TALKING TO STRANGERS:

FEMINISM, SEXUAL PREDATORS, AND RAPE LAW REFORM

by

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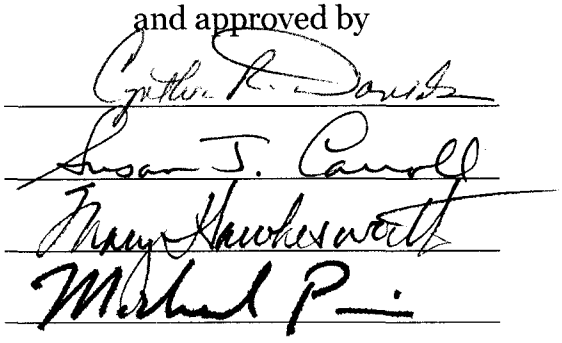

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ABSTRACT OF THE DISSERTATION

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This dissertation uses New Jersey's sex offender registration and community notification laws, commonly known as "Megan's Law," as a lens through which to examine the transformation of the feminist anti-rape movement. Megan's Law attacks many of the basic premises of feminist attempts to reform rape laws and change cultural perceptions of sexual violence, yet local rape care advocates have maintained a public silence about the laws. The dissertation draws extensively on interviews with rape care advocates in New Jersey to identify the long-term impact of legal mobilization on the anti-rape movement and on the legal response to sexual assault.

Examining the impact of Megan's Law on criminal justice practices, the construction of sex offenders, and the relationship between the state and rape crisis centers points to the negative and demobilizing effects of organizing for legal change. The failure of local organizations to respond to Megan's Law is the result of changes that were deeply influenced by the movement's turn to law to

achieve social change. The use of law reform ultimately resulted in the contraction of the movement's vision and scope, a retreat from politics and policy, and a decline in legal consciousness among activists. These factors diminished the skills, resources, and interest of local activists in using law for social change, and dissuaded advocates from making public their concerns and criticisms of Megan's Law.

ACKNOWLEDGEMENTS

This project has taken a long time, and been nurtured equally by my intellectual home at Rutgers University and my feminist community in Philadelphia. I cannot begin to acknowledge all of the people who have offered enthusiastic support and critical assessments along the way, but I'll try.

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Anand Commissiong, Hank Suhr, and Matt Voorhees provided the kind of companionship without which graduate school is a lonely, depressing, and unbearably sober endeavor. Conversations with Mike Besso expanded my thinking about the role of institutions in public law, and were a source of intellectual and personal delight. Jonathan McFall, Eric Boehme, and Elizabeth Visceglia came along at different times; each one offered me a fresh perspective and a new theme song.

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CHAPTER 1—INTRODUCTION: TALKING TO STRANGERS

On July 29, 1994 in Hamilton Township, New Jersey, Jesse Timmendequas invited his seven-year-old neighbor Megan Kanka to his house to see a new puppy. Unbeknownst to the community, Timmendequas was a convicted sex offender with a history of assaults against children. Once inside the house, Timmendequas raped Kanka at least twice, strangled her with a belt, and finally suffocated her to death by placing a plastic bag over her head. Timmendequas was arrested shortly after the murder and confessed to the crime. Kanka's parents were outraged that they were unaware of the presence of a convicted sex offender in the neighborhood and helped organize a statewide movement to reform laws concerning sex offenders, including one requiring community notification of the presence of convicted sex offenders that the country would come to know as "Megan's Law."

Megan's Law is described by supporters and critics alike as a bold, new form of legal intervention that warrants close scrutiny. Megan's Law brings together early forms of punishment that involved shaming and marking with contemporary technologies of risk prediction, psychological assessment, and information management. Measured by public and governmental support, expenditure of funds, media coverage, and impact on legal institutions, Megan's Law is arguably the most important development in rape law reform since the 1970s when feminist anti-rape reformers, in a "spin-off" movement from the second-wave U.S. women's liberation movement, challenged antiquated rape laws that had existed unchanged in many states throughout the twentieth century.

The contemporary counterparts to these feminist reformers clearly see Megan's Law as deeply implicated in issues that have traditionally been at the heart of the feminist rape law reform project: educating communities about sexual violence, especially by familiars; the use of law to oppress marginal groups, even ones as unsympathetic as sex offenders; and law's capacity to shape perceptions of victims and offenders by changing the adjudication of rape cases. In interviews with twenty-one rape care advocates (RCAs) in New Jersey, almost all identified Megan's Law as being in conflict with the best interests of victims, useless to prevent sexual violence, and detrimental to the prosecution of rape cases. Yet none of these rape care advocates identified Megan's Law as a priority for community outreach, legislative education, or media campaigns. Indeed, the position of most of the advocates—and by extension, their agencies—was summed up by one director who said flatly, "I don't want to touch Megan's Law" (RCA 13).

Why are local anti-rape activists silent about the challenge Megan's Law poses to feminist rape reforms?

Theoretical models from legal and feminist research do not provide many tools to answer this question. Literature on mobilizing law for social change suggests that the anti-rape movement should have experienced significant positive benefits from law reform; feminist writers describe organizing within institutions as an effective, if covert, method to disseminate ideas about gender equality and justice. Both traditions expect that rape crisis centers should be active, engaged, effective advocates, using law and legal institutions to advance feminist ideas about rape.

Sociological research on contemporary anti-rape groups demonstrates similar assumptions. Many aspects of the movement have been studied, such as the transition from loosely-knit, grassroots, volunteer-based groups to state-funded social service agencies, the impact of feminist rape law reforms, and current activities of rape crisis centers. All of these different research projects arrive at roughly the same conclusion—one summed up well in Maria Bevacqua's study of rape on the public agenda. She describes "reforms in criminal law, gains in funding for rape research and service providers, institutional reform on the local level, [and] passage of the comprehensive Violence Against Women Act" as "major political and policy outcomes," points to mobilization outcomes such as the "diversity of organizations, ... actions ... and strategies," and asserts that the movement "has virtually transformed public perceptions of rape and its victims" to demonstrate that "the way we, as a culture, understand rape today marks a radical break from the public consciousness of the late 1960s." Though she acknowledges that there is still unfinished business on the anti-rape agenda, she concludes that "[b]y any measure the effectiveness of the anti-rape campaign cannot be denied" (Bevacqua 2000, 195-6).

In this dissertation I do question the effectiveness of the anti-rape campaign, especially in its most common form today, the local rape crisis center (RCC). Despite their successful history of proposing and influencing legislation around sexual violence, anti-rape organizations have been absent from discussions about Megan's Law. The law openly challenges feminist theories and reforms by resurrecting the image of rape as the act of an easily identified, sexually deviant, mentally impaired individual who commits physically violent

acts against victims unknown to him—legal and cultural stereotypes of the late 1960s (and before) that feminists fought to erase through rape law reform and public education. The return and widespread acceptance of the idea of the "sexual predator" among lawmakers, law enforcement personnel, and the public demonstrates that the anti-rape movement may have been much less successful in challenging these stereotypes than scholars and activists have assumed.

I suggest that a different set of questions need to be asked about law and feminist activism. How did feminist activists invoke and challenge legal language about rape? How did legal institutions absorb, resist, and re-define feminist reforms? What new discourses emerged from the confluence of feminist and legal theories about rape? How did mobilizing for law reform shape the political and intellectual trajectory of the anti-rape movement? What does Megan's Law tell us about the capacity of feminist groups to use law for social change?

Asking these kinds of questions allows us to take Megan's Law seriously and conduct a more searching interrogation of the consequences of law reform by and for feminist movements. What new meanings about rape are constructed through Megan's Law? What discourses and practices does Megan's Law employ to shift cultural perceptions of sexual violence? Does the emergence of Megan's Law mark a kind of simple counter-mobilization, or does it exist in a more complex relationship to feminist reform efforts? What do rape care advocates think about Megan's Law, and what can we learn from them about the evolving nature of legal consciousness? What political, institutional, and ideological factors influenced their inaction on the law? Close analysis of Megan's Law points

to unavoidably important issues for the policy history of rape law, and contributes to scholarly literature on law reform for social change.

Organizing for rape law reform transformed the political and intellectual scope of the anti-rape movement over the course of three decades. Though there have been numerous studies of the impact of rape law reform on criminal case processing, there are no studies that document how turning to law influenced the intellectual and political trajectory of the anti-rape movement. Using Megan's Law as a lens to analyze the effects of legal mobilization demonstrates that the turn to law reform had specific, negative effects on the intellectual and political tenor of anti-rape groups that cannot be accounted for by a simple story of movement institutionalization and resistance. Instead, I show that organizing for law reform created and exacerbated conflicts within the movement and was ultimately a demobilizing strategy that left groups unprepared—intellectually, politically, and institutionally—to face subsequent attacks on feminist ideas about rape.

Legal and political mobilization in the anti-rape movement

The anti-rape movement is often described as one of the great success stories of second-wave U.S. feminism. Its efforts to transform public and legal consciousness about rape have made the movement an exemplary illustration of the integration of theory and practice, advocacy and cooperation, and liberal and radical in projects for social change.

As an outgrowth of the New Left, many feminists were wary about using what they saw as oppressive institutions, like law and especially the criminal justice system, to create change. As Maria Bevacqua notes in her history of the

movement, a national newsletter for rape crisis centers "featured debates over whether close connections with law enforcement would discredit the rape crisis centers' long-standing suspicion of the criminal justice system as an institution that exacerbates race and class inequalities in the United States. ... The debate concerned not only liberal versus radical feminist strategies and goals ... but also the role of the anti-rape campaign in the context of the larger progressive movement and the question of reform versus reformism in feminist politics" (Bevacqua 2000, 84).

Concerns about co-optation and professionalization are still present in recent work on RCCs; however, researchers often present a picture of centers that praises their ability to pursue feminist work even within bureaucratic or institutional strictures. These studies show little of the hesitancy, ambiguity, and concern that marked the early stages of the anti-rape movement. Debating the form or even the very existence of RCC is no longer part of the academic agenda.[1] Modern centers are assumed to be independent, self-directed, effective, and energetic advocates for feminist arguments about sexual violence, with few of the concerns Bevacqua cites apparent in research or to activists themselves.

Theories of legal mobilization echo these optimistic findings, proposing a linear narrative in which organizing for legal change increases critical consciousness and expands political involvement among participants (McCann

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[1] Early reformers did question whether grassroots anti-rape groups should found formal institutions. Mary Ann Largen, director of the National Organization for Women Rape Task Force, warned that the feminist goal of "self-determination for victims is being lost" in the competition for service provision to victims and the funding that entailed, with rape crisis centers becoming more mainstream and professional (1976, 73). Other observers, however, argued that the "long-maligned organizational form, the institution, will yet prove to be a source of stability, integrity, and democracy for the women's movement" (Simon 1980, 485).

1994; Silverstein 1996). For example, McCann's discussion of the pay equity movement

> support[s] two related claims. First, it demonstrates that ... legal norms, practices, and commitments increasingly have occupied working women's consciousness and organized institutional spaces in which they act ... [and that] taking legal rights seriously has opened up more than closed debates, exposed more than masked systemic injuries, stirred more than pacified discontents, and nurtured more than retarded the development of solidarity among women workers and their allies (1994, 231-2).

McCann's conclusions resonate with those from feminist research, especially Mary Katzenstein's work on unobtrusive mobilization by feminists within institutions. In her influential article Katzenstein argues that

> Over the last decade the consciousness-raising functions of street politics and pressure group activity have been succeeded by a process of what might be termed unobtrusive mobilization inside institutions. Occurring inside institutions of higher education, foundations, the social services, the media, the professions, the armed forces, the churches—inside the core institutions of American society and the American state—unobtrusive mobilization by women now drives second-wave feminism ahead into the 1990s.... [I]n institutions ... women's groups and networks have worked to 'reinvent' feminism in ways that attempt to make sense of the daily experiences of women located within these institutions. Motivated by prevailing feminist ideas promulgated by the women's movement of the 1960s and 1970s, and incited by the obvious injustices ... women activists within institutions have assured the continuation of feminism as a vital force for change into the 1990s (1990, 27-8).

In both these formulations, the forms of political activity may change and evolve but they are still linked to the ideology from which they sprang. Ideology is assumed to persist through organizational and political change—it is the thread that connects later, often more institutionally-based movements to their grassroots origins.

Recent work on RCCs presents this assumption that feminist ideology persists within institutions, providing a reassuring picture of these new forms of political mobilization. One study that employed both quantitative and qualitative data found that though groups still engaged in political work and advocacy, the nature of those activities has changed significantly since the 1970s. The authors concluded that "centers ... participated in a variety of social change initiatives, ...

[but] that these social change activities may not have the same radical bent to them as they did years ago" (Campbell, Baker, and Mazurak 1998, 477). This large-scale study did not examine particular programs that rape crisis center staff considered social change, but other case studies provide positive examples of what these might look like.

Martin et al. (1992) describe a successful coalition effort involving a RCC that developed an inclusive, non-confrontational vision of victim services to work with mainstream organizations like legal and hospital personnel. In another article on a rape crisis center in California, the authors concluded that RCC staff "used an 'occupy and indoctrinate' strategy to persuade outsiders to adopt their version of laws, police officer training, rape exams, and school health education messages, thus imbuing them with [the agency's] conceptions of rape" (Schmitt and Martin 1999). In both examples, the unobtrusiveness of mobilization in this case was hailed as a virtue; the agencies' cooperative stance provided the institutional power and access to create change. Even Nancy Matthews, whose carefully detailed study of RCCs in California is considerably less sanguine about the effects of institutionalization, concludes finally that anti-rape groups were deeply influenced by the state's interest in treating individual victims but ultimately were able to retain a feminist analysis of sexual violence (1994).

Studies like these are a stirring endorsement of the strategies, tactics, and outcomes of the anti-rape movement, validating the hard work done by local groups and the improvements realized since the 1970s. Yet there remain persistent, unanswered questions about the role of law, advocacy, and meaning-making in the anti-rape movement—questions that come into sharper focus when

Megan's Law is introduced and must be explained in the context of this "successful" example combining feminism, bureaucracy, and law reform.

Studies of anti-rape organizing assume that law reform was a short, one-way street—that feminists successfully shaped policy and changed legal practices, and now have moved on to other issues. Descriptions of the current activities of local groups ignore the wealth of empirical studies documenting the limited success and sometimes outright failure of the feminist rape law reform project (Caringella-MacDonald 1984; Chappell 1984; Estrich 1987; LaFree 1989; Loh 1980; Marsh, Geist, and Caplan 1982; Schulhofer 1998; Spohn and Horney 1992). None of the case studies mentioned above examine how continuing problems might affect the daily work of RCCs or influence its ideological orientation. Furthermore, none incorporate scholarship on the powerful role that legal institutions and concepts play in constituting the worldview of individuals or groups, on how interventions are circumscribed by the constraints of law and legal institutions, or on how law permits and forecloses certain epistemological positions and interventions (Brown 1995; Cover 1983; MacKinnon 1989; Minow 1990).

This kind of critical consciousness about law becomes vitally important when examining Megan's Law. Without an understanding of how the pragmatic and symbolic functions of law construct social meaning, Megan's Law is easily dismissed as an hysterical over-reaction to an isolated case. But taking seriously the idea that law simultaneously reflects and creates social meaning requires us to investigate the ways that Megan's Law works to formulate new understandings of rape. Doing this requires close attention to both the specific workings of the

law and to the discursive practices that make it a politically viable, legally cognizable response to rape. In the next section I briefly review the policy history of Megan's Law to set the stage for an analysis of its symbolic and pragmatic functions in later chapters.

Policy history and current status of Megan's Law

The New Jersey Legislature passed ten separate bills during its special session on Megan's Law though only three have come under close scrutiny from media, citizens, courts, and scholars.[2] Provisions providing for the registration and community notification of sex offenders are by far the most visible and

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[2] There were five pieces of legislation aimed at sentencing and other post-conviction-related reforms. These were generally straightforward attempts to close what were perceived as "loopholes" in the state's treatment of sex offenders. Sentences were extended for certain types of sexual assaults, especially in the case of repeat offenders, and can be imposed for crimes which involve violence or the threat of violence against children 16 years and under (NJSA 2C:43-7). The youth of the victim (less than 14 years of age) can be considered an aggravating factor in death penalty sentencing (NJSA 2C:11-3). The state is required to provide notice of events in the criminal justice process (including plea bargains, parole hearings, and custody release dates) to crime victims, and allows for victim input through consent to plea bargains and impact statements at sentencing (NJSA 2C:12-14). Inmates at the ADTC will not get "good behavior" credit toward reducing their sentences if they do not "fully cooperate" with treatment options (NJSA 2C:47-8). Finally, DNA samples will be collected from individuals convicted of certain sex offenses (NJSA 53:1-20.17). The "Violent Predator Incapacitation Act" provides for community supervision of individuals convicted of a number of offenses, including sexual assaults and offenses against children. Individuals serving community supervision sentences are treated "as if on parole" for a period of not less than 15 years. Individuals whose behavior is "characterized by a pattern of repetitive, compulsive behavior" may be sentenced to the ADTC or be required to receive psychological treatment as a condition of probation (NJSA 2C:43-6.4). County prosecutors are notified when individuals convicted of certain offenses (such as murder, manslaughter, aggravated sexual assault, kidnapping, and offenses against children) are scheduled to be released, and upon notice of the impending release of an inmate prosecutors may request an examination to determine if the offender "is in need of involuntary commitment" (NJSA 30:4-123.53a). The civil commitment act provides for the involuntary, indefinite civil commitment of sexual offenders whose behavior is "characterized by a pattern of repetitive, compulsive behavior." The definition of "mental illness" is expanded to cover "disturbances" which do not necessarily constitute psychosis. Such offenders may be sentenced to the ADTC or to private mental health treatment as a condition of probation (NJSA 30:4-82.4). The New Jersey Legislature has defined "sexually violent predator" to mean "a person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment," (NJSA 30:4-27.26).

controversial components of the legislation. Registration and notification represented the real innovations of Megan's Law, and inspired similar state and federal laws throughout the United States and around the world.[3]

The New Jersey State Legislature passed the package of bills that the country has come to know as Megan's Law three months after the Kanka murder. Most were rushed through a special session convened by the Legislature; few of the proposed bills were assigned to Assembly committees so there were virtually no Assembly hearings on the legislation. Though the Senate did hold some hearings, these did not receive the consideration such major legislation ordinarily commands—most bills were passed by both houses two to three weeks after introduction. The consensus was clear that both legislators and the public felt a need for swift, decisive action in the wake of the Kanka murder, and neither body was disappointed. Observers who questioned the speed of the process were dismissed as obstructionists who favored criminals over children (McLarin 1994).

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[3] Laws targeting repeat sex offenders extend back to the 1920s, when almost every state had laws which permitted some combination of criminal and/or civil commitment for suspected "predatory" sex offenders (Freedman 1994; Jenkins 1998; Lieb 1996). Most states repealed or effectively abandoned the sexual psychopath laws in the 1960s as they came under attack from mental health professionals who refuted many of the assumptions on which the laws were based and challenged the vagueness of the diagnosis, as well as from legal critics who applied increased due process guarantees outlined by the Warren Court to the civil and criminal proceedings regarding sex offenders (Freedman 1984). Since the late 1980s, some states have resurrected their sexual psychopath laws (such as Minnesota [which supplemented the 1939 Psychopathic Personality act with the 1994 Sexually Dangerous Persons law] and Illinois [a 1938 law pertaining to "sexually dangerous persons"] while others, like Washington and New Jersey, have adopted similar language but created what are essentially entirely new statutes.
At this time, every U.S. state and the federal government has a registration statute; most also require community notification (Adams 2002). Registration and notification statutes from Connecticut and Alaska were upheld by the U.S. Supreme Court in March 2003 (*Connecticut Department of Public Safety v. Doe* 2003; *Smith v. Doe* 2003, respectively). Some states have set up a system of civil commitment for offenders who are deemed dangerous to be released at the end of their prison sentence. The Supreme Court has twice affirmed the constitutionality of civil commitment of sex offenders (*Allen v. Illinois* [1986]; *Kansas v. Hendricks* [1997]).

The debate was consistently framed by supporters—both elected and not—as the rights of children versus the rights of convicted pedophiles. Just days after Timmendequas was arrested for the murder, over 1,000 supporters gathered in Hamilton Township to mourn the death of Megan Kanka and to support action to notify neighbors when a sex offender takes up residence. Assemblyman Steven J. Corodemus expressed a sentiment echoed throughout the controversy when he stated, "'I'd rather err on the side of potential victims and not on the side of criminals. ... We can lock away these animals and take out of our minds the doubts that our children will be the next victims'" (McLarin 1994).

The emotion about the crime made it difficult to discuss potential problems with the legislation, or to challenge the use of this one case as the basis for such sweeping legislative action. Any criticism of the pace of passage in the Legislature was met with the charge that opponents favored criminals over children. Opponents and those who remained unconvinced about the efficacy of the proposed remedies were literally reduced to silence—there was only one non-unanimous vote on a package of ten bills, five of which had not been the subject of any committee hearings.[4] The unanimity of legislators on the issue was mirrored by interest groups. Because there were no hearings on most of the bills, there were few opportunities for anti-rape and children's advocacy groups to become involved either formally or informally in the legislative process. A few organizations such as the National Center for Missing and Exploited Children

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[4] The non-unanimous vote was on the requirement of life sentences for individuals convicted of two or more sex offenses (McLarin 1994).

supported the legislation while only the American Civil Liberties Union of New Jersey opposed Megan's Law openly from the beginning.

Once passed by the Legislature, Megan's Law became the province of New Jersey Attorney General Deborah Poritz. The Legislature had voted on only the most general outlines of the laws; the actual substance of the law was left to Attorney General Poritz, who convened a committee to draft detailed guidelines that were completed in December 1994 and scheduled to go into effect on January 1, 1995. Under the original guidelines issued by the Attorney General (hereinafter "Guidelines"), most sex offenders would be required to register with law enforcement officials; community notification would take various forms depending on the risk posed by offenders. County prosecutors were empowered to assign offenders into one of three tiers—low, moderate, and high risk to re-offend. Low risk offenders were not subject to the community notification provisions; only law enforcement officials would be aware of their release into the community. High and moderate risk offenders would be the subject of community notification, including information provided to schools, community groups, and religious organizations, as well as any group that registered with local police and formally requested the information.

Release of the guidelines renewed public attention to the issue and spurred supporters and critics to action. On January 4, 1995 federal judge John Bissell in Newark issued the first injunction to prevent a local police department from enforcing the community notification provisions against a sex offender about to be released. Judge Bissell upheld the registration requirement but ruled that community notification constituted additional punishment and therefore violated

Constitutional prohibitions against ex post facto penalties. Bissell also questioned the extent of prosecutorial discretion in making decisions about an offender's risk to re-offend and said that because it is a "quasi-judicial" procedure, a hearing challenging the tier assignment should be provided (Hanley 1995a). Bissell's opinions raised constitutional questions that observers of the bill had long expected. Though the injunction applied only to the specific offender in the case, the ruling gave clout to the concern expressed by civil libertarians and advocates for the rights of offenders.[5]

Two additional rulings in February dealt further blows to the Attorney General's guidelines. State judge Harold Wells of Burlington County agreed with Bissell that the guidelines gave prosecutors too much leeway in categorizing sex offenders and ordered that offenders were entitled to hearings before being classified (Hanley 1995b). Pending an appeal on this decision, Wells's ruling put a hold on the notification process. Problems with the notification procedures were further compounded when federal district court judge Nicholas Politan ruled that community notification for offenders convicted before Megan's Law went into effect was unconstitutional, though he too found nothing to prevent registration of such sex offenders with law enforcement agencies. The decision was criticized by supporters such as Maureen Kanka, Megan's mother, and W. Michael Murphy, a prosecutor in Morris County, who argued that "[t]his ruling effectively guts the

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[5] On another front, concerns that the law would be a spur to vigilantism were founded just days after the notification guidelines had gone into effect. On January 10, 1995 a father and son broke into a private home and attacked a man they thought was a sex offender whose name and address had been publicized in accordance with the regulations. Though there have been very few incidents of harassment of offenders since that time, critics pointed to the incident as affirming the possibility that the laws "'would be used to enable vigilantism rather than for any legitimate community interest'" (Nordheimer 1995).

legislative intent on Megan's Law" (Hanley 1995b). One day after Judge Politan's decision, faced with mounting opposition in the courts, Attorney General Poritz suspended notification procedures until the New Jersey Supreme Court could rule on Megan's Law. That case was not long in coming.

Anonymous plaintiff "Doe" brought suit against the state in early 1995; the Court heard arguments in May.[6] The New Jersey State Supreme Court's two-hundred-page majority opinion in *Doe v. Poritz* was delivered on July 25, 1995 and upheld Megan's Law as constitutionally sound by a vote of 6-1. The breadth and firmness of the Court's decision was a surprise to many observers, most of whom expected that the Court, with its record of "judicial pioneering" and sensitivity in the areas of civil liberties and defendants' rights, would overwhelmingly reject the new statutes.

In *Doe*, the Court described the dilemma faced and the proposal fashioned by the State Legislature:

> The remedy goes directly to the question of what a community can do to protect itself against the potential of reoffense by a group the Legislature could find had a relatively high risk of recidivism involving those crimes most feared, and those crimes to which the most vulnerable and defenseless were exposed—the children of society. The spectacle of offenses committed by neighbors, known in the public records as significantly potential reoffenders, but not known to anyone else, and especially not known to those most likely to be affected, their neighbors, suggested the most obvious and practical degree of protection: a law that would tell neighbors and others who night be affected, of the presence of such offenders, no more and no less (*Doe v. Poritz* 1995, 27-8).

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[6] Though Doe sought to limit the decision to his particular case, the Court ruled otherwise. "Although plaintiff is seeking relief only for himself, our decision will affect all sex offenders covered by the laws. Plaintiff's claims are the sane [sic] as any offender could assert, whether convicted before or after the enactment of these laws, although his ex post facto and bill of attainder claims apply only to previously-convicted offenders. The claims that can be made by offenders convicted after the enactment of the laws, double jeopardy, cruel and unusual punishment, invasion of privacy, equal protection, and procedural due process, can also be made by plaintiff" (*Doe v. Poritz* 1995, 41).

The Court, as suggested by this excerpt, largely deferred to legislative determinations about the nature and extent of the problem of sexual assault, and accepted the justification for the laws. The measures were challenged on several substantive grounds, most seriously that they violated ex post facto, double jeopardy, cruel and unusual punishment, equal protection, and procedural due process guarantees.[7] On the ex post facto, double jeopardy, and cruel and unusual punishment challenges, the Court upheld the laws based on a critical distinction: that the registration and community notification laws were remedial rather than punitive measures.[8] The Court disposed of the equal protection question by deferring to the legislative finding that sex offenders posed a substantially higher risk of recidivism, and of a particularly heinous and disturbing crime, than other criminal groups. The Court anticipated other possible challenges to the laws and found that the laws survived those as well.[9] The Court did find that aspects of the Guidelines violated the due process rights of offenders, and re-wrote the offending sections to remedy these deficiencies. The decision in *Doe* has been corrected twice, both times to "refine the hearing process" in response to decisions from the U.S. Third Circuit Court of Appeals (Guidelines 2000, 2). Those corrections have provided some additional protection of offender due

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[7] The Court also considered the plaintiff's argument that the laws constitute an unreasonable search and seizure; that claim was dismissed as without merit (*Doe v. Poritz* 1995, 44).
[8] This has obviously remained very much in the minds of judges in New Jersey. In granting an appeal to limit community notification of a Tier Two sex offender, one judge prefaced his ruling with the statement that, the "[r]egistrant's squalid life style and failure to conform to societal norms naturally excite one's punitive instincts. But the judicial process has already administered appropriate punishment to the registrant in a separate proceeding, and the constitutional justification for Megan's Law rests on the belief that it is intended as non-punitive, remedial legislation" (*In re R.F.*, 5-6 [citations omitted]).
[9] These potential arguments included challenges under the fundamental fairness doctrine as developed and applied in New Jersey state law.

process and privacy interests, though they upheld the substance of the state Supreme Court ruling. Since *Doe,* New Jersey lawmakers have moved ahead to implement Megan's Law, and anti-rape advocates have maintained their public silence about it.

Talking to strangers: Feminism, sexual predators, and rape law reform

I use the trope of "talking to strangers" to highlight a number of conversations that take place across and within this dissertation. There are several relationships where strangers engage each other in conversations that are sometimes illuminating and helpful, sometimes damaging and distorting. How have these exchanges have helped to shape the form, content, political significance, and scholarly understanding of sexual predator laws?

The first, and earliest, conversation between strangers took place among feminist groups in the 1970s. Why did radical feminist critics join forces with more moderate advocates of policy reform, and what does this model offer contemporary students of feminist mobilization for legal change? How did this strategic collaboration foreshadow problems that would continue to vex rape care advocates in their response to Megan's Law? A brief overview of feminist anti-rape organizing in the 1970s, provided in Chapter Two, points to the opportunities and constraints the feminist anti-rape movement experienced in the initial turn to law reform as a vehicle for social change.

Another such conversation between strangers, illustrated in Chapter Three, is between feminist activists and criminal law. How effective were feminist rape law reforms in shifting the stereotypes and internal priorities of a criminal justice system that routinely dismissed non-stranger assaults? How does Megan's

Law function as a state-centered response to feminist claims about sexual violence?

The third conversation—between feminist reformers and state-sanctioned experts—is the subject of Chapter Four. How were feminist claims about sexual violence and sex offenders translated, co-opted, and distorted by criminologists and psychologists working on rape? How were feminist analyses of gendered violence manipulated to justify the sexual predator rhetoric employed by Megan's Law?

The strangers participating in the fourth and final conversation are contemporary RCAs and feminist and legal scholars. How did the turn to law reform shape the trajectory of the anti-rape movement? Why did Megan's Law pose intellectual and political problems for RCCs that are inexplicable given the theoretical frameworks advanced by feminist and legal scholars?

Methods

I answer these questions through an approach that blends empirical research with theoretical analysis. I employ multiple methods—including policy analysis, interviews, and historical research—to check and sometimes counter the claims made by sources for this study. By placing different accounts of rape and of rape law reform side by side, I hope to provide a sense of the dynamic and constitutive interplay between law, theory, and political practice.

The project provides a fine-grained case study of Megan's Law as it has evolved in New Jersey. Attention to Megan's Law illustrates the administrative and legal interpretation of the nation's most influential sexual predator law. As detailed earlier in this chapter, the law has been the subject of litigation at the

state and federal levels, gone through several legislative revisions, come before the voters of the state, and procedures have been devised and been refined several times by the state Attorney General's office. Megan's Law represents a legally mature and well-developed approach to sexual predators that will, I expect, continue to serve as a model and a benchmark for other states. In addition to consulting appropriate scholarly sources on the anti-rape movement and the law enforcement response to rape, I draw on official state documents (including risk assessment tools, procedural manuals), state and federal court decisions, and interviews with local activists to create what I hope is a full, nuanced, and contextualized picture of how Megan's Law has evolved and is currently implemented in New Jersey.

I also conducted 21 open-ended, semi-structured interviews with individuals who work on issues of sexual violence in New Jersey. The interviews, which consisted of 19 rape care staff members, one state official who oversees rape care programs, and one member of the state coalition of rape crisis centers, generally took place in the Fall of 2001. The first three exploratory interviews with rape care directors took place in Spring 1998 and were conducted over the phone. In September 2001, directors at all twenty-one state-funded rape crisis centers were contacted first by letter, then by phone; sixteen agreed to participate in the interview.[10] The meetings were conducted at the rape crisis site. Interviews lasted between one and three hours, with most taking about 90 minutes; the

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[10] The typical reason given for not participating was because the position was vacant. Some centers simply did not respond to repeated requests for interviews and did not provide a reason.

interviews were tape-recorded with the participants' knowledge and permission;[11] I transcribed the recordings and used N*Vivo qualitative data analysis software to identify and track important themes. Advocates were first asked to describe their organization and its main functions, including number of clients served, programs offered, and funding sources. This led into specific questions about Megan's Law that were asked of all participants. The names and counties of all advocates are anonymous because some fear reprisals from law enforcement or state funding agencies; all interviewees are cited in the text simply as "rape care advocate" and my reference number (e.g. "RCA 5").

The interviews are an essential part of the project, and present compelling evidence that contemporary RCCs have evolved significantly since their origins in the 1970s. The findings from these interviews offer a cautionary counter-narrative to the optimistic descriptions of feminist and legal mobilization for progressive causes, and of the role of RCCs in advancing feminist theories, policies, and politics.

Chapter outline

Each chapter begins with a general overview and theoretical discussion about the questions and conversations I interrogate. I use that overview to delineate some of the major intellectual claims and approaches to the topic, then turn to a detailed examination of circumstances in New Jersey to contrast these general findings with evidence from Megan's Law and RCAs. My hope is that this

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[11] The one exception is RCA 10, who declined to be recorded. I took written notes on our discussion during and after the meeting.

structure connects specific concerns raised in this case study with broader political, intellectual, and legal discussions.

I begin Chapter Two by discussing the role of law in creating and changing social meaning. Drawing on work from interpretive legal studies, I show how and why law reform was a powerful tool for mobilizing communities and changing cultural understandings about rape. I briefly discuss the history of feminist rape law reforms that evolved out of second-wave U.S. feminism. In their initial foray into rape law reform, feminists adopted and adapted mainstream political language to make claims about sexual assault that did help them communicate their concerns to a wide policy and lay audience, and to achieve some stunning legal successes. Though discussions about legal rights and responsibilities could not encompass the feminist critique of rape, it did provide a way to talk about justice that was a better fit than the punitive language and tactics available through the criminal law. Indeed, law reform framed in these broader terms did have many of the positive benefits described by legal mobilization and feminist theorists.

Having outlined why law matters at symbolic and concrete levels for feminists concerned about rape, Chapter Three focuses on how the Attorney General's Guidelines and state court decisions define sexual predators for the purposes of registration and community notification. In Chapter Three I look closely at Megan's Law to show that these legal institutions responded to many of the challenges posed by rape law reform by co-opting and distorting feminist rhetoric about rape law reform. Interviews with activists demonstrate that these legal practices attack the rape law reforms advocated by feminists and may have

significant unanticipated effects on reporting and processing of rape complaints. This chapter shows that Megan's Law offers new interpretations of rape and sex offenders that logically would make it a priority for feminist anti-rape advocates to resist, but that the law was couched in rhetoric and forms that were traditionally associated with progressive, feminist reforms.

In Chapter Four I begin to explain the silence of rape care advocates by turning to the discursive production of sex offender identities. In particular, I focus on how feminist theories about rapists were adapted by mainstream researchers to develop two opposing models of sex offenders: the "accidental offender" and the "pathological predator." These models had some connection to feminist theory, but were altered almost beyond recognition by psychologists and criminologists. As law has become increasingly important to the anti-rape movement and feminist theories have been marginalized, these legally-sanctioned discourses were internalized and reinforced by movement activists. In these conversations, feminist goals and arguments were quickly overwhelmed by the priorities of law enforcement institutions and personnel. Without an alternative language to talk about sex offenders, advocates have only a limited and politically ineffective vocabulary to explain their objections to the sexual predator stereotype revived by Megan's Law.

