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Classing Sex Offenders: How Prosecutors and Defense Attorneys Differentiate Men Accused of Sexual Assault

Jamie L. Small

As public awareness of and concern about sexual victimization has increased in recent decades, stigmatization of sex offenders has also increased considerably. Contemporary sex offender policies transform discrete criminal behaviors into lifelong social identities. Although there is much debate about the efficacy and constitutionality of such policies, we know little about how the category of "sex offender" is constituted in the first place. In this article, I reveal how prosecutors and defense attorneys construct sex offenders, not as monsterous or racialized as is commonly thought, but as "lower class" men. This analysis is based on 30 in-depth interviews with prosecutors and defense attorneys in Michigan. These legal actors wield disproportionate power in defining the boundaries of criminal behaviors and individuals. That they associate sexual criminality with lower class men demonstrates yet another way that class-based inequalities are reproduced in the legal field.

Sexual allegations against Dominique Strauss-Kahn, then head of the International Monetary Fund and likely contender for the French presidency, rocked the global political scene in May 2011. A housekeeper at a Manhattan hotel accused Strauss-Kahn of a forced sexual interaction. After swift reactions from hotel security and local authorities, her allegations led to the dramatic apprehension of Strauss-Kahn as he sat aboard a jet, just minutes away from its departure to Paris. Strauss-Kahn was charged with a criminal sexual act, attempted rape, and unlawful imprisonment, and he was held in protective custody at the Rikers Island Jail. Eventually, the judge released Strauss-Kahn on a $1,000,000 bail

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and thereafter he remained under home confinement. Over the summer, however, the case unraveled primarily due to the prosecutor's questions about the complainant's credibility. Most damning, according to the prosecutor, were previous false allegations of rape she made on her application for asylum in the United States. In August, the judge dismissed the indictment and Strauss-Kahn was no longer facing criminal charges and the subsequent stigma of being a sex offender.

This extraordinary case generated much media attention, confusion, and controversy, precisely because the alleged perpetrator did not fit the mold of the stereotypical sex offender. Political insiders claimed that it was a conspiracy in which Strauss-Kahn was framed to eliminate him from the French presidential race. Feminists and radicals contended that it was a case of "plantation politics," alluding to sexualized power dynamics between master and slave from the 19th century.[1] French commentators saw it as an example of the barbarism of the American justice system in which the defendant is defamed by media prior to trial. Despite the complexities, it is clear that local authorities took the complainant's allegations seriously. That these allegations went as far as they did is remarkable given what we know about the legal processing of sexual assault in the United States. Despite widespread rape law reforms that swept the country in the 1970s and 1980s, research shows that complainants still experience secondary victimization (Campbell & Raja 1999; Konradi 2007; Patterson 2011; Temkin 2002), attrition rates remain high (Alderden & Ullman 2012; Caringella-MacDonald 1984; Daly & Bouhours 2010), and public attitudes often blame the victim (Campbell et al. 2001; Clarke & Lawson 2009; Frese et al. 2004). Given this context, the Strauss-Kahn case is both remarkable and paradoxical. On one hand, it is surprising that prosecutors acted as aggressively as they did due to his privileged class status and the limited evidence. On the other hand, it is also surprising that the charges were dismissed so far into the legal process because most cases that are investigated and charged continue forward (Frazier & Haney 1996).

The Strauss-Kahn case suggests a complexity in sexual assault processing that is often overlooked. In focusing on *if* the reforms are effective, we miss the more important question of *how* the reforms are effective. Legal reforms often have unintended consequences that are different from what original reformers intended. The case of legal reforms of sex crimes is no different.

[1] http://www.guardian.co.uk/world/2011/aug/23/dominique-strauss-kahn-charges-dropped

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In this article, I investigate how these reforms shaped the attitudes and behaviors of legal actors in Michigan. Findings indicate that as knowledge about sexual victimization grows more sophisticated, understandings of sexual perpetrators becomes ever narrower. The sex offender category becomes conflated with lower class identities and cultures. In turn, the process of identifying sex offenders emerges as yet another way that class-based inequalities are reproduced in the legal field.

Conceptualizing Perpetrators in Sex Crime Laws

Sexual violence is widely recognized as a serious social problem (Bevacqua 2000; Chasteen 2001; Cuklanz 1995). State resources are now routinely deployed to study, prevent, and criminally process claims of sexual assault (Bumiller 2008; Martin 2005; Matthews 1994). Despite extensive legal mobilization, incidence of sexual assault holds steady, and attrition rates in the criminal justice process remain high (Lonsway & Archambault 2012; Spohn & Horney 1990; Spohn & Tellis 2012). Scholars propose many explanations for the lackluster effects of sex crime legal reforms. First, the investigation and pretrial phases are demeaning, invasive, and confusing to victims, which compel them to acquiesce to less-aggressive prosecution strategies (Corrigan 2013; Konradi 2010; Maier 2007). Second, cultural stereotypes about women and people of color permeate prosecutors' decision-making process (Beichner & Spohn 2005; Frohmann 1997; Taslitz 1999). Third, the criminal justice process silences and subordinates sex crime victims (Bucher & Manasse 2011; Konradi 1996; Matoesian 1997). What is missing from these debates, however, is a serious consideration of the sexual perpetrator and his relationship to the social problem of sexual violence. Since rape law reforms in the late 1970s, scholars and activists have reconceptualized the rapist: he shifted from a passionate Rhett Butler-like figure who uncovers the hidden desires of women to a pathological man who requires extensive surveillance and severe punishment.

Who Are the Perpetrators?

There are three prevailing schools of thought in understanding sexual violence: feminism, psychology, and post-colonialism. While there are some overlaps in their respective models, these schools largely conceptualize sexual violence and its perpetrators differently. First, feminists understand sexual violence as a gendered social problem that reproduces structural inequalities. This model emerged from the radical feminism which identifies rape

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as the primary mechanism of women's oppression (Brownmiller 1975; MacKinnon 1989).[2] Whereas rape had been understood historically as a crime against the collective family, community, or nation (Block 2006; Frank et al. 2010), anti-rape activists frame rape as an identity-based crime—against women as a class. This formulation politicizes the crime. Men's sexual dominance leads to other forms of discrimination against women, such as poor career opportunities, restricted bodily movements, and political disenfranchisement. Perpetrators occupy a dominant, if under-explicated, position in this model. Brownmiller famously wrote, "Rape is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear" (1975: 6). Here, potential perpetrators are *all* men, regardless of their class status.

Second, psychologists understand the perpetration of sexual violence as an individual pathology. They delineate the different types of sexual perpetrators in great detail through scientific study. Groth created a typology of rapists, which includes anger, power, and sadistic rapists (Groth 1979: 12–58). Subsequently, psychologists divided the types further with the primary goal being to categorize the motivations and crime patterns of rapists. The focus remains on individual pathology: Why do some men commit sexual assaults while others refrain? How do they select their victims? How do they perform the sexual assault? This body of work understands rape behavior as problematic, but it does not necessarily articulate a feminist stance because the perpetration of sexual violence is not directly linked to gendered inequalities. Moreover, by focusing on individual pathologies, rape behavior is more likely to be associated with marginalized men, especially poor ones, who exhibit other behaviors perceived to be pathological, such as sexual deviance, chaotic family lives, and poor work histories.

