the rhetorical strategy of irony is the role context plays in all ironic discourse. Wayne Booth suggests that context is very often what provides the base perspective for an ironic construction.<sup>44</sup> To demonstrate this point, Booth gives the following example of a friend’s attempt to relay the information that it is raining outside. By contrasting two scenarios, one in which the friend walks in the door and states, “It’s raining” and the other where the friend walks in “dripping wet, stands for a moment looking dejected, and mourns, ‘It’s raining.’”<sup>45</sup> The first scenario, while rife with interpersonal context does not lend itself to an ironic construction and suggests that the friend is merely attempting to impart information. The second scenario has several ironic interpretations. Not only is it clear that it is raining outside

from the friend's appearance, but it is also clear from the fact that he "looks dejected" and "mourns" that he is not particularly happy at being stuck in the deluge.<sup>46</sup>

The context surrounding the statement "it's raining" completely changes the message because it offers a different perspective to consider while searching for the casuistries of the situation. Perspectives are opened and points of view are considered that are absent in a strictly informational setting. In the case of the feminist counterformulations of rape, irony allows one to interrogate the symbolic motivations behind the terms "acquaintance rape" and "date rape." A. Cheree Carlson observed a similar rhetorical strategy in the rhetoric of the American Female Moral Reform Society (AFMRA) in the 19<sup>th</sup> century. Carlson suggests that by using irony to shape protests of moral double standards between women and men the AFMRA's "ironic strategies" "create[d] a new perspective" in which to approach the issue of moral reform.<sup>47</sup> Similarly, the counterformulations "acquaintance rape" and "date rape" shifted the perspective of "rape" by pairing the existing definition of "rape" with a new perspective (acquaintance, date, and so on) highlighting both the internal contradictions embodied in the word "rape" and the inadequacy of the term to describe the most prevalent form of sexual violence.

This was no easy task. The rape reform movement was challenging perceptions of "rape" that had stood virtually unchallenged for centuries. In order to navigate the area between the traditional meaning of "rape" and the new feminist counterformations of "acquaintance rape" and "date rape" the movement attempted to strike a balance through what Burke terms "casuistic stretching," wherein "one introduces new principles while theoretically remain faithful to old principles."<sup>48</sup> Carlson explains that casuistic stretching is a strategy that "consists of removing terms of accepted or traditional contexts and moving them to a new territory."<sup>49</sup> Once situated in

a new context the terms take on a new meaning straddling two perspectives, borrowing the established meaning of the “old” context and applying it to the new.

Casuistic stretching is used most often in conjunction with the rhetorical method of “perspective by incongruity.”<sup>50</sup> Perspective by incongruity uses casuistic stretching to rationally “wrench” a term “loose” from its traditional context and “metaphorically apply it to a different category.”<sup>51</sup> Similar to the “methodology of the pun,” perspective by incongruity “links by tonal association words hitherto unlinked” in order to “transcend” the original context of the term and create a “new start.”<sup>52</sup> Burke insists that perspective by incongruity is not “negative smuggling, but positive cards-face-up-on-the-table.”<sup>53</sup> It is designed to “remoralize by accurately naming a situation already demoralized by inaccuracy.”<sup>54</sup> The rape reform movement certainly believed that “rape” was a term that needed to be remoralized and saved from inaccuracy. The tension created by the juxtaposition of the terms “date” or “acquaintance” and “rape” provided a productive space to change the perspective of “rape” in order to change the reality of rape.<sup>55</sup>

Through the rhetorical space created by casuistic stretching and perspective by incongruity, Carlson suggests that an ironic synthesis of terms to can be constructed to “clear the way for a change in consciousness.”<sup>56</sup> Ironic synthesis of terms is Burke’s ironic trope writ small. Within one phrase, “apparently contradictory elements” are linked to create “a working whole” that enables a new perspective to emerge.<sup>57</sup> This is exactly what feminist rhetorics of rape accomplished with the terms “acquaintance rape” and “date rape.” The ironic synthesis of the words “acquaintance” or “date” with the word “rape” was so jarring within the context of “rape myths” and the narrow discourse “stranger rape” that the new perspective presented by the “reform movement cleared the path for a new reality of rape. In the next section, I will give

several examples of this ironic synthesis of terms was used and how the ironic nature of the “acquaintance rape” and “date rape” was used to spark debate over the perception of “rape.”

### **Feminist Counterformulations of “Acquaintance Rape” and “Date Rape”**

At the very heart of the conflict over the feminist counterformulations of rape is the myth that rape is “just” sex. This can be specifically seen in the criticism that “acquaintance rape” and “date rape” called into question the role of seduction in romantic interaction between heterosexual couples. The “seduction argument” against “acquaintance rape” and “date rape” is seen in the comments from conservative critics like Norman Podhoretz, but also finds purchase in legal scholarship surrounding “rape.” For example, Richard Klein defends this notion by equating date rape to seduction and, thus, is not a rape at all: “Seduction is not rape. Seduction implies that a reluctant partner, even one who had previously said ‘No,’ had been lured to change her mind — voluntarily so. Even regretting it in the morning and thinking ‘how did I ever allow that to happen,’ does not transform the earlier seduction into rape.”<sup>58</sup> Klein’s argument highlights the perspective the feminist counterformulations of rape calls into questions — if it is a date can it be a rape? The feminist counterformulations of “acquaintance rape” and “date rape” attempted to answer to Klein’s question in the most public way possible. Through books, magazines, and newspaper articles all discussing “acquaintance rape” and “date rape” and proposing them as viable alternatives to the narrow discourse of “stranger rape.” In the following section, I will analyze several examples in which “acquaintance rape” and “date rape” were used in popular publications to demonstrate how their ironic construction succeed in describing sexual assaults previously ignored.

In *I Never Called it Rape*, Robin Warshaw addresses questions of seduction and the ironic construction of “acquaintance rape” and “date rape” directly and suggests that the term “date rape” is meant to draw attention to the myth that rape is something that only occurs between strangers:

The pairing of the word “date,” which conjures up an image of fun shared by two companions, with the word “rape,” which evokes the total loss of control by one person to the will of another, results in the creation of a new phrase that is nearly impossible for most people to comprehend.<sup>59</sup>

Warshaw explains the importance of the terms “acquaintance rape” and “date rape” play in battling rape myths and giving a name to an occurrence that so often went unnamed.<sup>60</sup> While Warshaw does not expand on why the combination of “date” and “rape” create a term that is “nearly impossible for most people to understand” she does suggest that the synthesis of these two seemingly contradicting terms create a new perspective of rape.

The irony of the feminist counterformulations of rape becomes apparent when these terms are seen functioning in popular publications. The most notable article appeared in *Ms.* Magazine in October 1985. Written by Ellen Sweet, the *Ms.* editor that supervised the *Ms.* Magazine Campus Project on Sexual Assault, “Date Rape: The Story of an Epidemic and Those Who Deny It” was the first extended discussion of date rape in popular publications and became central in Warshaw’s book *I Never called It Rape*.<sup>61</sup> The connecting thread of the article is the phrase “I can’t believe it happened to me” or “I can’t believe it is happening here” and identifies date rape as a “‘hidden’ campus phenomenon, unreported and unacknowledged by many college administrators, law enforcement personal, and students.”<sup>62</sup> Although *Ms.* published a shorter article, “Date Rape: A Campus Epidemic?” two years earlier, Sweet’s article was one of the first

extended publications on date rape and used primary findings from Mary Koss' study to discuss the prevalence of date rape on college campuses.

As one of the first extended discussions of date rape, Sweet's article sets the tone and structure for much of the conversations about date rape. For example, the article opens with an account of a date rape from a woman she calls "Yale graduate Judy."<sup>63</sup> Judy recounts a night where she met a man at a dorm party and when he offered to walk her back to her dorm, he kissed her.<sup>64</sup> Judy remembers that she "didn't resist" and that she "was excited," but when he "tried for more" she said "no."<sup>65</sup> Judy then remembers, "he grew completely silent" and then "pinned me down and ripped off my pants. I couldn't believe it was happening to me."<sup>66</sup> The opening narrative of a date rape scenario becomes almost formulaic in articles discussing date rape.

Sweet's article also demonstrates the importance of the terms "date rape" and "acquaintance rape." The denial of terms, for Sweet, amounts to a denial of the act itself. Judy's case, which opens the article, is used to demonstrate how colleges deny that a date rape has occurred by refusing to use the word in their policies.<sup>67</sup> At the time the article was published, any Yale student who wished to report a date rape had to bring a charge of sexual harassment against their attacker. Even if a perpetrator was found guilty of date rape before the Yale College Executive Committee and dismissed from the university, it would be for sexual harassment, not "rape," a much vaguer and less emotionally charged term. By not using the terms "acquaintance" or "date rape" to describe the attack it is akin to denying the attack ever happened.<sup>68</sup>

Outside of women's magazines "acquaintance rape" and "date rape" were also discussed as a "new" and confusing occurrence in newspapers. For example, the *New York Times* published several articles chronicling the use of the terms "acquaintance rape" and "date rape." In October

1985, the *New York Times* published an article titled, “A New Recognition of the Realities of ‘Date Rape,’” which outlined a “growing problem on college campuses” — date rape. The article describes “date rape” as an “incident” that “takes place when students are dating” and “women are forced to have sexual intercourse against their will.”<sup>69</sup> As one of the earlier articles written about “acquaintance rape” and “date rape” this article clearly demonstrates the ironic synthesis of the phrase “date rape” by breaking it down to its individual parts and delineating the inherent contradiction of the term:

Women are hesitant to think that someone they met in an English class or at fraternity party might assault them. . . . We tend to visualize rapist as wearing stocking masks and jumping out at women from dark alleys. . . . In the past these cases would not have come to light. . . . But today, more women are willing to recognize that the problem exists.

The article goes on to explain that date rape does not only refer to dating situations, but in all situations where the survivor knows her attacker.

Similar to Warshaw’s assertion that “date rape” is a difficult term for many people to grasp fully, the article states that, while “date rape” is not a new phenomenon, it is a new concept and needs to be thoroughly explained. The article focuses on breaking down the phrase “date rape” and supporting it with examples, anecdotes, and statistics in order to differentiate it from “stranger rape.” Central to this disassociation is the seduction myth, the belief that “when a woman says no, she really means yes,” and the notion of consent.<sup>70</sup> The overall structure of the article is one of explanation, illustration, and introduction to a “new” perspective of “rape.”

