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Ideological Resilience and Disruption: Reproducing and Resisting Gender and Racial Inequality in Cases of Teacher Sexual Misconduct

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Ideological Resilience and Disruption: Reproducing and Resisting Gender and Racial Inequality in Cases of Teacher Sexual Misconduct

A Dissertation submitted in partial satisfaction of the requirements for the degree of

Doctor of Philosophy

in

Sociology

by

Kerry Ryan Mulligan

June 2014

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Dedication

This project would not have been possible without the depth of love and support I received from my family. I am so grateful to Jacob for his unwavering love and belief in me. To my dad for his strength, unconditional love, and commitment to creating a meaningful life. To my sister Kate for her kindness and her joyful engagement with the world. And to my sister Maura for her generosity of spirit and empathetic ear. I am indebted to so many other members of my family, including Pat, Naomi, Charlie, Sophia, Matt C., Matt M., Uncle John and Aunt Peg, and the entire Blake and Ryan clans. Finally, I am grateful to the friends I have made throughout my academic life who have enriched my experience in countless ways and shared the difficult journey through the program with me.
ABSTRACT OF THE DISSERTATION

Ideological Resilience and Disruption: Reproducing and Resisting Gender and Racial Inequality in Cases of Teacher Sexual Misconduct

by

Kerry Ryan Mulligan

Doctor of Philosophy, Graduate Program in Sociology
University of California, Riverside, June 2014
Dr. Katja M. Guenther, Chairperson

Through a comparative analysis of the media coverage and legal treatment of a national sample of criminal cases involving sexual contact between teachers and their adolescent students, this research examines how gender and racial inequalities are reproduced and resisted in the news media and criminal justice system. Using regression analysis of sentencing outcomes, I find support for the selective chivalry hypothesis, which suggests that female defendants who adhere to dominant gender expectations experience leniency in the criminal justice system while female defendants who are viewed as gender deviants are treated especially punitively. I also employ qualitative discourse analysis of the new media coverage and court room construction of a subsample of 66 cases to consider how inequality is reproduced and resisted. I draw on a conceptualization of hegemonic ideology as a set of symbolic resources that individuals have differential access to depending on their location in the matrix of privilege and oppression. Using this conceptualization, I elaborate how defense attorneys strategically draw on patriarchal views of women’s passivity to reduce the culpability of their female clients, how
prosecuting attorneys resist these hegemonic ideals and demand that the sexual
perpetrating of both male and female defendants be taken seriously, and how judges
discursively perform neutrality even while making sentencing decisions that are shaped
by gender ideology. I also analyze the media framing of these cases, including how the
explosion of discourse around cases involving white female perpetrators relates to the
regulation of female sexuality and how the politics of Black respectability are used to
frame cases involving Black male defendants. Finally, I analyze the constructed and
contested nature of sexual victimhood, and how the differential access to claims of
“worthy victimhood” identity relates to the race and gender of the adolescent victim.
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Chapter 1: Ideological Resilience and Disruption: How the Discursive Construction of Teacher Sexual Misconduct Produces and Challenges Gender and Racial Inequality

INTRODUCTION

Through a comparative analysis of the media coverage and legal treatment of a national sample of criminal cases involving sexual contact between teachers and their adolescent students, this research addresses two theoretical questions: First, how do legal actors (including prosecutors, judges, and defense attorneys) and journalists strategically employ and resist dominant ideas about gender and race when making sense of criminal cases that reflect and challenge dominant ideologies? Second, how are dominant ideologies regarding gender and race incorporated into purportedly gender-neutral and color-blind institutional practices, such as the application of statutory rape and sexual abuse laws in criminal case proceedings?

This research utilizes quantitative and qualitative methods to address these questions. I use quantitative methods to analyze the legal outcomes for a national sample of 326 such cases. This analysis contributes to sociological understanding of how the gender and race of the defendant shape the sentencing outcomes across similar cases of statutory rape and sexual abuse. Second, I employ qualitative discourse analysis of the media coverage and court room construction of a subsample of 66 cases. This allows me to consider how journalists, judges, lawyers, victims, and other community members strategically draw on and challenge dominant understandings of race, gender, and sexuality to construct these types of criminal cases differently. Cases in which the victim
and perpetrator are connected through the latter’s role as a teacher are analytically powerful sites for analyzing how ideology shapes the media and the criminal justice system. While the teacher/student relationship places the perpetrator in a structural position of authority, criminal cases involving sex crimes often involve contestation around issues of consent, victimhood, and culpability. The formal positions of power and authority over students that teachers hold may highlight the inequality of power between the victim and perpetrator and render efforts by individuals in the state and media to trivialize the seriousness of these cases more overt. This research allows insight into how journalists and criminal justice actors respond to the gender deviance of perpetrating women and reproduce racial hierarchies in assessing both victim and perpetrator culpability and worth.

This project contributes to scholarship on the reproduction of inequality in the state and media as well as theorizing on the interactional and intersectional production of inequality. Feminist and critical race scholarship on the state tends to depict it as a relatively cohesive and homogenous entity that serves the interests of the dominant group by regulating and enforcing inequality. My findings complicate this conceptualization of the state by focusing on how the structural position of specific state actors (namely judges, prosecutors, and defense attorneys) produce their different strategic interests. These disparate interests lead to patterned variation in the way state actors employ ideological resources, and encourage some state actors to articulate arguments that challenge hegemonic conceptualizations of race and gender.
I also contribute to a specific set of state scholarship on inequality in criminal justice sentencing decisions. My methodological approach of analyzing quantitative and qualitative data simultaneously is unique in this area of research, and allows me to explore the link between a judge’s public constructions of the case and the leniency or harshness of his/her sentencing. The majority of the research on how race and gender shape sentencing outcomes is quantitative. While it demonstrates gendered and racist patterns in sentencing outcomes, the connection of these patterns to the judges’ conceptualizations of the cases and defendants is not directly observed (for exceptions see Daly 1989; Spohn & Beicher 2000). My data allows me to analyze how judges’ ideology and discursive constructions of these cases relates to their sentencing decisions. My findings suggest that judges are invested in upholding the presumed legitimacy and neutrality of the court in their discursive construction of these cases, but often sentence perpetrators in ways that reflect gender biases in assumptions about sexual perpetrating and victimhood. These findings demonstrate that the relationship between judge’s beliefs, discursive constructions of criminal cases and sentencing decisions are more complex than previous research suggests.

Scholars analyzing the reproduction of inequality in the media tend to depict the media as a conservative institution that reproduces dominant ideology (Cavender et al. 1999). My findings suggest that the coverage of news stories by journalists has a more complex relationship to hegemonic ideology. Journalists at local newspapers often do not offer a singular narrative frame in their coverage of a trial and are willing to incorporate contradictory constructions of events into their coverage of these criminal cases (both
over time and even within the same article). The opportunity structure of journalists and the editors that supervise them generally prioritize soliciting as wide a readership as possible. This may encourage them to draw on a variety of different discursive frames that resonate with a range of audiences. They are also motivated by efforts to present news items as newsworthy, such as by constructing the issue as hotly debated and contentious. These findings cohere with the argument of some scholars that the media is a less closely regulated and cohesive institution than the state, and is therefore a powerful resource for those seeking opportunities to express resistance.

Finally, I contribute to the social constructionist and intersectional literature by elaborating how interactional processes and individual meaning-making activities connect to the reproduction of inequality in institutions. I conceptualize hegemonic ideology as a set of symbolic resources that individuals have differential access to depending on their location in the matrix of privilege and oppression (Collins 2000; Messerschmidt 1993; Schwalbe et al. 2000; Swidler 1986). Rather than focusing solely on how dominant ideology shapes individual action, I consider how ideology is used strategically by agentic actors attempting to make sense of and account for their behavior (Hamilton 2007; Schwalbe et al. 2000; Swindler 1986). Ideology can be conceptualized as a cultural resource or “tool kit” through which individuals fashion socially meaningful action (Swidler 1986). Individuals strategically employ discursive resources that are most likely to position them positively and resonate with their desired audience. Individuals tend to frame events using commonly held beliefs and narratives. This tendency provides insight into the resiliency of ideology, in that events that seem to run counter to dominant
ideology are often recast in ways that adhere to dominant ideas. Conceptualizing ideology as a resource also allows me to identify structural positions that encourage individuals, including powerful state actors, to make discursive claims that challenge dominant ideology. Because of the reliance of news journalists on state actors as sources for news content, these counter-hegemonic narratives are frequently included in media coverage of these cases, and become an important site for distributing ideas that challenge dominant ideology.

In this chapter, I begin by reviewing the foundational scholarship that informs this research project and to which I seek to contribute. This includes literature on the role of the state and the media in the production of structures of oppression and the insights of social constructionists and intersectional theorizing about how inequality is reproduced in institutional settings. I next turn to a discussion of my methodological approach, including an outline of my sampling technique, statistical analysis, and qualitative coding and interpretive strategies. The chapter closes with an outline of the substantive chapters to follow.

THEORY AND BACKGROUND

This section begins with a discussion of existing scholarship on the role of the state in producing and enforcing inequality, including through welfare provisioning, the regulation of marriage, electoral politics, and criminal justice policy and enforcement. I then discuss existing scholarship on how inequality is reproduced in the media, including research on the content of controlling images around race and gender as well as how
organizational and institutional constraints shape what is reported in the news media. The section closes with a focus on the processual view of inequality informed by social constructionist and intersectional theorizing. This section considers how individuals participate in the production of inequality, in their everyday lives and in institutional settings. The interactional perspective provides an analytic start point from which I consider the way that hegemonic ideology is incorporated into the state and media.

*The (Re)Production of Inequality in the State*

A significant body of scholarship has analyzed the role of the state in enforcing and challenging systems of inequality. Drawing on a body of Marxist thinking, Althusser (1977) conceptualizes the state as the ruling apparatus used to enforce the social order that benefits economic and political elites. Feminist scholars have analyzed the state as an entity that enforces male dominance, both because gender ideology shapes the functioning of the state and because the state plays an important role in producing and enforcing gender (Brush 2002; Connell 1990; Haney 2000; Mirchandani 2006). The state can be conceptualized as patriarchal in two ways: it is androcentric and it plays a central role in regulating gender differentiation. State androcentrism refers to the centrality of masculinity in the organization of the state. The legal systems’ claims of objectivity, rationality, individualism and male mode of argumentation reflect male dominance (Haney 2000). State and federal courts have historically been and continue to be dominated by white males. While the representation of women and people of color as judges has been increasing in recent decades, white males still compose seventy percent
of judges in district and appeals courts (Wheeler 2009). Patterns of law school graduates are similar; eighty eight percent of licensed lawyers are white and seventy percent are male (American Bar Association 2013).

The state enforces inequality through its funding priorities, restriction on women’s reproductive choices, regulation of marriage, and welfare provisioning (Haney 2000; Connell 1990). Welfare provisioning, for example, reproduces gender, race, sexual and class hierarchies by enforcing adherence to a nuclear family ideal that encourages women’s financial dependence on male assistance and reinforces heterosexual and patriarchal family structures (Haney 2000). Welfare policies aimed at marriage promotion “seek to stabilize the norm of the White, middle-class, heterosexual family” (Heath 2009: 28). The racism and classism of policy makers shapes funding priorities and allows them to legitimate inequality by blaming oppressed people for disadvantaged status. For example, reductions in welfare payments to needy families are often validated by welfare critics and state actors who draw on racist imagery, such as ‘Black welfare queens’ or ‘lazy Latino immigrants’ (Reese 2005: 68). Due to discriminatory voting policies, gerrymandering, and differential access to political resources, people of color and those living in poverty have less access to political participation and also face discriminatory state housing and financial lending policies (Bonilla-Silva 2014).

But state intervention can also be means for challenging inequality. State welfare provisioning, for example, ameliorates social inequality through redistributive practices (Orloff 2010). Other researchers have demonstrated that criminal courts have successfully collaborated with feminist social activists to better address domestic
violence as a gender issue (Mirchandani 2006). The state can usefully be conceptualized as a complex set of organizations and practices that have the power to both enforce and challenge existing systems of inequality (Haney 2000).

The criminal justice system is a central site for the state enforcement of inequality. Researchers have demonstrated that state actors draw on racist ideology in the criminal justice system. Scholars have found that Black men are at higher risk of experiencing police brutality than white males and that “black and brown youth” face ongoing harassment by police, legitimated through racist policies such as New York’s “stop and frisk” laws (Bonilla-Silva 2014: 46). The literature on racial differences in sentencing outcomes has significant variation in findings, but the researchers nearly all find some evidence of racial disparity in legal treatment that benefits white relative to other racial groups (Steffenmeier et al. 1998). Some research indicates that Black perpetrators receive harsher sentences on average than perpetrators of other races (Mosher 1999); while other research finds that Hispanic defendants are at the greatest risk of receiving harsh penalties (Steffenmeier & Demuth 2001). Crimes involving white victims and Black perpetrators are also sentenced more harshly than those involving victims and offenders of the same racial group (Mosher 1999). Likelihood of conviction and severity in sentencing is especially high in cases involving young Black male perpetrators (Spohn & Beichner 2000; Steffenmeier et al. 1998). While much of this research is quantitative and draws less on the ideology influencing these practices, the differential treatment of Black, Latino and white offenders likely draws on and reproduces racist conceptions of Black and Latino masculinity as aggressive and out of
control and of non-white men as dangerous or menacing; an ideology that serves to support the power and authority of white middle class men (Mosher 1999; Steffenmeier et al. 1998). The disparity in sentencing outcomes is tied not only to the adoption of racist ideology by individual judges and attorneys, but also of policy makers. Racist ideas about criminality, for example, are reflected in the federal drug-policy sentencing guidelines which disadvantage Blacks relative to whites convicted of similar crimes. This is especially problematic because Black defendants are more likely to be held to these minimum sentencing requirements than whites (Mustard 2001).

A number of researchers have also demonstrated that cultural attitudes regarding femininity and criminality also shape the functioning of the criminal justice system (Curry et al. 2004; Daly 1989; Herzog & Oreg 2008; Spohn & Beicher 2000). These scholars note that gender ideology encourages state actors, who are largely male, to behave in paternalistic or chivalrous ways toward female defendants. Individuals drawing on paternalistic ideology tend to view women as passive, weak and dependent. This view suggests that they need protection, not punishment, from the criminal justice system, which often results in more lenient sentencing of ‘good’ of ‘traditional’ female offenders who are perceived to be ‘doing’ femininity appropriately. This leniency has been evidenced in sentencing, conviction, and incarceration rates. Through this gendered lens, female offenders are often constructed as passive victims of their lives, in contrast to the agentic male offender, and their sentencing is often times focused on treatment rather than punishment. Other scholars have demonstrated the state’s involvement in gender regulation through mechanisms such as judges privileging women’s care work
responsibilities over their material contributions to their families when making decisions about whether defendants should be incarcerated (Daly 1989; Gathings & Parrotta 2013), or in the fact that women who are perceived as gender deviants, such as those that behave aggressively or are charged with violent crimes, tend to face harsher sentencing (Haney, 1996; Vischer 1983).

This literature demonstrates that state actors draw on gendered and racist ideologies to make sense of and regulate deviant behavior. Patriarchal constructions of gender encourage state actors to view women as passive and dependent, which encourages paternalism from the state and voids their capacity to act agentically or be held responsible for their actions. The variation in conviction and sentencing by gender and race also reflects the subjectivity of legal enforcement despite the patriarchal state’s claim of rationality and objectivity. This variation in treatment reflects how the gendered and racialized interpretations and negotiations within state institutions of individual state actors can differentially situate and produce gender and race, even when laws appears to be “gender neutral” or “color blind.”

The Role of the Media in (Re)Producing Inequality

In addition to the explicit regulation of inequality through repressive state apparatuses, such as the police and courts, the interests of elites is also managed through the control of culture and ideology in ideological state apparatus, including the media. The media can be conceptualized as an ideological state apparatus in that it is largely controlled by individuals that benefit from current power arrangements and that media
outlets tend to reinforce and distribute hegemonic cultural beliefs (Althusser 1977). Media outlets therefore do not only reflect the existing ideological system, they serve to reinforce it. Sociological analysis of the media reveals that there is not a reality out there for journalists to cover. Rather, the gathering of facts into a meaningful news story requires a great deal of subjective intervention by journalists shaped by institutional constraints (Schudson 1989). Journalists are limited in their identification and framing of news stories by organizational constraints that encourage a reliance on government sources and powerful corporate interests to provide newsworthy stories and serve as experts in the media (Schudson 1989). Journalists are also discouraged from focusing on complex stories that require significant time allocation, and their framing of stories is constrained by pressure to align with broad cultural symbols (Schudson 1989: 266).

The news-making efforts of journalists are also shaped by the political economy of news, such that the reporting of journalists generally supports the views of the powerful interests (Parenti 1993). This is especially true given the concentration of media in the hands of a few powerful corporate actors, the close ties and economic dependence of media outlets on powerful corporate interests, and the dependence on government sources for large amounts of content. The media industry is dominated by a few large media conglomerates that are closely connected to other corporations and powerful political actors (Herman & Chomsky 1988; Parenti 1993). For example, “giant newspaper chains like Gannett, Knight-Ridder, and Newhouse … earn about 75 percent of all newspaper revenues in the country” (Parenti 1993: 27). The close ties between actors in
the news media, government, and corporate world encourages the promotion of hegemonic ideology in media reporting.

A number of scholars have considered how the media draws on and reproduces current power arrangements. The news media serves as a key site for reproducing controlling images (Collins 2000). The concept of controlling images refers to sets of imagery and representations that serve to legitimize and naturalize specific power arrangements and uphold current systems of oppression. This concept draws attention to the importance of cultural meanings in sustaining current power arrangements. It is largely through the control of representation and meanings that “contemporary forms of oppression… manufacture consent for domination so that we lose our ability to question and thus collude in our own subordination” (Collins 2004: 50). Hooks similarly argues that “control over images is central to the maintenance of any system of racial domination” (1992: 2). Therefore the media, as a central site for disseminating representations, is an important resource for reproducing and also potentially for challenging gender and racial subordination.

Critical media scholarship supports the assertion that media representations tend to present content in ways that reflect and reproduce existing power arrangements. Feminists researchers, for example, have found that women’s magazines tend to valorize traditional standards of femininity, such as emphasizing attractiveness, romance, relationships, motherhood, and being objects of masculine desire (Emerson 2002; Kuperberg & Stone 2008; Massoni 2004) and to trivialize the gender oppression of Western women (Wade 2009).
The media also tends to reproduce imagery that supports the maintenance of white supremacy (hooks 1992; Bonilla-Silva 2014). For example, scholars have demonstrated that hip-hop music and music videos present images of Blackness that perpetuate racial stereotypes and controlling images (Collins 2004). Depictions of Black womanhood often draw on racialized and gendered stereotypes, such as “the hypersexualized ‘hot momma’ or ‘Jezebel,’ the asexual ‘mammy,’ the emasculating ‘matriarch,’ and the ‘welfare recipient’ or ‘baby-momma’” (Emerson 2002: 117) while Black men are often depicted as womanizers and criminals (Wingfield 2008). Media coverage of the AIDS epidemic in the 1980s and 1990s constructed gay men and people of color as threats to the “supposedly innocent ‘general public’” that was implicitly constructed as the white majority (Booth 2000: 647). Representations of Latinos in the media also reproduce racial inequality by frequently depicting Latinos as less articulate, less motivated, more hot-tempered and more sexualized than whites, though the rigidity of these racial stereotypes has decreased over time (Mastro & Behm-Morawitz 2005).

A number of scholars have specifically examined how the media draws on race and gender ideology in crime reporting. Crimes involving Black offenders are more likely to be covered than those involving white perpetrators, while crimes involving victims who are racial minorities are less likely to receive media coverage (Bjornstrom et al. 2010). Additional research suggests that “Black offenders involved in interracial sexual offenses were frequently portrayed by the press as being especially dangerous” (Mosher 1999: 653). These findings reflect the reproduction of hegemonic racial ideologies that serve to protect the interest of the powerful and reproduce images of racial
minorities as illegitimate citizens and as threats to the white majority (Bjornstrom et al. 2010; hooks 1992).

Scholars have also found that the media tends to draw on hegemonic conceptualizations of gender when reporting on sex crimes (Benedict 1992). This includes emphasizing a female perpetrator’s vulnerability and need for treatment, rather than her sexual aggression and an over-representation of crimes involving female victimization (Meyers 1997). Media actors often attempt to ‘make sense’ of and neutralize gender-breaching female criminals by drawing on the oversimplified labeling of female offenders as ‘bad women,’ ‘mad women,’ or victims (Berrington & Honkatukia 2002; Cavender et al. 1999; Ndangam 2008).

Media depictions of female offenders are often characterized by a mad woman /bad woman dichotomy (Berrington & Honkatukia 2002). Mad women are understood as being at the mercy of hormones, biology, or past victimization, while bad women are defined as evil, frightening, and the unwomanly. This discourse constructs normal femininity in opposition to mad/bad women, while simultaneously (re)producing the ideology that women lack control over and responsibility for their own actions (Cavender et al. 1999). They are viewed as either mad women needing treatment to be ‘cured,’ or as bad women who are incomprehensible and should be locked away permanently. The tendency of media outlets to reproduce hegemonic conceptualizations of gender is further evidenced in news stories that minimize the severity of the crimes committed by women (Berrington & Honkatukia 2002; Ndangam 2008).
The above scholarship demonstrates that the media does not solely report “the facts,” but instead that media content is shaped by and reproduces hegemonic ideologies. The media can be conceptualized as a “conservative institution” that tends to draw on and reproduce broader discursive frames (Cavender et al. 1999). This reflects the control of large media outlets by corporate interest and the close connection between the media and political elites. It also reflects the organizational constraints on journalists, which encourage them to produce stories that resonate with broadly understood cultural narratives. Nonetheless, research also suggests that journalists are able to intervene in public discourse and cover stories in ways that solicit activist intervention in social causes (Wade 2011). Journalists and other media actors can be understood as facing a great deal of pressure to reproduce hegemonic ideology. But they also can be understood as agentic individuals who have the opportunity to challenge conventional understandings of issues through their framing of news stories and by choosing which individuals are given a voice in their news coverage.

*The Interactional Production of Inequality*

An interactional perspective on inequality is essential for understanding the processes through which systems of oppression are created and reproduced. This is especially important because articulating the social mechanisms/processes that produce inequality also provides a means to resist it. This project reflects my conceptualization of systems of oppression as created through interactional processes occurring in “concrete settings” (Schwalbe et al. 2000: 419). Rather than viewing inequality as a reified
structure that shapes individual lives, this project considers how inequality is ongoingly produced through the negotiation and joint action of individuals (West & Zimmerman 1987). It is essential to not only identify patterns of inequality in institutional settings such as the state and media, but also to identify the mechanisms through which these aggregated patterns emerge. My research draws on social constructionist thinking to analyze how claims-making and negotiation of meanings at the interactional level (by individual journalists, attorneys, judges, victims, etc.) relates to the (re)production of inequality. The regulation of ideology, or ways of making sense of the world, is an essential part of all systems of oppression (Bonilla-Silva 2014).

Interactional processes involve symbolic tools and material resources, which are differentially available to actors depending upon their location in the system of privilege and domination. Political and economic elites are able to construct “powerful virtual selves” through the management of backstage realities, the manipulation of symbolic resources, and the collaboration of powerful actors across various institutional spaces. Members of subjugated groups have less access to resources for constructing fully creditable selves (Schwalbe et al. 2000: 424). Those with the most power and privilege in society are able to create the “master frameworks” upon which individuals construct their ideological positions (Bonilla-Silva 2014: 9). Therefore, the ideological resources available to interacting individuals tend to reflect the interests of the dominant group.