Third, post-colonial scholars understand sexual violence as the primary mechanism through which dominant nations consolidate their power (Block 2006; Kolsky 2010; McClintock 1995). The colonizers dominate the people of their colonies by raping the women. Much has been written of this phenomenon in the American South, in which wealthy white men raped black slaves (Fischer 2002; Rosen 2009). Not only did this create a subservient

[2] Important anti-rape work was done long before second wave feminism. Some of this activism intersected with other social movements like that of racial equality. For instance, Ida B. Wells was a pioneer in publicizing and denouncing sexual violence against African-Americans in the Jim Crow era (Freedman 2013: 89–124). Yet rape did not enter the mainstream public agenda until much later, and the dominant rhetoric that now explains this social problem is most directly linked to radical feminism of the 1970s and 1980s.

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slave class because of the constant fear of sexual violence, but it also generated additional human labor through the subsequent pregnancies. In these historical processes, the rapist enacts a behavior that reproduces racialized structures of society, but it is generally condoned so long as it remains secretive. Here, potential perpetrators are high status men who enact sexualized power across differences of race, ethnicity, religion, and nationality.

Although there is variation within these schools of thought, on the whole, they articulate different hypotheses on which kinds of men are the most probable sexual perpetrators. Feminists predict that all men are equally likely to commit sexual crimes; psychologists predict that lower status men are more likely; and post-colonial scholars predict that high-status men are more likely. Prosecutors and defense attorneys draw most closely on the second hypothesis, and they add the angle of class to their formulations. This is perhaps not surprising given that violent criminality has been historically associated with poor communities. State actors now take sexual assault seriously, and the punitive consequences can be severe. Thus, the classed connotations of sex offenders have potentially significant effects.

Institutionalizing Sex Offender Identity

While the first wave of rape law reforms focused on the treatment of the victim, the second wave, beginning in the 1990s, focused on the identification of the perpetrator (Farkas & Stichman 2002; Leon 2011: 107–24). A dense network of laws, policies, and social service organizations now make meaning about the sex offender and his actions. Sex offender laws are intended to prevent sexual violence, identify potential perpetrators, and punish convicted perpetrators. The public process of creating knowledge about people who commit sexual crimes effectively institutionalizes a new kind of criminal: the sex offender. The behavior of the new sex offender is largely the same as the historical rapist, but his actions are now solidified for life in a social identity that trumps all other statuses. Following in the wake of panics in the 1980s about child sexual abuse, these laws spread rapidly at state and national levels. They were often named after children who had been sexually assaulted and murdered, often by strangers—e.g., Jacob's Law, Megan's Law, and Amber's Law. Although variable, most states' sex offender laws include elements like requiring sex crime convicts to register publicly and regularly, notify their community of their presence, and keep a certain distance from schools. Notably, sex offender laws focus on the protection of youth victims, presuming an adult outsider threat to innocent children.

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Over the 1990s, terminology shifted from "rapist" to "sex offender" as an avalanche of new laws swept the country. Scholars have analyzed the cultural meanings associated with the recent sex offender laws. Many argue that the laws traffic in themes of monstrosity and disgust, imagining sex offenders as monstrous individuals who need to be contained (Lancaster 2011; Levine 2003: 20–44; Spencer 2009). For instance, Lynch analyzes federal debates about proposed sex offender legislation and finds that they are over-saturated with language of disgust, contagion, and pollution (Lynch 2002). This fearful rhetoric generates an emotional motivation for lawmakers to draw clear boundaries between innocent victims and monstrous sex offenders via their legislation. By framing sex offenders as monstrous, they are constructed as outside of society and not worthy of civil liberty protections. Scholars argue that in this formulation, the sex offender becomes a bogeyman through which social anxieties can play out (Leon 2011; Meiners 2009; Simon 1998, 2000; Wacquant 2009). So the monstrosity trope becomes a way for society to work through its anxieties about sexuality, deviance, and contamination. Moreover, it draws on racialized discourse in which the dark outsider is perceived as a grave threat to the domestic order. Historically, men of color were targeted, often wrongly, as threats to white women's sexual purity. In the Jim Crow era, African-American men endured horrific lynching campaigns for engaging in consensual sexual relations with white women. More recently, Puar and Rai (2002) write about how Arab-American men were constructed as threats, vis-à-vis their sexuality, to U.S. national security in the post-9/11 era.

Sex offender laws are designed to punish convicted offenders, protect communities, and prevent future sexual assaults. However, the legal mechanisms designed to achieve these outcomes have far-reaching consequences for sex offenders and their families. First, sex offenders are stigmatized. Research shows that sex offenders have trouble securing steady employment (Tewksbury & Lees 2006); they have trouble finding places to live (Meloy et al. 2008; Tewksbury & Lees 2006; Tewksbury 2005); and they and their families report negative repercussions in dealing with others (Levenson & Tewksbury 2009; Tewksbury 2012; Winnick 2008; Zevitz 2004). Their children are ostracized at school, and their partners have to manage stigma flung at their families. Ironically, these stigmatizing patterns may serve to further isolate sex offenders from the fabric of society. Some scholars suggest that the challenge of successfully reintegrating into society after confinement release may make them more likely to reoffend because of the severe stress that their status places on them (McAlinden 2005; Meloy et al. 2007). Second, it is not clear that

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sex offender registries and related programs are effective at decreasing the prevalence of sexual violence (Griffin and Miller 2008; Hebenton and Seddon 2009; Tewksbury & Jennings 2010; Waldram 2008). Sexual violence is an intractable problem that likely requires more than band aid solutions. Third, sex offender laws gradate the degree of harm based on the relationship of the victim and perpetrator, which means that crimes between familiars are considered less criminally severe. Thus, sex offender laws are structured around the rare yet poignant stranger rape and murder scenarios, which is precisely what original anti-rape activists were trying to challenge (Corrigan 2006).

Despite the historical prominence of using race as a proxy (albeit, a poor one) for assessing sexual threat, class emerges as the most salient proxy for legal actors in Michigan. In fact, racialized explanations of sexual criminality almost wholly fall away in favor of classed ones. Prosecutors and defense attorneys describe sexual defendants as "creeps," "mopes," "bums," "drunks," and "deadbeats." These labels emerge as mechanisms to differentiate groups of men based on their class status. Of course, the process becomes a self-reinforcing tautology. Men who are accused of sexual assault may truly, by virtue of their possible guilt, be unsavory individuals, yet guilty men who are not formally accused in the first place escape the derogatory labels. Furthermore, that this unsavoriness is constructed along lines of class, means that class privileged men will rarely be cast as potential sex offender. Criminal investigations against class privileged men may never be initiated in the first instance and those that are may be incomplete as the alleged defendant is so misaligned with the stereotypical sex offender. Prosecutors and defense attorneys wield disproportionate power in determining who will be named a sex offender and who will escape the stigma. In this article, I examine the cultural logics by which prosecutors and defense attorneys make sense of the sex offender. It turns out that they imagine him in somewhat different ways than the literature would predict. Rather than imagining him as raced or monstrous, they see him as a "lower class" man.

Research Design

This study examines the legal construction of sex offenders in Michigan because it has one of the nation's highest rates of forcible rape and, consequently, a large number of registered sex offenders. According to the Federal Bureau of Investigation's Uniform Crime Report, there were 45.3 reported instances of forcible rape per 100,000 people in 2009, sixth highest in the

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country. In addition, there were 40,481 registered sex offenders in Michigan as of 2013; per capita, this is the third highest rate nationally (National Center for Missing & Exploited Children 2013).[3] Michigan's rates of sexual assault and registered sex offenders are high compared to nearby states. These are largely explained by characteristics of the legal jurisdiction rather than a violent citizenry. Michigan was the first state to reform its rape laws in 1974; these laws are comprehensive; and it has an active prosecuting attorney's association that provides trainings. So offenses that might be ignored or downgraded to non-sex crimes in other states are more likely to be charged and prosecuted as such in Michigan.