Chapter Five looks at the political context of anti-rape work, examining how the turn to law reform shaped the development and daily operation of contemporary rape crisis centers. Locked into resource-draining entanglements with law enforcement and state funding agencies, centers have few institutional resources to engage in policy analysis or reform. Furthermore, the eclipse of

feminist ideology by a crisis intervention, social service model has isolated rape care advocates from the broader progressive community and eliminated the critical consciousness about law and social meaning that motivated feminist law reform in the 1970s.

Chapter Six draws together my conclusions about why feminists are silent on Megan's Law, emphasizing the political and ideological effects of the turn to law. In addition to making policy recommendations, I sketch out directions for future research on Megan's Law and on the intellectual and political history of the anti-rape movement.

CHAPTER 2—RESEARCH CONTEXT

In the dissertation I identify three areas where the constitutive and problematic relationship between feminism and law contributed to the emergence of Megan's Law. First, I examine the use of law to manipulate the legal and cultural meanings of rape. Second, I trace the transformation of discourse about sex offenders in the wake of rape law reforms. Third, I demonstrate the political effects of law reform on the anti-rape movement. In doing so, I develop an approach that charts the political, intellectual, and legal trajectory of one law reform movement, and the use of sexual violence as a vehicle to contest meanings about sexuality, power, and social control. Looking at Megan's Law, I believe, helps us to see more clearly how identities and movements are shaped by the legal categories that they invoke, engage, and resist.

My project then is not to assess the accuracy of its depictions or efficacy in controlling sexual violence, but rather to use Megan's Law as a window onto how contemporary U.S. culture "sees" sexual violence.[12] How did Megan's Law come to be a widely accepted interpretation and representation of sexual violence, replacing feminist analyses that were the basis for rape law reform for over twenty-five years?

I begin with a brief introduction to the mutually constitutive relationship of law and cultural meaning, emphasizing law as a tool for social change and for social control. Theorists associated with critical legal studies and legal

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[12] For Joseph Gusfield, the public character of law illuminates a society's understanding of the world and of the construction of the "facts" upon which law is based. "In stating a general set of principles as publically [sic] held norms, laws grant an orderliness to the diversity of behaviors that enable us to 'see' a society," (1981, 142).

mobilization offer provocative insights about the potential and limitations of law, especially for thinking about how law affects the three main issues the dissertation investigates: the legal, symbolic, and political effects of law in social movements. I then provide an overview of law in the feminist anti-rape movement, illustrating that activists shared and anticipated many of the concerns that have preoccupied scholars of law and social movements. The chapter concludes with some notes on how the methodology of the project is shaped by the theoretical priorities I have outlined here.

Law and social meaning

The idea that law has symbolic as well as practical functions is well-established (Brown 1995; Cohen 1979; Crenshaw et al. 1995; Edelman 1988; Handler 1978; Scheingold 1974). Law serves as a widely shared cultural framework through which experiences, categories, and events are interpreted—in the words of anthropologist Clifford Geertz, as "part of a distinctive manner of imagining the real" (1983, 173). Law is created and invested with meaning through the interaction of political, historical, and economic concepts, systems, and positions. These positions, which may appear invisible or impartial, represent particular ways of seeing the world that facilitate some approaches or responses to law while rendering others unintelligible (Minow 1990; Reiman 1996; Silverstein 1996), and that systematically privilege some groups over others (Balbus 1982; Klare 1982; MacKinnon 1989). Law is thus channeled through institutions, forms, and ideologies that simultaneously circumscribe and communicate its power.

Law plays a pivotal role in creating our sense of the world in which we live. In his analysis of this role Robert Cover includes not only explicitly legal forms but also the process through which those forms are constituted and given meaning.

> The student of law may come to identify the normative world with the professional paraphernalia of social control. The rules and principles of justice, the formal institutions of the law, and the conventions of a social order are, indeed, important to that world; they are, however, but a small part of the normative universe that ought to claim our attention. No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. ... Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live (Cover 1983, 4-5, citations omitted).

Within this narrative context, law can take on a plurality of meanings. Sally Merry Engle describes what she calls "the discourse of law" as

> neither internally consistent nor unambiguous.... It is an intricate, historical accretion of rules, punishments, categories of behavior, and practices which reflect changing notions of crime, individual and environmental causes of behavior, the responsibilities of the state for social life, and do forth. Its ambiguities, inconsistencies, and contradictions provide multiple opportunities for interpretation and contest (Merry 1990, 9).

Even though law is indeterminate and subject to multiple interpretations, it is not therefore either meaningless or powerless. For Merry, law's power is not only in "the imposition of rules and punishments but also ... its capacity to construct authoritative images of social relationships and actions, images which are symbolically powerful" (Merry 1990, 8). Joseph Gusfield similarly argues that the particular power of law is "not only in its manifest language but also in the metaphorical symbolism of its latent meanings. It is as seen semiotically, as part of a set of verbal and nonverbal signs and signals, that law possesses a mythical property and its promulgation becomes public ritual" (1981, 113).

The public rituals related to meaning-creation include the perceptions and expressions of needs, rights, claims, disputes, and remedies (Bumiller 1988;

Ewick and Silbey 1998; Felstiner, Abel, and Sarat 1980-81; Mather and Yngvesson 1980-81). In the more expansive view of law advocated by scholars of law and/in society,[13] law creates and reflects systems of meaning, permeating individuals' lives and community norms in ways that may or may not be visible to those whom it affects (Merry 1990; Nielsen 2000; Sarat and Kearns 1993b).

But attention to the constitutive power of law in society does not require inattention to its coercive or violent elements. Theorists as different as Robert Cover (1992), Catharine MacKinnon (1987), and Jonathan Simon (1997) argue that law is premised on power, that it creates the social conditions for violence, and that it expresses that violence through formal legal mechanisms such as police procedures, criminal sanctions, policy-making, and judicial decision-making.[14] As I discuss later in this chapter, the connections between the symbolic and material effects of law are particularly compelling in crime control policy.

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[13] Ewick and Silbey persuasively challenge what they see as the reification of the concepts of law and of society inherent in the "law and society" rubric:

> Even as it has opened up some lines of inquiry, the 'law and society' question has necessarily foreclosed others.... It relies for its intelligibility on a horizon of certainty: a set of terms that are accepted as self-evident and that frame the central problem. For instance, the ontology implied in the pairing of 'law and society' assigns to the law a distinctive, coherent, and recognizable form, independent of society. Similarly the conjunction 'and' assumes a more or less clear boundary demarcating the two spheres of social life.... In other words, in denying legality the conceptual distinctiveness that is linguistically implied in the phrase 'law and society,' our theoretical question shifts away from tracking the causal and instrumental relationship between law and society toward tracing the presence of law *in* society (1998, 34-5, emphasis in the original, citations omitted).

[14] Cover, for example, says that

> legal interpretation takes place in a field of pain and death.... Legal interpretative acts signal and occasion the imposition of violence on others.... Interpretations in law also constitute justifications for violence which has already occurred or which is about to occur. When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence. Neither legal interpretation nor the violence it occasions may be properly understood apart from one another. This much is obvious, though the growing literature that argues for the centrality of interpretive practices in law blithely ignores it (1992, 203-4).

Yet the pervasiveness of law does not mean that it is entirely unbounded. Though indeterminate, the forms of law matter and are not all-encompassing or infinitely malleable. Law requires a way of seeing and interpreting the world that is dependent on and reinforces legal conventions. Legal forms shape perceptions of the world at the same time that they are shaped by use, by what Martha Minow describes as "the possibility that our very process of sorting [problems into law] may stretch some categories, contract others, or even require us to invent a new box for what we cannot yet classify" (1990, 8). Sarat and Kearns further describe this constitutive interaction between law, life, and use:

> Law is continuously shaped and reshaped by the ways it is used, even as law's constitutive power constrains patterns of usage. Law in everyday life is, in this sense, both constitutive and instrumental. The possible variations in practice are situationally circumscribed; there are, for example, a limited number of available meanings within any setting. Thus, "[W]hile the law may be a resource, a tool available for all sorts of uses, the ways in which it is put to use are constrained by ... conventions, ways of doing things that relate to courts, lawyers, litigation, claims of right, precedent, evidence, judgment. ... [W]hat is done in the name of the law is constrained by a world of its own creation," (1993a, 55, citations omitted).

Law is a normative force that melds symbols, stories, and visions into a public statement about social ideals that is backed by the physically coercive power of the state. This ability to "see" a society through its laws thus makes law and legal institutions useful lenses through which to examine the articulation and transformation of beliefs, concepts, and institutions.

But asserting that law has this kind of power and understanding how that power works are different tasks. Two different approaches to the study of law and social movements raise serious questions about the extent to which law can be used to deliberately re-shape public perceptions, social norms, and legal practices. Some legal theorists point to law's pre-existing priorities and procedures as inhibiting progressive social change. Other scholars working on

quantitative impact studies similarly cite law's ineffectiveness at making social change. For very different reasons both groups point to significant questions about the capacity of law to create progressive social change along lines designated by reformers.

Law and social movements

Questioning law's power

The school of critical legal studies (CLS) that emerged in the 1970s is typically described an intellectual movement that attempted to apply insights from leftist theories into legal studies and the legal academy.[15] Drawing on intellectual sources ranging from the legal realists to the Frankfurt School to Marxist theory, scholars affiliated under the loose rubric of CLS described legal forms as inherently artificial, legal processes and institutions as biased in favor of politically powerful groups, with even favorable decisions producing only incremental, unsatisfying changes in legal or social systems (Balbus 1982; Gabel 1984; Galanter 1974; Kennedy 1982; Klare 1978; Tushnet 1984).

In contrast to the understandings of law and social meaning discussed above, where legality is an organic part of the fabric of everyday life and law provides opportunities for resistance as well as repression, CLS scholars acknowledge the constitutive role of law in social, political, and economic life but

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[15] For overviews of the central arguments of critical legal studies, see Gordon (1984), Kairys (1982), Kelman (1987), and Unger (1983). Though in a recent article on the history of CLS Mark Tushnet, himself one of the foremost scholars associated with CLS, rejected this general description and instead opted to describe CLS as "a political location for a group of people on the Left who share the project of supporting and extending the domain of the left in the legal academy," which does not require or produce "any essential intellectual component," (Tushnet 1991).

only as a source of alienation and—at best—false consciousness. Peter Gabel, for example, asserts that

> the characterization of 'rights-bearing citizen' has the intended effect of erasing the concrete and common reality in which we act on desire and replacing it with a blank and disembodies reality comprised of what we might call 'empty vessels' who act only insofar as they have been filled with 'rights.' It is this empty-vessel quality of the 'rights-bearing citizen' that represents 'in law' the anonymous, absence-of-being quality of the alienated role-performance (1984, 1576)

Given this understanding of law, it is not surprising that CLS scholars were not strong proponents of the use of law and courts to achieve social change. These concerns challenged dominant liberal ideas about whether courts could, would, and should adopt radical change.

This research forced a reconsideration of the optimistic studies of law and social movements that were the norm in the post-*Brown v. Board of Education* era (see, for example, Casper 1976; Chayes 1976; Kluger 1976; Vose 1959). Research on the implementation of social change also pointed to limits on law and courts. Though typically arising from very different epistemological and methodological commitments than those employed by critical legal scholars, quantitative impact studies also raised serious questions about the use of law by social movements.

Analyses of reform have long provided evidence that law is a limited and unpredictable tool for social change. Scholars have pointed out problems such as institutional limits on what courts can do to enforce their decisions (Horowitz 1977), formal and informal resistance to implementation (Handler 1978), the modification of court decisions by legislative and executive branches (Melnick 1994), and counter-mobilization in the wake of controversial decisions (Rosenberg 1991).

These studies generally adopt a "top-down" approach in which the effectiveness of law is measured by the effect of judicial decisions on interested groups and by compliance with court-ordered actions. In their study of judicial "implementation and impact" for example, Johnson and Canon (1984) define these terms as

> the *behavior* following a court decision ... [W]hen we discuss 'impact,' we are describing general reactions following a judicial decision. When we discuss 'implementation,' we are describing the behavior of lower courts, government agencies, or other affected parties as it related to enforcing a judicial decision. When we discuss what many would call 'compliance/noncompliance' or 'evasion,' we are describing behavior that is in some way consistent or inconsistent with the behavioral requirements of the judicial decision (14-5, italics in original).

This is a significantly different approach than the law and society understanding about how legality saturates the very social and political experiences that make law meaningful.

In what is probably the most influential quantitative assessment of law and social change, Gerald Rosenberg's book *The Hollow Hope* (1991) points to institutional and political limitations on courts and law that hamper the implementation of legal remedies, provide fodder for counter-mobilization, and demand significant resources as evidence that courts are a poor choice for groups seeking social change. Rosenberg frames the central questions about law and social change as, "To what degree, and under what conditions, can judicial processes be used to produce political and social change? What are the constraints that operate on them? What factors are important and why?" (1991, 1). He includes in his empirical study evidence about both the direct and the indirect effects of judicial action, operationalized respectively as "whether the change required by the courts was made," and "by inspiring individuals to act or

persuading them to examine and change their opinions" (1991, 7). In this model, Rosenberg assumes that law and legal decisions have a top-down effect, using landmark cases (notably *Brown v. Board of Education* and *Roe v. Wade*) as the starting point to test the capacity of law to make change. Rosenberg provides persuasive evidence against law reform as a useful tactic for social movements, and ultimately finds that courts are a deeply constrained set of institutions that cannot create significant reform due to institutional and procedural limitations concerning justiciable claims, lack of political support for controversial decisions, and inability to implement and enforce decisions.

Given these constraints, Rosenberg concludes that "U.S. courts can *almost never* be effective producers of significant social reform" (1991, 338, italics in original). This critique of litigation leads Rosenberg to describe "courts ... as 'fly-paper' for social reformers who succumb to the 'lure of litigation' (1991, 341). He asserts that

> courts also limit change by deflecting claims from substantive political battles, where success is possible, into harmless legal ones where it is not. Even when major cases are won, the achievement is often more symbolic that [sic] real. Thus, courts may serve an ideological function of luring movements for social reform to an institution that is structurally constrained from serving their needs, providing only an illusion of change (Rosenberg 1991, 341).

Rosenberg's conclusion is reminiscent of the cautions urged by theorists associated with CLS. These authors cautioned that law was inherently conservative, protecting the interests of entrenched elites. In this understanding, insurgent political movements were in danger of being distracted by endless legal battles that could at best only produce marginal improvements—a warning that resonates strongly (though for different reasons) with Rosenberg's conclusion about the "fly-paper Court."

Together these research traditions provide a strong critique of the foundations and effectiveness of legal power. The challenge these findings pose to research on social movements and law has been taken up most visibly by recent scholarship loosely grouped under the heading of legal mobilization. These scholars employ a notion of law that draws on and elaborates theories about the constitutive role of law in social meaning through empirical investigation.

Interpretive research on law and reform

The influence of CLS and challenges from quantitative social scientists have helped shape current research on law and social movements. In this section I draw on recent studies that have attempted to bring together the critical theoretical insights of the law and society movement with empirical research to document the effects of social change through law reform.[16] The research that I discuss in this section shares several common premises: that law is both a source of social control and of resistance; that both formal and informal actors are sources of legal interpretation that have meaningful effects for how law is understood and applied; and that law has the power to change behavior, communicate meaning, and organize constituencies through legal symbols and channels that are nevertheless limited and contingent. The authors generally employ an interpretive approach to legal studies that employs empiricism as a method of analysis but does not rely on it exclusively. Interpretive research on law and social movements addresses three central questions that are pertinent to

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[16] I acknowledge but do not agree with those critics who charge that empiricism is incompatible with and even counterproductive to developing a critical approach to law (Garcia-Villegas 2003; Trubek and Esser 1987).

this study of rape law reform: what methods best capture the effects of law in social movements? What are the uses of law in movements for change? And how does law shape the development of these struggles?

The research on law and social movements that I review here does not represent the whole of the field, nor every approach or concern within studies of law and social movements. Rather, I concentrate on those studies that emphasize the interaction of symbolic and concrete elements of legal tactics, and those that examine the production and effects of legal ideologies in social movements. Following Geertz in "Ideology as a cultural system," I define ideology broadly and non-pejoratively as "the attempt ... to render otherwise incomprehensible social situations meaningful, to so construe them as to make it possible to act purposefully within them," as "maps of problematic social reality and matrices for the creation of collective conscience" (Geertz 1973, 220). Law and legality play a pivotal role in shaping reform movement ideology, and in determining the range of viable responses by legal institutions. This interpretive turn in legal studies is particularly helpful in exploring how the interaction of law and politics shapes legal, symbolic, and political consequences of legal mobilization.

Method

To assess the impact of law conceived more broadly than compliance and implementation alone, scholars working on law and social movements generally employ a methodological approach that is variously called a "bottom-up" or "decentered" approach to law. This bottom-up approach starts with many of the premises discussed in the first part of this chapter—that law is an intrinsic part of the creation of social meaning, that law is created through the interaction of the

symbolic and the real, that law is shaped not only by formal legal rules and policies but also by the participation of individuals and groups who bring cases and grievances to the courts (Ewick and Silbey 1998; Milner 1987). Given the centrality of individuals and groups that help define the reach and scope of law, the decentered view that dominates legal mobilization scholarship begins not with formal law or court decrees, but rather "the process when ... desires or wants are transformed into demands" (Zemans 1983, 694).

This model challenges the "top-down" approach to law and courts in social movements exemplified in Rosenberg's work. In contrast, the interpretive approach portrays law and culture as mutually constitutive elements, existing in a relationship where meaning arises from both the symbolic and the physically coercive power of law. Researchers working from this model have a very different set of understandings that guide the creation and investigation of research problems. In *The common place of law*, Patricia Ewick and Susan Silbey offer a useful sketch of how these different intellectual priorities inform a law and society research agenda:

> Rather than imagining law as existing apart from social relations (i.e. so-called natural law) or conceiving of it as produced solely by groups of powerful law 'makers' (i.e. the positive law of legislatures, and common law of appellate courts), much law and society research portrays law from the 'bottom up' as a continuing production of practical reason and action. This research provides a view of law emerging from the routine, often discretionary, encounters among professional and nonprofessional actors. It depicts a legal system with numerous actors, involved in diverse projects, employing different legitimating discourses, material resources, and political power to achieve a wide range of goals. Emerging from these interactions, the practices and ideals to which the term 'law' might be applies are understandably variable, complex, and sometimes contradictory (Ewick and Silbey 1998, 19).

In this understanding, law provides a powerful frame to understand how social meaning—from the mundane to the profound—is repeatedly constituted and contested. Michael McCann's study of pay equity struggles, one of the most

influential expositions of the decentered or bottom-up approach, asserts that "both the specific constructions and relative power of specific legal discourses at particular moments are shaped in large part by other intervening factors of personal experience and local situational dynamics," factors that necessitate "systematic attention to the specific circumstances in which law is mobilized" (1994, 286).

The interpretive, case study-based research I discuss in this section also assumes the necessary interconnection of theory and practice. Like McCann and Brigham, Elizabeth Schneider's work on battered women and feminist lawmaking examines how invocations of law are intrinsically tied to their political context. She challenges critics of rights such as CLS scholars, arguing that the power of law cannot be evaluated meaningfully without attention to its use in political struggles.

> [C]ritiques of rights ... suffer from an analysis that divorces theory from practice. Rights are analyzed in the abstract, viewed as static—as a form of legal theory separate from social practice—and then criticized for being formal and abstract. My approach to rights views theory and practice as dialectically related, and I look to the philosophical concept of praxis to describe this process. The fundamental aspect of praxis is the active role of consciousness and subjectivity in shaping both theory and practice and the dynamic interrelationship that results.... [M]y focus on praxis impels me to explore how rights claims can flow from and express the political and moral aspirations of a social movement group, how rights claims are experienced or perceived in social movement practice, and how rights discourse impacts on social movement practice generally (Schneider 1990, 228-9).

Prioritizing interpretation, local context, and thick description leads interpretive researchers to reject what McCann characterizes as Rosenberg's "narrow understanding of causality and impact" (1994, 290), advocating instead an analysis that accounts for the constitutive and multifaceted power of law in social movements. Rosenberg's approach exemplifies an understanding of legal impact that, McCann contends, "obscures the subtle but significant ways that

judicial actions shape the strategic landscape within which citizens (including elites) negotiate relations with each other as legal subjects—i.e., the ways in which legal norms prefigure social relations, delimit the range of realistic actions, and hence influence the balance of power among differently situated parties" (1994, 291).

The uses of law

The interpretive methods McCann relies on—especially interviews with pay equity activists—leads him to identify several stages where law and social movements interact in important and often very different ways: the "movement building process;" "the struggle to compel formal changes in official policy;" "the struggle for control over actual reform policy development and implementation;" and "the transformative legacy of legal action" (1994, 11). These interactions include both the direct, formal changes emphasized by impact analysis and the informal, extra-judicial, symbolic effects prioritized by law and society scholars. McCann emphasizes legal engagement as a transformative force that, while constrained by forms and language, can have powerful effects that elude a quantitative analysis focused only on compliance with court decrees.

Bringing together the politics of rights with more expansive definitions of impact and attention to the constitutive power of law opens up new ways to think about the role of law in reform movements. In this understanding, legal institutions not only make formal law but authorize, limit, challenge, or adopt the language and claims of reform groups. Interpretive research focuses on the interplay between law and politics, on the integral and dynamic connections between tactics, framing, and outcomes.

Stuart Scheingold's book *The politics of rights* (1974) was a ground-breaking text that still serves as a touchstone for the study of law and social movements.[17] Scheingold, writing during the heyday of liberal litigation strategies, cautioned movement activists against succumbing to what he describes as "the myth of rights"—"[t]he assumption is that litigation can evoke a declaration of rights from courts; that it can, further, be used to assure the realization of these rights; and, finally, that realization is tantamount to meaningful change. The *myth of rights* is, in other words, premised on a direct linking of litigation, rights, and remedies with social change" (1974, 5, italics in original). Scheingold rejects this approach for a variety of theoretical and tactical reasons, arguing instead for what he calls "the politics of rights." This politics of rights acknowledges that while rights are contingent and do not provide a sufficient basis for a movement or for significant social change, the idea of rights "provides political *ideals*" which "are reflected in the formal *rules* which structure American institutions," rules which in turn "influence the *behavior* of governmental officials and private citizens" (1974, 83, italics in original). For Scheingold, then, formal legal rights are insufficient but meaningful, and as such provide movements with limited but powerful tools that must be combined with other forms of political action in order.

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[17] Scheingold's work remains relevant despite its age. For an excellent recent example of the "myth of rights" in action see Stoddard (1997), who describes himself as "confounded" that despite formal legal protections accorded to gays and lesbians in New Zealand, "most gay people in New Zealand still did not feel safe enough to 'come out'" and that according rights to gays and lesbians had not been sufficient to "cast off the centuries of persecution ... and promote a flowering of gay culture" (970).

Understanding how movements adopt, transform, and re-fashion legal concepts has been a central concern for legal studies scholars. Most studies emphasize how social groups infuse existing concepts with new meaning, illustrating Scheingold's idea about how the politics of rights can be a powerful tool for social movements.

Rights rhetoric is one of the most widely adopted legal conventions in movement activism. Scholars have noted that emerging right-based groups infuse notions of rights with new meaning, stretching their meaning and using them to articulate new political agendas. In her study of the animal rights movement, Helena Silverstein argues that it is the very indeterminacy of rights assailed by CLS scholars that permits animal rights activists to infuse rights with new meaning, thus challenging the idea that rights and other legal concepts are inherently alienating, artificial, and unhelpful for reformers.

> If ... the deployment of rights language by this social movement effectively supports the concepts of relationship, caring, responsibility, and community, then we may conclude that critics have been inaccurate in their attack against rights. We may further conclude that infusing rights with content that competes with individualism provides the opportunity to reinvigorate the power and meaning of the language. Finally, we may interpret this appropriation of rights not simply as one that challenges and attempts to transform the very conception and understanding of the language. In other words, the deployment of rights by this movement both extends the language and, more importantly, alters the underlying substantive terms of the language itself (1996, 57).

Silverstein's optimistic assessment of the elasticity and openness of legal concepts to re-interpretation is shared by other scholars. McCann describes pay equity reformers as having a "'double consciousness'" about law that allows them to invoke and strategically use legal language while maintaining "few illusions about the indeterminate, contingent, socially constructed character of rights themselves" (1994, 232, 236). He says that activists have successfully "aimed to impart new, varying meanings to the cultural legacy of struggle over rights"

(1994, 238). Schneider (1990) uses almost identical language about the reconstruction of rights for battered women.

There has been considerable research on the effects of law reform in social movements. Most of the findings are encouraging, pointing out that activists have a nuanced understanding of the limits of law but also a sophisticated sense of its power to achieve symbolic and practical change. Assessing the impact of reform efforts also requires attention to the place law reform plays in transforming movement politics.

McCann tempers the negative outcomes of court decisions about pay equity with evidence about how adverse decisions helped the movement to publicize and organize workers, showing that "equity activists derived substantial power from legal tactics despite only limited judicial support" (1994, 4). Brigham's (1987) examination of the legal claims made by anti-pornography activists describes how they were able to introduce a new and influential analysis of pornography as sex discrimination, even though the ordinance they championed was struck down in court. In her study of batterer intervention programs in Hawaii, Sally Engle Merry (2001) points out that court referrals to three competing programs were in part based on the consonance of these programs with evolving legal and cultural understandings about domestic violence.

The relationship between reformers' claims and existing legal structures is important to the prospects for the success of reforms. As in the examples above, local factors and movement ideologies helped determine whether legal strategies were an attractive and useful option. McCann highlights the positive benefits of

legal reform as a way for pay equity activists to articulate grievances and transform the ideological terrain for individuals and the movement. He argues that "perhaps *the single most important achievement* of the movement has been the transformation in many working women's understandings, commitments, and affiliations. ... Far from strengthening dominant liberal ideological propensities ... pay equity reform has contributed significantly to an ongoing progressive transformation in the consciousness and capacities of many movement affiliates" (1994, 230, emphasis in the original). McCann argues that rights have served as a valuable way for pay equity activists to examine and evaluate problems: "the evidence suggests that taking legal rights seriously has opened more than closed debates, exposed more than masked systemic injustices, stirred more than pacified discontents, and nurtured more than retarded the development of solidarity among women workers and their allies" (1994, 232).

Michael Paris argues that the "ideational content and ideological coherence across the legal and political components of reform projects ... may have an important but underappreciated relationship to overall success or failure in litigation-involved efforts" (Paris 2001, 641). For Paris, coherence between legal and political tactics "would play a role in motivating group members, mobilizing constituents, and 'disciplining' the thinking and activities of participating lawyers" but also might demonstrate the "'good faith'" of reformers

"about democratic politics as well as their deep commitment to the vision they seek to have embodied in law" (2001, 673-4).[18]

Neal Milner's work exemplifies the conflicts that can arise when such coherence is absent. Milner's study of mental patient liberation groups showed "a tension between litigation and other forms of political participation that are central to mental patient liberation ideology. Direct action and self-help were not easily integrated with litigation though there were explicit attempts to accomplish such integration" (Milner 1986, 126). Though the most readily apparent solution would be "a transformation that combines the two ideologies" into one "that sees rights as a tool to be used to build broadly participatory political action" Milner finds "reasons to be skeptical of the success of the reconciliations" (126).

The effects of law

Interpretive studies are concerned with the success and impact of reform efforts, but these definitions are construed more broadly than in the quantitative or impact literature discussed earlier. Rather than focusing on the top-down approach, legal mobilization theorists examine not only the outcomes of particular cases but how judicial decisions, legislative acts, and other legal interventions present or close down opportunities for reformers regardless of the outcome in the specific case or law. Thus the effects of reform are not measured solely by observable changes in formal law, but also by re-shaping public discourse, mobilizing supporters, articulating claims, and proposing remedies.

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[18] The idea that legal mobilization is a form of democratic participation is developed in Zemans's (1983) influential article.

Milner's suggestion, mentioned above, that different ideological approaches to law and politics are not always reconcilable or complementary provides a provocative contrast with other research on legal reformers. McCann asserts that "Scheingold's 'myth of rights' and the savvy 'politics of rights' are not inherently contradictory, but can be understood as interrelated component of strategic legal interaction for women workers and their allies" (1994, 233). Idit Kostiner points out that activists working on education reform often invoke different and contradictory ideas about the role of law in social change—sometimes seeing law as an instrument to achieve a concrete set of measurably improved ends, or alternatively as a tool for political organizing. Kostiner concludes that

> contradictions between the instrumental and the political schemas ... sustain the understanding of law as a means for social change. Their coexistence in the consciousness of all activists enables activists to justify the use of law despite their own criticism of it.... [B]ecause law is evaluated from an instrumental lens and from a political lens *simultaneously*, there is always a way to counteract evidence of law's futility and to justify its use (2003, 361-2).

But demonstrating that activists have multiple types of legal consciousness does not address whether those different approaches to law can be integrated into a coherent strategy for successful mobilization and reform. In another article, Milner looks at four case studies of mobilization around the rights of mental patients and finds that particular forms of advocacy emerged from factors such as lawyers' access to mental patients prior to the assertion of rights claims, the roles of plaintiffs (class action versus individual claims), and the degree of mobilization by patients and their advocates. These factors produced divergent paths to and through legal institutions—paths that resulted in very different outcomes for groups at the local level. The ideological arguments that justified

each path grew out of the legal resources available, and legal arguments capitalized on the forms of mobilization that brought these claims to court (Milner 1987). What counted as "success" in some of these cases would not have been hailed as a victory in others.

Furthermore, questions persist about the contexts in which law and rights matter. There are comparatively fewer studies that assess whether adopting legal concepts alters the intellectual trajectory and/or priorities of a movement. This concern, which was central to CLS scholars, has received relatively short shrift from legal researchers, especially in recent work on law and social movements (though see Bell 1976; 1980). Nevertheless, some interpretive research points out that the long-term consequences of legal mobilization must include discussions of the significant limitations and negative, often inadvertent, effects of law as deployed by social movements.

Cause for skepticism and concern is provided in Kristin Bumiller's interviews with individuals who alleged experiences of employment-related harassment and discrimination. Bumiller argues that the legal and political construction of civil rights alienates many individuals who refuse to avail themselves of remedies because they reject the requirements necessary to bring a formal claim. Seeking redress for discrimination requires that complainants "assume the role of the victim. This transforms the conflict into an internal contest to reconcile a positive self-image with the image of oneself as a powerless and defeated victim" (Bumiller 1988, 52). Thus the qualities that define victims are precisely the opposite of those qualities that would result in a successful legal

intervention. Rather than adopting the victimized identity necessary to assert a legal claim, Bumiller's subjects often chose not to identify as victims.[19] Thus,

> [a]ntidiscrimination ideology may serve to reinforce the victimization of women and racial minorities. Instead of providing a tool to lessen inequality, legal mechanisms, which create the legal identity of the discrimination victim, maintain divisions between the powerful and the powerless by means that are obscured by the ideology of equal protection (1988, 2)

In this example, multiple consciousness about the roles of law led to frustration and inaction, not mobilization. In an example provided by Milner, even activists with a sophisticated analysis of rights ultimately find legal language constrained and politically ineffective, especially when addressing concrete problems and developing policy alternatives.

> How useful is a language and framing process if that process has little to do with the way people deal with their everyday problems? ... When it comes to dealing with issues at this level, rights language may be off-putting, abstract, divisive, and not very relevant. My own experiences in bringing together diverse groups and individuals for mental health policy making suggest that when they try to work together, these people share a general rights language that fosters a sense of common concern. When particular issues are joined, however, the language discourages rather than fosters interpretive community. Recent developments in mental health policy are often based on attempts to finesse rights language by trying to create contexts in which rights are not the issue (1989, 674).

Milner's formulation suggests that though rights talk could serve a valuable "macro" strategy for an emerging movement trying to articulate new claims and build movement consensus, it may be less useful for groups seeking to develop policies to address persistent problems. This coincides with McCann's observation that "[l]egal mobilization proved most significant for the pay equity cause during the initial stages of movement formation" (1994, 48).

But though legal tactics and tools may eventually recede into the background of a social movement, this is not to say that their power is diminished

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[19] Bumiller's findings resonate with those of Black, who warns that in its most purely democratic form—as cases and complaints instigated by citizens—"patterns of legal discrimination ... are more elusive, and consequently they are more intransigent than are similar patterns in [government-initiated] mobilization systems," (1973, 144).

or effaced. Merry's article, which charts changes in batterer intervention programs over a twenty year period, offers a more dynamic picture of the relationship between law and reform groups. Merry notes that all three programs not only influenced the local legal culture by offering explanations for and responses to domestic violence, but how those programs were themselves changed by their growing dependence on courts for participants and funding. By tailoring their program to ensure it was palatable to state officials, local batterer intervention groups were transformed by their engagement with the law (Merry 2001, 83). As part of this process of colonization, "[e]ach [program] moved away from its initial radical vision and adopted a more mainstream approach to personal transformation in order to survive and grow" resulting in "not uniformity but similarities within distinct cultural spaces" (Merry 2001, 83). At the same time, integrating these new elements into programs helped groups survive and expand their programs and reach to potential batterers. She points out that the transformation in movement ideologies has been marked by controversy in some cases, with some members of the group leaving in protest of what they see as a "watering-down" of the feminist aspects of the program (Merry 2001, 59).

Legal scholars have looked closely at how movements adopt and transform legal rhetoric and social movement theorists have examined how law may co-opt political groups, but both approaches are flawed from the perspective of a constitutive, interpretive understanding of law. Legal scholarship describes legal concepts as tools, strategies, and leverage—adopted, discarded, and controlled by organizations. Social movement studies see law as an external force, alien and

often hostile to political groups. Neither analysis provides a long-term assessment of if, how, and why reform might transform law from either a convenient strategy or malign outside influence to an unquestioned component of movement ideology.

The use of legal language and concepts at a movement's initial stages may continue to exist, even as recognition of the uses and purposes of adopting that language or those concepts has been forgotten or abandoned. Indeed, the institutionalization of certain ways of thinking about the problem at hand may render a legalistic analysis invisible and even less likely to be questioned or examined. As law fades from the foreground of movement consciousness, it may become even more powerful because it assumes an unquestioned and unquestionable role in the very definition of a problem, and in the appropriate means to solve it. Law may come to assume an ontological—rather than an epistemological—status. Understanding how the evolution of legal rhetoric changes movements is especially important in issues such as the environment (Coglianese 2001), equal opportunity (Bumiller 1988; Burstein 1991), crime policy (Scheingold 1984), and domestic violence (Schecter 1982; Schneider 2000), where the state has stepped in to champion at least some of the reforms demanded by citizen groups. This is certainly the case with the feminist anti-rape movement.

This project differs from most studies of legal mobilization in focusing not on the origins of legal consciousness in the movement, but on the long-term effects of law and legal change. Though I briefly discuss the origins of rape law reform in the next section, most of the dissertation examines the aftermath of

rape law reform. This study charts some territory similar but not quite identical to concerns about institutionalization that are a primary concern for many movements. In this project, institutionalization is not defined as "good" or "bad," nor am I interested in focusing on the processes of institutionalization in the anti-rape movement.[20] Instead I want to look at the ways in which the adoption of certain legal tactics channeled movement development and institutionalization *in particular ways* that were largely determined by the type of legal frames adopted by the anti-rape movement. The emphasis on how rape law reform has transformed the movement contributes to the still under-theorized and under-documented literature on law, politics, and social movements.

