

# Honest Victim Scripting in the Twitterverse

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## HONEST VICTIM SCRIPTING IN THE TWITTERVERSE

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This Article critically analyzes Tweets regarding recent allegations of interpersonal violence against celebrities in order to explore societal perceptions of, and expectations about, alleged victims. The Article concludes that Twitter may be viewed as a micro-courtroom in which victims' veracity and perpetrators' responses are evaluated, interrogated, and assessed. A key, feminist critique of rape law is that the determination of the perpetrator's guilt or innocence too often hinges on an assessment of the victim's character. This is borne out on social networking sites, where terms such as "gold digger," "slut," and "ho" are engaged with regularity to describe those who come forward alleging an assault by a public figure. These derogatory terms serve not only to discipline the accuser but also to critique parties' behavior as they forge relationships with legal systems and processes. Those who do not conform to what this Article deems an "honest victim script"—showing visible physical injury, promptly reporting non-consensual sexual contact to law enforcement, and refraining from filing a civil suit—risk being labeled "whores," "bitches," and "gold diggers." These accusations are not just offhand comments. Closely examining Tweets reveals the ways in which contemporary viewpoints are shaped within the construct of the law's historical treatment of rape victims and perpetrators. In just 140 characters, the comments suggest pervasive disbelief of victims whose stories do not fit neatly into the stranger rape paradigm. They reveal distrust of survivors who—rather than or in addition to pursuing justice via criminal law—seek compensation in tort for the harms wrought by sexual assault. Further, and importantly, they signal a profound awareness of both the power of law to affect social change and the legal system's past and present role in fostering oppressions.

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## INTRODUCTION

*"I ain't sayin' she a gold digger . . ."*<sup>1</sup>

In recent years, allegations of gender-based violence<sup>2</sup> have been brought against numerous public figures,<sup>3</sup> including football players Ben Roethlisberger, Ray Rice, and Jameis Winston, hockey player Patrick Kane, and television personality Bill Cosby.<sup>4</sup> Each time an

1. *Gold Digger Lyrics by Kanye West*, METRO LYRICS, <http://www.metrolyrics.com/gold-digger-lyrics-kanye-west.html> [<http://perma.cc/F6PB-PR2B>] [hereinafter *Gold Digger*].

2. The term "gender-based violence" applies to violence that causes women, individually or as a group, to suffer or disproportionately to suffer mental, physical, or sexual harm. Gender-based violence also may be inflicted upon men by upholding perceived societal standards of masculinity. *Our Bodies—Their Battle Ground: Gender-Based Violence in Conflict Zones*, IRIN (Sept. 1, 2004), <http://www.irinnews.org/indepthmain.aspx?InDepthId=20&ReportId=62847> [<http://perma.cc/LX4N-GH8V>].

3. The categorization of the athletes and entertainers, discussed herein as "public figures," is rooted in a series of legal decisions extending from *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964) (establishing that, for public officials to recover damages for harm to their reputations, they must show that the defendant acted with "actual malice") and *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 135, 155 (1967) (holding that public figures such as Butts, a college athletics director, can only recover damages in defamation actions upon a showing of "highly unreasonable conduct" on the part of the publisher). Matthew Poorman observes that, since the Butts decision, "[c]ourts, with virtually no exceptions, have found professional athletes to be public figures." Matthew T. Poorman, Note, *Get with the Times: Why Defamation Law Must Be Reformed in Order to Protect Athletes and Celebrities from Media Attacks*, 15 TEX. REV. ENT. & SPORTS L. 67, 70 (2013). See, e.g., *Time, Inc. v. Johnston*, 448 F.2d 378, 380 (4th Cir. 1971) (holding a retired basketball player to be a public figure); *Bell v. Associated Press*, 584 F. Supp. 128, 131 (D.D.C. 1984) (holding a football player to be a public figure); *Gomez v. Murdoch*, 475 A.2d 622, 624–25 (N.J. Super. Ct. App. Div. 1984) (holding a jockey to be a public figure). But see Joe Trevino, Note, *From Tweets to Twibel: Why the Current Defamation Law Does Not Provide for Jay Cutler's Feelings*, 19 SPORTS L.J. 49, 55 (2012) (observing that professional sports players "are generally considered to be limited-purpose public figures because there are personal issues in their lives that may affect their careers but are not appropriate for unlimited publication").

4. See, e.g., CNN WIRE STAFF, *Police Statement Details Roethlisberger's Alleged Assault*, CNN (Apr. 16, 2010, 10:57 PM), <http://www.cnn.com/2010/CRIME/04/16/roethlis>

incident comes to light, the public reaction is strikingly predictable. Some rally around the victim or alleged victim.<sup>5</sup> For example, after Janay Palmer married Ray Rice, whose assault on his fiancée was captured on a hotel video camera, a hashtag campaign, “#WhyIStayed,” developed surrounding the theme of explaining Palmer’s decision to marry her abuser.<sup>6</sup> Explanations offered for her behavior ranged from fear of the abusive spouse, to stigmatization of divorce, to belief in the essential goodness of human nature.<sup>7</sup> At the same time, Tweets questioned the victim’s motives for going forward with the marriage, labeling her a “gold digger,” a “bitch,” and a “ho.”

These vicious online comments reflect a conscious effort to discipline Palmer by utilizing what Patricia Hill Collins deems “controlling images,” familiar, historically rooted metaphors that undermine personal agency and normalize gendered, classed, and raced oppressions.<sup>8</sup> Within the 140 character constraints of the Twitter service, connections to other users are established via coded language and metaphor. Engaging recognizable, gendered tropes to define accusers by their status provides a way for online commenters to quickly classify and order social relationships, as well as to articulate their own political and socio-economic position vis-à-vis other users.<sup>9</sup>

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berger.incident [http://perma.cc/S5SK-WKAP]; *Judge Dismisses Domestic Violence Charges Against Ray Rice*, USA TODAY (May 21, 2015, 1:47 PM), <http://www.usatoday.com/story/sports/nfl/2015/05/21/judge-dismissed-domestic-violence-charges-against-ray-rice/27709875> [http://perma.cc/XN39-VHW8]; Gary Fineout, *Jameis Winston Sued over Alleged Rape of Former FSU Student*, HUFFINGTON POST (Apr. 16, 2015, 6:22 PM), [http://www.huffingtonpost.com/2015/04/16/jameis-winston-sued-rape\\_n\\_7082762.html](http://www.huffingtonpost.com/2015/04/16/jameis-winston-sued-rape_n_7082762.html) [http://perma.cc/D766-PK6C]; Wesley Bruer & Greg Botelho, *Prosecutor: Patrick Kane Won't Be Charged in Rape Case*, CNN (Nov. 5, 2015, 5:49 PM), <http://www.cnn.com/2015/11/05/us/patrick-kane-no-charges> [http://perma.cc/XE7Q-JSD2]; Kate Pickert, *Here's Everything We Know (and Don't Know) About the Bill Cosby Rape Allegations*, TIME (Nov. 21, 2014, 4:27 PM), <http://time.com/3592547/bill-cosby-rape-allegations-timeline> [http://perma.cc/35DE-Q34Y].

5. This Article interchangeably uses the terms “victim” and “survivor,” recognizing that, while those who have experienced sexual assault, rape, or intimate partner violence may prefer the term survivor, the term “victim” remains widely used in criminal legal discourse, as well as in sociological and legal studies.

6. See Nina Bahadur, *#WhyIStayed Stories Reveal Why Domestic Violence Survivors Can't 'Just Leave,'* HUFFINGTON POST (Sept. 9, 2014, 12:24 PM), [http://www.huffingtonpost.com/2014/09/09/whyistayed-twitter-domestic-violence\\_n\\_5790320.html](http://www.huffingtonpost.com/2014/09/09/whyistayed-twitter-domestic-violence_n_5790320.html) [http://perma.cc/EX6H-U883].

7. See Audie Cornish, *Hashtag Activism in 2014: Tweeting 'Why I Stayed,'* NAT'L PUB. RADIO (Dec. 23, 2014, 6:26 PM), <http://www.npr.org/2014/12/23/372729058/hashtag-activism-in-2014-tweeting-why-i-stayed> [http://perma.cc/B8NU-NZWJ].

8. See PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 69 (2d ed. 2000).

9. See CECILIA L. RIDGEWAY, *FRAMED BY GENDER: HOW GENDER INEQUALITY PERSISTS IN THE MODERN WORLD* 43 (2011) (discussing “the use of sex/gender as a primary cultural device for making sense of another”); Elizabeth A. Armstrong, Laura T. Hamilton,

Sexualized terms such as “gold digger,” “slut,” or “bitch” at once rhetorically discipline the individual and reaffirm the speaker’s own superior social and moral standing.

In the context of sexual assault claims or intimate partner violence, these terms, also, reflect beliefs and expectations about the way in which parties to very public incidents can and do interact with the legal system. An important critique of the law’s treatment of gender-based violence is that the determination of a perpetrator’s guilt or innocence too often hinges on assessments of the victim’s character. This is borne out on Twitter, where the expectation is that the legitimate accuser will adhere to what this Article deems an honest victim script, promptly reporting any non-consensual sexual contact to law enforcement and resorting to civil litigation only as a last resort. Those who do not quickly report crimes or who do not follow through with criminal prosecution risk being labeled greedy, self-interested, and manipulative. As David M. Engel observes, in times of societal transition, the assertion of legal claims or rights may be viewed as a threat to individual freedoms or to the existing social order.<sup>10</sup> Derogatory, shaming terms such as “gold digger” or “ho” are not applied to all victims but to those whose experiences did not meet the classic “stranger rape” paradigm or those who, in the aftermath of a potential assault, did not behave like an honest victim should. As I discuss herein, labels such as “slut,” “whore,” or “bitch” are not ahistorical; a genealogy of these terms reveals the weight of centuries of raced and gendered oppressions. In the context of online discussions of legal claims-making, these insults have a unique and weighty capacity to exclude. In very few words, Tweets reveal not only surprisingly complex impressions about the relationship of alleged sexual assault survivors and perpetrators to the United States legal system but also deeply held concerns about potential redistribution of power within and by that system.

The contributions this Article hopes to make are twofold. First, its purpose is to critically analyze how commenters make sense of sexual assault incidents and intimate partner violence, a vital task because the opportunities to explore these points of view are rare.<sup>11</sup>

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Elizabeth M. Armstrong & J. Lotus Seeley, “Good Girls”: Gender, Social Class, and Slut Discourse on Campus, 77 SOC. PSYCHOL. Q. 100, 102 (2014) (noting that women will engage in slut shaming as a way of deflecting stigma from themselves).

10. David M. Engel, *The Oven Bird’s Song: Insiders, Outsiders, and Personal Injuries in an American Community*, 18 LAW & SOC’Y REV. 551, 552 (1984) [hereinafter Engel, *Insiders, Outsiders, and Personal Injuries*].

11. Amanda Nell Edgar, *R&B Rhetoric and Victim-Blaming Discourses: Exploring the Popular Press’s Revision of Rihanna’s Contextual Agency*, 37 WOMEN’S STUD. COMM. 138, 139 (2014).

More than twenty percent of adult internet users currently hold Twitter accounts, rendering the service a new public sphere.<sup>12</sup> When sexual assault allegations are made against celebrities, Twitter users connect to other like-minded commenters by placing alleged victims and perpetrators into an existing historical and social order. Because rape and sexual assault continue to be significantly underreported, those few complaints that reach the media provide unusual opportunities to gain insight into, at least some, everyday points of view on sexual assault laws and the persons who come into their ambit.<sup>13</sup>

Second, analyzing Tweets regarding recent accusations against celebrities provides an opportunity to further investigate how the seemingly liberatory space of the internet may replicate or foster harmful norms regarding gender, race, and class. As I describe herein, users' reactions to recent cases not only convey expectations about engagement with the law, they also reveal how longstanding, "commonsense" ideas about race, gender, and socio-economic status shape such expectations. As Ridgeway observes, "when people at sites of social change come together to construct some . . . new type of relationship . . . the cultural beliefs about gender that are activated in the background are more traditional than the innovative circumstances they confront."<sup>14</sup> Although opportunities exist to create disruptive online spaces, recent instances of violent trolling of women gamers and bloggers emphasizes that a "masculine ethos . . . predominates in online content and interaction . . ." <sup>15</sup> Young women are the group most likely to experience severe online harassment,

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12. Maeve Duggan, Nicole B. Ellison, Cliff Lampe, Amanda Lenhart & Mary Madden, *Demographics of Key Social Networking Platforms*, PEW RES. CTR. (Jan. 9, 2015), <http://www.pewinternet.org/2015/01/09/demographics-of-key-social-networking-platforms-2> [<http://perma.cc/H5GC-4MS6>]. For a discussion of Twitter as a public sphere, see CHRISTIAN FUCHS, *SOCIAL MEDIA: A CRITICAL INTRODUCTION* 179–207 (2014).

13. See, e.g., Edgar, *supra* note 11, at 139 (discussing Chris Brown's 2009 attack on Rihanna as one such event); Renae Franiuk, Jennifer L. Seefeld, Sandy L. Cepress & Joseph A. Vandello, *Prevalence and Effects of Rape Myths in Print Journalism*, 14 VIOLENCE AGAINST WOMEN 287, 291 (2008).

14. RIDGEWAY, *supra* note 9, at 159.

15. Michael Salter, *Justice and Revenge in Online Counter-Publics: Emerging Responses to Sexual Violence in the Age of Social Media*, 9 CRIME MEDIA CULTURE 225, 234 (2013); see also Jessica Megarry, *Online Incivility or Sexual Harassment? Conceptualising Women's Experiences in the Digital Age*, 47 WOMEN'S STUD. INT'L F. 46, 49–50 (2014) (recounting stories Tweeted in the #mencallmethings hashtag); cf. Mark Hsueh, Kumar Yogeeswaran & Sanna Malinen, "Leave Your Comment Below": Can Biased Online Comments Influence Our Own Prejudicial Attitudes and Behaviors?, 41 HUM. COMM. RES. 557, 559 (2015) (describing research that suggests people mimic prevailing attitudes in the group to which they belong). The Pew Research Center reports that more than 70% of Internet users have witnessed online harassment of themselves or another user. Maeve Duggan, *Online Harassment*, PEW RES. CTR. (Oct. 22, 2014), <http://www.pewinternet.org/2014/10/22/online-harassment> [<http://perma.cc/QSC6-M4MV>].



such as being called offensive names, stalking, being purposefully embarrassed, or being physically threatened.<sup>16</sup> Ubiquitous, derogatory Tweets characterizing Janay Palmer as a “gold digger,” “bitch,” or “ho” signal that, even in a novel universe, persons who do not conform to a familiar, gendered script will face severe sanctions. In addition, virtual discourses carry real world implications. At an historical moment in which rape, sexual assault, and other forms of gender-based violence continue to be significantly underreported, pervasive stigmatization of accusers on social networking sites may further discourage claimants from coming forward.