I conducted in-depth interviews with 30 prosecutors and defense attorneys in Michigan. The interviews occurred over an 8-month period in 2011–2012. I recruited 83 participants via written letter based on their previous experience having worked on a case involving an adult male sexual complainant, which is the focus of the larger project. Even though I targeted specific individuals, the selection criterion was not substantively related to this analysis, so the final sample is semi-random. The response rate was 36 percent. The sample includes county prosecutors, public defenders, private defense counsel, and appellate attorneys. Of the 30 participants, 18 are from the Southwest region; 10 are from the Southeast region; and 2 are from the Northern region. Most respondents are based in one of the state's larger cities (Detroit, Ann Arbor, Lansing, or Grand Rapids), but because prosecutions are county-based, their practices often stretch into the nearby rural areas. I included appellate attorneys because they make written and oral arguments about sex offenders, which have the potential to shape case law. Most respondents are middle-aged men who graduated from second-tier law schools between 1975 and 1985; women comprise less than 20 percent of the sample. The sample does not over-represent attorneys who have particular views about sexual violence because most of them exercised little discretion in the cases on which they worked. Moreover, few respondents expressed politicized views—either sexist or feminist—about sexual violence.

Interviews lasted between 30 minutes and 2 hours. Generally, I met the respondents at their offices, but I met a couple on university campuses or in cafes. I used a semi-structured interview guide, which started with their work histories and moved into their experiences prosecuting or defending sex crime cases. I encouraged respondents to tell stories so that I could understand

[3] http://www.missingkids.com/en_US/documents/Sex_Offenders_Map.pdf

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the complexities of their framing logics. As much as possible, I simply listened, letting their perspective guide the discussion. I mirrored respondent's language because rape language is politicized—"complainant," "victim," "witness," and "survivor" all have different connotations—and I wanted to meet them where they were. Similarly, I use the phrase "lower class" to describe how the attorneys characterize sex offenders. Although they do not organize their classed assessments in a systematic way, the euphemisms they use connote a disparaging judgment. So while I approach all subjects of this research in a respectful manner, I also want to accurately capture the tone that these influential actors invoke, which itself is not always respectful. Interviews were digitally recorded and professionally transcribed. I analyzed the interview transcripts using grounded theory (Strauss and Corbin 1990). Because the interview guide was based on the respondents' professional experiences, the time frame of this analysis is bounded by their career trajectories, all of whom had been in the legal field for at least a decade and some for as many as 40 years. In the analysis below, I select representative quotes that best encapsulate the broader point. I conceal the identities of the respondents and the individuals who emerge in the stories they tell.

The class divide between the attorneys and sex offenders becomes starker when placed in the context of the research interview. Even as the respondents actively distanced themselves from the bodies, behaviors, and identities of sex offenders, a quick rapport developed between the attorneys and me. Despite our differences—I am a younger woman who does not have a law degree—the respondents recognized our class and professional affiliations. Accepting me as a colleague, they welcomed me into their offices. They were generous with their time; they gave thoughtful answers to my questions; and they shared relevant legal documents with me. Thus, I approach these data from a critical pragmatist stance (Kadlec 2006; Smith 1987). Although I critique how the respondents understand sex offenders, I also recognize that they do important work under structural and institutional constraints. In many respects, they provide excellent models for how to both prosecute allegations of sexual violence and protect the constitutional rights of defendants. My hope is to illuminate one of the unintended consequences of sex crime legal reforms.

Michigan is an ideal site for this research because it has been on the vanguard of the anti-rape movement. Nonetheless, there are some limitations to this study and important avenues for future research. First, the relatively small sample size cannot indicate how widespread these conceptual models are and how they might vary across jurisdiction. Second, the methodology of in-depth interviews reveals how the attorneys think about sex

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offenders, but they do not provide a systematic or verifiable record of how these attitudes affect their professional decisions. Third, attorneys represent just one set of actors in the criminal justice process. Additional research might examine how other stakeholders such as investigators, judges, and probation and parole officers shape the construction of the sex offender identity.

Analysis proceeds in two parts. First, I show how sophisticated notions of harm, vulnerability, and victimization are embedded in Michigan's sexual assault laws. Accordingly, this legal framework shapes how the respondents think about and do their work. Second, I chart the classed narratives that respondents invoke when they discuss sex offenders. Class emerges as a distinct theme as respondents discuss the sex offender's family, work history, criminal behavior, and appearance. I argue that even as understandings of sexual victimization have grown more refined, understandings of perpetrators have grown narrower and are defined largely in terms of their lower class status.

Part I: Enacting Rape Law Reforms in Michigan

Rape law reforms swept across the United States beginning in the mid-1970s (Matthews 1994; Spohn and Horney 1992). They were arguably the most successful component of the feminist movement (Bevacqua 2000). The logics of anti-rape activism drew from both radical and liberal feminist frameworks. Like the former, anti-rape activists formulated gender as dichotomous and hierarchical, and like the latter, they turned to the law as the optimal site for social reform. Writers like Catharine MacKinnon and Andrea Dworkin received much public recognition for leading this social movement. However, grassroots activists, who received little historical acknowledgement, mobilized the legislative and institutional reforms. These grassroots activists eventually received significant financial support, which enabled the creation of institutionalized activist networks, with the federal passage of the Violence Against Women Act in 1994.

Michigan was the first state to reform its rape laws in 1974.[4] The Michigan criminal code organizes sexual assault violations under one category called "criminal sexual conduct" (CSC). CSC

[4] All states reformed their rape laws to some degree between the 1970s and 1990s. Each state's legislative reform was piecemeal and influenced by local politics. Many states followed Michigan's lead and enacted comprehensive reforms that were gradated, reflected the empirical realities of sexual violence, and accounted for the traumatic experience of the victim. New York, where Dominique Strauss-Kahn was indicted, has similar sexual assault laws as Michigan. Other states enacted more modest reforms, tweaking procedural and evidentiary standards, while leaving the original code's structure in tact.

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is gradated into four degrees, the first three of which are felonies and the fourth of which is a misdemeanor. The degrees are distinguished between the type of behavior that occurred and the relationship between the perpetrator and the victim. For instance, unwanted sexual touching is differentiated from unwanted sexual penetration, and perpetrators who hold formal power over their victims—as teachers, law enforcement officers, and adults—face stricter sanctions. Punishment for a CSC conviction ranges from a monetary fine to life imprisonment. In addition to statutorial reforms, Michigan reformed its procedural and evidentiary standards for the prosecution of CSC cases. In 1994, Michigan legislators passed the Sex Offenders Registration Act (SORA). This law requires persons convicted of CSC to register their address, place of employment, criminal history, and certain physical characteristics on a public database. It also restricts their presence near schools and imposes fees and penalties. The SORA justifies these mandates and restrictions because "a person who has been convicted of committing an offense covered by this act poses a potential serious menace and danger to the health, safety, morals, and welfare of the people, and particularly the children, of this state" (Michigan Criminal Code Section 28.721a). Although they both address sexual violence, the CSC and SORA laws have different genealogies and implementation dynamics. The feminist movement mobilized the CSC reforms, whereas the crime victims rights movement, which surged in the 1980s, mobilized the SORA reforms. Moreover, the former is a criminal statute, and the latter is a civil one. This means that prosecutors and defense attorneys engage exclusively with CSC laws, and yet they also function as crucial gatekeepers who channel individuals into (or shield them from) state surveillance as a convicted sex offender.