The feminist anti-rape movement and legal reform

I place questions about the relationship between politics and legal reform at the heart of this project; demonstrating that the turn to law reform changed cultural meanings about rape even as it changed the anti-rape movement itself. Law and social movements thus exist in a mutually constitutive relationship where both are changed by the analyses, choices, and tactics employed in reform campaigns. In pursuing this project, I am interested not simply to extend this type of research into the previously unexamined area of feminist efforts to reform rape law, but also to understand more precisely the ways that pursuit of legal goals shapes the development of social movements. Did the turn to law have specific effects on the way the movement understood and presented itself

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[20] Nancy Matthews (1994) has done quite an excellent job on this issue; I do not presume to replicate her work here.

politically, and on the pragmatic and theoretical capacity of the movement to engage in political behavior over the next decades?

Understanding the impact of law on the feminist anti-rape movement is particularly interesting because rape law reform is routinely cited as one of the most significant and lasting victories of second-wave feminism. Reformers turned to law in a self-conscious and sophisticated manner to change societal conceptions of rape. A close examination of the outcomes of that experiment, and its relationship to contemporary sexual predator laws, provides a fascinating case study of the potential and limits of law for achieving change especially as it relates to groups concerned with gender inequality and to those who seek to advance a radical political analysis. The emergence of sexual predator laws suggests that the success of the rape law reform project must be tempered by an assessment of how feminist rhetoric and legal tactics were deployed not only by its supporters, but also by advocates who opposed feminist reforms.

Second-wave feminist discussions of rape as a topic of policy and political concern have sparked thousands of books, articles, videos, and pamphlets that attempt to locate the causes of rape, document its effects on individuals and institutions, and advance solutions for its eradication. I will not address this vast body of literature except as it relates directly to the role of law and legal reform in addressing sexual violence. My purpose here is not to contribute to this rich and diverse literature, but rather to explore more precisely how rape laws are invoked, especially grassroots activists associated with the anti-rape movement, to construct the problem of rape and to propose remedies for it.

Law & social meaning: Changing rape culture through law

The anti-rape movement is generally acknowledged to have grown out of second-wave feminism, and was viewed as a distinct sub-movement by the early 1970s. Other histories have ably documented the emergence and growth of local groups that provided services such as crisis intervention, self-defense training, and education (Bevacqua 2000; Gornick 1985; Largen 1976; Largen 1985; Matthews 1994).

Even as local groups have typically prioritized these community services, advocacy around rape law has also been an important focus of anti-rape organizing. Though many early feminist discussions of rape eschewed law as a solution to the problem, almost all identified law as contributing to the prevalence and stigma of rape. The problem with rape law, authors and activists argued, was that it reflected a cultural attitude toward rape that was premised on women's inequality before the law, and that legal systems perpetuated that inequality through the systematic refusal to acknowledge or prosecute sexual crimes against women. Law functioned on two levels: as an expression of ideology about what rape was (usually defined as a rare crime committed by men who were mentally ill and left clear evidence of the abuse, or as the interracial rape of a white woman), and as a mechanism of social control (by ignoring or dismissing rape allegations that did not fit the legal paradigm). These two functions of law were mutually reinforcing: eliminating from the criminal justice system cases that involved forced sex but that fell outside of legal definitions of rape helped to reinforce cultural beliefs about rape.

It was these dual functions of law—ideological and instrumental—that advocates hoped to use to their own ends. By reforming rape laws, activists reasoned, they could simultaneously challenge beliefs about what rape was, and by loosening restrictions on prosecution they could actually change which individuals were charged, prosecuted, and sentenced for sex crimes. This two-pronged approach formed the justification for the rape law reform strategies that swept the country in the 1970s.

Whether to pursue rape law reform was a central question for almost every anti-rape group in the country in the mid-1970s. Though few (if any) believed that law reform could solve the problem of rape, many believed that it was a necessary step in changing public attitudes which *would* result in a change in women's vulnerability to violence.

Connell and Wilson, who edited the book resulting from the New York Radical Feminists speak out and conference on rape, introduce a section on "Legal aspects of rape" by emphasizing that "it is our institutions of law which reflect society's *intent* to pursue justice. ... The laws as they stand now reflect only suspicion and mistrust of the victim" (1974,125). Largen describes rape laws as a concern for feminists because legal institutions and practices "reflect the attitudes and biases of the society they serve. ... Feminists ... felt that reforms would be best achieved in conjunction with a positive change in social attitudes toward the crime and its victims" (1985, 3). BenDor stressed that a "major function of law reform is confirming and protecting democratic rights" which for rape victims in Michigan were impinged by the state's "old statute, ... [that] exhibited all the inequities of the sexist and hypocritically moralistic social order

which shaped it" (1976, 154). Drawing on letters and articles from the *Feminist Alliance Against Rape Newsletter*, Bevacqua points out that "Whether or not individual crisis center workers agreed with a strategy of law reform, they understood that many of their clients would pursue their cases through police and prosecutors. ... Reformed laws ... helped them to present victims with an even greater number of choices" (2000, 107)

For feminists, this dual pursuit of legal and cultural change was an ideal place to use the symbolic power of law. As Marsh, Geist, and Caplan put it,

> The traditional view of the crime of rape has expressed the degrading notion that women would consent to a brutal, violent assault, or that their essentially vindictive nature would lead them to fantasize about and fabricate the occurrence of the crimes. ... Because old laws were predicated on this degrading and confining view of women, efforts to reform them represent more than a redefinition of the crimes. Such efforts are part of a larger statement that, as women move into more autonomous roles in society, their activities deserve to be acknowledged and respected. Reformed rape laws, then, reflect and legitimate the increasingly varied and independent roles and styles of behavior for women in society. They define the crimes in terms consistent with emerging concerns of women (1982, 3).

Law reform was thus seen as part of an ongoing attempt to recognize the realities of women's lives in the law, providing at least symbolic legal equality and recognition for women.

Activists were thus keenly aware of the role that law plays in shaping cultural perceptions that are then validated or justified by reference to law and legal evidence. Feminists sought to change the very definitions of rape to include groups that had previously been denied access to the criminal justice system (such as males and married women), encompass crimes that had not been considered rape (anything other than penile penetration of the vagina), and eliminate the most obvious barriers to prosecution (corroboration and "utmost resistance" requirements). In doing so, activists knew they were embarked on "an experiment in which we can hope to learn how a major revision in the criminal

code can deter, control, publicize, and equalize the treatment of a very destructive set of acts against human beings" (Marsh, Geist and Caplan 1982, 5).

Though optimistic about the potential of rape law reform, anti-rape activists were also keenly observant of the limitations and dangers they faced. Even before Scheingold (1974) was warning progressive law reform movements against a naïve reliance on the "myth of rights," feminist anti-rape activists demonstrated a striking awareness of the potentially negative impact of law reform on the political and intellectual capacity of the movement.

This ambivalence mirrors attitudes that permeate scholarship on law and social movements. Like law and society scholars, anti-rape advocates had a realist view that was not premised on faith either in the inherent justice and fairness of the legal system or in the individual men who made up that system. Like their academic counterparts, advocates were conflicted about the potential misuse of rape law reform, yet keenly aware that law reform offered an unparalleled opportunity to do work reshaping cultural perception of sexual violence. Grassroots advocates even anticipated some of the more problematic aspects of law reform in advance of academic research. In particular, anti-rape activists stressed over and over again the potential misuse of rape law reforms. These advocates recognized that law's malleability, indeterminacy, and power could work to their advantage, but that these same qualities also made reforms vulnerable to co-optation.

The politics of rape law reform

Anti-rape groups drew on New Left and feminist analyses of power that pointed out problems with the turn to law. The New Left origins of women's

liberation contributed to an anti-establishment stance among feminist groups (Haag 1996). As one participant in the New York Radical Feminists conference is quoted as saying in rejecting overly punitive rape law reforms, "'[t]he authoritarian society is our enemy,'" (Connell and Wilson 1974, 125). Many advocates were repulsed by the idea of working with a criminal justice system that was deeply implicated in class and race discrimination, and further "question[ed] the efficacy of a social change strategy to be implemented by a male-dominated institution" (Marsh, Geist and Caplan 1982, 14; see also Connell and Wilson 1974; Brownmiller 1975; BenDor 1976; Bevacqua 2000).

Second-wave histories of rape stressed the ways that law had been complicit in the kinds of oppression and discrimination that feminists argued contributed to sexual violence; thus reformers were realistic about the ways that reforms might be used to justify other interests or political agendas. Concerns about the potential misuse of rape reforms influenced the political tactics of groups and limited the possibilities for reform.

In recounting the success of rape law reforms, Largen felt compelled to warn that "[w]hile the women's movement continues to focus upon the societal sexism inherent in rape, society itself is taking up the rape issue under the 'law and order' banner. This banner provokes emotion but fails to deal with the source of the problem; it is a Band-Aid solution to an injury which requires major surgery" (1976, 72). Such concerns were not misplaced; conservative forces attempted to weaken model rape law in Michigan even as they exploited the rhetoric of fear and victimization provoked by discussions of rape (Marsh, Geist and Caplan 1982; see also Connell and Wilson 1974).

Skepticism about the criminal response to rape also limited the kinds of reforms activists believed they could consider. Feminist groups in New York considered but ultimately rejected a gender-neutral scheme that would have re-categorized rape as assault in order to eliminate most of the obstacles to prosecuting sex crimes. The proposed assault law was discarded largely because "[w]omen have learned through bitter experience that reforms that they have fought for can be used to further their oppression. It is not inconceivable that our male-dominated legal institutions would greatly lessen the penalties for rape if it were viewed as assault, especially since many lawyers and judges seem unable to distinguish between voluntary and involuntary intercourse" (Connell and Wilson 1974, 130).

Rape law reform was not only a project of progressive feminist groups. Calls for more police, better prosecution, and harsher sentences were echoed by law and order legislators and lobbing organizations. Conservative political movements were strong critics of the rising tide of sexual violence[21] though they often located the problem with the women's liberation movement and the corresponding moral laxity and disintegration of the family they believed it encouraged. As early as 1973 conservative opponents of the movement had seized upon feminist concerns about sex crimes as a way to attack women's liberation as dangerous to women themselves (Eisenstein 1984). Participants in the anti-rape movement were not blind to these problems. One discussion of rape reform efforts warns that "[w]hile the women's movement continues to focus upon the

[21] FBI statistics showed a sharp increase in reported rapes after 1960, though the rates may reflect an increase in the number of actual crimes committed as well as changing attitudes about reporting rape (Bourque 1989; Marsh 1982).

societal sexism inherent in rape, society itself is taking up the rape issue under the 'law and order' banner. This banner provokes emotion but fails to deal with the source of the problem; it is a Band-Aid solution to an injury which requires major surgery" (Largen 1976, 72). Despite this awareness, it was almost unavoidable that when anti-rape groups called for stronger responses to sex offenses, conservatives often added their voices—and their policy preferences—to the chorus (Geis 1977).

Nevertheless, feminist activists were willing to work with ostensible "enemies" such as conservative legislators and local police and prosecutors, in order to enact rape law reform. Feminists wielded law reform as a tool for progressive social change because their demands were the basis for change, and because women's groups crafted legislation rather than merely reacted to it. Feminist groups worked with sympathetic local experts while maintaining access and ties to the wider women's movement, making for a powerful combination of legal expertise, political mobilizing, and media outreach. Drawing on these various sources of support, feminist reformers worked with conservative groups to enact reform without being co-opted.

Unanswered questions

Though interpretive studies are careful to acknowledge a complex and multi-directional relationship between movement and legal institutions, this study attempts to compensate for two key shortcomings in many interpretive studies of the politics of law reform: the short time period covered by most studies, and an over-reliance on self-reports by movement activists to gauge the impact of law on movements and individuals.

Few of the interpretive case studies cover a sufficiently long time period to account for the ways that legal institutions adopt and re-shape the new ideas, concepts, and meanings supplied by reformers. Though most studies describe the immediate response to movement demands, few follow these responses over a long time to see if and how they change as new ideas are adopted, resisted, and re-deployed by legal institutions. As a result, we have a good deal of knowledge about how the initial stages of mobilization evolve, but much less about how legal practices and institutions respond to the challenges posed by these new ideas. In seeking to understand how legal institutions re-interpret social change I do not mean to return to a court-centered analysis of compliance. Rather, my emphasis is on interpreting legal responses as part of the ongoing struggles over the symbolic and material content of law, recognizing that the broader impact of reform may take years to assess.

To assess these multiple kinds of impact and avoid what I see as the second problem of interpretive legal research on social movements—the over-reliance on self-reports by movement activists—I incorporate the multiple methods and sources described in Chapter One. In this case study interviews with RCAs often provided enough internal contradiction to enable a critical reading of their attitudes; incorporating these interviews into a longer historical view of the movement and contrasting them with a broader picture of the events around Megan's Law helps to highlight places where activists do not necessarily provide the most accurate assessment of their work. These interviews also point out the inaccurate assumptions made by academic researchers about rape crisis workers, and offer intriguing insights about the impact of rape law reform.

CHAPTER 3—MAKING MEANING IN MEGAN'S LAW

When feminist activists engaged criminal justice systems through rape law reform, they expected significant change. Though anti-rape activists were cautious and skeptical about the ability and willingness of the state to adopt and enforce feminist definitions of rape, activists nonetheless saw pragmatic and symbolic benefits in starting a conversation with the state. Accounts of the anti-rape movement point to the increase in victim services, improved rates of arrest and prosecution for sex crimes, the expansion of sex crimes definitions to include males and married individuals, legal protections such as rape shield laws, and the presence of rape crisis advocates in courts and at hospitals as evidence of real successes (Bevacqua 2000; Gornick, Burt, and Pittman 1985; Marsh, Geist, and Caplan 1982; Spohn and Horney 1992). But ultimately how successful was this conversation between feminist activists and legal institutions? Did the dialogue between reformers and legal actors really shift the state's understanding of and response to sexual violence?

In this chapter I examine the legal practices that have emerged around implementation of Megan's Law, focusing on New Jersey.[22] Close attention to what government, law enforcement, and criminal justice personnel are actually doing to make Megan's Law meaningful in New Jersey provides a sharp contrast to the existing scholarly literature on sexual predator laws, which generally draws on scattered, decontextualized examples from different jurisdictions, and

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[22] New Jersey serves as an important model for several reasons: first, because its widely-discussed law served as a template for many other states; second, because its laws have had time to mature through statutory amendment and regulatory and judicial interpretation; and third, because New Jersey is recognized as an innovative and liberal leader in criminal matters.

depictions of the success of the anti-rape movement in changing the legal response to rape. These studies, while thought-provoking and insightful, generally fail to account for the ways that different legal practices—case processing, constitutional challenges to the laws, ground-level enforcement—are nested together in sometimes surprising relationships that advance some of the stated purposes of Megan's Law while neutralizing or even hindering others. A fine-grained portrait of Megan's Law helps to illuminate how sexual predator laws reflect and change social and legal constructions of sexual violence.

This chapter shows that Megan's Law uses the trappings of feminist rape law reform to challenge feminist arguments about rape. Megan's Law invokes intellectual, political, and rhetorical devices associated with progressive rape reforms proposed by feminists to reinforce an understanding of sexual violence that resurrects the image of the rapist as a physically violent and psychologically abnormal stranger. My discussion focuses on the two most important parts of Megan's Law: the classification of sex offenders into tiers (and hence, designating some of them as "sexual predators"), and the procedures around community notification. These practices illuminate the complex relationship between law, legal processes, and the cultural production of sexual violence; relationships that are unanticipated and unanswered by critiques of sexual predator laws.

Understanding Megan's Law: Research on sexual predator laws

As I discussed in the introduction, feminist activists and scholars have been almost completely silent about Megan's Law. But the absence of feminist commentary has not meant that the issue has gone unnoticed; indeed, Megan's Law has spawned a cottage industry of law review articles on state and federal

laws.[23] Most of these articles, obviously too numerous to cite here, take a position for or against the laws based on a "balancing" perspective that weighs the rights of children versus those of convicted sex offenders (Martin 1996; Rudin 1996; Schopf 1995). Others provide detailed descriptions of state laws and assess potential legal challenges to the statutes (Fernsler 1998; Fischer 1997; Gfellers and Lewis 1998; Greissman 1996; Schramkowski 1999). These articles, while helpful in illuminating the specifics of various states' legislation, don't shed much light on the questions about the relationship of law to social meaning. When authors do invoke the symbolic content of the laws it is most often in a disparaging context that accuses the laws of "empty symbolism" and uses metaphors such as "the scarlet letter," "pariahs," and "the mark of Cain" to describe the law's symbolic functions (Earl-Hubbard 1996; Farber and Sherry 1996; Kabat 1998; Kuperman 1996). Such interpretations portray law as an entirely repressive force, using its power to savagely subdue and suppress sex offenders—for good or bad.

Empirical research takes much the same straightforward approach to examining Megan's Law. Because of the speed with which states implemented their statutes, researchers and governmental agencies are playing "catch up" to document the range of state responses to sex offenders and ensure that these comport with federal requirements (Adams 2002; English, Pullen, and Jones 1997). Authors have examined how supervision and notification components of sexual predator statutes can overwhelm local law enforcement bureaucracies

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[23] A June 2003 Lexis search for law review articles including the terms "Megan's Law" or "sexual predator law" appearing at least three times in the text produced over 250 references.

(Zevitz and Farkas 2000), raised questions about the reliability of risk assessment procedures (Campbell 2000), and found limited evidence that community notification can prevent sex crimes (Petrosino and Petrosino 1999; Schram and Milloy 1995). These studies point to interesting areas for further investigation, but fail to ask why Megan's Law has the form or impact that it does.

A somewhat more nuanced picture emerges from several historical studies that document the evolution of Megan's Law, from the sexual psychopath laws of the 1920s and 1950s to contemporary versions. Edwin Sutherland's work, published during the wave of sexual psychopath laws enacted in the 1950s, foreshadows many of the issues that would be raised by contemporary scholars. Sutherland (1950) used the sociological framework of a "panic" to explain the cycle of rising fear incited by isolated but highly-publicized incidents, followed by a legislative response out of proportion to the actual rate of crime, which then encouraged law enforcement to seek out individuals who fit the legislative profile.

Recent observers have added detail and scope, but don't stray too far afield from Sutherland's analysis. In his exhaustively detailed work on sexual psychopath laws, Jenkins (1998) also uses the language of "moral panic" to account for the emergence and disappearance of sexual predator laws, relating recent laws to the confluence of activism on rape by feminists, child advocates, and victim's rights groups. Freedman's (1987) analysis places the 1950s wave of statutes in the context of a society-wide anxiety about gender roles in the post-World War II era, and links these anxieties to the medicalization of "deviant" sexual behavior. Similar themes arise in Denno's account, which traces the legal development of sexual predator laws. Her project focuses on the "unintentional"

and unfair results of registration and notification statutes that arise from trends toward the "increasing importance placed on children and the family during the twentieth century; and ... the criminal justice system's promotion of the medical model ... of deviance" (Denno 1998, 1318-9).

In all three of these works, and most importantly in Jenkins, scholars assume the irrationality of sexual predator laws. Since these writers argue that incidents of sexual abuse (especially of children) are vastly overdramatized, the laws represent little more than an hysterical over-reaction to an imaginary problem. The "panic" understanding of Megan's Law, a very common and persuasive criticism, too easily slides into requiring skepticism about the prevalence of sexual abuse itself. Though Jenkins, for example, purports to remain a strict "constructionist" in his analysis of child sexual abuse, he is clearly dismissive of feminist claims about the widespread nature of serious sexual abuse.[24]

Some studies pick up on the concerns evident in these historical assessments of sexual psychopath laws and seek to understand how Megan's Law functions in relation to other social and political structures. These articles see sexual predator laws as generating new kinds of knowledge and reflecting important trends in the uses of law as social control. Drawing generally on

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[24] Jenkins uses the term "panic" to describe "fear that is wildly exaggerated and wrongly directed" as he argues occurred "quite spectacularly in eras like the mid-1980s. ... Statements that in calmer years would mark the speaker as hyperbolic or paranoid suddenly acquire the status of incontestable fact, while skeptics are pitied for their callous denial" (1994, 6-7). In recounting the "discovery" of child sexual abuse in the 1970s he admits that while "the new construction of the problem cannot be described as a groundless panic," "these claims were embellished" by "assimilating all minor forms of deviancy with the most threatening acts of sexual predation" (1994, 119).

themes that Scheingold (1998) summarizes in his article on his article on the "new political criminology," these authors look at crime control as a way to extend and generate political power; these critics often employ a postmodern lens that is skeptical about the capacity and motivation of the modern, liberal state. This provocative perspective provides a much more interesting and persuasive explanation for the emergence and swift adoption of sexual predator laws across the United States. In looking at both the symbolic and practical effects of Megan's Law, these studies argue that Megan's Law offers important lessons about relationships between crime control and the power of law—lessons that were similarly at stake during the earlier wave of rape law reform initiated by feminists. I focus briefly on this literature as it raises some of the most profound challenges to Megan's Law, yet is still circumscribed by the lack of attention to the specific function and utility of rape in the laws.

Like feminist rape reformers, critics of contemporary sexual predator laws see the role of the offender as pivotal in the justifications for Megan's Law. Cole's (2000) thorough history of how "psychiatric knowledge" functioned in New Jersey to diagnose and treat those offenders deemed "psychopaths" notes how these decisions reflected and consolidated the power of psychiatrists and of the criminal justice system. Kennedy investigates the symbolic and political utility of "monstrous offenders," such as sex offenders, arguing that the desire to imagine and punish such offenders is the result of "changes, divisions, and tremors in our social and economic structure over the last several decades" that have eroded "social solidarity," resulting in "the hyper-punitiveness of our criminal justice practices" (2000, 830). Simon also uses the language of monstrosity to assert

that sex offenders "have become a lesson in the intransigence of evil," evil that supposedly defies the capacity of psychological and psychiatric expertise. Simon sees this intransigence, manifested in the sexual predator laws upheld by state and federal courts, as evidence for a "new penology" that is "largely immune from constitutional limits established by judicial review" (1998, 452).

The (un)democratic implications of these laws are developed most thoroughly in articles by Simon (2000) and Pratt (2000). Though the authors pursue different agendas, both stress how Megan's Law exemplifies new trends in the uses of law for social control.

In Simon's work, the objects of the new penology—an approach he calls "governing through crime"—are not simply criminals, but whole networks of political and social interactions and identities. "Governing through crime increasingly includes efforts to govern victims themselves and not just criminals or those suspected of crimes. ... [S]exual offender notification laws like Megan's Law aim at affecting the behavior of the innocent in the name of managing the dangerous. ... Indeed, one might think of crime prevention as a way of governing the less controllable (potential criminals) through manipulating the more controllable (potential victims)" (Simon 2000, 1133). For Simon, then, Megan's Law functions to fundamentally reconfigure relationships between government and citizens, typically in ways that result in greater docility and control of non-criminal individuals.

Where Simon is primarily concerned with crime as a strategy of governance, Pratt connects these laws to institutional shifts in political, social, and economic conditions, especially the emergence of the modern welfare state.

He points to an emerging "culture of intolerance," fueled by political and economic uncertainty, that is moving legal punishment "beyond the established parameters that had hitherto been set for it in modern society and is prepared to draw on crime control strategies that have more affinity with premodern or nonmodern societies" (Pratt 2000, 136). Pratt argues that earlier waves of sexual psychopath laws were "a passing moment," overturned by "a growing culture of tolerance and social solidarity" inspired by the security afforded by the modern welfare state.[25] Pratt blames the resurgence of these laws on the shrinking, neo-liberal welfare state. At the same time that new cultural arrangements afford citizens opportunities, the rise of the late modern state also demand a high price in "increased vulnerability and anxiety" (Pratt 2000, 147). Sexual predator laws ease this anxiety by identifying criminals and "empowering" local communities to deal with them. Like Simon, Pratt sees sexual predator laws as instrumental in shaping the conduct of the fearful, potential victims who constitute the rest of society (Pratt 2000, 148).

These studies, which see the cultural power of law as part of strategies for governing, present the most sophisticated and far-reaching criticisms of Megan's Law. As provocative as they are, these authors nevertheless fail to account for the ways that Megan's Law co-opts and deploys progressive, usually feminist, rhetoric about sex crimes. Without this perspective, existing research fails to apprehend that Megan's Law is not merely an illustration of "governing through crime control" that is fungible with other new punitive measures, but that it is

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[25] Pratt's work is cross-national, drawing primarily on the U.S., U.K, and Australian experiences. He points to the relative weakness of the welfare state in the U.S. as likely related to its status as the country with the most wide-ranging and draconian sexual predator laws (2000, 149).

also a specific response to the challenges feminist rape reforms posed to social, cultural, and legal institutions that structure gender, sexuality, the family, and so on. Megan's Law is a viable project precisely because it so successfully adapts progressive, feminist rhetoric and tactics to ends that further coercive state power.

Identifying sexual predators: Sex offender registration

As the laws in New Jersey currently stand, thousands of sex offenders are required to register with local law enforcement officials. Registration requirements apply to some previously convicted sex offenders and to individuals who were in state custody at the time the law was passed.

The first group of offenders required to register are those who committed or attempted to commit more serious sex crimes[26] and who were found by a court to exhibit "a pattern of repetitive, compulsive behavior" (Guidelines 2000, 6). These repetitive, compulsive offenders must register regardless of when the offense was committed or the offender was released from state custody. Implementation of the laws against this group raised ex post facto concerns, but was upheld in *Doe* because it was a carefully tailored remedial measure.[27]

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[26] Offenses requiring retroactive registration are aggravated sexual assault, sexual assault, aggravated criminal sexual contact, or kidnapping.

[27] The Court justified this on the grounds that

> The law does not apply to all offenders but only to sex offenders, and as for those who may have committed their offenses many years ago, it applies only to those who were found to be repetitive and compulsive offenders, i.e., those most likely, even many years later, to reoffend, providing a justification that strongly supports the remedial intent and nature of the law. It applies to those with no culpability, not guilty by reason of insanity, those who would clearly be excluded if punishment were the goal but included for remedial purposes. And it applies to juveniles, similarly an unlikely target for double punishment but included for remedial protective purposes (*Doe* 1995, 129-30).

The second group of offenders required to register are those who were convicted or in State control[28] on or after the effective date of Megan's Law, and who were convicted of a broad range of sex crimes.[29] These offenders are not required to exhibit a pattern or repetitive, compulsive behavior; conviction for one of the enumerated offenses is sufficient to trigger the registration requirement.

Sex offenders are notified of their "duty to register" either through the mail (in the case of previously convicted sex offenders not in State custody on October 30, 1994) or before they are released from state custody.[30] Offenders complete a "Sex Offender Registration" form at the local police station or prior to their release from custody. Eligible offenders are required to provide their name, a recent photograph, a physical description, specifics of the convicted sex offense, home and employment or school addresses, vehicle description, and license plates (Guidelines 2000, 24). After the initial registration repetitive and compulsive offenders are required to re-register every 90 days; all other offenders must re-register annually or if they change their address. Failure to register is a crime of the fourth degree.

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[28] Offenders under State control include those who are incarcerated, on probation or parole, or confined in another state institution.

[29] Offenders are required to register if they are convicted, adjudicated delinquent, or found not guilty by reason of insanity for completed or attempted acts of: aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child; endangering the welfare of a child; luring or enticing; criminal sexual contact if the victim is a minor; kidnapping, criminal restraint, or false imprisonment if the victim was a minor under the age of 18 and the offender is not a parent/guardian of the victim.

[30] Additionally, "[o]ffenders moving to this State must notify the chief law enforcement officer of the municipality or the State Police within 70 days of their arrival in New Jersey," (Guidelines 2000, 8).

When notified (by state personnel or the offender him or herself) that an eligible sex offender resides in the district, the county prosecutor uses the Registrant Risk Assessment Scale (hereinafter Scale; see page 72) to determine the risk of reoffense and corresponding level of community notification. The Scale is an actuarial risk assessment instrument developed by a committee of experts convened by the State Attorney General to predict the likelihood of reoffense and the likely harm to the community should reoffense occur (Guidelines 2000). The prosecutor completes the Scale and computes a score for the offender. The score classifies the sex offender into one of the three tiers designated by the Legislature: low; moderate; or high risk to reoffend. Tier assignment is linked to community notification—the higher the assessed risk of the offender, the more far-ranging and public the form of notification. Eligible offenders are then served with notice of their Tier assignment and proposed level of community notification. Offenders may appeal Tier assignment and the concomitant scope of notification at a hearing before a special judge.

Appeals of Tier assignments and the concomitant scope of notification can come on several grounds: that their score on the Scale is factually inaccurate (usually disputing the inclusion or scoring of particular offenses); that the score does not accurately reflect the offender's risk to the community, or that

community notification should be limited or tailored for the offender's circumstances.[31] Notification is put on hold until any appeals are complete.

Once the registrant's tier assignment and scope of notification is finalized, the community notification process begins. Notification is typically based on tier assignment and disseminated to the following groups:

Tier One (low risk to reoffend): law enforcement likely to encounter the offender;[32]

Tier Two (moderate risk to reoffend): law enforcement, and schools and community organizations likely to encounter the offender;

Tier Three (high risk to reoffend): law enforcement, schools and community organizations, and members of the public likely to encounter the offender.

The Scale is a logical place to start talking about the legal practices surrounding Megan's Law, since it is the primary instrument through which registration and community notification are effected. The accompanying

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[31] In decisions since *Doe*, the NJ Supreme Court has directed trial courts to tailor community notification in situations where the facts of the case suggest either broader or more narrow notification than that required in the Guidelines. Court rulings limiting the scope of community notification were partially overridden by a constitutional amendment passed by voters in the state in 2000. That amendment permitted implementation of an internet website to disseminate information about offenders designated as Tier Two or Three (NJSA § 2C:7-12).

[32] Based on guidance from the NJ Supreme Court, the Guidelines define the term "likely to encounter" to mean

> that the law enforcement agency, community organization or members of the community are in a location or in close geographic proximity to a location which the offender visits or can be presumed to visit on a regular basis. ... In addition to geographic proximity, there must also be a "fair chance to encounter" the offender. "Fair chance to encounter" shall mean for purposes of these guidelines that the types of interaction which ordinarily occur at that location and other attendant circumstances demonstrate that contact with the offender is reasonably certain. For example, barring other attendant circumstances, it is not reasonably certain that there is a 'fair chance to encounter' an offender at a gas station where the offender stops merely to buy gas and has no more extensive contact or interaction (Guidelines 2000, 13-14).

Registrant Risk Assessment Scale Manual (hereinafter Manual) describes the vital role of the Scale in registration and notification:

> The purpose of the scale and this accompanying manual is to provide Prosecutors with an objective standard on which to base the community notification decision ... and to insure that the notification law is applied in a uniform manner throughout the State. The Risk Assessment Scale was rationally derived by a penal of mental health and legal experts by the following processes: 1) the selection of risk assessment criteria that have empirical support; 2) the weighting of these pertinent risk assessment criteria and 3) the use of sample cases to assist in the setting of numerical cut-off points for low, moderate and high risk scores (Manual 1998, 1).

The Scale measures risk of reoffense through several sections ("Seriousness of offenses," "Offense history," "Characteristics of offender," and "Community support"), each of which is broken down into several individual items for even more precise scoring.[33] The Scale is therefore explicitly couched in the language of expertise and scientific neutrality that Jenkins, Pratt, and Simon regard as an important, beneficial component of a civilized and rational approach to sex crimes. This same frame, however, is also explicitly used to displace feminist arguments that rape is an expression of gendered inequality by depoliticizing and individualizing experiences of sexual violence. The project becomes one of establishing "objective" principles and procedures that are actually deeply informed by this particular understanding of rape. The experts on rape are no longer feminists nor even victims themselves, but instead "mental health and legal experts" whose institutional and disciplinary frameworks explicitly preclude viewing rape as a product of systemic or class-based violence.

This image of neutral objectivity and scientific precision is invoked throughout the Scale and the accompanying Manual. However, the Manual

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[33] The sections are weighted differently to reflect the Legislature's guiding concern about specific kind of criminals—repeat sex offenders who commit physically violent assaults against minor children.

REGISTRANT RISK ASSESSMENT SCALE

Criteria	Low Risk	0	Moderate Risk	1	High Risk	3	Comments	Total
Seriousness of Offense x5								
1. Degree of Force	no physical force; no threats		threats; minor physical force		violent; use of weapon; significant victim harm			
2. Degree of Contact	no contact; fondling over clothing		fondling under clothing		penetration			
3. Age of Victim	18 or over		13-17		under 13			
							Subtotal:	
Offense History x3								
4. Victim Selection	household/family member		acquaintance		stranger			
5. Number of Offenses/ Victims	first known offense/victim		two known offenses/victims		three or more offenses/victims			
6. Duration of Offensive Behavior	less than 1 year		1 to 2 years		over 2 years			
7. Length of Time Since Last Offense	5 or more years		more than 1 but less than 5 years		1 year or less			
8. History of Anti-Social Acts	no history		limited history		extensive history			
							Subtotal:	
Characteristics of Offender x2								
9. Response to Treatment	good progress		limited progress		prior unsuccessful treatment or no progress in current treatment			
10. Substance Abuse	no history of abuse		in remission		not in remission			
							Subtotal:	
Community Support x1								
11. Therapeutic Support	current/ continued involvement in therapy		intermittent		no involvement			
12. Residential Support	supportive/ supervised setting; appropriate location		stable and appropriate location but no external support system		problematic location and/or unstable; isolated			
13. Employment/ Educational stability	stable and appropriate		intermittent but appropriate		inappropriate or none			
							Subtotal:	
							Total:	

Scoring: **Highest possible total score = 111**
Low range: 0 - 36 **Moderate range: 37 - 73** **High range: 74 - 111**

From the *Attorney General Guidelines for the Implementation of Sex Offender Registration and Community Notification Laws* (Guidelines 2000).

regularly refers to feminist understandings or language about rape without addressing any of the associated critiques of violence, gender, or inequality that were central to the feminist anti-rape movement. As a result, political claims about the nature of offender risk and victim harm, about re-offense rates and predatory behavior, are all couched in the language of psychological expertise that refuses to see the contradictions in its formulation of sexual predators.

A conceptual and rhetorical centerpiece of the feminist anti-rape movement was the claim that "rape is violence, not sex." Feminists focused on violence as a way to insist on the harm of sexual assaults and to counter beliefs that rape was motivated primarily by uncontrollable sexual urges. However, it proved easy for non-feminist researchers, writers, and lawmakers to treat rape "just like" other violent crimes, by refusing to see the sex in rape as a specific form of violence. This is reflected in elements of the Scale that refuse to see unwanted sexual contact as expressing force.