Those with the greatest power are also able to shape the functioning of the state apparatuses and ensure relative coherence across different institutional spaces. Sustaining inequality requires the coordination of individuals’ actions across settings, which is
accomplished through the patterning of constraints on the ideas, emotions, and behaviors available to them in their interactions. The greater access to resources by powerful actors allows them to create the “common sense” knowledge of society (Bonilla-Silva 2014: 9). This process of defining the framework within which individuals can feel, think and behave obscures the constructed nature of inequality and makes its reproduction appear natural or inevitable. Control over ideological resources is important because these resources can be employed not only to reproduce, but also to challenge the social order. Because individuals are reflexive and agentic, the social order is also open to contestation and revision. Symbolic resources are especially open to modification because they vary and conflict across institutional settings. The social order is therefore in constant flux and vulnerable to modification (Althusser, 1977).

*Gender, race, class, and sexuality: Interlocking Systems of Oppression*

Feminist insight into the interlocking nature of inequalities, often conceptualized as a matrix of domination, emphasizes the mutual constitution and simultaneity of systems of oppression (Collins 2000). Because oppression across the dimensions of gender, race, class, and sexuality are produced simultaneously and are inseparable in individual lived experiences as well as cultural representations, they must be considered simultaneously in research focused on the production of inequality by individual and institutional actors (Baca Zinn and Dill 1996; Collins 2000; Crenshaw 1991; Pyke 1996; Pyke & Johnson 2003).
The concept of hegemonic masculinity refers to the pattern of practices that sustain men’s collective dominance over women (Connell 1987; Connell & Messerschmidt 2005). This concept allows scholars to simultaneously conceptualize both the qualities associated with masculinity and femininity in a specific regional and temporal space as well as how these constructs (re)produce the subordination of women by men. This reflects the fact that beliefs about gender differences not only provide a set of descriptions about how men and women should think and behave but also the legitimating rationale for oppression based on these presumed differences (Schippers 2007; West & Zimmerman 1987). Hegemonic masculinity is associated with strength, power, agency and desire for the feminine object while emphasized femininity is associated with vulnerability, passivity and compliance (Schippers 2007). Hegemonic masculinity and emphasized femininity are complementary and hierarchically related in that masculinity implies the desiring and dominance of the female object. Masculinity is not a fixed character type (Schilt 2006: 466), but rather a set of ideals that serve as ideological resources for assessing an individual’s gender performance. An individual’s sexuality, race, and class background differently situate them in relation to these hegemonic ideals. While all gender identity is continually produced and contested, men and women who are disadvantaged along other axes have less opportunity to claim the privileges of performing hegemonic masculinity and emphasized femininity, respectively.

White, heterosexual, middle-class men and women are provided more opportunity to claim adherence to hegemonic ideals (Bettie 2000; Collins 2000, 2004; Trautner 2005; Wilkins 2004). The gender enactment and sexuality of racially subordinated groups is
often constructed as morally deviant in order to buffer current arrangements of power and privilege (Espiritu 2008: 14; Wilkins 2004). For example, working-class men enact masculinity through the performance of hypermasculinity and boisterous discussion of sexuality. While this gender enactment allows working-class men to express their collective dominance over women, it also reproduces their class oppression by providing a subordinated contrast through which middle-class men are able to construct themselves as more civilized and egalitarian (Pyke 1996).

The current patterns of inequality are dependent on a normal/deviant binary that installs, “White heterosexuality as normal, natural, and ideal [and] requires stigmatizing alternate sexualities as abnormal, unnatural, and sinful” (Collins 2000: 97). Drawing on intersectional insights, scholars have elaborated how “those in power use languages of sexuality to naturalize oppression based on race, class, and gender, such as in racist understandings of Black women as sexually voracious, Asian women as sexually exotic, Black men as sexually predatory, and White women as sexually innocent” (Gamson & Moon 2004: 53). In dominant ideological constructions, Black sexuality is depicted as being excessive or unrestrained (Collins 2000). The sexuality of Black men specifically is constructed as wild and predatory while Black women are constructed as promiscuous and lacking restraint (2000: 103-4). This ideology posits Black men as threats to the presumed “sanctity” of white women, and also results in the devaluation and marginalization of Black women’s sexual victimization (Crenshaw 1991: 1268). White, middle-class women’s performance of “good” female sexuality requires sexual naivété and passivity. This hegemonic form of “doing gender” is linked to the reproduction of a
heterosexuality premised on the eroticization of gender differences and power inequality (Jackson 1996: 176).

Hegemonic ideals are not understood as true characterizations of individuals’ experiences, but rather as resources individuals use for interpreting experiences and behavior. For example, in analyzing the dynamics of college hook-ups, individuals tend to draw on dominant constructions of sexuality in which women are presumed to desire relationships over sex and men are viewed as more sexually motivated and less relationally oriented than women (Hamilton & Armstrong 2009). Even women who do not experience these ideals as accurate depictions of their lived experiences are compelled to account for their sexual behavior in relation to dominant gender ideology. Women who act as sexual subjects and behave outside of conventional expectations for middle-class college-aged women are held to account for their gender performance through slut-shaming and pervasive assumptions about their desire for romantic relationships. This holding to account serves to encourage individual adherence and buy-in to hegemonic ideals. Because patriarchy and heteronormative privilege is dependent on preserving the gender binary, women who engage as sexually assertive actors are stigmatized and treated as both gender and sexual deviants (Collins 2000). While everyday lived experiences are complex and contradictory, dominant constructions of gender serve as ideal types that are employed to hold individuals accountable to gender (West & Zimmerman 1987) and to uphold structures of dominance. Sexuality thus provides a mechanism for reproducing gender, race and class oppression through the sanctioning and marginalization of particular presentations of sexuality (Bettie 2000;
Pyke 1996). Individuals draw on these ideological resources in making sense of their everyday world and these ways of thinking shape their thinking and behavior, which patterns interaction in ways that reproduce the existing social order.

The performance of heterosexuality is an important component of performing a “normal, respectable gender identity” (Seidman 2003: 49, see also Schilt & Westbrook 2009 and Pascoe 2007). Sexual identity also serves as a distinct axis of oppression in that heterosexuality is normalized and institutionalized (Seidman 2009). Under compulsory heterosexuality, all sexuality is regulated and attributed moral meaning, by both institutional and individual actors. Individuals engaging in sexual acts that are seen as falling outside the bounds of normalized heterosexual, monogamous relationships are largely stigmatized (Seidman 2009: 24). In this context, homosexuality is constructed as morally suspect and deviant relative to constructions of heterosexual relationships as moral and normative. Heterosexuality is enforced as the privileged category in that individuals treat homosexuality as a marked category; “preventing homosexuality from being a form of sexuality that can be taken for granted or go unmarked or seem right in the way heterosexuality can” (Valocchi 2003: 756). Sexual deviance is also attributed to “the anatomies, genders, sexual practices, and identities that do not neatly fit into either category of the binaries or that violate the normative alignment of sex, gender, and sexuality” (Valocchi 2005: 753). While heterosexual monogamous relationships, premised on romantic love and intimacy, are treated as ideological ideals, hegemonic ideals are not always cohesive and straightforward. The increasing acceptance of gay individuals and marriage in American society reflects the changeable nature of ideologies
of normalcy, but also demonstrates that ideologies can shift in ways that do not necessarily challenge the foundations of inequality (Duggan 2003).

Hegemonic ideology is neither cohesive nor static. There is a growing body of scholarship on the dynamic nature of masculinity, for example, that explores how straight identified men incorporate gay or feminine termed practices into their production of straight masculinity, including emotional expressiveness (Messner 1993; 2007) and the incorporation of “gay aesthetic” into their presentation of self (Bridges 2014). Carr (1998) analyzed the agentic adoption of “tomboy” identities as it both challenged and reproduced gender inequality, and Kimmel (2008) has similarly noted the “guyification” of college age women, in which young women adopt some behaviors associated with masculinity in order to reap some benefits. While this “hybridization” of gender identities does not reflect a dismantling of the underpinnings of hegemonic masculinity, it does reflect the dynamic and changeable nature of hegemonic ideology as it is enacted by individuals in their daily lives. This scholarship demonstrates that hegemonic ideals are complex and contradictory. The symbolic resources used to reproduce and legitimate oppression do not always align perfectly with one another and are differentially available in various concrete settings. Furthermore, individuals actively construct the social world; they are not just products of it (Connell 1987; Carr 1998). This suggests that studying how individuals draw on and reshape ideologies at points of disruption can provide insight into the contradictions inherent in hegemonic ideals as well as how ideology is resisted and changed.
Implications of the Existing Literature for the Current Research

Social constructionist scholarship provides a compelling theoretical lens through which to analyze the discourses surrounding sexual contact between adult teachers and their adolescent students. These cases are powerful sites for analysis because scholars have demonstrated that the regulation of sexuality is central to the reproduction of racial and gender inequality. Theorizing about hegemonic masculinity demonstrates the centrality of heterosexuality to the relational construction of masculinity and femininity. Constructions of racial minorities as over-sexed and aggressive threats to the white majority permeate the news media and criminal justice system, and are employed as ideological resources that perpetuate white privilege.

Attention to the creation, maintenance, reshaping, and points of contradiction of hegemonic ideologies is an essential project in the analysis of inequality. Ideologies serve as resources for individuals as they try to make sense of or strategically construct these criminal sexual relationships. Because court rooms and newspapers both involve explicit claims about the “facts” of the case, they are powerful sites for exploring how contradictions in ideology are managed by individuals. As Althusser and others have posited, the repressive state apparatus (including the criminal justice system) and the ideological state apparatus (including the news media) have points of similarity and disjuncture. The repressive state is more closely controlled by a narrow set of powerful actors and it is used largely to enforce the existing social order. While the ideological state apparatus is also closely connected to those with the greatest power and privilege in society, it is more heterogeneous and dispersed. This theorizing suggests that challenges
to the gendered and racial order may be more likely to appear in the media than in the state. On the other hand, the court room is a setting where actors strategically draw on various cultural scripts in attempting to make a compelling case. Because trials are inherently places of contestation and conflict, this provides an opportunity to analyze how competing and contradictory hegemonic ideals are made sense of.

The reproduction and contestation of hegemonic ideology occurs in concrete settings across a range of institutional settings. Informed by Althusser’s distinction between the repressive state apparatus (including government legislators, the police, and the court system) and the ideological state apparatus (including the media and the education system), I identify the court room and the news media as two important institutional sites for exploring the reproduction of inequality. While this project explores the reproduction of inequality in institutional settings, I focus on the interactional processes through which the patterning of individual action occurs, including the construction and negotiation of meaning in the court room and the narrative framing of criminal cases in the media.

DATA AND METHODOLOGY

Methodological Overview

This research project is grounded in the feminist epistemological insight that power is inherent in the production of knowledge (Cancian 1992; Harding 1987). Based on this insight, I focus on the power dynamics involved in the discursive constructions of cases of sexual contact between adults and adolescents by varying actors. This research is
motivated by an interest in challenging oppression by (1) articulating the processes through which inequality is reproduced in the news media and the criminal justice system; and (2) drawing attention to individuals, events, and narratives that challenge the existing social order. The focus on the construction of these cases not only by the actors involved, but also by the media and the state draws on a tradition of “studying up” or critically examining the mechanisms through which those with power reproduce that power (Harding 1987; Messner 1996). The process of “excavating” that which is hidden or unacknowledged (DeVault 1999) challenges attempts to naturalize oppression by revealing the constructed nature of hegemonic ideology.

I employed both quantitative and qualitative sources of data to address these research goals. There is a strong body of scholarship exploring how race and gender shape the legal outcomes of criminal cases. The inclusion of both qualitative and quantitative data in this project allows me to contribute to this discussion both in terms of identifying the statistical patterns of inequality in these cases as well as connecting these findings to the meaning-making processes that occur in the court room. Attention to the discursive framing of these cases by journalists and criminal justice actors was best accomplished using qualitative content analysis of textual materials. These texts provided rich sources of data that allowed me to identify various constructions of each case and analyze how the variability in the framing of these cases across different individuals related to their strategic interest, institutional location, and access to ideological resources. The discursive framing of these cases by any single actor is complex and may be at times contradictory, not fully elaborated, or change over the course of the trial. The
inclusion of the breadth of media coverage of each trial allowed me to track these points of disjuncture and discrepancies as well as to identify contradictions in the discursive framing of the same case by different institutional actors (such as the prosecuting and defense attorneys).

Sample

This research focuses on criminal cases involving teachers who had sexual contact with adolescent students. Teachers accused of sexual misconduct with students can be charged with a broad range of statutes (Shakeshaft 2004: 39-40) and there is no national database available for identifying such cases. For this reason, I constructed a database including a national sample of over 300 criminal cases involving statutory rape or other forms of sexual contact occurring between teachers and their students using content analysis of print newspaper articles archived in LexisNexis Academic. The sample of cases was identified by including all relevant criminal cases identified in newspaper articles archived in LexisNexis that contained the search terms: “teacher AND student AND sexual relationship OR sexual contact OR rape OR sexual assault” and were published in the calendar years 2008, 2009, or 2010. These broad search terms were selected to maximize the diversity of the sample and insure inclusion of cases that may not have been charged under statutory rape or related statutes (such as contributing to the delinquency of a minor). The LexisNexis search engine includes nearly 500 unique newspapers and is a tool frequently used to locate media coverage for content analysis.
(Stryker et al. 2006). The breadth of newspapers included in the archive led to a diverse sample of cases that represent 46 of the 50 states and variation in regional demographics, rural and urban settings, and newspaper circulation. The time frame was selected to be broad enough to ensure a large sample, recent enough that it can be used to interpret current ideologies, and historic enough that cases receiving media coverage during the time frame will have reached the conclusion of the trial so that the outcomes and sentencing can be included in the research. The sample does include a significant number of cases that had only minimal media coverage (e.g. one Associated Press brief on the defendant’s arrest), but excludes cases that generated no media coverage. Media coverage of criminal cases is often dependent on government officials serving as sources and journalists’ access to court documents. This sample of cases may therefore over-represent cases that were taken seriously in the criminal justice system (i.e. the police department published a press release, or a prosecuting attorney contacted the media) or that involved victims, defendants, or schools that journalists and newspaper editors viewed as newsworthy.

Data from the newspaper articles were used to code the following variables for each case: gender, race, and age of the perpetrator; gender, race and age of the victim (as available); the geographic location of the case; and the legal outcomes of the criminal case, including resolved through jury trial or plea bargain, length of sentencing, mental health and substance abuse treatment mandates, and sex offender classification. While

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1 Stryker et al.’s (2006) recent research indicates that the use of electronic databases to locate a sample of media coverage for content analysis is increasingly common and normative. These scholars found that within six broadly read communication journals, 42% of all content analyses published over the five year span of 2000 to 2005 used a database as a source for constructing their sample.
much of the demographic and sentencing data can be gathered from the newspaper articles available in the LexisNexis search, full coding of cases in which case outcomes or demographic information was not provided was completed with the assistance of a team of undergraduate research assistants through follow up research using newspaper coverage, court documents, and government sex offender and incarcerated offender websites. The coding team was trained in identifying legitimate sources for information and maintained weekly contact with the primary investigator throughout their coding. The primary investigator and the most experienced undergraduate coder each completed a ten percent spot check of the coding, and inter-coder discrepancy rates were less than ten percent across all coders.

The racial demographics of the sample I identified through LexisNexis closely match the racial demographics of the educators nationally (see Figure 1). Male defendants were significantly overrepresented in the sample relative to their presence in the population of teachers; only 24% of teachers are male while 61% of the cases in the sample involved male perpetrators. This suggests that male teachers perpetrate at higher rates than female teachers. In addition to these descriptive statistics, this data was used in the regression analyses of how gender and race shape legal outcomes of cases discussed in chapter 2.

The sample of cases identified through LexisNexis also served as the population list from which a smaller sample of cases was selected for textual analysis. Considering the intersection of gender and race in the construction of sexuality and criminality is a key goal of this project. I therefore employed a stratified random sampling technique to
select the subsample of cases that were used for qualitative analysis. This ensured the subsample included sufficient numbers of cases from less represented demographic groups. In the interest of analytic clarity and ensuring both depth and breadth in analysis, I opted to focus solely on cases involving white, Black, or Latino perpetrators. In creating the subsample for qualitative analysis, the goal was to include 15 cases from each demographic category (race by gender). The full sample list of cases identified in the LexisNexis search included very few female perpetrators of color. For this reason, the full sample of cases involving female Latina perpetrators with male victims were selected into the sample (n = 6). While the single case involving a female Black perpetrator with a male victim was included in the sample, the analysis of this case was used largely to confirm patterns found in other cases rather than attempting to generalize about the treatment of Black female perpetrators from a single case. The full sample of 14 cases involving male Latino perpetrators with female victims were selected into the subsample. A random sample of 15 cases was selected into the subsample from each demographic group that had more than 15 cases in the full sample. This included cases involving white male perpetrators with female victims, white female perpetrators with male victims, and Black male perpetrators with male victims. See Table 1 for a description of the demographic characteristics of the LexisNexis population of cases as well as the subsample selected for qualitative analysis.

The complex interaction of the production and regulation of race and gender through homophobia and heteronormativity is an important site for analysis. Analyzing how treatment of cases in the media and court room differs depending on the gender
pairing of the victim and perpetrator would require equal representation of cases involving same and different gendered pairings. Because of the sample size this would require, the sample selected for qualitative discourse analysis was limited to cases that involve pairs of perpetrators and victims with different genders. The intersection of non-heteronormative relationships with race and gender was still considered in the quantitative analysis of these cases, and will also be a site for future research.

*Regression Models*

Differences in the legal outcomes of the full sample of 326 criminal cases were analyzed using logistic and ordinary least squares regression models. Logistic regression models were run to assess differences in the likelihood of conviction, as well as in the likelihood of convicted perpetrators being sentenced to incarceration (including house arrest, jail, or prison). Ordinary least squares regression models were used to assess differences in the length of sentences and included the same independent and control variables. Both models included the gender configuration of the victim and perpetrator (same gender or different gender pairs), whether there were multiple victims involved, and the gender and race of the perpetrator as independent variables. The age of the minor, the seriousness of charges (coded as felony or misdemeanor), and the geographic region of the trial were included as control variables.
Discourse Analysis

The qualitative discourse analysis was based on the subsample of sixty six cases. Once these cases were selected into the sample, I located the appropriate local newspaper for each criminal jurisdiction and identified the newspaper coverage of the incidents and criminal proceedings by entering the perpetrator’s name as a search term in the online sites of newspapers or in paid online news archives. Every effort was made to include an exhaustive list of all news articles and editorial content written on each case within their local newspaper by searching not only within the newspapers online site, but also news aggregators, including Google and HighBeam Research. While most of the newspapers maintained their own paid news archive, others were available only through the aggregated news archive HighBeam Research. I also analyzed relevant news coverage of the sample of cases that was available through the LexisNexis news archive. This included primarily local and national newspaper articles as well and Associated Press coverage and a smaller number of news television show transcripts (including shows from CNN, Fox News and MSNBC). The majority of cases had at least three locatable news stories, one reporting the initial criminal charges or indictment, another reporting on either a plea deal or a juror verdict, and a third reporting on sentencing. The median number of local newspaper articles covering a case was 5, while about a quarter of the sample was written up in over a dozen local newspapers. Some were covered in national newspapers and on national news shows (see chapter 3 for a discussion of the gender and racial patterns in the level of news media coverage of these cases).
The news media coverage of the cases provided the bulk of information about what occurred during the criminal proceedings. Because the media framing of the trials provides only a partial depiction of the full happenings of any case, I also procured the court transcripts of the criminal court proceedings for five of these cases. These transcripts served as data that allowed me to triangulate my analysis of the state characterizations of these cases based on the media reported, and allowed greater insight into how arguments about the case unfolded in the court room. These cases were selected using theoretical case selection following the full coding of newspaper articles and media coverage of the sixty six cases in the qualitative sample, but were also limited by the availability of the transcripts. These five cases were selected as exemplars of how gender and race shape the discursive construction and proceedings of a criminal case based on the data collected through newspaper coverage and were available for purchase within a reasonable cost (the average per transcript was about $1500) and time frame. Because of the extensive amount of textual material involved in the court transcript of a jury trial, I focused on the opening and closing arguments of the prosecution and defense as well as the statements made at the sentencing hearing (including victim impact statements and the judge’s sentencing soliloquies) when coding the transcripts. The closing arguments are ideal sites for locating how these actors draw on contradictory narratives in strategically reconstructing the events of the case. Additionally, the sentencing statements of judges provide insight into their characterizations of the case. These are places where the judge legitimates his or her sentencing decisions through a discursive framing of the case including the perpetrators’ presumed needs for treatment and/or punishment.
The discourse analysis involved coding textual material (news content and transcripts) using the qualitative coding software program ATLAS.ti. While the initial coding closely reflected the content of the newspaper articles, the decision about what was and was not coded was shaped by theoretically informed sensitizing concepts. These sensitizing concepts include attention to the language used to characterize the sexual contact, attributions of agency and passivity, constructions of normalcy and deviance regarding gender performance, race, and sexuality, and the interrelation of race, gender, and sexuality in constructing victimization, credibility, aggression, and desire. The code list was continuously revised and expanded, and I returned to previously coded documents to apply new codes as I located emergent themes. The analysis of the media paid attention to the framing of the journalists (Benford and Snow 2000; Schilt & Westbrook 2009) as well which actors were given voice through quotes and close paraphrasing in the news coverage, letters to the editor, and editorials. See Appendix 2 for a listing of codes and Appendix 3 for a sample news article coding.

CONCLUSION

By analyzing the efforts of journalists, state attorneys, defense attorneys, judges, victims, and their advocates to make sense of cases of sexual contact between teachers and their students, this research contributes to sociological understanding of the resiliency and reshaping of dominant ideology and the role of individuals in the reproduction of gender and race inequality in the judicial system and the mainstream news media. It also
contributes to criminological knowledge about the role of gender and race in sentencing decisions and challenges claims of legal neutrality concerning gender and race.

Chapter 2 draws on the regression analysis to consider how race, gender, and their intersection relate to sentencing outcomes. This analysis demonstrates that the racial disparity in sentencing outcomes identified by other scholars is not evident in this particular set of cases. The middle class identity of the Black and Latino perpetrators may serve as a buffer against the judicial punitive many defendants of color face in the criminal justice system. I also contribute to the criminological discussion of the functioning of judicial chivalry in sentencing decisions and support for the selective chivalry hypothesis that suggests women who adhere to dominant understandings of gender experience leniency in the criminal justice system while those who fail to do so are treated more punitively.

Chapter 3 details how individuals in the media and state differently construct cases depending on the gender and race of the perpetrator. I highlight the cultural ambivalence about the seriousness of these crimes, as well as the gendered and racialized nature of the media’s coverage of these cases. In particular I argue that the media’s greater attention to cases involving white female teachers reflects dominant interests in regulating white female sexuality. I also analyze how the media’s use of the “respectable black man” narrative reproduces gender, class, and race hierarchies. Drawing on the work of Haney (2000) and others, I complicate views of the state as wholly patriarchal by focusing on the contradictory constructions of these cases offered by defense and prosecuting attorneys. While defense attorneys often draw on gender stereotypes in
minimizing the seriousness of the crime, prosecutors often challenge hegemonic ideology by strategically asserting the predatory and self-seeking nature of crimes involving both male and female perpetrators.

Chapter 4 analyzes the state and media treatment of the adolescent victims in these cases. I highlight the contingent nature of constructions of the “worthiness” of female victims offered by journalists, attorneys, and judges, especially as these assessments of worthiness relate to the race and class of the victim. This chapter also analyzes efforts by journalists, attorneys, the victim and the victim’s parents to preserve and protect the masculine identity of the male adolescent victims. Extending existing literature on the seeming incompatibility of victimhood and a masculine identity, this chapter identifies subtle efforts by a range of actors serving to protect the seemingly vulnerable access these adolescents have to hegemonic masculinity. This chapter explores the ideological vulnerability of adolescent masculinity as well as the work actors engage in to protect the access of white male bodies to male privilege.

