

# *Raped or “Seduced”? How Language Helps Shape Our Response to Sexual Violence*

National Judicial Education Program\*

A Project of Legal Momentum

in cooperation with the

National Association of Women Judges

# Word Association

Write down the first thing  
that comes to mind when you  
hear the following words:

# Choice of Language

“Language can never be neutral; it creates versions of reality. To describe an event is inevitably to characterize that event.”

(Bavelas & Coates, 2001)

# Choice of Language

- The term “comfort women”
  - Women and girls described as “recruited” to “work in brothels”
  - In reality, kidnapped, taken by force, imprisoned and serially raped by soldiers
  - Term implies affectionate care & consolation
  - Term conveys none of the brutality

(Bavelas & Coates, 2001)



# Topics Covered

- Using the language of consensual sex to describe assaultive acts
- Describing victims in terms that objectify them or blame them for the violence
- Using linguistic avoidance
  - To create an “invisible perpetrator”
  - To minimize the violence

# Topics Covered

- Restrictions on language used—word bans
- Recommendations for judges

# Importance of Legal Language

“Written judgments not only express current law, but also shape future law and society itself.”

(MacMartin, 2002)

# Importance of Legal Language

“Potentially drawing on the discourse of lawyers, witnesses, previous judgments or the discourse of the broader society, the language of legal judgments represents a ‘public discourse (and not uncommunicated thoughts, attitudes or motivations) that has an impact and is acted upon.’”

(MacMartin, 2002)