Michigan's legal regime profoundly affects how its prosecutors and defense attorneys understand sexual victimization. It has a robust set of laws that address sex crimes, and there are a multitude of professional training opportunities for prosecutors. Moreover, nearly two generations of lawyers have come of age since the original rape law reforms in 1974. So the case law is well-established, and most lawyers practicing today have no reference point for how things used to be. These conditions created a statewide legal culture that prioritizes the problem of sexual violence and recognizes the dynamics of sexual victimization.

The lens through which prosecutors and defense attorneys understand sexual violence builds on feminist legal theory. They understand sexual violence to be an assault rather than an act of passion; they believe that it occurs more frequently than is generally acknowledged; and they recognize the harm of sexual

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violence. As one prosecutor states bluntly, "It messes people up." Most respondents had difficulty articulating the harm of sexual violence in a nuanced manner, but they recognized that the psychological harm was often more severe and enduring than the physical harm. Here, a defense attorney identifies the existential threat of sexual violence: "Victims would tell me [via victim impact statements] about how they were afraid to be at home alone, and they are always looking over their shoulders. So they never feel completely safe again. You sort of rob the person—practically for life—of the ability to feel free." The attorneys developed this lens on sexual violence through their professional, rather than personal, experience. Most respondents did not identify as a survivor or potential victim. In addition, prosecutors tend to be more distressed about sexual violence because they articulate the crime on behalf of the state. Nonetheless, this feminist-inspired lens emerges as the dominant framework within which defense attorneys work.

Their sophisticated views of sexual victimization affect how prosecutors do their work. Prosecutors take steps to minimize secondary victimization that survivors might experience and to educate jurors about sexual violence. First, many prosecutors work with rape crisis workers (including investigators, forensic interviewers, and sexual assault nurse examiners); these professional collaborations enable them to collect evidence in ways that are thought to lessen the survivor's distress. For instance, investigators may video-record interviews so the survivor does not have to repeat her story many times, and nurses who conduct medical exams have training and resources that enable them to collect the corporeal evidence in a humane fashion.[5] The extent of these professional collaborations varies by county, but nearly all the prosecutors reported some degree of collaboration. Second, prosecutors educate potential jurors during jury selection about rape myths. For instance, they explain why a survivor might delay reporting her victimization, or they might explain why a survivor's behavior prior to the assault does not justify the crime. Many prosecutors develop a provocative strategy to challenge the rape myths. One common tactic was to have jurors imagine what it would be like to narrate their last sexual encounter in great detail to the courtroom. This exercise is intended to help jurors understand the behavior and emotional reaction of the survivor as they testify; survivors may act in unexpected ways because the situation is so awkward. These prosecutorial strategies represent

[5] The effects of these procedural reforms are contested. For instance, Corrigan shows how the forensic exams can evolve into yet another traumatic obstacle that sexual assault survivors endure when they report their victimization (2013).

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profound shifts in terms of how state actors understand the sexual assault victim's trauma.

Defense attorneys react to the dominant logics of sexual violence laid out by prosecutors. Within this field in which sexual violence is taken seriously, they are cautious about appearing too brutish in the courtroom. One defense attorney describes how perceptions of the complainant's vulnerability affect his cross-examination style: "In the courtroom, the defense attorneys have to be very careful. You could be perceived by a jury as being a bully. The way I approach that is to be very respectful, very patient, but still make the inquiries that need to be made." This approach is different from historical defense strategies in which the primary objective was to directly tarnish the complainant's credibility (Larcombe 2002). Rather than smearing the complainant's sexual reputation, defense attorneys are now more likely to reveal inconsistencies by posing questions to other witnesses or by challenging the physical evidence.

Although there have been profound shifts in how prosecutors and defense attorneys think about sexual violence in Michigan, there remains variation across individual, office, and county levels. First, individual attorneys are motivated by different factors, and this affects how they approach their work. Some are galvanized by a strong sense of justice, especially for vulnerable populations, while others approach the work as a simply job to be done. Second, office structure is important (Levine & Wright 2012; Miller & Caplinger 2012). Many prosecuting attorneys' offices process cases vertically, which means that one prosecutor follows each case from beginning to end (Beichner & Spohn 2005). The logic in this model is that the prosecutor can develop a relationship with the complainant, and over time, he can cultivate the unique skill set that CSC prosecutions require. Third, the cultural, economic, and political dynamics of each county affect how sexual violence is prioritized and understood. For instance, Wayne County, which includes Detroit, confronts other social problems, not the least of which is a high rate of violent felonies and unsolved homicides, so the resources available for CSC prosecutions are fewer.[6] Despite variation within the state, the dominant framework is one that recognizes the alarming frequency of sexual violence and the trauma of victimization.

[6] Although it should be recognized that Wayne County prosecutor, Kym Worthy, has demonstrated excellent leadership in generating the political and financial momentum to analyze the thousands of unprocessed rape kits that were shelved in a Detroit Police Department storage facility. The rape kits, which are used to collect forensic evidence from the body of a sexual assault complainant, were discovered in 2009, and some were 25 years old.

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The question remains about why this particular feminist objective resonates so strongly in the legal field. This outcome was not inevitable; after all, other contemporary feminist objectives, like the Equal Rights Amendment, are now historical relics. I suggest that the enduring success of the anti-rape agenda is largely due to its submissive model of women. Sexual assault emerges as a crime against the state to be resolved by prosecutors. Even if the ultimate goal is gender equity, women are still victims in this model. Framing women, especially younger ones and girls, as victims does not disrupt the gendered structure of society. In fact, it aligns nicely with a vision of paternalistic protectionism. Although the elimination of violence against women is required for this group to achieve equitable outcomes, an empowering vision of women, which would be much more unsettling to the gendered status quo, does not necessarily follow from the sexual assault prosecutions.

Part II: Classifying Sexual Perpetrators

As knowledge about sexual victimization has grown more sophisticated, understandings of sexual perpetrators have grown narrower. Attorneys integrate many components of the anti-rape agenda into their work, yet they reject one crucial insight from radical feminism: namely, that any man is equally likely to commit sexual assault. Instead, prosecutors and defense attorneys conflate sex offenders with men they perceive to be of a lower class status. By targeting a specific group of men as the most probable sex offender, the attorneys eliminate the analytical bite of feminism. The practice of prosecuting sexual assault then becomes as much about distinguishing between good and bad men as about eliminating violence against women. The question remains as to whether the attorneys' perceptions about which men commit sex crimes are accurate. It may be that, for whatever reason, lower class men *do* commit sexual crimes at disproportionate rates, which would mean that the respondents' framing logics mirror the empirical reality. On the other hand, it may be that their belief is a cultural stereotype, which would mean that they are overlooking or downplaying allegations made against class privileged offenders. Unfortunately, it is impossible to definitively validate these competing hypotheses with available data. National crime statistics do not collect information about the class status of perpetrators. So we do not actually know whether lower class men are more likely to commit sexual crimes or not. Yet theories about sexual violence and the reproduction of power

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would suggest that class privileged men commit sexual assaults at least as often.

In this part, I lay out how the attorneys conflate sex offenders with lower class men. First, I show how socio-economic stratification emerges as a salient point of difference between attorneys and defendants. Second, I describe how attorneys conceptualize the sex offender's behavior patterns. Third, I reveal how attorneys situate sex offenders within familial contexts, which departs from historical archetypes that imagined him as an outsider (Leon 2011: 25–53). Fourth, I argue that the material and behavioral indicators of the sex offender become embodied in his physical self. Finally, I conclude with two counterexamples that underscore how difficult it is to successfully bring sexual charges against class privileged men. This analysis will show that rape law reforms are being actively implemented, contrary to many critiques in the literature, but in surprisingly circumscribed ways.