This project illuminates how dominant ideology about gender and race shape institutional responses to similar criminal cases. By analyzing the media’s regulation of female sexuality, efforts by individuals in the media and state to protect white adolescent masculinity, the racialization of male victimhood in the court room, the construction of “respectable” Black masculinity, and claims about gender injustice in sentencing, this research contributes to our understanding of how dominant ideologies are strategically employed and reproduced by individuals embedded in powerful institutional settings. It also demonstrates that hegemonic ideals are not cohesive and can be contradictorily
employed by various actors with different strategic interests. This project therefore demonstrates both the resiliency and vulnerability of hegemonic ideology as it is employed by agentic individual actors.
References


Figure 1. Population and Sample Demographics

NCES Teachers data\textsuperscript{1}  
Lexis Nexis Sample

<table>
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<tr>
<th></th>
<th>NCES Teachers data</th>
<th>Lexis Nexis Sample</th>
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<tr>
<td>White</td>
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<td>77%</td>
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<td>Black</td>
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<td>8%</td>
</tr>
<tr>
<td>Hispanic or Latino</td>
<td>7%</td>
<td>7%</td>
</tr>
<tr>
<td>Other</td>
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<td>1%</td>
</tr>
<tr>
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Table 1. LexisNexis Sample and Qualitative Sub-Sample Demographics

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<th>White</th>
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<th>Total</th>
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</thead>
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<td>0</td>
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<td>16</td>
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<td>1</td>
<td>0</td>
<td>110</td>
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<td>Male-Female</td>
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<td>117</td>
<td>5</td>
<td>20</td>
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<td><strong>22</strong></td>
<td><strong>252</strong></td>
<td><strong>6</strong></td>
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<td><strong>Total</strong></td>
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<td><strong>30</strong></td>
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<td><strong>0</strong></td>
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Race of Defendant
Chapter 2: Assessing Justice: Defendant Gender and Race in Judges’ Statements and Sentencing Outcomes

INTRODUCTION

This chapter contributes to criminological literature analyzing how the gender and race of the perpetrator relate to sentencing outcomes in criminal trials by analyzing the outcomes of trials involving educators who had a sexual relationship with their student. I use statistical analyses of criminal case outcomes to consider how race, gender and the interaction of the two shape the sentencing decisions of judges. I find little evidence of racial differences in sentencing outcomes and strong evidence that female defendants experience greater leniency in sentencing outcomes. Drawing on intersectional insights on the contingent nature of judicial leniency, I analyze whether women who can be viewed as gender deviants face more punitive legal treatment than other women and comparable male offenders.

I also use qualitative analysis of judges’ characterization of these cases, as reflected in newspaper coverage and a subsample of court transcripts. I argue that judges tend to affirm the importance of the criminal justice system by highlighting the seriousness of these crimes. This affirmation may be especially likely in these cases because the level of victimhood and the seriousness of the crime is a contentious issue among the public at large (see chapters 3 and 4), leaving the legal system potentially vulnerable to criticism. In contrast to the strong patterns of gender disparity in the legal treatment I found in the regression analysis, I find that judges tend to make both overt
and covert claims to gender neutrality, including through explicit statements that they take crimes involving female sexual perpetrators seriously.

I begin the chapter by reviewing the relevant literature on patterns of racial and gender inequality in the criminal justice system. This is followed by an explanation of the variables and their hypothesized relationships in the regression analyses examining sentencing outcomes and in the qualitative analysis of judges’ sentencing statements. The findings report patterns of gender differences in the legal treatment of these cases using both quantitative and qualitative data. I close with a discussion of the findings and consider how dominant beliefs about gender and sexuality shape the legal outcomes of these cases.

RACISM AND SEXISM IN THE CRIMINAL JUSTICE SYSTEM

A significant body of literature has analyzed differences in how men and women and white, Black, and Hispanic offenders are treated in the criminal justice system. While a range of scholars have examined the separate effects of race and gender on sentencing outcomes, recent research has focused on articulating the complex interactions of race and gender in criminal justice outcomes to better articulate how social inequality and dominant ideology shape the functioning of the state.

The literature on racial differences in sentencing outcomes has significant variation in findings, but nearly all of the research finds some evidence of racial disparity in legal treatment that benefits whites relative to other racial groups (Steffenmeier et al. 1998). Research indicates that white defendants experience greater leniency in the
criminal justice system, with some scholars finding that Black perpetrators receive harsher sentences on average than perpetrators of other races (Mosher 1999; Mustard 2001), and others finding that Hispanic defendants are at the greatest risk of receiving harsh penalties (Steffenmeier & Demuth 2001). Because much of the research on sentencing outcomes is quantitative, the processes through which these patterns of racial injustice in sentencing outcomes emerge are not articulated. But it is likely that the differential treatment of Black, Latino and white offenders is based on and reproduces racist conceptions of Black and Latino masculinity as aggressive and dangerous (Mosher 1999; Steffenmeier et al. 1998).

Research on how the combination of the race of the victim and perpetrator relates to sentencing outcomes also supports the argument that Black and Hispanic offenders are viewed as more dangerous threats to the white majority and are punished more harshly. Scholars have found that Black defendants of crimes against white victims face the greatest severity in sentencing when compared to other combinations of victim-perpetrator race (Mosher 1999; Zeisel 1981). Because newspaper coverage of criminal cases involving sex crimes does not generally identify the victim and rarely provide descriptions of the victim’s race or ethnicity, I did not have data that allowed me to analyze how victim race related to the treatment of defendants in the criminal justice system. There were a handful of cases in which the victim’s race was identified in either the court transcript or media coverage of the case. While the numbers were too small to include in statistical analysis, the differential treatment of white victims and victims of color is considered in chapter 4.
There is a large and growing body of research on gender differences in criminal justice outcomes (Daly 1989; Herzog & Oreg 2008; Spohn & Beicher 2000). Historically, this literature was centered on the “chivalry hypothesis,” which suggests that judges (who are primarily male) hold paternalistic attitudes towards women. This paternalism makes it difficult for the judges to imagine female defendants behaving in the way they are accused, leads to views of women as passive and dependent, and motivates judges to want to protect, rather than punish, female offenders (Vischer 1983; Daly 1989). There is a great deal of variation in the findings regarding gender and leniency in the criminal justice system. Some researchers have found that female offenders experience greater leniency in pretrial release decisions and post-conviction sentencing severity (Kruttschnitt 1984). Others have found that female offenders experience some leniency in risk of incarceration (Spohn and Beicher 2000; Steffensmeier et al. 1998), but not in terms of incarceration length (Steffensmeier et al. 1998). Researchers have also found that offender/victim gender pairing has an impact on sentencing, with male offenders in crimes involving female victims receiving longer average sentences than any other offender-victim gender pairing (Curry et al. 2004).

More recent scholarship has drawn on intersectional insights to better understand these contradictory findings and to elaborate the complex ways in which race, gender, and other systems of oppression operate within the criminal justice system. These scholars have argued that gender differences in sentencing do not apply equally to all women. This “selective chivalry” or “evil woman” thesis suggests that leniency may be differentially extended to women based on their race and class status or to female
offenders who are perceived to be ‘doing’ femininity appropriately (Bernstein et al. 1979). Early conceptualizations of the selective chivalry thesis were based on findings regarding the greater leniency afforded to women who were white, older, and viewed as cooperative by the police (Vischer 1983). More recent elaborations have focused on mediating effect of caregiving on female incarceration. Scholars have demonstrated that judges tend to treat women with care responsibilities more leniently than single women, and that they privilege women’s care work responsibilities over their material contributions to their families when making decisions about whether defendants should be incarcerated (Daly 1989; Gathings & Parrotta 2013). Bernstein et al. (1979) first hypothesized that the female defendant’s whose crime do not suggest they breached dominant gender expectations may have more access to leniency than women who are viewed as gender deviants over two decades ago. Since that time, there has been little empirical examination of this specific application of the selective chivalry thesis. The research that has compared the treatment of men and women across different types of crime (e.g. assault or property crime) (Farnsworth and Teske 1995), the violent/non-violent nature of the crime (Steffensmeier et al. 1993) and the seriousness of the crime (Mustard 2001) and have found little support for the selective chivalry hypothesis.

Most recently, Embry and Lyons (2012) examined the selective chivalry hypothesis in the context of sexual offending. They argued that because sex offenses committed by female offenders can be viewed as an “abhorrent break from traditional gender roles,” (152) the selective chivalry thesis would suggest that women convicted of these crimes would be treated more harshly than men convicted of the same charges.
They instead found that women received less severe sentences across a range of sexual offenses and that sexual crimes that involve presumably more serious breaches of gender expectation (e.g. forcible sodomy versus statutory rape) did not lead to harsher treatment of women relative to men convicted of the same crime. These findings may suggest that female sexual offenders are not inevitably assumed to be gender deviants by individuals in the criminal justice system. My qualitative analysis suggests that defense attorneys strategically draw on gender ideology to minimize the seriousness of female sexual perpetrated in ways that recast their client’s as “good” women who adhere to traditional femininity (see chapter 3). Operationalizing gender deviance simply in terms of the type of crime committed may not be effective for capturing the functioning of selective chivalry. It is possible that female offenders who are viewed as gender deviants are treated more harshly, but that a conviction as a sex offender does not invariably lead to a view of female perpetrators as gender deviants.

There is also a significant body of research that challenges scholarly claims regarding gender disparity in sentencing outcomes and highlights the important of other determinates of sentencing outcomes (Rodriguez, Curry & Lee 2006). Some scholars suggest that past criminal history and the seriousness of the crime are the most important factors determining judges’ sentencing decisions (Steffensmeier et al. 1998) while others argue that willingness to take responsibility for the crime, as well as seriousness of the crime, are the best predictors of sentence severity (Pasko 2002). This research may actually be connected to gender disparities in sentencing in that judges may use gender expectations as a shorthand in assessing the blameworthiness and future risk to the
community that the offender poses when they are faced with limited information (Embry & Lyons 2012).

Scholars have also demonstrated that it is essential to consider race and gender simultaneously when analyzing criminal justice outcomes. A number of researchers have found that the effect of race on legal treatment is conditioned by gender in that male racial minorities face harsher treatment than white males, while the same does not hold for women who are racial minorities (Spohn and Beicher 2000; Steffensmeier et al. 1998). Research also suggests that the likelihood of conviction and severity in sentencing is especially high in cases involving young Black male perpetrators (Spohn & Beichner 2000; Steffenmeier et al. 1998). The insight that the criminal justice system does not “function the same way at all points for all women” has encouraged a focus on “exploring the diversity in the justice system's stratifying and labeling processes” (Haney 2000: 650-1). In this chapter, I contribute to this growing literature on the intersection of race, gender, and sexuality in the criminal justice system by examining the relationship of these variables using statistical interaction effects.

DATA AND METHODS

In this chapter, I analyze how sentencing outcomes differ by the gender and race of the perpetrator in criminal cases involving teachers who had sexual relationships with their adolescent students. I identified a sample of relevant cases through content analysis of print newspaper articles archived in LexisNexis Academic. Using the search terms “teacher AND student AND sexual relationship OR sexual contact OR rape OR sexual
assault,” I identified all relevant criminal cases reported on in the calendar years 2008, 2009, and 2010. These broad search terms allowed me to identify a diverse sample that included defendants charged under a variety of legal statutes, including statutory rape, contributing to the delinquency of a minor and improper relationship between a student and a teacher. The breadth of newspapers included in the archive led to a diverse sample of cases that represent 46 of the 50 states and vary in regional demographics, rural and urban settings, and newspaper circulation. The sample does include a significant number of cases that had only minimal media coverage (e.g. one Associated Press brief on the defendant’s arrest), but excludes cases that generated no media coverage. Media coverage of criminal cases is often dependent on government officials serving as sources and journalists’ access to court documents and hearings. This sample of cases may therefore over-represent cases that were taken seriously in the criminal justice system (i.e. the police department published a press release, or a prosecuting attorney contacted the media) or that involved victims, defendants, or schools that journalists and newspaper editors viewed as newsworthy.

Because I was interested in making comparisons across similar cases, and the broader project analyzes the contested nature of sexual victimization in these cases, I focused only on cases that involved “social consent” (Cavanagh 2007). The term social consent is inherently slippery, but is useful for distinguishing between criminal sexual contact that involved physical coercion and those that did not involve physical coercion, i.e. those in which the sexual contact was illegal because the victims’ status as a minor prevented them from being able to give legal consent. Cases that involved illegal sexual
contact due to the age of the minor, the perpetrator’s role as a teacher, or both were
included in the sample only if the relationship involved some social consent. Identifying
social consent is complex, and the sample involves a great many relationships in which
the victim described encounters as coerced, through the perpetrator’s use of their
authority to exert social pressure over the victim. The use of this term is not intended to
undermine the victimization many of these minors experienced, but rather as a sensitizing
concept in building a sample of similar cases in which the meaning of consent and
victimhood is more likely to be contested. This goal also lead me to exclude cases where
a victim was under 13 years of age when the sexual contact occurred and cases in which
the victim was identified by the media as qualifying for special education services, based
on the presumption that the victimhood of the minors in these cases was less likely to be
contested. Many of the cases involved sustained sexual relationships over a period of
weeks, months, or even years (often with frequent phone and internet contact between the
perpetrator and the victim) while other cases involved one time sexual encounters.

Data from the newspaper articles were used to code the following variables for
each case: gender, race, and age of the perpetrator; gender and age of the victim; the
geographic location of the case; and the legal outcomes of the criminal case, which
included whether the case was resolved through jury trial or plea bargain, legal outcome
(acquittal or conviction), probation length, incarceration length, and other sentencing
mandates (including sexual offender, mental health and substance abuse treatment
mandates). While the initial identification of cases and some of the demographic and
sentencing data was coded from the news articles used to identify the sample, full coding
of case outcomes or demographic information was completed with the assistance of a team of three undergraduate research assistants. Each coder used newspaper coverage, court documents, government press releases, government sex offender websites, and government incarcerated offender websites. The coding team was trained in identifying legitimate sources for information and maintained weekly contact with the primary investigator throughout their coding. The primary investigator and the most experienced undergraduate coder each completed a ten percent spot check of the coding. The rate of inter-coder agreement was above ninety percent across all cases, which is a frequently cited standard in coding media content (Lombard, Snyder-Duch, and Campanella Bracken 2002).

I also examined sites of convergence and disjuncture in the discursive constructions of these cases offered by judges and their sentencing decisions. I used qualitative content analysis of the newspaper coverage of a subset of 66 cases and the court transcripts of five cases to analyze the framing of these cases by the trial and sentencing judges. I used Atlas.ti to code the articles and transcripts. While coding, I paid special attention to the judges’ construction of the seriousness of the crime, their explanation for their sentencing decision (when offered), and their characterization of the offender.

**Variables and Models**

The regression models predicting incarceration length included independent variables reporting the gender and race of the perpetrator, the gender of the victim, the
occupational role of the perpetrator (coded as teacher/administrator, coach/ musical director, or other), and whether the case involved multiple victims or a single victim. In order to assess the impact of race and gender on criminal justice outcomes simultaneously, I created an interaction variable. I constructed a nominal variable reflecting the possible combinations of perpetrator race and gender in my sample (Black male; Latino male; Latina female; white male; white female) that allowed me to analyze the effects of race/gender combinations rather than separately reporting the impact of perpetrator gender on sentencing and the impact of perpetrator race on sentencing. Based on prior research, I hypothesized that white female perpetrators would experience greater leniency in sentencing length than Hispanic female perpetrators and male perpetrators of all races. I also hypothesized that Black and Hispanic male perpetrators would experience more severe sentencing relative to white males and females of all races.

The model also included three independent variables that reflect the nature of the relationship between the victim and the perpetrator: the academic position of the perpetrator, whether there were multiple victims involved, and the gender composition of the victim-perpetrator pairing. The measure of the academic role that the perpetrator served in is important because it reflects the amount of authority the perpetrator held over students. Each perpetrator was categorized as either (1) a teacher or administrator; (2) a coach or band/music director; (3) a substitute/aide/other role. Nearly eighty percent of the perpetrators in the sample were teachers (four were academic administers, such as vice principals and academic counselors). Perpetrators in these positions have a great deal of formal authority in the school setting, including the ability to affect the victims’
academic success and discipline. Over ten percent of cases involved perpetrators who were athletic coaches or band, orchestra, or choir directors. I grouped these roles together because while they involve working in an instructional capacity with formal authority over the student like teachers, these positions allow for greater flexibility and informality in their relationship to students (musical directors often accompany students on overnight trips to performances, coaches often spend time with student after school hours and in non-school settings, etc.). Data suggests that these types of instructors are at greater risk of sexual perpetrating than other teachers because of the greater opportunity to contact minors in settings with low levels of supervision (Murce 2013). They also generally have less influence over the students’ academic well-being and possibly less control over in-school disciplining of students. In cases in which the perpetrator was described as both a coach and a teacher, they were coded as a teacher because of the greater authority associated with that role.

The final category involved staff members that were not in direct instructional positions with students (such as computer technician aides or security guards) or were in assistive positions that are associated with lower responsibility and authority in the school setting (student teacher, teaching aide, substitute teacher). While their authority over the victim is less than those in more supervisory roles (such as classroom teachers), they still have administrative power (such as the ability to subject student to discipline or to control their movement) and are connected to the victim through their academic role. I hypothesized that those with the greatest level of supervisory power over students (e.g.
teachers and administrators) would experience less sentencing leniency than adults working in other educational capacities.

The model included two additional independent variables that were used for examining the “selective chivalry” hypothesis, which suggests that women who adhere to dominant gender expectation experience leniency in the criminal justice system, while those that breach these norms are treated punitively. One was a dummy variable that reported whether the case involved more than one victim. I hypothesized that all perpetrators that were involved in sexual relationships with multiple victims would face harsher sentencing than those that involved only one victim, but also that there may be an interaction effect between gender and number of victims such that females with multiple victims were treated the most harshly. I created an interaction term with the multiple victim variable and the gender of the perpetrator to determine if the effect of involving multiple victims on incarceration length was greater for female offenders than for male offenders. I also included a nominal variable that reported the gender pairing of the teacher and student (coded as male-male; female-female; or different genders). I hypothesized that cases that involved sexual relationships that deviated from heteronormative expectations would be viewed as more serious by sentencing judges and would increase the risk of incarceration and sentencing length for offenders.

The models also included three control variables. Two of the variables, the victim’s age and a dummy-coded variable reporting whether the conviction was for a felony or a misdemeanor, are measures of the seriousness of the crime. I also controlled for the geographic region where the trial occurred. In the interest of protecting statistical
power, I dummy coded the region variable as Southern state/ not-Southern state using the U.S. Census Bureau’s regional classification system. Inclusion of this variable is based on research that suggests that there is regional variation in sentencing severity (Pasko 2002), with “the character of punishment in the South being particularly punitive” (Borg 1997: 27).

I ran four models with three different dependent variables. The first two were both dichotomous dependent variables: whether a defendant who had been indicted on charges was convicted or acquitted, and whether a convicted offender was sentenced to incarceration. I used logistic regression to analyze how each independent variable relates to the likelihood of conviction as well as the likelihood that a convicted defendant will be sentenced to incarceration. Only six percent of cases that made it to the trial or plea bargaining stage resulted in acquittal (a dozen cases in the sample involved criminal charges that were ultimately dropped). Slightly over seventy five percent of the convicted offenders in my sample were incarcerated.

The third and fourth models used incarceration length (measured in days) as the dependent variable. This variable measures the minimum sentence recommended by the sentencing judge. It does not include deferred sentences, which the defendant is not expected to serve unless they break a condition of their release. The coding took into account only the sentencing decision made by the judge at the sentencing hearing and excluded modifications to the sentence made through the appeals process or in later stages of the criminal justice system (such as early release programs occurring in jails and prisons). There was a great deal of variation in length of incarceration: the lowest in the
sample was 2 days and the longest was 45 years. Ten percent of incarcerated offenders were sentenced to 10 years or longer. Because the data was significantly positively skewed, I transformed the sentencing length data using the natural log function and used the logged variable in the analysis. I used ordinary least squares regression to analyze how each independent variable relates to the length of incarceration.

“DOING” NEUTRALITY AND THE GENDERED DETERMINATION OF JUSTICE

Judicial Paternalism in Sentencing Outcomes

I analyzed patterns of racial and gender difference in sentencing outcomes using separate models for each stage of criminal trials. I first predicted the risk of being convicted for all cases that went to trial or plea bargaining using logistic regression (i.e. all cases in which charges were not dropped). I then included all cases in which the perpetrator had been convicted (through jury trial, bench trial, or plea bargain) to predict the risk of being sentenced to incarceration (rather than probation or deferred sentencing) using logistic regression. For offenders that were sentenced to incarceration, I then analyzed the variables that predicted the length of their sentences using ordinary least squares regression. This latter analysis produced the greatest amount of significant findings and is discussed in the most detail below.

The analysis included a sample of 291 cases that concluded in either a jury trial or plea bargain (excluding cases in which charges were ultimately dropped or for which sentencing outcomes could not be located). The logistic regression predicting the odds of acquittal had no significant findings among either the control or independent variables
(see Model 1 of Table 2). In the logistic regression predicting the odds of being incarcerated, a number of the control variables were significant predictors of the risk of incarceration and that the relationships were generally in the expected directions (see Model 2 of Table 2). Specifically, perpetrators who were convicted of felonies were more likely to be incarcerated than those convicted of misdemeanors. Cases that involved multiple victims were also more likely to result in incarceration than cases involving single victims. As expected, victim age was negatively related to the odds that a perpetrator would be incarcerated, such that as the victim age increased, the odds of the perpetrator being incarcerated decreased. Surprisingly, cases being heard in Southern states were less likely to result in incarceration than those being heard in other geographic regions.

Models three and four both predicted the length of incarceration using OLS regression. The length of incarceration data was highly variable. The mean length of incarceration was 1,482 days (about 4 years). The standard deviation of the length of incarceration variable was over one and a half times the mean, at 2,419 days. The OLS regression on this length of incarceration data revealed a number of interesting findings (see Table 3). All of the control variables were significant and the relationships were in the expected direction. The academic role of the perpetrator was a significant predictor of incarceration length, with adults employed as coaches or choir/ band instructors having lower average sentences than those working as teachers and administrators.

The hypothesis regarding the greater sanctioning of offenders involved in same-gender sexual contact was not supported. There were not significant differences in the
sentences faced by defendants involved in same- and different-gender perpetrating. This finding may suggest that judges view the victimization of adolescents involved with same-gender and different-gender adults as equally serious. This is surprising given that previous researchers have found that these experiences are more likely to be described as abuse by the minors themselves and outside observers (Nelson and Oliver 1998; Hunter 2005). It is also possible that judges view these same-gender victims more suspiciously or less sympathetically and are therefore less willing to take their victimization seriously. Researchers have found that victims of sexual assault who are identified as gay are more likely to be viewed as blameworthy and/or to not have been harmed by an assault compared to straight-identified victims (Davies & Rogers 2006; Graham 2006). Future research qualitatively analyzing the discourses surrounding these types of cases would provide insight into these and other possible explanations.

The effects of certain defendant race/gender combinations were significant and also suggest that there was interaction in the way that gender and race relate to incarceration length in these cases. Both Latina females and white females had on average significantly lower incarceration lengths relative to white male offenders (who were used as the reference category for comparison) net of control variables. This effect was greater for Latina females, meaning that Latinas face lower average sentences than their white female counterparts. This may suggest that Latinas are viewed as more dependent or less agentic than white females in the criminal justice system. Alternatively, it may suggest that the victimization of adolescents involved with Latina perpetrators (who, given the racial segregation of teachers and schools, may be more likely to be
Latino themselves) is not taken as seriously by sentencing judges. Additionally, both white and Latina female perpetrators faced lower average sentences than male perpetrators of all racial groups. There were no significant racial differences in incarceration length among male offenders of different racial groups. This is especially surprising given the centrality of fears about Black and Latino men’s sexuality in the reproduction of race inequality and the large body of research that has found racial disparities in sentencing across a range of criminal charges. It may be that the class based privilege of these male offenders (as largely college-educated middle class men) serves as a buffer against the harsh treatment most non-white men face in the criminal justice system (see chapter 3 for a discussion of the politics of Black and Latino male respectability in the construction of these cases).