A little less than four years later, shortly after the publication of the *Ms. Magazine Project on Campus Assault*, the *New York Times* published another article exploring the “steady increase

in rapes” on college campuses.<sup>71</sup> “Acquaintance rape” and “date rape,” according to this article, are still in the process of being understood as a crime as well as a concept and is not always recognized as a felony by law enforcement, college administration, or students themselves.<sup>72</sup> Unlike the 1985 article, it does not suggest that date rape is a “new” type of rape; instead, this article takes the feminist counterformulations as a matter of fact and focuses on how to spread this knowledge on college campuses.<sup>73</sup> The article suggests beginning and continuing consciousness-raising efforts in order to introduce “acquaintance rape” and “date rape” to a wider audience, with the idea that this knowledge would stop the “violence,” “embarrassment,” “fear,” and “silence” that prevent the majority of rapes being reported.<sup>74</sup>

The fact that this January 1989 article does not question the validity or existence of “acquaintance rape” or “date rape” is a huge step forward for the feminist counterformulations of rape. Since the article is organized around how college campuses can spread the word about acquaintance rape in hopes of eradicating it all together, the synthesis of perspectives can be observed in the recommended “prevention strategies” that colleges can follow. These suggestions range from stricter policies and punishments for “rape involving an acquaintance” to mandatory education programs informing students about acquaintance rape.<sup>75</sup> It is the hope that by educating the college population about what “acquaintance rape” and “date rape” entails that the new perspective will supplant the old and work to change the reality of rape.

In August 1989 an article titled, “When the Rapist is Not a Stranger,” by Daniel Goleman appeared, “acquaintance rape” and “date rape” are described as an attempt to name the “sexual double standard” that “nice women don’t say yes, and real men don’t listen to no.”<sup>76</sup> Since the word “rape” has long been understood to describe an assault that happens between strangers, the synthesis of — in the case of this particular article — “acquaintance” and “rape” opens up

different perspective on sex and male/female relations.<sup>77</sup> “Acquaintance rape,” according to the article, goes a long way to explaining the disparity between the number of women who report they have been raped at least once in their life and men who state that they would never rape a woman.<sup>78</sup>

Although the article does not name it as such, the “seduction” myth is the sexual “double standard” that “acquaintance rape” is challenging. Quoting a study done by Dr. Neil Malamuth from University of California at Los Angeles, the article represents the seduction myth in the following matter:

When men are asked if there is any likelihood they would force a woman to have sex against her will if they could get away with it, about half say they would. . . .

But if you ask them if they would *rape* a woman if they knew they could get away with it, only about 15 percent say they would (emphasis mine).<sup>79</sup>

The men who changed their answers because of the addition of the word “rape” in the question clearly do not realize that force (whether that force is physical, emotional, or psychological) equates rape. However, the term “acquaintance rape” brings together two perspectives that have often been considered worlds apart: dating and rape. By bringing this new and, according to the article, difficult perspective to the table, it is possible that rape between acquaintances could be avoided in the future.<sup>80</sup>

### **Using the Words: Feminist Rhetorics of Rape**

“Acquaintance rape” and “date rape” were more than just a means to describe sexual assaults that were previously unable to be described as “rape;” they were an ironic synthesis of terms that created a feminist argument for broadening the definition of “rape.” Through books,

magazines, and newspapers the feminist counterformulations of “acquaintance rape” and “date rape” became a legitimate (if controversial) way to talk about rape and suggested a perspective that was often pushed aside in favor of the easier “rape myths” that were used for generations. The counterformulations generated countless questions concerning gender roles, relationships, and what constitutes a sexual assault. These questions led to debates, reform, and acknowledgement that rape does not only occur between strangers in dark alleys.

However, the counterformulations of “acquaintance rape” and “date rape” were not universally accepted. As I will address in the next chapter, the postfeminist discourse of rape also utilizes ironic synthesis of terms to contradict the feminist counterformulations of “acquaintance rape” and “date rape.” While feminist rhetorics of rape attempt to disprove the very narrow worldview provided by “rape myths,” the postfeminist discourse of rape suggests a very specific way of knowing the world by creating *postfeminist* counterformulations of rape that breathe new life into “rape myths.

## CHAPTER 4

### AFTER THE WORDS: THE POSTFEMINIST DISCOURSE OF RAPE

This is what happened: Alicia had asked another student, Kevin, to be her “platonic date” at a college sorority formal. The two of them went out for dinner first with friends and then to the dance. She remembers that they got drunk but not what she would call sloppy wasted.

After the dance, they went to Kevin’s room and, eventually, started making out. She told him flat out that she didn’t want it to proceed to sex, and he said okay. But in a few minutes, he had pushed her down on the couch and positioned himself on top of her.

“No. Stop,” she said softly — too softly, she later told herself. When he ignored her and entered her anyway, she tensed up and tried to go numb until it was over. He fell asleep afterward, and she left for her dorm, “having this dirty feeling of not knowing what to do or who to tell or whether it was my fault.” While it felt like rape to her — she had not wanted to have sex with Kevin — she was not sure if that’s what anyone else would call it.<sup>1</sup>

The above passage is the lead vignette in an article published in the popular women’s magazine *Cosmopolitan* in September 2007. The article, written by *Washington Post* reporter Laura Sessions Stepp and entitled “A New Kind of Date Rape,” recounts the experiences of several college-aged females with “gray rape”: “sex that falls somewhere between consent and denial and is even more confusing than date rape because often both parties are unsure of who wanted what.”<sup>2</sup> The article opens by painting a picture of present-day Alicia as a young, successful woman with a high-paying consultant job, a high-rise condominium, and a boyfriend “her friends envy.” However, Alicia is “haunted by the memory of something that occurred one night years ago — a sexual encounter and an unanswered question: *Was I raped?*”<sup>3</sup>

In the previous chapters, I have examined how the rape reform movement and feminist counterformulations of “acquaintance rape” and “date rape” shifted the perception of rape from the narrow discourse of “stranger rape” to broader feminist rhetorics of rape. This was achieved

through ironic synthesis of terms, casuistic stretching, and perspective by incongruity. Through these strategies, feminist rhetorics of rape created and disseminated terms that were both familiar and uncomfortable, leading to the success of the terms as a legitimate alternative to the discourse of “stranger rape.” Essential to the success of the feminist counterformulations of rape was the ability of “acquaintance rape” and “date rape” to acknowledge the “traditional” perspective of “rape” (as is presented in the discourse of “stranger rape”) while simultaneously suggesting a broader perspective of rape that included sexual assaults that had been ignored for centuries.

However, feminist rhetorics of rape were far from universally accepted. Commentary from critics like Norman Podhoretz provide some of the more expected condemnation of feminist rhetorics of rape, but more recently a different discourse has emerged that contradicts “acquaintance rape” and “date rape” in a much subtler way. As the passage above demonstrates, the term “gray rape” is an example of how rape — more specifically date rape — is represented as a “new” issue. The prevalence of the “nice guy” rapist<sup>4</sup> and questioning of the woman’s “fault” in sexual assaults is nothing unusual — it is what the singular discourse of “stranger rape” expounded for generations — but the emphasis the discourse of “gray rape” places on the *newness* of the type of rape Alicia experienced makes “gray rape” more than just a simple iteration of rape myths. Alicia’s experience is the quintessential description of date rape: she agreed to go out with a male friend and consented to one level of intimacy with him. When pushed to proceed to intercourse she made it clear that she did not want to have sex with him, but was ignored. However, the article presents this situation as something completely different from date rape.

Alicia clearly did not consent to have sex with Kevin. She said no, asked him to stop, and *felt* as if she had been raped. Yet the article states that Alicia’s assault falls into a “gray area”

between consent and denial. In this chapter, I will look at the discourse of “gray rape” as an example of what I will call “the postfeminist discourse of rape” and how this discourse may be another shift in the perception of rape. The postfeminist discourse of rape is more than just a reiteration of rape myths or feminist backlash; it suggests a very particular way of participating in the world. Central to this argument is “gray rape” as a postfeminist counterformulation of “date rape.” I will first introduce some of the most pertinent aspects of postfeminist theory and the notion of gray rape. Then I will discuss how the rhetorical strategies employed by the postfeminist discourse of rape, especially as manifested in “gray rape,” mirror those used by the rape reform movement. Finally, I will suggest how the postfeminist discourse of rape is a damaging shift from feminist rhetorics of rape and, if left unchecked, is detrimental to serious public discussion about rape.

### **The Postfeminist Discourse of Rape**

Much like the phrase “feminist rhetorics of rape,” the phrase “the postfeminist discourse of rape” was not chosen idly. The designation represents the singularity of the postfeminist discourse of rape. The inclusion of the article “the” and the use of the word “discourse” instead of “rhetoric” are conscious word choices. This is not because I want to suggest an essentialist discourse (the postfeminist discourse of rape can and does take many forms), but because when compared to feminist rhetorics of rape, which encompass a variety of standpoints and discourses and attempt to acknowledge them all, the postfeminist discourse of rape takes into consideration only *one* standpoint. The exclusion and systematic disregard for other possibilities and explanations makes the postfeminist discourse of rape a singular discourse that creates a persuasive argument for how women should see, act, and participate in the world.

Postfeminism is a difficult phenomenon to pin down. Often it is confused with feminist backlash or general denial of feminist principles. However, postfeminism is more a subtle response to feminism and feminist gains and often masquerades as “new” type feminism. As described in Angela McRobbie’s foundational article, “Post-Feminism and Popular Culture,” postfeminism is:

An active process by which feminist gains of the 1970s and 80s come to be undermined. It proposes that through an array of mechanizations, elements of contemporary popular culture are perniciously effective in regard to this undoing of feminism, while simultaneously appearing to be engaging in a well-informed and even well-intended response to feminism.<sup>5</sup>

McRobbie’s thesis complicates the backlash theory proposed by Susan Faludi, which suggests that criticism of feminism can be seen in explicit, conservative discourse that blames feminism for all of the issues “modern women” face. Backlash consists of arguments that do not question the goals of feminism or ask if they have been tried or realized, but disregard feminism as a “failed experiment.”<sup>6</sup> Postfeminism, for the most part, draws positively on feminism “in order to install a whole repertoire of new meanings which emphasise that it is no longer needed.”<sup>7</sup>

McRobbie believes this is tension a result of a “double entanglement” of neo-conservative values in relation “to gender, sexuality and family life” and the liberalization of “choice and diversity in domestic, sexual and kinship relations.”<sup>8</sup> The result of this double entanglement is the slow dismantling of feminism in popular culture that seems, on the surface, to be an intelligent, reasoned response to feminist gains and the creation of “new” feminist meanings for a new era.<sup>9</sup>

Bonnie Dow locates a similar discourse at work in American television sitcoms in the 1970s and 80s.<sup>10</sup> Dow finds the roots for postfeminism in American feminist thinkers as well as

within popular culture. Most notably, Dow locates the postfeminist watershed moment in Betty Friedan's 1981 book *The Second Stage*. In *The Second Stage* Friedan suggests that feminism ignores the needs of the family, differences between men and women, and the power of women's traditional roles.<sup>11</sup> Friedan does not completely disavow feminism in *The Second Stage*; instead, she suggests that the "first wave" of feminism got a lot right, but has since progressed in the wrong direction.<sup>12</sup> Since Friedan is the author of *The Feminine Mystique*, the book that many credit for igniting the contemporary feminist movement, her critique garnered significant attention.<sup>13</sup> In particular, Friedan thought that feminists were "wasting energy" on "sexual issues" when women's economic survival is at stake."<sup>14</sup> Feminism should be focusing on family issues, "powerful" traditional feminine roles (like motherhood), and freeing women from the "new *feminist* mystique" of the "superwoman" who can "have it all."<sup>15</sup> Friedan's final suggestion is the "second stage" of feminism should stop focusing on issues of sexual equality (pornography, sexual harassment, rape, same-sex rights) and concentrate on the "human sex" and "restructuring institutions" in order to create a "life-sustaining, self-nourishing" household that will raise strong children.<sup>16</sup> Friedan's argument does not reject the work done by the "first stage" of feminism, but suggests that it is no longer applicable to today's society.