Men at Work

Both prosecutors and defense attorneys view the defendants from a position of privilege. Although some report coming from a working class background, they no longer face those constraints due to their advanced education, income bracket, and professional status.[7] The effects of their professional privilege become magnified in the criminal justice context. Sexual allegations have the potential to profoundly alter the defendant's life trajectory, whereas for the attorneys, each case is simply one of many they see in any given year. It is Galanter's distinction (1974) between one-shot and repeat legal players writ large—repeat legal players, the professionals, have significant advantage over newcomers in any given interaction. One defense attorney neatly sums up the different stakes for himself versus his client: "I am not my client. I am not in his predicament, and for that I am thankful." A sense of social distance occurs alongside this professional privilege, which ultimately renders it easier for the attorneys to judge the defendants harshly based on who they *are* rather than what they *did*.

Socio-economic stratification undergirds the attorneys' cultural narratives of class. They organize men hierarchically according to their work history and employment status. Masculinity scholars argue that a man's position in the paid labor force

[7] Lawyers in Michigan earn a salary that places them in the middle class. According to prosecutorsalary.org, the average annual salary range for prosecutors in Michigan is $49,000–74,000, which is comparable to that of public defenders. These rates are above Michigan's 2012 median household income of $48,000. The annual income of private defense attorneys is more variable. Overall, criminal attorneys in Michigan earn a middle class wage, and they enjoy a respectable professional status.

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emerges as a crucial metric for determining his worth (Connell 2005; Nixon 2009). As the attorneys map sex offenders in this discursive system, a complex order of masculinity emerges that draws on the intersection of paid labor, sexual behavior, and respectability. The attorneys situate themselves in the normative center, and from there, they distinguish between two types of working class men: the respectable and the deviant.

The attorneys differentiate between respectable and deviant lower class men based on their ability and willingness to work in the labor force. Men who work hard and steady, even in low wage jobs, are good models of masculinity. One prosecutor describes a case involving a trio of men: the complainant, the defendant, and a witness who was friends with the defendant. The prosecutor's characterizations of these three men in relation to one another exemplify the different types of classed masculinity with which the attorneys engage. Although currently disabled, the complainant in this case had previously worked long hours at a fast food restaurant, earning a promotion to management. After his injury, which was unrelated to his criminal victimization, he continued to lead an orderly life and parented his young son. The defendant's friend, a key witness at trial, also worked. In fact, his professional status bolstered his credibility, which irked the prosecutor, as he was nearly certain that this witness lied on the stand to protect his buddy. "That was a bit of a challenge because [he] is a guy who has a legitimate job. He's a homeowner, and he's a veterinarian." In contrast, the defendant did not hold a steady job, occasionally doing handywork but mostly hanging about. "[He] was just a worthless dog. He didn't do anything except hang out and drink." These three men—respectively, a sexual victim, a perpetrator, and a trial witness—exemplify the types of classed masculinity. A man's absence from the paid labor force is overlooked if he is legitimately not able to be there, and a man's professional status buys him enhanced credibility. Without professional status, financial resources, or sweat labor, a man emerges simply as a "worthless dog."

Predatory Conduct

Much has been written about sex offender laws—their genealogies, their effects, their unintended consequences, and what they tell us about American society. Yet we know little about how individuals become marked as sex offenders in the first place. The public identity of the sex offender is initiated by an allegation of sexual assault, which emerges from a set of behaviors defined as problematic. The pedophile, perceived to be especially deviant, has emerged as a familiar image in popular culture since

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the wave of child sex abuse panics in the 1980s (Best 1993; Levine 2003, 2006). Indeed, respondents draw on the trope of the pedophile as they organize their knowledge of sexual violence into heuristic categories. Within this structure, the pedophile, or child molester, is the most vile and feared type of sex offender. He targets vulnerable children and assaults them repeatedly over time. Although the predatory behavior that the respondents describe is broad, they only apply it to certain circumstances. The identification of predatory conduct is contingent on the age and gender of the victim in relation to the perpetrator.

Respondents believe that pedophiles are unique sex offenders in terms of their behavior patterns and potential for rehabilitation. They use animalistic imagery to describe the "predatory" conduct of pedophiles. His "grooming" process includes identifying a victim who is not likely to report the behavior because of his or her marginal social position; ingratiating himself by lavishing attention and gifts on the victim; establishing sexual contact; and escalating the relationship into one of abuse. The victim may participate actively in the relationship, or at least refrain from reporting the crime, because he or she has relatively little social and material capital; the sexual encounters may feel good; and the perpetrator may threaten the victim. Respondents pick up this knowledge about who pedophiles are and how they behave from their day-to-day work experience and from professional training opportunities. Several also reported reading popular psychology books and journals. Indeed, this narrative pattern has been publicized on television shows like *Oprah* and *To Catch a Predator*.

Unlike other criminals, respondents categorize pedophiles as uniquely deviant. They perceive them to be incorrigible. The pedophile is unrehabilitative because his sexual urges are a core part of his being—perhaps conditioned because of his upbringing, but nonetheless solidified in his adult identity. One prosecutor, who was otherwise passionate and insightful about eradicating sexual violence, describes the rehabilitation potential of pedophiles.

> We're talking about a genre [pedophiles] that does not lend itself to rehabilitation, especially when you're talking about the predatory conduct. I'm not talking about the kinds of things necessarily where somebody gets drunk and does something they're not supposed to do. Not that I am minimizing that in the least. But if you're talking about predatory conduct or if you're talking about child molesters, they do not lend themselves to rehabilitation.

In this formulation, the pedophile is driven by abnormal sexual urges that are impossible to destroy. It is notable, however,

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that this respondent distinguishes between the predatory conduct of a pedophile and that of somebody who "gets drunk" and makes a mistake. This distinction is based on the age and behavior of the victim. "True innocence," as he mentions elsewhere, is more difficult to establish when the victim is older because with age comes sexual maturity and the possibility of sexual consent, which can be exploited by clever defense attorneys. Moreover, the compartmentalization of cases involving alcohol sidelines the problem of sexual violence on college campuses. Armstrong, Hamilton, and Sweeney (2006) show how college campuses are organized to tacitly enable sexual violence. Fraternities, in particular, target freshman women who may be eager to socialize and consume alcohol since they are new to campus. This gendered institutional context facilitates coercive and forced sexual encounters (Martin and Hummer 1989; Wiegman et al. 2007). Yet such behavior does not commonly fall under the rubric of "predatory conduct" because the victims are grown women.

Notions of appropriate sexual desire determine whether a particular sexual encounter is defined as predatory (Cocca 2004). Specifically, assumptions about heterosexuality and men's sexual agency are key litmus tests. The case of women pursuing teenage boys illuminates the constructed nature of "predatory conduct." Several respondents initiated conversation about female teachers who pursued sexual relationships with young men. Such encounters are criminal, commonly known as statutory rape: the victim is not legally able to consent that sexual activity because of his or her youthfulness. Respondents were conflicted about the harm in cases involving a woman and a teenaged boy.