I ran a separate OLS regression model predicting incarceration length using the same control variables as well as an interaction term measuring perpetrator gender/multiple victim combinations as an independent variable (see Table 4). Past research has demonstrated that women who adhere more closely to white, heteronormative, middle-class ideals of femininity reap greater rewards in the criminal justice system. I used this analysis to consider whether women who engaged in sexual relationships with multiple victims can be understood as gender deviants that face harsher treatment in the criminal justice system. Female perpetrators that were involved with multiple victims faced significantly longer sentences than female perpetrators with a single victim. This is especially noteworthy because the incarceration lengths of males who had multiple victims did not differ significantly from males who had single victims. This finding
suggests that female perpetrators who deviate from gender expectations by being involved with multiple sexual partners face harsher treatment in sentencing decisions and provides support for the selective chivalry hypothesis.

The regression analyses resulted in mixed support for the chivalry thesis and no evidence of the preferential treatment of white offenders in these cases. I did not find significant gender differences in the likelihood of conviction or incarceration. My findings that female perpetrators are generally sentenced to shorter sentences than male perpetrators provide support for the chivalry thesis. I also found that female defendants who were accused of having sexual relationships with more than one victim faced harsher sentencing than female defendants with a single victim, and that this punitive was more pronounced for female defendants than male defendants. This finding provides support for the selective chivalry thesis, which suggests that female defendants that adhere to dominant gender expectations are treated more leniently in the criminal justice system, while those that fail to adhere to these expectations are treated more punitively.

*Qualitative Discourse Analysis of Judges’ Sentencing Decisions*

In contrast to the strong quantitative evidence of gender difference in the severity of sentences faced by male and female perpetrators, the qualitative content analysis of the judges’ characterizations of the cases suggests that judges make claims of objectivity and gender neutrality in legitimating their sentencing decisions. Based on an analysis of the judicial characterizations of cases as reported by the media in a sample of over 60 cases and in the subsample of five court transcripts, I argue that judges consistently affirm the
seriousness of crime (and implicitly also the importance of the court system they are a part of) and often explicitly state that they take cases involving female perpetrators seriously. Their focus on affirming the need for justice and challenging the presumption of gender inequity in the legal treatment of cases involving female and male perpetrators can be understood as a pattern of legitimating the court system they are a part of through the “doing” or performance of neutrality and objectivity. The discursive characterization of the cases by trial judges was surprising given that the regression analyses suggest that the defendant’s gender did in fact play an important role in these judge’s assessments of the crime. By analyzing the discursive construction of these cases along with the sentencing outcomes, I demonstrate that judicial claims to gender neutrality are made even in cases involving lenient sentencing of female perpetrators.

One of the most common judicial discourses offered in sentencing hearings is an affirmation of the seriousness of the crime. The judges tend to demand remorse of the perpetrator and elaborate on why the crime should be taken seriously. Judges highlight the seriousness of the crime both in terms of the specific harm inflicted upon the victim (because of their status as a minor, their status as a student in a custodial relationship with the perpetrator, or both) and the broader harm to the community at large.

Judges frequently cite the specific harm the victim has experienced as a result of the crime at the sentencing hearing. In the sentencing hearing for Ryan Zellner (white male) Manitowoc County Circuit Judge Darryl Deets said, "This is a situation where there's no winners and losers. This is a tragedy for the victims, a tragedy for the families, [and] the defendant” (Weiss 2011). Similarly, Douglas County District Court Judge
Stephen Six, the judge overseeing Meredith Kane’s case (white female), said “In a fiduciary position as a teacher, I find it extremely injurious to his health and the health of any teenager in that situation” (Diepenbrock 2007). In explaining his sentencing of Kenneth Anderson (Black male) Judge Monte Watkins said he noted a number of enhancement factors that served as a guide in making the sentencing decision (which increase the severity of the sentencing), including “enhancement factor number four, whereas the victim was particularly vulnerable because of her age; enhancement factor number seven, the offense was committed to gratify the defendant's desire for pleasure; and, enhancement factor number fourteen, where the defendant used his position of private trust.” (Anderson v. State of Tennessee: 463).

In addition to articulating the individual harm the victim and his/her family suffered, many judges also noted the level of trust bestowed upon teachers and other educators. They often described these crimes as assaults against the community at large and a breach of public trust. State Supreme Court Justice John L. Michalski said that Van Valkinburgh’s (white male) crime “betrayed the community at large” (Gryta 2008). Similarly, Circuit Judge Pat Siracusa told Michael Aaron Black (Black male), “You stole from your profession. You destroyed some of the confidence that this community has in teachers, all so that you could use a student for recreational sex” (Moorhead 2008).

These affirmations of the seriousness of the crime appeared consistently across cases involving both male and female perpetrators. Judges also often specifically contested their presumption that members of the public do not take cases involving female perpetrators and male victims seriously. For example, at the sentencing hearing
for Christy Smith (white female), Lancaster County Judge Dennis Reinaker stated “There are some who wrongfully believe that situations such as this don't truly have victims…That because it involved a female adult and male teenagers that it's less serious than those where the situation is reversed…That is simply not the case” (Hambright 2012). Judge Reinaker followed this characterization of the case with an extremely harsh sentence; sentencing Smith to 20 to 40 years in prison for her sexual relationships with 16 and 17 year old male students. But the affirmation of the seriousness of the crime was not always connected to severity in sentencing decisions among cases involving female offenders.

For example, following a plea agreement Kristy Sanchez Trujilo’s (Latina) was eligible for up to five years of incarceration. Before making his sentencing decisions, Judge Sheppard stated:

There was some talk at plea negotiation time regarding double standards, what would happen if rules were reversed, this were a male teacher and a female victim. I want to make it perfectly clear that it is completely unacceptable for any adult to have sex with a minor child, regardless of whether it's a female adult with a male child, a male adult with a female child, or any other combination. That is illegal. It's not to be tolerated, and it's completely unacceptable. (Trujillo v. State of New Mexico 2012: 19)

But following the judge’s affirmation of the seriousness of the crime and gender neutrality, he sentenced Trujillo to only 364 days of house arrest and decided to suspend the remainder of the sentence. Interestingly, while Judge Sheppard explicitly expressed disapproval of the potential for a “double standard” in cases involving female perpetrators, his description of his decision making process in the sentencing hearing
suggested that the did believe the gender of the defendant and victim were relevant factors in his sentencing decision. After returning to the court with his ruling, he said:

[I]n my experience on the Bench, which is now four years, I believe Ms. Sanchez Trujillo is the first female sex offender that I have had, but dozens, if not a hundred or more, male sex offenders, so I have nothing to go back to in my own time on the Bench regarding sentencing and what would be an appropriate sentencing under the circumstances (Trujillo v. State of New Mexico 2012: 20).

This suggest that some judges may publicly characterize these cases as serious while still presuming that the gender of female perpetrators should be considered as a mediating factor in their sentencing decisions.

Similar patterns of discrepancy between the discursive framing of the seriousness of the case and the judges’ sentencing decision were evident in a number of other cases involving female offenders. For example, at the sentencing hearing following Dickey’s (white female) guilty plea to two counts of statutory rape, Judge Michalski “told Dickey that she let down her family, the victim's family and the entire community through her actions while in a position of trust” (Warner and Gryta 2009). This case was especially serious given the youth of the boy (14 years old), and the fact that she initially faced charges of promoting a suicide attempt and unlawful imprisonment for fleeing the area and providing drugs for a planned dual suicide to the minor. While Judge Michalski told Dickey her pleas to two counts of second-degree rape could have carried a prison term of up to 14 years, he ultimately sentenced her to only four years of incarceration and opted to have her two four year sentences run concurrently.

Judge Mark Switalski similarly publically affirmed the seriousness of the crime involving Janelle Batkins, a white female offender while simultaneously sentencing her
relatively leniently and allowing her to avoid incarceration all together. Judge Switalski described the sexual relationship by saying “It’s a betrayal of the public trust - a teacher is in the public trust,” but ultimately sentenced her “to three years’ probation, significantly below state-computed guidelines of three years to almost six years in prison” (Dalton 2008). Similarly, in characterizing a case involving a dance instructor that had a sustained sexual relationship with a 13 year old boy, District Judge Jose Longoria argued that Borrego (Latina female) “preyed on the boy and took advantage of him,” and added that, “part of his job is to protect the community” (Cavazos 2009). But he ultimately accepted a deferred adjudication plea deal that sentenced Borrego to 10 years of deferred adjudication probation (including 6 months in jail as a condition of her probation) that would allow her conviction to be dismissed if she successfully completed her probation term.

Judges’ statements at sentencing hearings provide rich insight into their public discursive construction of these cases. While I found some evidence that judges are more likely to presume male perpetrators were sexually driven and to view female perpetrators as victims of their difficult life circumstances or substance abuse problems, the judges consistently affirm the seriousness of all of the crimes and often even assert their gender neutral perspective in the court room. Judges assert the seriousness of the crime by referring to the specific harm the victim has suffered, as well as by detailing the specific burden of trust attributed to educators. My analysis also suggests that judges’ public characterizations of cases in the court room are not always clearly connected to their sentencing decisions. This finding provides some explanation for the significant disparity
between the gender disparity in incarceration length found in the regression analysis and the frequent judicial claims of neutrality.

DISCUSSION AND CONCLUSION

Taken together, the qualitative and quantitative data suggest that judges are invested in claims of objectivity and neutrality, but make sentencing decisions that differentiate male and female perpetrators. Judges work hard to publically perform neutrality and to appear to be taking all cases seriously. However, they are embedded in social relationships and ideologies that suggest female sexual perpetration should not be taken as seriously as male sexual perpetration. They may also be faced with male victims that contest the attribution of victimhood to them. I would argue that these different ideological resources explain the apparent leniently of sentencing judges in terms of the lesser sentences of white and Latina female perpetrators relative to male perpetrators of all races.

There is not necessarily a disparity between judges’ claims to neutrality and disparity in sentencing decisions. To the extent that male victims of female perpetrators experience less social and emotional harm as a result of the crime, they may be sentencing defendants fairly. This disparity in harm occurs in a broader culture of sexism and homophobia which deems some sexual assaults more harmful than others. Research suggests adult men who had early sexual experiences with women are less likely to characterize those experiences as abusive and less likely to report experiencing negative outcomes related to them (Denov 2003; Hunter 2005; Nelson and Oliver 1998). Possibly
more problematic, though, this research suggests that adult men and women were more likely to characterize this sexual contact as abuse if it involved a same-sex adult (Nelson and Oliver 1998). This body of research suggests that the discursive frame available for interpreting one’s sexual contact with an adult may have real consequences. Those who are presumed to be victims are more likely to experience themselves as such, to be treated as such, and face greater life challenges as a result of this characterization. This does not at all suggest that these minors are not “actually” victims; but rather that the social negotiation of victimhood has real social consequences. In a social structure where female sexuality is viewed suspiciously and male sexuality is valorized, female victims of male perpetrators may experience their victimization more harshly than male victims of female perpetrators.

Furthermore, heteronormative definitions of normal and deviant sexuality may position adolescent victims of same sex perpetrators to experience their victimization more severely than if the sexual contact was heterosexual. This makes assessing justice complex and “sentencing equality” ambiguous. If judges are encouraged to take the level of harm done into account when making sentencing decisions, this may lead to patterns of greater leniency for female offenders. In some ways, these patterns of gender inequity in sentencing outcomes can be viewed as the result of an equitable enforcement of the law relative to harm done. But this assessment of relative harm and this construction of male sexual perpetrating and female victimhood are built upon a patriarchal understanding of agency and desire. It also places the ideological burden of victimhood
largely on the backs on female victims, who may be forced to contend with greater social stigma as they navigate the status of sexual abuse victim.

I also find support for the selective chivalry hypothesis, which suggests that women who adhere to dominant understandings of “good” femininity are more likely to solicit judge paternalism and chivalry. Female perpetrators who are involved with multiple victims can be understood as failing to perform “good” femininity, which requires sexual passivity and naïveté. Judges may also be more likely to view the sexual contact involving female offenders as predatory or abusive if the perpetration involves multiple victims. I found that female perpetrators with multiple victims face the highest average incarceration length relative even to male perpetrators with multiple victims. This is especially noteworthy because I otherwise find strong evidence that female defendants experience greater leniency in sentencing in these cases. The fact that female offenders with multiple victims face stronger sanctioning than their male counterparts as well as the strong evidence that female defendants as a whole experience greater leniency in sentencing decisions provides compelling evidence that the selective chivalry hypothesis applies to cases involving female sexual perpetrators. This suggests that the courts are a site where the state regulates and enforces gender performance.

Future research on the selective chivalry hypothesis should consider other ways to measure the gender breaching of female defendants, keeping in mind that conviction on a violent or sexual crime may not guarantee a perception of the defendant as failing to perform femininity. More specific contextualizing information of the crime may be useful in identifying the types of offending that make it most difficult for female offenders to
position themselves as adhering to “good” womanhood and thus to solicit judicial leniency. This would allow for a more nuanced analysis of how sentencing decisions related to the regulation of gender in the criminal justice system.
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### Table 2. Logistic Regression Models Predicting Relative Risk of Conviction and Incarceration

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 1 Conviction</th>
<th>Model 2 Incarceration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Perp.Race•Gender</strong>&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White Females</td>
<td>-0.60 (0.68)</td>
<td>-0.11 (0.38)</td>
</tr>
<tr>
<td>Latino Males</td>
<td>-1.33 (0.94)</td>
<td>-0.72 (0.70)</td>
</tr>
<tr>
<td>Latina Females&lt;sup&gt;d&lt;/sup&gt;</td>
<td>---</td>
<td>-0.53 (1.19)</td>
</tr>
<tr>
<td>Black Males</td>
<td>-0.98 (0.79)</td>
<td>-0.68 (0.58)</td>
</tr>
<tr>
<td><strong>Gender Pairings</strong>&lt;sup&gt;b&lt;/sup&gt;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Both Female&lt;sup&gt;d&lt;/sup&gt;</td>
<td>---</td>
<td>0.33 (0.83)</td>
</tr>
<tr>
<td>Both Male&lt;sup&gt;d&lt;/sup&gt;</td>
<td>---</td>
<td>0.21 (0.75)</td>
</tr>
<tr>
<td><strong>Academic Role</strong>&lt;sup&gt;c&lt;/sup&gt;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coach/Music Dir.</td>
<td>-0.77 (0.30)</td>
<td>-0.24 (0.51)</td>
</tr>
<tr>
<td>Assist./Sub./Other</td>
<td>-0.18 (0.35)</td>
<td>0.06 (0.63)</td>
</tr>
<tr>
<td>Felony</td>
<td>0.86 (0.65)</td>
<td>1.29* (0.43)</td>
</tr>
<tr>
<td>Victim’s Age</td>
<td>-0.28 (0.22)</td>
<td>-0.53** (0.14)</td>
</tr>
<tr>
<td>South</td>
<td>-0.80 (0.57)</td>
<td>-0.86* (0.20)</td>
</tr>
</tbody>
</table>

| N                         | 237                | 261                   |
| **Pseudo R<sup>2**        | 0.10               | 0.16**                |
| **LR chi<sup>2</sup>**    | 12.23              | 46.89**               |

**p < 0.01; * p < 0.05; † p < 0.10; Standard errors in parentheses.**  
<sup>a</sup> Reference category is white males  
<sup>b</sup> Reference category is mixed gender pairs  
<sup>c</sup> Reference category is teachers  
<sup>d</sup> Excluded in Model 1 due to perfect prediction
Table 3. OLS Regression Model of Defendant Race and Gender Predicting Natural Log of Incarceration Length

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient</th>
<th>Standard Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multiple Victims</td>
<td>0.59*</td>
<td>(0.25)</td>
</tr>
<tr>
<td><em>Perp. Race • Gender</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White Females</td>
<td>-0.51*</td>
<td>(0.22)</td>
</tr>
<tr>
<td>Latino Males</td>
<td>-0.02</td>
<td>(0.45)</td>
</tr>
<tr>
<td>Latina Females</td>
<td>-1.13†</td>
<td>(0.62)</td>
</tr>
<tr>
<td>Black Males</td>
<td>0.53</td>
<td>(0.40)</td>
</tr>
<tr>
<td>Gender Pairings*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Both Female</td>
<td>0.02</td>
<td>(0.41)</td>
</tr>
<tr>
<td>Both Male</td>
<td>-0.14</td>
<td>(0.39)</td>
</tr>
<tr>
<td><em>Academic Role</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coach/Music Dir.</td>
<td>-0.77*</td>
<td>(0.30)</td>
</tr>
<tr>
<td>Assist./Sub./Other</td>
<td>-0.18</td>
<td>(0.35)</td>
</tr>
<tr>
<td>Felony</td>
<td>1.46**</td>
<td>(0.35)</td>
</tr>
<tr>
<td>Victim’s Age</td>
<td>-0.40**</td>
<td>(0.07)</td>
</tr>
<tr>
<td>South</td>
<td>0.52*</td>
<td>(0.20)</td>
</tr>
</tbody>
</table>

| N                         | 192         |
| R²                        | 0.34        |

** Model F-ratio ** 7.48**

** p < 0.01; * p < 0.05; † p < 0.10; Standard errors in parentheses.

* Reference category is white males

* Reference category is mixed gender pairs

* Reference category is teachers/administrators
Table 4. OLS Regression Model of Defendant Gender and Multiple Victims Predicting Natural Log of Incarceration Length

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient</th>
<th>Standard Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multiple Victims</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multip. Victims • Perp.Gender&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single Victim Male</td>
<td>0.67**</td>
<td>0.22</td>
<td>&lt;0.01</td>
</tr>
<tr>
<td>Multiple Victims Female</td>
<td>0.91*</td>
<td>0.42</td>
<td>&lt;0.05</td>
</tr>
<tr>
<td>Multiple Victims Male</td>
<td>0.95**</td>
<td>0.31</td>
<td>&lt;0.01</td>
</tr>
<tr>
<td>Perp. Race&lt;sup&gt;b&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>0.48</td>
<td>0.40</td>
<td></td>
</tr>
<tr>
<td>Latino</td>
<td>-0.20</td>
<td>0.40</td>
<td></td>
</tr>
<tr>
<td>Other Race/Ethnicity</td>
<td>-0.18</td>
<td>0.66</td>
<td></td>
</tr>
<tr>
<td>Academic Role&lt;sup&gt;c&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coach/Music Dir.</td>
<td>-0.78*</td>
<td>0.30</td>
<td>&lt;0.05</td>
</tr>
<tr>
<td>Assist./Sub./Other</td>
<td>-0.18</td>
<td>0.35</td>
<td></td>
</tr>
<tr>
<td>Felony</td>
<td>1.46**</td>
<td>0.35</td>
<td>&lt;0.01</td>
</tr>
<tr>
<td>Victim’s Age</td>
<td>-0.41**</td>
<td>0.07</td>
<td>&lt;0.01</td>
</tr>
<tr>
<td>South</td>
<td>0.59*</td>
<td>0.20</td>
<td>&lt;0.05</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Statistics</th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>N</td>
<td>204</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$R^2$</td>
<td>0.28</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Model F-ratio</td>
<td>8.76**</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<sup>a</sup> Reference category is female perpetrator with single victim
<sup>b</sup> Reference category is white perpetrator
<sup>c</sup> Reference category is teachers/administrators

** p < 0.01; * p < 0.05; † p < 0.10; Standard errors in parentheses.
Chapter 3: Engendering Sexual Perpetrators, Regulating White Female Sexuality, and the Politics of Black Men’s Respectability

INTRODUCTION

This chapter explores the discursive construction of educator sexual perpetrating in the media and the court room. This chapter begins with an analysis of how journalists employ and reproduce gendered constructions of sexual agency and criminal culpability. I focus specifically on the higher amount of media attention to cases involving white female perpetrators to consider how this “moral panic” allows for the regulation of female sexuality. I also analyze the media coverage of cases involving Black male perpetrators to consider how the framing of these cases in the media relates to the politics of Black respectability and allows for the implicit reproduction of sexism and racial oppression. This analysis provides support for the view of the media as a key site for reproduction of controlling images and hegemonic ideology. I also note that the news media is often willing to incorporate contradictory narrative frames of these cases into their coverage and may therefore sometimes serve as a site for disseminating counter-hegemonic ideas.

I then turn to an analysis of the treatment of perpetrators within the criminal justice system to consider the role of attorneys in constructing and resisting dominant ideologies. I analyze how the different strategic opportunity structures of prosecuting and defense attorneys encourage them to draw on different symbolic resources in constructing conflicting characterizations of these cases. This analysis contributes to recent
scholarship which conceptualizes the state as a complex and contradictory entity in which inequality is both resisted and reproduced.

THE CENTRALITY OF DISCOURSE IN THE REGULATION OF SEXUALITY

Foucault (1978) argues that the regulation of sexuality occurs through productive discursive practices. Rather than viewing sexuality as something that is treated as taboo and repressed, Foucault argues that modern Western societies are characterized by an “incitement to discourse,” in which all desire is translated into discourse, and is analyzed, classified, and taken stock of, in the name of “public interest” (1978: 23). Foucault conceptualizes power as productive, rather than repressive, in that it operates through the classification and regulation of discourses of normalcy and deviance (Epstein 2005; Macleod & Durrheim 2002).

The regulation of sexuality through discourse produces individual subjectivity as well as constructions of normalcy and deviance. The modern epoch has led to a proliferation of “perversions” through the discursive construction of deviant sexualities. It is in contrast to these deviant forms that “normalized” sexualities are produced. The power to regulate is expressed not just as law, then, but also as norms (Foucault 1978:144). It is through discourses of normalcy and deviance that sexuality is produced. Deviant forms of sexuality, such as sexual relationships between teachers and their students, provide discursive opportunities for repudiating deviant sexualities and reaffirming normative constructions of sexuality.
Foucault also argues that in modern society, women’s bodies are viewed as “thoroughly saturated with sexuality,” and that this “hysterization of women’s bodies” is a key strategy in the deployment of sexual power and knowledge (1978:104). This view of women’s bodies positions them as objects of sexual desire and vessels of reproduction that need to be regulated, while excluding the possibility of female sexual subjecthood. While norms around female sexuality have shifted in recent decades (including greater tolerance for non-marital sex), women’s sexuality continues to be closely regulated (Wilkins 2004) and tied to heteronormative assumptions (Forbes 1996). These seeming changes in sexual mores and claims of female sexual liberation have become a source of significant social anxiety (Barron and Lacombe 2005). I argue that this contemporary anxiety around “liberated” female sexuality is expressed through the denigration of white female perpetrators in the media, including the greater incitement to discourse (Foucault 1978) and the specific tone of “moral panic” (Cohen [1972] 2002) evident in the news media coverage of these specific cases.

While Foucault characterizes discourse as an oppressive force that reshapes all that is spoken in accordance with hegemonic power relations, this perspective is at odds with the view of many social movement actors that view speech as having liberatory potential (Alcoff and Gray 1993). Speaking out about one’s experiences from the margins can enhance collective identity and bring new voices into the social conversation and political milieu. Discursive attention to experiences and beliefs that are generally rendered invisible by powerful actors that have an interest in obscuring them has the possibility to disrupt the hegemonic order. Although Foucault views resistance as
inherently connected to the existing power structure, he does not suggest it is completely ineffectual. While Foucault argues that power is reproduced by “employing similar apparatuses, strategies, and mechanism of control” across different settings (hooks 1992:115), he also acknowledges that these strategies are variable. Articulating alternative discourses and subverting hegemonic practices has the possibility of shifting the location and practice of power (Macleod and Durrheim 2002: 55). Foucault suggests that individual acts of unpredictable resistance “…at particular, historically contingent moments…might happen to add up to something more” (Epstein 2005:492). While others have explored the power of resistive discourses in regards to the construction of survivor/victim discourses (Alcoff and Gray 1993), I explore the extent to which individuals in the media and criminal justice system articulate visions of these cases that pose challenges to hegemonic discourses. Specifically, I consider how the media’s attraction to the “newsworthiness” of stories that pose challenges to the hegemonic understandings of femininity provide opportunity to contest the gender order. I also identify state actors that draw on counter-hegemonic narratives in their construction of these criminal cases.