Dow approaches postfeminist discourse by investigating television shows like *Murphy Brown*, *Designing Women*, and *Cagney and Lacey*. Dow's treatment of *Murphy Brown* clearly demonstrates the key narrative that is found in all postfeminist discourse: "The personal costs of professional success, the conflicts between work and motherhood, and the emphasis on the 'choices' women make."<sup>17</sup> Postfeminist discourse always deems a woman's life incomplete without the prospect and realization of a heterosexual marriage that produces offspring. The postfeminist discourse of rape follows this line of reasoning, focusing on how the choices

women make while they are young (most likely while attending college) have the ability to negatively affect their future prospects for a “normal” relationship, children, and lasting happiness.

Recently, McRobbie has updated her argument by suggesting that postfeminism has become so influential it has almost replaced feminism in popular culture. Furthermore, postfeminism has become a tool for Western governments to disseminate freedom around the world. McRobbie’s updated thesis is long, but is worth quoting in length here, as the postfeminist discourse of rape is very much a part of this view of postfeminism:

Elements of feminism have been taken into account, and have been absolutely incorporated into political and institutional life. Drawing on a vocabulary that includes words like “empowerment” and “choice,” these elements are then converted into a much more individualistic discourse, and they are deployed in this new guise, particularly in media and popular culture, but also by agencies of the state, as a kind of substitute for feminism. These new and seemingly “modern” ideas about women and especially about young women are then disseminated more aggressively, so as to ensure that a new women’s movement will not re-emerge. “Feminism” is instrumentalised, it is brought forward and claimed by Western governments, as a signal to the rest of the world that this is a key part of what freedom now means. Freedom is revitalized and brought up-to-date with this *faux*-feminism. The boundaries between West and the rest can, as a result, be more specifically coded in terms of gender, and the granting of sexual freedoms.<sup>18</sup>

According to McRobbie this “faux-feminist” discourse actively seeks “the consent and participation of young women” at the ground level in a “multiplicity of ways that defy the notion of a centralized power in charge of the demise of feminism.”<sup>19</sup> By making feminism something that is old-fashioned, no longer necessary and something to keep quiet about, postfeminist discourse “rewards” women who participate in the postfeminist ideology by promising an independent lifestyle that is based on choice. As a result, postfeminist discourse eclipses feminist rhetorics by appropriating words like “empowerment” and “choice” in order to provide “new” meanings for what it is to be a feminist.

Postfeminism is the larger frame in which the postfeminist discourse of rape operates. The fundamentals of postfeminism are used to create a new counterformulation of rape that suggests new meanings for the feminist counterformulation of “date rape.” The postfeminist counterformulation of “gray rape” demonstrates much of the “faux-feminism” that McRobbie identifies as the heart of postfeminism and suggests an alternate meaning of “date rape” that seems to be a well-reasoned, rational response to an old-fashioned feminist idea that is no longer applicable for modern women. In reality, however, “gray rape” is a return to the rape myths that held normative control over rhetorics of rape prior to the emergence of the rape reform movement and the terms “acquaintance rape” and “date rape.”

The roots of the postfeminist discourse of rape can be seen in Katie Roiphe’s 1994 book *The Morning After: Sex, Fear and Feminism*.<sup>20</sup> The book, hailed as “brave” and “courageous” on the front page of the *New York Times Book Review*, argued that feminist rhetorics of rape portray women as a weak-willed gender void of sexual desire.<sup>21</sup> As the title of her book suggests, she argues that “date rape” does not exist; instead, the phenomenon that feminists named “date rape” is nothing more than the post-coital regret women have after “bad sex.”<sup>22</sup> “Bad sex” can consist

of intercourse under the influence of drugs or alcohol, verbal coercion, or sex with a man the woman knows she should have avoided. In all of these cases, Roiphe believes women are complicit assault and therefore cannot bring a charge of rape.<sup>23</sup>

Roiphe's argument is based on her own experience as a college student and her observations of the lifestyle choices of her friends.<sup>24</sup> The lifestyle Roiphe describes in her book is a precursor of the "hookup culture" that became central in the postfeminist counterformulation of "gray rape." A woman cannot be raped, Roiphe argues, if she chooses take part in "the parties, dark rooms, beer, and cigarettes" of college life.<sup>25</sup> Roiphe believes that women, even inexperienced freshmen, know the dangers of mixing alcohol and sex and should not be surprised if the results are regrettable.<sup>26</sup> As such, Roiphe suggests that "date rape" is nothing more than a "trump card" feminism plays in order to "block analysis" of their arguments and create a climate of fear around sex.<sup>27</sup> Before "date rape" and "acquaintance rape," Roiphe argues, women were warned to "stay away from empty rooms and dimly lit streets," but now under the tutelage of "rape-crisis feminists" (her name for the rape reform movement) women are instructed to suspect every man as having the capability for rape.<sup>28</sup> According to Roiphe, this climate of fear encourages women to use the word "rape" as a "catchall expression" for "everything that is unpleasant and disturbing about relations between the sexes" including regretting sex that — while unfortunate — does not constitute rape.<sup>29</sup>

Beyond the climate of fear created by feminist rhetorics of rape, Roiphe accuses feminists of stripping women of their agency. In particular, Roiphe attacks Robin Warshaw's *I Never Called it Rape* and the *Ms. Magazine Project on Campus Assault* for propagating the notion that women are constantly at the mercy of men, words, and alcohol.<sup>30</sup> Roiphe insists that rape under the influence of alcohol or drugs — even if the woman was not aware of what she consuming —

is not rape because the woman chose to put herself in that situation. In perhaps her most quoted assertion and one that becomes the very foundation of the postfeminist discourse of rape, Roiphe insists that “date rape” is an opinion and not a crime:

[W]hat is being called rape is not a clear-cut issue of common sense. Whether or not one in four college women has been raped, then, is a matter of opinion, not a matter of mathematical fact. Everyone agrees that rape is a terrible thing, but we don’t agree on what rape is. There is a *gray area in which someone’s rape may be another person’s bad night*. (Emphasis mine)<sup>31</sup>

The observation that rape is a vague or *gray* concept is not new; both Keith Burgess-Jackson and Eric Reitan locate much of the debate over “acquaintance rape” and “date rape” in the ambiguous nature of the term, but they see this area as a space where constructive arguments about the meaning and possible broadening of these definitions can exist. Roiphe’s insistence that this gray area is a place where rapes are invented, not debated, forms the foundation for the postfeminist counterformulation of “gray rape.”

### **The Postfeminist Counterformulation of “Gray Rape”**

Unlike the larger postfeminist discourse of rape, the postfeminist counterformulation of “gray rape” is an easy concept to pin down. Popularized in Laura Sessions Stepp’s 2007 *Cosmopolitan* article, “A New Kind of Date Rape,” “gray rape” is defined as “sex that falls somewhere between consent and denial and is even more confusing than date rape because often both parties are unsure of who wanted what.”<sup>32</sup> Much like the feminist counterformulation of “date rape” gave name and consequence to sexual assaults that were previously ignored, “gray rape” provides a clever moniker for Roiphe’s assertion that date rape is little more than a

difference of opinions. However, unlike Roiphe's argument, the counterformulation of "gray rape" does not deny the existence of acquaintance rape or date rape, but suggests that the terms are no longer sufficient and need to be updated.

The result of the postfeminist counterformulation of "gray rape" is a "new" category of assaults that do not fit within either "traditional" discourse of "stranger rape" or feminist counterformulations of "acquaintance rape" and "date rape." However, as is seen the passage that opens this chapter, "gray rape" is not much different than "date rape." Alicia knew Kevin, counted him among her friends and clearly did not consent to have sex with him: she said no, asked him to stop, and *felt* as if she had been raped. Yet, the *Cosmopolitan* article frames Alicia's assault as something *other* than date rape, an encounter falls in a "gray area" between consent and denial and, again, suggests that this is something "new."

Stepp's article solidifies the rhetorical foundation for the postfeminist discourse of rape by naming the "gray area" and giving examples. The article is framed as a cautionary tale for women who participate in the "hookup culture," which serves as an entrance into the investigation of "gray rape." In the article, the "hookup culture" is described as a conflicted space where women are encouraged to participate in "lots of partying and flirting" accompanied by "plenty of alcohol, and ironically, the idea that women can be just as bold and adventurous about sex as men are."<sup>33</sup> The notion that women who participate in the "hookup culture" are doing so ironically can be illuminated by Stepp's book — which was published eight months prior to the *Cosmopolitan* article — *Unhooked: How Young Women Pursue Sex, Delay Love and Lose Both*. In the book, Stepp follows three high-school girls and six college women for a year, chronicling their sexual behavior and attitudes toward sex. All nine women participated in the "hookup culture" that Stepp describes as encouraging women and men to form relationships that

“carry no commitment.” Young women “hookup with the understanding that however far they go sexually, neither should become romantically involved in any serious way. . . . Maybe they got badly burned in a relationship, or find themselves swamped with term papers and final exams. The freedom to unhook from someone — ostensibly without repercussions — gives them maximum flexibility.”<sup>34</sup> For Stepp, hooking up is an improper “way of thinking about relationships, period” and teaches women to care more about their “law degree” than “their ability to conceive children.”<sup>35</sup>

While feminism is never mentioned in the *Cosmopolitan* article, Stepp does explicitly blame feminism for the “hookup culture” in her book:

Feminism is undeniably a driving force behind the phenomenon of hooking up.