> You find a lot of teachers doing it with boys. Let's face it, I'm a guy. If I was that age, and my teacher who I had a crush on came up to me, and she was a woman, I would have no problem with it. I'm being honest about it. A lot of people are incensed – and I am! I am incensed that a teacher would even do that to a boy. I'm talking about the boy…I remember how it was at that age. I was young once. You're going to do it to mud. That's the way guys are.

This prosecutor tacks between defining this situation as a problem versus an ideal situation. Legally, he knows that this sexual encounter is a crime, but his personal experience, as a former heterosexual male teenager, compels him to consider the pleasure and thrill involved. This potential excitement is based on assumptions that men, especially younger ones, always want sex. Their state of sexual arousal is so high that they will "do it to mud," so a sexual encounter with an attractive, mature woman is the ultimate endeavor. The difficulty with which this respondent

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has in categorizing such a case is the result of gendered assumptions about sexual desire and consent (Levine 2006).

The criminal code defines sexual defendants by their sexual desires and deviant behaviors, even though the behavior of the sex offender ultimately sediments into a permanent new identity. Respondents engage in popular psychological discourse which marks these offenders by their "grooming" and "predatory" behaviors. Although these terms might accurately capture the relationship between perpetrator and victim, they remain limited. In practice, respondents only apply these models to pedophiles, effectively excluding offenders who target older teenagers and adults. By not recognizing how "grooming" behaviors mirror normative patterns of masculine courtship rituals, we fail to fully understand the normalization of sexual assault patterns. In this section, I unpack the notion of "predatory conduct" and reveal that it is not an objective behavior pattern, but rather it is contingent on the social conditions of the assault and identities of the individuals involved.

Sex Offenders and the Family

In contrast to stereotypes that portray the sex offender as a monstrous stranger, prosecutors and defense attorneys situate sex offenders within the familial environment. This incongruity between the public image and criminal justice practice is likely a result of successful legal mobilization around child sexual abuse in the 1980s (Whittier 2011). While flagship victims are invaluable for stimulating public sympathies, most child sexual abuse occurs within familial networks (Corrigan 2006). Such horrific cases occur too infrequently to become bread-and-butter cases for prosecutors, so the family becomes a ripe location for eradicating sexual violence. Indeed, most respondents reported little experience with the proverbial stranger case. Here, a defense attorney describes the shift in sexual assault cases over his forty year career. "It's been years since I've had that type of case: the classic victim, physical violence. Very little of that around here now. The criminal sexual conduct I see more often now is the family settings. There's rarely any violence. There's maybe an abusive authority, but not the violent rape." Although stranger rapes are commonly perceived as most horrific, from the perspective of prosecutors, sex offenses within families are actually most challenging, both professionally and emotionally. Not only is it more difficult to prosecute crimes in which the complainant and defendant know one another, but also the effects of his violence reverberate through multiple generations. Sexual abuse victims, girls and boys alike, are thought to carry their trauma through life, leading to future sexual victimization and perpetration.

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The presence of a sex offender in a family marks the whole group as deviant, and conversely, his absence suggests familial respectability. Respondents draw sharp boundaries between "normal" and "abnormal" families. Building on the authority of their professional status, they locate themselves in the category of normal, even as they draw cultural and spatial boundaries around all other families. The following quotes reveal the contrast in how respondents talk about "our" families and "those" families.

> I grew up in a normal Jewish family, and we didn't have this stuff [child sexual abuse].
>
> Prosecutor

> A lot of my clients have serious mental health problems and really bad family. They have really horrendous backgrounds. They don't think and act the same as normal people. You think, "Why would anyone do that?" But you don't understand, these aren't your neighbors. These aren't your family. These are people in a different mindset, and you can't understand it in a lot of ways.
>
> Defense Attorney

To emphasize the harsh realities of his clients' lives, the latter respondent suggests that his clients are much different than my neighbors and family. Of course, he does not know my social networks, but, based presumably on my self-presentation and affiliation with the university, he assumes that I am normal. In this formulation, two kinds of families emerge: normal families and those plagued by a sex offender.

Classed narratives overlay the characterizations of "abnormal" families. Respondents characterize families that include a sex offender as unstable, criminal, and hypersexual. The adults are frequently unemployed or imprisoned, while the youth remain free to do as they please. As the respondents describe it, sexual violence flourishes in this unstable and undisciplined environment. One defense attorney explains how structural chaos leads to peculiar sexual behavior: "I had one family once, they all had very limited developmental ages. My client was probably in his late 20s, but he functioned as a five-year-old. In that family, they all thought it was perfectly appropriate to have sex with the kids. At one point, the grandfather was in prison, my client, his brother, his wife, his sister-in-law. It was just bizarre." The respondent links familial disorganization with sexual abuse. Within this framework, the sex offender emerges in lower class families because they are not managed efficiently, and there are not clear demarcations between appropriate sexual couplings. Although this framework does not suggest that all lower class families will experience sexual violence, it does mean that middle- and upper-class families are largely exempt from

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prosecutorial scrutiny because they fall on the "normal" side of the binary. If "normal" families are not perceived to have "this stuff," then how could a potential allegation of sexual abuse from a middle class family be true?

The attorneys perceive sexual assault that occurs within families to be uniquely horrible because it contributes to the cycle of violence. They observe that the traumatic effects of sexual violence last long beyond the event(s) itself: girl victims move to precocious sexual behavior, and boy victims move to the role of perpetrator. One defense attorney describes this cycle of sexual violence. "I had a client who was abused by a mother's boyfriend, a neighbor, and someone at church. That's amazing — it's like the kid had a sign on his forehead that said, 'Abuse me.' I don't know how one child could be victimized by such different groups of men in his life. Then he turned around and did it to someone else." The attorneys learn about the cycle of violence through their professional experience and trainings. Organizations like the Prosecuting Attorneys Association of Michigan hold frequent conferences and webinars on related issues, and the attorneys report attending such educational opportunities. Indeed, they report learning little, if any, practical knowledge about sexual violence in law school, so they gained most of their knowledge on the job. This focus on the cycle of violence demonstrates one of the ways that the feminist anti-rape agenda has been taken up by attorneys is through an inordinate anxiety about childhood, innocence, and premature initiation into sexual behavior (Martin 1996; Tolman 2005).

Blame for the sex offender's criminal actions falls primarily on the victim's mother. The sex offender may receive public sanction, but the respondents privately chastise the mother for enabling such behavior. In cases where the mother does not react with appropriate interventions, she may receive just as severe a punishment, albeit via indirect means. A prosecutor describes a case in which the mother took no action to stop her boyfriend from sexually abusing her children.

> If a mother is looking away, then you want to take the child away. You can terminate someone's parental rights or at least suspend them because they're not doing their job. Their job is to protect the child. If they see the abuse, they've got to report it. I remember doing a parole violation where he was having sex with the children and probably was abusive to her. She said, "Where else am I going to find a man that will take me in with four children?" I'm thinking, "Well, that's your problem."

This respondent did not remember the outcome of this case, but his identification with the children and lack of empathy with the mother is clear. He does not seriously consider the limited

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choices available to this woman: a partner who may provide some economic support versus the physical well-being of her children. Moreover, he overlooks the gendered dynamics of the situation. As Corrigan argues, sex offender community notification laws presume that families are willing and able to protect themselves from harm, provided that they have good data (2006). Yet some individuals, especially poor women, are structurally situated such that they have relatively little power over their daily lives. Shifting the responsibility and blame to individual families obscures the fact that sexual violence is a social problem. Although sex offenders act as individuals, their actions illuminate expectations regarding appropriate social arrangements and sexual behavior. The sex offender's criminal behavior, seen rightfully as such by the attorneys, paradoxically enables the attorneys to judge the seemingly bad choices made by the associated individuals left in his wake. In the absence of a gendered analysis, poor women, like the one described above, are held indirectly accountable for the actions of the sex offender in their lives. Essentially, women who do not follow the expectations of their paternalistic protectors—the prosecutors—may pay a steep price.