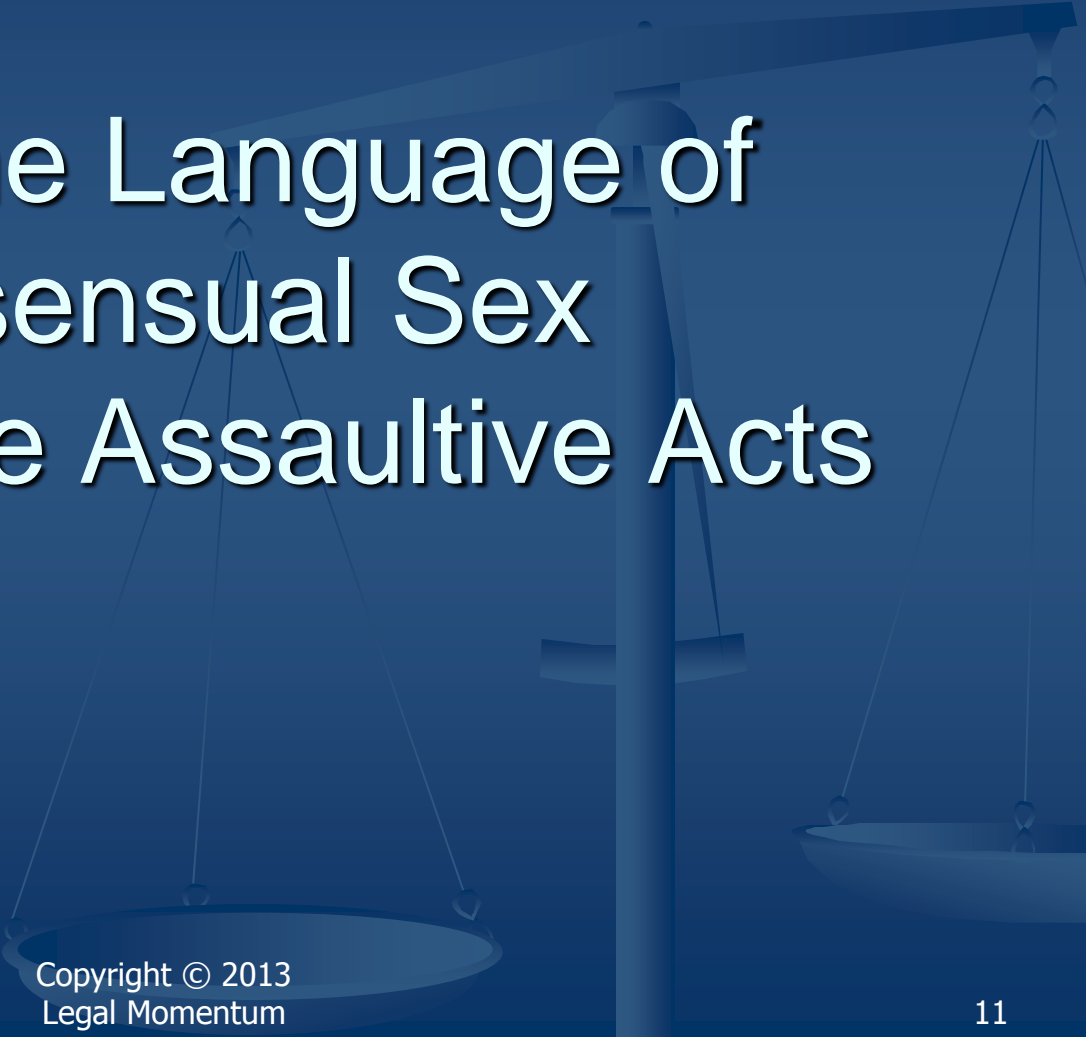
# Importance of Legal Language

- In a large-scale study of 230 articles about domestic violence homicides or attempted homicides:
  - One in five articles relied on law enforcement sources
  - One in four articles relied on court records

(Weller, 2009)

# Language of Sexual Assault

- Language often used to assess actions, ascribe blame and minimize perpetrator's responsibility:
  - Use of language of consensual sex to describe assaultive acts
  - Describing victims in terms that objectify them or blame them for the violence
  - Use of linguistic avoidance: the "invisible perpetrator"



# Using the Language of Consensual Sex to Describe Assaultive Acts

# Using the Language of Consensual Sex

- Describing acts in terms usually used for pleasurable and affectionate acts:
  - Minimizes and hides the intrinsic violence of an assault
  - Makes it harder to visualize the acts as unwanted violations
  - Allows society to rationalize, justify and excuse sexual aggression

(Bavelas & Coates, 2001)



# Language of Consensual Sex

- Eroticized language that creates an intimate and non-threatening scene
  - “He fondled her breasts”
  - “He kissed, hugged, caressed or had sex with her”
- Statements that imply consent without the context of force (physical or emotional)
  - “They had intercourse”
  - “She performed oral sex”

(Bavelas & Coates, 2001)

# Language of Consensual Sex

- Think about the difference between these two statements:
  - “He had sex with her”
  - “He forcefully penetrated her vagina with his penis”

# Language of Consensual Sex

- It “does not just euphemize; it actively misleads and misdirects.”
- It brings the acts “discursively into the range of everyday human behavior. Thus, they can be seen as sexual actions that were simply somewhat inappropriate....”

(Bavelas & Coates, 2001)

# Lack of Appropriate Language

“There are cultural narratives or vocabulary for consensual heterosexual sex and for stranger rape but none for the more typical cases in which the assailant is known by the victim.”

(MacMartin, 2002)

# Lack of Appropriate Language

“Analytic attention to the deployment of discourses of stranger rape and consensual sex highlights a possible lack of alternative discourses to describe many victims’ experience of sexual assault.”

(MacMartin, 2002)

# Language of Consensual Sex

- Study of Canadian judicial opinions showed:
  - Judges frequently characterized sexual assaults as erotic, romantic or affectionate acts
  - Assaultive acts reformulated as “they had French kissed,” “intercourse” & “fondling”

(Coates & Wade, 2004)

# Language of Consensual Sex

- Study of Canadian judicial opinions showed:
  - Accounts failed to reflect unilateral nature of sexualized violence or the victim's experience of those acts
  - Language implied the victim was at least partly to blame

(Coates & Wade, 2004)



# Language of Consensual Sex

- Canadian study also found:
  - There was no statistically significant difference between the way the judges described acts in cases where the defendant was acquitted or convicted.
  - “Acts that had been legally established as assaults and acts that had been deemed consensual and noncriminal were equally likely to be described in sexual terms.”

(Bavelas & Coates, 2001)



# The Roman Polanski Example

- What the media reported
  - “I know it wasn’t rape-rape.”  
Whoopi Goldberg
- What the victim said
- What Polanski admitted

A faint, stylized illustration of a balance scale, symbolizing justice, law, and equity. The scale is positioned in the background, with its beam and pans visible, though rendered in a light blue tone that blends with the overall background.

# Victim-Blaming Language

# Victim-Blaming Language

“Residents of the neighborhood where the abandoned trailer stands—known as the Quarters—said the victim had been visiting various friends there for months. They said she dressed older than her age, wearing makeup and fashions more appropriate to a woman in her 20s. She would hang out with teenage boys at the playground, some said.”