In the "Seriousness of the offense" section of the Scale, offenders are scored on the degree of force, degree of contact, and age of the victim. The Manual describes the importance of the degree of force as "the seriousness of the potential harm to the community if reoffense occurs" (Manual 1998, 6). The low risk examples provided are "intra- or extrafamilial child sexual abuse in which the offender obtains or attempts to obtain sexual gratification through use of candy, pets or other nonviolent methods; offender exposes self to child; offender

fondles adult victim without use of force" (Manual 1998, 6).[34] The degree of contact item creates a similar elision of violence from sex. It is logical that the sexual contact is primary—the harm is derived from the extent to which the assault looks like intercourse. Thus, "fondling over clothes" or "exhibitionism" is given a low score, while the highest score is reserved for "penetrat[ion] [of an] orifice with object, tongue, finger, or penis" (Manual 1998, 6).[35]

But the Scale defines many forms of sexually violent behavior as resulting in little harm to the individual or community should they re-occur. Without evidence of externally visible physical force, it is apparently difficult for the designers of the Scale to perceive sexually violent behavior. The problem with rape is presumed to be with the force used or the degree of penetration, not with the loss of autonomy or sovereignty or the lack of consent by the victim. Thus behaviors like "seducing" a child and fondling an adult are calculated as presenting the same risk and harm as exhibitionism, because the law sees none of them as employing externally visible levels of coercion or violence. That radically different levels of force may actually be present—the distinguishable difference between exhibitionism and imposing unwanted sexual contact on adult—is

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[34] The Manual also provides examples of moderate and high risk examples. Moderate risk examples are, "offender threatens physical harm or offender applies physical force that coerces but does no physical harm, for example, by holding the victim down; the offender uses verbal coercion against a child victim, for example, by telling a child victim that he will get 'in trouble' or 'won't be loved' if he tells anyone of the abuse." A high risk offender "causes lasting or substantial physical damage to victim, or ... uses or is armed with a weapon," (Manual 1998, 6).

[35] According to the Manual, "[i]f one is dealing with a compulsive exhibitionist, although there may be a high likelihood of recidivism, the offense itself is considered a nuisance offense. Hence, the offender's risk to the community would be judged low, consistent with the low legal penalties associated with such offenses. Conversely, with a violent offender who has a history of substantial victim harm, even a relatively low likelihood of recidivism may result in a moderate or high potential risk to the community given the seriousness of a reoffense," (Manual 1998, 2).

invisible to observers who only see the harm of rape when it looks like physically violent intercourse.

This approach apparently mirrors feminist reforms that created a "step" approach to sexual assault (Marsh, Geist, and Caplan 1982; Spohn and Horney 1992), but in contrast separates out some crimes as creating "no risk" to the community. The score of zero given to low risk behaviors is different in form and substance from feminist reforms that actually attempted to *increase* prosecution of these crimes by bringing them within the scope of the criminal law, and by creating reasonable definitions and penalties that law enforcement personnel could accept. Megan's Law, to the contrary, seeks to exclude these crimes from consideration, minimizing assaults that do not conform to a reified notion of sexuality as residing in certain organs and acts, or a limited understanding of violence that is expressed through physical abuse.

The age of the victim presents another conflict for the "rationally derived" Scale. The Scale was designed to reflect the legislative concern about sexual offenses committed against children. The legislative determination included the finding that sex offenses against children are quantitatively and qualitatively different than those committed against adults.[36] Though there is deep and genuine disagreement in the sex offender research community about the causes of sexually abusive behavior toward children and the prospects for rehabilitation

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[36] The Legislature also went on to find that there were even differences between (assumed male) heterosexual and (assumed male) homosexual pedophiles.

> Studies describing recidivism by sex offenders indicate the severity of the problem the Legislature addressed in Megan's Law. Studies report that rapists recidivate at a rate of 7 to 35%; offenders who molest young girls, at a rate of 10 to 29%, and offenders who molest young boys, at a rate of 13 to 40% (*Doe* 1995, 20).

of adults who sexually abuse children, the committee dutifully performed its assigned task to find that individuals who act out sexually with children under the age of 13 present the greatest risk to the community. At the same time, the focus on the externally obvious physical violence acts to balance out the score for most offenders who assault children known to them and who rely on threats, manipulation, or bribery rather than weapons or physical violence. This contradiction suggests that rather than developing a model that tried to accurately reflect research on the prevalence and forms of sexual assault, the committee simply developed a way to identify sexual predators to fit the pre-determined notion that stranger offenders pose the most serious risk to the community. By invoking the anti-rape movement's legacy of protecting victims through rape shield laws, Megan's Law re-inscribes a problematic privileging of some victims over others (formerly on the basis of race or class; in Megan's Law on the basis of age and characteristics of the assailant) that feminists fought to eliminate.

Just as violence is required to make rape recognizable, so too must offenders fit the image of a sexual predator. Offenders whose victims are household or family members are deemed low risk, scoring a zero on the "Victim selection" criteria, while strangers ostensibly present the greatest threat. According to the Manual, "[v]ictim selection is related to likelihood of reoffense (with intrafamilial offenders having the lowest baserate of reoffense) as well as risk to the community at large" (Manual 1998, 6). The Manual does not cite its sources for conclusions about reoffense rates, much less qualify its statements with undisputed findings that incest and other forms of familial abuse are the

most under-reported form kind of sexual abuse, and the least likely to be successfully prosecuted through the criminal justice system (Simon 1996).

This approach fundamentally misunderstands the character of incest as a less serious, even benign form of sexual abuse. The Guidelines dwell at length on the harms done by strangers, though they rarely acknowledge that the types of assaults most feared by the public—the physically violent genital rape of a child by a stranger—are a tiny fraction of assaults. Incest offenses, in comparison, constitute approximately 46% of *convictions* for sexual assaults committed against children (Langan and Harlow 1994),[37] often occur over several years, and are committed against a victim who is usually dependent on the abuser for the most basic life necessities. Furthermore, despite common assumptions that incest is less physically violent than assaults against strangers, about 25% of parent-child sexual assault resulted in what the government defines as a "major injury"—"severe lacerations, fractures, internal injuries, or unconsciousness" (Greenfeld 1997). Nevertheless, incest often relies on a kind of violence that many non-feminist observers choose to ignore and thus is simply eliminated from consideration in the Scale. The Scale's inclusion of mental illness and social deviance as markers of sexual pathology helps to further exclude and reward more privileged individuals who have not otherwise come to the attention of the criminal law. It also reinforces the political and legal resistance to feminist interpretations of sexual violence by family and friends that threaten to destabilize the public/private dichotomy.

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[37] According to the same report, another 50% of convictions were obtained for offenses against children under 12 committed by friends and acquaintances; only 4% of convictions were against stranger assailants (Langan and Harlow 1994).

The "Offense history" and "Characteristics of the offender" sections of the Scale draw on decades of psychological research on rapists to present a picture of sexual violence as motivated by or at least closely associated with mental health problems or social abnormalities. This approach is a return to the idea of the "crazed rapist" that dominated the criminal response to rape until the mid-1970s (Wells and Motley 2001). The myth of mental illness as the basis for rape has been a subject of critique since the early days of second-wave feminism. Writers have pointed out that assuming that rapists are mentally defective or deficient obscures the high number of sexual assaults and absolves rapists of political and legal responsibility for their actions (Brownmiller 1975; Griffin 1977; Largen 1976) In their thorough review of the literature, Allison and Wrightsman (1993) found few studies that demonstrated significant differences between most sex offenders and "normal" male control groups. The return of the "crazed rapist"—illustrated in the Scale—demonstrates the powerful pull of individualized, psychological explanations for rape that challenge and resist feminist arguments about rape as a tool of social and political control. This rhetoric had some grounds in feminist writings but were more often distorted caricatures seized upon and used by conservative opponents of feminist claims.

Though many authors argue that Megan's Law displaces psychological expertise (Cole 2000; Jenkins 1998; Pratt 2000; Simon 1998, 2000), implementation clearly shows this is not the case. The Scale does, however, demonstrate conflicts about the role of psychology. The legislature defines sexual violence as the product of mental abnormality resistant to treatment. This approach is not supported by the findings of mental health research, and in fact

could threaten the legitimacy of the psychological profession to diagnose, assess, and treat sex offenders. The Scale thus has to balance two competing interests: the legislative finding that sex offenders are unresponsive to treatment, and its pre-existing commitments[38] to the legitimacy of the psychological response to rape. This approach is not too far from the position of feminist rape reform activists who often supported treatment for individual offenders, but did not want mental health problems to serve as an exculpatory explanation for abusive behavior.

The solution presented by Megan's Law is to ever more tightly integrate the psychological approach to rape with law enforcement norms and practices, legitimating therapeutic intervention by incorporating it into the coercive apparatus of the state. Offenders are scored on several key items relating to their mental health. In each case, the state extends its power over convicted sex offenders by requiring them to engage in therapy and then punishing them for being honest. Psychologists use information gained in treatment of sex offenders to justify and extend the mechanisms of social control created by Megan's Law. At the same time, studies conducted on the tiny fraction of incarcerated sex offenders reinforce the supposed link between anti-social traits and sexual violence.

Some convicted sex offenders are genuinely interested in changing their behavior; if they are lucky, they are sent to the Adult Diagnostic and Treatment

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[38] I would include among these financial (the investment in an extensive range of research, diagnosis, and treatment services for offenders), liberal (the almost-moribund belief in individual rehabilitation), and patriarchal (to a depoliticized, individualized understanding of sexual violence) commitments.

Center (known as Avenel) in Woodbridge, New Jersey. If they engage in an honest and open assessment of their behavior, they may well disclose behaviors, assaults, and victims in addition to those for which they were convicted. Under the Scale, however, these disclosures will increase the offender's score on at least four important items, which could result in a higher tier assignment and wider range of community notification.[39] Under the Scale, however, these kinds of disclosure will increase the offender's score on at least four important items, which could obviously result in a higher tier assignment and wider range of community notification.[40] The Scale relies on and the courts have consistently upheld the use of non-conviction offenses in computing the registrant's score (*In re C.A., In re G.B.*). Offenders thus have a profound disincentive to openly discuss any history of offenses other than their conviction. The failure of psychological treatment of rapists is almost assured by the penalties for taking it seriously.

The Scale does not acknowledge this poses a catch-22 for offenders. Officials value treatment and therefore reward offenders who comply with designated protocols by assigning fewer points on the Scale for the "response to treatment" item, but this does not make up for the increased score that would accompany additional disclosures of suspect acts. Here the legislative interest in identifying and incapacitating sexual predators conflicts with the psychological response to rape premised on the medical model of individual rehabilitation. The

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[39] The items that would likely change after additional disclosures include victim selection, number of offenses or victims, duration of offensive behavior, and length of time since last offense.
[40] The items that would likely change after treatment include victim selection, number of offenses or victims, duration of offensive behavior, and length of time since last offense.

two models at work in Megan's Law—the unrepentant predator and the accidental offender—produce incoherence and inconsistency in the attempt to classify sex offenders.[41] Neither approach has a sufficiently developed explanation for rape to make judgments that are consistent with the varied expressions of sexual violence.

Therapy is not the only source of information about offenders. The Scale incorporates reports from the criminal justice system and other human services agencies in its assessment of perpetrator risk. The Manual states that an offender's

> [h]istory of antisocial acts is a good predictor of future antisocial acts, sexual and otherwise. The more extensive the antisocial history, the worse the prognosis for the offender. Antisocial acts include crimes against persons, crimes against property, and status offenses (for juveniles). Acts which are not the subject of criminal charges but that are credibly represented in the available records may be counted. ... Available documentation which can be considered may include evidence of truancy, behavioral problems in school or in a work situation, school suspensions, work suspensions, prior diagnoses of conduct disorder or oppositional defiant disorder. Acts perpetrated while incarcerated or committed may be included (Manual 1998, 8).

Documentation of these behaviors and characteristics—non-conviction offenses, history of anti-social acts, residential support, and employment or educational stability (items in the "Offense history" and "Community support" sections of the Scale)—are used to determine an offender's likelihood of successful reintegration into the community. The risk assessment required by Megan's Law prescribes

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[41] In 1998 the Legislative revised its findings and determinations regarding sexually violent predators to define more clearly the relationship between mental illness and sex offenses:

> Certain individuals who commit sex offenses suffer from mental abnormalities or personality disorders which make them likely to engage in repeat acts of predatory sexual violence if not treated for their mental conditions. ... 'Mental illness' is a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality, which causes the person to be dangerous to self, others or property. The nature of the mental condition from which a sexually violent predator may suffer may not always lend itself to characterization under the existing statutory standard, although civil commitment may nonetheless be warranted due to the danger the person may pose to others as a result of the mental condition (NJSA § 30:4-27.25).

and scientifically validates close legal scrutiny to the entire life-span of sex offenders. Ironically, this level of detail is also characteristic of feminist demands that explaining rape requires attention to specific context and circumstances, so that actions that are incomprehensible from one perspective (such as a victim's decision of whether to resist physically or to press criminal charges) are illuminated in context (a victim's history of prior abuse, knowledge about the offender's propensity to use violence, concerns about family safety). Again, the state uses feminist rhetoric and strategies to justify its own apolitical and anti-feminist response to rape.

The Scale relies on this history but does not attempt to control for the socio-economic differences that will likely emerge. The emphasis placed on documentation of non-conviction offenses, history of anti-social acts, residential support, and employment or educational stability (items in the "Offense history" and "Community support" sections of the Scale) means that offenders who have less social or economic privilege to insulate themselves from contact with the police or other social services will almost certainly be rated a more serious threat than offenders without such a background. Offenders from vulnerable or marginalized groups are more likely to have trivial acts recorded and seized on as evidence of pathology, while offenders who are white, moneyed, or otherwise privileged are able to keep the observational and diagnostic machinery of the

state at bay. The scoring system also penalizes those who may simply be poor—lack of stable employment and housing also counts against an offender.[42]

Nor do the courts seem willing to address its potentially discriminatory impact. In one challenge to the validity of the Scale the Supreme Court wrote that "[r]isk assessment experts generally agree that the best predictor of a registrant's future criminal sexual behavior is his or her prior criminal record. We emphasize that the focus on prior offenses is not due to any attempt at punishment but is rather a scientific attempt to better protect the public safety from registrants likely to re-offend" (*In re C.A.*, 1169-70). Scoring is thus justified on the basis of expertise, which is derived from empirically valid studies scientifically and systematically designed to permit researchers to obscure the kinds of bias criminal statistics enact.

Controlling sexual predators: Community notification

Implementation of Megan's Law has produced a series of practices that reflects interests and priorities not easily reconciled with the academic research reviewed earlier. In this section I discuss two ways that the rhetoric of community notification diverges sharply from legal practices: the development of notification exemptions, and procedures for Tier Two and Three community notification.

The "incest exemption" which has been articulated in several court decisions demonstrates that the category of the sexual predator is constructed to exclude large numbers of offenders. In the case *In re G.B.*, the New Jersey

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[42] This is a particularly cruel irony for offenders subject to Tier Two and Three community notification, as the publicity that attends notification makes the process of finding stable employment and housing even more difficult for released offenders (Zevitz and Farkas 2000).

Supreme Court ruled that a convicted sex offender whose Scale score placed him in Tier Two and thus subject to limited community notification could introduce expert testimony that might lower his Scale score. The justices also held that the trial judge making the final tier classification could reduce the offender's score and/or tailor community notification in cases that fell outside of the "heartland" of community notification. In this case, the trial judge was instructed to consider expert testimony that because his offenses were against a child in his family, the Scale score for G.B. was inappropriately high.[43] The Court permitted such expert testimony, but qualified it by saying that:

> We believe that few cases will involve facts that render the Scale score suspect. ... Only in the unusual case where relevant, material, and reliable facts exist for which the Scale does not account, or does not adequately account, should the Scale score be questioned. Those facts must be sufficiently unusual to establish that a particular registrant's case falls outside the 'heartland' of cases. We cannot define what those facts might be, but we can provide some examples. Here, G.B.'s offense occurred in the family home. The Scale calculations did not take this circumstance into account when computing his risk of reoffense. Registrant contends, with some support, that sexual offenders who commit their offenses within the family home pose less risk to the community than do other sexual offenders. ... Of course, we express no opinion here about the validity of that proposition. Rather, we note that arguments based on such evidence, if found persuasive by a court, may support a claim that the Scale calculations, although accurately performed, do not accurately establish the risk of reoffense for a particular registrant. In such circumstances, a Scale score may be 'overridden' (*In re G.B.* at 30-1, citations omitted).

The decision in *G.B.* was followed by another that extended the incest exemption. The Superior Court of New Jersey applied the standard articulated in

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[43] G.B. was indicted for aggravated sexual assault, sexual assault, endangering the welfare of a child, and child abuse for a variety of acts, including oral sex and intercourse, against a female cousin beginning when she was five and lasting for seven years. The charges were reduced to one count of second-degree sexual assault in exchange for a guilty plea, and he was sentenced to five years at Avenel (of which he appears to have served about 3 years), (*In re G.B.).*

G.B. to *In re R.F.*, a Tier Two notification appeal.[44] In excluding schools from receiving notification of R.F.'s presence in the community, the appellate court found

> nothing in the registrant's history and personal circumstances that rises to the level of clear and convincing evidence that he threatens the children attending the listed schools. His two previous sex offenses ... while abhorrent, were committed upon two helpless children who in one way or another were placed in his care, were members of the same household as he and to whom he had easy and convenient access. His acts arose from a trusting relationship between him and his victims. They were not 'predatory' in the sense of the Guidelines that he placed himself in a household which included these children in order to offend against them.
>
> Nothing in the evidence suggests that he is given to prowling schoolyards or other areas serving children (*In re R.F.*, 15-6).

It thus appears that the most typical kinds of sex offenders—those who abuse children in their care—will not be subjected to the kinds of community notification feared by critics. On the basis of the victim-offender relationship, then, judges may shield offenders by reducing their Tier classification or limiting community notification of their offenses. The incest exemption shows that, far from opening up categories and making overly vague generalizations, Megan's Law has a radically *underinclusive* definition of sexual violence. As far as the public is concerned, offenders who are not subject to community notification might as well not exist.

Civil libertarians allege that the dissemination of information about sex offenders will encourage vigilante violence and reprisals against identified offenders. In fact, there have been documented cases of threats and violence

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[44] R.F. is described in the decision as a neurologically impaired adult man with a history of sexual behavior toward minors. At fourteen he was found fondling the genitals of his three-year-old female cousin. In 1992 he was convicted for an assault on the ten-year-old son of his girlfriend that included "acts of fellatio and sodomy." (Interestingly, the court cites the completed Registrant Risk Assessment Scale, rather than original court documents, to find that the attack was carried out by "threats and minor physical force.") He was sentenced to eight years imprisonment and appears to have served about five years (*In re R.F.*, 3).

against sex offenders in several states including New Jersey, where the first round of community notification in 1995 led to the assault of two men, one of whom was mistakenly thought to be a sex offender (Nordheimer 1995). Based on the information available these types of violence appear to be rare (Matson and Lieb 1996; Zevitz and Farkas 2000).[45] The rarity of vigilantism may be due to the fact that notification doesn't work at all like critics or proponents claim. Even in the era of notification, information about the identity of sex offenders is often a closely guarded secret. In New Jersey, the state Guidelines limit community notification in ways that largely frustrate and undermine the stated goals of Megan's Law.

According to the last official numbers released by the State of New Jersey there are 8780 convicted sex offenders eligible for registration under Megan's Law (Administrative Office of the Courts 2002). Many of these offenders are not subject to community notification because they are designated as Tier One offenders (2829 individuals; 32%). There are an additional 2075 offenders (24%) whose Tier classification has not yet been finalized. That means less than half of offenders are currently eligible for community notification.

Notification does not work as expected in even those cases theoretically subject to public exposure. As practiced in New Jersey, notification is a byzantine process that rarely provides specific information about offenders to the public. In typical Tier Two notifications, identifying information is provided to school

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[45] These studies relied primarily on data collected from law enforcement agencies. Clearly there may be a reporting gap—sex offenders who experience harassment may not report it to authorities. Freeman-Longo (2002) provides some anecdotal information about harassment and discrimination against registered sex offenders.

principals, community groups that care for women and children, and law enforcement. Community members receive a notice that often simply states that a convicted sex offender lives in the neighborhood and provides no specific information. For higher risk Tier Two offenders, information may include a photograph and description, but does not include a home address. School principals and community group staff are required to go through an elaborately detailed process for receiving notices and are strictly warned not to distribute the information to inappropriate groups, such as parents or parent-teacher organizations, groups using school facilities, and students or program participants (Guidelines 2000, 31-7).

Classification as a Tier Three offender results in greater exposure. A notice with a photograph, description, and vehicle information is hand-delivered to all community members living in the specified area. These notices may include the offender's home address and place of employment. Tier Three status, which results in what is most commonly understood as Megan's Law, has been assigned to only 362 individuals in the state of New Jersey. Only 6% of *eligible* sex offenders are subject to the highest form of community notification; this is 2% of all registered sex offenders.[46]

Limitations on community notification might well seem obsolete in light of internet registries. The New Jersey Sex Offender Database, which went live in March 2002, provides a searchable database of offenders by county, township, zip code, name, or vehicle (www.nj.gov/njsp/info/reg_sexoffend.html). Internet

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[46] David DiSabatino provided assistance in wading through the state data to extract and make sense of these numbers.

sex offender databases present the closest approximation to the type of community notification strongly criticized by opponents of the law.[47] Under the referendum approved by New Jersey voters, all Tier Two and Three offenders are eligible for inclusion in the database.[48] Information about sex offenders available on the New Jersey website includes a photograph, physical description, tier assignment, aliases, a brief summary of offense and conviction information, "modus operandi/significant event details" (including the victim's age and sex),[49] and vehicle information.

The website also provides links to information on topics such as sexual assault education and prevention, "how can citizens help support the management of sex offenders in communities?", personal safety tips for children, and myths and facts about sexual assault. Not surprisingly, most of the information presented on the website reinforces the "stranger danger" approach to sexual violence. It overwhelmingly presents child sexual abuse as a problem committed by strangers, does not address sexual abuse of adults at all, and

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[47] Online databases listing sex offenders are clearly an important and growing component of the state procedures for managing sex offenders. By 2001, 29 states and Washington, D.C. had publicly accessible sex offender databases; six more states were developing or planning to develop an internet database for community use (Adams 2002).

[48] According to the website, the on-line registry "includes information pertaining to sex offenders determined to pose a relatively high risk of re-offense (Tier 3 offenders) and, with certain exceptions, information about sex offenders found to pose a moderate risk of re-offense (Tier 2 offenders). The Internet registry excludes any information about offenders determined to present a low risk of re-offense (Tier 1 offenders)" (New Jersey Sex Offender Internet Registry). The website does not specify which offenders are excluded; these include juvenile offenders, incest offenders, and some cases of "consensual sex," such as statutory rape (NJSA 2C:7-12).

[49] The offense and conviction history indicates the age category (e.g. "under 13," "adult") and sex of the victim. The modus operandi gives additional information about the crimes. Sample descriptions from the New Jersey database for Bergen county include the following offenses: "unlawfully entered victims [sic] home and assaulted her"; "subject assaulted female stranger"; "gains access to juvenile victims through family members"; "offender picked up a hitchhiker, took her into a wooded area and assaulted her"; "forcibly assaulted a female at gunpoint"; "offender broke into to home and assaulted victim. Victim was an acquaintance of offender"; and "gains access to juvenile victims while visiting a park."

presents state-approved treatment and rehabilitation as a viable option for reducing sexually violent behavior. Though the information is flawed and incomplete, the internet site offers more potential education to citizens than notification conducted by the police or mailed to citizen's homes.

In the New Jersey experience, however, the website provides another opportunity to limit the number and types of sex offenders exposed. Excluded from the online sex offender database are juvenile sex offenders[50] and individuals convicted of incest and statutory rape. These exclusions were supported by and indeed explicitly sought by members of the New Jersey Coalition Against Sexual Assault, who were concerned about protecting confidentiality of incest victims. Here the state's interest in masking the prevalence of incest coincided with rape care advocates' interests in victim confidentiality, resulting in a shared goal. Where earlier rape reform activists saw the prosecution of incest as contributing to social change by making visible its prevalence, contemporary state law enforcement officials used the trope of visibility as a threat against victims, thus persuading advocates that effacing incest was a better strategy than publicizing it.

As a result of offender appeals and exemptions, only 18% of *eligible* Tier Two and Three offenders are included in the database—just 6% of *all* registered sex offenders. This is a far cry from the assumption that all offenders are subject to notification. Again supporters of Megan's Law consolidate support for the laws through the illusion of providing complete, transparent information to the community.

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[50] Juveniles are still required to register under Megan's Law and may be subject to community notification, but are explicitly removed from the online database.

Nevertheless, policymakers and law enforcement officials continue to insist the notification provides communities with the means to protect themselves, and to nurture an image of sexual violence as the act of marginal, undesirable, identifiable strangers. Experience in New Jersey strongly suggests that notification is neither as straightforward nor as simple as proponents desire and critics fear. What emerges much more clearly is the production of new bureaucratic and administrative controls over sex offender information. In contrast to the assertions by Pratt (2000) and Simon (1998), implementation demonstrates that criminal justice personnel have not lowered or eliminated the separation between the state and the community, but rather that they has erected an entirely new set of administrative structures to manage, manipulate, and control images and perceptions of sexual violence in the guise of community protection.

Discussion

The studies of Megan's Law discussed earlier in this chapter demonstrate that the keenest observers of the new laws view them as part of a new political rhetoric of risk and penality. Missing from these analyses are the ways in which Megan's Law represents an attack on feminist arguments about rape. The articles reviewed earlier in the chapter make no attempt to understand how Megan's Law may function not only as an instrument of social control, but also as a political intervention into and argument about how sexual violence is defined and treated within the criminal system.

The image of sexual predators derived from examination of legal practices is considerably more complex than that depicted by scholars. Megan's Law turns

out not to be the all-encompassing, over-broad category critics allege, but rather reflects a particular, identifiable set of political beliefs about rape that makes distinctions between sex offenders in ways that amplify the kinds of fear and penal strategies identified by authors like Pratt and Simon.

The distinctions engendered by these legal practices are important for several reasons. First, as I have discussed already, the rhetoric and publicity surrounding the laws resurrect a view of rape that supplants feminist interpretations. Second, Megan's Law maps out a new vision about the proper role of the state in confronting sex crimes. Third, the laws provide a lever to change law enforcement practices which reshapes public opinion and influences expert knowledge on sex offenses.

Implementation shows that some of the concerns of critics are borne out by legal practices. Scores of sex offenders are now exposed to the public via new technologies such as the internet, disseminating information in ways that were not possible until recently. At the same time, however, authors fail to distinguish between the public rhetoric that surrounds the law and the actual practices surrounding notification.

Pratt and others argue that Megan's Law represents a diminishing commitment on the part of the state—that the state is ceding its modern role as the source of punishment and turning that responsibility over to the community. Pratt describes this well and is worth quoting at length:

> [T]he emphasis on surveillance in the community ... rather than the provision of treatment is again a pointer to the more punitive, relentlessly suspicious, and untrusting response to sex criminals. ... [T]hese measures seem to reflect is a new involvement by the public in the process of punishment. ... Here, it is as if the bureaucrats and penal professionals have been shifted to more of a fringe role in penal administration: what now seems to be taking place is some sort of implicit convergence of interests between government and people. ... Hitherto, it

> was as if the criminal justice experts had effectively regarded criminal populations as their own and provided a shield between them and the public (thereby protecting the one from the other). Now, though, in the wake of the post-1970s collapse of faith in such expertise to provide 'results' this shield seems to be slipping: angry publics demand the right to have knowledge of such criminals and the right to have them removed from their own communities (Pratt 2000, 143-4).

Though community notification is an innovative method of punishment, it works very differently than the transparent exchange of information assumed by Pratt, Simon, Jenkins, and other scholarly observers of the laws.

The first and perhaps most glaring gap between rhetoric and practice is that even interested lay people apparently have little knowledge or understanding of Megan's Law. Rape care advocates, who are probably better informed than most citizens, were nevertheless almost completely at a loss to describe the scope and workings of the law (see Chapter Five). Furthermore, though advocates noted that the publicity surrounding Megan's Law had helped to raise awareness about sexual abuse, most immediately pointed out that public misperceptions about who commits sex offenses—images reinforced by Megan's Law—undermine the potential usefulness of notification mechanisms.

> Had Maureen Kanka had an internet and gone out there, she would have had to go on there and search so well that she knew everyone in her area, and she wouldn't ... [Jesse Timmendequas] was a friend's neighbor. I don't know if she would even have thought to go on the internet and look at that point if her kid hadn't been hurt. ... I guess the one way it does raise awareness is the idea that your community's not safe. ... I could see how that could bring awareness to it, but I still think it goes to the stranger versus the internal (RCA 4).

> My reaction is this is nonsense.... [M]y neighbors get [a notification letter] and the anxiety level escalates. Now what the heck are they looking for? In their minds—some stereotype, a picture of Jesse Timmendequas because that's the last sexual offender we actually know of? ... It could be Sally Smith's father who is a CEO of a company or the head of the police department. Because people don't want to believe they're at risk in their lives. They don't want to believe it's someone like them (RCA 8).

The New Jersey State Coalition Against Sexual Assault (NJCASA), the advocacy organization for state-funded RCCs, came out against internet notification for incest, juvenile, and statutory rape offenders. Members of the

NJCASA board believed that the public exposure of incest and juvenile offenders would be detrimental to their victims and their rehabilitation, and that statutory rape was a gray area where the victim might have given consent (RCA 1, 5, 9).

Notification may thus not be the right eagerly seized by communities that Pratt and Simon expect. Megan's Law works to reinforce an image of sex offenders that only a fraction of individuals will fit, thus reducing the community's interest in the information. Additionally, the New Jersey's online database is organized by county, thus making internet notification particularly ineffective for individuals who live in larger or more densely-populated areas.

Furthermore, as I have described above, community notification is much more closely managed and controlled than these observers allow. That criminological experts have been displaced is simply not an accurate reflection of implementation in New Jersey. In fact, community notification works so differently as to call into question the whole range of assertions and conclusions that they draw from their assumptions about the process.

The state has not been de-centered by the process of notification, but rather, through its various actors (county prosecutors, judges, criminal justice experts, mental health personnel) continues to occupy the pivotal role in determining what information is available and to whom. The legislative rhetoric of openness and information masks the numerous formal and informal ways the state can manipulate information to achieve its desired ends. Though public discussions about the failure of the criminal justice system to deal appropriately with sex offenders are warranted, these assertions of failure that inspired Megan's Law co-exist with a blind faith in the capacity of the legal system to

accurately recognize, properly prosecute, and correctly calculate punishments and Scale scores for offenders. The flip side of rhetoric about the failure of the criminal justice system to protect children from molestation is the certainty that the state can reliably identify sexual predators. And, when sex offenders are defined strictly along lines that the state is willing to accept, it can in fact do a reasonable job of recognizing what it already knows.

Activists doubt the capacity of the criminal justice system to do even this well. Accustomed to law enforcement ineptitude and disinterest in prosecuting sex crimes, one advocate scoffed at the idea of Megan's Law, saying "I really don't think that the system is able to keep track of who these folks are... Nine-tenths of them don't get into the system to begin with!" (RCA 5). In particular, advocates derided the idea that a sex crime conviction was a useful indicator of risk.

> More people are aware and think about it more often because of things in the paper. But the other reality is raising awareness so if a guy isn't identified—do you just let your kid go with anyone? [It has] raised awareness but maybe not necessarily in a good way. Maybe giving people a false sense of security that 'don't worry, we've got them all identified, we know who they are,' and nothing could be further from the truth (RCA 14).

> I think it could be a dangerous thing. I think that people think, 'Oh, thank God, we're gonna be notified about any sex offender or any bad people who live around here.' And I think that gives them a false sense of security. There's a lot out there that have not been identified and have not been caught, and what are the statistics of how many times they have to repeat their crimes until they're caught? (RCA 13).

This viewpoint, informed by a history of law enforcement resistance to taking sex crimes seriously, counters the critics discussed earlier who present the criminal justice system that spawned Megan's Law as continuously poised to create, assimilate, and manipulate new groups of offenders. Interviews with advocates identified at least two ways that Megan's Law may actually limit or reduce the power of the state over sex offenders. First, several RCC directors were concerned, based on observation and discussion with local prosecutors, that

defendants accused of sex crimes and therefore potentially subject to Megan's Law are unwilling to accept a plea bargain, thus forcing more rape cases to go to trial (RCA 11, 14). Others expected reports of sexual assaults to decrease if victims thought their assailants, especially family members or acquaintances, would be subject to notification.

> [T]he majority of the women and men and children who we treat in our program are victims of incest, where [the assault was committed by] somebody in the family or someone close to the family—I think there are a million reasons why people don't report anyway and this is one more to add to it (RCA 5).

Megan's Law may also limit the power of the state by codifying and therefore making possible resistance to procedures around community notification, which had evidently been happening informally in some New Jersey jurisdictions for years. One director reported a conversation with local police in which she learned that

> they hated Megan's Law because it stopped them from what they used to do. There are controls on who they notify, the radius and all that, where before they could just go and tell anybody they wanted to tell... [T]hey said, 'It's like handcuffing us.' It's putting control on [police] that they didn't have before (RCA 13).

So, rather than expanding the authority of the state to monitor offenders, in some cases Megan's Law exposes and codifies police practices, therefore putting some rudimentary controls on how police deal with sex offenders in their communities.

The systematic exclusion of certain sex offenders from community notification is one example that legal systems are not the boundlessly voracious entities depicted. The concerns cited by advocates above are further evidence against this claim. Instead, it is more appropriate to view these systems as capable of formal and informal resistance to and co-optation of legislative and regulatory changes—the same kinds of behavior that have allowed local

jurisdictions to largely circumvent previous feminist-inspired rape reforms. Scholars and policy-makers alike discuss Megan's Law without referring to the inequalities and discrimination in rape case adjudication that continue to exist but are rarely discussed publicly. The fiction that the legal system handles rape adequately goes unchallenged—and indeed is reinforced—in the work of these legal scholars, whose arguments assume that these emerging forms of punishment are not bounded by pre-existing politics of gender and sexuality.

Yet the attraction of this story for a public schooled in and apparently accepting of the basis for feminist reforms is not clear. Why did reforms gather so much momentum so quickly? Why were they depicted so persuasively as the logical successor to feminist reforms, though in practice they will likely have quite the opposite effects?

The point of this chapter is not to illustrate gaps in Megan's Law that should be closed through tighter regulation; rather, it is that feminist rape law reforms began but ultimately did not shift the cultural and legal perceptions of sexual abuse. The conversation between feminist reformers and legal actors that resulted in rape law reforms produced some real benefits, not the least of which was offering lawmakers and the public a real choice in how to interpret sexual violence. In publicly contesting the state's response to rape, feminist activists expanded the conversation about sexual violence to include different kinds of behavior, new groups of individuals, and provocative discussions about the conditions necessary for equality. The changes wrought by this engagement, however, proved relatively shallow. Megan's Law offered an opportunity to resume and again contest state-centered interpretations of sexual violence, but

that was an exchange that did not happen. Though the criminal justice system was resistant to many feminist ideas, especially those related to critiques of gender, culture, or the family, they did incorporate aspects of reform that consolidated state power, such as the expansion of punitive power and the specialized (sometimes fetishized) focus on sex crimes. Supporters of the Megan's Law co-opted and distorted feminist arguments about sexual abuse so that they had a surface resemblance to what the public recognized as a victim-centered response to rape.

In the next chapter I show how feminist ideas about rape and the new influx of offenders convicted under feminist-written rape laws transformed legal and psychological discourses about rape. These images helped create the conditions for Megan's Law and signal a failure of the feminist attempt to use law to change legal culture. The power of law and its openness to change created opportunities for feminists to invest legal institutions with their own definitions of rape; that same malleability, however, provided legal actors with the resources to resist and reinterpret feminist reforms that challenged legal processes and cultural beliefs too deeply.