INEQUALITY AND THE PRODUCTION OF BLACK MASCULINITY

Discourse is also central to the maintenance of structures of racial inequality. Images of Black people in the media tend to reproduce white supremacy (hooks 1992). The “control over images is central to the maintenance of any system of racial domination” (hooks 1992:2). Black and Latino men tend to be stereotyped as hypermasculine in media depictions (Collins 2000). Media images of black men in
particular tend to be dominated by polarized depictions of “the cool pose” and “black respectability” (Oware 2011). This polarization of Black masculinity suggests Black men can either construct identities that position them as antithetical to dominant values and dangerous to white society (“the cool pose”) or as a “respectable” Black man who trades his Black authenticity in order to participate in and reap some rewards from the dominant order (Oware 2005:25). These two images of masculinity reflect Black men’s adaption to structures that disadvantage them through two alternative forms of subordinate adaption: trading power for patronage and forming alternative subcultures (Schwalbe et al. 2000). While the production of these identities by individual Black men provides them access to some status and resources, they are problematic controlling images because they support white supremacy by limiting Black men’s opportunities and legitimating structures of racial inequality (Collins 2004; Oware 2011). Individuals that participate in the production of these identities may reap benefits in the short term, but their participation serves to benefit the reproduction of a system that oppresses them (Collins 2004; hooks 1992; Schwalbe et al. 2000).

DATA AND METHODS

This chapter is based on a qualitative content analysis of the newspaper coverage of a sample of sixty six criminal cases involving teachers who had sexual relationships with their adolescent students. A population of over 300 such cases was identified based on the content analysis of newspaper articles archived in LexisNexis. From that population, I selected a stratified random sample of cases to ensure equal representation
of cases involving male and female perpetrators, as well as Black, Latino, and white perpetrators. In creating the subsample for qualitative analysis, the goal was to include 15 cases from each demographic category (race by gender). The full sample list of cases identified in the LexisNexis search included very few female perpetrators of color. For this reason, the full sample of cases involving female Latina perpetrators with male victims were selected into the sample (n = 6). While the single case involving a female Black perpetrator with a male victim was included in the sample, the analysis of this case was used largely to confirm patterns found in other cases rather than attempting to generalize about the treatment of Black female perpetrators from a single case. The full sample of 14 cases involving male Latino perpetrators with female victims were selected into the subsample. A random sample of 15 cases was selected into the subsample from each demographic group that had more than 15 cases in the full sample. This included cases involving white male perpetrators with female victims, white female perpetrators with male victims, and Black male perpetrators with female victims (see Table 1 in chapter 1 for a description of the sample).

Once the subsample was identified, I located the appropriate local newspaper for each criminal jurisdiction and identified the newspaper coverage of the incidents and criminal proceedings by entering the perpetrator name as a search term in the online sites of newspapers or in paid online news archives. In regions in which there were multiple newspapers covering the case, I selected the newspaper with the higher level of coverage of the case (based on number of articles identified). This newspaper coverage served as the bulk of my data. I relied heavily on media coverage of the criminal cases to assess
how these cases were negotiated in the criminal court system. I was able to supplement this data with a subsample of transcripts from the criminal court proceedings of five cases. This data allowed me to triangulate the media depictions of the court room with the detailed transcripts and provided greater insight into how arguments unfolded in the court room.

The discourse analysis involved coding the news articles and court transcripts to analyze the language and framing of the sexual acts and criminal trials. The qualitative coding software program ATLAS.ti was used. I focused particularly on the language used to characterize the sexual contact, attributions of agency and passivity, constructions of normalcy and deviance regarding gender performance, race, and sexuality, and the interrelation of race, gender, and sexuality in constructing victimization, credibility, aggression, and desire. As I worked through the coding, I realized the high level of disparity in the level of media interest and attention paid to various cases. To assess whether there were patterns in this variability across different types of cases, I also completed an article and word count of the local newspaper coverage of each case. See Table 5 reporting descriptive statistics on the amount of newspaper reporting by the gender and race of the perpetrator.

CONSTRUCTING CASES IN THE MEDIA

*Adolescent Sexual Victimhood and American Ambivalence about Age of Consent Laws*

The media coverage of cases involving teachers who had sex with their adolescent students can be generally characterized as expressing both ambivalence and outrage.
Americans tend to view teens as having sexual desires that they are not developmentally capable of handling (Schalet 2011). Age of consent laws reflect a level of cultural agreement about the age at which minors are too young to meaningfully consent to sex. While age of consent varies across state lines and with the age of the minor’s sexual partner, the average age of consent in the United States is sixteen. Legal enforcement of these laws is inconsistent (and may be used to regulate “normative” adolescent sexuality), but has been increasing since the mid-1990s (Sutherland 2003). These laws are presumed to protect “young persons from sexual exploitation by adults” and are based on a protectionist logic which suggests that a minor cannot legally consent to the sexual contact (Sutherland 2003: 315). But the logic of protectionism is complicated by the moral meaning associated with the risk avoidance models of teen sexuality, which tends to lead to attributions of individual deviance and moral failing to teenagers, and especially teen girls, who engage in sexual activity. Furthermore, discursive constructions of teen sexuality tend to position male adolescents as sexually interested and motivated. These discourses complicate the cultural responses to victims of statutory rape and provoke ambivalence about the seriousness of the crimes.

The cultural ambivalence about these cases is evidenced in the language and tone of the media coverage of the criminal proceedings. Media trivializing occurs across cases involving male and female perpetrators as well as Black, Latino, and white perpetrators. The language used to describe the cases often treats the sexual contact as illegal, but not necessarily involving serious victimization. Newspaper coverage of the cases largely reserves use of terms referencing sexual violation, such as “rape” or “sexual assault,” to
specific references to legal charges. Journalists frequently instead refer to the relationships using the neutral phrase “sex with student.” They also frequently use words that trivialize the cases, such as referring to the criminalized relationships as “trysts,” “illicit affairs,” and “sexual dalliances.” In characterizing a civil law suit a victim and her family brought against the school district, for example, a journalist from the Las Vegas Review-Journal (2012) wrote, “Teen, dad sue school district, ex-counselor over ’sexting’” [emphasis added].

The media coverage of a case involving Calvin Collum provides a good example of the cultural ambivalence about the seriousness of these crimes. Collum, 47, plead guilty to one charge of third-degree criminal sexual conduct stemming from his on-going sexual relationship with a 16-year-old female student. There was significant discrepancy in the language used in the headlines of newspaper articles, both within and across newspapers covering the story. The St. Paul Pioneer Press (2009) published one article titled “Former teacher accused of assaulting teen,” and another later article titled “Sleepy Eye / Teacher admits sex with student”, while the Mankato Daily Free Press (2009) article was titled “Ex-teacher admits affair with student” (Ojanpa 2009) [emphasis added]. The variation in language occurred both across and within individual newspapers, with reporters sometimes characterizing the sexual contact as assault or rape within a few sentences of referring to it more innocuously as “sex with a student.” This inconsistency in language reflects a broader cultural ambivalence about how injurious experiences of statutory rape are for the minors involved.
The moral ambivalence about the seriousness of the crimes is also reflected by journalists and community members quoted in the media, including police officers and school officials, who often explicitly describe the relationships as consensual. For example, in referring to a case involving Janelle Batkins, a 42-year-old female teacher who had a sexual relationship with a 16-year-old male student, journalist Christina Stolarz of *The Detroit News* wrote “While the relationship was consensual; and the age of consent in Michigan is 16; Batkins, 42, was charged under a Michigan law that makes it a crime for teachers to have sex with students, regardless of their age.” (2008). Similarly, journalists often implicitly treat these cases as not being self-evidently wrong and instead contextualize the criminal charges in ways that suggest they are in need of explanation. In a case involving James Van Valkinburgh, 42, having a sexual relationship with a 16-year-old female student, a *Buffalo News* journalist wrote, “Under the state's Criminal Procedure Law, third-degree rape applies when one participant is younger than 17 and the other older than 21, *even if no force was involved* [emphasis added]” (Gryta 2008).

Describing these relationships as ‘consensual,’ despite breaching age of consent laws, laws barring teachers having sexual relationships with their students, or both, reflects cultural ambivalence about the treatment of adolescent sexuality. While age of consent laws are created to protect an abstracted and vulnerable teenager, the public seems to have more difficulty attributing lack of consent to cases involving real (rather than abstracted) teenagers. This likely reflects the individualized and moralized discourses that Americans draw on to understand sexuality (Schalet 2011). Rather than being viewed as
victims, these teens are viewed suspiciously for their individual failure to avoid the risks of adolescent sexual activity.

*The Failed Woman Narrative, White Female Perpetrators and the News Media’s ‘Incitement to Discourse’*

The news media’s treatment of cases involving female perpetrators tends to draw on and reproduce dominant ideas about gender and sexuality, including constructing women as sexually passive and female sexual subjects as objects of repulsion and derision. Cases involving white female perpetrators are especially likely to solicit a great deal of media attention and expressions of moral outrage. The media coverage of these cases can be interpreted as a “moral panic,” in which a phenomenon that is perceived to be a threat to the social order is sensationalized, dramatized, and rallied against by moral crusaders in the media (Cohen [1972] 2002). Foucault’s (1978) conceptualization of the incitement to discourse, which suggests that modern society is characterized by social pressure to speak about, identify, and classify sexual behavior and identity, is also useful for interpreting the relative explosion of media coverage of cases involving white female offenders.

Drawing on a view of power as exercised through discursive formations (Foucault 1978), I argue that cases involving white female sexual perpetrators incite discourse because they provide an opportunity to regulate white female sexuality through the denigration of the failed femininity of female sexual subjects. By drawing comparisons across cases involving male and female perpetrators as well as across cases involving
white female and Latina perpetrators, I demonstrate the specific cultural fascination with cases involving white female perpetrators. The media, community, and criminal justice responses to female perpetrators can be best characterized as moral outrage, with the cases inciting harsh criticism and expressions of disdain for the perpetrator in the media and public response. The severity of the responses to cases involving female perpetrators is especially noteworthy because of the seeming cultural ambivalence about the seriousness of the victimization of the minors involved.

*Incitement to discourse: Sexualizing female perpetrators and the male gaze*

While this pattern of cultural ambivalence about the seriousness of the crime occurs across cases involving male and female perpetrators of various racial identities, the means through which this trivialization occurs is strongly gendered. In this section, I demonstrate that the coverage of cases involving female perpetrators is often sensationalized and sexualized. The extensiveness of the coverage of cases involving white female perpetrators is especially pronounced (see Table 1). The high level of coverage is especially noteworthy given the public’s low level of concern about the well-being of the adolescent victims. While journalists and community members express significant cultural ambivalence about the seriousness of victimization occurring in these cases, there is relative consensus about the moral failing of the female perpetrator. The media focus tends to be on admonishing the female perpetrator, who is treated as a spectacle for cultural derision and shaming in both the media and the court rooms. This
regulation is focused on denying female sexual subjectivity while simultaneously deriding the perpetrator who threatens to claim it.

Journalists and the community members they give voice to draw on dominant discourses when making sense of these cases. There are often little or no efforts to conceptualize these cases as expressions of the female perpetrator’s sexual desire, agency, or aggression. This stands in sharp contrast to the frequent characterization of male perpetrators as sexually motivated. The women are rather characterized as pathetic, disturbed, or both. Cases involving female perpetrators and male victims therefore are often treated with simultaneous derision and delight.

While female perpetrators are rarely viewed as sexual aggressors, their cases are often sexualized in a way that serves to titillate the audience and trivialize the victimization. This discursive construction of cases allows the threat of female sexual aggression to be neutralized by repositioning these female offenders as objects of the male gaze. The incitement to discourse these cases generate is evidenced in the greater level of details and sexual imagery journalists offer in their coverage of cases involving female sex offenders, as well as the moral outrage cases involving white female perpetrators provokes.

The detailed description of the sexual acts and appearance of the white and Latina female perpetrators stands in stark contrast to the low level of detail provided for the majority of cases involving male perpetrators. For example, in reporting on Christy Smith’s trial, journalist Brett Hambright (2012) quoted extensively from a police officer’s testimony. The article reported that, “The student recalled specific marks on Smith's
body, details of her apartment and sex toys and pornography the teacher kept at her place…Detective Sonja Stebbins noted a tattoo of a frog Smith had on her hip that normally would be concealed by her underwear. The McCaskey student gave police a description and location of the tattoo, she said.” The specificity of the coverage allows readers to view Smith as a sexual object, rather than as an aggressor or subject of sexual desire. Many cases involving female perpetrators include specific details of the frequency and location of each sex act.

In contrast, a number of cases involving male perpetrators detailed the legal charges without connecting them to a specific sexual contact or act. For example, while the San Bernadino Sun reported that Brenton James Unferth, 39, “pledged no contest Friday to committing a lewd and lascivious act with a former student,” they report only that the charges reflected that Unferth “committed the lewd acts with a 15-year-old girl in 2008,” without explicit reference to the acts provoking the charges (Cruz 2010). Most cases involving female perpetrators facing similar charges include details of the public acts, including specific reference to the locations where the contact occurred (such as naming the store parking lot or public park). For example, in the coverage of Beulah Nicole Sumner (white female), “According to court documents, Sumner admitted in an interview with a Bowling Green Police Department detective to having sexual intercourse with the teenager in a motel room in Bowling Green and to engaging in kissing and touching to the point of intercourse in her car on other occasions” (Story 2010a). Similarly, in covering a case involving a Latina female perpetrator, a journalist wrote, “Trujillo said she and the boy had had sex twice in a week, but not at school. She told
officers that she picked the boy up twice from his home, took him to the movies, then
drove to see the petroglyphs, which she referred to as ‘our spot.’ She told officers they
had sex in the back seat of her car” (Sanchez 2012).

The sexualization of these cases repositions the female offender as a sexual object
of the male gaze while simultaneously deriding her as pathetic, immoral, or both. These
cases garner a great deal of media attention because they provide an opportunity to
regulate female sexuality. While these cases risk individuals constructing female
perpetrators as sexual actors, the media construction of these cases repositions them such
that the women appear pitiable rather than threatening.

The incitement to discourse is especially pronounced in the moral outrage sparked
by cases involving white female offenders. While there are patterns of the gendering of
sexual perpetrating that apply across racial groups, the media fascination with cases
involving white female perpetrators in especially pronounced. In terms of both the
number of articles and number of words written about specific cases in the media, cases
involving white female perpetrators solicited the greatest amount of media attention. In
fact, in terms of the average number of words and articles written about each case, cases
involving white female perpetrators solicited about twice as much attention as cases
involving Latina perpetrators (see Table 1).

The high level of media coverage and the gendered nature of this coverage are
well evidenced in the media response to the Carrie McCandless case. McCandless was a
29-year-old white female teacher when she had sexual contact with a 17-year-old white
male who was a student at her school. This case garnered a great deal of media attention,
not only at the local or state level, but on the national stage, including coverage on Nancy
Colmes* on Fox News, and Keith Olbermann’s *The Countdown* on MSNBC. Given the
frequency of criminal cases involving teachers having sexual relationships with their
students (over one hundred criminal cases a year), and the relatively typical nature of this
case (McCandless had a one-time sexual contact with a single opposite sex student), the
level of coverage of the McCandless case is surprising.

McCandless was frequently described as attractive by journalists covering the
case, and the story was frequently positioned in ways that served to titillate the audience.
For example, in Olbermann’s framing of the McCandless story, he said “The hot for
teacher syndrome is in Colorado, now. There’s a twist though, that elevates the story
above the usual sleaze -- well, slightly.” He later adds “A teacher-student sex scandal
with some actual news inside it. Was it covered up because one of the teachers happened
to be married to the principal…?” His effort to frame the story as “legitimate news”
seems to imply a level of insecurity about the journalistic value of covering teacher-
student sex scandals (especially given the political-news centric nature of his show).
Despite claiming that he is covering the story only for its newsworthiness, Olbermann
employs sexualized language such as “hot for teacher” and “naughty” to titillate the
audience while simultaneously denigrating the act as “sleaze.” The simultaneous
sexualization and denigration of these cases is common in the coverage of these cases in
the media. The media coverage of cases involving white female perpetrators often
sensationalize the cases in ways that minimize the seriousness of the crime, but also
serves to regulate female sexuality through the treatment of these cases as opportunities to both denigrate the female perpetrator and to titillate the audience. The motivation of actors in the media to cover these stores is usefully interpreted through Foucault’s incitement to discourse.

*The O’Reilly Factor’s* coverage of the McCandless case reflected a similar incitement to report on the case along with explicit ambivalence about the seriousness of the crime. In his initial coverage, O’Reilly seemed to minimize the seriousness of the crime based on the age of the victim. This characterization implicitly draws on dominant discourses about the sexual interest of teenage boys. He says, “I mean, 30-year-old -- this kid was 17, so he's 17. I'm not -- it's not a 12 year. It's not a 10-year-old. But obviously this teacher is something wrong with her” (The O’Reilly Factor, March 14, 2007). In a later episode, O’Reilly expresses seemingly contradictory concern about the lenient sentence McCandless received. He characterized the case by saying, “It's an exploitation [sic]. It is the first rule of any teacher. And she violates all of this. .. And she gets 45 days. That is an extremely light sentence” (The O’Reilly Factor, April 25, 2007). His coverage of the case was largely centered on the moral failing of the female teacher, despite his presumption that the victimization of the 17-year-old boy need not be taken seriously. This form of discourse suggests that these cases garner a great deal of media coverage because of the opportunity to regulate white female sexuality.

The amount of media coverage of cases involving Latina defendants was significantly lower than the coverage of white female defendants. This may suggest that journalists and newspaper editors view these stories as less titillating to their audience.
and therefore less worthy of significant coverage. Only two of the six cases involving Latina defendants included more than 5 articles (the mean for white women was 15) and only those same two cases had over 1,000 words of coverage (the median for white women was over 2,600). While I argue that white female sexual perpetrators are especially attractive targets for moralizing media coverage, cases involving Latina perpetrators also involve a similar under tone of derision, and at times draws on racialized descriptions of the defendant to portray them unsympathetically.

In the news coverage of the Kristy Sanchez-Trujillo case (Latina), journalists for the Albuquerque Journal noted in multiple articles that the sexual contact occurred in Sanchez-Trujillo’s car while a DVD of Transformers, a science fictions movie geared toward teen audiences, played in the car. An editorial in the paper decrying the rash of recent teacher sex scandals opened with the line “A middle school teacher and student having sex in her car while a ‘Transformers’ DVD set the mood” (Heinz 2010). Like much of the coverage of female perpetrators, the inclusion of this detail allows journalists to implicitly infantilize and deride the defendant. The coverage of the Sanchez-Trujillo case also subtly drew on racist views of Latina women as “hyperfertile” (Garcia 2009: 533) in describing her as a “single mother of three” (Schoellkopf 2011). The defendant’s marital status was generally only reported when they were married, because it was then used to position the case as more shocking or newsworthy. In my sample of over sixty, I identified only one other case (involving a white female) in which the unmarried status of the perpetrator was noted. In another case involving a Latina perpetrator, the journalist reported that “On the stand, Borrego’s husband, a retail jewelry business owner, said
Friday he has two children with his wife, a 15-year-old boy and 17-year-old girl. Her youngest daughter is eight months old” (Cavazos 2008). While the paternity of the infant daughter was an important piece of evidence in the trial (the results of a paternity test were never released to the public), the journalist made a choice to contextualizing the infant’s paternity in terms of Borrego’s previous children and her marital status. This framing of the paternity allowed the journalist to depict Borrego in a way that aligns with stereotypes of Latinas as overly reproductive and sexually irresponsible.

Cases involving male perpetrators are not characterized by the same tone of moral disdain. Some cases involving male perpetrators, especially if multiple cases occur in a short time span, do prompt moral outcries among journalists and other media actors. But the individual perpetrators in cases involving male defendants are not subject to the same level of attention and scrutiny as female offenders. In contrast to the cases involving white female perpetrators detailed above, cases involving male perpetrators rarely garner coverage outside of the local news. In fact, only one case in my sample of fifteen cases involving a white male perpetrator garnered any national attention, and this media attention was driven by social organizing on behalf of the victim and her family (see the discussion of the Stacy Rambold case in chapter 4). Three of the fifteen cases involving Black male perpetrators received national attention, but only in the context of the perpetrator’s previous collegiate or professional athletic achievement. The relative mundane of the McCandless case stands in sharp contrast, for example, to the case involving Ryan Zellner, a white male perpetrator. Zellner was a 33-year-old teacher and coach when he was discovered to have had sexual relationships with 11 different female
victims across the three high schools he worked in over a span of eight years (Holman 2011). Given the exceptionalness of this case in terms of the number of victims and Zellner’s movement across high schools, it is no surprise that this case garnered a great deal of media coverage in the local news. What was surprising, though, was that the case garnered no national news coverage and in fact no media attention outside of regional news media coverage in Wisconsin.

While cases involving white female perpetrators are often treated as newsworthy novelties that are expected to shock the audience, the coverage often neutralizes the potential challenge to dominant ideology these cases pose to traditional gender stereotypes by either sexualizing or trivializing the crime. By treating the female sexual perpetrators as crazy, emotionally needy, or foolishly romantic women, the media reproduces dominant images of women as sexually passive, in need of guidance and supervision, and/or romantically oriented. The sexualizing of these cases also allows journalists to solicit attention to their stories by titillating the audience in a way that returns the female perpetrator to a position as a sexual object. By framing the stories in ways that titillate the audience, the female perpetrator is no longer viewed as a sexual subject, but instead as an object of the male gaze.

I also characterized the high level of media attention to cases involving white female perpetrators as reflecting an “incitement to discourse.” Like other phenomena that solicit moral panics, these cases serve as a repository for social anxiety (Cohen [1972] 2002). Feminist challenges to the existing gender order and recent changes in sexual mores have provoked anxiety around female sexuality (Barron and Lacombe 2005;
Furthermore, the current structure of racial and gender inequality is dependent on images of the sexual passivity and vulnerability of white women. These controlling images legitimize the sexist practices under the guise of male paternalism towards women and construct Black and Latino men as sexually aggressive threats to the white majority. For these reasons, social anxiety around the changing and potentially disruptive practice of white female sexuality is especially pronounced and likely to coalesce into a media discourse of moral panic.

The Politics of Black Respectability in the Media

One of the most surprising findings of this project was the sympathetic tone of a good deal of the media coverage of cases involving Black male defendants. In contrast to previous research which has found that the news media fixates on stories involving Black male perpetrators, I found that cases involving Black male defendants solicited less media attention than those involving both white male and white female perpetrators (see Table 1). Additionally, many of the news articles covering the cases made mention of accolades the defendant had earned (such as coaching accomplishments or teaching awards) and/or referenced the great deal of community support the defendant had in the court room. This framing of Black male perpetrators is surprising given prior research which suggests that Black men are often depicted as especially dangerous criminals (Bjornstrom et al. 2010; Mosher 1999) and the centrality of Black male sexuality as specter in the reproduction of racism (Collins 2004). I argue that the media’s framing of
these defendants as “respectable” Black men allows for the reproduction of racial and gender inequality under the guise of a patronizing racial tolerance.

Journalists often described Black male defendants in ways that implicitly distance them from the controlling image of the “cool pose” and suggest their alliance with Black respectability. For example, Molly Moorhead (2008) described Michael Aaron Black as, “A slight man with a soft voice wearing thin glasses, he talked in near-poetic words about integrity, character and the heart of a man” in her description of his sentencing hearing. Willie Idlette was similarly described as “quiet and respectful” at his plea hearing by journalist Monica Mercer (2009). These descriptions were entirely missing for white and Latino male perpetrators, whose court room presentation of self was not generally discussed beyond a reporting of whether they were in handcuffs and/or correctional facility uniforms at their hearings, their responses to their convictions (such as hanging head or crying), and the frequent quoting of their statements at sentencing hearings.