(McKinley, 2011)

# Victim-Blaming Language

- Blames and pathologizes the victims by portraying them as catalysts who excited the sexual desire of an otherwise good person
- Reformulates victims into perpetrators (responsible for acts committed against them) and perpetrators into victims (not responsible for their own actions)

(Coates & Wade, 2004)

# *Jastorff Pleads Not Guilty*

## Exercise

- Read the article
- Identify examples where the author uses the language of consensual sex to describe assaultive acts



# Linguistic Avoidance: The “Invisible Perpetrator”

# The “Invisible Perpetrator”

“Linguistically, responsibility is assigned by naming agents of acts (i.e., subjects of verbs). Thus, the greatest culprit in the diffusion of responsibility in this area is the ubiquitous passive voice of social science, **which presents acts without agents, harm without guilt.**”

(Lamb, 1991)

# The “Invisible Perpetrator”

“The ‘degree of responsibility’ apportioned to any offender depends only in part upon his or her actions. It hinges also on how both the offender’s and victim’s actions are represented linguistically in police reports, legal arguments, testimony, related judgments and more broadly in professional and public discourse.”

(Coates & Wade, 2004)



# The “Invisible Perpetrator”

- Linguistic avoidance:
  - Uses language to deflect responsibility for the violence away from the perpetrator
  - Diffuses responsibility by creating a situation where there is no identified perpetrator

(Bohner, 2001)

# The “Invisible Perpetrator”

- Consider these examples:
  - “Mary was raped” v. “Don raped Mary”
  - “Every 46 seconds a woman is raped” v. “Every 46 seconds a man rapes a woman”
- What is the difference?

(Frank & Goldstein, undated)

# The “Invisible Perpetrator”

- Linguistic avoidance used to:
  - Present women as objects of acts that have no specified agents
    - Examples: “abused women” or “battered woman”
  - Nominalize the violence so that no agent is necessary
    - Examples: “the violence” or “the abuse”

(Lamb, 1991)

# The “Invisible Perpetrator”

- Linguistic avoidance used to:
  - Construct sentences so that agency (and responsibility for the act) are obscured
  - Identify the subjects together in a way that suggests mutual responsibility
    - Examples:
      - Spouse abuse
      - Marital aggression
      - Violent relationship
      - Parental or family violence

# Unaccountable Language: To Minimize the Violence

- “Accuser”
- “Date rape”
- “Domestic dispute”

# Unaccountable Language: To Minimize the Violence

- “Abusive relationship”
- Victims “confessed” they were sexually abused as children
- “Child pornography” or “kiddie porn”

# Victims' Use of Language

- May use language of consensual sex or mutual experience
- Often acknowledge they were “forced to have sex,” but may not characterize it as rape
- May use vague or slang terms, impersonal verbs or passive language
  - “Something happened”

# Victims' Use of Language

- May describe what they “should have done” to end the assault, assigning some level of responsibility to themselves

- Why?

(Wood & Rennie, 1994)



# “Violence Against Women ” Accountable Language Exercise

- Read the article
- Circle words that refer to people
  - What do you notice about those words?
- Rewrite one paragraph using accountable language

(Katz, 1997)

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# The Visible Perpetrator: “Sexual Assault Prevention Tips Guaranteed to Work!”

- “Don’t put drugs in people’s drinks in order to control their behavior.
- When you see someone walking [alone], leave [her] alone!
- If you pull over to help someone with car problems, remember not to assault [her].
- NEVER open an unlocked door or window uninvited.”

(Jamison, 2009)

# The Visible Perpetrator: “Sexual Assault Prevention Tips Guaranteed to Work!”

- “If you are in an elevator and someone else gets in, DON’T ASSAULT [HER].
- Remember, people go to the laundry to do their laundry, do not attempt to molest someone who is alone in a laundry room.
- **USE THE BUDDY SYSTEM!** If you are not able to stop yourself from assaulting people, ask a friend to stay with you while you are in public.”

(Jamison, 2009)

# The Visible Perpetrator: “Sexual Assault Prevention Tips Guaranteed to Work!”

- “Always be honest with people! Don’t pretend to be a caring friend in order to gain the trust of someone you want to assault. Consider telling [her] you plan to assault [her]. If you don’t communicate your intentions, the other person may take that as a sign that you do not plan to rape [her].
- Don’t forget: you can’t have sex with someone unless [she is] awake.”