Assessing feminist reforms in the 1980s, Carol Smart warned that the changes to rape law advanced by the movement would be “pyrrhic” unless greater societal issues were also addressed.<sup>17</sup> The comments analyzed herein suggest that Smart’s prediction in fact is a reality. We occupy a moment in which gender norms are being renegotiated and laws surrounding gender-based violence are evolving and unpredictably applied. Within this unsettled socio-legal context a virtual settlement has emerged where users are able instantly to comment on social events and incidents, and, in the process, to establish connections to others, negotiate social status, and create in-groups and out-groups. The microblogging<sup>18</sup> format provides a unique vehicle for everyday persons to respond to law, voice opinions about worthy and unworthy victims, and assess the likelihood of perpetrators’ guilt and innocence. Ironically, the new arena of the Twitterverse is an ideal location to study how sexual assault laws are informed and activated by stereotypical tropes and metaphors deeply rooted in a gendered, economically segregated, and racist past.

## I. METHODS

Each day, the microblogging service Twitter disseminates more than 65 million posts of 140 characters or less (Tweets).<sup>19</sup> The service indexes all public Tweets dating back to 2006, and a half trillion Tweets are currently publicly available for search.<sup>20</sup> Given the

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16. Duggan, *supra* note 15.

17. CAROL SMART, FEMINISM AND THE POWER OF LAW 49 (1989).

18. “A microblog is an Internet-based service in which: (1) users have a public profile where they broadcast short public messages/updates [ . . . ] (2) messages become publicly aggregated together across users; and (3) users can decide whose messages they wish to receive but not . . . who can receive their messages . . . .” FUCHS, *supra* note 12, at 179–80 (internal quotation marks omitted) (citations omitted).

19. Anatoliy Gruzd, Barry Wellman & Yuri Takhteyev, *Imagining Twitter as an Imagined Community*, 55 AM. BEHAV. SCIENTIST 1294, 1302 (2011).

20. Yi Zhuang, *Building a Complete Tweet Index*, TWITTER BLOG (Nov. 18, 2014), <http://blog.twitter.com/2014/building-a-complete-tweet-index> [<http://perma.cc/W3MH-DX53>].

volume of data available, it is difficult to focus on analyzing how power is perceived and operationalized by users. Thus, Marwick recommends that researchers analyze only a small number of Tweets, such as those engaging a particular hashtag or topic.<sup>21</sup> By providing “thick description” of a smaller amount of discourse one is able to “illuminate specific patterns of use that would [be] difficult . . . to ascertain with a more automated method.”<sup>22</sup>

Data was collected for this Article by using the Advanced Search function on Twitter.com to search for “Top Tweets”<sup>23</sup> engaging key terms relating to recent allegations of sexual assault and other interpersonal violence involving public figures Bill Cosby, Ray Rice, Jameis Winston, Patrick Kane, and Ben Roethlisberger. Search terms included the names of alleged perpetrators and terms such as “rape,” “sexual assault,” “domestic violence,” “intimate partner violence,” “crime,” “lawsuit,” “civil suit” and “defamation.”<sup>24</sup> Initially, open coding was applied to the search results, locating broad themes based in law, critical race and gender theory, and feminist history.<sup>25</sup> Once broad themes were identified, a more detailed coding system was developed that included more specific codes (e.g., “gold digger,” “ho,” “slut,” “bitch,” “punk”).<sup>26</sup>

Although this data was collected in the public sphere,<sup>27</sup> users may not have Tweeted with the expectation of becoming research subjects. The decision to use direct quotations in this Article was made in order to more fully and accurately discuss public understanding about law and legal structures; however, to protect users’

21. Alice E. Marwick, *Ethnographic and Qualitative Research on Twitter*, in TWITTER AND SOCIETY 109, 116 (Katrin Weller, Axel Bruns, Jean Burgess, Merja Mahrt & Cornelius Puschmann eds., 2014).

22. *Id.* at 118.

23. Per the Twitter service, top tweets are selected via an algorithm that identifies “[t]weets that lots of people are interacting with and sharing via Retweets, replies, and more.” *FAQs About Top Search Results*, TWITTER HELP CTR., <https://support.twitter.com/articles/131209?lang=en#> [<http://perma.cc/G4QH-TCCE>].

24. Specific terms searched differed depending upon the crime of which the perpetrator was accused.

25. For examples of other research projects tracing online discourse in a similar way, see Megarry, *supra* note 15, at 47; Jo Reger, *Micro-Cohorts, Feminist Discourse, and the Emergence of the Toronto SlutWalk*, 26 FEMINIST FORMATIONS 49, 54 (2014); Anastasia Salter & Bridget Blodgett, *Hypermasculinity & Dickwolves: The Contentious Role of Women in the New Gaming Public*, 56 J. BROADCASTING & ELECTRONIC MEDIA 401, 405 (2012).

26. For a model, see Reger, *supra* note 25, at 54.

27. When users sign up for a Twitter account they certify that they have read and understood the service’s privacy policy, which notes, “Tip: What you say on the Twitter Services may be viewed all around the world instantly. You are what you Tweet!” There are privacy settings available so that users can choose to make their Tweets not publicly available via search engines if they choose. *Twitter Privacy Policy*, TWITTER (effective May 18, 2015), <https://twitter.com/privacy?lang=en> [<http://perma.cc/LLL7-6NJV>] (emphasis omitted).



identities, quotations are not attributed to any particular “handle,” nor were any identifying characteristics about users collected or analyzed. Restricting searches to “Top Tweets” ensures that data have been collected from those whose ideas are even more firmly in the public sphere, having been re-Tweeted multiple times by various users. The findings herein are not intended to be generalizable, nor does this Article claim that these constitute the majority of Tweets or “typical” Tweets regarding these incidents. The objective herein is simply to provide one, unique lens into how a few persons in a small but increasingly significant subset of society are making sense of the law in the context of gender-based violence.

The purpose in offering this Article is to study a particular set of legal understandings during a specific moment in time. I offer a warning that, in order to preserve their intended meaning, the Tweets presented here are unedited from their original form. Brackets have been inserted where, for example, I have capitalized in order to preserve what I believe is closest to the original meaning of the discourse. Where it was not clear from media coverage that accusers have self-identified, the names of accusers have been deleted. Occasionally, I deleted information incomprehensible to me, and the deletion is marked by ellipses. Otherwise, the comments discussed herein are in their original form. Many of the comments are violent. Some are racist. Nearly all include terms that are, at best, dismissive of women, and, at worst, misogynistic. My intention is not to replicate harms, but to work towards reform by making visible the stigmatization and exclusion that occurs in this one, small part of the online world.

## II. RAPE, REFORM, REGRET

*“I know you want it!”*<sup>28</sup>

Even though the vast majority of sexual assaults occur in non-stranger contexts, the stranger rape myth continues to pervade discussions of rape and sexual assault in United States society.<sup>29</sup>

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28. *Robin Thicke: Blurred Lines (feat. T.I. and Pharrell Williams)*, AZLYRICS, <http://www.azlyrics.com/lyrics/robinthicke/blurredlines.html> [<http://perma.cc/M2KV-Y4SW>] [hereinafter *Blurred Lines*] (“[T]hat’s why I’m gon’ take a/Good girl/I know you want it/I know you want it/I know you want it/ . . . I hate these blurred lines . . . /Had a bitch, but she ain’t bad as you/So, hit me up when you pass through/I’ll give you something big enough to tear your ass in two . . .”).

29. A White House Report presents data that the vast majority—more than *ninety percent*—of female survivors have been raped by a current or former intimate partner or by an acquaintance, and more than fifty percent of boys who report sexual assault

Prior to the feminist movement, the confluence of exclusionary legal standards and gendered societal expectations meant that rape trials were rare, and convictions likely only in cases fitting into this classic stranger paradigm.<sup>30</sup> *Hale* instructions (cautioning jurors against false accusations),<sup>31</sup> requirements for proof of resistance and corroboration of victims' statements, and the availability of death as a potential penalty, deterred both prosecution and conviction.<sup>32</sup> By the 1990s, new laws did away with requirements of resistance, shielded victims from being impeached with evidence of their character, and provided graduated penalties for many different forms of sexual violence, including marital rape.<sup>33</sup> During this period, the American public became cognizant that the legal term "rape" could apply to sexual encounters among acquaintances. The new phrase "date rape" was etched into the public consciousness via highly publicized sexual assault charges against Kobe Bryant, Mike Tyson, William Kennedy Smith, and the St. John's University Lacrosse Team.<sup>34</sup> Interpersonal harassment and violence were also front and center in Anita Hill's accusation of sexual harassment against Supreme Court nominee Clarence Thomas,<sup>35</sup> and the multi-million-dollar trial of superstar O.J. Simpson for the murder of his estranged wife, Nicole Brown Simpson.<sup>36</sup> Many of these cases inspired highly charged debates about race, and all of them ignited powerful, public conversations about gender, wealth, and power.

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describe having been raped by an acquaintance. THE WHITE HOUSE COUNCIL ON WOMEN AND GIRLS, RAPE AND SEXUAL ASSAULT: A RENEWED CALL TO ACTION 9 (2014). Despite this data, Corrigan observes that we tend to find sensationalist narratives more compelling than the idea that "sexual abuse exists embedded in a quieter, more persistent, and more troubling cultural context." ROSE CORRIGAN, UP AGAINST A WALL: RAPE REFORM AND THE FAILURE OF SUCCESS 245 (2013) (internal citation omitted).

30. See SUSAN ESTRICH, REAL RAPE 4–5 (1987).

31. The *Hale* instruction provides that "rape is a most detestable crime, and therefore ought severely and impartially to be punished . . . but it must be remembered that it is an accusation easy to be made, hard to be proved, but harder to be defended by the party accused, though innocent." PEGGY REEVES SANDAY, A WOMAN SCORNED: ACQUAINTANCE RAPE ON TRIAL 58 (1996).

32. *Id.* at 22–23.

33. *Id.* at 179, 218.

34. See Tom Lininger, *Is It Wrong to Sue for Rape?*, 57 DUKE L.J. 1557, 1565 (2008) (discussing Kobe Bryant); Sarah E.H. Moore, *Tracing the Life of a Crime Category: The Shifting Meaning of "Date Rape,"* 11 FEMINIST MEDIA STUD. 451, 455–56 (2011) (discussing William Kennedy Smith and Mike Tyson); SANDAY, *supra* note 31, at 35 (discussing the St. John's University Lacrosse Team).

35. See SANDAY, *supra* note 31, at 208–09 (discussing Anita Hill's accusations against Clarence Thomas).

36. Sarah Moore observes that "[b]etween 1990 and 1992 the number of US newspaper reports that featured the phrase 'date rape' doubled, and remained at this level until the middle of the decade." Moore, *supra* note 34, at 456.

In recent years, not only have there been significant reforms in the criminal justice system, but, although they remain small in number, civil lawsuits seeking damages for sexual assault have also increased.<sup>37</sup> Historically, rape was more often than not a private crime vindicated (if at all) by male relatives of the accuser.<sup>38</sup> Under the doctrine of coverture, women were property of fathers, then husbands.<sup>39</sup> If sexual violation occurred, these male authority figures, and not women themselves, were expected to bring charges or privately to come to terms to compensate for the violation.<sup>40</sup> For African-American women, it has taken decades for rape to be legally recognized as a crime at all.<sup>41</sup> Within the construct of the law, female victims of sexual assault were doubly disempowered. The traditional stranger-using-force rape paradigm constructed them as passive “objects of violence,” expected to react to being assaulted in predetermined physically and psychologically inaccurate ways.<sup>42</sup> Afterward, the ability for a woman to report her own assault was constrained by a system that not only silenced her voice, but was unlikely to recognize her rape as rape. Although the system remains imperfect, great strides have been made in crafting laws that are more inclusive and accessible. As an increasing number of women have entered the public sphere, opportunities to engage the civil legal system have radically expanded, including the increased availability of Title VII and Title IX, as well as the passage of the Violence Against Women

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37. From the 1970s to 2008, legal opinions had been published in over 2,200 civil law suits regarding sexual assaults. Only one-fourth of these were solely against individual perpetrators, and nearly three-fourths against third parties. Lininger, *supra* note 34, at 1568, 1570.

38. *Cf.* Salter, *supra* note 15, at 225 (noting that sexual violence has historically been viewed as a private matter).

39. Catherine Allgor, *Coverture—The Word You Probably Don’t Know But Should*, NAT’L WOMEN’S HIST. MUSEUM, <https://www.nwhm.org/blog/coverture-the-word-you-probably-don-t-know-but-should> [http://perma.cc/WSG4-F65F].

40. SANDAY, *supra* note 31, at 59; I. Bennett Capers, *The Unintentional Rapist*, 87 WASH. U. L. REV. 1345, 1365 (2010).

41. Capers makes the point that, although in the 1980s, the United States was captivated by news of the rape of the white, affluent Central Park jogger, the majority of rape victims in New York City that year were African-American, several experiencing assaults not dissimilar from the one suffered by the jogger. Capers, *supra* note 40, at 1365–66. This persistent lack of attention to sexual violence against women of color is a factor both of contemporary racism and historical refusal to acknowledge that such women should have the power to deny sexual access.