CHAPTER 4—POWER AND CONTROL: THE RHETORIC OF SEX OFFENDERS

As discussed in Chapter 3, the legal practices surrounding Megan's Law demonstrate a welter of conflicting priorities that nevertheless mount a concerted attack on feminist reforms of the 1970s. Those reforms were intended primarily as a vehicle to reshape cultural perceptions of rape. The self-conscious use of legal reform to effect symbolic change that marked feminist reforms of the 1970s may be less evident in Megan's Law, yet legal practices clearly reflect and construct new kinds of meaning about rape. Megan's Law was presented as the logical successor to feminist rape reform because it drew on the supposedly progressive rhetoric associated with those earlier changes.

Given the failure of rape law reform to effect substantive procedural changes in many jurisdictions and the emergence of sexual predator laws, how successful were feminists in challenging the legal perceptions of sex offenders? What new discourses—legal, psychological, and criminological—developed out of the conversation between feminists and the state?

The incomplete and halting translation of feminist goals into legal language and culture helped to influence the development of Megan's Law. Feminist and legal discussions about victims and offenders existed in a mutually constitutive relationship, with each seeking to incorporate new information, theories, and evidence, and struggling to articulate a compelling explanation for and vision of the state response to sexual violence. In the wake of rape law reform feminist theories reshaped approaches to sex crimes offenders, but not always in ways that feminist advocates expected or would have endorsed. These

bowdlerized feminist ideas were vulnerable to co-optation and distortion by conservative lawmakers and victims' rights groups. In contrast to the conversation started by law reform, which was led by feminists, conversations about sex offenders were quickly dominated and justified by claims to scientific expertise on the part of state actors. At the same time, intellectual changes in the movement combined with the increasing importance of law encouraged anti-rape activists to abandon feminist theories about sexual violence in favor of the state-promoted view of sex offenders. This conversation had a deeply depoliticizing effect on feminist interpretations of rape, and hindered the movement's ability to respond effectively to Megan's Law.

Megan's Law employs a notion of the sexual predator that hearkens back to stereotypes prevalent prior to second-wave feminism. Challenging assumptions about the sexual psychopath was a central aim for feminists, and its resurrection in Megan's Law marks a significant problem for the movement. In this section, I show that the seeds for discussions about sexual predators were present in the movement's own rhetoric from the earliest stages, and that the turn to legal solutions to rape helped to solidify support, even with anti-rape groups, for understanding sex crimes as the result of pathology. Though feminists conceptualized the pathology very differently than psychologists—as cultural interpretations of masculinity, not individual mental illness—both were united in their depictions of sex offenders as untreatable and uncontrollable. The intersection of feminist concerns with criminology and psychology facilitated the troubling re-emergence of the idea of the unrepentant sexual predator. At the same time, the increasing numbers of men convicted of sex crimes under new,

feminist-inspired laws reinforced the tendency of criminologists and psychologists to separate these "true" predators from "accidental" offenders whose crimes were typically explained by blaming women's behavior and men's inadequate social skills and suboptimal personality traits.

Feminist theorizing about sex offenders

One of the earliest, most thorough, and still most widely cited works in the anti-rape literature is Susan Brownmiller's (1975) book *Against our will.* Brownmiller's oft-quoted thesis, drawn almost verbatim from her mentor Herbert Aptheker's work on the lynching of blacks in the antebellum South, was that rape "is nothing more or less than a conscious process of intimidation by which *all* men keep *all* women in a state of fear" (Brownmiller 1975, 15, italics in original). Central to this analysis was sexual anatomy, which made "the human male ... a natural predator and the human female ... his natural prey" (Brownmiller 1975, 16). Her very successful and widely praised effort to point out the social normalcy of rape marshaled historical, literary, and anthropological evidence in support of this claim.

While Brownmiller's book was probably the most widely read feminist critique of rape, it was not the first and far from the only one. Though the understandings of the causes of rape varied, activists were united in linking women's private experiences of sexual violence to broader forms of public, political oppression. In a widely disseminated essay first published in 1971, Susan Griffin (1977) argued that, far from being a natural or innate phenomenon, rape was a learned behavior that reinforced mechanisms of social control. In their influential article "Rape: An act of terror," Mehrhof and Kearon describe rape as

"an effective political device. It is not an arbitrary act of violence by one individual on another; it is a political act of oppression ... exercised by members of a powerful class on members of the powerless class" (1971, 233, italics in original). Diana Russell used similar language when she described rape as "the supreme political act of men against women" (1974, 231).

Early feminist understandings of rape were based on scathing critiques of male sexual violence and its relationship to public, gendered forms of inequality. Integral to this political analysis was an insistence that rape was a conscious choice—that rape sprang from and reinforced male supremacist ideology, not from mental illness or frustrated sexual desire. Feminist researchers Clark and Lewis explicitly related rape to more general social attitudes toward women and pointed out that while "virtually all studies ... found the rapist to manifest great hostility towards women ... no one had been prepared to classify misogyny as mental illness" (1977, 135, italics in original). Anti-rape advocates argued that rapists were not significantly different from other types of criminals (or men in general) even though they and their victims were treated differently by the legal system.

Feminists were particularly angered by the ways that psychological language was used to blame women for making false accusations of rape, and to exonerate men from responsibility for the crime. Confronting the assumed link between mental illness and rape was central to feminists' success. To counter pervasive assumptions that rape was the product of a diseased mind (and consequently rare and not preventable), these feminists argued that rape was a normal, expected, and socially accepted outcome of oppressive practices toward

women, poor people, and racial minorities. This position was expressed as a policy goal of having rapists held responsible for their actions, not exculpated on the basis of a supposed mental defect, and resonated with both conservative calls for harsher punishment of sex offenders and with liberal sympathies toward victims (Marsh, Geist, and Caplan 1982).

As indicated above, feminist rhetoric often dovetailed with conservatives' arguments about and proposed responses to sexuality and social control. Emphasis on the essentially problematic nature of male sexuality resonated with conservative rhetoric about the need for social control of men, especially as crime, increased sexual activity, and social acceptance of alternative family and sexual lifestyles were seen as out of control (Eisenstein 1984; Gilder 1973). This behavior was proof that the domesticating influence of women and the family were being eroded, resulting in men who were freer than ever to indulge their base and degraded natures. Feminist researcher Diana Russell, for example, emphasized the dangers of sexual liberation of men who, "freed from internal constraints ... are likely to become active rapists" (1974, 209). George Gilder's self-proclaimed conservative polemic *Sexual Suicide* decries women's liberation and its results, which will "liberate the man to celebrate ... a violent, misogynistic, and narcissistic eroticism" (1973, 258).

Both feminists and conservatives saw male sexuality as premised on aggression, and both proposed that state power be used to curb this tendency. The difference was that most feminists linked this aggression to sex and gender roles, while conservatives pointed to men as "essentially" sexually dangerous. Discussions of the widespread nature of rape and the constant reminders that it

could happen to any woman could be read as providing evidence of the fragility and vulnerability of women to male attack, thus reinforcing the perceived need to "protect" women from sexual violence rather than to change the conditions which make that violence possible (Brownmiller 1975). Conservatives picked up feminist concerns about the prevalence of rape and leniency toward offenders to argue for tougher laws, but dismissed their related arguments about how rape laws were deeply related to racism, classism, sexism, and social control. Taken out of context, these distortions of feminist rhetoric provided support for the goals of groups with markedly different interests than the women's movement.

The rhetoric of equality adopted by most activists was important and effective because perceptions of the seriousness of sexual violence are so closely tied to perceptions of responsibility. One research study conducted around the time of the first reforms "found that college students were ... more likely to attribute responsibility to the assailant who raped a virgin than to one who raped a divorcee. The subjects also attributed more responsibility to the assailant of a female physician than of a cocktail waitress" (Klemmack and Klemmack 1976, 136). These beliefs and their codification in law set up hierarchies, so that a victim with higher perceived social status (a chaste woman, a physician) was seen as experiencing a greater harm from the assault than a less worthy woman (a black woman, a prostitute). Law reform aimed to eliminate these sorts of inequality by placing the blame for the assault squarely on the shoulders of rapists.

Feminist reformers challenged the link between rape and mental illness by describing the crime as one "motivated by hostility rather than passion, ...

generally a premeditated crime of violence rather than a crime provoked by the victim's behavior" (Cobb and Schauer 1977, 170). Rapists were assumed to be competent and responsible for their actions; unlike earlier statutes, the Michigan reforms described crimes and associated penalties without reference to the rapists' psychological state.

Debunking the myth of the "sexual psychopath" and rebutting the historical approach to rape as a crime against male property, feminists created alternatives to the existing legal paradigm of rape. Since rapists were men who freely chose to commit a crime, determinate sentences with opportunities for rehabilitation were more appropriate than indefinite terms of civil commitment that assumed offenders were untreatable psychopaths. Feminists believed that creating a determinate sentencing scheme and opposing the death penalty for rape would convince judges and juries to convict more often since sentences would be proportional to the crime. The penalties were also intended to eliminate some of the more egregious cases of judges who based sentencing decisions on personal characteristics of the victim and/or the offender rather than on the crime itself (Marsh, Geist, and Caplan 1982; Spohn and Horney 1992). Expanding protection for victims was accomplished by including separated and divorced women,[51] as well as men and boys, under the legal definition of rape. Finally, activists in several states considered (though ultimately rejected) subsuming rape entirely under the law of assault.

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[51] The campaign against the marital rape exception started and stalled in Michigan in 1974; it would be over a decade before all fifty states criminalized rape in marriage.

The prospect of eliminating rape altogether arose from early feminist claims that rape was no different than other crimes, and that treating rape as a special type of crime merely reinforced the stigmatization of victims and its marginalization by legal institutions. Based in a fascinating and sophisticated analysis of rape's relationship to female sexual and legal identity, this theory represented a significant development for the movement (Connell and Wilson 1974; Haag 1996). It also represented the beginning of a move to turn attention from critiques of sexuality and/as male power to controlling violence—what would become a troubled and troubling process of effacing the sexual politics of rape.

Conservatives seized on feminist rhetoric and positions just as the movement itself was undergoing a theoretical maturation that led to intense polarization among anti-rape advocates. Differences about the connection between sex and violence were the subject of the first real split in the movement. Just a few years after the first feminist works on rape had appeared, many in the anti-rape field began arguing that gender alone failed to account for many of the power dynamics present in rape. Theorists and activists began to examine how other types of power inequalities, especially those based on race, class, and social position were implicated in sexual violence (Connell and Wilson 1974; Davis 1983; hooks 1980). This process was facilitated by the emergence of new kinds of rape cases—such as sexual assault between acquaintances, against men and boys, by women, and without externally visible physical force—brought to court for the first time under revised sex crimes codes.

These cases forced feminists to confront more complex issues that defied the simplistic formulations of "all men" oppressing "all women." As a more nuanced and difficult picture of sexual abuse emerged, sparked by public discussions about rape reform even if reform itself was largely illusory, questions about power rather than gender came to dominate feminist explanations for sexual violence. Examining power as a component of rape brought to light a wealth of empirical research that fruitfully complicated feminist arguments. While this closer look at power was sorely needed and enriched understandings of and approaches to sexual assault, it largely came at the expense of critiques of sexuality and dominance.

These sweeping generalizations about gender and sexuality were being re-evaluated in favor of more careful, qualified claims just as the height of the women's movement had passed and radical critiques of sexuality were becoming less acceptable (Echols 1989). The move to more cautious, limited arguments about rape coincided with the emphasis on individual experience that began during the initial wave of rape law reform. Backpedaling on two essential movement claims—that rape was both violent and sexual, and that rape was a crime against women as a class—provided a way to continue addressing the issue without alienating allies or being perceived as radical or marginal. Separating rape from gender and sexuality allowed activists and researchers to distinguish between the violence inherent in rape and the particularly sexualized nature of that violence.

Removing sex as an issue from anti-rape work, though a questionable and perhaps even dangerous move, made the topic more respectable, accessible to a

wider audience, and less threatening. In Catharine MacKinnon's words, "[t]he point of defining rape as 'violence not sex' has been to claim an ungendered and nonsexual ground for affirming sex (heterosexuality) while rejecting violence (rape)" (1989, 173-4). For anti-rape groups struggling to secure funding and work cooperatively with local law enforcement and medical personnel, this focus on power as distinct from gender and sexuality provided a useful language to advance feminist claims in a less threatening guise.

By the 1980s the creed of the mainstream movement had quite clearly become "rape is violence, not sex." Perhaps first seen widely on the back cover of *Against our will*, this theme was drummed home by many anti-rape feminists, academic scholarship, and media coverage, becoming a truism repeated endlessly. Though laudable in intent, the uncoupling of sex and violence undermined much of the theoretical power of early feminist efforts. Most mainstream empirical studies of rape presupposed a "natural" separation of sex and sexuality from violence. In 1971 Susan Griffin had argued that "[e]rotic pleasure cannot be separated from culture, and in our culture male eroticism is wedded to power" (Griffin 1977, 52). Over the next decade, feminist critiques were gradually pushed aside in favor of sociological, psychological, and other types of more scientific research. These studies provided much needed information about sexual assault which was nevertheless often devoid of feminist analysis about how social and political conditions lead to violent sexuality (Matthews 1994).

Feminist theories thus helped to sketch out two different approaches to sex offenders that criminologists and psychologists would follow. One

emphasized the pervasiveness of rape culture as sanctioning everyday violence against women by men of all kinds, men who criminologists would come to view as the "accidental offender." The second was the model of male sexual identity as inherently violent and problematic; an approach that was conveniently close to the "sexual psychopath" of decades past but which included a political component completely lacking in that formulation. These two models deeply influenced thinking on and treatment toward convicted sex offenders.

Criminology and psychology respond to the offender

Prison-based treatment of sex offenders took on a schizophrenic quality trying to reconcile these two understandings. The expert role feminist reformers had once occupied was soon overtaken by the burgeoning mainstream of mental health research, funded by government dollars and deeply invested in maintaining the legitimacy of their profession by providing individual, psychological, and therapeutic answers to the political questions raised by anti-rape activists. Clinicians and researchers demonstrated their continued relevance to the criminal justice system by incorporating the changes and challenges posed by feminists while adapting this new rhetoric to their own existing interests and forms.

Criminal justice researchers were confronted with the dilemma of explaining how and why sexual assault was so much more common than had been imagined before the feminist anti-rape movement. Since the offenders targeted by new statutes were unlike those previously available for study, researchers were challenged to develop and apply models of understanding sex crimes other than that of the sexual psychopath which had defined the

psychological and legal response to rape for decades. In creating new models for sexually violent behavior, psychological and criminological professionals drew on feminist rhetoric emphasizing sexual assault as expected behavior in a culture founded on sex, class, and racial supremacy.

Feminist discussions about the prevalence of sexual violence produced different effects. The assertion that it was normal for men socialized in a violent, patriarchal culture to commit acts of appalling sexual brutality and dominance was separated into several distinct claims. Researchers adopted the language of normalcy for many offenders, but at the same time were forced to account for the behavior exhibited by these men, which was legally (and increasingly, socially) proscribed by new rape laws. On the other hand, the "violence, not sex" formulation permitted psychologists to focus on the violence of rape without attention to its sexual expression. More violent offenders could be easily encompassed into existing characterizations of the sexual psychopath. In neither case were feminist arguments about the relationship between behavior, gender, and culture the subject of exploration.

Many social science researchers seized on the rhetoric of normalcy without questioning normal standards of sexuality as feminists did. Criminological and clinical approaches to sex offenders began stressing the aggression in rape or individuals themselves, rather than a sexually violent model of masculinity, as the cause of rape (Groth 1979; Hilberman 1976; Storaska 1975). Researchers puzzled over the failure of rapists as a group to deviate significantly from other groups of men along all kinds of clinical measures. A common solution to this dilemma was not that rapists were in fact typical though perhaps extreme examples of violent

attitudes toward women, but rather that sex offenders required individual treatment to identify and remedy individual pathologies which resisted generalization (Allison and Wrightsman 1993; Pacht 1976).

In working from the criminal law-based paradigm focused on individual cases, mainstream mental health researchers convincingly argued for the notion of sex offenders as disturbed but essentially normal individuals who required psychological stabilization. In contrast to feminist understandings that assumed sex offending was linked to and condoned by cultural, social, and political institutions, psychologists stressed individual therapy to change undesirable personality traits or maladaptive behavior.

The imposition of "normal" or "typical" heterosexual and heterosocial attitudes was commonly suggested as one solution to deviant sexual behavior. A study on the "Psychological treatment of rapists" approvingly discusses one offender treatment program which required convicted sex offenders to "actually ask for and 'go out' on informal dates within the prison walls with females, e.g. secretaries, clerks, aides, etc." This particular program, the authors note, was unfortunately limited because the facility "simply did not have sufficient numbers of females for the implementation of such a program" and because impact could not be properly measured (Abel, Blanchard, and Becker 1976, 103-4). Such attitudes were a far cry from feminist analyses of rape.

Another strain of offender research that became prevalent during the 1970s painted perpetrators as victims—of social circumstance, especially in the case of poor, working class, or black men (Curtis 1976; Russell 1974), of miscommunication (Amir 1971), of male stereotypes (Beneke 1982; Russell 1974),

and—the perennial favorite—of the overbearing and insensitive mother who ultimately produces the most sadistic and vicious sexual predators (Cohen et al. 1977). One convicted rapist in Diana Russell's *The politics of rape* said plaintively, "[i]t was my doing, but I was also the victim. I had no image of a man who could be gentle and kind and still sexual" (Russell 1974, 250). Though victims, these men were still normal. They were representatives of all men who struggled to live up to the unrealistic demands of the male sex role; rape was an unfortunate manifestation of inequality directed against *men*.

The idea that men were the ones victimized in rape was substantiated by psychological research that blamed accusations of rape on victims who provoked abuse or were mentally deranged. In one of the first empirical studies of "forcible rape," criminologist Menachem Amir said that, in some cases,

> the victim is the one who is acting out, initiating the interaction between her and the offender, and by her behavior she generates the potentiality for criminal behavior of the offender or triggers this potentiality, if it existed before in him. Her behavior transforms him into a doer by directing his criminal intentions which lead not only to the offense but may also shape its form (1971, 259).

Though the chapter this passage is taken from has been widely (and justifiably) criticized as an example of "victim blaming," the implications are deeper than that categorization would suggest. Amir's argument is not just about victim blaming or male sexuality. It also speaks to female sexuality and social standards of normal sexual behavior. The fetishization of female power endows women with the ability to both (and perhaps simultaneously) control and inhibit male sexual behavior, to discipline and channel it into appropriate acts, as well as to deform and pervert it, to elicit and provoke "the brutish and animal nature of the human male" (Amir 1971, 7).

Even child sexual abuse, which Jenkins asserts was "treated with the utmost gravity" (1998, 9), was often met with indifference by researchers and the criminal justice system. Though Anglo-American common law provided a rationale to undercut the seriousness with which many assaults against children were viewed (Bienan 1983), legal actors increasingly turned to psychological research like Amir's to justify lax prosecution of child offenses. Florence Rush, a social worker and early anti-rape reformer, quotes studies that describe the "unusually attractive personalities" of child victims of sexual abuse, leading researchers to "consider ... the possibility that the child might have been the actual seducer rather than the one innocently seduced" (Rush 1974, 69).

Without a feminist analysis of sexual violence, clinical and criminological research reinforced the idea of "non-violent" sex offenses—a kind of double-speak that legitimated the biases exhibited by law enforcement and the public alike. The image of non-violent offenders resonated particularly well because feminist attention to rape in the late 1970s and 1980s focused on bringing to light elements of rape that were far less clear-cut for most observers than the stereotypical violent assault by a stranger. Feminist actions to expose child sexual abuse and "date" or "acquaintance" rape brought a new and difficult set of issues to the legal and public fore.

Though obscured by this new research, earlier feminist arguments about the problematic nature of male sexuality were never quite erased. The view of male sexuality—and of maleness itself—as intrinsically linked to violence was widely disseminated by feminist works throughout the 1970s and into the 1980s. Even mainstream feminist writers and speakers stressed the idea that a sexual

predator could lurk behind a façade of normalcy (Warshaw 1988). These beliefs continued to inform theoretical and political developments in anti-rape movements, most clearly in the work of Andrea Dworkin (1974; 1981) and Catharine MacKinnon (1989; 1993; 1997). Even as Dworkin and MacKinnon were attacked and ridiculed in both the popular press and feminist writings, the idea of male sexuality as intrinsically linked to violence and as naturally predatory resonated with myths and stereotypes about rape and reinforced existing public discourse about rape and other forms of sexual violence. The strong critiques of social conditions were filtered out or dismissed and only the most simplistic elements of these analyses survived.

The inverse of feminist and clinical attempts to "normalize" rapists drew on these evocative and disturbing images of male sexuality presented by feminists. In this view, rapists were identifiably different than other men and other criminals—these were the unrepentant predators who posed a true danger. This understanding relied on the conscious exclusion of offenses and offenders that did not fit a clear-cut clinical definition of pathological behavior. Cohen et al. (1977) described their opportunity to "observe characterological sexual pathology and features of character related to such pathology, without the distortion created by clinical cases showing sexual deviancy as the result of transient neurotic regressions, traumatic environmental stress ... or the deviancies that are better ascribed to cultural disapproval than to psychopathology." The authors then go on to give examples of acts excluded from their definition of sexual "pathology":

> the disappointed lover misunderstanding the glances of a young girl as a seductive invitation and arrested for accosting; ... the man on a date sexually provoked and then denied whose anger triggers off a sudden, uncharacteristic, explosive rape; ... the sexual assault [as] an expression of a subcultural double standard or masculine culture machismo" (1977: 295).

These assaults, committed "accidentally" by men who were otherwise completely normal, exemplified the problem with the psychological response to rape. Psychologists working with rapists were generally dismissive of feminist arguments that sexual assault was an expression of cultural contempt for women engendered by misogyny and amplified by racism, classism, and capitalist consumerism, and that even these apparently normal men were participants in a class-based form of terrorism against women. These professionals instead often drew facile distinctions between predatory strangers and men who accidentally committed violent acts blamed on what were often discussed as *legitimate* or *understandable* responses to disappointment, seduction, provocation, and expressions of masculinity. This does not mean that the researchers I quote condoned such behavior, but rather that these experts differentiated these forms of sexual abuse, most often involving individuals known to each other or acts that closely resembled heterosexual intercourse, from those of the predators identified by their assaults against strangers or involving deviant sexual acts.

This narrow approach to constructing the category of sex offenders flourished in research throughout the 1980s. Unlike feminist arguments that saw these acts as different but related expressions of socially accepted violence toward women, the professional, scientific research that followed created specific categories in which real offenders—those who demonstrated clear and frightening pathologies—were easily separated from their normal male counterparts. And, with almost all feminist energies focused on providing assistance to rape victims in the wake of law reform (Berliner 1985; Bohmer 1977; Gornick, Burt, and

Pittman 1985; Holmstrom 1985; O'Sullivan 1978),[52] the primacy of criminologists and psychologists in defining mental abnormality as the root cause of sexually abusive behavior was unchallenged.

The theoretical incoherence of this approach and its lack of validity in large numbers of offenders was of little importance when compared to public fascination with psychopaths who committed sexually violent acts (Pacht 1976; Prager 1982). Descriptions of the often pathetic and hapless accidental offender contrasted sharply with this image of the sexual psychopath. Highly publicized sexual serial murders by Jeffrey Dahmer, Ted Bundy, and John Wayne Gacy fit neatly into these stereotypes about the clear pathology of sex offenders, reinforcing the myth that sex offenders are monstrous creatures easily identified by their acts of extreme violence. The horrified fascination with these offenders reinforced many of these evocative and disturbing images of male sexuality presented by feminist essentialist arguments. In this view, rapists were identifiably different than other men and other criminals. Real sex offenders, we learn, are distinguishable by pervasive and identifiable mental illness—by a virulent pathology that sets them apart and makes them visible to the trained observer who employs special clinical tools.

One early researcher on sex offenders pointed out wryly that "it was easy to separate the two extremes of criminal sexual behavior, i.e. the psychotics and the psychopaths; there were very few of either" (Pacht 1976, 93). Mainstream psychology offered persuasive explanations only for these extremes; they had

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[52] The most visible feminist scholar doing work on sexually violent behavior, Diana E.H. Russell, is often held up for criticism (if not ridicule) because her empirical research expresses political and normative beliefs about gender inequality and sexual violence.

considerably less success explaining offenders who had no evidence of mental illness. Intensive psychological intervention was argued to be the most humane, liberal, and effective way to deal with so-called normal sex offenders, and, while treatment with psychopaths was futile, mental health professionals were required to continuously monitor their mental state (Cohen et al. 1977). In either case, the clinical response to sex offenders reinforced the professional prestige and relevance of psychology at a time when calls for a more punitive response to criminals threatened to overshadow the supposed rehabilitative potential of prosecution.

Feminist rape law reform, with its dual intention of redefining the crimes that constituted sexual assault and creating a more supportive environment for victims to report and prosecute these crimes, changed the prosecution of sex crimes in the U.S. and offered new explanations for why rape existed. Though wider public awareness sparked skepticism and doubt, it also encouraged reporting of new crimes and increased sensitivity to reasons why victims hesitated to report rape. Law reform created both hope and fear that men would be held accountable for sexual abuse; while public sympathy for appealing victims was palpable, women whose stories were more complicated were still routinely treated with contempt. By effecting real changes in the criminal justice response to rape and doing public outreach and education about sexual violence, feminists opened the doors for new interpretations of rape.

Faced with information and images about sexual violence that were increasingly confusing, the public and lawmakers were ripe for an interpretation of rape that would reconcile these seemingly intractable conflicts. But even as

feminists offered new frameworks for rape, they were less interested in theorizing about sex offenders themselves. As RCCs adopted a crisis intervention model for rape victim services, fewer advocates had the time or inclination to dwell on sex offenders. Over time, without a compelling competing paradigm to explain sexually violent behavior, RCAs would increasingly adopt the depoliticized, psychological understanding of rape. When the public and policy-makers sought to make sense of the Kanka murder, RCCs had little to contribute to the conversation.

"Power and control": Rape care advocates talk about sex offenders

In talking with rape care program directors, the first striking observation was how many of the early concerns of rape law reformers have fallen by the wayside and are no longer part of the intellectual landscape of anti-rape work. Rape care advocates most commonly speak in a language that relies on psychological and therapeutic understandings of offenders, struggling to integrate these discourses with their experiences with sexual violence. Feminist theories about sex offenders are notable only in their absence.

Rape care directors sometimes prefaced their comments about Megan's Law by talking about how sexual assault affects victims. These characterizations demonstrate that advocates see sexual violence as a crime with devastating and long-lasting effects on victims, thus justifying calls for a serious and equitable law enforcement response to rape. Most strikingly, several advocates likened rape to murder in its harm and evident finality. One director described rape as a "heinous crime" asserting that offenders "need to know that they can't get away with murder" (emphasizing that she chose the word "murder" deliberately)

because the victim's trauma "will never leave" (RCA 10). For another, harsh punishments against rapists were warranted because an offender has "taken the life of a child forever" since "even if they don't kill the child, the trauma lasts a lifetime" (RCA 16). And again, sexual abuse "is, next to murdering to somebody, the worst thing you can possibly do to somebody" (RCA 9).

This language certainly calls to mind the kind of hyperbolic descriptions of rape that are described as problematic by both feminist and anti-feminist writers critical of the movement (Alcoff and Gray 1993; Brown 1995; Lamb 1999; Marcus 1992; Roiphe 1993). Though I seriously doubt that all of the women I interviewed would agree with these comments,[53] they do illuminate a particular approach to victim advocacy that feeds into the beliefs that support Megan's Law.

But these discussions of victimization are not always concomitant with the demonization of offenders, as most academic writers assume (Jenkins 1998; Kennedy 2000; Lamb 1999; Simon 1998). Certainly there was anger expressed toward perpetrators, but most directors explicitly rejected the image of the "monster" that sexual predator laws employ and rejected the solution proposed by Megan's Law in favor of continued supportive psychological services.

> I know some of the sex offenders that have lived in my town, just because of the work that I do. One of them used to pump gas at the local gas station, and I can't tell you that when I

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[53] One director objected to the way that Megan's Law singles out sexual violence as being uniquely harmful by pointing out other crimes that she defined as equally or more serious than rape.

> I don't see why ... we don't put DUI people up on there. ... How come [community notification] is seen as prevention for just [rape]? People who went away for violent assaults and attempted murder—shouldn't I know what they look like too? Shouldn't I know they may be armed and dangerous and on my block? Isn't that prevention? ... Knowing the severity of [rape] and what it does to victims—but other crimes can do that severity. In DUI, you kill somebody. ... Murder, attempted murder, violent assault, robbery with assault. Those are scary things (RCA 4).

> would pull my car in I wasn't tempted to pull over his toes, because he sodomized a little eight-year-old girl. ... [But] I'd much rather see the money spent—because it costs a lot of money to keep Megan's Law rolling—to have some sort of mandated, continued parole supervision, groups, or something for offenders (RCA 14).

RCAs are considerably more disposed to adopt psychological language to explain the behavior of sex offenders than to rely on either feminist discussions of sexual inequality or conservative or cultural feminist notions about men expressing their inherently violent nature through sex. Mentioning that Megan's Law does not include funding for offender treatment or other prevention, one director said:

> I've never been pro-Megan's Law. ... I don't necessarily see how it can help curb the problem. ... I don't look at offenders as one-dimensional, deviant individuals, I see them as human beings, who have rights. ... It sounds like I'm picking up the case for the offenders, but because we've worked with offenders we know we can see changes in some of these folks if they are allowed to engage in treatment. But we [as a society] don't want to treat them. ... I think [most people] want to demonize [sex offenders] and punish them, not to see them as human beings (RCA 5).

Some advocates portrayed rape as not inevitable, but learned. For one, "I believe that perpetrators aren't born, that they are learned" (RCA 8), while a second advocate affirmed that people who commit sexually violent acts "are not born wicked" (RCA 10). These women emphasized the role of socialization—a cornerstone of feminist thought on rape—but without reference to systemic inequalities that troubled their feminist predecessors.

Several directors offered psychological explanations and interventions to resist the totalizing, over-determined model of the sexual predator advanced by Megan's Law.

> The most typically underpinning [of sex offending] is physical abuse. [One of our counselors who] worked with these [juvenile sex offenders] went back and looked over her records and found that 100% of the boys had been physically abused. Many of them had been sexually abused, but I believe that we're gonna know more about the physical abuse than the sexual abuse anyway (RCA 5)

> Most people who are abused do not become abusers. But in the population of abusers, there is a higher percentage who have been abused. So I try to be open-hearted and open-minded and see it in that way. ... It's not as though [rape care advocates] don't care, we don't understand. We would like to see research and programs to help offenders. I take our advocates to the Adult Diagnostic and Treatment Center in Avenel, I have been to the Pinelands, the place where they treat the teenage sex offenders—they look like they're little kids. And it helps you to sort of see what turns these kids—these freckle-faced little guys—into sex offenders. So it's not that I can't see both sides; I really can (RCA 14).

> It's just beyond people's imagination to be able to fathom that [sexual abuse] happens. ... They want to attach some kind of criminal or sociopathical [sic] behavior to the person: 'They're crazy, that's why they do this. They're crazy. They're criminals.' They don't want to admit it's about power and control. You don't have to be an absolute lunatic to molest somebody. People get that frame of mind, that it's the person with schizophrenia or some kind of mental illness, and that's what causes them to do this. No. It's not. ... It's about humiliating, degredating [sic], and making somebody feel like a thing. It's having power and control over another human being. That's what it's about (RCA 9).

> A person has committed a crime and very possibly ... may continue to commit the crime and hurt someone else, especially if they're an adult, it's not always curable, and certainly not always controllable. But [Megan's Law] is problematic in regard to ... redemption, and the ability of somebody to do something in their life that might be able to get themselves to rise above it and somehow be able to have hope that they would be perceived as a normal human being and not have to have [community notification] on them forever, because they have done whatever work was capable of them to do and therefore they will not harm someone anymore (RCA 15).

Advocates similarly used psychological research as the basis for their response to Megan's Law. Two advocates who opposed the law cited its effects on offenders as contributing to the potential for recidivism:

> There was a study that came out I think in Minnesota, and they said that [community notification] was causing more stress, and then stress causes the perpetrators to perpetrate again, and so Megan's Law was not rectifying anything, it was just sending them back into jail because they couldn't find jobs, they couldn't make friends, they couldn't start families, so they would go out and perpetrate again and go back to jail. I don't know if that's a lame-ass excuse for what it is that they do, but... (RCA 9)

> Megan's Law ... poses stress on offenders, which is one of the things that is likely to set them into their cycle [of offending] (RCA 14).

Despite their resistance to the rhetoric of Megan's Law, advocates nevertheless clearly reflect the dominant psychological model of dividing sex offenders into two categories: the pathological predator or the accidental offender. Interestingly, in rape crisis work this often means drawing distinctions between stranger assailants and other crimes, especially incest and statutory

rape. Even anti-rape workers assume that the strangers are the pathological predators and that offenders known to the victim are not as dangerous.

> [NJCASA] really fought against having juveniles and such on the registrant thing, on the internet. Because if someone gets convicted.... Suppose you're thirteen dating a seventeen-year-old, and it's consensual, but the parents press charges, now you're picture's up on the freaking internet for the rest of your life? (RCA 9).

> You're not dealing with the same problem—you're dealing with this sadistic anti-social personality who will kill. It's not the same thing at work as what's happening in the family. ... Most of the sex offenders we see are not these compulsive repetitive pedophiles—that's a whole different problem than we're looking at. I don't think the dad out there who is molesting the daughter and the daughter's friends in the house when they're drunk are always that type of sex offender. And they're much more amenable to treatment. I believe that they are, anyway (RCA 5).

> Incest victims aren't going to be killed by the offender. Megan's Law protects kids from strangers who do kill (RCA 17).[54]

> [The Megan Kanka case] is that 15% [of stranger assaults]. ... We have more cases where it is someone who has access to the victim in the living situation of the adolescent or child that is not a relative, like the boyfriend. Friend's father is a big one too. He's not necessarily perpetrating his own daughter, maybe he does draw a line there for whatever reason, maybe he doesn't—maybe he's perpetrating her as well. But he may just be perpetrating her friends. ... Sexual violence is something that escalates, depending upon how gratified the perpetrator is becoming or how sick, and over time what starts as a fondling usually will end up as a penetration, as long as the access is there. ... As they gain more and more trust from the victim it will escalate and if someone is as sick as Jesse Timmendequas it's outright rape and not... [trails off] (RCA 8).

Advocates thus replicate and reinforce psychological explanations for sexual violence that create careful distinctions between the sexual violence committed by a parent or acquaintance as opposed to a stranger; between the accidental, damaged, non-violent offender who reacts to trauma and the predator whose impulses are sadistic and uncontrollable. The strategies that they propose for eliminating rape mirror these positions. Support for prevention that includes early intervention for juveniles who act out sexually, treatment for identified offenders, and education for the public about the warning signs of abuse was unanimous among the advocates.

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[54] This is not supported by research on homicide. Family members are more likely than strangers to murder children under the age of 12 (Dawson and Langan 1994).

But Megan's Law poses a difficult dilemma for advocates—one that is set up by the structure of the law itself. If offenders really are dangerous and uncontrollable predators, at least some advocates believe that community notification is an appropriate response. One director supported Megan's Law because "there is no such thing as reform or rehabilitation for pedophiles" (RCA 16). But if offenders are that dangerous, these same advocates argue that Megan's Law is not likely to be an effective deterrent. As two directors put it,

> If [an offender] really intends to do something, they will find a way to do it.... Those things that might stop a rational person won't necessarily stop a sex offender (RCA 18).