Journalists also often cited the defendants’ accolades in articles reporting on cases involving Black male perpetrators. The strategy of positioning the presumed worthiness of the teacher against the charges s/he faced was a common rhetorical strategy for framing these cases as interesting across the gender and race of the perpetrators. In describing the charges against Cara Dickey (white female), for example, the journalist wrote “The five-year veteran teacher, described as popular with students and staff alike, was fired the next day” (Gryta & Warner 2008). The coverage of Steven Parkman’s (white male) case similarly noted that “he was honored in …the Student and Teacher Achievement Recognition program teacher of the 2007-08 school year for Harrison High
School” (Mollett 2008) when he was arrested and indicted, but not in articles covering his later sentencing. As details of the case emerge, though, journalists generally shifted to other strategies for imbuing these cases with interest and relevance. But cases involving Black male perpetrators were more likely to include continued reference to these accolades throughout their coverage of the case. For example, journalists noted that “Mr. Idlette lettered in football, track and basketball at Baylor. He was named a Freshmen All-America football player at Wake Forest University, a prestigious award given only to the top college freshmen players every year. He returned to Baylor after graduation from college, only to be fired over the 2007 incident that involved a 16-year-old female student” (Mercer 2009).

This focus on the accolades of male defendants was nearly completely missing in the media coverage of cases involving male Latino perpetrators. Two of the Latino male defendants in the sample taught at prestigious private high schools and likely had impressive credentials. Journalists tended to focus on the pedigree of the institution as a way of framing these cases as newsworthy and especially surprising, but they did not highlight the individual accolades of the defendants (Srisavasdi 2010). For example while the journalist noted that “[Sheriff] Alderden said Ruiz was hired in July 2008 after teaching at schools in Miami, South Korea and Japan,” (Taylor 2009) but never elaborated on these potentially noteworthy credentials.

Journalists often also included quotes from others actors who noted the middle-class respectability of Black male defendants, including references to their education level and community standing. In covering the Charles McClendon case, for example, a
journalist opted to include his defense attorney’s statements at the sentencing hearing claiming that “…it's an unfortunate situation all the way around…Mr. McClendon is an educated man…He's got a couple degrees under his belt” (Looney-Bond 2010). The newspaper similarly reported that a juvenile detective on the witness stand in Claude Brown’s case said “…I think someone with his educational background and status in the community should have known better” (Meyer 2008). Defendants and their advocates often made similar references to their standing in the community, and these sentiments were often repeated in the media. Brown himself, for example, said he was “troubled by the message his actions have sent to his players, the community, his family and the school district” (Trexler 2007). This media emphasis on the defendant’s contributions to and status in community relies on an implicit suggestion that the Black community is lacking in positive male role models (Black males are frequently described as “endangered species” by journalists; Ferguson 2001) and that the loss of the defendants as a relatively respectable Black man will be hard felt.

Classifying these middle-class, college educated Black men as “good” men allows journalists to appear to express sympathy and even leniency toward these individual Black perpetrators. This allows for journalists to make claims about color-blind or non-racist reporting. It is even more problematic, though, because it allows for the reproduction of racist and classist system of privileging particular forms of masculinity. Under the guise of racial tolerance or justice, journalists are able to construct stories that reproduce the good/bad Black man dichotomy. Furthermore, by treating these defendants in a paternalistically sympathetic light, journalists implicitly reproduce raced hierarchies
of masculinity that position some Black men (middle-class, educated, “respectable”) as more worthy than others.

ENGENDERING SEXUAL PERPETRATION IN THE STATE

Defense Attorneys and the Strategic Use of Discourses of Difference

Across the race and gender of the defendant, defense attorneys generally work to position their clients in the most sympathetic light. Over the course of the trial this characterization may shift from one denying guilt to one taking responsibility and advocating for judicial leniency in sentencing. I begin with a discussion of some of the defense strategies employed by defense attorneys for both male and female perpetrators. I then extend Gathing and Parrotta’s (2013) insight into the strategic use of gender by defendants seeking leniency by elaborating how defense attorneys representing female clients employ dominant ideology in a way that potentially enhances their clients’ prospects in the court room, but also reproduces hegemonic gender ideology.

I identified two defense strategies that occurred across cases involving Black, Latino, and white perpetrators, as well as male and female perpetrators. One frequent strategy was the contestation of victimhood and the focus on the social consent of the victim. This framing of these cases is closely tied to the cultural ambivalence about the seriousness of these cases and will be discussed in the following chapter on the discursive construction of victimhood.

The second strategy, the elaboration of non-legal consequences, frequently emerged in the sentencing portion of the trial. Sentencing hearings occur after the perpetrator has accepted a plea deal or been convicted through a jury trial. During this
phase of the trial the defense counsel advocates for leniency in the sentencing of the perpetrator by constructing the perpetrator as worthy of leniency to the judge. One means through which defense attorneys advocate for leniency is by highlighting the non-legal repercussions of the case. For example, Beulah Nicole Sumner’s (white female) attorney “said that his client made a ‘tragic mistake’ by conducting the affair and lost her career, husband and children because of it” (Story 2010b). While Brenton James Unferth’s (white male) defense attorney said that, “Unferth might lose his marriage, children and house and that his client has a new unpaid job now” (Shimura 2010). And Norman McMillan’s (Black male) attorney said that, “People do make mistakes, they do harm people… His life is forever changed” (Kelley 2010). Other research has demonstrated that sentencing guidelines requiring judges to take into account a defendant’s family caregiving and financial responsibilities can shape defense strategies and judicial decision making (Gathings & Parrotta 2013). My findings suggest that defense attorney presume that judges take the difficulties that have arisen for the defendant into account when considering how to best respond to their conviction of a crime.

There were other strongly gendered patterns in the defense team’s construction of these cases. In a large number of cases involving males, the sexual contact with the adolescent victim was constructed as reflecting a momentary lapse in judgment of the male perpetrators. This reflects an implicit characterization of male sexual desire for a female minor as inevitable or unsurprising; a desire that needs to be “controlled” but not symptomatic of an underlying psychosis. The sexual desire for an adolescent object is not implicitly normalized in cases involving female perpetrators as it is in cases involving
male perpetrators. Defense attorneys in cases involving female perpetrators are very unlikely to construct the sexual contact as a moment of poor judgment driven by sexual desire, but instead as a reflection of the defendants underlying psychological difficulties. Defense attorneys instead focus on mental health, substance abuse, or life circumstances of the female perpetrator to provide an explanation for her presumably deviant sexual behavior. The attorney is able to draw on dominant understandings of sexuality that suggest that women are incapable of experiencing sexual subjectivity and acting as sexual predators to defuse the defendant’s culpability.

Defense attorney are likely to depict female defendants as victims of their own life circumstances in ways that are not available to male defendants. This includes focusing on the marital troubles or other personal troubles a defendant was facing during the time of their sexual relationship with a minor. The defense’s examination of the defendant, in Sheila Vasquez’s (Latina female) case provides an illustrative example of how defense attorneys strategically construct their female defendants as passive victims of their own life circumstances. During Vasquez’s testimony at her own trial, her defense attorney asked her, “Did you use your position to try to take advantage of him?” to which Vasquez responded "No." He then asked her, “Was it just something that happened?” and Vasquez responded “Yes” (Murray 2008). The defense’s characterization of the illegal sexual contact as “something that just happened” draws on dominant ideas about women as generally passive and not sexually motivated.

Another strategy that highlighted the defendants’ struggles with mental health or substance abuse similarly relied on patronizing depictions of women that allowed them to
deny their own agency and therefore their own culpability. In Melinda Beth Bridge’s (white female) case, for example, her defense attorney highlighted her use of drugs and alcohol as a mitigating factor. As the sentencing hearing he claimed that “‘The root of this whole problem is substance abuse’ and requested she be sentenced to probation rather than incarceration so that she could receive treatment” (Wright 2010). Similar arguments were made in other cases involving white female perpetrators, including Meredith Kane’s attorney asking for probation so she could be treated for bipolar disorder and Dickey’s lawyer arguing that “her depression and her medication outweighed her ability to understand the consequences of her actions” (Warner and Gryta 2009). Kristy Sanchez Trujillo’s defense attorney called a psychologist to testify at her sentencing hearing. The psychologist reported that Trujillo’s history of sexual abuse, the breakup of her abusive marriage, and her being “a person who looks especially to men to have her make sense of her life and to validate her and a person who seeks that attention in that elevation externally, especially from males all the time” were all factors that lead to her abusing the victim, despite the fact that, based on his evaluation, Trujillo was not a pedophile (Trujillo v. State of New Mexico 2012: 13).

These characterizations of female defendants as passive victims of their own life circumstances stand in sharp contrast to the emphasis on apologizing and taking responsibility that characterized most hearings involving male perpetrators. Even cases involving a clear pattern of reckless behavior and frequent alcohol use, such as Ryan Zellner’s (white male), did not include a single mention of mental health or substance abuse at his sentencing hearing. This is likely due to the different ideological resources
available to defense attorneys as they attempt to situate their defendants as worthy of leniency.

While this qualitative data, as well as the sentencing outcomes data discussed in chapter two, suggests that this paternalistic view benefits some individual female perpetrators in the criminal justice system, the use of these cultural tropes in the court room also reproduces problematic hegemonic gender ideology. The next section considers how different strategic positions shape the ideological resources employed by state actors. It suggests that court rooms are not sites for only the reproduction of dominant ideology, but also places this ideology is contested and reshaped.

State Attorneys and the Contestation of Female Sexual Passivity

State attorneys, including county prosecutors and members of district attorneys’ offices are expected to argue cases in ways that encourage the conviction and strident sentencing of individuals being prosecuted by their offices. The pattern of strategic framing of these criminal cases by prosecuting attorneys challenges the simplistic view of the state as wholly patriarchal (Haney 1996; 2000). In constructing the guilt of the defendant and the seriousness of these crimes, prosecuting attorneys tend to challenge hegemonic images of women as sexually passive and frequently position defendants, both male and female, as predatory, dangerous, and sexually motivated.

In their construction of these criminal cases through the indictment, conviction, and sentencing process, prosecutors are largely united in their characterizations of these crimes as extremely serious. This framing requires evidence not only that the defendant
broke the law, but did so in ways that reflects premeditation, disregard for the harm that would result, and/or a serious breach of the social trust.

Prosecuting attorneys across a range of cases characterized the perpetrators as predatory. This framing often involved resisting characterizations offered by the defense that the crime reflected a brief lapse in judgment by an otherwise respectable community member. In his closing arguments, the prosecuting attorney in the Deanna Bobo (white female) case argued: “This wasn't just a momentary lapse of reason, a momentary lapse of judgment, it was premeditated, it was planned. She thought about it. She e-mailed about it. She obsessed about it. She made multiple phone calls on the dates we think it occurred” (Bobo v. State of Arkansas: 2949).

State attorney’s made a similar argument in characterizing Rambold’s (white male) case, noting that, “The Defendant's conduct was ongoing and cannot be attributed to a slip-up or mistake. The Defendant's relationship with his 14-year-old student went on for months. . . . Every day for a period of months, the Defendant knew he was engaging in a relationship with a child student” (Rambold v. State of Montana: 16). Prosecutors drew on imagery of predatory childhood sexual abusers when describing the sustained nature of the perpetrators relationship with the victim. For example, in a case involving McCandless (white female), the prosecuting attorney argued that the defendant “handpicked the student and was ‘grooming him’” (Gallegos 2007). Prosecuting attorney’s made similar reference to the imagery of a child predator in characterizing cases involving white and non-white male defendants, such as describing a white male defendant “as a child molester” in the closing arguments (Harrison 2009).
The sexual predator framing also tended to focus on having a history of inappropriate sexual behavior and/or having demonstrated repeated sexual interest in minors. In one case involving a Black male defendant, the assistant prosecutor, “said in a previous hearing that Brown had admitted to ‘a 20-year history of sexual inappropriateness with adults and girls’ going back to the late 1980s, when he was in the Canton school system at the former Lehman Junior High School” (Mayer 2008). In the examination of a state witness, prosecutors worked to elaborate on state depictions of Kenneth Anderson (Black male) as a sexual predator attracted to young girls. In response to state examination, the witness testified about her observation of the defendant “checking out” young women at a public pharmacy. She said “When I proceeded to go in, you know, to the rows, to get what I was getting, he was standing up there with his arms crossed, checking out all the girls' back-ends, the young girls that were working in the store in Walgreens” (Anderson v. State of Tennessee 2006: 413). A similar argument was offered by the Chief Assistant District Attorney Kirby in Gaddy’s (white female) case. In submitting a request to include evidence of “similar transactions” into the criminal trial, Kirby argued that she wanted to include information about sex acts the defendant engaged in with the victim’s brothers (both of whom were over the age of consent), as well as her sexual contact with an 18-year-old high school student. Kirby argued that this set of information demonstrated Gaddy’s “lustful disposition for younger boys” (Martin 2009). Cases involving multiple victims were especially likely to be framed as reflecting a predatory interest. In the closing arguments of Christy Smith’s
(white female) trial, for example, the prosecuting attorney argued that “These crimes were very similar [which reflects] a pattern of behavior” (Hambright 2012).

The prosecution also frequently made note of the defendant’s position of authority in characterizing the seriousness, emphasizing the breach of trust of the teacher-student relationship and of the public trust in teachers. In one noteworthy example, the District Attorney’s office agreed to a plea deal with defendant Sanchez-Trujillo (Latina female). According to the plea, Sanchez-Trujillo pleaded guilty to one count of criminal sexual penetration of a minor, two counts of criminal sexual contact and two counts of contributing to the delinquency of a minor, all stemming from her sexual relationship with a 13 year old male student. While Sanchez-Trujillo faced up to 24 years in prison, the presiding judge ultimately sentenced her to one year of house arrest and at least five years of probation. The local newspaper, the Albuquerque Journal, published an editorial days after the sentencing condemning the judge’s leniency and the state’s poor record on taking cases of teacher sexual abuse seriously (Albuquerque Journal Editorial Board 2012). A spokesperson for the District Attorney’s office wrote a letter to the editor which was then published in the Albuquerque Journal, in response to the newspaper’s editorial. The letter to the editor expressed similar frustration with the sentence and made note that the prosecuting attorney had advocated for incarceration at the sentencing hearing. The letter read in part:

It is not acceptable to have sex with a 13-year-old child. It is an even greater violation of the public’s trust that she had sworn to educate and protect this child and instead raped this boy. She deserved to go to prison for her actions.” [Emphasis added] (Anderson 2012)
This letter to the editor reflects two common themes in the framing of these cases by prosecuting attorneys: the emphasis on the seriousness of the crime (demonstrated here through the use of the term rape and the description of the victim as a boy), as well as the treatment of the adult’s position of authority as enhancing the seriousness of the crime. It reflects the tendency of prosecuting attorneys to position female defendants as child sexual predators whose crimes should be taken seriously.

CONCLUSION

This chapter identifies ways in which journalists participate in the reproduction of hegemonic ideology. The media treatment of cases involving both white and Latina female perpetrators tends to draw on and reproduce dominant ideas about gender and sexuality, including constructing women as sexually passive and female sexual subjects as objects of repulsion and derision. Foucault’s concept of the incitement to discourse is useful for understanding the relative explosion of media coverage of cases involving white female offenders.

In contrast to this relative explosion of discourse, I note that cases involving Latino defendants of both genders generate significantly lower level of media attention than cases involving defendants of other races. Coverage of Latino defendants tends to be a more concise retelling of judicial actions is generally characterized by low levels of media engagement and less attention to the life circumstances and behavior of the individual defendant compared to the treatment of defendants of other races.
I also analyze how the pattern of the media coverage of cases involving Black male defendants differs from their coverage of cases involving white and Latino male defendants. Cases involving Black male defendants generate less media attention than those involving white men and more attention than those involving Latino defendants. I argue that the media attention to the Black respectability of these individual defendants allows journalists to make claims of racial tolerance while framing cases in ways that reproduce race and class inequality.

I then turn to an analysis of the treatment of perpetrators in the state to consider the role of attorneys in constructing and resisting dominant ideologies. I analyze how the different strategic opportunity structures of prosecuting and defense attorneys encourage their employment of conflicting characterizations of these cases. I demonstrate that defense attorneys draw on patriarchal views of women’s passivity to reduce the culpability of their clients while prosecuting attorneys resist these hegemonic ideals and demand that the sexual perpetrating of female defendants be taken seriously. This insight complicates characterizations of the state as wholly patriarchal and contributes to scholarly understanding of how symbolic resources are used strategically.
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Table 5. Descriptive Statistics of Newspaper Coverage by Perpetrator Race and Gender

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<th>Median words</th>
<th>St. dev. words</th>
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Notes
1. Counts based on coverage by the single newspaper with greatest amount of coverage of a case
2. Only words specific to case were counted from articles covering aggregations of cases
Chapter 4: Good Girls, Real Boys, and the Construction and Contestation of Sexual Victimhood

INTRODUCTION

This chapter explores the construction and contestation of victimhood in criminal cases involving sexual contact between teachers and their adolescent students. I focus on the ways in which sexual victimhood is gendered, raced, and classed. Defense attorneys who are attempting to minimize the seriousness of the crime and contest the minors’ claims of victimhood often characterize female victims of male perpetrators as sexually experienced, aggressive, or over-sexed. These characterizations of victims are occasionally repeated by trial judges. This understanding of female sexuality encourages implicit sympathy with the male perpetrator’s characterization of the female minor as a dangerous seductress. Adherence to white middle-class norms of female innocence and purity (e.g., little sexual experience, academic achievement, happy dispositions) are the central rubric for measuring the seriousness of the female adolescent’s victimization. This rubric of worthiness upholds inequality by associating shame and danger with adolescent female sexuality and differently positioning victims based on their locations in the structure of racial and gender privilege and oppression.

This chapter also describes efforts by journalists, attorneys, the victim and the victim’s parents to preserve and protect the masculine identity of the male adolescent victims. Extending existing literature on the seeming incompatibility of victimhood and a masculine identity, this chapter identifies subtle efforts by a range of actors serving to protect the seemingly vulnerable access these adolescents have to hegemonic
masculinity. This chapter explores the ideological vulnerability of adolescent masculinity, as well as the work actors engage in to protect the access of male bodies to male privilege.

LITERATURE REVIEW

This chapter draws on a body of literature that provides insight into American understandings of teenage sexuality and the gendered nature of dominant understandings of sexual victimhood. Feminist research on sex education policy and practice suggests that Americans tend to view adolescent sexuality as both dangerous and immoral, and tend to focus specifically on the risks and dangers of sexual activity for adolescent girls. Research also demonstrates that cultural discourses surrounding gender and sexuality shape individual responses to their own sexual experiences and potential victimhood, as well as the treatment of sexual violence in the criminal justice system.

Constructing Adolescent Sexuality

Feminist research demonstrates that adolescent sexuality is often discursively constructed as risky and undesirable by adults in a variety of settings, including families, community health centers, high school classrooms, and sex education courses (Fine 1988; Garcia 2009; Macleod & Durrheim 2002; Mann 2013; Morris 2007; Schalet 2011). In her influential research on American sex education policies, Fine (1988) articulated the gendered nature of this view of adolescent sexuality, noting that dominant understandings of female teen sexuality are centered on sexual passivity and vulnerability rather than
desire. Other scholars have extended this insight by analyzing the way that the discourse of sexual risk and subjecthood is racialized and classed (Hill Collins 2004; Garcia 2009; Mann 2013; Morris 2007).

Comparative analysis of interview data suggests that American parents and teens characterize adolescent sexuality as inherently risky and problematic (Schalet 2011). This cultural framework for understanding teen sexuality leads to an American “dramatization” of teen sex, which stands in stark contrast to the Dutch “normalization” of teen sexuality. This dramatization regulates teen sexuality through a discourse of risk avoidance and stigma. Drawing a discourse of “raging hormones,” American parents tend to view sexuality an impulse that needs reigning in and as an adult realm of behavior that should not be accessible to their children until they are ready for financial and emotional autonomy from the family unit. This discourse refers not only to what individual parents and teenagers say and feel about teen sexuality, but also to the logic behind their behaviors and beliefs. This regulation is also strongly gendered. Americans tend to conceptualize heterosexual teen relationships as antagonistic, with boys pursuing sex and girls pursuing romantic love (Schalet 2011). Girls are also generally subject to greater regulation of their sexual experiences by parents and educators, while boys may experience tacit approval of their sexual activity outside of the home (Macleod & Durrheim 2002; Schalet 2011; Tolman 2005).

The American dramatization of adolescent sexuality is also evident in public discourses around teen sex in the United States (Fine 1988). Based on an analysis of modern sex education practices, policy, and rhetoric, Fine argues that the discourse
surrounding teen sexuality depict teen sexuality as immoral and risky. Constructions of female sexuality are especially focused on the language of violence, risk, and victimization (Tolman 2005). Teen girls are taught to avoid victimization by “defend[ing] themselves against disease, pregnancy, and ‘being used’” through abstinence and adherence to values of heterosexual monogamy (Fine 1988: 32). These discourses are premised on images of male desire, aggression, and predation and female passivity and vulnerability to male desire (Tolman 2005). The focus on victimization and risk in depictions of female sexuality leads to a “missing discourse of desire,” which makes it difficult for females to experience themselves as sexual subjects (Fine 1988). Teen girls often describe sexual activity as something that “just happened,” because of the lack of discursive resources for articulating their own sexual subjecthood and because they view sexual activity as out of line with being “‘good’, nice, and normal girls” (Tolman 2005: 2). This obscuring of female sexual desire is connected to a broader culture of ambivalence around female sexuality, and allows adults to translate their own “anxieties about female sexuality into acceptable, and even protective, talk” (Fine 1988: 42).

While the regulation of female adolescent sexuality is consistently characterized by a focus on risk rather than desire, the regulation of teen sexuality is shaped by race and class (Tolman 2005). The discourse of risk avoidance positions sexually agentic females as risk takers or “bad girls” and is premised on white, middle-class values of appropriate gender display, delayed motherhood, and economic and educational attainment (Mann 2013). The construction of girls’ sexual innocence depends on “the figure of the over- and/or inappropriately sexualized girl, set against a middle-class norm of
developmentally appropriate (hetero)sexuality” (Renold & Ringrose 2011: 402-3). The performance of gender and sexuality by working class girls is often interpreted as deviant by teachers and other school staff (Archer, Halsall & Hollingworth 2007). Teenage girls signal adherence to “good girl” and “good student” standards through the performance of a middle-class and desexualized femininity. These standards include an orientation to hard work, achievement, respect of authority and disinvestment in the working class expressions of femininity (170). The working-class “hyper-heterosexual” femininity, performed through an orientation to appearance, sexuality, and romantic relationships is viewed by teachers and school staff as antithetical to educational achievement and leads to the marginalization of many working-class girls within schools (166).

The dichotomized “good girl/ bad girl” narrative is strongly racialized. Individual health workers and educators tend to treat women of color as being at constant risk of “slipping” into “bad girls” through teen pregnancy or other forms of sexual deviancy (Garcia 2009; Mann 2013). Black and Latina teenagers are often constructed as sexually precocious (Garcia 2009) or oversexed (Morris 2007). While Latina teens are often criticized by health workers and educators for their dependence or vulnerability to Latino men (Mann 2013), Black teenage girls are often viewed as aggressive and in less need of male protection (Hill Collins 2004; Morris 2007).