What [feminism] should say about sex and relationships has been a matter of debate since the birth of the modern movement in the 1960s and 1970s. Women’s liberation back then meant, among many other things, being free to have a sexual appetite and act on it with as much abandon as women assumed men did. Sex — in or outside a relationship — was a natural and healthy as breast milk.<sup>36</sup>

Of course, Stepp glosses over most of the goals of the women’s liberation (such as equal pay for equal work) with the phrase, “among many other things,” but this identification of feminism as the root of the “hookup culture” lays the foundation for the postfeminist discourse of rape. Stepp’s apparent disapproval of prioritizing career over family and disdain for relationships that can be “unhooked” at a moment’s notice paints a nostalgic picture of “traditional” feminine roles like motherhood. The importance of the choices women make regarding sex early in life are essential her future happiness, which is more likely, in her opinion, to be found in “their ability to conceive children” than a “law degree.”

The danger of these choice can be seen in the description of present-day Alicia as a successful career woman who has finally settled down with a boyfriend (instead of “hooking up” with “platonic dates”) but is still haunted by *her* mistakes (not Kevin’s mistakes) while participating in the “hookup culture” in college. Alicia, even in her supposedly well-adjusted and happy life, believes that her sexual assault fell in a “gray area” and her on some level her fault. When reading the story of Alicia —as well as that of the other women in the article — what is the most striking is that all the women said “no” before, during, and after the assault. These assaults *should* be considered date rape, but are not because the women were violating the rules of traditional femininity by participating in the “hookup culture.” Their easy attitude toward sex, dating, and the reluctance to label relationships creates the “grayness” of “gray rape” because there are no clear “rules” for men and women to follow.

“Gray rape” and its connection to the “hookup culture” did not just stay within the pages of *Cosmopolitan*. Stepp continues to write and discuss “gray rape” and other sexual and relational issues on the website SexReally.com.<sup>37</sup> Some of the most notable of her contributions to the website, which is maintained by the not-for-profit, non-partisan organization *National Campaign to Prevent Teen Pregnancy*, are her podcasts that reiterate the postfeminist view on sex and relationships that undergird her *Cosmopolitan* article and book. One podcast, “Starting a Relationship with Sex: Running the Bases Backwards,” continues her attack on the “hookup culture” by suggesting that women are going about relationships the wrong way:

We’ve all heard the baseball metaphors for sex, like “made it to second,” or “hit a home run.” Years ago, as a girl ran the bases, she anticipated a certain progression in the relationship. (At least, some girls did.) Guys might try to skip a base or two and it was up to her to foil their often-clumsy attempts.

Well, that scenario is not so common anymore.... These days, sex frequently happens before anything resembling a relationship. Is this a good thing? A bad thing?<sup>38</sup>

Given Stepp's previous work on the topic it is not hard to guess her opinion of "taking off from home base."<sup>39</sup> The lack of traditional rules in the "hookup culture" not only leads to confusion in dating relationships, but can also lead to situations like "gray rape."<sup>40</sup>

"Gray rape" has also been the source of much controversy on college campuses. Since the postfeminist discourse of rape tends to focus on college students and their lifestyles, it is not surprising that the term found purchase and debate in college newspapers. One of the earliest mentions of the "gray rape" in college newspapers was at George Washington University in 2005. The article, "A Gray Area: Students Encounter Gray Rape," investigated the "new" phenomenon of gray rape, which is described as sexual encounters that could be defined as rape, but usually are not.<sup>41</sup> The article provides the story of "Nicole" as an example of "gray rape": "One night at a party [Nicole] was raped and forced to perform oral sex on multiple young men. She said she was so drunk that she fell in and out of consciousness and was unable to defend herself or say 'no.' She remembers trying in vain to throw punches as the men climbed on top of her."<sup>42</sup> The article goes on to distinguish the difference between "Nicole's" "gray rape" from "date rape" in the consensual activity that happened *before* the assault.<sup>43</sup> Like most examples of "gray rape," "Nicole's" assault shares many, if not all, of the traits of "date rape," but because "Nicole" participated in the "hookup culture" the situation has been identified as something else.

Another recent example of the postfeminist discourse of rape can be found in

American University's student newspaper, *The Eagle*. Written by Alex Knepper, the article rapidly became a national news story and hotly debated topic in the blogosphere.<sup>44</sup> While the term "gray rape" is not used in the article, Knepper's column clearly agrees with the notion of rape that is embodied in the postfeminist counterformulation of "gray rape":

Let's get this straight: any woman who heads to an EI [an unrecognized fraternity on American University's campus] party as an anonymous onlooker, drinks five cups of the jungle juice, and walks back to a boy's room with him is indicating that she wants sex, OK? To cry "date rape" after you sober up the next morning and regret the incident is the equivalent of pulling a gun to someone's head and then later claiming that you didn't ever actually intend to pull the trigger.

"Date rape" is an incoherent concept. There's rape and there's not-rape, and we need a line of demarcation. It's not clear enough to merely speak of consent, because the lines of consent in sex — especially anonymous sex — can become very blurry. If that bothers you, then stick with Pat Robertson and his brigade of anti-sex cavemen! Don't jump into the sexual arena if you can't handle the volatility of its practice!<sup>45</sup>

Once again, the patterns of the postfeminist discourse of rape can be seen in the excerpt above: "date rape" is not rape if the woman chose to be in a situation where sex (read: "hooking up") is common, particularly if there is alcohol involved. Knepper also echoes Roiphe's argument quite a bit when suggesting that the feminist counterformulation "date rape" is an "incoherent concept" that only denies men and women agency.<sup>46</sup> Knepper also explicitly blames feminism, and the term "date rape," for creating an improbable world that "envisions a bedroom" as a space

where “two amorphous, gender-neutral blobs ask each other ‘Is this OK with you?’ before daring to move their lips any lower on the other’s body.”<sup>47</sup> Knepper does not deny feminism its place on campuses; on the contrary, he considers himself a feminist, but perceives the rape reform movement as a radical wing of feminism that has gotten out of hand.

The feminist counterformulations of “acquaintance rape” and “date rape” and postfeminist counterformulation of “gray rape” use similar strategies to construct their arguments. However, unlike feminist rhetorics of rape, which made a point of broadening the meaning of the word “rape” to include historically ignored sexual assaults, the postfeminist discourse of rape once again narrows the meaning of “rape.” The postfeminist counterformulation of “gray rape” claims to be a more reasoned approach toward the vagueness of “rape” and paints terms “acquaintance rape” and “date rape” as an over-emotional response to sexual assaults that needs to be reined in. The strategies used to go about shifting from “acquaintance rape” and “date rape” to “gray rape” are similar to the ironic synthesis of terms the rape reform movement used in order to create and disseminate feminist rhetorics of rape. In the next section, I discuss the similarities of these strategies and suggest what this means for the future of rhetorics of rape.

### **Ironic Synthesis of Terms in the Postfeminist Counterformulation of “Gray Rape”**

As discussed in the previous chapter, ironic synthesis of terms is a strategy that employs irony to shape new perspectives.<sup>48</sup> The rape reform movement used ironic synthesis of terms to broaden the scope of rape beyond the discourse of “stranger rape” to include sexual assaults that had been previously ignored or thought to be “bad sex.” The postfeminist counterformulation of “gray rape” also utilizes the strategy of ironic synthesis, but instead of attempting to stretch the

meaning of “stranger rape,” “gray rape” shrinks the meaning of “date rape” back to a narrow perspective of rape that disregards many of the meanings achieved through feminist rhetorics of rape. The postfeminist discourse of “gray rape” is not simply a reiteration of the discourses that compose “stranger rape”; instead, it utilizes rape myths to create a different, although no less restrictive, discourse that takes feminist counterformulations of rape as a true, but no longer applicable in the current overly sexualized environment. “Gray rape” is a “new” phenomenon that requires a new term to fully capture the incident.

The postfeminist discourse of gray rape accomplishes this ironic synthesis in several ways. Most obviously is the similar construction of the “gray rape” and “date rape.” Besides being the structurally similar, the terms have similar meanings. The vagueness (or “grayness”) of rape is something that has been the focus of debates over “rape” for generations. It is within this “gray area” that Eric Reitan locates the essential contestability of rape, Keith Burgess-Jackson finds the precisifying definitions of rape, and the rape reform movement found the space to include instances of “acquaintance rape” and “date rape” in the perception of rape.<sup>49</sup> The rape reform movement used the inherent vagueness of “rape” to spark debate about the word and through irony broaden the types of sexual assaults that could be described as rape.

The feminist counterformulations of “acquaintance rape” and “date rape” used irony to suggest that the discourse of “stranger rape” was too restrictive to be an accurate description of instances of rape. The same strategy can be observed in the postfeminist discourse of rape. The postfeminist counterformulation of “gray rape” draws on the feminist counterformulations of “acquaintance rape” and “date rape” to ironically suggest that the terms are too broad to accurately describe sex in the current collegiate context. “Gray rape” manipulates the vagueness of the word “rape” in such a way that to narrow the scope of “acquaintance rape” and “date rape”

while simultaneously acknowledging these types of assault still exist. Under the postfeminist counterformulation of “gray rape,” “acquaintance rape” and “date rape” become the inadequate terms for describing rape because they are *too* broad and describe sexual encounters that regrettable, but consensual.

One may find echoes of Podhoretz and rape myths in the postfeminist counterformulation “gray rape.” Both “gray rape” and “date rape” also pivot on the myth that rape is “just” sex. In the case of rape reform movement, the counterformulations of “acquaintance rape” and “date rape” were used to counter this myth and suggest that rape is never “just” anything. This myth is also at the center of the postfeminist counterformulation of “gray rape.” “Gray rape” implies that the woman is complicit in the rape because she is participating in the “hookup culture” and “allowing” herself to be in a place where a sexual assault is probable. Unlike pre-rape reform movement rhetoric, the postfeminist counterformulation of “gray rape” does not look at these instances as something *other* than rape, but as a different (and “new”) type of rape that is unique to this generation’s college-aged students. By not disavowing acquaintance rape and date rape as legitimate forms of sexual assault, the postfeminist counterformulation of “gray rape” portrays “acquaintance rape” and “date rape” in a similar fashion as the rape reform movement described “stranger rape”: As a legitimate and dangerous occurrence that should not be ignored, but is no longer a productive way to look at all instances of rape.