42. See Alletta Brenner, Note, *Resisting Simple Dichotomies: Critiquing Narratives of Victims, Perpetrators, and Harm in Feminist Theories of Rape*, 36 HARV. J.L. & GENDER 503, 506, 517 (2013); *see also* State v. Rusk, 424 A.2d 720, 727–28 (Md. 1981) (reinstating Rusk’s conviction, and reversing the Court of Special Appeals’ holding that evidence presented at Rusk’s trial was legally insufficient to convict him of rape in part because the victim’s “subjective reaction of fear to the situation in which she had voluntarily placed herself was unreasonable and exaggerated”).

Act.<sup>43</sup> Even the United States Department of Justice itself advocates that victims of sexual assault, where possible, file civil suits.<sup>44</sup> Lower standards of proof and non-unanimous jury requirements in the civil system may provide an attractive avenue for redress not only against individuals, but also against institutions that intentionally or negligently have fostered environments in which such incidents occurred.<sup>45</sup>

As legislation has been drafted with the objective of better reflecting survivors' experiences, critics question whether the presence or absence of consent is a sufficient basis for apportioning criminal responsibility. More than twenty years ago, Katie Roiphe famously cautioned, "[S]omeone's rape may be another person's bad night," launching a conversation regarding sexual encounters that continues to preoccupy both scholars and the public today.<sup>46</sup> In case after case throughout the 1990s, debates raged as to who was the "true" victim: was it the accuser, who potentially had experienced interpersonal violence, or the accused, targeted by an overzealous legal system? Lisa Cuklanz identifies a trend whereby, once legal change has been established, the media begin to question whether such change has "gone *too far*."<sup>47</sup> With news of each accusation against a public figure—Tyson, Kennedy Smith, Bryant, Simpson—questions arose as to whether claimants were untruthful, untrustworthy, or complicit.<sup>48</sup>

Today, wariness about consent as an appropriate demarcation of culpability continues to pervade both everyday assumptions about sexual interactions and the black-letter law. As Deborah Tuerkheimer observes, the majority of state statutes require action to convey non-consent—"no means no"—while consent may be legally inferred from

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43. Phoebe A. Morgan, *Risking Relationships: Understanding the Litigation Choices of Sexually Harassed Women*, 33 LAW & SOC'Y REV. 67, 68 (1999).

44. See, e.g., NAT'L CRIME VICTIM BAR ASS'N, CIVIL JUSTICE FOR VICTIMS OF CRIME 2 (2001), [https://www.victimsofcrime.org/docs/Public%20Folders/Civil%20Justice%20-%20FINAL%20\(non-book\).pdf?sfvrsn=0](https://www.victimsofcrime.org/docs/Public%20Folders/Civil%20Justice%20-%20FINAL%20(non-book).pdf?sfvrsn=0) [http://perma.cc/NQ9R-MAHS] (The Department of Justice funded research providing that "[e]very crime victim has the right to file a civil lawsuit seeking financial compensation from the perpetrator or from other parties whose unreasonable conduct gave rise to conditions which allowed the crime to occur.").

45. Cf. Lininger, *supra* note 34, at 1570 (listing possible theories of third-party liability for rape).

46. KATIE ROIPHE, *THE MORNING AFTER: SEX, FEAR, AND FEMINISM ON CAMPUS* 54 (1993).

47. LISA M. CUKLANZ, *RAPE ON TRIAL: HOW THE MASS MEDIA CONSTRUCT LEGAL REFORM AND SOCIAL CHANGE* 74 (1996) (emphasis in original).

48. See Moore, *supra* note 34, at 453; CUKLANZ, *supra* note 47, at 74. Ultimately, the parties to the Kobe Bryant case agreed to disagree about what occurred, with Bryant offering a befuddled and incomplete apology: "After months . . . I now understand how she feels that she did not consent to this encounter." *Kobe Bryant's Apology*, ESPN (Sept. 2, 2004), <http://sports.espn.go.com/nba/news/story?id=1872928> [http://perma.cc/7LX9-2G2W].

a victim's inaction.<sup>49</sup> This construct, she argues, reinforces traditional ideas of "an ultra-passive female sexuality—that is, sexuality *without* agency."<sup>50</sup> Confusion regarding the aftermath of potentially non-consensual encounters is evident in numerous research projects finding that, although many college women report having experienced events that meet the statutory criteria for rape, few choose to report such incidents to campus officials or local law enforcement.<sup>51</sup> Debates about the nature of consent rage on as evidenced by the popularity of multi-platinum relationship anthem, *Blurred Lines* by pop singer Robin Thicke, the chorus of which repeats a rote narrative of male, active pursuit, conquering reluctant and passive feminine desire.<sup>52</sup> They were evident, too, in a recent holiday advertisement for a well-known department store, which was rapidly withdrawn after critics pointed out that a caption reading, "Spike your best friend's eegnog when they're not looking," might encourage criminal behavior.<sup>53</sup>

When one compares interviews about rape and sexual assault conducted with today's college students to those conducted with students in the 1980s, it is apparent that, despite the entrance of terms such as "date rape" and "acquaintance rape" into the vernacular, the feminist movement has been less than successful in challenging stranger rape mythology.<sup>54</sup> Moore chronicles how, while initially the term "date rape" was used to describe sexual violence occurring in the midst of ongoing intimate relationships, today the term most often brings to mind an event where, rather than unwanted sex occurring in the course of a long-term relationship, a threatening stranger

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49. Deborah Tuerkheimer, *Slutwalking in the Shadow of the Law*, 98 MINN. L. REV. 1453, 1497–98 (2014).

50. *Id.* at 1498 (emphasis in original).

51. A recent study observes that only thirteen percent of forcible rapes on campus and two percent of sexual assaults of incapacitated victims are reported. WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT, NOT ALONE: THE FIRST REPORT OF THE WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT 7 (2014), <https://www.notalone.gov/assets/report.pdf> [<http://perma.cc/RER3-FCFU>].

52. See *Blurred Lines*, *supra* note 28.

53. Danielle Paquette, *What a Creepy Bloomingdale's Ad Tells Us About America's Understanding of Rape*, WASH. POST (Nov. 12, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/11/12/what-a-creepy-bloomington-ad-tells-us-about-americas-understanding-of-rape> [<http://perma.cc/HT42-2REL>] (emphasis omitted).

54. Compare BONNIE S. FISHER, LEAH E. DAIGLE & FRANCIS T. CULLEN, UNSAFE IN THE IVORY TOWER: THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN 2 (2010) (emphasis in original) (using the terms "date rape" or "acquaintance rape" to classify the type of rape most common on college campuses today) with Mary P. Koss, Christine A. Gidycz & Nadine Wisniewski, *The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students*, 55 J. CONSULTING & CLINICAL PSYCHOL. 162, 163 (1987) (summarizing surveys from the 1980s describing scenarios that would now be classified as "date rape," but without using contemporary terminology).

either has administered a drug or taken advantage of a victim he barely knows.<sup>55</sup> This reformation of acquaintance rape as a “crime category” suggests that there has been a process of “co-optation”; under the weight of the stranger myth, date rape has become under-inclusive of those actors and actions it was initially crafted to encompass.<sup>56</sup> An advertisement that, for example, encourages someone surreptitiously to slip their “best friend” some alcohol, implies that, if non-consensual encounters take place among friends, such encounters amount to something less than rape.

Historically, procedural rules of evidence and substantive criminal definitions excluded the most common experiences of sexual assault from juridical consideration.<sup>57</sup> As Carol Smart observes, the greatest accomplishment of the feminist movement has been to incorporate more of women’s lived experiences into the criminal law.<sup>58</sup> However, as women’s access to law has increased, so too have suspicions that the law is incapable of affording justice in an unbiased manner. In her most recognizable form, justice is blind, but she is also gendered. As became clear in heated public debates regarding incidents throughout the 1990s, the affording of formal legal rights or formal equality to victims may be perceived as a transfer of power, particularly when the media inundates the public with coverage of celebrity-seeking accusers.<sup>59</sup> With legal reforms came public perception of such laws as biased and subject to manipulation.

As victims increasingly have been drawn to the civil system as an avenue for seeking justice, members of the public question their motivations; an honorable desire for justice is juxtaposed with a less honorable quest for “deep pockets.” In the 1992 criminal case against Tyson, for example, editorials debated whether alleged survivor Desiree Washington was “a real champion” or “a phoney, a gold-digger, [or] an opportunist.”<sup>60</sup> Around the same time, the lawyer for one of the defendants accused in a rape case against several members of the St. John’s University lacrosse team spoke out on the nightly news, labeling the alleged victim just one of those “scheming females” who “manipulate and control the entire criminal justice system . . . .”<sup>61</sup> News articles minimized allegations of acquaintance

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55. Moore, *supra* note 34, at 459.

56. *Id.* at 463.

57. *Cf.* SMART, *supra* note 17, at 33 (noting that the guilty/innocent, consent/non-consent binary is ill-suited to the complexities of the crime of rape).

58. *Id.* at 33–34.

59. *See id.* at 144.

60. Ira Berkow, *Sports of the Times; A Champ Named Desiree*, N.Y. TIMES (Feb. 25, 1992), <http://www.nytimes.com/1992/02/25/sports/sports-of-the-times-a-champ-named-desiree.html> [<http://perma.cc/8SPW-DLJZ>].

61. SANDAY, *supra* note 31, at 36–37 (internal quotations omitted).



rape, contrasting “real rapes” such as those occurring in Bosnia to the “he said/she said” incidents taking place in the hotel rooms of high-profile athletes and celebrities.<sup>62</sup>

Although more than twenty years have passed since Mike Tyson’s trial, little has changed in public discourse that occurs when high-profile persons—usually men—are publicly accused—most often by women—of committing sexual or interpersonal violence.<sup>63</sup> What radically has transformed is the power of the everyday person to comment on these events. As I discuss below, the themes present in Twitter comments are remarkably consistent across recent, high profile incidents, and they reveal the ways in which contemporary viewpoints are shaped within the construct of the law’s historical treatment of rape victims and perpetrators. The comments suggest pervasive disbelief of victims whose stories do not fit neatly into the stranger rape paradigm. They reveal distrust of survivors who, rather than or in addition to pursuing justice via criminal law, seek compensation in tort for the harms wrought by sexual assault. Further, and importantly, the comments signal a profound awareness of the horrific history of the criminal justice system in regard to rape law, and the system’s past and present role in furthering oppressions. Due to Twitter’s microblog format these important conversations about law and society are not and cannot be fully articulated. Rather, fears, apprehensions, and expectations about power and privilege are conveyed in shorthand, usually by deploying just a few, vicious words about women.

### III. ONLINE CHARACTERIZATIONS, MATERIAL IMPLICATIONS

*“She take my money when I’m in need”*<sup>64</sup>

During 2014–2015, nearly forty women came forward alleging that they had been drugged and sexually assaulted by comedian Bill Cosby.<sup>65</sup> While the public largely rallied behind accusers’ claims,

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62. Franiuk et al., *supra* note 13, at 288. The authors found that more than sixty percent of articles written about the Kobe Bryant allegations contained at least one statement that reflected the typical stranger rape mythology. *Id.* at 299.

63. While, as I discuss herein, the term “gold digger” historically is gendered female, the label is applied to male accusers. For example, Tweets regarding posthumous allegations against Michael Jackson occasionally label accusers “gold diggers.”

64. *Gold Digger*, *supra* note 1.

65. See, e.g., Lydia O’Connor, *3 Women Bring New Sexual Assault Allegations Against Bill Cosby*, HUFFINGTON POST (Apr. 24, 2015, 5:59 PM), [http://www.huffingtonpost.com/2015/04/23/new-cosby-victims\\_n\\_7129458.html](http://www.huffingtonpost.com/2015/04/23/new-cosby-victims_n_7129458.html) [<http://perma.cc/76CK-P98J>]; Holly

skeptics took to Twitter to defend Cosby against the allegations. Examples of Tweets rallying around the celebrity include, “Bill Cosby ain’t rape nobody. These hoes just wanna pay check”; “Bill Cosby is innocent in my eyes, bitches just hoes and do anything for money”; “Them hoes just want a comeup!”; “[A]nother paycheck and spotlight for you spiteful bitches”; and, directed toward a particular victim, “[Y]ou are nothing more than a damn opportunist and gold digger.” One user tautologically compliments the comedian: “Bill Cosby is smart if he really did rape them hoes cause they hoes and we don’t believe hoes.” Another identifies lovelorn vengeance as a possible motivation: “Bill Cosby was hittin hoes and not doing them no more and now they mad.”

The accusations being waged against Cosby are by no means the only such allegations made against public figures in recent years. Pittsburgh Steelers football quarterback Ben Roethlisberger recently received a four-game suspension from the National Football League, having been the subject of a civil suit in Nevada and a criminal investigation in Georgia in connection with two distinct sexual assault claims.<sup>66</sup> The Twitterverse weighs in, observing, “Wow I am über angry about Roethlisberger’s suspension. Stupid gold digging slut!! #NFL”; “The . . . alleged rape victim didn’t pursue any criminal action, she was just after a cash settlement. We call that a #hooker”; “Enough is enough. Stop demonizing Ben Roethlisberger, the likely victim of a false rape claim”; and “Police didn’t believe Roethlisberger’s accuser, but he had to pay to end the lawsuit. \$ motivates false accusations.” Other commenters observe, advise, and even threaten, “She is a skank ho bag and the truth is already out . . . SLUT! You are going down BITCH”; “Smfh,<sup>67</sup> another slut whore tryna get rich quick; dis time it’s Ben Roethlisberger who has allegations of rape, damn shame how low they stoop”; and “If I were Roethlisberger, I’d write [the accuser’s name] under one eye, ‘slut’ under the other.” Another notes, simply, “I smell payoff.” Online comments defending Roethlisberger are pervasive even though, in announcing the state’s decision not to go forward with rape charges,

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Yan, Elliott C. McLaughlin & Dana Ford, *Bill Cosby Admitted to Getting Quaaludes to Give to Women*, CNN (July 7, 2015, 11:42PM), <http://www.cnn.com/2015/07/07/us/bill-cosby-quaaludes-sexual-assault-allegations> [<http://perma.cc/39QD-PM46>].