The Embodied Sex Offender

The sex offender is a legal category that becomes operationalized via corporeal attributes of those marked as such. The embodied operationalization of this legal category emerges along lines of class. The attorneys recognize sex offenders by visual markers of lower class masculinity, like long unkempt hair, bad posture, and poor grooming habits. In fact, the attorneys' association between lower class masculinity and sex offender behaviors is so strong that it becomes difficult to determine the causal direction—are those who display visual markers of lower class masculinity more likely to be sex offenders? Or are sex offenders more likely to display visual markers of lower class masculinity? This ambivalence over causality is significant because if the former is perceived as true, then some groups of men, simply because of how they present, may be disproportionately investigated, charged, and convicted of sexual allegations.

The criminal justice process is social. Although the plane of possibility is determined by legal and institutional structures, real people do the work, and their personal biases and biography inevitably inform their professional decisions. The attorneys draw on visual cues as they assess the legal situation of the defendant. Visual images shape these assessments, and they pervade the criminal justice process. First, the attorneys see the defendants in real time during meetings and judicial hearings. Second, the proverbial

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mug shot circulates with the defendant's case file and for convicted felons, it is readily available on either the statewide sex offender registry or on OTIS, a public database that tracks all individuals under surveillance by Michigan. The OTIS database provides detailed information about felons, including their photograph, physical characteristics, criminal history, and expected date of release. Third, I brought photographs of defendants to some interviews. The broader project examines specific cases of adult male sexual victimization, and I wanted to prompt the respondent's recall. Within this graphic penumbra, the *look* of the sex offender becomes just as important as the *behavior* of the sex offender.

Visual images are tools through which respondents make meaning about the self-presentation of sex offenders. The attorneys initiated discussions about what the defendants looked like during our interview. For instance, one prosecutor eagerly ushered me to his office so that he could locate a digital photograph from the database. We were discussing a network of related defendants, and he felt that I would better understand his narrative if I could see what the men looked like. Respondents generally agreed that sex offenders have a distinctive look. Although they had a difficult time defining the precise look, they could identify it swiftly upon seeing the accused. Notably, both prosecutors and defense attorneys used a class-based cognitive frame to make sense of sexual defendants. Here, a defense attorney attempts to categorize the look of a former client who was convicted of a serious sexual offense.

> I: He [the defendant] doesn't look like a guy who's gone to grad school at Michigan and gotten a doctorate. He looks like he's maybe lived a tough life.
>
> JS: What about him made him look like he lived a tough life?
>
> I: I can't say clothing because he's wearing jail garb that everybody wears. So maybe that's part of what I'm bringing to it. He doesn't match my stereotypes of what somebody who has led an unimpeachable life might look like. He is rugged looking. What can I say? I can't explain it more clearly than that.

This respondent has a difficult time explaining his impression of the defendant; his response is punctuated by many "Ums" and pauses. Moreover, he recognizes that his conclusion about the defendant's "tough life" may be a function of the photograph's context. After all, it is a mug shot embedded in a criminal justice document. Given this, it may be difficult for many people to imagine the defendant as a member of a high-status occupation like the professoriate. Despite the obvious suggestions posed by the visual context, however, the attorneys often take the photographs and their

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subsequent impressions as fact. Most were not as circumspect as this respondent. Criminal law is a fast paced working environment in which participants are rewarded for definitive knowledge and quick decisions. In their daily environment, the attorneys do not generally have time or inclination for critical reflection.

The classed look of the sex offender is so ubiquitous that it becomes a casual part of office culture. Mastering these cognitive frames becomes a source of expertise for the attorneys, and the frames also function as a comic relief. A prosecutor described a game he played with colleagues. During informal encounters with one another, they would display a photograph of a defendant and challenge their coworker to guess the crime. The respondent claimed to be skilled at this game; he was usually successful at distinguishing the sex offender from the robbers, embezzlers, and murderers. Here, he explains the game and the sex offender's look.

> There are certain things. "Yeah, he fits the mold." It's just prosecutors pick up on these things. There's just something about it. I think the jury may even pick up a little on this too. All I know is that after 35 years, you tend to say, "Oh boy, here's the look." You can't make anything out of it. It's just something that we talk about amongst ourselves. . .a lot have that hillbilly look. About 40% of these guys have this hillbilly look, and I'm thinking, "Oh God." There's nothing scientific about it. Like the jury probably thought, "Oh God!" and is convicting him already. It's probably nothing to it. I'm just telling you as a prosecutor, we get these guys' pictures, and we go, "Look at this guy. What do you think?" "Oh, CSC 1, right?"

First degree CSC is punishable up to life in prison, and many such convictions carry a 25-year sentence. So although the game is amusing and there may be "nothing to it," the effects of these cognitive frames may have profound impacts. In this workplace game, the sex offender is classed as a "hillbilly," which invokes rural, poor, white cultures. Other respondents used derogatory words like "creep," "mope," "bum," and "deadbeat" to describe sex offenders. These formulations are notable, particularly in the game described above, because the sex offender identity, understood vis-à-vis a classed self-presentation, precedes the attorney's knowledge of the alleged criminal behavior. The potential for sexual criminality is written figuratively on the bodies of lower class men.

These lower class, rural connotations of the sex offender are also marked by race. The attorneys perceive the paradigmatic sex offender to be a white man who molests children. This formulation is unexpected, given the complicated histories of race and sexual violence in the United States. Historically, criminal justice authorities marked men of color as rapists, often wrongly, as a way to

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reproduce racist social structures (Feimster 2009). Yet the attorneys most often imagine current sex offenders as white. Here is how one prosecutor describes the dominant type of sex offender. “Usually, they’re white, older middle aged. Maybe I’m talking a little more on the child sex [abuse]. But there are child sex offenders that you just [say], Boy, they’ve got that little weird look.” There are several intersecting explanations for the sex offender’s imagined whiteness. First, Michigan’s population is predominantly white, so it may be that the attorneys simply encounter more white defendants, especially those who practice outside of the state’s southeast region, where most people of color reside. Second, one of the reasons that the feminist anti-rape movement has been extraordinarily successful is because its vision aligned with the burgeoning contemporary recognition of the prevalence of child sexual abuse (Davis 2005; Whittier 2011). Child victims are sympathetic, and the stereotype of what one defense attorney calls the “funny uncle” aligns with white cultures. Third, the attorneys are highly conscious of racial politics, and they guard against any appearances of discriminating on the basis of race. One prosecutor stated emphatically that it would be unacceptable in his office to use the “race card” as a trial strategy. In turn, these conditions render it socially and professionally acceptable to mark the sex offender as white.

In this section, I show how the sex offender emerges as a lower class man in the criminal justice process. This lower class status is so closely aligned with the behaviors of the sex offender that the attorneys attribute the behavior to the embodied person before reviewing any evidence. These snap decisions are revealed most starkly in the “hillbilly” game described above. Importantly, legal regimes and institutions buttress these cultural stereotypes about the sex offender as well because once a person is convicted of a sex crime, SORA policies effectively mark him as such for life. To be certain, though, in most criminal cases the defendant committed an offense similar to the prosecutor’s charges. I do not mean to suggest the sex offenders described are innocent. However, in conceiving the sex offender as a lower class man, it becomes nearly impossible to imagine class privileged men in the same predicament.