For example, in the original *Cosmopolitan* “gray rape” article, Stepp very clearly lays out the three conditions that make gray rape “gray”: the woman willingly participated in the “hookup culture,” consumed alcohol, and was actively participating in the hookup until the point of intercourse.<sup>50</sup> Alicia’s narrative is followed by the story of Laura, a Cornell University graduate, who allegedly experienced gray rape in her sophomore year of college.<sup>51</sup> The vignette is

supposed to demonstrate how difficult it is for women to recognize and talk about gray rape: “In gray-rape cases, it’s even easier than in more clear-cut date rapes for women to blame themselves: ‘If only I hadn’t gone to that party, this wouldn’t have happened’ or ‘If I hadn’t worn such a revealing top and come on to that hot guy. . . .’”<sup>52</sup> This is the only time in the article that “gray rape” is placed in direct opposition to “date rape” and the distinction between the two are made to seem concrete when it is nothing of the sort. Self-blame and shame are well documented psychological consequences of any rape — stranger, date, marital, or otherwise<sup>53</sup> — but this paragraph assumes that only gray rape situations, in comparison to “clear-cut date rapes,” cause the victim to blame their own actions as the reasons for the rape. The suggestion that date rapes are “clear-cut” and easy to understand further separates the terms “gray rape” and “date rape,” shrinking the meaning of date rape to a more singular discourse.

Claiming that “gray rape” differs from “clear-cut date rapes” also reinforces several of rape myths. The postfeminist counterformulation of “gray rape,” places a strong emphasis on “improper” female attitudes toward sex, invoking the “virgin”/“vamp” dichotomy that was discussed in Chapter One. Women who participate in the “hookup culture” are choosing to ignore the heteronormative roles of traditional femininity, thereby blurring the boundaries of acceptable sexual behavior between women and men. Stepp’s exploration of the “hookup culture” on college campuses explicitly draws parallels to the feminist ideas; most notably the notion that women can have sex like men.<sup>54</sup> Early in the article, the counterfactual ideal of a “safer, simpler time” is placed in direct opposition to the “complicated and dangerous” confusion of femininity and masculinity that the “hookup culture” perpetuates:

A generation ago, it was easier for men and women to understand what

constituted rape because the social rules were clearer. Men were supposed to be the ones coming on to women, and women were said to be looking for relationships, not casual sex.

But those boundaries and rules have been loosening up for decades, and now lots of women feel it's perfectly okay to go out looking for a hookup or to be the aggressor, which may turn out fine for them — unless the signals get mixed or misread.<sup>55</sup>

In this moment of the article, feminism is placed in direct opposition to traditional conceptions of masculinity and femininity. The emphasis placed on the “decades” of loosening boundaries, the “clearer” rules that dictated social situations, and the distrust of women who display masculine qualities like aggression in romantic situations suggests feminism has *caused* the “hookup culture” that is to blame for this “new kind of rape.” The image of the “aggressive” woman in the second narrative insinuates that rape is only rape if the woman, at the very least, abides by tradition norms of femininity or, at the very most, is a virgin. This false dilemma is not new and is the very argument the rape reform movement attempted to challenge by creating the counterformulations “acquaintance rape” and “date rape.”

While the postfeminist counterformulation of “gray rape” purports to describe a “new” kind of rape that cannot be accurately described as “acquaintance rape” and “date rape” this is simply not the case. “Gray rape” in all of its iterations is a discourse that draws on the broad perspective of feminist rhetorics of rape in order to suggest its time has passed. By implying “acquaintance rape” and “date rape” are too broad to describe some of the rape that occur on college campuses, “gray rape” calls all sexual assaults between acquaintances into question. This

allow even “clear-cut” date rapes like Alicia’s to once again fall prey to the rape myths that “acquaintance rape” and “date rape” challenged. The postfeminist counterformulation of “gray rape” places all of the blame on women, reifying the most pervasive rape myth that rape is “just” sex and that women can avoid such a thing if they follow the correct “social rules” of a generation ago.

### **After the Words: The Implications of the Postfeminist Discourse of Rape for Feminist Rhetorics of Rape**

The term “gray rape” drew a significant amount of criticism, particularly from feminists and legal scholars. Unsurprisingly, Stepp’s *Cosmopolitan* article drew the most fire. On October 15, 2007, a panel convened at John Jay College of Criminal of Justice in New York City to discuss the article. The panel brought together the editor and chief of *Cosmopolitan*, Kate White; Stepp; the president of John Jay and former city police official, Jeremy Travis; and four other legal and educational experts to discuss the implications of “gray rape.” Although White and Stepp stood by the article as responsible journalism, the rest of the panel did not, citing the possible implication the term “gray rape” could have on the reporting of rape and the possibility that gray rape reinforces the “culture of masculinity” that says men can “take advantage of women’s bodies” because they are men.<sup>56</sup>

The panel demonstrated an attempt to discuss the ever-growing issues of date rape, gray rape, and the rape culture that teaches women that rape is their fault no matter how clear-cut or “gray;” however, *Cosmopolitan* stood by the article at the John Jay panel and did not print any negative Letters to the Editor in the subsequent issues. Although the feminist blogosphere organized a letter writing campaign to tell “*Cosmo* that there is no such thing as gray rape,” there

were only two letters that addressed the “Gray Rape” article printed in the November issue.<sup>57</sup>

Both letters were positive, thanking *Cosmopolitan* “for making women more aware of gray rape.”<sup>58</sup> One writer in particular, Ashley, demonstrates the danger of introducing “gray rape” into the public discourse. Ashley writes:

I want to thank you for making women more aware of gray rape. A similar situation happened to me, except I hadn’t been drinking. I was making out with a guy, and I told him I wasn’t ready to have sex. I was a virgin and wanted to wait for the right person. But to avoid causing a big scene, I just lay there feeling scared and alone. Afterward, I felt like it was my fault and that I could have done something to stop it. I told myself it wasn’t rape, and I didn’t even let anyone know for months. I was later told that when you say no, it means no. You shouldn’t have to kick and scream and bite to get someone off of you.<sup>59</sup>

Ashley’s situation was not gray rape. In fact, it would more than likely fall into the category of “clear-cut” date rape that the article created for instances where there was no alcohol and the woman was not participating in the “hookup culture.” However, Ashley identifies with the other women in the article — Alicia for instance — because the narratives are so similar to her own. This is because gray rape *is* date rape, just by another name. Ashley misinterprets the article, and while she has apparently spoken to people to help her work through her rape, still identifies her experience as gray rape, not date rape, as if what she experienced was somehow less serious than date rape.

Ashley’s response to the article reveals significant issues surrounding rhetorics of rape: All of the terms used to describe rape are in some ways vague and totalizing gestalts that demand one looks at rape from a particular perspective. The word “rape” is so steeped in centuries’ worth

of meanings, memories, and myopia that even the focused efforts of the rape reform movement did not result in a uniform victory. Any type of rape — stranger, date, acquaintance, or gray — carries with it connotations that are hard to rectify and will never be fully accepted by everyone.

Feminist rhetorics of rape assert a broader perspective on the types of sexual assaults that can be spoken about, tried, and recognized as rape. They also provide the flexibility for rhetorics of rape to change and develop without forsaking all of the women it was meant to represent. Rape will always be a crime of power, violence, and intimidation no matter if it takes place in a dark alley or a dark party. Feminist rhetorics do not dismiss *any* charge of rape, whether it is a stranger, acquaintance, or date rape. By recognizing that the vagueness of the word “rape” as a space where meaningful debate over the meaning of “rape” can be discussed, feminist rhetorics of rape changed the perception of “rape” while still acknowledging other facets of sexual assaults. With a broader understanding of the prejudices that come part and parcel with any reported rape, feminist rhetorics of rape expanded “rape” beyond the “grayness” of the term in order to better represent the reality of rape.

The postfeminist rhetoric of rape does the exact opposite. By claiming, as the postfeminist counterformulation of rape does, that feminism is to blame for the modern “hookup culture” “gray rape” devalues the feminist counterformulations of “acquaintance rape” and “date rape” as the cause of gray rape. The postfeminist discourse of rape holds feminism responsible for the disregard of traditional feminine values and draws the key distinction between “gray rape” and “date rape”: Gray rape is not date rape because there was no *date*. Since the influence of feminism has moved women away from the traditional norms of romantic involvement between men and women, the postfeminist rhetoric of rape suggests that the rules for appropriate sexual behavior has changed. This is the final move in creating a new, narrow postfeminist

perspective of rape. The postfeminist counterformulation of “gray rape” eclipses the feminist counterformulation of “date rape” by giving an instance of date rape another name. If a date rape is “gray” than it cannot be discussed as rape because the term “gray rape” has no concrete meaning

Clearly, the existence and continued use of “gray rape” suggests that the debates over the meaning, the use, and the parameters of “rape” are not over. However, a deeper understanding of the words that is used to describe, judge, and discuss rape can shine a light on the terms that are used to describe rape throughout history. “Stranger rape,” “acquaintance rape,” “date rape,” and “gray rape” all have meanings that will forever be intertwined, but it is my belief that some of these meanings are better than others. “Acquaintance rape” and “date rape” provide the most accurate description of sexual assaults that occur between those who know each other. Shifting the meaning of “acquaintance rape” and “date rape” to “gray rape” narrows the meaning of “rape” to something that is reminiscent to “stranger rape.” The postfeminist counterformulation of “gray rape,” if left unchecked, will result in a return to the narrow discourse of “stranger rape” where a woman has to prove her claim by providing evidence of her character.

Maybe it is time for a new rape reform movement, one that takes into consideration the difficulties of creating words that accurately represent the broad perspectives of rape and looks for new and different ways to talk about it without falling prey to the idea that women are at fault for rape and sexual assault. If nothing else, I hope this thesis provides a starting point for further inquiry into the rhetorical strategies used to describe, name, and label instances of sexual assault. “Rape” is a word that carries with it generations of emotional, legal, and social ramifications that may never be fully rectified and resolved. However, just because rape is an act that is always committed through force, it does not mean that words used to describe rape must force a narrow

and circumscribe perception on survivors of rape. Rape is never something other than rape and the words, phrases, and terms used to describe it should never suggest otherwise

### Notes for Chapter 1

<sup>1</sup> See Andrea Stewart, “Rape?” in *Pandora: Women in Classical Greece* ed. Ellen D. Reeder (Princeton: Princeton University, 1995.), 74-90.

<sup>2</sup> For more on the Bryant case see: Michelle J. Anderson, “Time to Reform Rape Shield Laws: Kobe Bryant Case Highlights Holes in the Armor,” *American Bar Association*, Summer (2004): 14 and Richard I. Haddad, “Shield or Sieve? *People v. Bryant* and the Rape Shield Law in High-Profile Cases,” *The Columbia Journal of Law and Social Problems*, 185 (2005): 185-221.