66. *Steelers QB Wants Written Apology*, ESPN (Sept. 16, 2009), <http://sports.espn.go.com/nfl/news/story?id=4414936> [<http://perma.cc/HW3A-CTMH>] [hereinafter *Steelers QB*]; *Ben Roethlisberger’s Ban at 4 Games*, ESPN (Sept. 4, 2010), <http://espn.go.com/nfl/news/story?id=5527564> [<http://perma.cc/W2QN-EPJ2>].

67. “Shaking my f\*\*\*ing head.” Greg Elmassian, *Smfh*, URBAN DICTIONARY (Nov. 17, 2007), <http://www.urbandictionary.com/define.php?term=smfh> [<http://perma.cc/6AAL-VJV8>].

the Georgia District Attorney observed that, in his expert opinion, the complainant “did not strike him . . . as [one of] ‘a gold digger.’”<sup>68</sup>

Similar concerns about alleged victims engaging in abuse of the legal system are evident in Tweets regarding the criminal charges and subsequent civil suit filed against then-amateur and now pro-football quarterback Jameis Winston. Although Winston was cleared of a fellow Florida State student’s sexual assault allegations, in a university proceeding, and the state did not pursue criminal charges, the alleged victim brought a civil case against Winston that is ongoing, and Winston is engaged in a counter-suit alleging defamation.<sup>69</sup> As with Cosby and Roethlisberger, in addition to Tweets supporting Winston’s accuser, numerous comments voice suspicion about her motivation in coming forward with accusations against the promising player. A series of Tweets using #golddigger, observe, “This girl who’s suing Winston has no credibility at all: changed her story like 5 times and she just wants to cash in #golddigger”; “How convenient 2 weeks before #NFLDraft #golddigger Jameis Winston sued by accuser in sexual assault incident”; “So, it’s confirmed that Jameis Winston’s accuser is a gold digger, right?”; “Golddiggin’ like crazy!”; and “Gimme a break #liar #golddigger #witchhunt.” Commenters riff on Kanye West’s lyrics, noting, “I ain’t sayin’ she’s a gold digger, but she ain’t messing with no broke Jameis Winston’s” or “Jameis Winston . . . I ain’t saying she a gold digger but she a hoe and lying.”

In discussing Chicago Blackhawks player Patrick Kane, who in the fall of 2015 was under investigation for possibly sexually assaulting a young woman at his New York home,<sup>70</sup> Tweets repeat the refrain. Twitter comments observe, “[T]his whole situation is ridiculous. Some slut just wants money . . . Maybe she raped him”; “This whole Patrick Kane thing is stupid! Some slut probably had sex with him and now wants money out of it. I’m on his side. #PatrickKane”; and “It’s just another slut trying to fuck over a professional athlete and get a settlement check to go away.” One Tweet simply notes, “I know how Patrick Kane feels” and links to a YouTube recording of

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68. Dan Majors, ‘Grow Up,’ DA Tells Roethlisberger While Announcing Decision Not to Prosecute Rape Case, PITT. POST-GAZETTE (Apr. 13, 2010, 8:00 AM), <http://www.post-gazette.com/sports/steelers/2010/04/13/Grow-up-DA-tells-Roethlisberger-while-announcing-decision-not-to-prosecute-rape-case/stories/201004130163> [<http://perma.cc/YG3P-ZY4V>] (observing that the victim had not been offered money to drop the case).

69. Pat Yasinskas, *Trial Date for Civil Lawsuit Filed Against Jameis Winston Set for 2017*, ESPN (July 24, 2015), [http://espn.go.com/nfl/story/\\_/id/13311013/trial-date-civil-lawsuit-filed-tampa-bay-buccaneers-qb-jameis-winston-set-2017](http://espn.go.com/nfl/story/_/id/13311013/trial-date-civil-lawsuit-filed-tampa-bay-buccaneers-qb-jameis-winston-set-2017) [<http://perma.cc/Q74N-N78X>].

70. Bruer & Botelho, *supra* note 4.

a comedy rock song entitled *Gold Digging Whore*.<sup>71</sup> A sense of justice appears to prompt a different user to intervene in debates about the veracity of claims against Kane, noting, “Not a huge hockey fan but as a mom of 3 sons . . . that girl is a gold digger #PatrickKane #Buffalo.” Another commenter draws a dichotomous line that eerily reflects centuries-old categories of legal exclusion: “If she really was raped then by no means is she a slut . . . but I don’t think she was so in my eyes she’s just a slut.”

Having decided to marry rather than prosecute her attacker, Janay Palmer may have the dubious honor of being labeled the most egregious of the gold diggers.<sup>72</sup> Numerous Tweets categorize the victim based on her behavior after the incident, “Only a golddigger would marry their abuser”; “Janay Rice is a fucking gold digger who’s on the come up”; and “She married her meal ticket. Gold digger.” Several characterize Rice as the consummate gold digger, noting that “Ray Rice’s wife gotta be the most dedicated gold digger out there”; she is “a perfect definition of a gold digger”; and she may be “the golddigger of the millennium.” A Tweet summarizes, “Ray Rice’s wife . . . is married to a woman-beating punk for three reasons: Money, fame and dick. Money is the big one. TRUTH!!!”

In addition to the label gold digger, a common refrain about accusers is to label them “bitches” for bringing forward accusations of interpersonal violence. Typical tweets defending Winston include: “I hope Jameis takes that bitch for every penny she got and then some”; “LMAOOO!!! Jameis . . . fucked that Bitch and took her home on his scooter the next day! [crying emojis] and she tried to claim rape smh”; “[W]hen you’re in the spotlights bitches make up shiit and ya’ll should know considering how females are nowadays”; “[Winston] should find that bitch who tried to put fake rape charges on him and spit on her”; “It was just some crazy bitch . . . Girls are psycho”; “That bitch tryna fuck him over!!! I hate females that spread their Legs and then later say ‘I got Raped’!!”

Janay Palmer in particular is the subject of numerous Tweets that engage physical threats to affect virtual discipline for her (in)actions. Tweets observe: “Janay is a dumb bitch”; “Janay Rice = dumb bitch”; “stupid ass bitch”; “KINKY bitch”; and “Janay Rice is

71. STEEL PANTHER, *Gold Digging Whore*, on *BALLS OUT* (Universal Pub. Records 2011).

72. Sara Nathan & David McCormack, *Happily Ever After? Disgraced NFL Star Ray Rice and His High School Sweetheart Wife Janay Pictured on Their Wedding Day—Just 24 Hours After He Was Indicted for Striking His Bride Unconscious*, DAILY MAIL (Sept. 9, 2014, 5:23 PM), <http://www.dailymail.co.uk/news/article-2749430/Happily-Disgraced-NFL-star-Ray-Rice-wife-Janay-pictured-wedding-day-just-24-hours-indicted-striking-bride-unconscious.html> [<http://perma.cc/QL8Y-A997>].

the definition of dumb bitch.” Commenters on Kane’s situation write, “[T]hat bitch that is accusing him of rape is probably a broke bitch and prob just wants money from him”; “Patrick Kane done fucked with the wrong bitch and now she wants em to come up off a couple mil for her . . .”; and ask, “Why would Patrick Kane have to rape anybody. He can fuck any girl he wants. That bitch is Lying your honor.” One Tweeter notes, “Never thought I’d say this about a potential rape case but only one response suffices: YOU SELFISH FUCKING BITCH.”

In these unmoderated online discussions several obvious themes emerge. Foremost is the ubiquitous deployment of what Patricia Hill Collins deems “controlling images,” as accusers are situated as familiar, stock characters<sup>73</sup>: the “ho,” the “gold digger,” the “dumb bitch,” the “psycho.” Researchers find that, within the largely anonymous environment of the Twitterverse, social identities take on a heightened importance.<sup>74</sup> By engaging these powerful and recognizable tropes, online commentators signal that they represent a particular social group or identity and close the social distance between themselves and other posters.<sup>75</sup> Twitter’s format, character limitations, and use of hashtags encourage engagement in “reductionist discourses” that privilege one social group over another.<sup>76</sup> As comments on a particular theme such as #golddigger, #cleatcher, or #puckslut multiply, pressure escalates to reinforce the beliefs of the group.<sup>77</sup> In perpetuating negative images about accusers, groups of like-minded commenters display a “cultural logic . . . normatively biased towards and comfortable with the violent discipline of women in order to keep them in their perceived place.”<sup>78</sup> With engagement of a single term, a status hierarchy is established<sup>79</sup> differentiating honest survivors from dishonest “sluts,” “bitches,” or “whores.”

These derogatory terms persist—and perhaps undergo a renaissance—in the virtual world because to some extent they reflect “commonsense” beliefs about gender. Among these assumptions are

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73. See HILL COLLINS, *supra* note 8, at 72.

74. Nadine Tamburrini, Marco Cinnirella, Vincent A.A. Jansen & John Bryden, *Twitter Users Change Word Usage According to Conversation-Partner Social Identity*, 40 SOC. NETWORKS 84, 85 (2015).

75. See Hsueh et al., *supra* note 15, at 559; Tamburrini et al., *supra* note 74, at 85; Sarita Yardi & Danah Boyd, *Dynamic Debates: An Analysis of Group Polarization Over Time on Twitter*, 30 BULL. SCI. TECH. & SOC’Y 316, 316 (2010).

76. Edgar, *supra* note 11, at 145.

77. See Hsueh et al., *supra* note 15, at 558–59, 567.

78. Kirsti K. Cole, “It’s Like She’s Eager to Be Verbally Abused”: *Twitter, Trolls, and (En)Gendering Disciplinary Rhetoric*, 15 FEMINIST MEDIA STUD. 356, 357 (2015).

79. See RIDGEWAY, *supra* note 9, at 43–44. For a discussion of “slut discourse” terminology and use in the social strata, see Armstrong et al., *supra* note 9, at 104.

that men are logical and women emotional,<sup>80</sup> that females are “more manipulative” than males,<sup>81</sup> and that men are more “agentially competent” than their female counterparts.<sup>82</sup> Numerous comments reflect directly or indirectly on accusers’ mental health, noting, for example, “Kobe Ben Jameis . . . they don’t rape it’s a crazy hoe or a hoe that needs money behind them . . .”; “Jameis didn’t rape anyone ya crazy bitch”; or “[the alleged victim is] a slutty, psycho, gold digging cutie pie.” These categorizations of accusers as mentally unstable or incompetent fit neatly into a centuries old tradition of disciplining women who speak out by reducing them to a hyper-emotional, ultra-corporeal state.<sup>83</sup>

In contrast to Tweets labeling accusers as “crazy” or “psycho,” others condemn accusers for behaving too logically in the aftermath of what should have been a traumatic incident. In regard to the Winston allegations, a user provides a handbook to how s/he believes events will proceed, the drama unfolding like a sordid, legal novella:

- “1. Sloot got fucked
2. She loved it
3. Jameis becomes famous
4. Bitch realizes hes a star and wants money
5. Bitch claims rape
6. Winston wins.”

Observations such as “Maybe she raped him” or “Some slut probably had sex with him and now wants money out of it” suggest that alleged survivors have orchestrated these incidents, manipulating the law for personal gain. The word “bitch” in particular signals that, historically, the least desirable traits in women have been those associated with “forceful dominance.”<sup>84</sup> The accusers in the recent celebrity sexual assault cases discussed herein deviate from the perceived

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80. Charles B. Craver, *The Impact of Gender on Bargaining Interactions*, NEGOTIATIONS, <http://www.negotiations.com/articles/gender-interaction> [<http://perma.cc/MK4Q-JRNT>].

81. *Men or Women: Who’s the Better Leader?* PEW RES. CTR. (Aug. 25, 2008), <http://www.pewsocialtrends.org/2008/08/25/men-or-women-whos-the-better-leader> [<http://perma.cc/TU95-PBPV>].

82. RIDGEWAY, *supra* note 9, at 61. Counteracting internalized gendered assumptions about agency and competence in the workplace are the foundation of Facebook Chief Operating Officer Sheryl Sandberg’s best selling book, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD*. See SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 40 (2013).

83. See LAURA SJOBERG & CARON E. GENTRY, *MOTHERS, MONSTERS, WHORES: WOMEN’S VIOLENCE IN GLOBAL POLITICS* 7 (2007) (noting that women in the military are criticized for not adhering to traditional gender roles).

84. RIDGEWAY, *supra* note 9, at 80–81.



norm in that they are proactively engaging the legal system in a very public context. This systematic engagement flies in the face of assumptions that women engage in ‘expressive’ behaviors—a sudden letting go of pent-up anger—versus ‘instrumental’ ones, such as plotting or planning.<sup>85</sup> Embedded in the term “bitch” are expectations of female passivity, chastity, and domesticity and the implication that, by coming forward, accusers are flouting these expectations.<sup>86</sup> As Ridgeway identifies, stereotypes “change more slowly than people’s own behavior in response to new opportunities.”<sup>87</sup> In real life, commenters occupy a world that increasingly supports women’s participation as equal to men’s in the public sphere. This includes an ever-evolving criminal justice system that increasingly recognizes those who experience rape as empowered survivors as well as injured victims. Online, however, the backlash against women thrives.

In refocusing attention on the character of survivors rather than the circumstances of the alleged assaults, the comments above operate to sever the parties from their particular circumstances in order to situate them in a larger, societal framework. Tweets such as “[B]itches just hoes and do anything for money”; “Girls are psycho”; “[B]itches make up shiiiiit . . .”; or “hoes lie about rape so much so often u can’t trust these bitches . . .” rely on broad generalizations that attribute particular characteristics to accusers, regardless of what actually transpired in each case. In a recent study of “slut discourse” on a college campus, Armstrong et al. demonstrate that derogatory terms about female sexuality often are not used to describe actual sexual behaviors.<sup>88</sup> Rather, researchers found that, among female college student interviewees, the terms “slut” or “ho” are engaged as a way for “[h]igh- and low-status women [to] draw moral boundaries consistent with their own classed styles of femininity, effectively segregating the groups.”<sup>89</sup> Employing a label such as “slut” or “trick” transforms a fully fledged person into an interchangeable member of a dubious category: “[F]emales that spread their Legs and then later say ‘I got Raped!’” After being inundated with stories of accusations against Mike Tyson, Kobe Bryant, Ben Roethlisberger, and a host of other celebrity athletes, for some, the suit against Jameis Winston seems to take on a tired predictability:

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85. See Salter, *supra* note 15, at 238; see also SJOBERG & GENTRY, *supra* note 83, at 37 (describing how women who commit acts of violence are seen as monsters because they have abandoned feminine norms).