The Gendered Meanings of Sexual Abuse and the Construction of Sexual Victimization

The ideological linking of femininity to risk and victimization and male sexuality to agentic desire and predation also shape the way victims, their advocates, outside individuals, and members of the criminal justice system interpret and respond to
instances of adult sexual contact with minors. A number of clinical researchers demonstrate that gender shapes individual experiences of sexual abuse (Kia-Keating et al 2005; Hunter 2009; Nelson & Oliver 1998). This research suggests that male victims of childhood sexual abuse face challenges in incorporating this experience into their evolving masculine identity, which is premised on autonomy, aggression and invulnerability (Kia-Keating et al. 2005). Parents of boys who have been the victim of sexual abuse often perceive their son’s victimhood as a threat to the gender order and the boys’ emerging masculinity (McGuffey 2005, 2008). This leads some parents to encourage or coerce their sons into heteronormative behavior to counter their fears that their son may be sexually or gender deviant (McGuffey 2005, 2008). Others researchers demonstrate that gender ideology circumscribes the meanings and discourses available to individuals who have had early sexual experiences with adults. They find that male adults recalling childhood sexual contact with an adult are more likely to construct the experience as unimportant or in a positive light and are less likely to draw on the discourses of victim or survivor than female respondents (Hunter 2009; Nelson & Oliver 1998).

In addition to the ideological erasure of male victimhood, research suggests that the abuse of both male and female victims by a female perpetrator is especially underreported (Denov 2003). This likely relates to the lack of discursive and structural resources available for victims of sexual abuse that run counter to traditional understandings of gender and sexuality as well as the gendered stigma faced by male victims of sexual assault (Graham 2006). This gendered erasure of particular forms of
sexual abuse that challenge hegemonic conceptions of gender is also (re)produced institutionally, as illustrated by the fact that the psychiatric diagnostic handbook the *Diagnostic and Statistical Manual of Mental Disorders IV* describes paraphilias, which includes pedophilia, as “almost never diagnosed in females” (Denov 2003: 303).

Cultural discourses surrounding gender and sexuality also shape the treatment of sexual violence in the criminal justice system. Victims of rape and other forms of sexual and gendered violence have historically been treated un-responsively, hostilely, and suspiciously within the criminal justice system (Schafran 1992; Yancey Martin & Powell 1994). Narrow cultural ideals about what domestic violence is suggest that only women who are meek, innocent of any provocation, and passive are “real” victims (Ferraro 2006). Additionally, rape cases that do not adhere to the “classic” rape case involving a male stranger, physical injury, and “veritable saint” of a victim are notoriously difficult to prosecute (Yancey Martin & Powell: 873) and are less likely to be reported to the police to begin with (Du Mont, Miller & Myhr 2003). These restrictive definitions of victimhood provide a social context through which female victims are forced to negotiate and perform their own victim status, and in which criminal juries “focus on victims as much as on defendants” (Yancey Martin & Powell: 873). Female victims involved in the prosecution of their rapists often strategically employ appearance and emotion work in efforts to adhere to these cultural ideals of female victimization, with the expectation that jurors and judges hold many of these values (Konradi 1996).

The tension between victimhood and masculinity is also evident in the criminal justice system (Durfee 2011). Legal definitions of rape have historically excluded male
victims (Graham 2006; Smith 2012) and sex crimes perpetrated against male victims often have more lenient sentencing requirements (Graham 2006). The failure to take male sexual victimhood seriously is evident in other state practices, including state enforcement of child support orders against male victims of statutory rape (Jones 2002).

A number of experimental research projects have used case vignette surveys to examine the how the gender of offender and victim shape the way that outside individuals perceive the sexual contact (Davies & Rogers 2006; Quas et al. 2002). Scholars have found that that male victims are more likely to be viewed as culpable in their own victimization than female victims and that cases involving female perpetrators and male victims are at the greatest risk of not being taken seriously by outside parties (and potential jurors) (Davies & Rogers 2006; Quas et al. 2002). These studies demonstrate that dominant ideologies around gender and sexuality shape individual responses to cases of rape and child sexual abuse. Other research has demonstrated the centrality of discourses of fear and victimization in the everyday production of gender, including the conflation of femininity with perceived vulnerability and masculinity with perceived dangerousness (Holland 2001). Female teenagers are often viewed as being at greatest risk of harm, due in part to “the widespread misconception that sexual assaults are motivated by the victims attractiveness,” while teenage boys are viewed as able to protect themselves (Holland 2001: 95).

Media depictions of statutory rape and child sexual abuse also generally reflect dominant understandings of gender and sexuality (Landor & Eisenchlas 2012; Ndangam 2008). While male perpetrators in these cases are likely to be described as pedophiles or
perverts in the media, the seriousness of the crime involving female offenders is often downplayed, with news articles often describing the relationship as romantic and/or describing the male victim as the sexual initiator (Landor & Eisenchlas 2012).

CONSTRUCTING AND CONTESTATING VICTIMHOOD

American beliefs about teen sexuality, including the erasure of female sexual desire, the presumption of male sexual desire and even aggression, and the association of teen sexuality with immorality and risk, shape the media and criminal justice responses to these crimes. In this section, I detail how these sets of meaning provide discursive resources as victims, lawyers, journalists, and members of the public make sense of the sexual relationships alleged in the criminal charges. I argue that moralized discourses of teen sexuality (Schalet 2011) lead journalists, attorneys, judges, and the general public to view teenage victims suspiciously for their individual failure to avoid the risks of adolescent sexual activity. In this section, I detail the ways in which the discourses employed in constructing and contesting victimhood in these cases are gendered, raced, and classed.

Victimhood is not an inevitable or static identity, but rather a claim that is produced, defended and contested in the realms of the news media and the court room. Some of the minors involved in these cases contested their own victimhood, such as by drawing on claims about romantic love or their sexual agency or initiative. Others discuss their status as a victim as something that was ultimately revealed to them, an underlying truth that they were not initially able to identify or accept. A male victim in the Christy
Smith case, for example, was not initially cooperative with police, and in fact “signed a waiver of prosecution with Lancaster city police. But that summer, he said, ‘I realized for the first time that I had been a victim and I was being taken advantage of’” (Stauffer & Nephin 2012).

As detailed in chapter 3, the news coverage of these cases often reflects ambivalence about the seriousness of the crime by trivializing the case and failing to take the minor’s status as a victim seriously. Defense attorneys also often contest the status of the minor as a victim and the level of harm resulting from the relationship. In an extreme case of the contestation of victimhood, the defense attorney in the Elizabeth Gaddy case submitted a motion to the judge (which was denied) asking that the judge “instruct the district attorney and state's witnesses to refrain from calling the student a ‘victim’” because, he argued, “The connotation of the word 'victim' takes on an inflammatory appeal such that the passion of the average man or woman is aroused to the point of prejudice” (LaGrange Daily News Staff Reporter 2009).

Based on this understanding of victimhood as a negotiated identity, I analyze the strategic construction of victimhood by the minor victims and their advocates. I also consider how these minors, and their status as victims of sex crimes, are depicted in the media coverage of these cases. I detail specifically how claims to victimhood are differently employed by, and available to, victims based on their gender and race. I then consider how these constructions of victimhood relate to dominant understandings of adolescent sexuality.
Regulating Female Sexuality and the Construction of “Good” Female Victims

Cases involving female victims frequently reflect an association of shame and risk with adolescent female sexuality by news media and criminal justice actors. This suggests that any female involvement with sexuality (even in a case of statutory rape) risks polluting the girls’ claims to “good” femininity. My findings suggest that adherence to white middle-class norms of femininity, including sexual innocence, appropriate gender displays, and academic achievement serve as the dominant rubric for measuring the seriousness of the female adolescent’s victimization. This occurs largely through claims of the victims’ sexual innocence and naïveté as well as by highlighting their adherence to middle-class heteronormative ideals of femininity in other ways. Access to these claims of “good” femininity and therefore “worthy victimhood” is racialized in a way that makes them less accessible to female victims of color and to girls whose victimization involved multiple male perpetrators.

Legal sentencing decisions following both jury trial convictions and plea bargains allow leeway in both the form and length of the sentence. These are constricted only by minimum and maximum sentencing provisions associated with the charges a defendant was convicted on, as well as any conditions of the plea agreement. Judges take into account the level of harm resulting from the crime and the effects of the crime on the victim and the community when making sentencing decisions (National Conference of State Legislatures 2011). Sentencing decisions are therefore largely dependent on the sentencing judge’s interpretation of the seriousness of the crime and provide significant insight into the judge’s construction of the case.
Victim impact statements are a frequent and important component of sentencing hearings. They provide the victim and his/her family an opportunity to detail how the crime has negatively impacted them and to advocate for the perpetrator to be sentenced in a particular way. In cases involving female victims, these statements are also frequently places where a victim and her advocates attempt to neutralize the threat of her engagement in sexual activity by constructing her as “good girls” who should be viewed as a sympathetic and “worthy” victim.

This strategic employment of the “good girl” narrative is well evidenced in the victim impact statement and its subsequent media coverage of the victim’s father in the sentencing hearing for Brenton James Unferth. As it was recounted by in the Victorville Daily Press:

The father told [Judge] Nakata that his daughter had never kissed or had a boyfriend until the relationship with her former teacher began. ‘She didn't have the experience at 14 to deal with a relationship with a 38-year-old man,’ the father said. Tears stifled his words several times during the speech. He said that his daughter’s behavior started to change. Although the victim used to be a 4.0 student, she started struggling at school. She doesn't trust adults now, the father said. Although the defendant could stay home, shielded from the public, as the trial went on, his daughter had to go to school and face teachers and friends, the father said. "I can't be more proud," he said referring to his daughter. The father finished his statement and walked back to his seat next to the victim, wiping his tears (Shimura 2010).

This impact statement characterizes the victim as sexually innocent and seriously harmed by the relationship. The victim’s father also cites her past academic achievement and her “good daughter” status as evidence that she was undeserving and seriously harmed by her relationship with Unferth. The focus on her past academic achievements and previous trust of authority demonstrate adherence to middle-class norms of performing a
respectable student identity. The *Victorville Daily Press*’s extensive paraphrasing of the father’s statement reflects the journalist’s and/or editor’s interest in positioning the victim as a “worthy victim.” Implicit in this construction of victimization is that deviation from these “good girl” norms suggests that the adolescent girl may have more difficulty demonstrating her victimization.

Female victims who do not adhere to these standards of “good girl” femininity face greater challenges in soliciting sympathy from both the courts and the media. During the sentencing hearing for Darryl Peterson (Black male), who was a basketball and baseball coach before being charged for having sexual contact with two female students, Judge Matthew Switalski told Peterson that what he did was “indefensible.” But the judge then added that he’s “seen in other cases and this case, the girls are a little aggressive nowadays, these teenage girls” (Cook 2009). Following these comments, Switalski sentenced Peterson to just one year in jail and four years of probation, significantly below the sentencing guideline that ranged from three to nearly six years in prison (Cook 2009). This suggests that judges’ perception of the presumed worthiness of the victim(s), especially in regards to their sexual experience or assertiveness, is connected to their assessment of the seriousness of the crime.

There was a strong pattern of minimizing the victimization of female teens who are not presumed to be sexually naïve. The fifteen year old victim in the David Rangel case resisted being identified as a victim of sexual assault and instead argued that she felt most victimized by the social consequences of the trial. In her statement at Rangel’s sentencing hearing, she said, “Instead of being a victim of sex assault, I consider myself a
victim of bullying from my peers.” She also stated that “Most people in my life believe David ruined me.” (Dunn 2011). While the female minor resisted the court’s construction of her as a victim, her statement suggests that she did experience social stigma related to relationship. Her statement that some people think the defendant “ruined her” suggests that the claims to sexual innocence made by female victims in these cases may be threatened by their involvement in a sexual relationship with a man, even in cases where the minor cannot legally consent to the sexual contact.

The focus on the sexual experience of the female victims is also evidenced in the small sample of cases the involved a victim who had sexual contact with two different educators at their school, both of whom were facing legal charges. In cases in which the sexual contact of the female victim with multiple adult educators was known at the time of the trial, the perpetrators received relatively lenient sentences. This suggests that the victim’s involvement with two different men reduced the judge’s perception of her victimization because of her deviation from the “good girl” standard of sexual innocence. This is similar to Schafran’s (1992) discussion of the propensity of judges to presume that subsequent sexual victimizations are less, rather than more, traumatizing for sexual assault survivors.

In the full sample of over 300 cases, there was one male victim that was involved in the legal prosecution of two different educators, and there were three female students that were identified as victims in the prosecution of two different educators. Across these eight trials, the only two defendants sentenced to any time in prison were the two female teachers that were involved with the same male victim (2 and 3 years in prison). The
legal treatment of Kevin Vincent and Scott Neil’s victimization of the same girl, which was uncovered during the same investigation, is significantly more lenient. During their separate trials, each received a suspended sentence of 6 months contingent on their completion of a sex offender treatment program.

In a similar pair of cases, Gary Wilcox and Jeff Wenham also both received relatively lenient sentences. Wilcox was sentenced to just one year in jail work release program that required him only to return to jail at night. The sentence Jeff Wenham was facing at his plea bargain was lower because he pled to only a pair of misdemeanor charges (nearly all cases involved felony charges), because he reportedly only kissed the student while she was 17, and waited until she was 18 to initiate a sexual relationship. But his case involved arguably an even greater breach of trust because the defendant was aware of the victim’s previous victimization and initiated the relationship through an exploitation of his role as an academic administrator. Wenham’s plea included a charge of failing to report that another teacher was having a sexual relationship with a student (the second misdemeanor). In fact, Wenham initiated the relationship with the victim after she came to him in his role as “student body adviser” to solicit his assistance in exiting her relationship with Wilcox. As reported in the San Diego Union-Tribune, the victim said at Wenham’s sentencing “I sought you out because I needed help and you took advantage of me” (Huard 2008). While none of judge’s statements at the sentencing hearing were reported in the media coverage, the paltriness of the sentence suggests that the judge did not take the victimization very seriously.
The final pair of cases involving multiple perpetrators and the same victim involved defendants Marco Herrera and Jose Barnardo Fanjul. This case differed from the others in that the sexual relationships were not discovered simultaneously. In this case, Herrera was convicted before charges were even brought against Fanjul. Following his conviction on three counts of forcible sexual abuse, Herrera was sentenced to 3-15 years in prison. In the months following this resolution of the Herrera trial, the victim alleged that Fanjul initiated a sexual relationship with her. Fanjul was ultimately acquitted through a bench trial in which “[Judge Ann] Boyden said there was no credible evidence sufficient to find Fanjul guilty beyond a reasonable doubt” (Thomson 2009). In the early stages of the Fanjul trial, the Salt Lake Tribune reported that, “During a Sept. 18 bail hearing for Fanjul, prosecutors acknowledged the girl was ‘sexually posturing’ with a third teacher” (Carlisle and Alberty 2008). This inclusion of this information at the bail hearing suggests that the female victim’s lack of sexual innocence or naiveté was being included as an apparently relevant fact in the trial. Furthermore, the newspapers framing of the information, such as using the language that the prosecutor’s “acknowledged” this occurred suggests that the journalists views this information as somehow detrimental to the prosecutions case. This interpretation of this information is based on a logic of assessing the worthiness of female victims based on a rubric of sexual innocence. Under the child sexual abuse narrative, this information could alternatively be interpreted as evidence of the psychological duress of the victim. Taken as a whole, the set of cases involving female victims whom dealt with multiple victimizations suggests that judges take a victim’s sexual inexperience into account when assessing the level of harm.
resulting from the crime. This suggests that female victims who have been victimized by multiple perpetrators are viewed as less worthy or in need of legal protection, which is especially troubling given research suggesting the cumulative trauma of multiple assaults (Schafran 1992).

A similar issue arose in the trial of Kenneth Anderson in that the defense requested to the court (and was denied) that they be able to ask the victim (who, based on court transcripts, was Latina) about her past sexual experience when she was on the witness stand. During the original trial, the defense claimed that they wanted to address this issue only in order to demonstrate that the victim would have been able to describe what sex felt like without having had a sexual relationship with Anderson (Anderson v. State of Tennessee 2006: 75-85), but the terms of the defense’s later appeal suggested otherwise. In requesting the appeal, the defense listed one of the grounds for appeal as determining “whether the trial court erred by refusing to allow testimony regarding the victim’s past sexual behavior and preference for older men” (Anderson v. State of Tennessee 2011: 1). This suggests that the defense was motivated to try and get information about the victim’s past sexual experience submitted into the record because they believed positioning the victim as more sexually experienced may decrease the judge and jury’s sympathy toward and/or increase their suspicion of the victim.

In addition to the suspicion faced by female victims who are not able to demonstrate their sexual naiveté, female victims of color face specific racialized challenges in negotiating their claims to victimization. Women and girls of color are often treated as oversexed or sexually deviant, and these discourses infuse the criminal
proceedings of cases involving non-white victims. Because the news reporting on most cases does not identify the racial or ethnic identity of the victim, there were only three cases involving female victims in my sample where I was able to identify the race of the victim. Despite this small sample, there was strong evidence of the racialized construction of victimhood, both in the media and in the court room.

One such case involved Claude Brown, a revered high school football coach in Akron, Ohio, who pleaded guilty to two counts of sexual battery related to his sexual relationship with a 17-year-old female student. In this case the media, the victim’s family, and even the victim herself, seemed to express ambivalence and even doubt about her right to claim victimization. This was especially surprising given that the prosecution provided evidence that Brown had displayed a pattern of inappropriate contact with females students, including being forced to resign from a teaching position decades earlier “for making inappropriate comments to about 15 to 20 students” (Meyer 2007).

The victim’s uncle spoke at Brown’s sentencing hearing and reported working at the school Brown coached for and knowing Brown in that capacity. In providing a victim impact statement, the uncle said in part that his family “was not here to pass judgment on Mr. Brown. We forgive you, and everyone would just like to move on” (Meyer 2007). While the victim was not identified in the media coverage of the case, her uncle was African American, and I inferred her racial status as non-white.

The victim herself also submitted a written victim impact statement that reflected similar feelings of ambivalence about her victimization. Interestingly, she did not construct the relationship as romantically motivated and therefore morally sound. Instead,
she reproduced the construction of the relationship as problematic and morally wrong, but challenged the legal constructions of herself as innocent or not-culpable. The statement, as quoted in the local newspaper, read in part: “I am not innocent nor have I ever claimed to be. I have always been very outspoken and straight-forward. I have beaten myself up over this situation continuously…I have taken part in this situation just as much as he has. I consider this a learning experience” (Meyer 2007). The victim seemed to be drawing on dominant understandings of sexuality that suggest adolescent female’s sexuality should be premised on protecting themselves from sexual victimization and risk. Past research suggests that as a female teenager of color, she has likely been frequently treated suspiciously, as at being at constant risk of being a “bad girl.” Rather than this sexual relationship being viewed in terms of victimization, it is employed as evidence of her failure to protect herself from sexual risk, which therefore undermines her claims to sexual morality. While her victim impact statement does not seek to absolve the perpetrator of wrongdoing, it does seem to suggest that the victim is also culpable. By quoting significantly from her statement, and failing to problematize her claims, the newspaper is reproducing this racialized understanding of female sexuality and victimhood.

This discourse of female culpability and failure to avoid victimization was also well evidenced in the Stacey Rambold case, which involved a Latina girl who was 14 at the time of the sexual contact. This case is an especially tragic one, as the female victim took her own life before the case went to trial in 2007. Shortly after, the prosecution agreed to a deferred sentencing agreement because they feared it would be difficult to
prove the case without a victim that would be available to testify. Under the agreement, all charges against Rambold would be dropped if he successfully completed a community based sex offender treatment program. After failing to adhere to the conditions of his suspended sentence (he had failed to attend two sessions of the treatment program), Rambold was notified that the State intended to pursue charges against him and he agreed to a plea bargain in which he plead guilty to one charge of sexual intercourse without consent. At the resentencing hearing Judge Baugh sentenced him to 15 years of incarceration, but with all but thirty one days of his sentence suspended (Supreme Court of the State of Montana 2014: 3). In legitimating the sentence, Judge Baugh described the victim as “‘as much in control of the situation’ as Rambold and as ‘older than her chronological age’” (Rogers 2013). This characterization of the relationship draws on controlling images of Latinas as too sexually available and oversexed which essentially erases the possibility of identifying the minor as a victim. The judge’s statements and lenient sentencing in this case were especially surprising given the compelling evidence of the emotional trauma the victim suffered following the relationship and provide especially strong evidence of the discursive incompatibility of sexual subjectivity and female claims to victimhood.

While the Rambold case was covered only by the regional news media at the time of the original sentencing hearing, the case garnered a great deal of media attention following the resentencing hearing in late 2013. CNN Online, for example, reported that “His lenient sentence and the judge's comments about his victim sparked national outrage and protests” (Lah 2013), while Bill O’Reilly (2013) characterized the sentence as “one
of the worst atrocities of justice we have ever seen.” In soliciting public support and organizing, the media and the victim’s advocates tended to draw on, rather than challenge, dominant narratives about “good” femininity. The coverage tended to focus on repositioning the girl as a worthy victim rather than more broadly challenging the practice of assessing the worthiness of rape victims based on their sexual naiveté or adhere to dominant norms of “good girl” femininity. National media coverage of the case, for example, cited her love of animals and poetry and her mother’s recollections of their close relationship and her daughter’s “playful nature” (McLaughlin 2013) to position the victim as a “good girl” and solicit public sympathy.

The explosion of moral outrage on behalf of the victim and her mother demonstrates the complex and contested nature of discourses around sexual victimhood. While the judge’s characterization of the case was not normative, it was also not exceedingly rare (see, for example, the judge’s statements in the Darryl Peterson case). It was also in line with gendered and racialized constructions of victimization described above. But because diverse discourses are available for interpreting each case, motivated actors are able to draw on other relevant discourses (such as the male sexual predator) to differently construct this case. Constructed through this lens, the judge’s characterization of the case has sparked moral outrage at the national level.

This case also provides compelling evidence that social organizing has the ability to shape state practices, even in the relatively insular criminal court system. Following the public attention to this case, a number of legal and feminist organizations became involved in providing legal support to the victim’s family and advocating for an appeal of
the sentence (including Legal Momentum, Sexual Violence Law Center and the Women’s Law Project). The case was successfully appealed through the Montana Supreme Court, which decided that the initial sentence imposed in the case did not meet minimal sentencing requirements. The Court recommended the case be resentenced and additionally recommended that a new judge be assigned to oversee the resentencing. In the written appeal opinion, the members of the state Supreme Court noted that “[T]here is no basis in the law for the court’s distinction between the victim’s ‘chronological age’ and the court’s perception of her maturity” (Supreme Court of the State of Montana 2014: 10). They further wrote that “Judge Baugh’s statements reflected an improper basis for his decision and cast serious doubt on the appearance of justice” (10). Judge Baugh is also currently being considered for disciplinary action related to his statements on this case by the same court. The appeal opinion reflects the Courts’ acknowledgement of the importance of the discursive construction of criminal cases in the performance of fairness or impartiality. It also reflects that there are various, and often contradictory, ways of framing these cases. While defense attorneys are often successful in minimizing the seriousness of the crime by diminishing the presumed worthiness of the female victim, prosecuting attorneys and victim advocates are able to strategically draw on legal definitions of consent as well as discursive constructions of sexual predators in constructing these cases as serious crimes that should be taken seriously.

Taken as a whole, the cases discussed in this section suggest that adolescent female victims of statutory rape and other forms of sexual assault are vulnerable to cultural disinvestment and hostility in the criminal justice system. Victims of rape are
frequently compared to cultural ideas about “good” rape victims, who are defined as chaste, emotional, and vulnerable (Ferraro 2006; Konradi 1996). The adolescent victims are also assessed in terms of their performance of “good girl” adolescent sexuality, which is premised on adherence to white middle-class femininity and avoiding sexual activity and risk. These ideals provide norms against which these victims can be held accountable, and which can be strategically employed by the defense and others to undercut the seriousness of their victimization.

The next section discusses the discursive construction of victimhood in cases involving male minors. I argue that the masculine claims to victimhood are not premised on the same rubric as the “good girl” femininity discussed above. Instead, male victims and their advocates focus on articulating their victim status in ways that coheres with dominant understandings of masculinity.