<sup>3</sup> For more on the phrase “rhetorical dimensions” see Martin J. Medhursts and Thomas W. Benson, eds, *Rhetorical Dimensions in Media: A Critical Casebook* (Dubuque, IA: Kendall/Hunt Publishing Company, 1984).

<sup>4</sup> Celeste Michelle Condit, *Decoding Abortion Rhetoric* (Champaign: University of Illinois Press, 1994), 1.

<sup>5</sup> *Ibid.*

<sup>6</sup> Barbie Zelizer, “Reading the Past Against the Grain: The Shape of Memory Studies” *Review and Criticism* 12, no. 2 (1995): 214.

<sup>7</sup> *Ibid.*, 214, 218.

<sup>8</sup> Edward Casey, “Perceiving and Remembering” *The Review of Metaphysics* 32, no.3 (1979): 409.

<sup>9</sup> *Ibid.*, 420.

<sup>10</sup> For more on feminist rhetorics see: Karlyn Kohrs Campbell, “The Rhetoric of Women’s Liberation: An Oxymoron” *The Quarterly Journal of Speech* 50, no.1 (1973): 7-86.

<sup>11</sup> Samuel R. Delany, *Shorter Views: Queer Thoughts & The Politics of Paraliterary* (Middletown, CT: Wesleyan University Press, 1999), 13

<sup>12</sup> Ibid.

<sup>13</sup> Thomas W Benson, "Rhetoric and Autobiography: The Case of Malcolm X," *The Quarterly Journal of Speech* 60, no. 1 (1974): 1.

<sup>14</sup> Adrienne Rich, *On Lies, Secrets, and Silence: Selected Prose 1966-1978* (New York: W. W. Norton, 1979), 35.

<sup>15</sup> Campbell, 74.

<sup>16</sup> Bonnie Dow, *Prime-Time Feminism: Television, Media Culture, and the Women's Movement Since 1970* (Philadelphia: University of Pennsylvania Press, 1996.)

<sup>17</sup> Tania Modleski, quoted in Bonnie Dow, *Prime-Time Feminism: Television, Media Culture, and the Women's Movement Since 1970* (Philadelphia: University of Pennsylvania Press, 1996), 4.

<sup>18</sup> Rosa Eberly, *Citizen Critics: Literary Public Spheres* (Chicago: University of Illinois Press, 2000), 133-60.

<sup>19</sup> For example see: Michelle J. Anderson, "Negotiating Sex." *Southern California Law Review* 78, August (2004-2005): 1404-5; Helen Benedict, *Virgin or Vamp*, (New York: Oxford University Press, 1992); Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975); Susan Caringella, *Addressing Rape Reform in Law and Practice* (New York: Columbia University Press, 2009); Susan Estrich, *Real Rape* (Cambridge: Harvard University Press, 1987); Jaclyn Friedman and Jessica Valenti, eds. *Yes Means Yes: Visions of Female Sexual Power & A World Without Rape* (Berkeley: Seal Press, 2008); Richard Klein, "An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for

Fundamental Fairness” *Akron Law Review* 41 (2008): 983-1045; Sarah Projansky, *Watching Rape: Film and Television in Postfeminist Culture* (New York: New York University Press, 2001); and Sabine Sielke, *Reading Rape: The Rhetoric of Sexual Violence in American Literature and Culture, 1790-1990* (Princeton: Princeton University Press, 2002).

<sup>20</sup> Eric Reitan, “Rape as an Essentially Contested Concept,” *Hypatia* 16, no. 2 (2001): 45.

<sup>21</sup> Kenneth Burke, *Attitudes Towards History* (Berkeley: University of California Press, 1935), 229-232.

<sup>22</sup> See Estrich, 1.

<sup>23</sup> For more about male rape see Michael Scarce, *Male on Male Rape: The Hidden toll of Stigma and Shame* (Cambridge: Perseus Books, 1997).

<sup>24</sup> For more about the history of marital rape see Jill Elaine Hasdayt, “Contest and Consent: A Legal History of Marital Rape” *California Law Review* 88 (2000): 1373-1606.

<sup>25</sup> See Brownmiller; Susan Estrich; and Robin Warshaw, *I Never Called it Rape* (New York: Harper & Row, 1988).

<sup>26</sup> U.S. Department of Justice. Office of Justice Programs, *The Sexual Victimization of College Women* (Washington, D.C.: U.S. Department of Justice, 2000), 19.

<sup>27</sup> General George S. Patton, Jr., quoted in Brownmiller, *Against Our Will*, 31.

<sup>28</sup> See Brownmiller, 31-113.

<sup>29</sup> Elisabeth Vikman, “Ancient Origins: Sexual Violence in Warfare, Part I,” *Anthropology & Medicine* 12, no.1 (2005): 21-31.

<sup>30</sup> Gorgias, *Encomium of Helen*, translated and edited by John Dillion and Tania Gergel (New York: Penguin Books, 2003).

<sup>31</sup> Gorgias, 79

<sup>32</sup> For more about the attitude of rape in war time see A.L. Barstow, ed., *War's Dirty Secret: Rape Prostitution, and Other Crimes against Women* (Cleveland: Pilgrim Press, 2000).

<sup>33</sup> Iris Chang, "The Rape of Nanking," in *War's Dirty Secret: Rape Prostitution, and Other Crimes against Women*, ed., A.L. Barstow (Cleveland: Pilgrim Press, 2000), 46

<sup>34</sup> Ibid.

<sup>35</sup> Chung Hyun-Kyung, "Your Comfort versus My Death," in *War's Dirty Secret: Rape Prostitution, and Other Crimes against Women*, ed., A.L. Barstow (Cleveland: Pilgrim Press, 2000), 15.

<sup>36</sup> Ibid.

<sup>37</sup> Brownmiller, 31.

<sup>38</sup> Ibid., 18.

<sup>39</sup> Alexandra Stigmayer, "The Rapes in Bosnia-Herzegovina" in *Mass Rape: The War Against Women in Bosnia-Herzegovina*, eds. Alexandra Stigmayer and Marion Faber (Lincoln: University of Nebraska Press, 1994) 82-169.

<sup>40</sup> Ibid, 87.

<sup>41</sup> Ibid, 115-136.

<sup>42</sup> Ibid, 115-136. Also see Claudia Card, "Rape as a Weapon of War," *Hypatia* 11, no.4 (1996): 7.

<sup>43</sup> Robin Warshaw, *I Never Called it Rape* (New York: Harper & Row, 1988), 19

<sup>44</sup> Estrich, 8-26.

<sup>45</sup> Benedict, 18.

<sup>46</sup> Ibid., 23.

<sup>47</sup> Ibid., 24

<sup>48</sup> Ibid., 23.

<sup>49</sup> Ibid., 16-7.

<sup>50</sup> “Bryant's Defense Goes on Offensive.” *Associated Press*, 15 October 2003,  
<http://www.lexisnesus.com> (accessed 10 March 2009).

<sup>51</sup> Pamela Mackey, “Cross Examination of Detective Doug Winters, Part I,” Transcript, 9  
October 2003, 112.

<sup>52</sup> Pamela Mackey, “Cross Examination of Detective Doug Winters, Part I,” Transcript, 9  
October 2003, 19-34.

<sup>53</sup> Craig Wolfe, “Youths Rape and Beat Central Park Jogger” *New York Times*, 21 April  
1989, B1.

<sup>54</sup> Benedict, 244

<sup>55</sup> Ibid., 194-8.

<sup>56</sup> Andrea Peyser and Jim Nolan’s article, “She Didn’t Know Fear, Popular Exec on Her  
Way to the Top,” *The New York Post*, 30 April 1989, 3.

<sup>57</sup> “Judge: Sex life of Bryant accuser OK.” *Associated Press*. 26 July 2004,  
<http://www.lexisnesus.com> (accessed 10 April 2009).

<sup>58</sup> Campbell, 7-86.

<sup>59</sup> Richard Sennett, *The Fall of Public Man* (New York: W.W. Norton & Company,  
1974), 42-3.

## Notes for Chapter 2

<sup>1</sup> *The Oxford English Dictionary*, s.v “rape,” <http://dictionary.oed.com> (accessed 15 June 2010).

<sup>2</sup> Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975).

<sup>3</sup> Sarah Projansky, *Watching Rape: Film and Television in Postfeminist Culture* (New York: New York University Press, 2001), 8.

<sup>4</sup> Karlyn Kohrs Campbell, “The Rhetoric of Women’s Liberation: An Oxymoron,” *The Quarterly Journal of Speech* 59, no. 1 (1973): 74

<sup>5</sup> Richard Sennett, *The Fall of Public Man* (New York: W.W. Norton & Company, 1974), 42.

<sup>6</sup> Ibid.

<sup>7</sup> S. Hamby, “The Gender Debate about Intimate Partner Violence: Solutions and Dead Ends,” *Psychological Trauma: Theory, Research, Practice, and Policy* 1 (2009): 24-34.

<sup>8</sup> See Susan Estrich, *Real Rape* (Cambridge: Harvard University Press, 1987). The term “real rape” is used throughout this chapter and is borrowed from Susan Estrich’s landmark work by the same name.

<sup>9</sup> Ibid, 1.

<sup>10</sup> Ibid.

<sup>11</sup> Recently Alice Sebold also discussed the phenomenon of the “lucky” rape victim in her memoir, *Lucky*. Sebold was attacked and raped by a stranger on her last night at Syracuse

University. After the attack, Sebold was told by a police officer that she was “lucky” because a woman had been killed and dismembered in the same area shortly before she was raped. Sebold remembers that, at the time, she felt as if she had “more in common with the dead girl” than someone who could be considered lucky. For those interested in reading more of Sebold’s memoir see: Alice Sebold, *Lucky* (Boston: Back Bay Books, 2002).

<sup>12</sup> Estrich, *Real Rape*, 3.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> See Katherine M. Tellis and Cassia C. Spohn, “The Sexual Stratification Hypothesis Revisited: Testing Assumptions About Simple Versus Aggravated Rape,” *Journal of Criminal Justice* 36 (2008): 252-261.

<sup>16</sup> Ibid.

<sup>17</sup> By and large, rape reform movement was successful in this goal. Virtually every rape statute in the country has done away with the simple-aggravated divide and does not require aggravated force for a rape to be considered a felony. See California Penal Code § 261 (2003); N.Y. Penal Law § 130.00 (McKinney 2002); and Pa. Cons. Stat. § 3101 (2002) for examples of current rape statutes.

<sup>18</sup> Brownmiller, 376.

<sup>19</sup> Ibid., 312.

<sup>20</sup> Ibid, 311.