86. Cf. Armstrong et al., *supra* note 9, at 101–02 (discussing the loss of status that accompanies “slut stigma”).

87. RIDGEWAY, *supra* note 9, at 159.

88. Armstrong et al., *supra* note 9, at 104.

89. *Id.* at 107.

“probably just another gold digger trying to get money out of a sports star,” “another slut whore tryna get rich quick . . . .” As one person remarks, “of course a bird is gonna try and get money off him.” After all, we “[r]eally have to be careful of these types of girls.”<sup>90</sup>

Although the terms are so pervasive in everyday life they may escape our notice, the online branding of bitches, gold diggers, and hoes has the power to effect material, societal harms, obscuring the personal experiences of survivors and “mak[ing] racism, sexism, poverty, and other forms of social injustice appear to be natural, normal, and inevitable parts of everyday life.”<sup>91</sup> The terms are an effective, shorthand way to underscore that—usually female—accusers do not belong online. As I discuss in the following section, they emphasize, also, that women do not belong in the courtroom.

#### IV. OUTSIDER STATUS AND ALLEGATIONS OF GENDER-BASED VIOLENCE

*“With a baby Louis Vuitton/Under her underarm  
...”*<sup>92</sup>

Although the Tweets presented in the previous section quite obviously reflect assumptions about gender, they also reveal particular ideas about the economic status of accusers. As David M. Engel writes, individuals’ engagement with law may be perceived as “intru[ding] upon existing relationships, as pretexts for forced exchanges, as inappropriate attempts to redistribute wealth, and as limitations upon individual freedom.”<sup>93</sup> Engel’s research demonstrates that “social status and power can affect fundamental assumptions about causation and responsibility . . . .”<sup>94</sup> “Haves,” with greater access to institutional resources, from healthcare, to employment, to the judicial system, may exhibit stoicism in the face of injury, while “have nots” may challenge views of “self-sufficiency in the face of injuries” and emphasize responsibility and accountability.<sup>95</sup> Perceptions of

90. Although the facts are completely different, and although the incidents occurred more than fifteen years and thousands of miles apart from one another, commenters, for example, have been quick to compare recent allegations against Chicago Bulls player Derrick Rose to charges brought against Kobe Bryant. One commenter seemingly conflated one alleged victim with another: “Drose didnt rape that girl. Andddd neither did kobe.”

91. HILL COLLINS, *supra* note 8, at 69.

92. *Gold Digger*, *supra* note 1.

93. Engel, *Insiders, Outsiders, and Personal Injuries*, *supra* note 10, at 577.

94. David M. Engel, *Perception and Decision at the Threshold of Tort Law: Explaining the Infrequency of Claims*, 62 DEPAUL L. REV. 293, 323 (2013) [hereinafter Engel, *Explaining the Infrequency of Claims*].

95. *Id.*; see also Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on*

the validity of legal claims may be influenced not only by the actual, personal characteristics of the claimant but by the greater social, legal, and political climate in which such claims are made.

The ideal type of the gold digger is deeply embedded in United States sexual-legal history, featured in the very first issue of *Playboy* magazine in 1953.<sup>96</sup> The magazine tied women's increasing access to court-awarded child support to abuse of the legal system and mourned the carefree days, when "wives were faithful, and alimony was reserved for the little floosies who periodically married and divorced millionaire playboys."<sup>97</sup> The article noted that no man was safe: "[A]limony has gone democratic, and any man can get hit."<sup>98</sup> And the magazine suggested that, in the justice system, women would receive preferential treatment: "[E]ven if the wife is a 'trollop' . . . or 'a spendthrift' . . . the judge still grants 'the little missus a healthy stipend for future escapades and extravagances.'"<sup>99</sup> The piece concluded ominously, with a warning to every man: "[T]he modern gold digger [is] after you[!]"<sup>100</sup>

The *Playboy* article highlights that terms such as "gold digger" have embedded within them a "status inequality" premised on the idea that women historically have been reliant on men for their economic security.<sup>101</sup> The essence of both a "gold digger" and a "ho" is what Stephens and Phillips deem the "sex for sale" principle, reliance on sexuality to obtain financial benefit.<sup>102</sup> The gold digger

trades sex for a harder currency . . . . Gold Diggers are not traditionally viewed as being successful in educational, employment, or other economic spheres. Instead, the . . . plan is to 'toss them titties around, shake that ass, make that money' . . . . Sex may be used to barter for basic needs such as a bag of groceries, getting rent paid, or making sure their lights do not get turned off. However, manicures and pedicures, new clothing, vacations, or having a car note paid are also possible wants . . . .<sup>103</sup>

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*the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 125 (1974) (summarizing advantages enjoyed by "repeated players" versus "one-shotters" in the legal system).

96. SANDAY, *supra* note 31, at 149.

97. *Id.* at 150 (internal quotation marks omitted).

98. *Id.*

99. *Id.*

100. *Id.*

101. RIDGEWAY, *supra* note 9, at 27.

102. Dionne P. Stephens & Layli D. Phillips, *Freaks, Gold Diggers, Divas, and Dykes: The Sociohistorical Development of Adolescent African American Women's Sexual Scripts*, 7 SEXUALITY & CULTURE 3, 18 (2003).

103. *Id.* at 17–18 (quoting D. Smith, *She Got Game: Foxy Brown is the Illest*, VIBE, June 1999, at 113–16).

*Playboy's* positioning of the unwitting everyman against the "liberated" wife of the 1950s bears a surprisingly striking resemblance to Tweets about today's rape accusations proclaiming that "bitches," "sluts," and "tricks" are reporting crimes to achieve a "come up," socially and economically.

An undercurrent on Twitter identifies "crying rape" as a path for claimants to achieve fame or status as public figures. Supporting the adage that there is no bad press, Tweets suggest a widespread belief that one's status as a rape survivor may be parlayed into a career in broadcasting or reality television. Commenters on the Cosby accusations opine, for example, that these "fame whore[s]" or "thirsty tricks" "just want all the fame, fortune, money, prestige, and power that comes with being a rape victim in America." One notes that accusers are "trying to getting 15 mins of fame. It's BS. Cosby is the victim," and another thinks that "being a rape victim is trendy." Jameis Winston's accuser is compared to "the new Monica Lewinsky, [since] she got famous off of sexual activity." Users muse, "Maybe when [her] civil suit against Jameis gets dropped . . . she'll write a book 'Web of Lies . . .'" and joke, "HAHA stupid ass chick trying to get famous by accusing Winston of rape. Bitch cant touch him #FamousJameis." Others write that Janay Rice is a "fame money whore" who "stand[s] by [her husband's] fame & fortune" because she "wanna be relevant so bad." Blackhawks supporters Tweet "I knew Patrick Kane's accuser was just another thirsty whore looking for \$\$\$"; "Patrick Kane is being investigated for a rape charge lol that's just some thirsty hoe tryna get his money"; and "Come on. Patrick Kane didn't rape nobody. Stupid bitch just wants some money and her 5 seconds in the spotlight." Analogizing setting up a rape charge with a get rich quick scheme, a commenter complains, "[S]ick of worthless cunts accusing stars of rape for fame and money . . . go get a job you fucking bitch #PatrickKane."

Accusers' agency and competency are challenged, too, by those accusing them of waging accusations to further a "feminist agenda" or engage in a "witch hunt." Contemporary accusations of sexual assault nearly always are accompanied by queries as to whether the accuser is being coerced or manipulated into bringing charges at the hands of some greater conspiracy, political agenda, or cabal. One Tweet decries, "No matter what feminist RACISTS like [Winston's accuser] . . . say, we will always have your back, brother. #JameisWinston." Another complains, "[T]he feminist agenda is to promote the lie that we live in a rape culture. the Bill Cosby case is the perfect time to promote it." For some, the sheer number of accusers in Bill Cosby's case further supports this theory of a conspiracy against Cosby: "[I]f it's THAT many girls SOMEBODY

would've have come forward years ago!" Each new set of accusations against a celebrity is situated as evidencing (or not) a perceived "feminist agenda," as users question, "[W]hat is this 'rape culture'? is this some feminist agenda???" STOP TRYING TO FORCE YOUR LIBERAL HIPPIE TRASH ON ME!" A commenter notes, "I don't feel bad for rape victims at all. Stop pushing that feminist agenda yall. Whores." Someone else writes, paradoxically, "[They] were raped to further their feminist agenda and spread propaganda instead of focusing on the real issue, rape."

The most efficient way for commenters to articulate their understanding that a rape charge is linked to a larger social movement or societal conspiracy is via hashtags, used by commenters to follow conversations, to demonstrate affinities with others, and to convey humor and irony.<sup>104</sup> In the context of highly publicized sexual assault claims, Tweets engage hashtags to categorize discussions of accusers and accused, to identify with others based on collective disgust or admiration, and to signal a belief in the existence of systemic oppression or conspiracy. Many comments about Jameis Winston's accuser, for example, are tagged "#cleatchaser," a pop culture term used to describe women who seek out sex with athletes.<sup>105</sup> Tweets offering opinions about Kane's accuser similarly bear #puckslut.<sup>106</sup> A series of Tweets engage Kane's jersey number, #IStandwith88. Others flag critiques of the lawsuit against Winston by employing #famousjameis. Like the commenter described above, who, although not a fan, Tweeted in defense of Patrick Kane out of a greater sense of justice, a number of commenters link their posts to larger causes. A striking number of commenters engage #feminism or #rapeculture, at once demonstrating an astute awareness of the debates currently shaping what it means to be feminist and expressing potentially anti-feminist points of view. For example, a Tweet asks "Is the #Kane matter yet another instance of #RapeJournalismCulture? Will #Feminism #WeBelieve themselves into anothr narrative drunk regret?" A fan bemoans, "I agree he sould counter sue, but he can't. Kane would get destroyed if he did such. The #rapeculture people wld destroy [him] . . . ."

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104. See Yu-Ru Lin, Drew Margolin, Brian Keegan, Andrea Baronchelli & David Lazer, *#Bigbirds Never Die: Understanding Social Dynamics of Emergent Hashtags*, in PROCEEDINGS OF THE SEVENTH INTERNATIONAL AAAI CONFERENCE ON BLOGS AND SOCIAL MEDIA, 8–11 JULY 2013, CAMBRIDGE, MASSACHUSETTS, USA 370 (2013), <http://arxiv.org/pdf/1303.7144.pdf> [<http://perma.cc/5K7Y-MFLE>].

105. Aaron Rock, *Cleat Chaser*, URBAN DICTIONARY (Oct. 30, 2003), <http://www.urbandictionary.com/define.php?term=cleat+chaser> [<http://perma.cc/PS57-ZEB2>].

106. These terms are not only applied by observers but also sometimes by (usually female) fans to describe themselves.

On one hand, representations of accusers as pawns in a greater, feminist conspiracy to identify a “rape culture” and as reliant on men for financial security play into the historical tendency to deem women impetuous, frivolous, and less agentically competent than men. As a society, we tend to associate “consumption with the feminine,”<sup>107</sup> as impulsive and extreme in contrast to men’s spending, which is more likely to be perceived as measured and rational.<sup>108</sup> Implicit in the labels “ho,” “hooker” and “gold digger” is the idea that women are capable of earning money but do not have the capacity to be shrewd financial managers. Comments such as “Everyone talking shit on Janay Rice meanwhile she just bout a new \$1,000 Versace purse” or “this female victim of Jameis Weston is out for some NFL cheese because she can’t make money on her own” characterize accusers as incompetent, petty, and valuing material possessions over physical comfort. Notably, to be labeled “a gold digger,” a woman need not be acting wholly out of self-interest; the characterization of women as consumers in part reflects their status as domestic caregivers.<sup>109</sup> Kanye West’s exemplary gold digger does not just carry a fancy handbag, she persuades the narrator to feed her kids.<sup>110</sup> Allegations about the existence of a “feminist agenda” or the “#feminists” controlling accusers’ actions plays into these presumptions of fiscal irresponsibility or incompetency by assuming accusers are puppets, with other parties controlling the strings. The gold digger’s ultimate objective is a “come up” in resources but at the same time the surrender of financial control over those resources. For “her own good,” there is or will be a—presumably male—pimp or husband who dictates wages and access. As one person notes, “Ray and Janay Rice are the ideal ‘relationship goals’ couple. he KO’s her, Ravens give him a settlement of \$3.5 mill, he buys her a purse.”

On the other hand, the gold digger of *Playboy* past and pop culture present is anything but passive or incompetent. The “gold digger” in a “perverted entrepreneurial spirit . . . aims to extort the defendant into a settlement . . . . [M]oney lust . . . propel[s] her to

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107. MARY VIANNA ALFRED, LEARNING FOR ECONOMIC SELF SUFFICIENCY: CONSTRUCTING PEDAGOGIES OF HOPE AMONG LOW-INCOME, LOW-LITERATE ADULTS 157 (2010) (“The association of consumption with the feminine is grounded in capitalism’s ideology of the sexual division of labor . . .”).

108. See Jennifer A. Sandlin, Jennie Stearns, Julie Garlen Maudlin & Jake Burdick, “Now I Ain’t Sayin’ She a Gold Digger”: Wal-Mart Shoppers, Welfare Queens, and Other Gendered Stereotypes of Poor Women in the Big Curriculum of Consumption, 11 CULTURAL STUD. ↔ CRITICAL METHODOLOGIES 464, 466 (2011).

109. *Id.*

110. *Gold Digger*, *supra* note 1 (“OK get ya kids but then they got their friends/I pulled up in the Benz, they all got up in/We all went to Den and then I had to pay/If you fucking with this girl then you betta be payed . . .”).



try to dupe a trier of fact into infusing her bank account with ready cash.”<sup>111</sup> She is “not . . . [a] victim, but instead is . . . the villainous perpetrator of a fraud.”<sup>112</sup> Tweets go so far as to compare alleged survivors coming forward to report sexual assaults as criminal behaviors, observing, for example that “Jameis Winston is the victim of attempted EXTORTION”; Oldest trik in book #whitechicks #feminism #extortion”; and “[S]he’s asking for money to shut up. #BLACKMAIL.” When the media reported that Winston might be contemplating suing for defamation of character after CNN aired *The Hunting Ground*, a documentary regarding collegiate athletes and sexual assault,<sup>113</sup> Tweets quickly noted heartily about Jameis, “Good to see a victim taking action!”