Impossible Guilt

The immense social distance between the attorneys and most of the defendants creates conditions in which the former are quick to engage in disapprobation of the latter. The social distance that separates the attorneys and the defendants is a result of their structural locations, professional interactions, and symbolic frameworks. Like other professionals, the attorneys hold disproportionate power because of their experience, expertise,

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and social networks (Sarat & Felstiner 1995). They use this power to manage their cases, and they also use it to regulate the taxing emotions that CSC cases engender. Yet the reserved judgment that characterizes so many of their professional narratives collapses when the defendant's class identity is similar to their own.

The professional relationship between the attorneys and defendants grows complicated when they share a similar class identity. One defense attorney practiced criminal law in a small town for more than 30 years. He had worked on many kinds of cases during his career; he had strong opinions about how things should be; and he had extensive social and professional networks. During the first half of our interview, he was relaxed, jovial, and confident. His demeanor changed dramatically when we began discussing a case in which he knew the defendant. The defendant worked in the local criminal justice system, so the two had occasional professional interactions, and the attorney also coached the defendant's child's athletic team. The defendant was accused of sexually assaulting teenagers. The defense attorney describes how his prior relationship with the defendant affects how he approached the case.

> It gave me more of an insight as to who he was, and maybe I had a tendency not to believe the allegations. I knew his wife, I knew his kids, and I knew him. Up until this, he was well respected. A lot more emotional involvement than usual. A little bit of you goes in all of these cases, but this maybe even more so. You really wanted to believe him.

As he described this case, the defense attorney became more withdrawn: he chose his words more carefully, and, leaning forward, he held his head in his hands. The case did not fit in the schemas of sexual crimes with which he was familiar. Yet this dissonance is not a result of the crime itself—the encounters between the defendant and his victims were unremarkable, in terms of the standard range of sexual crimes. The dissonance emerges because of the defendant's class status. He is a middle-class man who works in a professional occupation, quite different from the "hillbillies" described above. This respectability made it difficult for the defense attorney to believe the allegations. That the defense attorney even brought up the veracity of the allegations is notable because most defense attorneys, himself included, state that it is not their job to determine the truth.

The classed image of the sex offender is so powerful that it can undermine strong legal evidence. One prosecutor remembered a sexual assault involving a young, handsome man who targeted a large working class woman. He allegedly broke into her mobile home at night, raped her while she was sleeping, and beat

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her so severely that she sustained facial fractures. When the victim's roommate heard the commotion, she called 911, and the man ran out of the home naked. Once outside and exposed, the man returned to the sliding glass door to retrieve his clothes, but he scurried off when police cars arrived. Police officers arrived to a crime scene that included a physically injured victim, a witness, and the alleged perpetrator's personal belongings. They were able to locate the man swiftly because they obtained his address from his discarded wallet. His attractive girlfriend answered the door to his home and claimed that he had been robbed. Although these case facts were supported by exceptionally strong evidence, the jury returned with a not guilty verdict. Shocked, the prosecutor interviewed jurors after the trial to understand their decision.

> I argued with the jury, "Come on. This is ridiculous. Why would somebody rob him of all of the clothes to frame him for a sexual assault that they're going to do? They would have no reason to come back and try to get in—because that's why they were framed, right? They wouldn't try to get back in." Not guilty. Do you know why? Because the women on the jury said, "He had the most beautiful girl in the world at home. Why would he go rape that fat woman?"

The jurors determine the defendant's social status based on how he presents himself in the courtroom—he was a "very good-looking, young man"—and his perceived relationships with these two women. Because he had a "beautiful girlfriend" who openly displayed affection toward him during the trial, it became implausible that he would have sexual desires for the less-attractive victim. Even though the prosecutor reminded jurors that sexual assault is about power, the incongruity of this classed and gendered narrative was simply too great for them to convict. Although jurors may have considered other factors, that the complainant's physical appearance in relation to the defendant's girlfriend was one of them is revealing. This case shows how the perceived propensity to commit sexual violence is assessed by criminal justice actors with tools that go beyond factual evidence.

Discussion and Conclusions

> We have a tendency to think of these people as monsters: Frankenstein, evil, bad. And they're not. They just have a disease.
>
> Defense Attorney

As shown in this article, the "disease" of sexual offending has a remarkable ability to afflict only lower class men. Prosecutors

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and defense attorneys pathologize this group of men vis-à-vis sexuality because of their class position. Attorneys define the sex offender as a lower class man through his socioeconomic status, sexual behavior, family, and corporeality. Conversely, class privilege serves as a protective factor against sexual allegations, investigations, and convictions. It is extraordinarily difficult for legal actors, and by extension the general public, to imagine class privileged men as committing sexual crimes. The widespread shock and denial of sexual allegations against prominent men such as Dominique Strauss-Kahn, Woody Allen, Kobe Bryant, and Jerry Sandusky exemplify this pattern. Furthermore, class privileged men may be able to commit multiple sexual assaults over many years precisely because they are perceived as improbable perpetrators. In fact, research shows that a small percentage of men commit the majority of sexual assaults through repeated offenses (Lisak and Miller 2002; McWhorter et al. 2009). The effects of this empirical reality may be exacerbated when applied to class privileged men. A small pool of class privileged perpetrators may commit a disproportionate number of sexual assaults with near impunity. Given available information, however, this hypothesis remains speculative at this point.

Sex offender laws are intended to assess risk and prevent violence, but research proves that they are largely ineffective. Moreover, they are designed to categorize the defendant's behavior, but in practice, legal actors focus instead on his class identity. This follows the same pattern as crimes, whereby the defendant's racial identity leads to vastly different outcomes and ultimately creates structural inequalities in and through the criminal justice system. Yet we know much more about how race affects criminal justice outcomes than we do about class. National crime statistics do not collect information about the class status of offenders, and class status is much more difficult to measure accurately with a single demographic question. Furthermore, legal actors are not as mindful about class bias because it is not a protected status under antidiscrimination laws. Thus, we know comparatively little about how class shapes criminal justice processing and outcomes.

Sex offender laws raise broader questions about the role of governance in postindustrial societies. Law is, paradoxically, a site through which power differentials in society are both ameliorated and reproduced. The case of sexual violence illuminates these tensions. How do we best assess sexual risk and prevent violence? Is the state an advocate for victims or the source of a repressive violence? On one hand, feminists turned to the law to address sexual violence, and in many respects, they were extremely successful in reforming rape laws (Bevacqua 2000; Spohn and

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Horney 1992; Temkin 2002). Although responses remain imperfect, sexual assault victims now experience far more sophisticated and compassionate institutional responses than they did prior to rape law reforms. On the other hand, sex offender laws are also theorized as a punitive mechanism by which the state governs through crime (Simon 2000, 2007: 3–32; Wacquant 2009: 209–42). That is, population management in the postindustrial state occurs through criminal rhetoric—people are either victims, perpetrators, or protectors—and this is evidenced by empirical patterns like the war on drugs, mass incarceration, and the rise of self-help literature on trauma. My findings reveal a missing component of this debate: namely, the ways that classed imagery shapes the identification of sex offenders. I take seriously the problem of sexual assault, while also recognizing how legal interventions may reproduce structures of power. The qualitative analysis exposes this process in great detail, but the relatively small sample size poses limitations to generalizability. Future research might extend these findings by systematically exploring sex crime case outcomes in relation to the defendant's class status, or by investigating how jurisdictional and institutional characteristics affect legal actors' classed decision-making processes.

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