<sup>21</sup> Ibid, 313.

<sup>22</sup> Martha R. Burt, “Cultural Myths and Supports for Rape,” *Journal of Personality and Social Psychology* 38, no. 3 (1980): 217.

<sup>23</sup> Ibid., 229.

<sup>24</sup> Ibid.

<sup>25</sup> Helen Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes* (New York: Oxford University Press, 1992), 14.

<sup>26</sup>“Texas Candidate’s Comment About Rape Causes Furor,” *Associated Press*, 26 March 1990, <http://www.lexisnesus.com> (accessed 12 March 2009).

<sup>27</sup> Brownmiller, 313.

<sup>28</sup> See Richard Klein, “An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness,” *Akron Law Review* 41 (2008): 983-1045.

<sup>29</sup> Robin Warshaw, *I Never Called it Rape* (New York: Harper & Row, 1988), 19

<sup>30</sup> Ibid.

<sup>31</sup> Benedict, 15.

<sup>32</sup> Warshaw, 19.

<sup>33</sup> Benedict, 16.

<sup>34</sup> Warshaw, 18.

<sup>35</sup> Ibid., 19.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid., 17.

<sup>39</sup> Brownmiller, 387.

<sup>40</sup>See Dan Majors, “Roethlisberger Countersues Accuser, Seeks Unspecified Damages,” *Pittsburgh Post-Gazette*, 17 October 2009, A1.

<sup>41</sup> See Brownmiller, Warshaw, and Estrich.

<sup>42</sup> See Caringella, Brownmiller, Warshaw, and Estrich.

<sup>43</sup> Michigan Penal Code, Criminal Sexual Conduct Code, Public Act 328, §750.520a-j.

<sup>44</sup> See Hubert Field and Leigh B. Bienen, *Jurors and Rape: A Study in Psychology and Law* (Lexington, Mass: Lexington Books, 1980) and Cassia Spohn and Julia Horney, *Rape Law Reform: A Grass Roots Revolution and Its Impact* (New York: Plenum, 1992) for discussion of the Michigan statute and how it influences other states.

<sup>45</sup> Jan BenDor, “Justice after Rape: Legal Reform in Michigan” in *Sexual Assault: The Victim and the Rapist*, eds. Marcia J. Walker and Stanely L. Brodsky (Lexington, Mass.: Lexington Books, 1976), 149.

<sup>46</sup> Michigan Penal Code, Criminal Sexual Conduct Code, Public Act 328, §750.520a-j.

<sup>47</sup> Jeanne C. Marsh, Alison Geist, and Nathan Caplan, *Rape and the Limits of Law Reform* (Boston: Auburn House, 1982), 20.

<sup>48</sup> Richard Klein, “An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness,” *Akron Law Review* 41 (2008), 986.

<sup>49</sup> Caringella, 14.

<sup>50</sup> Sir Matthew Hale, *The History of the Pleas of the Crown* (London: London Professional Books, 1971), 628.

<sup>51</sup> Estrich, 5

<sup>52</sup> *Ibid.*

<sup>53</sup> Caringella, 14.

<sup>54</sup> BenDor, 159.

<sup>55</sup> Caringella, 14.

<sup>56</sup> Spohn, “The Rape Reform Movement: The Traditional Common Law and Rape Law Reforms,” *Jurimetrics* 39 (1999): 120.

<sup>57</sup> Klein, 987.

<sup>58</sup> Estrich, 29-41.

<sup>59</sup> Michigan Penal Code, Criminal Sexual Conduct Code, Public Act 328, § 750.520a.

<sup>60</sup> Klein, 985-89.

<sup>61</sup> Estrich, 29-40.

<sup>62</sup> *Ibid.*, 38.

<sup>63</sup> Roger B. Dworkin, “The Resistance Standard in Rape Legislation” *Stanford Law Review* 18, no. 4 (1966): 682.

<sup>64</sup> Michelle J. Anderson, “Time to Reform Rape Shield Laws: Kobe Bryant Case Highlights Holes in the Armor,” *American Bar Association*, Summer (2004), 2.

<sup>65</sup> See Lee Madigan and Nancy C. Gamble, *The Second Rape: Society’s Continued Betrayal of the Victim* (New York: Lexington Books, 1989).

<sup>66</sup> Caringella, 15.

<sup>67</sup> Michigan Penal Code, Criminal Sexual Conduct Code, Public Act 328, § 750.520j.

<sup>68</sup> *Ibid.*

<sup>69</sup> Patricia Searles and Ronald J. Berger, eds., *Rape and Society: Reading on the Problem of Sexual Assault* (Boulder, Co.: Westview, 1995), 227.

<sup>70</sup> See Richard I. Haddad, “Shield or Sieve? People v. Bryant and the Rape Shield Law in High-Profile Cases,” *The Columbia Journal of Law and Social Problems*, 39 (2005) for an account of how shield laws can sometimes fail when left solely to the discretion of the judge.

<sup>71</sup> Susan Caringella, *Addressing Rape Reform in Law and Practice* (New York: Columbia University Press, 2009), 13.

<sup>72</sup> Caringella, 1-2.

<sup>73</sup> See Karlyn Kohrs Campbell “The Rhetoric of Women’s Liberation: An Oxymoron,” *The Quarterly Journal of Speech* 50, no.1 (1973): 7-86.

<sup>74</sup> Maria Bevacqua, *Rape on the Public Agenda: Feminism and the Politics of Sexual Assault* (Boston: Northeastern University Press, 2000), 55.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Noreen Connell and Cassandra Wilson, eds., *Rape: The First Sourcebook for Women* (New York: New American Library), xv.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Mary P. Koss, “Hidden Rape: Sexual Aggression and Victimization in a National Sample of Students in Higher Education” in *Confronting Rape and Sexual Assault* (Lanham, MD: SR Books, 1998) 54.

<sup>83</sup> See Mary P. Koss, Christine A Gidycz, and Nadine Wisniewski, “The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students” *Journal of Consulting and Clinical Psychology* 55, no.2 (1987): 162-170 for a detailed description of the methodology of The *Ms.* Magazine Project on Campus Assault.

<sup>84</sup> Ibid.

<sup>85</sup> See Suzanne S. Ageton, *Sexual Assault Among Adolescents*. (Lexington, MA: Lexington Books, 1983); Eugene J. Kanin, "Male Aggression in Dating-Courtship Relations," *American Journal of Sociology*, 63, (1957): 197-204; Eugene J. Kanin and Stanely R. Parcel, "Sexual aggression: A Second Look at the Offended Female" *Archives of Sexual Behavior* 6, (1977): 67-76; and Dean G. Kilpatrick, et al., "Mental Health Correlates of Criminal Victimization: A Random Community Survey," *Journal of Consulting and Clinical Psychology* 53 (1985): 866-873.

<sup>86</sup> Warshaw, 48-9.

<sup>87</sup> Koss, Gidycz, and Wisniewski, 167.

<sup>88</sup> Ibid.

<sup>89</sup> Koss, 61.

<sup>90</sup> Koss, Gidycz, and Wisniewski, 168.

<sup>91</sup> Federal Bureau of Investigation. (1986). *Crime in the United States: Crime reports*. Washington, DC: U.S. Department of Justice.

<sup>92</sup> Koss, Gidycz, and Wisniewski, 167.

<sup>93</sup> Ibid.

<sup>94</sup> See Amy Erdman Farrell, *Yours in Sisterhood: Ms. Magazine and the Promise of Popular Feminism* (Chapel Hill: University of North Carolina Press, 1998).

<sup>95</sup> Ibid., 20.

<sup>96</sup> Ibid.

<sup>97</sup> Karen Barrett, "Date Rape: A Campus Epidemic?" *Ms.* September (1982): 48-50.

<sup>98</sup> Ibid.

<sup>99</sup> Warshaw, 14-8.

<sup>100</sup> Ibid., 19.

<sup>101</sup> Ibid., 53.

<sup>102</sup> Ibid., 54-64.

<sup>103</sup> See Majors, A1 and Steve Henson, “Accuser Will Be Named In Court; Woman cannot be Anonymous in Civil Trial against Bryant,” *Los Angeles Times*, 7 October 2004, D3.

### Notes for Chapter 3

<sup>1</sup> Robin Warshaw, *I Never Called it Rape* (New York: Harper & Row, 1988), 12-8.

<sup>2</sup> See Keith Burgess-Jackson, "Introduction," in *A Most Detestable Crime* (New York: Oxford University Press, 1999), 3-14; Burgess-Jackson, "Rape and Persuasive Definition," *Canadian Journal of Philosophy* 25, no.3 (1995): 415-54; and Eric Reitan, "Rape as an Essentially Contested Concept," *Hypatia* 16, no. 2 (2001): 43-66 for a good introduction to how philosophers approach the feminist counterformulations of rape.

<sup>3</sup> Sir William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Chicago and London: The University of Chicago Press, 1979), vol 4 p.210 (facsimile of first edition, published in 1975-69). Also see Robin Warshaw, *I Never Called it Rape* (New York: Harper & Row, 1988) and Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975) for an account of how "acquaintance rape" and "date rape" were the first effort to change the perception of rape.

<sup>4</sup> Lisa Cuklanz, *Rape on Prime Time: Television, Masculinity, and Sexual Violence* (Philadelphia: University of Pennsylvania Press, 2000), 9.

<sup>5</sup> Ibid.

<sup>6</sup> A. Cheree Carlson, "Creative Casuistry and Feminist Consciousness: The Rhetoric of Moral Reform," *the Quarterly Journal of Speech* 78, no. 1 (1992): 22

<sup>7</sup> See Andrea Stewart, "Rape?" in *Pandora: Women in Classical Greece* ed. Ellen D. Reeder (Princeton: Princeton University, 1995), 74.

<sup>8</sup> Ibid., 76-7.

<sup>9</sup> Ibid., 77.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Cathy Roberts, *Women and Rape* (New York: New York University Press, 1989). Also see Brownmiller and Warshaw.

<sup>14</sup> Ibid., 116.

<sup>15</sup> Ibid., 132-3.

<sup>16</sup> Ibid., 133.

<sup>17</sup> Norman Podhoretz, "Rape and the Feminists," *Commentary* 93, no.3 (1992), 6-7.

<sup>18</sup> Podhoretz, "Rape in Feminist Eyes," *Commentary* 92, no. 4 (1991), 30.

<sup>19</sup> Burgess-Jackson, "Rape and Persuasive Definition," 415-54.

<sup>20</sup> Charles Leslie Stevenson, "Persuasive Definition," *Mind* 47, no. 187 (1938): 331.

<sup>21</sup> Richard Robinson, *Definitions* (Oxford: Oxford University Press, 1954; reprinted ed. 1965), 168-9.