Ann Cammett discusses how fictional representations such as the “welfare queen” and the “deadbeat dad” materially impacted the legislation that was crafted in the 1980s.<sup>114</sup> She concludes that metaphors such as these appear to be organic but in fact are deliberately and politically deployed: “[T]he social construction of poor Black single mothers deemed them the agents of their own misfortune due to their unmarried status—assumed to indicate loose morals, hypersexuality, and presumed laziness—framed as reliance on public assistance rather than work.”<sup>115</sup> In the legislative imagination, the welfare queen of the 1980s was not a forceless ghost that faded into obscurity but a dangerous reality on whom lasting policies were founded. The United States legal system is Byzantine in its structures and requirements, but, like the “welfare queen” of the 1980s, the gold digger is exceptionally capable not just at navigation but at rigging an exceedingly complex system in her favor. The volume of Tweets referencing “bitches” who “cry rape” for personal or political gain suggests not only that accusers are prone to lie, but that the legal system is at their disposal. Chimamanda Adichie identifies in Nigerian society the misidentification of a social phenomenon called “bottom power”: women who are able to use their sexuality to gain material wealth and social status.<sup>116</sup> Adichie writes that “bottom power is actually not powerful; [the woman] just has a good route to

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111. Amy D. Ronner, *The Cassandra Curse: The Stereotype of the Female Liar Resurfaces in Jones v. Clinton*, 31 U.C. DAVIS L. REV. 123, 137 (1997).

112. *Id.*

113. David Folkenflik, *CNN's 'The Hunting Ground' Scrutinized for Portrayal of Campus Sexual Assault*, NPR (Nov. 23, 2015, 7:39 PM), <http://www.npr.org/2015/11/23/457139758/cnns-the-hunting-ground-scrutinized-for-portrayal-of-campus-sexual-assault> [<http://perma.cc/Y4NU-ACQ6>].

114. Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233, 257–59 (2014).

115. *Id.* at 237 (internal footnote omitted).

116. CHIMAMANDA NGOZI ADICHIE, *WE SHOULD ALL BE FEMINISTS* 44 (2015).

tap another person's power."<sup>117</sup> A similar misidentification of power takes place online, as Tweets narratively reassign responsibility for sexual assaults from alleged perpetrators to accusers.

As discussed above, the term "gold digger" is a double-edged sword. The trope encapsulates stereotypical views of women as lacking capability and agency by categorizing legal claimants as seeking out men on whom they can become financially dependent. Paradoxically, however, gold digging is the achievement of independence via dependence, an economically comfortable life attained via an exercise of sexual agency that currently is available only to a particular set of actors (young, usually female, and conventionally attractive). This tension between the expectation that women as a group, on the one hand, will be passive, emotional, and giving, and, on the other, the impression that accusers are cool, logical, and calculating is evident in Twitter comments juxtaposing the persona of the gold digger against the usual tropes situating women as dependent, emotional, or hysterical. For example, users observe, "Janay Rice is *either* just plain dumb or is a full fledged gold digger"; "[Janay] eithe[r] loves the abuse or is money hungry" and "[She] isn't crazy, she knew Ray was her meal ticket. Maybe to her, it's a small price to pay for access to such tremendous wealth." Another commenter notes, "I say she's smart. She married him after it happened. He does it again = divorce and \$\$\$."

These Tweets suggest that the label gold digger is not only a critique of women as flighty, irresponsible consumers. Within each of the popular online tropes—ho, hooker, gold digger—is a penalty exacted against women who are perceived as engaging the law in an attempt to improve their economic circumstances. Every successful gold digger seeks reliance on a male counterpart but must also encompass "masculine" characteristics: ambition, strategy, logical thinking. Like "bitch," the term "gold digger" is "rooted in unjust social conditions," it "represents a backlash against advancements in feminism and women's cultural power, providing a shorthand for women who challenge masculine cultural authority."<sup>118</sup>

Before moving on to discuss the socio-legal implications of online descriptions of accusers, it is important to acknowledge that, although the accusers in recent high-profile sexual assault and domestic violence incidents comprise a variety of racial and ethnic backgrounds, the terms "bitch," "gold digger" and "ho" are rooted in raced conceptions of womanhood. Terms such as "bitch" and "ho"

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117. *Id.* at 45.

118. Edgar, *supra* note 11, at 150.

echo labels such as “jezebel” and “mammy,” which historically were used to obscure the realities of everyday life for African-American women and to justify White male violence against them.<sup>119</sup> Even with the evolution of rape laws in the United States, many women and men continue to find themselves outside the purview of justice.

This is particularly true for African-American women who in the early United States literally were excluded from prohibitions against rape and may continue to be perceived by the public as less worthy victims.<sup>120</sup> In both overt and tacit ways, the criminal law continues to exclude men as a whole, and women who engage in sex work, who are imprisoned, who are married to the accused, or who otherwise have engaged in non-traditional sexual relationships.<sup>121</sup> Tuerkheimer explains that “[r]ape law . . . place[s] certain sexual conduct outside of the bounds of acceptability . . . . Women whose pasts involve consensual sex of a disapproved kind are presumed to be ‘unrapeable.’”<sup>122</sup> Stock characters such as the African-American “mammy,” presenting women of color as self-sacrificing, nurturing, and devoted to domesticity, were developed to hide from the public the realities of life for Black women during slavery and, subsequently, under Black Codes and Jim Crow.<sup>123</sup> What seem to have become “normalized” descriptors in contemporary society initially were politically deployed to exoticize and constrain women of color and to delimit the roles available to them.

These terms also reflect the limited societal roles traditionally available to White women, who, though privileged by comparison, were expected to achieve happiness and economic security via marriage and children and were harshly disciplined for stepping outside a narrowly defined sphere.<sup>124</sup> Throughout the 1800s and early- to mid-1900s, middle class homes were defined by the chastity and purity of the ladies housed within them.<sup>125</sup> One way to

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119. Cammett, *supra* note 114, at 248; Stephens & Phillips, *supra* note 102, at 11–12; see also HILL COLLINS, *supra* note 8, at 143–44 (discussing the continuing harm of the Jezebel stereotype).

120. I. Bennett Capers, *Real Women, Real Rape*, 60 UCLA L. REV. 826, 866 (2012); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 598–601 (1990).

121. *Cf.* Capers, *supra* note 120, at 867–68 (suggesting that many of the reforms in rape and sexual assault laws disproportionately have benefitted white women over women of color).

122. Tuerkheimer, *supra* note 49, at 1502.

123. Carolyn M. West, *Mammy, Jezebel, and Sapphire: Developing an “Oppositional Gaze” Toward the Images of Black Women*, in LECTURES ON THE PSYCHOLOGY OF WOMEN 236, 239 (Joan C. Chrisler, Carla Golden & Patricia D. Rozee eds., 3d ed. 2004).

124. *See id.* at 247.

125. Mary Louise Fellows & Sherene Razack, *The Race to Innocence: Confronting Hierarchical Relations Among Women*, 1 J. GENDER, RACE & JUST. 335, 347 (1998).

maintain the dominance of the status quo has been to emphasize the “divide between the public and private spheres of social life, where men are associated with public political action and women are relegated to the private domain of the household.”<sup>126</sup> To call a woman a “ho” is to convey not only that she has been unchaste but that she has engaged in sexual relations as a business arrangement outside the sphere of the home.

In implying that women have engaged in sex for sale, terms such as ho, hooker, or slut not only remove accusers from the bounds of social acceptability, they also suggest that alleged victims’ testimony regarding sexual violence should be distrusted. I discuss this and other ways in which Tweets intentionally and unintentionally impose raced, classed, and gendered frames on engagement with law in the following section.

#### V. HONEST VICTIM SCRIPTING IN THE TWITTERVERSE

*“[T]hem hoese cause they hoese and we don’t believe hoese.”*

Tropes such as the gold digger, the bitch, and the whore appear so frequently online, that we may come to view them as placeholders, signifying little besides a gendered disdain for the subject. However, although brief, Tweets in fact articulate thoughtful and specific expectations about how accusers should interact with the legal system. In this section, I discuss three aspects of what I refer to as “honest victim scripts” pervasive on Twitter. First and foremost, there is the frequently voiced idea that “real” or “honest” victims will file criminal charges against their attackers, and that failure to do this is a warning sign. When and how a crime is reported is a significant indicator as to whether an accuser is a truthful claimant or a “hoe” or “trick.” Second, in addition to filing criminal charges promptly, an honest victim behaves altruistically. She does not file a civil suit, which may benefit her personally, but instead resorts to the criminal system, which, ideally, will benefit society as a whole. Third, in real life, whether and how to engage the justice system after having experienced sexual violence is a complex decision informed by multiple, intersecting factors.<sup>127</sup> In the Twitterverse,

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126. Megarry, *supra* note 15, at 48 (internal citation omitted).

127. See William L.F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC’Y REV. 631, 642 (1980); Kimberly Thomas, *Interpersonal Power in the Criminal System*, 50 AM. CRIM. L. REV. 247, 250–55 (2013).

however, “true” survivors are both traumatized and articulate, and, although physically injured and psychologically scarred, are able to recall events with specificity, and to offer a consistent narrative backed by the weight of physical evidence.

The timing of victims’ notification of law enforcement is a theme that runs throughout Tweets discussing allegations against celebrities. For commenters who are distrustful of complainants, going to the police is a “game changer.” Taking “too long” to do so implies a victim’s guilt, complicity, or manipulation. Tweets regarding the criminal accusations and civil suit against Jameis Winston critique what appears to commenters to be the deliberate timing of both, making observations such as: “[T]he girl waited till Jameis Winston was the hottest name in college football to try and pull a rape case. That’s messed up”; “How convenient 2 weeks before #NFLDraft #GoldDigger Jameis Winston sued by accuser”; “[The alleged victim’s] timing is impeccable. Notice how she and her ‘investors’ always show up just before/after big games . . . ?”; “[S]he had impeccable timing filing the lawsuit”; “Funny how this [story] keeps showing up during football season, never wants to talk before. Winston didn’t force anything thot. #golddigger”; “This bitch only files after he wins something . . . .”; and “[The accuser] is a scandalous money seeking whore Sending info to media when FSU gets to #2 & beats CU? Press conference day before Heisman?”

The issue of timing also raises alarm bells for Twitter commenters regarding intimate partner violence, as they speculate that the Rices’ marriage hastily was arranged around Ray’s indictment for assault: “They did an emergency/quickie marriage so she wouldn’t have to testify against Ray Rice”; “Ray Rice Gets Married One Day After Grand Jury Indictment; Coincidence.”

The time frame in which victims have elected to speak out is deemed particularly relevant in Bill Cosby’s case, where over thirty years have passed since some alleged incidents occurred. Comments note: “Them hoes shoulda said something when the ‘Cosby raping’ first happened” and ask “Where’s the criminal complaint?” “I don’t believe that Bill Cosby shit, took you hoes too long to say something . . . .” writes one user. And another, “Them hoes shoulda said something when the ‘Cosby raping’ first happened. 30 years later I don’t believe it and it’s too late.” One jokes, “SORRY PUDDING POP YOU DON’T GET TO CRY RAPE 40 YEARS LATER!” Others ask, “Serious q: Is it normal for there 2b 30+ sexual assault victims of same man without ONE victim going to police?” In each case, the prompt filing of a police report is perceived as evidence of victims’ veracity.

Delay in doing so is interpreted as evidence of plotting, planning, or vengeance-seeking behavior.

The second “honest victim” expectation that Tweets articulate regarding survivors is that they eschew the civil system. About Patrick Kane, a fan notes, “Prediction: no criminal but civil law suit, hush money, back skating to cheers,” and another advises, “Look 4 the #patrickkane rape victim’s news conference to. A Drop the charges and blame the system B Announce a civil suit. Why? #noevidence.” A commenter who appears to believe Cosby’s victims provides as evidence that “NO CIVIL SUITS have yet been filed against Bill Cosby, shitting all over the gold digger cop-out.”

The theme among these comments is that a victim’s veracity declines in proportion to the extent he or she personally receives financial compensation or public recognition. Tweets repeatedly refer to settlements paid by Cosby and settlement offers proffered by Jameis Winston’s accuser’s attorney as “hush money” and note, “[o]nly thing stopping these rape victims credibility is that they took money instead of speaking out”; “My only issue wit the Cosby alleged victims why not pursue criminal charges immediately instead of waiting and going after money”; and “What bothers me most about the Cosby rape story is that the victims pursued civil money more than criminal justice.” One Cosby defender observes that “[i]t disgusts me to see women cry rape years after it supposedly happened . . . All for attention & \$\$,” and another critiques, “[t]hank you to Bill Cosby’s accusers you just set women back 20 years! Why now—why not then? You can’t cry rape 20 years later—it’s on you! [unhappy emojis].”

A Steelers fan observes, “[y]ou know what pisses me off? The typical Roethlisberger-type victim, who is willing to be paid off and made to go away.” Hockey fans chime in, with numerous comments noting, “the girl look like a gold digger”; “Patrick Kane didn’t do shit, obviously just a gold digger coming after his huge contract”; and “[s]ick of girls saying athletes raped them, you were easy and want money. #golddigger #PatrickKane.” One commenter writes that the accuser is “[j]ust a whore looking to cash out! Fuck that lying ass bitch and fuck anyone who doubted Kaner!” Another Tweet suggests that, regardless of whether any crime occurred, Patrick Kane should simply “pay her to go away.” Of Winston, users write, “[t]he fact that this whore is pursuing a civil case against Jameis Winston is actually ridiculous what a money grubbing hoe”; “This does seem like a set up for a civil law suit”; and “Stupid bitch trying to sue Jameis Winston she didn’t win with the rape shit now she’s trying to hit him with a civil lawsuit smh.” As one Tweet notes, “Patricia Carroll is



the perfect lawyer for [Jameis Winston's accuser]. Dumb bitch lawyer for a dumb bitch liar.”