(Jamison, 2009)

# The Visible Perpetrator: “Sexual Assault Prevention Tips Guaranteed to Work!”

- “Carry a whistle! If you are worried that you might assault someone ‘[by] accident’ you can hand it to the other person you are with so [she] can blow it if you do.
- And, ALWAYS REMEMBER: if you didn’t ask permission and then respect the answer the first time, you are committing a crime—no matter how ‘into it’ others appear to be.”

(Jamison, 2009)

# Case Law Exercise

- Read the case law excerpts provided
- Circle the words or phrases that are examples of:
  - Using the language of consensual sex to describe assaultive acts
  - Victim-blaming language
  - The “invisible perpetrator”
- Note examples of good choice of language
- Rewrite the selections assigned by your facilitator



# Language Restrictions in the Courtroom: The Word Ban



# Power Dynamics in the Courtroom

- Judges and lawyers are automatically afforded linguistic power
- Court rules empower lawyers over the witnesses they examine

(Conley & O'Barr, 1998)



# Power Dynamics in the Courtroom

- In a rape case, strategies of domination are employed in the service of one accused of domination.
- “In this sense re-victimization is real and its mechanism is linguistic.”

(Conley & O'Barr, 1998)

# Word Bans: The Nebraska Case

- Trial court judge entered an order prohibiting all witnesses from using the following words:
  - Rape
  - Assailant
  - Attack
  - Victim
  - Sexual Assault Kit/Sexual Assault Nurse Examiner

*Bowen v. Cheuvront*, 516 F. Supp. 2d 1021 (D. Neb. 2007),  
*vacated*, 521 F.3d 860 (8th Cir. 2008).

# Word Bans: The Nebraska Case

- Victim was required to sign an order agreeing to the word bans
- Sexual assault examination kit was to be referred to as the “sexual examination kit”
- SANE was to be referred to as “sexual examiner”
- After two mistrials, prosecutor dropped the charges

*Bowen v. Cheuvront*, 516 F. Supp. 2d 1021 (D. Neb. 2007),  
*vacated*, 521 F.3d 860 (8th Cir. 2008).

# Word Bans: “Victim”

- Other example:
  - Conviction reversed where word “victim” was used over 76 times. Trial court had refused to give a curative instruction.

*State v. Cortes*, 851 A.2d 1230 (Conn. Ct. App. 2004).

# Word Bans: Massachusetts

- In a recent Massachusetts case, the defendant in an aggravated rape case appealed his conviction, claiming that the trial court erred in admitting printed forms from the Sexual Assault Evidence Collection Kit.
- He claimed the forms referred to culpability and assumed a sexual assault “occurred.”

*Commonwealth v. Dargon*, 930 N.E.2d 707 (Mass. 2010).

# Word Bans: Massachusetts

- Massachusetts Supreme Judicial Court agreed, holding that the trial court's failure to redact the "sexual assault" title and references to "assault" and "assailant" was prejudicial error.

*Commonwealth v. Dargon*, 930 N.E.2d 707 (Mass. 2010) (conviction affirmed because prejudicial terms did not cause a substantial miscarriage of justice).

# Problem With Word Bans

“Word bans are a relatively new development in criminal trials, which have been implemented to protect the defendant from unfair prejudice. There is considerable difference between the usual exclusion of prejudicial ‘subject matter’ and the exclusion of specific words used to describe perfectly permissible subject matter.”

(Atassi, 2009)



# Problem With Word Bans

“For the life of me, I do not understand why a judge would tell an alleged rape victim that she cannot say she was ‘raped’ when she testifies in a trial about rape. Juries are not stupid. They are very wise. In my opinion, no properly instructed jury is going to be improperly swayed because a woman uses the word ‘rape’ rather than some tortured equivalent for the word.”

*Bowen v. Cheuvront*, 516 F. Supp. 2d 1021, 1029 (D. Neb. 2007), *vacated*, 521 F.3d 860 (8th Cir. 2008) (per curiam) (holding that the federal courts did not have personal jurisdiction over the state court judge and that dismissal of the state’s case rendered the federal case moot).