> An offender is an offender; if they're hell-bent on finding a child, I'm convinced they're going to go ahead and do it (RCA 14).

Skepticism about the capacity of law to control the behavior of sex offenders leads many advocates to focus on therapeutic intervention as the appropriate venue for both state and rape care center resources. Not surprisingly, advocates voiced different visions that reflect the uses of therapy in the criminal justice system for rehabilitative and punitive purposes.

> How could we prevent people from doing this? I definitely think that talking about it is first and foremost. Growing up, no one ever talked about anything, never. You didn't talk about alcoholism, about being hit, about someone molesting you. You never talked about anything (RCA 9).

> Let's say Joe Jones perpetrated me. Why can't the mandate be that each of us be required then to have three counseling sessions? That means as a victim to deal with my victimization, and if he's a perpetrator, fine, and if he's not, ... [there is] an assessment done to see if maybe there are perpetration issues, and assess that on a psychological issue. ... Anyone who is named as a victim or a perpetrator, regardless of whether they're found innocent or guilty. ... And [if] he did perpetrate me he wouldn't feel like he didn't get caught. He might not have gone to jail or got tried, but he would still have to sit for three hours and listen. And that would be the time served (RCA 8).

But what would such counseling look like, from the perspective of rape crisis centers? There appears to be little distinctive about the rape crisis center approach to sex offenders that would distinguish it from mainstream therapy.

The attempt to enrich feminist theories about rape by abandoning the simplistic axis of gender in favor of "power and control" appears to have devolved into a thin, apolitical truism. Even advocates who use the language seem to find it ultimately inadequate and unsatisfying. One director, discussing a trip she took to Avenel with her volunteers, recounted the following exchange during a panel discussion with sex offenders at the prison:

> These guys were talking about how their mother neglected them, about how they were abused, and I said to them, 'I can almost guarantee you that 50% of us on this side of the table have been abused in some shape or form, but we didn't turn around and do what you did. So how can you justify what you did?' And they couldn't answer me. But I think it was their way of being able to deal with their abuse, was to have power and control. ...
>
> The sad part is that [sex offenders] perpetrate on defenseless young people. But the whole dynamic of what they do, the grooming process, developing a relationship, learning to trust the person, then they just shatter them. And what would drive someone to shatter that person, I don't know. I can sit here and say power and control but I think that there's gotta be something a little bit more deeper than that, to cause such damage to a human being (RCA 9).

Contemporary advocates advanced a depoliticized view of offenders that shows how psychology has deepened some understandings of sexual violence even as it has obscured other elements. These leave little room for the structural, political explanations of sexual violence advanced by early anti-rape feminists; RCAs seem to have lost or discarded earlier feminist analyses that linked sexuality to institutional forms of violence and discrimination. None of the advocates I interviewed spoke about women's vulnerability along lines traditionally cited by feminists, such as race, ethnicity, or economic status; the only category that advocates did mention as mattering was the youth of the victim. Nor did advocates talk about how men's varying social positions could engender abusive behavior, though they were willing to talk about how histories of victimization might lead to rape.

The wholesale adoption of psychological language to discuss sex offenders leaves little room for advocates who want to challenge Megan's Law. At the same time, the necessarily individualized view of psychological intervention militates against the kind of generalizing and demonizing of sex offenders that scholars condemn. Attention to the background of sex offenders gives advocates a way to talk about the effects of sexual abuse on individuals, though they rarely link those effects to the social and political construction of gender and sexuality. Closer attention to the ways that advocates think about the causes and effects of sexually violent behavior shows that though they do not exhibit the vitriol against sex offenders that critics of the movement expect. RCAs exhibit the remnants of feminist theories about sex offenders, though these have been largely displaced by the politically neutral language of psychology that leaves little room for class-based analyses of gender, sexuality, or violence. Without an alternative explanation for sexually abusive behavior, the images of sex offenders presented by supporters of Megan's Law had no competition.

Discussion

Megan's Law does more than provide law enforcement with additional tools to control sex offenders; it is a new paradigm to understand sexual violence and the appropriate state role in controlling sex crimes. Megan's Law draws on feminist rhetoric about sex crimes to alter the state's response to rape in ways as profound and probably more influential than rape law reforms of the 1970s because the rhetoric and legal practices they employ, as discussed in Chapter Three, are more compatible with existing law enforcement priorities and beliefs.

The symbolic politics that undergird Megan's Law show the same kind of attachment to stereotypes feminists attempted to challenge through legal change.

Megan's Law represents an important new development in the state's response to sex crimes. Though many of the images and rhetoric deployed by supporters of the law are clearly recycled from pre-existing ideas such as the sexual psychopath, Megan's Law combines these in innovative ways with emerging technologies of state power—especially around observation and information—and the legacies of feminist legal intervention. Supporters of Megan's Law have to deal with the legacy of feminist rape law reform, especially the prosecution and conviction of individuals for crimes that in some cases simply did not exist before the mid-1970s. These offenders have to be accounted for under Megan's Law. Resistance to feminist interpretations of rape is no longer relegated to the informal, relatively hidden realm of criminal justice personnel, such as the refusal to take reports or to prosecute "difficult" cases. Megan's Law uses the full power and visibility of the state's authority to legitimize explicit, formal, legally-sanctioned discrimination among sex offenders. In resurrecting the idea that sexual violence is linked to mental illness, advocates of Megan's Law displace and minimize the importance of decades of research demonstrating the normalcy of most men convicted of sex crimes.

Megan's Law demonstrates the centrality of psychological expertise to defining and controlling sex offenders. Risk assessment for the purposes of Megan's Law prescribes exhaustive attention to the psychological condition of sex offenders, encompassing not only time spent in correctional facilities but an offender's entire life-span. The concern should not be that psychology has

abandoned sex offenders, but rather that it is being deployed in ways that are now justified in going beyond the conviction that brings the offender to attention of the legal system. Sexually violent behavior is linked to other forms of deviance and disruption, but those are not linked solely to sexuality or even to violence. The definition of social disorder and the disposition for sex crimes is now extended to a whole range of characteristics and circumstances—not only "oppositional-defiant disorder" but also lack of employment, lateness for school, or homelessness. These processes suggest that there is a different dynamic than the "group" approach to punishment that is decried by critics of the law.

Few scholarly commentators voice skepticism of the mental health model of sex offending. Somewhat surprisingly, the pervasive suspicion of the liberal state that marks much of the postmodern turn in criminology apparently sees no contradiction in advocating responses to sex offenders that are dependent on clinical evaluations and definitions of mental illness (Simon 1998, 458; Pratt 2000, 143). The reliance on the liberal, rehabilitative ideal of therapy for rapists erases and disguises the continuing role that mental health professionals have played in helping to create and sustain sexual predator laws, though this is discussed extensively in Jenkins (1998) and Freedman (1984). Simon's assumption, for example, that psychology is defined by "expertise relatively autonomous of the penal system" is not supported by research that shows that the legitimacy of these newly emerging professions was clearly linked to managing the kinds of deviant populations identified through legal practices (Freedman 1984; Pratt 2000).

Jenkins highlights the relationship of previous sexual psychopath laws to the policing of undesirable or dangerous communities, and faults feminists and child advocates for promoting policies that, because of discriminatory police practices, unfairly target these groups. He fails to acknowledge that feminist reforms significantly changed the profile of imprisoned sex offenders to one that is more likely to be white, middle-class, married, well-educated, and without previous convictions than any other group in custody (Greenfeld 1997). Megan's Law revives the stereotype of the sexual predator after two decades of the increasingly successful prosecution of "normal" men for crimes that in many cases were not defined as rape before the mid-1970s.

But in casting their net so broadly, legislators and other supporters of the law ran into the problem of how to classify these offenders whose crimes fit the definition of a sexual predator, but whose socio-economic or demographic characteristics were seen as inconsistent with that label. The result is that definitions of sexual predators and sexual violence are often manipulated, but rarely in ways predicted by scholars. Rather than expanding the legal understanding of sex crimes to catch more offenders, Megan's Law closes down whole areas feminists fought to integrate into rape law, especially familial and spousal assaults. Manipulation of these definitions is often in the interests of protecting privileged defendants rather than in increasing the number of sex offenders under state control. In contrast to earlier sexual psychopath laws that cast a very broad but shallow net that primarily targeted non-violent offenders (such as consenting, adult homosexuals), Megan's Law is structured and administrated in such a way as to exclude a vast number of clearly harmful

assaults and offenders. In fact, exceptions for the "harmless" sex offender are an integral part of Megan's Law.

These exceptions are not ad hoc or arbitrary. The Guidelines are quite specific and detailed about who is a viable candidate for community notification. These definitions clearly reflect preferences and politics around the definition of sexual violence. Neither the crime control nor moral panic perspectives can account for the systematic downgrading of familial and acquaintance assaults in Megan's Law. In contrast to assumptions that ever less serious crimes are being met with the full punitive power of the state (Jenkins 2000), sexual predator laws set up clear hierarchies of crimes and offenders who pose risk of harm to communities.

The reliance of the state on psychological expertise and the power of the combined rhetoric of feminist and psychological theories about rape explain why only some offenders are predators. Feminist critiques of the mental health approach to sex crimes are almost completely obscured in examinations of Megan's Law, usually mentioned only in passing (Denno 1998, 1354). None of the left-progressive scholars discussed earlier confronts the idea that therapeutic intervention in a prison setting relies on a set of uniquely coercive conditions, or that it subverts feminist arguments about rape as a form of structural, systemic violence. In turning to psychology to provide the carefully crafted, rehabilitative punishments for sex offenders that are evidently the modern democratic ideal, commentators on Megan's Law ignore the role mental health professionals have played in obscuring what feminists assert are the fundamental political causes of sexual violence. Despite these concerns, the centrality of the disease model of sex

offending—whether perceived as curable or incurable—is a fundamental part of sexual predator laws and one that draws on feminist rhetoric about the pervasiveness and prevalence of sex crimes.

RCAs didn't challenge these representations because they lack the language in which to do so. Most participants criticized Megan's Law, some harshly, yet none could put her finger on exactly what was wrong with the law. They couldn't articulate the more fundamental problem with Megan's Law that many of them saw because they had no alternative concepts to describe the problem. Psychology and criminology have effaced feminist explanations for sexual violence. Though psychological discourse provides RCAs with a limited way to resist the images advanced by Megan's Law, it is deeply and inextricably implicated in the construction of the sexual predator.

RCAs are clearly at a disadvantage in responding to these arguments. Having abandoned the radical language of gendered violence for the more neutral concept of "power and control," advocates were without a political vocabulary to criticize the assumptions made in Megan's Law. This does not mean that the conversation between feminists and state experts had no effect; indeed, one measure of the success of rape law reforms in challenging public consciousness about rape, limited as they may have been in changing law enforcement behavior, is the ferocity and specificity of the attacks on the feminist concept of rape by the myriad supporters of registration and notification laws. Megan's Law draws its power from the conflation of rape with mental illness, the fear of the predatory stranger, the psychic and physical stigma of rape, the privileging of some victims over others, and the power to treat offenders unequally.

These priorities directly contradict the symbolic and practical goals of feminist rape law reform. So why were anti-rape groups silent about Megan's Law? In the next chapter I show that in the wake of law reform anti-rape activists ceded their role as public intellectuals in favor of developing social service networks. Contemporary activists find that it has become increasingly costly and counterproductive for RCCs to assert feminist beliefs.

CHAPTER 5—THE FAILURE OF SUCCESS

In the previous two chapters I identified how legal institutions adapted feminist rape reform rhetoric to frame and justify Megan's Law, and how the anti-rape movement's analysis of rape helped to inform the criminological approach to sex offenders. Though debates with legal actors and psychological experts had mixed results, they represented turning points for the movement. In choosing to engage with the state and with the law—by talking to strangers—the movement experienced change, growth, and invigorating, sometimes fierce, debate. In perhaps the most troubling outcome of the turn to law reform, contemporary RCCs are largely cut off from the debates and discussions that might engender new development. Forced by funding and state requirements to focus their energies almost exclusively on service provisions, most RCAs have little time or energy to talk with anyone outside of their immediate circle.

In this chapter, I describe how rape care agencies understand Megan's Law in relation to their work. Contradictions inherent in the anti-rape movement's turn to law reform have deprived local agencies of the political, institutional, and intellectual resources to publicly engage Megan's Law, even though the law exacerbates many of the problems RCCs encounter when dealing with law enforcement. I focus closely on the words of RCAs to show how rape law reform has resulted in a vision of the rape crisis movement that precludes the kind of radical action that produced it.

Talking to the state: Transforming the movement

Rape was an issue which, like child care, abortion rights, or educational opportunity, became important because it both symbolized and concretized a

whole set of relationships and systems that activists argued oppressed women. Though the New York Radical Feminists noted that rape "does not encompass our experience as women nor reveal every form of oppression" (Connell and Wilson 1974, 4), feminists saw rape as an issue that brought together many of the forms of discrimination and inequality women faced. Activists argued that rape was a core component of U.S. racism, that victims of rape were judged based on their socio-economic class, and that rape was used to punish women who deviated from accepted gender roles. At the same time, feminists discussed how myths about rape were not only used to isolate and shame women, but also to justify state and individual violence against men of color and poor men accused of sexual assaults.

In the early stages of movement-building writers argued that nothing less than revolution could end rape. Law was not particularly visible during this initial phase. While activists acknowledged that rape laws discriminated against women and were grossly unfair, law reform was rarely mentioned as a way to address the problem of rape. Activists had a broader vision of how sexual violence fit into systems of political, economic, and gender privilege, and proposed revolution—not reform—as the way to compel these needed changes.

Waiting for the revolution, however, was an unsatisfactory answer for many activists who were forced to watch as rape victims were subjected to disrespectful and discriminatory practices in hospitals, police departments, and courtrooms. Even though legal categories and concepts were incidental to the construction of rape as an issue, antiquated rape laws, low rates of prosecution, and poor treatment of victims by legal institutions all helped make rape a

compelling and highly visible political vehicle for feminists. United in a radical political understanding of rape, advocates saw better laws and law enforcement as useful ways to grapple with systems and institutions—not as ends in themselves, but as a project that addressed violence against women in both symbolic and pragmatic terms (Connell and Wilson 1974).

These questions were not settled by the decision to draft new legislation and lobby for new policies; rather, activists saw this as a step that would have a positive impact on women's access to justice if it were properly implemented and monitored.

Engaging the state more directly helped activists to articulate a sophisticated and nuanced understanding of how law reform fit into the movement's larger goals. However, in defining the most visible feminist response to rape through criminal law, movement activists retreated on some of their most powerful theoretical critiques of rape and reinforced the perception of rape as a crime, not an act of gender domination. As changing the law enforcement response to rape became the most visible and dominant item on the anti-rape agenda, the movement was increasingly isolated from its origins in the women's liberation movement and from other New Left and progressive groups. As a result, the movement could draw on few allies in its struggles with the state.

In the wake of the Michigan experiment struggles to reform criminal codes spread across the country, with significant changes effected in every U.S. state by 1980 (Bevacqua 2000, 100). This stunning example of feminist-led reform was both inspiring and—despite its success—deeply controversial within the movement, with some participants "questioning the efficacy of a social change

strategy to be implemented by a male-dominated institution" (Marsh et al. 1982, 14). Despite these concerns, law reform catapulted the anti-rape movement to public attention, with an enormous increase in media coverage and member recruitment for the movement.

Despite its initial success, focusing attention and resources on criminal law reform was questionable for a number of pragmatic reasons. Rape law reform was dependent for its success on law enforcement personnel, few of whom had shown themselves to be allies of—or even vaguely sympathetic to—the movement. New laws would mean little without vigorous implementation, to be carried out by one of the most coercive and biased agents of state power. Police, attorneys, and judges had shown little inclination and indeed much hostility to the types of changes feminists were able to enact. The clash between the goals of reformers and the designated agents of implementation did not bode well for meaningful change. In turning to criminal law reform feminists brought themselves into contact with some of the least visionary, amenable, and elastic legal institutions.

Though they were often criticized for turning to criminal law, with its explicit use of law as social control, feminist rape reformers articulated sophisticated understandings of the state. Reformers argued that selective arrest and prosecution, often based on color and class, determined the treatment of both victims *and* offenders. Nevertheless, from the beginning anti-rape groups—steeped in the anti-authoritarian ethic of the New Left and familiar first-hand with state violence against communities of color—had to wrestle with the dilemma of how to respect victim claims about equal treatment while simultaneously protecting the rights of disadvantaged and persecuted minority

defendants (Bevacqua 2000; Haag 1996; Rush 1974).

In keeping with the feminist arguments that rape was about violence, not sex, and that criminal law was the appropriate place to intervene in rape, the primary source of government funds available to rape crisis centers was controlled by law enforcement agencies (the Law Enforcement Assistance Administration [LEAA], later the National Institute of Justice). The legal arguments feminists put forward thus not only had an immediate impact on law reform, but also determined the funding streams available once rape had been recognized as a legitimate issue. With funding in the hands of some of the most conservative state agencies, rape crisis centers quickly learned that they would have to make compromises in order to secure government assistance (Matthews 1994).

The perception that rape crisis centers would remain independent, radical agencies despite their cooperation with legal institutions was quickly dispelled. The energies focused on law reform and the relationships anti-rape groups developed with social service and law enforcement agencies pressured feminists to reconcile their radical political analysis of rape with legalistic and bureaucratic priorities. Bevacqua cites a 1976 anecdote about the Stop Rape Crisis Center (SRCC) in Louisiana as an example of the power of law enforcement over ostensibly independent rape crisis centers:

> [T]he SRCC, a recipient of federal LEAA funds through the local district attorney's office, had been instructed by District Attorney Ossie Davis to discontinue services to nonreporting victims and to victims who reported but whose cases had been concluded. When the Director of the center was fired for objecting, and the entire staff and volunteer corps resigned in solidarity, the paid workers were replaced with criminal justice professionals and new volunteers began to be recruited. These events took place because government funding contingent upon reporting rape to the police was incompatible with the original organizers' goals of placing the victims' needs ahead of law enforcement's "purely prosecutorial

objective." A few years later, in 1980, the SRCC was named an "exemplary project" by the National Institute of Justice, LEAA's successor (2000, 83-4, citations omitted).

With the real threat of sanctions for noncompliance, an institutionalized, social service model was adopted by most centers.[55] This approach meant that fewer new recruits were brought into the movement and radicalized by their experiences there (Gornick 1998). Early anti-rape groups had linked theories about women's lives with direct service to clients, politicizing and mobilizing participants through exposure to injustice and inequality. This approach helped to produce the first wave of activists who saw such interesting opportunities in law reform and were able to understand, articulate, and employ its potential. The social service model that came to dominate groups in the 1980s effectively eliminated the development of these organic intellectuals by focusing primarily on direct service and withdrawing almost completely from public policy over rape.

Reviewing these divides in California, Nancy Matthews explains that government funding "for rape crisis centers was increasingly generous, as long as they fitted into a mode of operation that was acceptable to the state. ... The division, however, was not just between the state and the activists, but also between those who were feminist activists and those who adopted the social service framework" (1994, 119). Whether radical activists left such organizations, frustrated and unwilling to comply with the constraints imposed by state

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[55] Similar trends have occurred among feminist non-governmental organizations (NGOs). Researchers such as Sonia Alvarez (1999), Christina Ewig (1999), and Lisa McIntosh Sundstrom (2002) have noted the difficult role that NGOs are expected to simultaneously play as agencies that rely on state approval that are also supposed to monitor and monitor state (in)action. I am indebted to Mary Hawkesworth for pointing out this illuminating comparison.

requirements, or were not brought into the movement by these increasingly moderate groups, the result was the same: the homogenization and depoliticization of movement ideology.

Though law reform occupied a central place in anti-rape work, conflict about working so closely with the state and with law enforcement was not eliminated. Even among supporters of law reform, many anti-rape activists recognized the apparent contradiction of turning to the criminal law to articulate their vision of social change. Though temporarily submerged beneath a wave of legal success, these conflicts would return when anti-rape groups confronted problems over implementation of these reforms. The changing trajectory of the anti-rape movement not only shifted its internal vision, but also helped to fragment and isolate the movement politically.

The movement's turn to the criminal law and willingness to work with conservative groups appears to have contributed to an increasing distance between rape crisis centers and the women's and New Left movements. The close (though usually far from cordial) relationships rape crisis centers maintained with local police and prosecutors often literally put them on the opposite side of the table from typically liberal legal advocacy organizations such as public defenders and civil libertarians. Devoted almost exclusively to crisis response and often supporters of punitive criminal justice measures, rape crisis centers (and

their sister agencies for battered women) are generally not perceived as members of the progressive community by activists on the left.[56]

Those allies the movement did not drive away by being too conservative they succeeded in alienating by being too radical. The success of rape law reform encouraged some activists to pursue further legal regulation in areas they argued contributed to sexual violence, especially pornography (Dworkin 1981; Griffin 1981; MacKinnon and Dworkin 1997). Though the anti-pornography approach in particular drew on many of the same principles regarding law and social change as had rape law reform, many academic feminists rejected these claims as antithetical to feminist politics. The resulting conflicts—dubbed "the sex wars"—lasted for years and created deep schisms in feminist circles (Vance 1984).

Radical anti-pornography activists were relatively small in number and often not affiliated with grassroots rape crisis centers, but because of the connections they drew between rape and other forms of sexual exploitation, many academic feminists and other progressives assumed that local anti-rape groups espoused these views. In reality, few rape crisis centers shared this analysis of sexual exploitation; many were oblivious to the debates that raged

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[56] Suzanne Pharr, an organizer of the "No on 9" campaign fighting an anti-gay ballot initiative in Oregon in 1992, noted that the statewide Battered Women's Coalition had not been invited to join the campaign. Pharr pointed out that, "[m]any people don't think of battered women's shelters as part of the progressive movement and they are rarely included at the table" in political coalitions (Pharr 1993).

mostly among feminists affiliated with the academy.[57] Nevertheless, anti-rape groups were often tagged as naïve, anti-sex zealots who colluded with the forces of political oppression and sexual repression (Brown 1995; Echols 1983; Marcus 1992; Willis 1983). These perceptions—accurate or not—fractured feminist support for further work on rape law reform.

Though local groups were often unaware about the depth of or theoretical basis for the sex wars, they were torn by their own internal battles about feminist ideology, the uses of law, and the appropriate role of the state in combating sexual violence. Increasingly isolated from each other, both rape crisis centers and feminist theorists stopped generating new theories about rape.[58] Concepts about sex offenders, victims, and the feminist response to rape were often mired in the early 1980s, with infusions of new ideas coming primarily from psychological studies of rape and its effects. Lacking the strong theoretical component that had informed earlier anti-rape actions, and prioritizing service delivery over policy debates, centers had limited resources for understanding and dealing with the state response to the rape reform movement.

Internal frictions arose as groups made different decisions about how to respond to rape, especially around whether confrontation or systems-based

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[57] In her account of the debates over the pornography ordinances introduced in Minneapolis, Indianapolis, and Los Angeles, Catharine MacKinnon says that "Battered women's groups, rape crisis center workers and advocates, [and] organizations of survivors of sexual abuse in childhood ... present unanimous evidence from their experience in favor of the ordinance. They, too, supported it against later legal challenge. The large, ethnically diverse Los Angeles County Commission on Women that sponsored and supported the ordinance chaired the hearings there," (1997, 11). Despite this claim of widespread support, only five sexual and domestic violence organizations were represented among the supporters of the ordinance in the three cities.

[58] In a recent article in *Signs*, Carine Mardorossian describes rape as "academia's undertheorized and apparently untheorizable issue" (2002, 743), noting that less than a half-dozen theoretical investigations of rape appeared in major feminist journals during the 1990s.

advocacy was the best way to implement reforms to the criminal justice system. Matthews (1994) notes that movement conflicts about whether centers should be dependent on the state were exacerbated by state agencies that required measures groups found overly bureaucratic (the creation of boards of directors, clear hierarchies of decision-making and accountability), intrusive (information-gathering and record-keeping about victims), and contrary to the best interests of victims (requiring that victims take certain steps, such as talking to the police, going to the hospital, or prosecuting, in order to receive services). These processes affected almost every rape crisis center in existence in the late 1970s. Though the experience was common, the responses varied greatly. As groups responded differently, as dictated by local conditions, internal ideological battles about what defined a feminist response to rape—and whether rape was even a feminist issue—came visibly to the fore.

Gornick, Burt, and Pittman (1985) noted that occasionally rape care staff disparaged the public political activities of other groups,[59] especially when rape was linked to a broader set of social concerns. Matthews links increasingly strained (and sometimes openly hostile) relations between rape crisis centers in California to different ideological perspectives about rape and feminism. Matthews documents in-fighting between groups that accepted state funds, labeled "sell-outs" by more radical centers, and radical groups, which were often dismissed as ineffective zealots who gave all rape crisis centers a bad name (1994,

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[59] "One of these centers remarked that there was a large 'Take Back the Night' march in their community, but that only two or three of the center's 60 volunteers took part; the program director felt that the demonstration was 'disgusting' and 'useless.' The director of a second program reported that the attitudes of her staff and goals of her program were largely in opposition to those of the local 'feminist community'" (Gornick, Burt, and Pittman 1985, 260).

112-6). As rape law reform sparked an influx of new activists, funding sources, and opportunities for alliances, feminists were increasingly conflicted about how to manage the benefits and costs that implementing reform entailed for local groups.

Though many rape crisis centers resisted the imposition of state values, goals, and methods on their work, few made disagreements public. Lacking the grassroots support that had characterized the law reform period and now deeply invested in the social service approach funded by criminal justice agencies, rape crisis centers defaulted to a position of behind-the-scenes negotiations to address the continuing, blatant problems in the criminal justice response to rape (Matthews 1994). Centers preferred to work out disagreements through private channels in order not to antagonize public officials, jeopardize their funding, and compromise access to and treatment of victims. This accomodationist stance ensured the survival of centers; it also reinforced the perception that rape law reform was a success and that treatment of victims and prosecution of sex crimes had improved dramatically.

Though some improvements were made, many of the problems reform was intended to solve did—and do—continue to exist (Caringella-MacDonald 1984; Estrich 1987; LaFree 1989; Maschke 1997; Schulhofer 1998). Despite these continued problems, the narrowing vision and scope of the movement meant that groups had little interest in using these problems to keep members engaged and active. Injustices were no longer opportunities for mobilization.

The most sophisticated of the anti-rape groups involved with legal change knew that criminal law reform was only the first step. They recognized that

implementation was the true test of success and were intellectually prepared for protracted struggles over the meaning of the new laws. Groups who expected that reforms would produce immediate change—akin to what Scheingold called the "myth of rights"—found themselves almost accidentally committed to a close and frustrating relationship with law enforcement. What neither group took into account was that many of their allies in reform efforts would move on to new battles. Anti-rape groups found themselves largely alone trying to combat the institutional cultures of law enforcement agencies.

Rape law reform excited legal advocates and feminist activists. The initial challenge of imagining and creating reform produced innovative and thoughtful collaboration between these groups. Once reforms were in place, however, many of the legal advocates left anti-rape work to focus on struggles where the need for legal expertise (especially though not exclusively litigation) was more pressing, such as on the Equal Rights Amendment and abortion rights (Gornick 1998; Mansbridge 1986). Without easy access to legal advocacy and typically isolated from progressive communities, anti-rape groups found that "overt opposition" to the state was often a costly and counterproductive strategy (Matthews 1995). Intellectually-minded feminists found a new home in burgeoning university-based women's studies programs, resulting in a kind of "brain drain" that diminished the level of critical analysis in the movement. Though some continued to work on issues of rape, their research was often inaccessible to grassroots activists and increasingly disconnected from the pressures and opportunities experienced by advocates on the frontlines.

This overview points out significant problems with the dominant

conceptualization of legal mobilization in social movements. In the anti-rape movement, law functioned not to help build the movement, but instead to exacerbate ideological conflicts among activists. Though groups attained a high level of visibility through the law reform process, the focus on criminal justice reform locked the movement into struggles with state agencies that were often very resistant to feminist changes. The struggle to compel implementation continued to falter as anti-rape groups transformed themselves into social services providers.

The effects of law reform on the movement were no longer simply in the form of external pressures or internal conflicts—struggles between anti-rape groups and law or legal institutions. Law reform and its consequences changed the very nature of legal consciousness among activists. Even as centers became institutionalized through the 1980s many activists recognized that failures of law reform could be used as levers on law enforcement agencies—that the threat of public action could produce change. Though groups rarely used this avenue many still recognized its availability and its power (Bevacqua 2000; Matthews 1994). With the increasing distance—both temporal and political—from law reform, anti-rape groups have largely lost any sense of the power of law for social change. The dominant understanding of law is instrumental, the sole function of law and legal advocacy to close loopholes in rape prosecutions and to provide funding for agencies. Many groups are unaware of the ways that law is used to constitute the very concepts basic to sexual violence, and most are unable and frankly uninterested in mobilizing law to change social conditions.

Law in the New Jersey context

The turn to law thus created a movement-wide shift in priorities and tactics that affected local groups. Rape law reform shaped anti-rape groups in ways beyond a simple pattern of movement institutionalization—the turn to law created a political and intellectual context that has deeply influenced the development of the movement. In this section I use interviews with activists to demonstrate how the issues I discussed above play out in the daily work of rape care agencies. RCCs in New Jersey are exhausted from continuous conflict with law enforcement agencies, hampered by their dependence on the state, and demoralized by the struggle to survive financially. As a result, they are deeply cynical about the capacity of law to achieve social change. This was the intellectual and political terrain from which RCCs faced Megan's Law. Perhaps not surprisingly, then, they had little motivation, few resources, and no time to air their concerns about what the law would mean for rape survivors.

Dealing with law enforcement: "Sometimes ... it feels really bad."[60]

One striking and persistent finding based on interviews with rape care directors was how much of their resources—emotional and organizational—are spent attempting to ensure a minimally acceptable level of service by law

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[60] "When I train advocates, ... I talk about the role of law enforcement to prove it beyond a reasonable doubt. We have a very different role. We believe always, no matter what. I don't want my advocates going out and doubting a survivor. So I try to explain the difference in the role. I think that sometimes when we look at how survivors are treated it feels really bad. And it's not all investigators, it's not all the time. Over the years I've seen some improvement from some horrific things I've seen happen years ago. ... [I]t doesn't help with the relationship [with the police], but when you do advocacy it's not fair for us to let that go," (RCA 14).

enforcement personnel.[61] The focus on police and prosecution is no longer a vehicle to make statements about women's rights as autonomous individuals with the right to equal treatment and sexual freedom. Instead centers in New Jersey are locked into an endless and exhausting cycle of "educating" law enforcement that consumes time and energy without bringing the issues to public attention.

Twenty-five years after New Jersey reformed its rape laws, advocates take for granted a high level of resistance by police and some prosecutors to their work. The advocates I interviewed made matter-of-fact statements that assumed and normalized very adverse conditions with law enforcement. Directors routinely described police, prosecutors, and judges who are abusive toward survivors, dismissive of rape allegations, incompetent at investigating rape, unaware that rape crisis centers exist, and contemptuous toward rape care advocates.

Directors described behavior including questioning rape victims in public locations (RCA 9, 15), refusing to let advocates meet with victims (RCA 5, 14), and openly accusing victims of lying (RCA 9). The belief that victims routinely lie is apparently still very common among line officers (RCA 4, 5, 9, 13). One director mentioned that during an outreach campaign to more than 50 local jurisdictions, only one agreed to have the center in to provide information on rape to first responders. The RCA reported that police in one town declined the invitation by saying rape "'doesn't happen here. We don't get those cases.'" Shaking her head,

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[61] Questions about law enforcement were not part of the standard interview format. Information about police and prosecutors was initially volunteered by directors; I then followed up with questions as appropriate.

she said, "I still laugh when I think about that" (RCA 14). A local judge accused an adolescent victim of fabricating allegations of sexual touching as part of a "custody plot" against a father with a previous conviction for incest (RCA 8). Two directors recounted specific cases of child sexual abuse where charges were not brought because the child was questioned inappropriately by investigators (RCA 4, 5). A director who has access to police reports said that police "don't know how to do a decent early investigation with kids. ... It's less of an attitude problem than it is a skill problem. ... [The quality of] these reports are just horrible, even when [police] are clearly sympathetic" to the victim (RCA 5).

RCCs are evidently marginal to the way law enforcement responds to rape victims. Most rape crisis centers do trainings for new police recruits. Centers stressed the importance of these programs to inform police of their existence. Even so, advocates report "after three years some of them still don't know" what RCCs are (RCA 2), or that "we've noticed that they don't even know where we are. ... [Police are] saying 'I don't even know how to get there,'" when bringing victims in for services (RCA 4). Sometimes the negative reactions go beyond bewilderment or ignorance and veer into outright hostility. One RCAs spoke about hating to train new police recruits about responding to rape. "You ever do trainings for the police? You know what they do?" She mimed falling asleep and snoring, then laughed. "It is horrible" (RCA 5). This director also mentioned that a conversation with a police officer who refused to let advocates meet with the victim before he questioned them. "The [officer] said, 'You know why we don't want you advocates in? We don't want you in because you come in, you make

[victims] comfortable, and you make it very easy for them to lie. That's why we don't want you in'" (RCA 5).

Nor are prosecutors necessarily more compassionate or effective. Though centers tended to talk less about problems with prosecutors than with police, those that have a contentious relationship with the prosecutor's office feel it in a myriad of big and small ways, from frustration with low rates of prosecution to the inability to meet with prosecutors to competition for grants to provide services to victims. One director described the state Attorney General's Office and the local prosecutors as "slimebags" who are "just not held accountable for a lot of things." The lack of oversight, she alleged, means that "there's not one county that does anything uniformly. Some of the prosecutors don't even want to apply for the [victim assistance program] money that's there" (RCA 4). Another director, when reflecting on what changes Megan's Law might have caused in the law enforcement response to rape, said sarcastically "If the prosecutor will ever meet with me I'll have to ask him about that" (RCA 14). This same director, when asked if her agency was on the Megan's Law notification list as a women's organization, said somewhat bitterly, "there's no way they would put us on a list for anything." These problems should not come as a surprise given research documenting the resistance of legal systems to rape law reforms (Berger 1991; Estrich 1986; LaFree 1989; Loh 1980; Marsh, Geist, and Caplan 1982; Spohn and Horney 1992), but somehow these continuing problems have been glossed over in recent social movement case studies of rape crisis centers (Campbell, Baker, and Mazurak 1998; Martin et al. 1992; Matthews 1995; Schmitt and Martin 1999).

These problems, which though perhaps more apparent in some counties appear to be common throughout the state, lead to what advocates describe as "glaring holes in the [law enforcement] process" (RCA 4). Most centers acknowledged that law enforcement procedures were less than ideal, though some were more open in their criticism than others. Whatever their criticisms, many of the directors volunteered that they had done some sort of systems advocacy to improve services to victims (RCA 4, 5, 8, 11, 13, 14). Activities ranged from fighting to have cases re-assigned to a new investigator, to making statements supporting victims bringing official complaints, to praise and recognition for individual law enforcement officers who treated victims well. These ongoing battles frustrate and anger service providers who try to create a balance between fighting for victim's rights and ensuring that centers continue to operate. The tension between advocacy and cooperation was apparent to many of the directors.