The comments above indicate that the criminal justice system is preferred to the civil system in affording justice in cases of rape and sexual assault. Tweets suggest that commenters are well aware of the difference in standards of proof between the criminal and civil systems. They evince, also, an awareness that differential evidentiary benchmarks are attracting increasing numbers of survivors to seek justice in routes outside the criminal legal process. I return to this discussion in the following section, in which I consider how Twitter users understand the criminal and civil systems as increasingly intersecting in the context of sexual assault claims. In particular, comments describing civil cases as requiring “#noevidence” or leading to a “payout” may misapprehend the number of civil suits that actually succeed and overestimate victims' access to justice.

In the context of honest victim scripting, the plethora of comments labeling accusers filing civil suits “gold diggers” seeking the “\$\$\$” reveal expectations about victims' behavior that are rooted in gendered conceptions of women as caregivers and that portray women stepping out of traditional roles as particularly suspect. Comments such as “[s]eems to me that the so called Bill Cosby Victims want money and not justice”; “How bout the women who took the money and shut up? Victims?”; and “[L]et's say all this stuff is true with Cosby. My question to the victims is do you want money or a conviction?” erect a dichotomy between the criminal system, which is presumed to affect collective, societal good by putting a perpetrator behind bars, and the tort system, which is perceived as righting an interpersonal wrong.

Tweets label those who file civil suits as “opportunists” or looking for a “come up” and even imply that, in suing a potential tortfeasor, alleged victims are themselves engaging in criminal behavior, such as blackmail or extortion. These Tweets make it clear that a desire to achieve personal economic security, to be made financially whole for injuries, or to inflict fiscal injury upon an alleged perpetrator are unacceptable motivations for pursuing rape or sexual assault complaints. The honest victim demonstrates unsullied motivations in reporting a crime, such as seeking “justice,” getting a “pig” off the streets, or in rare cases receiving compensation for proveable physical injuries. She never comes forward for the purpose of achieving personal gain or inflicting pain or harm on her attacker. Honest victims are altruistic, caring, and have neither ambivalent responses to the attack nor mixed motivations in reporting it. Across cases,

engaging the civil system is viewed as a clear sign that an accuser may be disingenuous.

Lastly, the honest victim stands steadfast to her story and her motives. Tweets noting “[r]egret isn’t rape!” or suggesting that, after time “rape” becomes “rumor” convey that there is little room for ambivalence in recollection of events. Commenters critique Jameis Winston’s accuser in particular for lacking a consistent story about events: “u say [the alleged victim’s] story hasn’t changed. Do u mean her latest version?”; “[R]ead the police report/her 5 diff stories!”; “her entire story just has way too many holes”; “[The accuser] is a skank. Sorry but after your story changes 10,000 times . . . ur DONE”; and “which story that [the accuser] told made you believe her?”

For rape and sexual assault victims, studies bear out that the decision to report is influenced by the stigma attached to reporting or guilt at perceived complicity in the incident due to drinking too much, wearing the wrong attire, or being in the wrong place at the wrong time.<sup>128</sup> Self-doubt about potential personal responsibility for or complicity in events may mean that victims’ stories do not unfold immediately, logically, or completely.<sup>129</sup> Waterhouse-Watson describes an unfortunate cycle, in which fear of disbelief dissuades women from pressing criminal charges, and the lack of pursuit of charges adds to the widespread assumption that women lie about sexual assaults.<sup>130</sup> In the online world, though, there is a profound lack of recognition of the chronic significant underreporting of crimes of sexual violence, and there is little room for confusion, uncertainty, or mixed emotions among victims.

Supplementing the other, specific expectations placed on victims in the Twitterverse is the widespread belief that the culpability of the attacker can be determined based on the physical condition of the victim. Although non-consent is the legal standard on the books in many states,<sup>131</sup> and research bears out that many sexual assaults do not result in lasting physical harm,<sup>132</sup> Tweets remark, “[c]uts, bruises,

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128. See FISHER ET AL., *supra* note 54, at 134, 141, 145.

129. See *id.* at 149. For example, Fisher et al. found that, among female college students who experienced but did not report incidents meeting the legal definition of rape, a significant portion characterized such incidents as a “miscommunication” or a “seduction.” *Id.* at 134.

130. Deb Waterhouse-Watson, *(Un)Reasonable Doubt: A “Narrative Immunity” for Footballers Against Sexual Assault Allegations*, M/C J., Mar. 2011, <http://www.journal.media-culture.org.au/index.php/mcjournal/article/viewArticle/337> [<http://perma.cc/9NNV-RM7U>].

131. Michal Buchhandler-Raphael, *The Failure of Consent: Re-Conceptualizing Rape as Sexual Abuse of Power*, 18 MICH. J. GENDER & L. 147, 157–58 (2011).

132. Only about 30% of women and 16% of men reporting rape report having experienced physical injury as a result of the crime. NAT’L CTR. FOR INJURY PREVENTION & CONTROL,

blood, semen found in the girl and no rape occurred? Ben Roethlisberger has just change the way we all have casual sex!” and “[w]ow. Bruises, lacerations, bleeding . . . Sure sounds like roethlisberger raped her to me.” Of Cosby, a user notes, “[n]ot to defend #Cosby, but unbelievable that 24 women accuse him of rape, & there is no hospital record of those bruises yet. No, not one.” One comment offers the following advice: “[r]e Cosby: I don’t know if claims R true, but NOTE to women, the time 2 cry rape is bef washing off the evidence. Years later its just rumor.” A Kane fan notes, “DNA doesn’t match. Forensic evidence doesn’t lie or have bias #FREEKANER.”

Despite volumes of research demonstrating that rape is a crime of power rather than passion,<sup>133</sup> Tweets, too, evaluate the likelihood that a criminal incident occurred by the perceived attractiveness of the victim or the perpetrator. Comedian Damon Wayans identified these commonly held assumptions in recent comments defending Bill Cosby, relying in part on the rationale that Cosby’s alleged victims are “un-rapeable[] I just look at them and go, ‘You don’t want that. Get out of here . . .’”<sup>134</sup> For decades, feminist scholars and activists have fought to reframe rape as a societal harm in addition to a personal one and to include nonconforming persons—men, sex workers, married women—within the legal definition of “rapeable” persons.<sup>135</sup> Despite these efforts, many Twitter users, like Wayans, proclaim astonishment and confusion that an attractive celebrity would coercively or forcibly obtain sexual gratification because, as one Tweet notes of Roethlisberger, famous men do not “need to rape” anyone. Of the Cosby incidents, Tweets note, “[He] DEFINITELY ain’t rape them 3 broads . . . they was ugly in they younger days too” and “[d]on’t care what you say . . . Bill Cosby couldn’t have ‘raped’ all these ugly ass women . . .” Tweets discuss sexual violence as occurring in proportion to one’s “ability” to obtain sexual partners; for example, users note that “[r]egular ugly dudes get chicks. Jameis Winston is the QB at Florida State. He got chicks

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SEXUAL VIOLENCE: FACTS AT A GLANCE (2012), <http://www.edc.gov/violenceprevention/pdf/sv-datasheet-a.pdf> [<http://perma.cc/WGZ3-HT69>].

133. See, e.g., Wendelin M. Hume, *Physical Attractiveness and Crime*, in THE ENCYCLOPEDIA OF THEORETICAL CRIMINOLOGY 616, 618 (J. Mitchell Miller ed., 2014) (observing that data shows, for example, rape victims range from infants to senior citizens, which serves to debunk myths that rape is a crime premised on physical attraction versus a crime of domination and power).

134. Arlene Washington, *Damon Wayans Defends Bill Cosby, Calls Accusers ‘Un-rapeable’*, CNN (Sept. 7, 2015, 5:54 PM), <http://www.cnn.com/2015/09/07/entertainment/damon-wayans-bill-cosby-thr-feat> [<http://perma.cc/SJ9Q-YFYN>].

135. Cf. Catharine A. MacKinnon, *Rape, Genocide, and Women’s Human Rights*, 17 HARV. WOMEN’S L.J. 5, 5–6 (1994) (providing examples of violence against women not treated as human rights violations).

ironing his draws right now. He doesn't have to rape . . . ,” “[y]ou'd think the bitches would already be on his dick why did he need to rape he's #famousjameis”; and ask, “Why would FAMOUS Jameis Winston need to rape a girl? I mean come on? He is ugly but he's built for success & will generate a large revenue!” About Kane, “People are so dumb, why would Patrick Kane rape anyone, he can get any bitch he wants”; “I don't think Patrick Kane would rape some random bitch . . . lol the things people do for money”; “I doubt Patrick Kane needs to 'rape' a girl to get some. #golddigger,” and “Why would PATRICK KANE have to rape a girl lmao he gets pussy left and right . . . #innocentuntilprovenguilt.”

A notable undercurrent is the vitriol with which users would like to see those who make false accusations—or who, like Janay Rice, otherwise flout the law by not adhering to the “honest victim” script—severely punished. A few commenters advocate moderate censure of false accusers, noting, for example, “[t]he girl needs to be charged with falsifying a report. Rape isn't a joke or a meal ticket. #fsu #cleatcher #FamousJameis.” The most common response, however, is to lobby for severe sanctions against those who bring an unsubstantiated claim. One Tweet notes of Winston's accuser, “bitches that cry rape when they didn't get raped shudd get charged n same sentencing as a rapist imo, fuckin skank . . .” Another writes, “If it is found that she purposely made a false allegation of rape, she needs to go to prison for TWICE as long as [Winston would have].”<sup>136</sup> Tweets also threaten Patrick Kane's accuser: “To the gold digger who falsely accused Patrick Kane of rape. Hope you get hung bitch,” and observe that the penalty for false rape accusations should be rape, noting, “she needs be gangbanged.”<sup>137</sup> Another Tweet notes of

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136. Although, in its current iteration, West's *Gold Digger* seems to be a relatively light-hearted romp through the socio-legal pitfalls of contemporary relationships, the original version, available online, is less jovial. In a 2003 video from the Second Annual Dynamic Producer Conference with John Legend, West sings: “On their 18th birthday he found out it wasn't his/He killed that bitch/They gave him 25 years, 25 years, yeah yeah/ . . . Now get down, go ladies . . .” *Kanye West & John Legend Perform the Original 'Gold Digger' in 2003!*, CLIPCARTEL, <http://www.clipcartel.com/Kanye-West-John-Legend-Perform-the-Original-Version-of-Gold-Digger-in-2003-video.10702.html> [<http://perma.cc/NLU3-3SFY>].

137. One Chicago reporter describes having been forced to stay home from work based on the number and extent of violent threats she received on Twitter as a result of covering the accusations against Kane. She noted that, in addition to being labeled a “skank” on the site, she also received Tweets describing in detail her daily routine and threatening physical violence against her. Juliet Spies-Gans, *Female Reporters Threatened with Violence for Reporting on Patrick Kane Allegations*, HUFFINGTON POST (Sept. 25, 2015, 6:40 PM), [http://www.huffingtonpost.com/entry/julie-dicaro-twitter-threats-patrick-kane\\_us\\_5605b532e4b0af3706dc5210](http://www.huffingtonpost.com/entry/julie-dicaro-twitter-threats-patrick-kane_us_5605b532e4b0af3706dc5210) [<http://perma.cc/YVA2-DHB4>]. Similar online trolling of women has occurred in several recent incidents, specifically “Gamer Gate,” during which

Roethlisberger's accuser, "Ben Roethlisberger is a 2x Superbowl Champion, Pro-Bowl NFL Quarterback. He doesn't need to rape anyone. I hope that slut dies." Many call for civil sanctions: "I want the Tallahassee Police Department to sue [the accuser] . . . for slander. THAT. WOULD. BE. GLORIOUS" and "jameis winston finna sue the white girl who accused him of rape for \$7 million lmao hahahaha teach these hoes false rape ain't no game then." Some conflate civil and criminal law: "HA HA lack of DNA evidence on the bitch claiming Patrick Kane raped her. Those type of women should be thrown in prison for defamation." One plans to take matters into his or her own hands, classifying Janay Palmer as "on my Whoop That Trick list. Sorry NOT Sorry." The theme of vengeance even is interwoven among "jokes" Tweeted about Janay Palmer. For example, in 2015, a debate regarding the color of a particular dress captivated many on social media. One re-Tweeted joke connects the year's big media events: "The dress is black and blue as Janay rice in an elevator."

Tweets invoking the specter of false allegations reinforce hegemonic masculinity,<sup>138</sup> by reframing the alleged victim as agent and the alleged perpetrator as target. Tweets observe, "I feel bad for Patrick Kane he's the face of National team and top player in NHL. Signs huge deal then some gold digger makes shit up. . . ." A Tweet discussed above suggests about Kane, "She raped him." Others note, "Ray Rice is the true victim, if it was bad enough she woulda left. #GoldDigger," and they inquire, "Crazy thought. What if Jameis Winston is innocent . . . Who is the victim now?" A fan decries, "It's sad that some pathetic girl would claim rape just to get money out of Pat Kane and now his entire career is ruined . . . #FreeKaner." A popular meme emphasizes the player's innocence by superimposing Kane's face on a painting of Jesus Christ. Others describe the accusers as "throwing a case" at a celebrity or "trying to bring a brother down." With this shift in attribution of power, the accuser's character is problematized to a greater extent than alleged perpetrator's actions.<sup>139</sup> As the "#IStandwith88" campaign defending Kane suggests, in the case of athletes in particular, accusations against a particular player may be perceived to signal an attack being waged against an

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death and rape threats caused cultural critic Anita Sarkeesian to cancel public appearances due to fear of physical harm. Nick Wingfield, *Feminist Critics of Video Games Facing Threats in 'GamerGate' Campaign*, N.Y. TIMES (Oct. 15, 2014), [http://www.nytimes.com/2014/10/16/technology/gamergate-women-video-game-threats-anita-sarkeesian.html?\\_r=2](http://www.nytimes.com/2014/10/16/technology/gamergate-women-video-game-threats-anita-sarkeesian.html?_r=2) [<http://perma.cc/N26Z-GNXR>].