# Problem With Word Bans

“Jurors expect accusations to be made at trial. They expect the person who is alleging to be a victim of a crime to make that allegation on the stand. A witness telling a jury that she was raped would not be unfairly prejudicial because it would merely tell the jury what they already know, that the victim believes [she was] raped.”

(Atassi, 2009)

# Problem With Word Bans

- No similar bans on using words like “robbed,” “murdered,” “mugged,” or “embezzled” (also “ultimate conclusions”).
- “Perhaps, more so than any other crime, the crime of rape heavily depends on the narrative that takes place in the courtroom.”

(Atassi, 2009)

# Problem With Word Bans

- Act as prior restraint on witness' speech
  - Particularly problematic in sexual assault case, where victim's credibility is key
  - Nebraska victim had to pause and reformulate her answers to comply with language ban
  - She was concerned it made her appear that she was fabricating details or that she did not know what really happened

(Atassi, 2009)

# Word Bans Rejected

- *State v. Rodriguez*, 946 A.2d 294 (Conn. App. Ct. 2008) (word “victim” permissible here).
- *State v. Goss*, 235 S.E.2d 844 (N.C. 1977) (permissible for victim to testify that defendant was “raping” her).
- *State v. Bombo*, No. COA09-1339, 2010 N.C. App. LEXIS 1099 (N.C. Ct. App. 2010) (not selected for official publication) (use of “victim” not error).

# Recommendations for Judges



# Recommendations for Judges

- Choose your language carefully
  - Use language that reflects the unilateral nature of sexual violence
  - Avoid using the language of consensual sex when describing assaultive acts
    - Instead, use language that describes body parts and what the victim was forced to do

# Recommendations for Judges

- Choose your language carefully
  - Avoid victim blaming language
  - Place agency where it belongs—avoid the “invisible perpetrator”
  - Use “person first” language when possible
    - “Woman with a disability” instead of “disabled woman”



# Recommendations for Judges

- Obvious exception: when quoting witnesses or statutory language
- Avoid word bans
- Educate court personnel about these issues



# Recommendations for Judges

- Educate the media, when possible
  - Humorous example from the *Washington Post*
  - Might not be possible for judges!
- Example: the Nevada project to educate the media about domestic violence
  - Stemmed from judge's personal tragedy
  - Judge created comprehensive media guide

# Remember

“The difference between the almost right word and the right word is really a large matter—it’s the difference between the lightning bug and the lightning.”

Mark Twain, in a letter to George Bainton (October 15, 1888)

# We Can Make a Difference

- The Judicial Language Project at New England Law | Boston:
  - In September 2010, they wrote to the Chief Justice of the Georgia Supreme Court and the Chief Judge of the Georgia Court of Appeals about the use of the word “perform” to describe actions of child victims in sexual assault cases

# We Can Make a Difference

- The Judicial Language Project at New England Law | Boston:
  - Chief Justice Hunstein wrote back thanking them for their critique and promising to be mindful about the courts' choice of language
  - April 2011 analysis shows that the Georgia appellate judges have actually changed the language they use in these cases

# References

- JOANNE ARCHAMBAULT, KIMBERLY LONSWAY, & SCOTT KEENAN, EFFECTIVE REPORT WRITING: USING THE LANGUAGE OF NON-CONSENSUAL SEX (End Violence Against Women (EVAW) International, 2006).
- Randah Atassi, Comment, *Silencing Tory Bowen: The Legal Implications of Word Bans in Rape Trials*, 43 J. MARSHALL L. REV. 215 (2009).
- Janet Bavelas & Linda Coates, *Is it Sex or Assault? Erotic Versus Violent Language in Sexual Assault Trial Judgments*, 10 J. SOC. DISTRESS & HOMELESS 29 (2001).
- Gerd Bohner, *Writing About Rape: Use of the Passive Voice and Other Distancing Text Features as an Expression of Perceived Responsibility of the Victim*, 40 BRIT. J. SOC. PSYCHOL. 515 (2001).
- Michelle Boorstein, *Study Says Lax Culture Bred Clergy Sex Scandal*, WASH. POST, May 19, 2011, at A4.