<sup>22</sup> See Stevenson and Robinson.

<sup>23</sup> See Stevenson and Robinson.

<sup>24</sup> Burgess-Jackson, "Rape and Persuasive Definition," 423-4.

<sup>25</sup> Podhoretz, "Rape in Feminist Eyes," 30.

<sup>26</sup> Burgess-Jackson, "Rape and Persuasive Definition," 426.

<sup>27</sup> Ibid., 432.

<sup>28</sup> Ibid., 432-3.

<sup>29</sup> Reitan, 46.

<sup>30</sup> Ibid.

<sup>31</sup> Max Black, "Reasoning with Loose Concepts," *Dialogue* 2 (1963): 1-12 and Black, "Vagueness," *Philosophy of Science* 4 (1937): 427-455.

<sup>32</sup> W.B. Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* 56, (1955-1956): 167-198.

<sup>33</sup> Reitan, 47

<sup>34</sup> Podhoretz, "Rape and the Feminists," 6-7

<sup>35</sup> Burgess-Jackson, "Rape and Persuasive Definition," 432.

<sup>36</sup> Cuklanz, 9.

<sup>37</sup> Chaim Perelman and Lucie Olbrechts-Tyteca, *The New Rhetoric* (Notre Dame: University of Notre Dame Press, 1969), 68.

<sup>38</sup> Edward Schiappa, "Arguing about Definitions" *Argumentation* 7, no. 4 (1993), 404.

<sup>39</sup> Kenneth Burke, *Grammar of Motives*, xxiii.

<sup>40</sup> *Ibid.*, 512.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Wayne Booth, *A Rhetoric of Irony* (Chicago: University of Chicago, 1974).

<sup>45</sup> *Ibid.*, 8.

<sup>46</sup> *Ibid.*

<sup>47</sup> Carlson, 21.

<sup>48</sup> Kenneth Burke, *Attitudes Towards History* (Berkeley: University of California Press, 1935), 229-232.

<sup>49</sup> Carlson, 21.

<sup>50</sup> Burke, *Attitudes Toward History*, 308.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, 309

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> Cuklanz, 9.

<sup>56</sup> Carlson, 21.

<sup>57</sup> *Ibid.*

<sup>58</sup> Richard Klein, “An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness” *Akron Law Review* 41 (2008), 1012.

<sup>59</sup> Warshaw, 14-5.

<sup>60</sup> *Ibid.*, 18.

<sup>61</sup> Ellen Sweet, “Date Rape: The Story of an Epidemic and Those Who Deny it,” in *Speculations: Readings in Culture, Identity, and Values*, eds. Charles I. Schuster and William V. Van Pelt (Upper Saddle River, NJ: Blair Press, 1996), 290.

<sup>62</sup> *Ibid.*, 291.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, 294

<sup>68</sup> *Ibid.*, 295

<sup>69</sup> Beth Sherman, "A New Recognition of the Realities of 'Date Rape,'" *The New York Times*, 23 October 1985, C1.

<sup>70</sup> *Ibid.*, C14

<sup>71</sup> Deirdre Carmody, "Increasing Rapes on Campus Spur Colleges to Fight Back," *The New York Times*, 1 January 1989, A1.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> Carmody, "Increasing Rapes on Campus Spur Colleges to Fight Back," *The New York Times*, 1 January 1989, A1.

<sup>75</sup> *Ibid.*

<sup>76</sup> Daniel Golman, "When the Rapist is Not a Stranger; Studies Seek New Understanding," *The New York Times*, 29 August 1989, C1.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*, C6.

<sup>80</sup> *Ibid.*

### Notes for Chapter 4

<sup>1</sup> Laura Session Stepp, “A New Kind of Date Rape,” *Cosmopolitan*, September 2007, 199.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> See Sara Ganim, “Attackers Work to Gain Trust” *Centre Daily Times*, 27 September 2009.

<sup>5</sup> Angela McRobbie, “Post-Feminism and Popular Culture,” *Feminist Media Studies* 4, n.3 (2004): 255.

<sup>6</sup> Susan Faludi, *Backlash: The Undeclared War Against Women* (London: Vintage, 1992).

<sup>7</sup> McRobbie, “Post-Feminism and Popular Culture,” 225.

<sup>8</sup> Ibid., 225-26.

<sup>9</sup> Most often cited as the feminist scholar whose work is at the center of this “double entanglement” is Judith Butler, particularly in regards to the denaturalizing of the female body. See Judith Butler, *Antigone's Claim: Kinship Between Life and Death* (New York: Columbia University Press, 2000).

<sup>10</sup> Bonnie Dow, *Prime-Time Feminism: Television, Media Culture, and the Women's Movement Since 1970* (Philadelphia: University of Pennsylvania Press, 1996).

<sup>11</sup> Betty Friedan, *The Second Stage* (Cambridge: Harvard University Press, 1981).

<sup>12</sup> Ibid., 15-43.

<sup>13</sup> See Friedan, *The Feminine Mystique* (New York: W.W. Norton and Company, 1968; reprint, New York: W.W. Norton & Company, 1997) and Margalit Fox, “Betty Friedan, Who Ignited Cause in ‘Feminine Mystique,’ Dies at 85,” *The New York Times*, 5 February 2006, A20.

<sup>14</sup> Ibid.,8.

<sup>15</sup> Ibid., 27-8.

<sup>16</sup> Ibid.,323.

<sup>17</sup> Ibid., 159.

<sup>18</sup> Angela McRobbie, *The Aftermath of Feminism: Gender, Culture and Social Change* (London: Sage, 2009), 1.

<sup>19</sup> Ibid.

<sup>20</sup> Katie Roiphe, *The Morning After: Sex, Fear and Feminism* (Boston: Back Bay Books, 1994).

<sup>21</sup> Wendy Kaminer, "What is This Thing Called Rape?" *The New York Times Book Review*, 19 September 1993, 1.

<sup>22</sup> Roiphe, *The Morning After: Sex, Fear and Feminism*, 51-84.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid, 2-3.

<sup>25</sup> Ibid., 15.

<sup>26</sup> Ibid., 16.

<sup>27</sup> Ibid., 56.

<sup>28</sup> Ibid., 83.

<sup>29</sup> Ibid., 80.

<sup>30</sup> Ibid., 51-5.

<sup>31</sup> Ibid., 54.

<sup>32</sup> Laura Session Stepp, “A New Kind of Date Rape,” *Cosmopolitan*, September 2007, 199. Although Stepp’s article was the first in which “gray rape” had any type of extended audience, she did not originate the term.

<sup>33</sup> Ibid.

<sup>34</sup> Laura Sessions Stepp, *Unhooked: How Young Women Pursue Sex, Delay Love and Lose Both* (New York: Riverhead Books, 2007), 5-6.

<sup>35</sup> Ibid., 6-7.

<sup>36</sup> Ibid., 154.

<sup>37</sup> An electronic archive of Stepp’s articles can be found at <http://sexreally.com/archives/blog/Laura%20Sessions%20Stepp>

<sup>38</sup> Stepp, “Starting a Relationship with Sex: Running the Bases Backwards,” podcast audio program, 15 June 2009, <http://sexreally.com/the-show/starting-relationship-sex-running-bases-backwards> (accessed 10 April 2010).

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Bryn Lansdowne, “A Gray Area: Students Encounter Gray Rape,” *The GW Hatchet*, (2 October 2005) <http://media.www.gwhatchet.com/media/storage/paper332/news/2005/10/03/Life/A.Gray.Area.Students.Encounter.Gray.Rape-1006578.shtml> (accessed 22 March 2009).

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> For more information about debate surround Knepper’s column see Jeff Greer, “Column at American University Cause Controversy,” *U.S. News* (1 April 2010)

<http://www.usnews.com/blogs/paper-trail/2010/04/01/column-at-american-university-causes-controversy.html> (accessed 10 April 2010); Jenna Johnson, "AU Date Rape Column Angers Students," *Washington Post* (29 March 2010) [http://voices.washingtonpost.com/campus-overload/2010/03/column\\_questions\\_date\\_rape\\_ang.html](http://voices.washingtonpost.com/campus-overload/2010/03/column_questions_date_rape_ang.html) (accessed 10 April 2010); "Rape Article Meant to Foster Dialogue," video, *CBS News*, 2 April 2010, <http://www.cbsnews.com/video/watch/?id=6356671n> (accessed 10 April 2010); and Susan Donaldson James, "American University Erupts Over Date Rape," *ABC News*, 1 April 2010, <http://abcnews.go.com/Health/MindMoodNews/date-rape-firestorm-erupts-american-university-student-newspaper/story?id=10254150> (accessed 10 April 2010).

<sup>45</sup> Alex Knepper, "Dealing with AU's anti-sex Brigade," *American University Eagle*, 28 March 2010, <http://www.theeagleonline.com/opinion/story/dealing-with-aus-anti-sex-brigade> (accessed April 10 2010).

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> A. Cheree Carlson, "Creative Casuistry and Feminist Consciousness: The Rhetoric of Moral Reform," *The Quarterly Journal of Speech* 78, no. 1 (1992): 21.

<sup>49</sup> Keith Burgess-Jackson, "Rape and Persuasive Definition," *Canadian Journal of Philosophy* 25, no.3 (1995): 415-54 and Eric Reitan, "Rape as an Essentially Contested Concept," *Hypatia* 16, no. 2 (2001): 43-66

<sup>50</sup> Stepp, "A New Kind of Date Rape," 199-207.

<sup>51</sup> Ibid., 200.

<sup>52</sup> Ibid.

<sup>53</sup> Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975), Martha R. Burt, "Cultural Myths and Supports for Rape," *Journal of Personality and Social Psychology* 38, no. 3 (1980): 217-30, Helen Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes* (New York: Oxford University Press, 1992), Susan Caringella, *Addressing Rape Reform in Law and Practice* (New York: Columbia University Press, 2009).

<sup>54</sup> Ibid., 199-200.

<sup>55</sup> Ibid.

<sup>56</sup> Sewell Chan, "'Gray Rape': A New Form of Date Rape," *New York Times Blog*, 15 October 2007, <http://cityroom.blogs.nytimes.com/2007/10/15/gray-rape-a-new-form-of-date-rape> (accessed 10 April 2009).

<sup>57</sup> Vanessa, "Write a Letter to *Cosmo*," *Feministing*, 27 August 2007, <http://feministing.com/archives/007622.html> (accessed 10 April 2009).

<sup>58</sup> Ashley, "Blurred Boundaries," *Letters to the Editor, Cosmopolitan*, November 2007, 16.

<sup>59</sup> Ibid.

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