Troubled Boys and the Negotiation of Masculine Victimhood

The victim impact statements of male victims, as well as the media coverage of these statements, is much less focused on establishing the victim as a “good” or “untroubled” teenager prior to the event. Additionally, the statements of male victims and their advocates tend to articulate the negative impact of the sexual contact, but in a way that does not conflict with the boys’ claims to masculinity, which may be vulnerable due to both his age and his status as a victim of a sex crime.
A letter submitted to the court at Deanna Bobo’s sentencing hearing by the mother of the male victim (who was fourteen years old at the time of the sexual contact) is an illustrative example of how male victimhood is described:

I have to worry about the long-term affect this has had on my child. I know so far that he has had a lot of destructive behavior, drinking mostly to what he puts it as “forgetting.” He is just trying to numb the pain. [Victim name] doesn’t want to go to counseling because he just wants to forget the whole thing happened (Bobo v. State of Arkansas 2007: 3029).

This letter, as well as the letter submitted by the boy’s father, did not appear to be positioning the victim as a “good” or “worthy” victim, but rather focused on the breach of trust involved and the negative impact the crime had on their son. Neither parent, for example, made reference to any of the boy’s achievements or desirable characteristics in an attempt to position him sympathetically. In the only mention of the victim’s sexual inexperience in the letter, the boy’s mother wrote:

This happened to a 14 year old child that had taken a vow to stay pure until he was married, whether he would have done it or not was not her place to molested [sic] him and put him in a situation like that. (Bobo v. State of Arkansas 2007: 3030)

This framing by the victim’s mother is noteworthy because it seems to reference sexual naiveté as a potential rubric for assessing harm, while simultaneously rejecting the relevance of this factor in assessing the level of harm inflicted on her son.

Statements from another parent of a male victim, which were included in the news coverage of the plea hearing for Elizabeth Gaddy similarly focused on the harm resulting from the abuse without attempting to demonstrate that the victim was unworthy of that harm. At the hearing, the victim’s father told the sentencing judge that “the case had been ‘very hard and stressful on this family’” and added “I'm so sorry, and I pray to God to
have mercy on everyone's soul… I don't understand why, but there are no winners. It's very sad for everyone involved. I know it's something we didn't do” (Martin 2009). The parents of male victims often describe the events as stressful or even tragic, but are careful to describe the impact of the crime in ways that do not undermine their sons’ masculinity. Descriptions of the psychological toll of the crime tend to focus on the victim’s anger, substance abuse, and acting out in cases involving male minors, while descriptions of the victims’ depression, self-harm, and/or self-esteem are more likely in cases involving female victims.

Victims and their advocates tend to depict the boy’s victimization in a way that does not pose significant challenges to his performance of masculinity. Cases involving female victims often specifically detail the psychological challenges the girls faced as a result of the crime. This included a female victim of Angel Menes (Latino male) reporting that “she was devastated by Menes' actions. She said she began cutting herself and eventually went into a psychiatric hospital for four days” (Planas 2008). Similarly, at the sentencing hearing for Marco Herrera (Latino male), the girl’s father provided a victim impact letter that read in part, "Despite the fact that she has consistent long-term therapy because of her abuse by Mr. Herrera, [her] progress will continue to require considerable time” (Carlisle & Alberty 2008).

In cases in which the boys’ mental health was discussed in the victim impact statements, they were more likely to be described in masculine terms, such as expressing anger and engaging in crime or substance abuse. In detailing the harm that resulted from their son’s sexual relationship with Jennifer Whiting (white female), for example, the
parents of the teenage male victim reported that “the boy dropped out of three schools after Rincon, has been arrested three times, is associating with gang members and is using drugs despite seeking counseling” (Smith 2011). In the Buffalo News’ coverage of Cara Dickey’s sentencing hearing, they wrote, “Dickey's teenage rape victim didn't appear in court Wednesday, but his pain and anger filled the courtroom as his two-page statement was read to the judge” (Warner & Gryta 2009). The framing of the consequences for the male victims is more focused on identifying behavioral changes and is more likely to describe the victim as angry or as acting out without framing this behavior as evidence of underlying psychological trauma. This framing allows the parents and the media to discuss male victimhood in a way that protects the male minor’s gender performance and is in line with dominant understandings of masculinity.

The victim in the Carrie McCandless case, a sixteen year old white male, was identified in the media when he and his parents gave an interview on NBC’s Today Show during the course of the trial. The negotiation of masculine victimhood is well evidenced in the following exchange prompted when Matt Lauer, a Today Show host, asked the teenage victim how the sexual contact affected him:

LAUER: And were you treated as a conquering hero or a bit of an outcast?

VICTIM: The girls in my school really kind of turned their shoulder, you know. It was a lot harder to find dates around there.

The victim goes on later in the interview to talk about the loss of friends, as well as the social stigma he experienced for “turning in” a teacher that was well-liked by students. As reflected in the above question and throughout the interview, Lauer’s questioning reflects the broader cultural ambivalence about the seriousness of crimes involving
female perpetrators and male victims. Through the course of the full segment, Lauer never asks the victim specifically about any emotional or psychological harm he experienced, such as depression, effects on his self-esteem, or loss of trust in authority figures. Lauer’s trivializing of the case may actually circumscribe the amount of harm the victim feels able to report. By focusing on the negative social outcomes of the sexual contact, the teenage boy is able to position himself as a masculine victim. He demonstrates that he has experienced negative social consequences, but describes the harm in a way that allow him to “do masculinity” by ignoring his emotional/psychological health and instead focusing on social status and heterosexual desire.

Other media coverage of cases involving male victims drew on similarly gendered constructions of the teenage boys’ experience of the relationship. The coverage of the Janelle Batkins’ trial, for example, included the victim’s statement that he stopped returning her phone calls while on a vacation with friends because “[he] realized how much fun [he] could have when [he] didn't have her watching over [him].” The coverage also included his claim that Batkins at one point told him she was pregnant with his child and that he ultimately ended the relationship after Batkins got upset that he took a phone call from his girlfriend while he and Batkins were having sex (Cook 2007). The inclusion of this information in the news coverage allows the journalist to construct the case in a way that aligns with hegemonic ideology. This includes depicting the female perpetrator as emotionally needy and oriented toward having a romantic relationship. It also positions the boy as successfully enacting hegemonic masculinity, including being sexually experienced and less relationally oriented. The inclusion of these contextualizing
details in the media coverage suggests that the journalist is not attempting to frame the case as straightforward case of sexual abuse based on the authority and coercion of the teacher, but is complicating the narrative by drawing on dominant understandings of gender, sexuality, and romantic relationships.

A similar, but more surprising, finding was that the media and some of the victim’s advocates occasionally framed the victims as troubled boys that were in some way helped by their relationships with the female perpetrators. Two of the cases involving male victims included explicit claims about the positive impact of the romantic relationship on the boys. In his coverage of Sheila Vasquez’s sentencing hearing, a journalist for the *Indianapolis Star* wrote:

The 15-year-old boy’s foster parents noticed improved study skills, better behavior and a more positive attitude during the few months he worked with Sheila Vasquez. But in May, the discovery of a field trip to the Warren Township school teacher’s home for a tryst brought an end to Vasquez’s career and landed her in jail (Murray 2008).

This framing of the case draws on hegemonic ideals of women as caretakers who serve as the moral groundings for reckless boys and men. It also minimizes, if not entirely erases, the victimization of the teenage boy. Given that youth living in foster care are likely to be from poor families (Pyter 2008), this framing may also draw on a classist view that the victim is fortunate to have the attention of a relatively privileged middle-class teacher, as was the case in the frequently cited case of Mary Kay Letourneau (Sutherland 2003).

The media also demonstrated a disregard for the seriousness of the victimization in three other cases, all of which involved male victims. They did so by identifying the victim by name (in the case of Melinda Beth Bridges and Cara Dickey) or by identifying
the victim’s parent by name (in the case of Meredith Kane). The only case that involved a female victim in which this occurred was the Rambold case described above. In this case, the girl’s mother was identified in interviews with the media after the loss of her daughter. The newspaper identification of multiple male victims is surprising given that nearly all print media outlets have explicit ethical policies barring them from publishing the name of victims of sex crimes. The boys in all three of these cases were described as “troubled” in the media coverage of these cases, which detailed their strained relationships with their families or their mental health diagnoses. This disregard for the privacy and well-being of the minor may be especially likely in cases that involve male victims of color or victims that are otherwise disadvantaged (such as through class background or status as a minor in foster care) and that may be viewed as less worthy of public protection.

The negotiation of masculine victimhood generally allows male victims and their advocates to demonstrate the boy’s victimhood while simultaneously protecting their access to male privilege. The seeming tension between masculinity and victimhood is addressed by detailing the negative impacts of the sexual abuse in terms of social isolation, anger, substance abuse, and behavioral acting out rather than psychological harm and trauma. While I have only a small amount of data on the race and class identity of these victims, my findings also suggest that there may be race or class differences in treatment of male victims in the media, such that the emerging masculine privilege of some victims is viewed as worthy of protection while the well-being of other victims is viewed as not worthy of protection by those covering the story.
Conclusion

This chapter identifies the gendered nature of discursive constructions of sexual victimhood. Like other victims of sex crimes, I find that these victims must perform their status as victims in order to solicit sympathy from members of the criminal justice system and media. Specifically, I argue that teenage female victims in these cases are pressured to demonstrate their adherence to “good girl” femininity. Performing good girl victimhood is difficult in these cases because dominant constructions of female sexuality suggest that all sexual activity is risky and polluting to “good” femininity. In combination with the findings discussed in chapter three, regarding the media’s treatment of female sexual perpetrators, this research suggests that dominant discourses on female sexuality treat female sexual subjecthood as morally repugnant and reproduce the association of female sexuality with danger and immorality.

My analysis also examines how narrative constructions of cases are employed in ways that reproduce racial hierarchies. The small sample of cases involving female victims of color suggest that these victims are treated especially suspiciously and have a hard time claiming a victim identity in the criminal justice system. These findings align with previous research on the racialized treatment of teen sexuality in which Black and Latina teen girls are viewed as especially at risk of failing to avoid sexual activity.

Previous research suggests that victimhood is generally understood as ideologically incompatible with hegemonic masculinity. My findings suggest that victims and their advocates, as well as members of the media, are able to simultaneously
construct these boys as masculine and as victims through a focus on the social and behavioral impact of the criminal sexual relationships. The articulation of many of the negative outcomes are framed in a masculine context (e.g. substance abuse rather than emotional trauma; effects on dating and social relationships). While my data on the race and class background of the victims is limited, future research should explore whether there are class and race differences in how seriously the boy’s victimization is taken. Given that previous research has found that those in positions of authority tend to view boys of color as “adultified,” (Ferguson 2001), the sexual victimization of these minors may be taken less seriously than that of their white peers.

Research on the negotiation of victimhood should also consider that there are different social meanings and consequences of successfully accessing a victim identity for male and female teenagers. Female victims whose victimhood is questioned are positioned as deviations from normative femininity (“bad girls”) and may be at greater risk of social stigma and isolation. In contrast, the contestation of an adolescent boy’s victimhood may buffer his claims to hegemonic masculinity by positioning him as an assertive, tough, and/or sexually aggressive, pseudo-man. Boys may therefore be less motivated to detail the trauma resulting from the criminal relationship, for example, but may also experience less social cost for revealing the relationship than female victims.
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Chapter 5: Conclusions, Contributions, and Future Directions

This project analyzed criminal cases involving teachers who had sexual relationships with their students as sites where gender, race, and sexuality are (re)produced in the news media and criminal justice system. I focused on how the legal treatment and discursive construction of these cases reproduces hegemonic ideology as well as places in which hegemonic ideology is resisted and reshaped.

The dissertation began with an analysis of how the criminal justice outcomes of a sample of approximately three hundred cases varied with the race and gender of the defendant. My findings from the regression analysis of incarceration length suggest that women on average receive shorter sentences than men. This finding provides support for the chivalry thesis. I also analyzed the differential impact of having been involved with multiple victims on the sentencing outcomes for male and female perpetrators. My findings suggest that women who were involved in sexual relationships with multiple minors were treated more harshly than men who were involved with multiple minors. This finding provides support for the selective chivalry thesis (Vischer 1983), which suggests that women who do not adhere to dominant gender expectations are treated especially punitively in the criminal justice system. Previous research has compared the treatment of men and women across different types of crime (e.g. assault or property crime) (Farnworth and Teske 1995), violent and non-violent crimes (Steffensmeier et al. 1993), crimes of varying severity (Mustard 2001), and sexual offenses (Embry and Lyons 2012). This previous research has found little support for the selective chivalry
hypothesis. Based on my findings, I suggest that future research on the functioning of selective chivalry in the criminal justice system should pay special attention to how gender deviance is defined and operationalized. Measuring gender deviance only in terms of the type of crime committed may not be effective for capturing the functioning of selective chivalry because the criminal behavior of individual perpetrators may still be interpreted as complying with dominant gender expectations (due in part to the strategic framing of the case by the defendant and their defense attorneys). It would be fruitful to include more nuanced descriptions of the perpetration of the crime (e.g. did the crime involve a male accomplice, high levels of violence, or a sustained pattern of child abuse) that may better allow researchers to parse out the type of perpetrating that is most likely to be interpreted as gender deviant in future research of the functioning of chivalry in the criminal justice system.

I also analyzed the judges’ discursive characterizations of a subsample of these cases using qualitative methods. I found that judges discursively perform neutrality through overt claims to gender blindness and covertly affirm the importance of their position through public statements about the seriousness of the crimes. This was surprising given that the regression analyses of the sentencing outcomes of these trials suggested there were strong patterns of gender difference in judge’s sentencing decisions. My use of mixed-methods is unique in this field of research and allowed me to demonstrate the disparity between judge’s discursive constructions of these cases and their sentencing decisions. Future research elaborating on the relationship between judicial characterizations of criminal cases and their treatment of defendants would help
elucidate the connection between the judge’s public performance of justice and his/her individual decision-making process in distributing criminal sentences.

The project also included an analysis of how the strategic construction of these cases by prosecuting and defense attorneys varied with the gender of the defendant. While dominant ideology provides a set of resources that individuals draw on in constructing events, there are a broad range of available discourses for “making sense of” these cases and therefore the discursive framing of these events differs with the interests of those involved. Defense attorneys strategically draw on hegemonic gender ideology in positioning their female clients as passive victims of their own life circumstance who should be viewed as in need of pity and treatment rather than punishment. They generally positioned male defendants as respectable men who had a momentary lapse in judgment. This construction positions men as generally more agentic and implicitly normalizes male sexual desire for teenage girls, suggesting that it is not pathological but just requires responsible resistance.

In contrast, I find that there is little variability in the framing of these cases by prosecuting attorneys with the gender of the perpetrator. Prosecutors tend to focus on the violation of age of consent laws, the breach of public trust, and the level of harm resulting from the crime. They often draw on imagery of child sexual predators to position these cases as ones that should be taken seriously in cases involving both male and female defendants. This finding is especially noteworthy because it suggests that individual attorneys in the powerful state institution of the criminal justice system may be sources of resistance to dominant gender ideology. While this resistance may disadvantage
particular female defendants, it poses a challenge to hegemonic gender ideology by resisting the differentiation of defendants by gender.

Because this project simultaneously considered the framing of cases by defense attorneys, prosecutors, and judges, I was able to contribute to the growing body of feminist scholarship on the complex and contradictory nature of gender politics in the state (Haney 2000). While other scholars have articulated the complex ways in which the state reproduces and challenges existing inequality in the context of welfare provisioning (Orloff 2010) and criminal justice correctional programs (Haney 1996), I focus on the contradictory production of gender within proceedings of criminal trials. Other research has also demonstrated that courts can be sites of feminist challenges to existing gender regimes, but only in the context of social movement organizing and activist intervention in the court around the issue of domestic violence (Mirchandani 2006). I similarly proposed that the court room can be a site for the contestation of dominant ideology, and elaborated on this strain of research by demonstrating that this contestation is not necessarily dependent on the intervention of activists.

Rather than being motivated by an orientation to social justice, I argue that prosecuting attorneys (and occasionally judges) challenge hegemonic ideology because of their strategic interests. I draw on a conceptualization of ideology as sets of resources that are used strategically by motivated actors (Swindler 1986; Schwalbe et al. 2000). I argued that attorneys and judges seek to employ ideology that will resonate with the intended audience (including judges, juries, members of the news media, and the public) and will be of strategic benefit. The different structural positions and interests of defense
attorneys, prosecutors, and judges leads to patterned variation in the way state actors in
the criminal justice system employ ideological resources. Given these structural and
ideological constraints, I found that prosecuting attorneys frequently explicitly challenged
dominant understandings of gender and sexuality by positioning female offenders as
sexual predators and adolescent males as vulnerable victims. These findings suggest that
while the criminal justice system is rooted in a system of gender inequality (Brush 2002),
it is also a place in which gender ideology can be contested and reshaped by actors whose
strategic interest (e.g. conviction of a female defendant) do not align with hegemonic ideology.

The project also included an analysis of the news coverage of these cases,
including the media treatment of the defendants, the victims, and the trials. I found that
the news media tends to reflect broader cultural ambivalence about the seriousness of
these crimes. This ambivalence is likely tied to dominant views of teen sexuality which
suggests that individual teenagers are responsible for protecting themselves against risk
by avoiding sexual contact (and treats those that fail to do so suspiciously) while also
presuming teenager’s “raging hormones” drive their sexual desire and experimentation.
I found that cases involving female offenders are trivialized in a particularly gendered
way through sexualization of the cases and the objectification of the female defendant.
This framing of the cases in the media repositions female sexual perpetrators as failed
women worthy of derision while also positioning them as objects of the male gaze. This
finding is in line with past research which has demonstrated that news coverage often
minimizes the severity of the crimes committed by women (Berrington & Honkatukia
This pattern of repositioning female defendants as sexual objects rather than perpetrators is in line with other scholarship that has demonstrated how threats to the gender order are often neutralized through a cultural “backlash” (Faludi 1991) or practices of “gender reaffirmation” (McGuffey 2008).

I also contributed to the literature on the politics of Black respectability by identifying how this narrative shapes the news coverage of cases involving Black male perpetrators. Media coverage of these cases often depicts the defendant sympathetically and focuses on the defendant’s middle-class status, achievements, and respectability. I argue that journalists and newspaper editors are able to implicitly position themselves as non-racist through their sympathetic coverage of these middle-class defendants. But the reproduction of Black respectability as a controlling image in the media coverage of these cases allows for the reproduction of class and race inequality and the continued devaluation of particular forms of Black masculinity.

Taken as a whole, my findings support a view of the media as a generally conservative institution that tends to reproduce hegemonic ideology in their discursive framing of newsworthy stories (Cavender et al. 1999). My findings provide support for the claim that the media is a key site for the distribution of controlling images that reinforce gender and racial inequality (Collins 2000). The coverage of these cases in the news media suggests that cases that pose challenges to dominant understandings of sexuality are often reconstructed in ways that better align with dominant understandings of race, gender, and sexuality and allow for the reproduction of systems of inequality.
I also, though, highlight the contradictions and ambivalence reflected in much of the news coverage of these cases. Journalists (and editors) frequently draw on a variety of different discursive frames, possibly in an effort to be accessible to a range of audiences and/or to present news items as newsworthy and contentious. These findings cohere with the argument of some scholars that the media is a less closely regulated and cohesive institution than the state (Althusser 1977), and suggests that the local news media can provide an important site of access for those seeking opportunities to express resistance to existing structures of inequality. The unfolding of the Rambold case (detailed in chapter 4) suggests that activist organizing can influence the framing of criminal cases in the media and that this news coverage can encourage public outrage and state intervention.

Finally, I analyzed the negotiated and contested nature of victimhood. I argued that female victims are often viewed suspiciously within the criminal justice system. Despite the fact that male perpetrators were generally taken more seriously, females’ claims to victimhood were dependent on their demonstration of “good girl” femininity. Their adherence to white middle-class norms of femininity was used as a rubric for assessing the seriousness of their victimization and in negotiating their identities as victims worthy of media sympathy and state protection. While other scholars have demonstrated the centrality of discourses of risk avoidance in the construction of “good” adolescent female sexuality (Fine 1988; Mann 2013; Schalet 2011; Tolman 2005) and the raced and classed applications of these discourses of risk (Archer, Halsall & Hollingworth 2007; Garcia 2009; Mann 2013; Morris 2007), I contribute to this literature
by demonstrating that this regulation of “good girl” sexuality even infuses the treatment of female victims in cases involving criminal sexual assault and statutory rape. Other feminist scholars have identified the sexist hostility victims of rape face in the criminal justice system (Konradi 1996; Schafran 1992; Martin & Powell 1994). My findings bring together research on dominant attitudes toward adolescent sexuality and feminist research on the treatment of victims of sexual assault by demonstrating that the dominant discourse of risk avoidance is used to frame minor female victims as suspicious for their personal failure to avoid victimization. My data suggests that the tone of hostility and suspicion adult victims of rape and sexual assault face in prosecuting the crimes is evident even in cases involving female victims who are legal minors.

While I found strong evidence that victimhood is a contentious and negotiated identity across cases involving both male and female victims (Konradi 1996; Hunter 2003), I also found the framing of this victimization differed with the gender of the victim. Prior research suggests that male victims of sexual abuse are less likely to be identified by others as victims, to identify themselves as victims, or to describe the sexual encounters as abusive (Denov 2003; Hunter 2005; Nelson and Oliver 1998). In my sample of cases (which is based on cases that entered the criminal justice system and that made it through to plea bargain or trial), the boy’s status as a victim was less likely to be contested, but the nature of that victimization was framed differently than female victims. I found that the victim status of teenage boys was often constructed by focusing on social and behavioral, rather than psychological or emotional, repercussions of the sexual
contact. This discursive construction of male victimhood protects the boys’ access to male privilege while admonishing the female perpetrators.

In a minority of cases, which I suggested may be more likely in cases in which the victim is disadvantaged in terms of race or class status, the boys’ victimhood was not taken seriously by media actors. This included newspapers that identified the victim in their coverage of the case and/or depicted him as having benefited from the relationship. Further research on how the victim’s race and social class shape criminal justice responses to cases of male sexual victimization may be fruitful, especially given the centrality of discourses of hyper-masculinity and hyper-sexuality of working class and non-white men in the reproduction of race and class inequality (Collins 2004; Pyke 1996).

LIMITATIONS AND FUTURE RESEARCH

The limitations of this project are related to the sample selection and availability of data. Because the initial sample of cases was identified through news coverage, I was not able to analyze the process through which cases enter into the criminal justice system. While about a dozen of the cases in my sample ultimately resulted in dropped charges, it is likely that many similar cases do not make it that far into the criminal justice system. This includes cases that are never reported and those that the District Attorney’s office decides not to pursue (due to lack of evidence, a non-compliant victim, or a perception that the case is not prosecutable). It is likely there are race and gender patterns in reporting and prosecution that I was not able to analyze in this project.
The lack of availability of data on the racial/ethnic and class background of the victims in these criminal cases was a second, more significant, limitation. My analysis of the contested nature of sexual victimhood in these cases suggests that a victim’s race and class are likely very important factors in the legal and media framing of these cases. Because previous research suggests that Black defendants in cases involving white victims face the greatest severity in sentencing (Mosher 1999; Zeisel 1981), it is likely that the judge’s perception of the seriousness of the victimization varies with different combinations of the perpetrator and victims’ race. My qualitative analysis of the treatment of the small number of cases for which I was able to identify the race of the victim suggested that the victimhood of non-white minors may be taken less seriously.

This limitation of the current study informs my next planned research project. My follow-up research will use data from the National Incident-Based Reporting System data (released by the Bureau of Justice Studies), which is a widely used nationally representative crime database that includes data on victim demographic characteristics (Krienert & Walsh 2011). Using this data, I will construct a sample of cases involving criminal sexual contact based on the minor’s age or the perpetrator’s position of authority. This data will allow me to explore how criminal sentencing outcomes vary with the race of the victim and defendant and to consider specifically whether the sexual victimhood of some minors, such as Black or Latino boys, is taken less seriously in the criminal justice system. The findings of this dissertation suggest that hegemonic understandings of gender, race, and sexuality do shape criminal justice system responses
to cases of criminal sexual contact and this future project would be an opportunity to further elaborate on the functioning of this process.
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