# References

- *Bowen v. Cheuvront*, 516 F. Supp. 2d 1021 (D. Neb. 2007), *vacated*, 521 F.3d 860 (8th Cir. 2008).
- Linda Coates & Allan Wade, *Telling It Like It Isn't: Obscuring Perpetrator Responsibility for Violent Crime*, 15 DISCOURSE SOC'Y 499 (2004).
- *Commonwealth v. Dargon*, 930 N.E.2d 707 (Mass. 2010).
- JOHN M. CONLEY & WILLIAM M. O'BARR, JUST WORDS: LAW, LANGUAGE AND POWER 15-37 (1998).
- Phyllis B. Frank & Barry Goldstein, *The Importance of Using Accountable Language*, <http://www.nomas.org/node/251> (last visited Apr. 25, 2011).

# References

- Letter from Judith G. Greenberg, Co-Director, The Judicial Language Project, New England Law, to Chief Justice Carol W. Hunstein, Supreme Court of Ga., and Chief Judge M. Yvette Miller, Court of Appeals of the State of Ga. (Sept. 23, 2010) (on file with NJEP).
- Colleen Jamison, *Sexual Assault Prevention Tips Guaranteed to Work!* FEMINALLY, (Aug. 21, 2009), <http://feminally.tumblr.com/post/168208983/sexual-assault-prevention-tips-guaranteed-to-work>.
- Leigh Jones, *Former Big Firm Associates Suspended Over Sexual Encounter*, NAT'L LAW J., Nov. 16, 2010.
- Don Jorgensen, *Former Teacher Gets 45 Years In Prison*, KELOLAND.COM (June 7, 2011), <http://www.keloland.com/NewsDetail6162.cfm?Id=116383/>.

# References

- Jackson Katz, *DSK's Alleged Victim Should Not Be Called His "Accuser"*, Huffington Post (Aug. 20, 2011), [http://www.huffingtonpost.com/jackson-katz/dsk-alleged-victim-should\\_b\\_930996.html](http://www.huffingtonpost.com/jackson-katz/dsk-alleged-victim-should_b_930996.html).
- Jackson Katz, *Language Matters #1: Violence Against Women* (1997).
- Sharon Lamb, *Acts Without Agents: An Analysis of Linguistic Avoidance in Journal Articles on Men who Batter Women*, 61 AM. J. ORTHOPSYCHIATRY 250 (1991).
- Letter to the Editor, *Training in 'Don't do that'?*, WASH. POST, May 23, 2011, at A18.
- Clare MacMartin, *(Un)reasonable Doubt? The Invocation of Children's Consent in Sexual Abuse Trial Judgments*, 13 DISCOURSE & SOC'Y 9 (2002).



# References

- Jenna Mann, *Jastorff Pleads Not Guilty to More than 30 Counts of Rape*, KDLT News (Dec. 28, 2010), [http://www.kdlt.com/index.php?option=com\\_content&task=view&id=6866&Itemid=57](http://www.kdlt.com/index.php?option=com_content&task=view&id=6866&Itemid=57).
- James C. McKinley, *Vicious Assault Shakes Texas Town*, N.Y. Times (Mar. 8, 2011) <http://www.nytimes.com/2011/03/09/us/09assault.html>.
- Letter from Wendy J. Murphy, Co-Director, The Judicial Language Project, New England Law (Apr. 7, 2011) (on file with NJEP).
- *State v. Bombo*, No. COA09-1339, 2010 N.C. App. LEXIS 1099 (N.C. Ct. App. 2010) (not selected for official publication).
- *State v. Cortes*, 851 A.2d 1230 (Conn. Ct. App. 2004).
- *State v. Goss*, 235 S.E.2d 844 (N.C. 1977).
- *State v. Rodriguez*, 946 A.2d 294 (Conn. App. Ct. 2008).

# References

- Judge Chuck Weller, *Covering Domestic Violence: A Guide for Informed Media Reporting in Nevada*, NEV. NETWORK AGAINST DOMESTIC VIOLENCE, [http://www.nnadv.org/pdfs/Press\\_Room/Covering Domestic Violence-Media Guide.pdf](http://www.nnadv.org/pdfs/Press_Room/Covering_Domestic_Violence-Media_Guide.pdf).
- Judge Chuck Weller, *Needed: A Guide for Media Coverage of Domestic Violence* (2009) (unpublished M.J.S. thesis, University of Nevada, Reno) (on file with the University of Nevada, Reno Library).
- Linda A. Wood & Heather Rennie, *Formulating Rape: The Discursive Construction of Victims and Villains*, 5 DISCOURSE SOC'Y 125 (1994).