> Everyone walks a very fine line on the local level. Each county—especially the ones whose prosecutors hold their grants. How the hell can you go out there and start bashing the lack of prosecution and bashing the law enforcement procedures and then send your [volunteer] advocates out there in the middle of the night to face those same law enforcement officers? That's tough. I would never want to put my advocates in that position. [I tell volunteers] you do not take on law enforcement. ... Now we're set up where you're bringing attention to their inadequacies and then saying, 'Oh, but we want to be part of your program, and give us our funding.' I think that's very difficult (RCA 4).

> I fought very long and hard not to have [a rape victim service program] out of the prosecutor's office. I caught a lot of flak for it, because here in my county if you want to play the politics game, you don't go fighting the prosecutor. But I really didn't see that it was in the best interest of the victim. ... It's too closely tied with law enforcement. ... You make a lot of enemies, by the way. You really do (RCA 13).

Making enemies is not an unimportant consideration for these groups. Police, who are invested with enormous discretionary power and carry guns, are threatening symbols of physical force and intimidation. Prosecutors often award

and administer grants that centers need to keep their doors open. Directors who call attention to problems with law enforcement fear various forms of retribution, from physical retaliation by police (especially in smaller communities where advocates are known personally) to losing grants. If police embody the brute physical force of law, prosecutors represent its more subtle functions of authority and control. In either case, advocates believe that challenging law enforcement may have serious adverse consequences for their safety, their services to victims, and possibly to the survival of their centers.

Because anti-rape groups put criminal law reform as a central component of their mission, local groups are forced to work cooperatively and seek funding from the same systems that they are supposed to criticize and challenge in the interest of rape victims. One director pointed out that even in cases where state officials worked cooperatively with rape care agencies to improve services to victims outside the criminal justice system, in the end monies for such initiatives seemed to always get funneled through state criminal justice agencies (RCA 5). By tying their work so closely to the criminal response to rape, RCAs in New Jersey appear to be trapped in a system that forces them to constantly adapt, incorporate, and defer to law enforcement when envisioning how rape should be handled in the community.

As a result of this Faustian bargain, when centers do advocacy it is always a private action, never a public confrontation. Several centers mentioned refusing to take on advocacy cases when survivors wanted to vigorously, sometimes publicly, pursue complaints about poor treatment by police and/or prosecutors (RCA 4, 14). Though these same directors were willing to make and follow-up on

complaints made through legal channels, advocates always preferred to address issues on an individual basis, not to take on systems wholesale or draw attention to persistent problems.

Though most centers see themselves as too weak to influence law enforcement, they also fear being too closely associated with them in the public mind. Without the staff, savvy, or resources to control their interactions with the criminal justice system, RCCs fear that engaging legal issues will undermine their independence and accessibility to victims (RCA 2, 8, 13). Centers appear unable to distinguish engagement from co-optation. This lack of power is not a simple lack of will, but reflects the desperately narrow margin of survival most centers take for granted.

Trying to survive

Rape crisis center staff are constantly overworked and overwhelmed, often juggling administrative responsibilities with crisis intervention work. In tones of exhaustion and anger, directors recounted the stress of trying to keep an agency afloat while also providing quality services to victims.

> We work in a very stressful field to begin with, never mind the stress of wondering if you're gonna be able to keep the staff by getting another grant the following quarter (RCA 9).

> [Grant-writing is] so incredibly involved, and so time-consuming, and you're supposed to do all that as well as do your job duties, plus be on call. And it's like, 'I'm sorry the grant's not ready on time, but I had to go to the hospital at three o'clock in the morning' (RCA 2).

> We're doing direct service, so we don't have time to look at [politics]. We have to think direct services all the time. I understand why [the state grant process] is competitive. ... but it's also stressful too.... Instead of focusing on direct services of outreach you're worrying about your funding and if you get cut what's gonna happen (RCA 11).

Centers receive the bulk of their state funding through the Division on Women of the Department of Community Affairs. These funds, which total

$500,000 for all twenty-one rape care agencies in the state, are the basis for most rape care program. Some centers also receive funds from state criminal justice agencies through the local prosecutor's office or the state victim assistance grants, but these grants—though sometimes larger than the DOW allotment—are unstable and more likely to be cut, some directors felt in retaliation for taking a confrontational stance with law enforcement officials.

In this environment, it is not surprising that directors typically place policy issues at the bottom of their priorities. One director said, "I wish I had time to get involved with legislative things that are coming up. ... It's really a shame, and I wish we had time to get involved, but we're just barely keeping our heads above water." But in the context of her agency, she described policy advocacy as "a luxury" (RCA 13). Another director pointed out that she is a counselor, not a legislative expert. "Lots of [our volunteers] don't understand the legislative process, and I don't understand it so great myself. I forget from one crisis to the next. I'm interested in it, but it's just like another thing" to do (RCA 14).

The problem is compounded by the isolation of rape crisis centers from groups that do work on policy or organizing. When directors spoke about community outreach and collaboration they only ever mentioned law enforcement or other state-funded social service non-profits, never groups such as lobbying or advocacy organizations, academic researchers, media, or policymakers. As a result, RCCs are both deprived of other viewpoints and unable to contribute their perspective on policy issues related to violence against women. Centers concentrate on managing law enforcement and improvements for victim services, not envisioning and advancing political analyses of rape.

Though they do engage in advocacy activities to improve systems, rape crisis centers explicitly and emphatically do not pursue the kind of policy advocacy that marked earlier stages of the movement. The only policy-related efforts interviewees mentioned were participation on a committee to develop state-wide standards for treatment of sexual assault victims, and support for a bill to increase state funding to rape crisis centers. Almost every director identified better funding of services as their top priority.

Directors appear to be cynical about the capacity of law to make a difference in their work. This is perhaps not surprising given the failure of rape law reform to eliminate problems with law enforcement personnel in New Jersey. But centers also lacked any interest in engaging legal definitions of sexual assault. With a very few exceptions, groups did not want to address policy issues at the level that rape law reformers did in the 1970s. Most directors reported writing letters to their legislators advocating passage of "the $2 mil bill"[62] that would provide a one-time grant of two million dollars in funding to local centers; some also testified at legislative hearings on the bill. Directors want more funding to "manage rape" (Matthews 1994), not new laws that change its meaning. RCCs justified their reticence on policy issues through a variety of reasons, ranging from perceived restrictions on the political activities in which non-profits can engage to limited resources to concerns about whether the center would lose public (and financial) support if it took an unpopular stand. And lacking alliances with any independent groups that could collaborate by providing legal expertise,

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[62] NJ Leg. A169 (2002).

compelling research, media outreach, and constituent pressure, the directors are probably right.

But these activities are also not pursued because they are incidental to what the directors understand to be the primary work of the centers—the provision of counseling services to victims. Centers place victim services at the core of their mission. Indeed, a review of literature requested from RCCs across the state reveals that crisis intervention and counseling services constitute in many cases the only function described in the mission of the center.[63] Typical of these are statements from centers in Sussex and Middlesex counties. In Sussex County, the "Sexual Trauma Resource Center provides services to victims of sexual assault, incest and childhood sexual abuse, regardless of gender, race, religion or sexual orientation, as well as to their families and significant others." From Middlesex County: "The Center provides understanding, supportive treatment for the victim. Experienced professionals offer medical assistance and evidence collection. Social workers provide individual and group counseling for victims and their families. They provide advocacy services, and will accompany the victim to court if she wishes to press charges."

This approach to rape facilitates organizational forms that emphasize professionalism, efficiency, and an individual, therapeutic responses to rape. One

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[63] Only two centers took a more political approach: the YWCA of Mercer County, which includes their organizational mission statement against racism and for the empowerment of women and girls in their sexual assault brochure, and the Rutgers University Sexual Assault Services and Crime Victim Assistance program. The Rutgers program is "committed to the creation of a community without violence. We provide services designed to raise awareness of and respond to the impact of interpersonal violence and other crimes. Through a combination of direct service, education, training, policy development and consulting to the University and broader community, we serve as a critical voice in challenging prevailing beliefs and attitudes about violence."

director spoke about the importance of providing "service" activities for community members who wanted to do volunteer work, though such service was described as a community-oriented, civic-minded opportunity (RCA 15). Desiring the recognition and respect that accompanies formal credentials, other directors spoke with resignation or distaste about relying on volunteers and talked about efforts to bring rape care agencies "on par" with medical and legal institutions (RCA 2, 13). These centers generally eschewed the idea of community education or mobilizing through volunteer education; volunteers are not potential recruits to a political movement, but an embarrassing holdover of an earlier, less sophisticated, pre-professional era.

In several other centers, directors criticized their reliance on volunteers as preventing them from intervening as immediately and forcefully in situations where other responders (police and medical personnel) were acting unprofessionally:

> There are still groups that look at rape care advocates as hand-holders and not professionals, and that's one of the reasons among many that I don't want to use volunteers, that everyone is a staff person. When so many of the counties are forced to use volunteers, volunteers are easily intimidated. If you're there to advocate for someone and you're a volunteer, are you going to have the courage to advocate in the same way that a staff person working in an agency whose been at staff meetings and knows what is going on at every moment is going to advocate? Probably not. There are some volunteers that will have that kind of courage to stand up for a survivor, and others who are going to back down if law enforcement or a nurse try to push them out of the room when the survivor has a right to have the advocate in there with her (RCA 14).

Interestingly, though many centers would do away with their volunteer programs if they could, it is the state Division on Women funding that requires the use of volunteers. The original, radical idea that volunteers provided a peer-based, political alternative to medical and legal professionals has been co-opted

to force centers into maintaining volunteer programs that are time-consuming, unpredictable, and often unreliable.

Ideology and activism

The retreat from the transformative potential of law may come most directly from the diminished importance of feminist ideology in rape care services.[64] Directors described their work repeatedly in the language of psychological intervention and assistance, not of feminism, gender equality, community organizing, or other explicitly political frameworks. In eschewing an explicitly feminist analysis of how rape law intersects with social meaning, centers have lost a powerful vocabulary or framework—though certainly not the only one—for analyzing the myriad problems they face, from funding to professionalization to victim advocacy to policy.

Few directors used political or ideological language as a framework. When asked whether they used the word "feminist" to describe themselves or the work of the rape care agency, directors offered a variety of responses. Some were perplexed at the question and visibly groped for a definition of feminism.

> No, we don't. Most of our clients are female. ... I would probably say yes and no. Obviously we don't discriminate on everybody, we believe that when you look up in the dictionary everyone should be treated equally—financially, socially—and no power structure. We don't use the word, but I guess yeah—in terms of that we don't discriminate. And especially being part of [a larger organization], we have all their [non-discrimination] stipulations that we need to abide by. We do work more with women, however we do work with men as well. So I don't know if I'd clearly say feminist, but we do work more on women's issues because we do have women

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[64] I do not wish to suggest or impose a definition of feminism on RCAs, nor did I do so in the interviews. Advocates were simply asked, "Do you use the word 'feminist' to describe yourself or the work of the agency?", leaving up to them the definition of feminism. When I speak of incipient feminist consciousness I mean to highlight advocates' own interpretation of their work as deeply inflected by gender. When I discuss feminist ideology I mean the use of that gendered interpretation to analyze situations and guide agency or individual responses. I recognize the multifaceted and hotly contested nature of these issues, and offer what are intended to be cautious and limited generalizations drawn from the advocates themselves.

> coming to us. I really can't answer... I guess we meet the definition of it, for women but also for men (RCA 11).
>
> [I]n a general way we come from a feminist perspective, as far as the women we work with, with the empowerment model. And men. We work with men too (RCA 9).
>
> Well, yes. But just because we are strong women, we still want chivalrous treatment. We don't know everything about cars or plumbing (RCA 10).

Two interviewees were clear about the positive role feminism played for them and in their agencies. For one program director, the answer was unambiguous. "I ... come out of a very feminist, women's organization that really focuses specifically on middle-class and lower-class women" (RCA 4). Another director who actively sought to hire feminists and screened job candidates about their political attitudes dismissed with evident impatience the association of feminism with what she called the stereotype of the "bra-burning lesbian." "I've been called that name and I'm not that, so slowly the image [of feminism] has changed" in her county (RCA 16).

But more often, advocates were ambivalent about what feminism meant in their organizations and to their role in the community. One advocate sympathetic to feminism said that her agency doesn't present itself to the public as feminist because she doubts that the community is tolerant of such an approach. She felt that downplaying the political views of her center is important to getting their message out and being seen as credible within the county (RCA 18). Others identified negative political "baggage" they associated with feminism.

> Yes. We use the word. I would say that each of us considers herself feminist. But I do get very sensitive about, even being in this organization, under a women's center thing. ... I think that sometimes people think of feminists, they think we're seeing this as a feminist issue and while we consider ourselves feminist, we try to be very sensitive that seven and a half percent [of our clients], at least in the year 2000, are males. We know that males are more reluctant to come out for services, and less likely to seek services. So we all consider ourselves feminist, but we would rather not be looked at as a feminist organization because of how feminism is misunderstood. [Feminism is] not seen as an equality thing—feminists are all feminazis ...

> and they're just trying to fight for women—and ... that's not the image that we want to portray (RCA 14).

> No, no. I just don't. I think there's negative connotations with that. As a matter of fact, I've changed my whole style, like with law enforcement officers, because we were always known as the feminazis. And I joke with them about it now. And I've found, since I turned my whole attitude around, that they listen now, they seem to be interested. I have to come across a different way to be effective with especially law enforcement people. And no, we do not—I do not, in my program—we don't. I'm sorry if that disappoints you. But it closes more doors than it opens in my experience. That's an interesting question, though (RCA 13).

> No. We don't use that word here. ... I hate it. ... Feminists have a tone which bothers me, in regard to—it almost smacks of exactly the opposite of what I want to see happen in this work. It's a word that has a flavor of taking over, almost like the perpetrator does. ... I cannot identify with that word (RCA 15).

Though these women may not use the language of feminism in explicit or everyday ways, they are clearly aware that their work is marginalized because of its gendered content and context. One director demanded, laughing incredulously, "If this were a male organization, do you really think that we'd have to go out and find volunteers and train them and try to keep them? There's no way." (RCA 13). Another demanded that I turn my tape recorder back on after the formal interview was over so she could make the following statement:

> I honestly think that if this was a man's issue, that it wouldn't be such a battle for all of us. ... If a majority of the people were men being raped, they would probably have all the centers and all the funding in the world, because it's still a patriarchal society. So I really think that across the nation and the world that if this was a men's issue that we would not be struggling as much. You can put that in! (RCA 9).

Several of the directors bitterly related the lack of funding, forced reliance on volunteers, and general lack of respect for rape care work to general social devaluing of women, and some went on to criticize the often underpaid, exploitive working conditions in many RCAs in this same language about lack of respect for women.

> If this were primarily a male problem, the salaries wouldn't be where they are. I'm here because I'm devoted to the cause and because I have a husband who makes a salary that allows me to make less. But if you were a single mother, some of the centers—they pay $12 or $13 an hour. Tell me about how the hell a single mother is gonna raise her children on that? (RCA 14)

> I want people to understand what it means to be on call. You really can't have a life. And we get paid shit. Flat out crap. We talk about empowering women, when we're barely making it ourselves (RCA 9).

Though this implicit, sometimes intuitive sense of gender injustice is a sign of incipient feminist consciousness, only rarely does it rise to the level of an explanatory ideology that centers could use to analyze their situation or guide their decisions.

The loss of this vocabulary is not incidental. It also erases visions about how to eliminate or prevent sexual violence. Though early anti-rape feminists were naïve in their belief that rape could be eradicated within a few years, the emphasis on individual treatment and the cramped intellectual scope of contemporary rape crisis culture makes for a pervasive sense of hopelessness and despair that works against the kind of political organizing that motivated the first round of rape law reform.

> I think that one of the reasons why [the agency] has difficulty raising monies ... when we do our fundraisers ... is that I still get a sense ... that when people give money, they want—they're giving money in hopes of a cure. Like for breast cancer or for MS. ... I don't feel they look at our agency as working for a cure for anything. Domestic violence and sexual assault are never going to be cured. They're never going to change.... It's not going to go away. It's not going to be helped (RCA 3).

> [Y]ou can't prevent sexual assaults, you can't do it. Because that's like saying, if we could prevent it, then it's the victim's fault because [you] didn't fight hard enough or you were in the wrong place at the wrong time. You can't control if somebody's gonna do that. But you can reduce the risk (RCA 9).

Even those who offered the most sweeping recommendations spoke about preventive measures involving education and outreach to younger children, more efficient and sensitive criminal case processing, and targeting services to offenders, not social transformation.

The turn to rape law reform thus has shaped the trajectory of the anti-rape movement in several key ways that become important when accounting for

Megan's Law. Most directly, rape law reform determined that anti-rape groups would be closely tied to local criminal justice agencies; groups would have a history of working with conservative law and order forces, and of alienation from progressive allies; and that the organizational forms required by state funding would diminish the skills and resources that could foster a critical feminist approach to rape law. Each of these constraints has an ideological and a political component that limited the ability and interest of rape care agencies to engage with Megan's Law.

Confronting Megan's Law

Without a critical approach to law and politics, rape crisis centers have little incentive to pay attention to legislation like Megan's Law. Though Megan's Law provided an opportunity for RCCs to conduct public outreach and education, especially around child sexual abuse and assault by familiars, not one center took advantage of the media, legislative, or public attention to the laws by conducting education around the laws or the issues it raised.

Rape care advocates were well aware of Megan's Law, though few were comfortable with their level of knowledge about it. When asked what they knew about Megan's Law typical responses included, "Not a whole lot" (RCA 2), "Not very much, unfortunately" (RCA 3), and "Probably not as much as I should know" (RCA 13). Only two of the directors could speak with any detail about the registration and notification provisions, and only one had seen the RRAS (discussed in chapter 3) and knew how offenders were assigned to tiers. Others described the law vaguely: "I know there are tiers based on the offenses and

someone could get tiered regardless of whether they've gone through treatment at Avenel or not" (RCA 8). One of the more well-informed directors said, "I know that there's a tier system, and that when someone is assigned to Megan's Law and they have the reporting requirement based on their tier, who they need to report to when they're coming out of prison" (RCA 11).

Most advocates attributed their lack of familiarity with the law to the fact that they do not work with children under the age of twelve.[65]

> I'm not as educated on Megan's Law as I probably should be. I think it's because we don't work with kids. Isn't it mostly kids? (RCA 8).

> Probably why more of the rape crisis centers don't know as much about it is because we deal with 13 and older. The younger children and the child sexual abuse cases we may not be as familiar with (RCA 11).

Only two of the directors knew for sure that Megan's Law does cover offenders who assault adult women.

When asked whether they thought whether rape crisis centers should be involved with Megan's Law in any way, every advocate assumed that involvement meant supporting the law. They were, therefore, quick to point out and repeat that their role is different than that of law enforcement.

> I'm not really sure, because I think that Megan's Law comes from more of a law enforcement perspective. ... Again, it goes back to that I don't really know enough about the law to really say either way, but ... that we're out there promoting this law and that could be detrimental to our program possibly (RCA 2).

> I don't know if we're actually buying into the process so I don't know what our role would be around it. ... Our focus is victim advocacy and I feel that Megan's Law falls more in the law enforcement purview (RCA 8).

Only one director thought that there might be a place for RCCs to do any outreach or education around Megan's Law. "Yeah. Because I think we have a

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[65] The Department on Women funding for RCAs is only for services to victims thirteen and older. The state Division of Youth and Family Services (DYFS) provides funding for some centers and other institutions to provide direct services to child victims (twelve and younger).

different point of view. But I don't know that it's just Megan's Law in and of itself, but maybe about sex offending as part of the victim issue" (RCA 5). Directors wanted to be clear that their support functions were distinct from police and prosecutors, and feared that any involvement with Megan's Law would blur those lines and possibly alienate clients who did not want police involved (RCA 2, 3, 8, 13).

Despite their well-founded cynicism about police and prosecutors, RCCs seem to take for granted that law enforcement is the legitimate authority on Megan's Law. Law enforcement varied in the quality of information they provided, ranging from a "cheesy little brochure" (RCA 2) to speaking engagements by local officers (usually detectives) who investigate sex crimes (RCA 4, 13).

Directors quoted police officers on the problems of Megan's Law immediately after discussing law enforcement apathy toward sexual assault cases, and never made possible connections between them. One director reported on a training for volunteers conducted by a police officer who opposed Megan's Law. "He gave us a specific example that just seemed ridiculous, I don't remember the details. And everyone was like, well, when you put it that way it does seem really silly" (RCA 2). In one county where law enforcement had conducted informal notifications about sex offenders well before Megan's Law was passed,[66] the director spoke sympathetically about police who resented the

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[66]County prosecutors in New Jersey have long been notified about the presence of recently-released sex offenders. In some jurisdictions, prosecutors apparently shared this information with local police who would conduct informal notifications of community members.

oversight and additional protections Megan's Law provided for offenders (RCA 13).

When asked where they would go if they wanted more information or assistance on Megan's Law, every advocate said she would refer inquiries to the local prosecutor's office, since they handle registration and notification. This reliance seems somewhat surprising given the historically antagonistic relationship between RCCs and law enforcement. But on the issue of Megan's Law, staffers seem so willing to accept law enforcement views and so uninterested in taking the issue on that there is apparently little friction between the two institutions.

Since the directors see Megan's Law as a law enforcement issue, they do not see any reason to go outside of existing criminal justice institutions for information or interpretations of the law. Many, however, remarked on the paucity of useful information about Megan's Law. One director mused, "It's funny because going to conferences—you never hear about it. I keep saying I've got to learn more about Megan's Law" (RCA 13).

Despite their lack of concrete information many advocates offered thoughtful and incisive perspectives on the law. When asked about benefits or problems associated with Megan's Law directors mentioned issues ranging from concerns about offenders' civil rights to the impact on the community to changes in legal practices. For some the importance was the symbolic meaning of the law, while for others it was more connected to the pragmatic effects. These reactions show that even if they are less explicit than in the past, the motivations, concerns,

and difficulties feminist rape law reformers faced in the 1970s still affect contemporary activists who work on sexual violence.

The most commonly discussed issue about the law—reflecting the dominant approach of scholars, interest groups and media—was whether the law violated the civil liberties of sex offenders. Though a few directors quickly dismissed the civil liberties issues, in one case with a curt, "Personally, I don't give two shits about the perpetrator" (RCA 8), most others visibly wrestled with what they perceived as an unwarranted infringement on civil liberties. Often prefacing their comments with a defensive denial that, "We don't want to come off, as a rape care agency, as being supportive of perpetrators! We don't want to do that" (RCA 4), activists reflected on why they were concerned about the way Megan's Law dealt with offenders. Some described the law as an inadequate or ineffective measure that did not justify the erosion of civil liberties (RCA 4, 9, 11), while others, as discussed in Chapter Four, expressed disapproval of demonizing and refusing to treat offenders (RCA 4, 9). Directors also expressed concern that the law reinforces stereotypes about offenders that promote a "false sense of security" among community members (RCA 4, 5, 8, 11, 13, 14).

Rape care workers acknowledge that sexual abuse of children is a difficult and volatile subject. Two directors who said they strongly support the law both cited children's vulnerability to abuse. One insisted that Megan's Law

> *is* important. I think that a victim of sexual assault needs to be made aware of any dangers that may be out there. ... [C]hildren are most vulnerable. I think that when you've got a child who is or has been a victim of a sexual assault it is a horrible, horrible occurrence and I think that parents who are in the process of trying to protect their children can hopefully see this as another way in which their children through the proper ways in which it is legislated and the ways in which it is put into place can hopefully prevent—you know, you're not going to prevent it 100 percent of the time, but I think anything you can do to take that bite out of that awful crime is going to help in some way. Any little bit will help (RCA 3).

Another characterized Megan's Law as "a valid legislative response to a horrible crime" and described the backlash against the law as proof that "we're winning" the fight to make society recognize the seriousness of child sexual abuse (RCA 16).

But the same horror that accompanies cases of sexual violence against children made other directors skeptical that any beneficial elements of Megan's Law could be handled properly. Advocates were unconvinced that notifications could be handled in a way that did not result in fear, anger, and discrimination against identified offenders (RCA 2, 4, 5, 8). For some, the "emotionally driven" response of Megan's Law was largely responsible for its problems and shortcomings (RCA 5).

> [M]ost people, when something horrible happens, especially to a child, do wanna jump on that 'we need to protect our kids' kind of thing. So I think that most people would just say that anything that protects our kids is a good thing, without really looking at all the different points to it (RCA 2).

Another interviewee, after checking again that her comments would be anonymous, said,

> I think it was enacted too quickly. I don't think there was enough problem-solving around some of the things that could have worked out a little better within it. It was obviously based on a reaction; the public felt the need because they were angry (RCA 11).

One advocate, when asked what she knew about Megan's Law, responded immediately and forcefully not with information about the law but with an analysis about the exploitation of Megan's Law by legislators.

> I know that it passed to make politicians look good. I know that the politicians that signed on to that knew that they were gonna get overwhelming support from their communities, they were gonna be heroes, and they were gonna protect all the communities from sex offenders. I think it is ridiculous (RCA 14).

To be fair, many states grappling with sexual predator laws were attempting to address a real need—the paucity of options to deal with repetitive

and violent offenders who were a clear danger to others (Lieb 1996). However, the way in which this problem was addressed was inseparable from *why* it was perceived as a problem. In both Washington State and New Jersey the problem "came to light" only after children were sexually assaulted and murdered. One advocate was deeply troubled by the preferential treatment accorded to children:

> I think [Megan's Law] has certainly ... sparked the conversation, and I think it probably has angered people to find out that another young girl was sexually abused and murdered. I certainly—and this may sound a little heartless—I don't know that it helps adult survivors at all. Because it certainly is validating for the child sexual abuse, but not for adult survivors. What is out there for them? ... [H]ow many adult victims have been raped and murdered and no one ever acted on any legislation for them? But because it's a child, and people have reactions to an innocent child.... [I]t could have happened to ten adult women, but they would have been blamed—where was she, what was she doing? And [Megan's Law] does cover them, but... [p]eople might not know that either. Because it was a child people got motivated and it got done. ...
>
> So I would like to see more aggressive steps done in particular for adults too. I think it's something that was probably needed, and people needed to know it would be enforced, and we're not gonna tolerate sex abusers, but it also sometimes goes with more of a stereotype that ... the adults deserve what is happening (RCA 11).

Though some of the New Jersey provisions were aimed at increasing penalties for acts committed against children, most of the laws were applicable to victims of all ages. That fact, however, was lost in the myopic focus on the pedophile as the subject of attention. While in some ways this attention might be seen as a welcome recognition of the prevalence and seriousness of child sexual abuse, Megan's Law actually reinforces misperceptions of sexual abuse by validating as "truly" harmful only a small fraction of the offenses committed. Nevertheless, none of the advocates saw this as a potential way to challenge the laws.

Despite its simplistic vision of sexual assault as crazy predators preying on children, the likely problematic effects on criminal case processing, the use of law as a coercive tool, and the exploitation of horrific crimes for political gain,

advocates still see Megan's Law as completely separate from the mission and function of their centers. The statute advances a notion of sexual violence that most directors reject, yet confronting those problematic depictions is not seen as an option. Identifying themselves almost exclusively as social service agencies, centers in New Jersey seem to have lost the ability to adapt to changes in the political and cultural context around them.

Centers remain fixed in their approach to outreach, education, and response, regardless of public interest or political opportunities like Megan's Law. Several rape care staff members mentioned that they were asked about Megan's Law in trainings, yet this was treated as a digression or diversion from the "real" issues of sexual violence. According to one director, "Megan's Law has never been a springboard for anything that we've tackled" (RCA 9). For another center, "we have so much on our plate and so many things to educate about now, that we don't have enough time to ... cover what we want to and need to cover anyway" (RCA 2). What centers see their programs as "wanting" and "needing" to cover in educational programs includes information about date rape drugs, the prevalence of assaults by acquaintances, awareness and prevention tips, definitions of consent, and helping survivors and significant others cope with the aftermath of assault.

Centers not only didn't reach out during the upheaval around Megan's Law, but at least one agency that was contacted by media outlets refused to speak with them (RCA 17). Asked about her center's position on Megan's Law, one program coordinator said that they did not have one:

> Because of all the different funding sources, we as an agency remain non-political. We're not able to voice our views—individually we all have our own opinions, we vote our own ways. But collectively as an agency we don't take stands one way or another on any type of law or legislation that may be out there pending or being presented (RCA 2).

Another said bluntly:

> Like many others we just sort of keep our mouth shut and don't talk to people sometimes (RCA 14).

This lack of engagement with institutions that shape cultural beliefs is a significant change from the early days of the anti-rape movement, and from the primary motivation for rape law reform. The increasing distance from feminist ideology undercuts the basis for large-scale community organizing or statutory reform. Forced into close proximity with law enforcement, advocates are simultaneously cynical about the impotence of law but forced to rely on the state for survival. Without even trying concerted, open, political action to force local law enforcement to implement rape law reforms, advocates dismiss law as irrelevant to their concerns and turn their energies instead to an individual, therapeutic response to rape that reinforces the perceived impossibility of social change.

Discussion

When reflecting on why her agency hadn't taken advantage of the window of opportunity offered by Megan's Law, one director offered a thoughtful perspective about the evolution of her own analysis of Megan's Law.

> In 1994 I think I was still trying to get [Megan's Law] and not thinking as analytically about it and the possible ramifications of it. ... You have to be in this business a long time to understand things. In 1994 I probably would have waved the banner—protect children! I don't think I would have seen it the way I do today. ... I think I needed to talk to people who ... knew that there was another side to all this.

> Even though I had a problem with [Megan's Law] I wasn't in tune with what was happening at the higher level about it and I don't recall NJCASA taking big action on it or having a large

> voice on it. I don't really know for sure what their role was in the legislation. It just happened so quickly that there wasn't any process to get [involved with]. ...
>
> The spirit in which the law was drawn up was simply a reaction to a high profile case and has been in other states as well. But it is not the essence of what the problem is. [Rape care agencies] are talking about the essence of the problem—what's out there in terms of sexual assault. We're talking about that at a broad level, but we're not relating to Megan's Law. ... And there's probably a political issue involved in all that too. We have to step carefully—we're trying to get the $2 mill bill passed, why would we want to offend anyone? Every legislator out there is still going to think [Megan's Law] is the best bill since sliced bread. It makes a lot of people feel like they're being paid attention to. ...
>
> It makes the case for NJCASA. ... [W]e probably have not thought about taking some making additional comments about how to treat offenders. I don't mean how to psychologically treat them or clinically treat them, but how to deal with offenders or to make statements more openly about the efficacy of Megan's Law. And I think we need more information to back up what we think (RCA 5).

This quotation illustrates the factors necessary—and generally lacking—for RCCs to engage Megan's Law. Key among these are a critical intellectual framework to understand rape, understanding and using discursive power to shape discussions of rape, and strategic considerations about political interventions.

The turn to law helped ensure that rape crisis centers became institutionalized in ways that diminished, punished, or prevented these necessary political skills from developing. Defining rape as a criminal justice issue instantiated law at the heart of rape care advocacy in a way that was very different than the approach of the anti-rape movement of the 1970s. As Nancy Matthews concludes that on her study of rape crisis centers in California, "The major effect of [criminal justice] funding on the anti-rape movement was to institutionalize the social service definition of the work that had previously been only one side of a dual mission" (1994, 126).

The dependence on state funding, bureaucratic, social service requirements imposed by that funding, and need to work closely and

cooperatively with law enforcement all helped diminish a critical feminist and/or legal consciousness that would see value in engaging with Megan's Law. And since rape crisis centers define themselves in opposition to the role of law enforcement and see their identity as dependent upon distancing themselves from legal institutions, potential opportunities for legal mobilization are instead dismissed as tangential to the real work of these organizations.

Anti-rape rhetoric has been enriched in some significant ways by the addition of new, non-feminist theory, especially from some psychological research on victims and offenders of sex crimes. More often, though, this highly individualized language has robbed the movement of some of its most powerful rhetorical weapons—talking about rape as a form of class-based inequality that reflects hierarchical privilege. It has also helped to efface a distinctively feminist, grassroots politics about rape in favor of language, concepts, rhetoric, and responses that meet state approval. Some directors understood these limitations and visibly struggled, usually unsuccessfully, with integrating their experiences of rape with the dominant models offered by psychologists and criminologists.

Without a framework that accounts for systemic discrimination and understands rape as a complex intersection of individual, cultural, and state power, rape care advocates are largely at a loss to explain their experiences. Though advocates certainly recognize many injustices and fight valiantly for what they see as the best interests of their clients, few are prepared to make sweeping statements about the failures of law or the inadequacy of the state response to sexual violence. Indeed, these areas are not the ones identified by rape care advocates as their most pressing concern.

When asked about what they considered the most pressing issue facing them, all but two directors said that obtaining adequate funding was their highest priority. Though almost all of the centers cite problems such as stereotypes about victims and offenders and ongoing problems with law enforcement personnel, few identified a pressing need to shift cultural attitudes or legal responses through public action on rape. The increased funding centers desire would go toward what they define as prevention and education, laudable programs that nevertheless do little to address the concerns about systemic discrimination, gender inequality, and the problematic role of the state that initially motivated feminist interventions in rape. Both the movement and individual centers lack a clear agenda about why, how, or in what way they should shape the discursive production of rape.

The state plays a role even in shaping what centers consider to be their legitimate agenda. Since most of the directors interviewed work for agencies that are not funded to deal with child sexual abuse, Megan's Law is defined as an "other" kind of problem, separate from the role of the county-based rape care agencies. Clinging to survival as they are, centers are neither willing nor able to imagine a political agenda that could include issues such as prevention and policy reform that they are not specifically funded to address. Issues that the state has decided irrelevant and that are not supported by other funding sources are deemed irrelevant and left vastly undertheorized.

The reluctance to criticize the state and its representatives arises no doubt from concerns about obtaining funding necessary to the survival of centers. If freed from the constraints of applying directly to the state, centers might be more

open to pursuing challenges to police and prosecutors more openly. But after a decade in which reform and systems advocacy have been off the table for most centers, the question remains whether centers have the skills and interest to do so. Without a framework for considering whether specific failures of law reflect deeper problems with the state-centered response to rape, centers have little impetus to address what might be ongoing problems, or to offer new solutions that could significantly change the role of law. Even if such problems and solutions were identified, centers recognize that individually they have little knowledge about—much less expertise in—guiding the policy process to achieve a desired result.

Most of the rape care advocates understand—more intuitively than explicitly—how the practical effects of law are deeply entwined with the symbols, images, and methods that it deploys. A few of the advocates recognize that the problems are deeper than a lack of resources and require a way of speaking about sexual violence that is compelling, persuasive, and incorporates the concerns and perspectives of rape care agencies. They also understand that there are few opportunities for them to develop a critical approach to law and policy (though they differ in how aware they are of their own lack of a critical approach) because of the constraints on their time, resources, and sources of information. There is the sense that they need an institutional ally and advocate for their interests, and many are excited that the New Jersey Coalition Against Sexual Assault (NJCASA) may be ready to fill this role.

A more active role for NJCASA might help with some of these issues, especially the role of institutional memory and more coordinated and self-

directed policy intervention. But even states with active coalitions didn't have anything to say about Megan's Law. In New Jersey the state coalition was involved in ways that might have been detrimental to the interests of rape victims and the larger work of rape care agencies. Thus a statewide organization might alleviate some of the problems associated with the social service side of rape care work, but appears to leave untouched the development of a coherent movement ideology.

It is here that the missing link between political action and ideology becomes clear and critical for RCCs. Without a vision for change centers have little impetus to engage in political action, and without the experience and skills to effect change advocates have little incentive to think about what kinds of (social, legal, political) reforms would make a difference on issues of sexual violence. The inability of RCC staff to imagine a political use of the law that does not require them to collaborate with law enforcement is a troubling manifestation of the decline in legal consciousness and political efficacy among anti-rape activists. Advocates like the one quoted above know that they are vulnerable to being co-opted for ends that they do not support. But the institutional resources that would be required for political action and resistance are instead dedicated to law enforcement oversight and administrative responsibilities.

These findings fit with Nancy Matthews's study of rape crisis centers in California. In discussing when and how centers turn to the state, Matthews writes that

> The uneasiness some members of the [anti-rape] movement felt about working with the state on an issue related to violence still simmers in the background, often appearing along with issues of social inequality, such as racism and homophobia. These issues are part of the

> political side of the movement that is less prominent now, but that is maintained by feminists for whom fundamental social change is the impetus for their work. When ambivalence about the state's real motivation or commitment to stopping violence against women is expressed, the historical roots in the women's liberation movement show. But for the most part, getting the state to fulfill its function of managing violence is a more accessible goal than implementing a broader critique of the state. Thus, practical political about the issue of violence have affected how ideological ambivalence is handled (1994, 154).

But the interviews conducted with RCAs in New Jersey point to even deeper problems with the way advocates think about their relationship with the state. Though advocates are clearly and deeply frustrated with the state response to rape, there appears to be no questioning the need to work with the state, and a diminishing sense that the work of the movement is at all related to social change. Advocates in New Jersey are unlikely to have the skills to question the state's motivation or aims around new legislation related to rape, much less to frame these concerns as a critique of the state. And finally, the pragmatic political adaptation of RCCs has not just changed how ideological ambivalence is handled, but has changed the very ideology of the movement to diminish that ambivalence.

Ceding responsibility for shaping the law enforcement response to rape—and not just monitoring it—left the field clear for law-and-order legislators and conservative victim's rights groups to advance Megan's Law. Neither group employs a feminist political analysis of rape, and both support a stereotyped, punitive, state-centered response to rape that undercuts feminist and victim-centered reform efforts. When the state stepped in to take on prevention as a new, high-profile role, rape care agencies lacked the political, intellectual, and institutional resources that could have made them powerful players in resisting or shaping Megan's Law for feminist ends.

RCCs in New Jersey are not engaged in conversations with outside groups that could produce the intellectual vitality and political action that marked their predecessors. Asking them to do so may be unfair. The renewed energy at NJCASA provides an opportunity to revive these political connections, but it remains to be seen whether this potential will be realized. Cut off from conversations that could help the movement define itself and its goals more coherently, RCAs may be taking too literally the admonition not to talk to strangers. Policy opportunities like Megan's Law will continue to exist, though how local centers will respond to these in large part depends on how they see the role of law in their work.

CHAPTER 6—CONCLUSIONS AND NEW CONVERSATIONS

The belief that law reform has played a powerful and positive role in the anti-rape movement is clear from accounts by advocates and scholars. In her policy history of the movement Maria Bevacqua credits law reform strategies with uniting disparate individuals and providing a logical point of convergence for different groups.

> Statutes alone are sterile without community-based organizations in place to hold lawmakers and law enforcement officers accountable for their actions. Conversely, crisis centers would be reluctant to refer a victim to the police or district attorney if the statutes that guide the action of law enforcers remain decidedly unfriendly. ... [A]s the anti-rape movement mobilized, and as the complexity of the problem became more evident, the nature of sexual assault prompted a response so serious that it brought together ideologically diverse feminists determined to prevent or eradicate it (2000, 109).

In the wake of law reform, activists and researchers cite improvements in services to victims, increased levels of arrest and prosecution for sex crimes, abolition of the marital rape exemption, institution of victim protections like rape shield laws, and the presence of rape crisis advocates in courts and at hospitals. They claim that law reform ended the most egregious abuses and created at least formal accountability and awareness among law enforcement, and that the anti-rape movement has become a stable network of feminist organizations that protect the rights and interests of rape victims while engaging in public education to ultimately eliminate rape.

While these claims may be at least partially true, Megan's Law represents a significant challenge to the feminist anti-rape project. Megan's Law attacks many of the arguments for feminist rape law reform and in doing so advances a vision of sexual violence that conflicts sharply with the basis for laws that improved the legal response to victims and broadened cultural definitions and understandings

of rape.

Where feminist activists sought to de-stigmatize rape, Megan's Law marks the crime as so horrific and different that it requires special penalties for (some) perpetrators. Supporters of Megan's Law and even some RCAs justify the law on the basis that sexual assault is so traumatic and insurmountable that victims are forever and eternally violated—hardly an empowering portrayal of those who have survived sexual violence. For RCAs, the insistence on the deep scars left by rape is more understandable, since they daily face the callous and dismissive attitudes of individuals who treat sexual assaults as a joke, an exaggeration, a form of entertainment, and a harmless prank. The state's insistence that victims occupy this helpless and powerless position minimizes ways of understanding and responding to victimization that make connections between gender, power, violence, and culture (Bumiller 1988).

Where rape law reform attempted to limit differential treatment among victims, Megan's Law reintroduces the idea that some victims deserve special protection. Making some victims more protected means that others are less so. The emphasis on the youth of victims as being key to the harm that they experience seems laudable, but relies on a problematic notion of a victim's worth being determined by her helplessness, innocence, and lack of complicated personal history. The historical record on prosecutions in sexual assault cases indicates that law enforcement concern about rape cases is usually keyed to a victim's social status. Megan's Law and similar laws across the country were based on protecting certain victims—almost exclusively white female children who lived in suburban areas and were physically brutalized by individuals

unrelated to them. Using this image of victims as our standard for what constitutes a harmful assault deeply diminishes our understanding of what sexual violence is and who it effects. And indeed, I have not been able to locate any sexual predator laws subsequent to Megan's Law where victims were not white, not described as middle-class, and not female.[67]

Anti-rape activists argued that rape was the product of social conditions that normalized sexual violence; Megan's Law depicts sexually violent behavior as the product of individual mental defects and pathology. Thus, along with victims who fit a preconceived notion of helplessness, so to do the offenders highlighted by sexual predator laws conveniently conform to a profile of the repeat, physically violent stranger rapist. This is not to deny the seriousness of those attacks or the devastation that can result from the horrific acts that are perpetrated by stranger perpetrators. But as Sutherland (1950) and Jenkins (1998) remind us, these particular crimes have almost always been fodder for lurid media coverage and harsh punishment. Assaults by strangers are disproportionately represented in rape reports and prosecutions since they are the "good" rapes—they are believed most easily by law enforcement (and by victims themselves) since they often conform to rape stereotypes. Stranger rapes are the one category of sexual assault where the legal system functions most normally and efficiently, and these offenders are the least likely to serve the short sentences that make Megan's Law appear a compelling solution.

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[67] This justifies the cynical view of a student in one of my classes, who remarked "You *know* they're not gonna have any 'Shaneequah's Law.'" The absence of any children of color from visibility in these cases is not surprising but is revealing; and is, I think, more important and provocative than studies of whether registration and notification laws treat convicted sex offenders are differently by race (see, for example, Filler 2003).

Furthermore, it is suspicious that Megan's Law chooses to use such a (literally) visible apparatus not just to highlight these kinds of stranger assaults, which but that the law also explicitly effaces the kinds of rape feminists argued (and government statistics have shown) are much more common. It is precisely the institutions such as the family, the public/private split, and the sexual double-standard that feminists attacked as that create and perpetuate rape that Megan's Law protects through elaborate procedures. The most threatening aspects of feminist rape law reform are those that supporters of Megan's Law deliberately erase in rhetoric and practice.

The emergence of Megan's Law and the silence with which RCCs greeted sexual predator laws indicates that there are some significant gaps in scholarly assumptions about the capacity of feminist politics to persist through legal mobilization and institutionalization. This study has used Megan's Law as a lens to identify some of these gaps and inconsistencies, and to draw on the experiences of grassroots rape care advocates to identify the roots of these contradictions. Throughout the dissertation I have identified the institutional, ideological, and political factors that influence the way RCAs think about and respond to Megan's Law and argued that rape law reform played a key role in the demise of the feminist political element of the movement.

Legal mobilization reshaped the intellectual and legal trajectory of the movement. The anti-rape movement was transformed from a political movement into a network of social service agencies that have little or no political content or power. In this conclusion, I review three primary ways that law reform had three negative and demobilizing effects on the movement: the contraction of movement

vision and scope; the retreat from politics; and the decline of legal consciousness. Though these conditions developed over the course of the two decades after feminist rape law reform, the dilemmas and paralysis caused by Megan's Law throw them into sharp relief. So why, despite their criticisms, are local anti-rape activists silent about the attack Megan's Law advances on feminist rape law reforms?

Contraction of movement vision

One part of the reason why anti-rape advocates were silent about why Megan's Law challenged the *feminist* response to rape was because feminism is no longer the dominant ideology of the movement. Rape crisis workers did not see Megan's Law as a threat to feminist reforms because they do not, for the most part, share or espouse a feminist understanding of rape.

Law reform was originally a good strategy for feminist anti-rape activists because it offered both real and symbolic benefits for the movement. The campaign for law reform exhibited the very kind of "politics of rights"—the instrumental, strategic use of law in the context of a broader struggle—advocated by scholars (McCann 1994; Scheingold 1974). In the wake of the stunning success of the first law reform campaign in Michigan, however, law turned from a tool into a guiding principle. Rape law reform affirmed the centrality of criminal law to feminist responses to rape, diminished the power and legitimacy of alternative explanations of and responses to rape, and tied the effectiveness (and often, the survival) of RCCs to a state-centered definition of rape.

Law reform required a kind of cooperation with state institutions that deprived feminists of their most radical and visionary critiques. Legal language, concepts, and strategies came to dominate feminist responses to sexual violence in a way that they had not during the initial six-year period of movement building. Law has permeated thinking about rape so thoroughly that its presence is unnoticed. This turn away from radicalism forecast the demise of the radical wing of second wave feminism in favor of a more liberal approach that centered on reforming institutions (Echols 1989). The problem is not limited to grassroots service providers. Most recent theorizing about sexual assault assumes the centrality of criminal law to articulating and eliminating the problem of sexual violence (Burgess-Jackson 1999; Estrich 1987; MacKinnon 1989; Schulhofer 1998). The very success of rape law reform appears to have been significant in driving out most other feminist analyses of and alternative responses to sexual violence.

Even activists who supported rape law reform recognized the contradiction of turning to the criminal law to articulate their vision of social change. Nevertheless, movement ideology justified the criminal justice reforms because they created equality among victims and offenders. The feminist analysis of rape insisted that the problem of rape was not only the dismissive treatment it received compared to other crimes, but also because the response to crimes was dictated so directly by the characteristics of the individuals involved. A political analysis of rape made feminists protest the overly harsh treatment of men of color accused of rape at the same time that they challenged the notion that some victims were more entitled than others to legal protection. By drawing

connections between rape, racism, classism, and other forms of oppression, feminists intellectually, politically, and legally connected the problem of rape to a wide array of pressing social problems.

But as the original reformers moved into new institutionalized rape crisis centers or left to join other movements, the feminist, praxis-based politics that drove the initial wave of rape reforms was supplanted by social service rhetoric that meshed more easily with the state's interest in what Matthews (1994) calls "managing" rather than eliminating rape. Feminist ideology was less consonant with the organizational forms demanded by funders, and less interesting to the new breed of professionals who came to staff RCCs. Increasingly, advocates incorporated psychological and criminological explanations for rape alongside feminist ones. Developing a political analysis of rape has been displaced by the overwhelming, crisis-driven demands on RCCs. In this climate, *thinking* about rape is sometimes derided as a wasteful, self-indulgent pursuit when so much *action* about rape is needed.[68]

Without a coherent or explicit ideology, RCCs adopted and adapted whatever thinking about rape came their way. As feminist thinkers moved on from rape (the problem was, after all, solved by rape law reform), the state took

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[68] This point was illustrated with painful clarity in the response by Beverley Allen to Carine Mardrossian's (2002) recent piece "Toward a new feminist theory of rape" in *Signs*. Allen, who chronicled mass rape in the former Yugoslavia, begins her response by saying that she fears it "will be a terrible disappointment."

> You see, since I began spending time in Croatia (during the war) and Bosnia and Herzegovinia (since the war), I have stopped reading feminist theory pretty much altogether. This was not due to any kind of decision or remotely polemical stance. It was because, once I was busy working with people who had been affected by the war, including those affected by genocidal rape, the relevance of contemporary theory grew pretty distant (Allen 2002, 777).

Allen's point, while acknowledging the abstractness of much academic theory, fails to engage Mardorossian's genuine attempt to think through some of the problems and harms of rape, and to use theory to open up aspects of rape that have escaped critical feminist inquiry.

on the role of funding and disseminating theories about sexual assault. Existing on the margins and trying desperately to scrape together the resources to provide services to victims, even RCAs who did want to reflect on what they learned from their experiences as service providers didn't have the time, energy, or resources to pursue thoughtful reflection and sustained conversations. They could criticize, but not theorize.

Contemporary RCAs didn't see many of these problems with the law because they no longer see rape in the same way that their anti-rape predecessors did. Rape care workers I interviewed don't see law as their issue. Their role is service provision and community education, not policy change or social transformation. Their role and responsibility only extends so far as their state funding permits. For most, Megan's Law was not an issue because they saw it as an issue about sexual abuse of children—an issue they are not funded to confront. Megan's Law was not an issue because it dealt with law enforcement, and they see no role for themselves in shaping overall policy regarding criminal justice institutions. Their job is to provide counseling and support services, not to articulate a vision for change. When they do identify problems with the law their analysis is limited to specifics—they cannot articulate an ideologically-based argument for the more general problems presented by the law. Lacking a principled basis to challenge sexual predator statutes, they see little incentive and only negative consequences to getting involved with Megan's Law.

The retreat from politics

A second reason why anti-rape advocates ignored the threat Megan's Law posed to the feminist *rape law reforms* was that crisis intervention and counseling have become the central features of RCCs. Local advocates do not see a place for policy advocacy, law reform, or political analysis in their daily work, and indeed, perceive being apolitical and distant from the policy process as a strength. And even if groups had been able to identify why and how Megan's Law threatens their crisis intervention work on behalf of victims, the movement's diminished political power, lack of policy resources, and state-funded non-profit structure would have inhibited their ability to intervene quickly and effectively.

In addition to constraining the scope and vision of the movement, the turn to law also required rape crisis centers to adopt a bureaucratic, social service response to sexual assault that was antithetical to feminist analyses of rape. In the anti-rape movement this transition was accelerated by the availability of federal money that permitted centers to expand their services but required the elimination of many of the organizational features that fostered a sharp political perspective (Matthews 1994). As the movement's internal vision shifted from addressing rape as problem of domination and inequality solved by revolution to one of inadequate institutional responses ameliorated and managed more efficiently, advocates had less impetus to attack law and the state as sources of gendered inequality. They were, instead, partners and funders. Reformers demanded that the state share responsibility for the compassionate and just treatment of rape victims. But the price was the dependence of RCCs on the good-will of law enforcement and even apparently benevolent state agencies like the

New Jersey Division on Women—a compromise that seems to have demanded more of RCCs than of the state.

As second-wave feminists argued, law is not the only institution that shapes perceptions of rape. If contemporary RCAs left law alone they might still attempt to re-shape cultural definitions of and responses to sexual violence through other means. But the importance of politics in anti-rape groups diminished in the wake of law reform.

Feminists brought rape to public attention, but retreated once reforms were adopted. Law reform required feminists to create coalitions with conservative groups and punitive state institutions; coalitions that feminists initially managed quite successfully but that eventually would co-opt and exploit sexual violence to justify the expansion of state power. As groups devoted less time, energy, and resources to managing the politics of rape law reform, they were less able to use these alliances to their benefit. With a public newly sensitized to the issues, conservative and law-and-order groups stepped in to employ rape to justify punitive criminal policies and to illustrate the dangers of rethinking sexuality and gender roles. Local RCCs were tainted by this use of the anti-rape banner to justify punitive and repressive policies, and grew distant and alienated from potential progressive political allies.

Megan's Law reinforces the divide between anti-rape advocates and civil libertarians by pitting the rights of sex offenders against those of children. RCAs play into this split by refusing to publicly condemn the depiction of the sexual predator. Since they don't have a language to talk about the broad problems facing them, they cannot connect the disgust the public evinces for stranger

rapists with the need to have victims who are sexually pure and socially irreproachable. Not a single RCA commented on the possible racial and class implications of Megan's Law—that the emphasis Megan's Law places on the social worth of the victim might diminish the seriousness of assaults against members of marginalized communities, or that the overtly punitive policies of Megan's Law could reinforce discrimination against non-white sex offenders. Some directors are so frustrated with continuing problems with the law enforcement response to rape that they see any attention directed toward the issue as a good one. Though many see Megan's Law as a mixed (if not an unwelcome) blessing, they perceive their institutional position as foreclosing any participation in shaping the law enforcement response. This is not entirely incorrect, since RCCs depend in large part on the goodwill of those very agencies they were intended to oversee. But RCCs cannot blame the lack of attention to issues of sexual violence entirely on pressures from the state.

Supporters of the statute skillfully played on the ambivalence advocates (and many victims) feel about the publicity surrounding rape. Advocates, who often want to protect victims from intrusive and insensitive public exposure, end up reinforcing the secrecy and shame associated with sexual violence by refusing to make public complaints against law enforcement and by cooperating with and indeed, demanding, the state's exclusion of incest and statutory rapists from the internet database. The state has shown considerably less interest in safeguarding the privacy of victims in other criminal procedures, such as through vigorous

enforcement of rape shield laws.[69] Though there might be good reasons for NJCASA to support the exclusions, the coalition did not articulate them. Instead advocates proceeded on a knee-jerk assumption that publicizing sexual violence is bad for victims, a view that directly contradicts the attempts of second-wave feminists to expose the prevalence of rape and use victims' experiences to challenge legal formulations of rape through their participation in politics, policy-making, and rape crisis response.

The decline of legal consciousness

The third element in the silence of anti-rape advocates was discerning the problem that *Megan's Law* posed to the feminist rape reforms. This study suggests that mobilizing for rape law reform ultimately reinforced the legitimacy and authority of the criminal law to deal with rape. Without a political approach to rape and isolated from other progressive and feminist groups, local RCCs lacked the kind of critical consciousness about law that would have been necessary for them to think through and identify the problems in the approach to sexual violence mapped out by Megan's Law.

The political tenor of the feminist anti-rape movement—anti-authoritarian, anti-establishment, and skeptical of law's neutrality—deeply influenced the framing of legal claims and the types of reforms sought. Though few, if any, feminists saw law reform as the primary vehicle of social change, they recognized the power of law to shape social meaning through its concrete and

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[69] Indeed, the state Supreme Court recently struck down significant parts of New Jersey's rape shield law (*State of New Jersey v. Anderson Garron* (2003)]), calling into question the court's professed interest in protecting victims from the insensitive and discriminatory dissemination of personal information.

symbolic functions. The original rape law reforms, though radical in practice, were pragmatic about the kinds of change legal institutions could tolerate and would accept. The reforms enacted in Michigan and throughout the country in the 1970s were comparatively modest, and typically extended the power of law enforcement in what feminist activists thought were circumscribed, legitimate ways.

These reformers were right in many ways. Their actions did create lasting change by opening up the interpretations and meanings accorded to rape. But engaging law changed the movement as deeply as it changed the state response to rape. The movement's legal tactics were disconnected too quickly from the kind of grassroots mobilization and political pressure that made law reform successful initially, and implementation of rape reforms faltered in the face of massive and continued resistance from law enforcement officials.

Megan's Law is a very sophisticated version of new penal arrangements of power, surveillance, and social control. Understanding its causes and effects has absorbed some of the most incisive legal theorists working on crime—people like Stuart Scheingold, Jonathan Simon, John Pratt, and Deborah Denno. If these scholars find the problem challenging, it is not surprising that exhausted crisis counselors would find it difficult to grasp the problems with the law. Advocates have criticisms of the laws; not always the ones these scholars identify, but ones that are important, flow from their practice, and bring a much-needed consciousness of gendered inequality into discussions of sexual predators. But their unwillingness and inability to generalize problems with the law keep these

advocates from following through their criticisms to their logical conclusions about the conditions under which law is useful for the anti-rape project.

Contemporary advocates no longer see the power of law to create social change in part because they have seen so little change as a result of rape reforms. That this reflects the changing composition and focus of the movement and the broader political context is clear. But since the widely proclaimed "success" of rape law reform has been such an unsatisfactory experience, advocates are neither intellectually nor politically motivated to pursue further law reform projects. Advocates could thus reject the premises of Megan's Law, criticize its implementation, point out the deficiencies in its assumptions, and yet not understand why I thought the topic worth pursuing.

Advocates no longer have a double consciousness about law that permit them to use it as a tool while maintaining a separate, more critical view within their organizations. Law happens to these organizations, these advocates, and the victims they serve; it is not something any of them could possibly control, shape, or challenge. Law is, instead, an antagonistic force that is inescapable and unavoidable.[70] Advocates no longer think of law, for good or bad, as a strategy to achieve their goals. It is difficult, then, for RCAs to see how legislation like Megan's Law matters to them. The symbolic effects of law are only dimly perceived, and advocates lack the tools, time, and inclination to undertake the

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[70] One director, talking about the uselessness, insensitivity, and medical incompetence of the post-rape exam, said she would refuse to undergo a rape kit if assaulted. Still she noted "no one is out there really arguing against the evidence collection. We're out there saying ... let's try to make this happen in the least intrusive, most supportive way possible, recognizing that the rape kit is a horrible experience for women to go through" (RCA 5).

kind of political analysis that made their predecessors such savvy manipulators of law.

Though they reject the kind of social change model that motivated earlier feminist reforms, advocates understand that law does make a difference, and that Megan's Law will make a difference. Based on the factors outlined here, it is clear that they are not in a position to challenge the laws head-on, but they are certainly in a position to use controversy over the legislation to their advantage.

Responding to Megan's Law

Megan's Law does not appear to benefit victims of rape in any way that substantially justifies its approach; moreover, I have argued throughout the dissertation that the law actually undercuts feminist rape law reforms that *did* improve rape victims' access to law and to justice. Rather than expensive, intrusive, and stereotyped approach laid out by Megan's Law, victims would be better served if New Jersey acted to ensure that law enforcement officials were trained to follow the state laws and monitored more closely. Improving the law enforcement response to rape—resulting in higher rates of arrest, prosecution, and incarceration—is a far more effective way to monitor and control sex offenders than offender registration and community notification, and comports more closely with acceptable means of state power.

Though it is highly unlikely that sexual predators will be overturned anytime soon through legislative action, there are research, legal, and educational opportunities for RCCs and NJCASA to work with potential allies and use the laws to advance an alternative interpretation of sexual violence. Most of the

advocates I interviewed were already very critical of Megan's Law, but lacked the resources and political cover to act. Renewed attention to the mutually reinforcing practices of theory and politics could help advocates overcome these obstacles and engage in new, energizing, and productive conversations.

Research

The first and most obvious opportunity for coalition is between RCCs and researchers to identify how Megan's Law is affecting the state's response to sex crimes. There are still few studies examining whether and how law enforcement agencies are willing to implement sexual predator. Such studies could point out whether Megan's Law benefits the community in the way its supporters claim, or if the law will have more negative consequences, as I expect. Studies of rape case processing would be a first step in defining a research agenda on sexual predator laws that could produce important information for RCCs.

By changing the punishments for sex crimes, proponents of Megan's Law have a subtle but powerful opportunity to shape who is prosecuted and imprisoned for these crimes. The legal practices toward sex crimes that were in place before Megan's Law will likely not remain static. I suspect that the unwillingness to expose non-stereotypical sex offenders to registration and notification laws will result in the kinds of evasions, especially diversions and dismissals, that typically occur under other types of mandatory minimum sentencing requirements (Nagel and Schulhofer 1992; Parent et al. 1997).

Anecdotal evidence suggests that legal norms are already changing. Rape care advocates talked about how the community notification and supervision

requirements adversely influence victims' decisions to report and prosecutors' ability to negotiate with defendants, and some are deeply concerned about how Megan's Law will affect the ability of the criminal justice system to recognize and prosecute sex offenders. Several advocates noted that defendants are unwilling to accept a plea bargain or that subjects them to Megan's Law, and thus rape cases are going to trial. One director noted that

> a lot of people don't want to plead charges now, when they find out about Megan's Law. ... So I think we're gonna see more things going to trial because people don't want to be under Megan's Law (RCA 11).

Another had seen that such changes were already underway. Megan's Law, she reported,

> has forced trials. [Sexual assault cases] take a lot longer. There are more trials because [defendants are] less likely to accept pleas because of the stigma (RCA 14).

If my hypotheses are correct, Megan's Law may become a tautology: all sex offenders will come to be seen as sexual predators, and only those defendants who fit the preconceived profile of a sexual predator will be recognized as sex offenders. We may therefore see significant changes in the rates of arrest, prosecution, plea bargaining, and sentencing, especially in non-stereotypical cases such as incest, spousal assault, and acquaintance rape. The positive impact of feminist rape law reforms may well be nullified by the increasing emphasis on crimes, victims, and offenders who fit most easily with stereotypes about rape held by criminal justice gatekeepers.

This kind of research creates opportunities for conversations between RCAs, who are familiar with local law enforcement procedures and personnel, and academic researchers who have access to statewide data and can develop a more neutral, professional relationship with law enforcement bureaucrats.

Specific findings from research on Megan's Law, especially any negative effects on victims or decreases in rates of prosecution and incarceration as a result of the law could be used in legal challenges and community outreach.

The process of developing a research agenda might serve a kind of consciousness-raising function, as advocates share their experiences with legal systems in a structured setting that demonstrates that problems are not confined to one jurisdiction or individual actors. Undertaking a research project with academic investigators could open up the space for concerned RCAs to reflect on Megan's Law, sharing their perspectives and stimulating discussion about how advocates want to define themselves and advance their interpretation of sexual violence. Debate about these interpretations would no doubt prove contentious, but could also highlight the strengths and similarities that exist across these different understandings. Since all the RCCs agree that services to victims are the primary function of the centers, research projects that investigate the effects of law reform on victims could provide a way to talk about larger problems that the movement faces (e.g., the relationship between RCCs and law enforcement) by examining specific, pragmatic goals of the movement (what, for example, would be "best practices" for the legal response to rape?) Involving RCCs in the research process could result in more theoretically interesting and policy-relevant research

questions and renew the importance of generating and questioning what Jane Mansbridge calls the "street theory"[71] of the movement.

Legal

Though the U.S. Supreme Court upheld the application of sexual predator statutes in 2003, the Court left open the possibility for a more fundamental due process challenge to the laws themselves, not just to the registration and notification provisions. If civil liberties groups like the ACLU take up this invitation, RCCs and state coalitions could take a page from other groups that have mobilized for social and legal change. Scholarship has shown that taking advantage of litigation and its attendant publicity is an effective vehicle to advance movement accounts of the issues at stake (McCann 1994; Paris 2001; Silverstein 1996).

While RCCs might not contribute much to the crafting of a legal due process challenges, actions such as filing a policy-based amicus brief about the effects on victims would no doubt engender considerable attention. A media campaign that included information about the appallingly low level of funding for RCCs versus the costs of implementing Megan's Law, the continuing failures of law enforcement to implement feminist reforms, the lack of treatment and support services for sex offenders, and the law's single-minded focus on strangers and exclusions for offenders known or related to the victim would present

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[71] "The discourse that creates the movement is not top-down. It works by what is of use. ... [T]he discursive process is always collective. Producers of words choose their words by what they think will make sense to others. ... The movement then sifts and either discards or keeps and cherishes her words. The 'movement' is made up of women figuring out and telling one another what they think makes sense, and what they think can explain and help crack the gender domination that they feel and are beginning to understand," (Mansbridge 1995, 28).

opportunities to emphasize the importance of RCCs, create a community-based constituency to support their work, gain political leverage, and re-assert ownership of the issue of rape by putting forth a clear and persuasive argument about sexual violence.

NJCASA's participation in legal action would put them in control of media attention and legal arguments instead of requiring them to be reactive and defensive. At the same time, discussions between RCAs and civil libertarians could shift the debate about Megan's Law from the narrow, arid, and easily-dismissed argument that "sex offenders have rights too." Conversations with civil libertarians might also convince those groups of the systemic problems faced by rape victims, creating the possibility for additional collaboration on issues such as patterns of discrimination, judicial education, and law enforcement oversight that RCCs have struggled with alone for so long.

Community outreach

These programs would necessarily require a great deal of time and energy on the part of RCCs. Though much of the work could—and likely, should—be done out of the state coalition, local RCCs would need to communicate with their constituencies about why the coalition might come out against Megan's Law. Stretched as thin as they are this may seem an impossible burden, but this kind of outreach might be the opportunity RCCs need to break the cycle of insularity and invisibility that perpetuates their marginal existence.

If and as anomalous offenders are no longer visible to the public, erased as sexual predators, public anxiety about the complexity of sexual violence may also

be smoothed away in favor of easy stereotypes and bright-line distinctions between sex crimes. RCCs represent a much different approach to dealing with the problem of sexual violence than the punitive policies advocated by lawmakers, and their voices would contribute significantly to public debate about crime. Agencies already prioritize community outreach about preventing sexual assault, but usually target children and school-based programs, not their letter-writing, politically active, voting parents. Education about Megan's Law is a hot-button issue that could get citizens in to hear the advocates' take on sexual abuse.[72] Community education could be a shared effort among local centers, the state coalition, researchers, and other allies. A progressive challenge to the assumptions that inform Megan's Law might be of interest to funding sources that support justice for victims of sexual assault but not the discrimination and innovation upon which the laws depend.

The process of developing a community outreach curriculum around Megan's Law would also force centers to think through their criticisms of the law, to interpret their own experiences about discrimination, power, and control, and to present an analysis that resonates with the experiences of community members. Centers are no doubt capable of doing this if they have the material resources that permit them to do so. Talking to some strangers could help centers get these resources and realize they are not alone in their efforts.

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[72] Right now public education on Megan's Law is primarily the province of groups such as "Parents for Megan's Law," (www.parentformeganslaw.com) or independent "experts," often brought in by local school districts, that reinforce all of the anti-feminist messages of Megan's Law.

Raising the public profile of RCCs in New Jersey is, I think, one of the only viable avenues to improve their situation. Making public their criticisms of Megan's Law certainly entails real risks for these groups. But these risks are not so much worse than the existing and increasing pressure agencies face in their current state. I think that these risks are justified and necessary, and at least offer opportunities for more self-directed action consistent with the approach of RCCs. Things are not so good for either RCCs or rape victims in New Jersey that conflict would be inevitably mean losing ground. In fact, given how badly off many of the centers are, I sometimes wondered what aspects of their situation advocates were afraid of compromising or damaging.

Feminism, law, and the anti-rape movement

Advocates would not be the only groups to benefit from a revitalized sense of the interconnections between theory and practice in the anti-rape movement. Closer attention to the lessons learned from Megan's Law and from RCAs can contribute to the scholarly literature on the relationships among feminism, law, and cultural meaning.

Though many RCCs are the direct descendent of feminist action in the 1970s, the interviews discussed in this dissertation immediately provoke the question of whether they are feminist institutions, as most researchers assume. Contemporary centers see themselves first and foremost as service providers, which makes for a different set of priorities than motivated the movement thirty years ago. Change is not necessarily bad, and I do not mean to imply that centers are wrong in their analysis or priorities. But this project raises questions about

the extent to which rape crisis centers should be seen as part of an ongoing feminist movement.

The apparent loss of a distinctively feminist analysis of rape among local, grassroots advocates and the wariness about identifying themselves or their agencies as feminist points to the need for additional research on the role of feminism in rape crisis centers. What does feminism mean in organizations that struggle to work cooperatively with law enforcement? How do rape care advocates claim or reject feminism as a survival strategy in working with the state, and what are the uses and costs of those strategies? And how do—or don't—feminist thinking and practices produce politically and intellectually useful constructions of sexual violence?

Developing a project along these lines would necessarily include not just national spokespeople or the heads of state coalitions, or organizations that are unusual for their development,[73] but the individuals whose work on the front lines is a constitutive element of anti-rape street theory. Though I did not have time in this project to interview staff members other than directors at New Jersey agencies, speaking with staff at all levels would be vital given the very real possibility that staff members who are lower down on the organizational

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[73] Santa Cruz Women Against Rape, for example, is an often-studied and highly unusual rape crisis service provider (Matthews 1994)

hierarchy might have a different, possibly more radical or overtly feminist ideological orientation.[74]

A more thorough understanding of the varieties and limits of feminist ideology within rape crisis centers sets the stage to examine opportunities and limitations for feminist organizing through legal institutions. We might ask to what extent do continuing participation in law reform or litigation, cooperative relationships with police and prosecutors, and extent of dependence on state funding sources effect the political context and forms of anti-rape work.[75] Learning from the practices and pressures faced by rape care advocates could enrich theories about the links between law, ideology, and feminist mobilization.

Developing relationships with local RCCs can identify new areas that are ripe for policy-oriented research and theoretical excavation. In my interviews with RCAs, for example, we often spent as much time talking about other law-related issues as we did Megan's Law. RCCs are being cajoled and coerced into ever-closer relationships with law enforcement. In 2001, the Division on Women required state-funded RCCs to participate in the new Sexual Assault Response Teams (SART) program. SART has RCCs work cooperatively with police and forensic nurses, providing the opportunity for better, more integrated services to victims but potentially further compromises RCCs. Many directors expressed

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[74] Indeed, this was often the case in my own experience working in agencies concerned with sexual and domestic violence. The feminist principles that motivated many staff members made them seem to some in the agency as "too radical" for the public face of the organization. Directors may also put limits on the political activities of their staff. At one rape crisis center where I worked, several staff members took advantage of the director's absence on vacation to mount a public protest about a state Supreme Court decision in a rape case—an action that director would not have permitted had she been present.

[75] The battered women's movement, which remained politicized and legally proactive for much longer than the anti-rape movement, might provide an interesting and instructive contrast.

their concern that the SART program further erodes their already limited autonomy, creates the impression that their aims are the same as those of law enforcement, and even paves the ground for their exclusion from the initial response to rape victims.

Megan's Law and SART programs are turning points in the state's cooptation of sexual violence. Collaborations between intellectuals and local activists can locate these pivotal movements more quickly and produce research that illuminates them while there is time for scholarship to learn from movement experiences and influence policy development.

There might be some skepticism about renewing the interplay between scholars and activists in this way. The rhythms and priorities of these groups are often quite different, as are the approaches they employ and the questions they often think important to ask. But it may be those differences—those conversations between strangers—that could enrich and invigorate both sets of participants.

My interviews with RCAs almost always included them asking about my own position on Megan's Law, my thoughts and findings.[76] Many of the directors were clearly hungry for the opportunity to think about the work that they do, and wanted feedback and analysis. There are few internal resources to provide this political space within individual agencies or NJCASA. But it is possible that if centers and advocates reach out beyond their immediate circle and begin to talk with some of the groups that have become strangers to them, revitalizing the

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[76] Trying to be a good social scientist, I declined to share it with them at that time.

connection between activists and academics might help renew the relationship of practice to theory and develop powerful, creative coalitions working to end sexual violence.

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