138. For a nuanced discussion of the definition and operation of hegemonic masculinity, see R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC'Y 829, 832–33 (2005).

139. Edgar, *supra* note 11, at 142.

entire group. Tweets remark, “Raise your hand if you’ve ever felt personally victimized by #PatrickKane accuser. [multiple hand-raising emojis]” and “The city of Chicago stands with patrick Kane.”

The rationale for perceiving criminal law as on the side of accusers—and accusers as “out to get” innocent athletes—stems from a variety of competing narratives interwoven into the United States’ socio-legal fabric. Sanday attributes the tendency to protect alleged celebrity perpetrators of rape to the idea that “[w]e are a nation that thirsts for male heroes and thrives on warrior dreams . . . .”<sup>140</sup> “American identity [is] . . . linked with masculine heroism.”<sup>141</sup> “The rugged, solitary man, who is larger than life, questing for glory . . . .”<sup>142</sup> In this context, celebrities’ successes most often are attributed to individual action—grit—rather than luck, suggesting that social mobility is gained via talent and hard work.<sup>143</sup> A trained athlete may be viewed as putting in blood, sweat, and tears, while a plaintiff who secures economic benefit via the civil system is seen as attempting to achieve success without effort. As evidenced by the *Playboy* gold digger article, and by Tweets referencing claims as part of a “feminist agenda,” there is also a collective fear that, when the masculinity of celebrities is threatened by the feminine—or feminist—charge of rape, the masculinity of every man is also threatened. Dowd et al. observe that, while men and boys may have a collective privilege, like their female counterparts, they “operate in a gendered context and collectively experience . . . harm as a result of the social construction of what it means to be a boy or a man.”<sup>144</sup> One female victim’s achievement of a “come up” may be perceived as indicative of a larger, systemic shift or bias. Although there has been no comprehensive study done on prosecution rates of high-profile athletes versus the rest of the population, initial studies suggest that college

140. SANDAY, *supra* note 31, at 49.

141. MONICA J. CASPER & LISA JEAN MOORE, MISSING BODIES: THE POLITICS OF VISIBILITY 133 (2009).

142. *Id.*

143. Rebecca Tiger, *Celebrity Gossip Blogs and the Interactive Construction of Addiction*, 17 NEW MEDIA & SOC’Y 340, 343–44 (2015).

144. Nancy E. Dowd, Nancy Levit & Ann C. McGinley, *Feminist Legal Theory Meets Masculinities Theory*, in MASCULINITIES AND THE LAW 25 (Frank Rudy Cooper & Ann C. McGinley eds., 2012). Others attribute the defense of celebrities accused of sexual violence to morally loftier ideals. Boisseau argues, consonant with the Blackstonian formulation, that,

[f]alse accusations provide the basis for one of the most poignant narratives of injustice because we have the sense that someone punished for a specific, discrete act that they did not commit is entirely innocent, not only of that discrete act but in some sort of existential sense of the word.

Tracey Jean Boisseau, *Response to “The Duke Rape Case Five Years Later: Lessons for the Academy, the Media, and the Criminal Justice System” by Dan Subotnik*, 45 AKRON L. REV. 923, 923 (2012).



athletes are significantly under-prosecuted for a large range of crimes compared to similarly situated, non-athlete counterparts.<sup>145</sup> Studies suggest this under-enforcement is due to a variety of factors, including prompt attention by attorneys, confusion as to how to proceed when university authorities are involved, and intimidation of witnesses.<sup>146</sup> Nonetheless, there is a pervasive idea among commenters that, if athletes are “targeted” for prosecution it will not bode well for the average Joe. As a comment warns, “ANY bitch u fucked can get out the bed rite after and fry u for rape. Please don’t act like Jameis is diff than anybody else.”

As the victim/perpetrator roles are reversed, attention is drawn away from the alleged crime and toward its aftermath. Although recent incidents of interpersonal violence involving celebrities sometimes seem to have taken over the nightly news, in fact, victims coming forward to report sexual assaults remain few and far between, and the likelihood of receiving a large financial payout as a result of suffering a sexual assault remains rare.<sup>147</sup> By categorizing the parties to publicized incidents as deviating from everyday, honest victims, any crimes that may have occurred become characterized as exceptional and unusual rather than everyday dangers that are part of the fabric of society. On the books, laws may be more inclusive of women’s realities than ever before; however, Adrian Howe warns that, to be acknowledged as legal claims, harms must be perceived as socially created and not particular to individuals.<sup>148</sup> Debates as to whether the accuser is a “slut,” a “bitch,” or a “ho,” focus on the personal characteristics of the party and serve to characterize incidences of rape and sexual assault as individual mistakes of judgment rather than societal crime problems.<sup>149</sup>

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145. Paula Lavigne, *Lawyers, Status, Public Backlash Aid College Athletes Accused of Crimes*, ESPN (June 15, 2015), [http://espn.go.com/espn/otl/story/\\_id/13065247/college-athletes-major-programs-benefit-confluence-factors-some-avoid-criminal-charges](http://espn.go.com/espn/otl/story/_id/13065247/college-athletes-major-programs-benefit-confluence-factors-some-avoid-criminal-charges) [<http://perma.cc/44BS-L4QE>].

146. *Id.*

147. *Statistics, RAPE, ABUSE & INCEST NAT’L NETWORK*, <https://rainn.org/statistics> [<http://perma.cc/55MN-P3Y9>]; see Brian Palmer, *Is \$45,000 a Lot for a Sexual Harassment Settlement?* SLATE (Nov. 9, 2011, 6:02 PM), [http://www.slate.com/articles/news\\_and\\_politics/explainer/2011/11/herman\\_cain\\_settlement\\_what\\_s\\_the\\_going\\_rate\\_for\\_sexual\\_harassment\\_claims\\_.html](http://www.slate.com/articles/news_and_politics/explainer/2011/11/herman_cain_settlement_what_s_the_going_rate_for_sexual_harassment_claims_.html) [<https://perma.cc/DK3L-7Y2G>].

148. Adrian Howe, *The Problem of Privatized Injuries: Feminist Strategies for Litigation*, in *AT THE BOUNDARIES OF THE LAW* 148, 162 (Martha Albertson Fineman & Nancy Sweet Thomadsen eds., 1991).

149. *Cf.* Brenner, *supra* note 42, at 507 (describing acts of sexual violence that have not been traditionally labeled as rape, including the rape of enslaved women); MacKinnon, *supra* note 135, at 8 (discussing rape in the larger context of human rights violations); Moore, *supra* note 34, at 453 (noting that victims of acquaintance rape are dismissed as not having experienced “real” rape).

In the Twitterverse, whether an accuser is an unwitting, “honest” victim or an ubër-logical, manipulative “bitch” hinges on her interaction with the legal sphere. The expectation is that, if she has experienced a “real” rape or assault, the survivor will be paralyzed by trauma, the story will be straightforward, and criminal charges promptly will be filed. In cases of rape, the time to fight back is during the crime itself, not later via the legal system. Accusers who behave otherwise are no longer identified as victims, but predators. Observations such as, “[i]f she really was raped then by no means is she a slut . . . but I don’t think she was so in my eyes she’s just a slut,” echo a history of exclusion of nonconforming parties from rape law and suggest a continued belief that, based on status, certain persons cannot be raped.

The expectations of online commenters that victims conform to a specific, honest victim script suggest that, although rape and sexual assault laws have undergone significant reforms, there remains a long way to go. Public impressions of rape law are haunted by fears of false accusations and gendered expectations of perpetrators and victims. The severe penalties that some advocate be administered to false accusers fit into the historical fear of blackmail in rape prosecutions, until recently entrenched in law by practices such as the use of the *Hale* instruction. The harsh nature of penalties exacted against the accused coupled with the cash value of women’s chastity and fidelity meant that each accusation was accompanied by a threat of the transfer of power from accused to accusers and a similarly strong incentive to protect the status quo. Today, Twitter users’ discussion of false accusations fits into this paradigm of victim blaming; accusers’ behavior is scrutinized as closely as if they were wearing the “wrong outfit,” walking alone in a “bad area,” or, to reach further back, casting spells against townspeople. As I discuss in the following section, these discourses taking place on Twitter are not dissimilar to scholarly discussions about not only rape and sexual assault law but access to justice more generally.

## VI. TWITTER WARS: THE COMMODIFICATION OF RAPE AND THE REDISTRIBUTION OF LEGAL POWER

*“[G]ot one of yo kids got you for 18 years”*<sup>150</sup>

The discomfort with victims seeking redress in tort, as expressed on Twitter, suggests that society has yet to come to agreement regarding the nature of the harms wrought by gender-based violence, whether such harms are compensable, and if victims personally are

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150. *Gold Digger*, *supra* note 1.

deserving of compensation. As discussed above, it is only recently that incidents of marital rape, rape of a sex worker, or rape of a long-term partner have been recognized as inflicting legally cognizable harms. Many actions that inflict actual harms on women, such as catcalling, certain forms of harassment, or intra-familial violence, continue to be deemed “private” problems that are unrecognized in the legal sphere.<sup>151</sup> This distinction between private and social injury leads to confusion—even among victims—as to whether infliction of some injuries is criminal, let alone whether those injuries should be actionable in tort.<sup>152</sup>

The pervasive unfriendliness toward civil claimants expressed via Tweets conveys a concern that lawsuits for having suffered a rape or sexual assault somehow are commodifying rape.<sup>153</sup> As one Tweet notes, “35 women are not Cosby’s victims. They’re the women who sold sex to Cosby. Sell your body for sex, lie to make money, eaassyyyyy.” Another notes, “Sounds like Patrick Kane bought himself a one way ticket to shakedown city.” A third: “Man they tryna railroad Jameis Winston dawg.” The connection between rape and the assignment of a hierarchy of economic value to women’s bodies is, of course, not new. Historically, rape was treated as a crime against property, with the harm resulting not from the physical or emotional trauma inflicted on the victim but the devaluing of the victim’s body in the eyes of (male) others.<sup>154</sup> Although in contemporary jurisprudence rape no longer is explicitly linked to theories of property, courts and scholars have not reached consensus on the actual harms wrought by sexual violence.<sup>155</sup> Some, including Jed Rubenfeld, advocate continuing a version of property-based theory of harm, arguing that rape violates self-possession.<sup>156</sup> Others seek to broaden legal recognition of the harms associated with gender-based violence, arguing for criminalizing violation of sexual agency

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151. *Cf.* Howe, *supra* note 148, at 157 (calling for feminist scholars to demonstrate the law’s gender bias); MacKinnon, *supra* note 135, at 14 (characterizing rape as a human rights issue).

152. *See* Howe, *supra* note 148, at 149; Megarry, *supra* note 15, at 49.

153. Lininger, *supra* note 34, at 1587.

154. CAROL E. TRACY, TERRY L. FROMSON, JENNIFER GENTILE LONG & CHARLENE WHITMAN, *RAPE AND SEXUAL ASSAULT IN THE LEGAL SYSTEM 1* (2012) (observing that “[r]ape originated as a crime against property, not a crime against a person. As such, the crime related to patriarchal inheritance rights and a female’s reproductive capacity and therefore was limited to a crime against unmarried virgins and included only forcible penile/vaginal penetration. These laws have evolved but retain vestiges of their archaic origins. The result is inconsistency and variability in sex crime terminology and elements from state to state as well as anomalies.”).

155. *See* Jed Rubenfeld, *The Riddle of Rape-by-Deception and the Myth of Sexual Autonomy*, 122 *YALE L.J.* 1372, 1392 (2013).

156. *Id.* at 1425–26.

and autonomy.<sup>157</sup> As Tweets demanding that victims show their bruises attest, the debates over the actual injury caused by sexual assault and rape are not purely academic. Conversations among the public at large mirror those in academic scholarship; if the resulting harm is not physical, Tweets ask, “Then how does one appropriately compensate the victim?”

Tweets referring to women who file civil suits against alleged celebrity attackers as “greedy,” “selfish,” or “gold digger hoes” reflect both confusion about the emotional or psychological injuries caused by sexual assault or rape and discomfort with victims receiving financial rewards for violations of sexual or bodily autonomy or integrity. For commenters, the idea that a victim might receive a financial benefit, or “come up,” after sexual activity appears to come uncomfortably close to a sex for sale arrangement, even if that sexual encounter was not at the outset consensual. Survivors who proactively engage the civil system challenge historical assumptions that victims of rape are irreparably passive or broken.<sup>158</sup> If a victim has overcome the trauma of sexual assault, then, users ask, “How and why should she be compensated?” The terms “hooker,” “whore,” and “ho” are used casually to delimit women across the internet, but, in the context of discussions about sexual assault, the term “whore” is anything but a metaphor. The idea that a sexual assault survivor may receive economic advancement as a result of anything over and above documented, physical harm triggers fears that the accuser has purposefully engaged in sexual relations in order to blackmail an unwitting partner.<sup>159</sup> Even in the case of Janay Palmer, rendered unconscious after her fiancé’s attack, users’ characterizations of the victim as “kinky” question whether she invited or even enjoyed the experience.

The suggestion that accusers are “fame whores” “throwing a case” at celebrities not only implies that the accuser is selling her body but also that it will be strikingly easy for her to succeed. The widespread classification of alleged victims as able to “game the system” belies the fact that rape results in fewer criminal complaints,

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157. Deborah Tuerkheimer, *Sex Without Consent*, 123 YALE L.J. ONLINE 335, 352 (2013).

158. The assumption that women who suffered rape were “damaged goods” was something then—ACLU attorney Ruth Bader Ginsburg questioned in the institution’s amicus brief in *Coker v. Georgia*, 433 U.S. 584 (1977). *Coker v. Georgia—Ginsburg Revisits Her Brief*, AM. L. & LEGAL INFO., <http://law.jrank.org/pages/23555/Coker-v-Georgia-Ginsburg-Revisits-Her-Brief.html> [<http://perma.cc/Y7WR-9SZX>].

159. This societal discomfort is mirrored in the legal sphere. Lininger, for example, argues that courts continue to allow “scathing impeachment of accusers” who bring coterminous civil and criminal actions, indicating that members of the judicial system are uncomfortable with civil suits for rape. Lininger, *supra* note 34, at 1560.

arrests, and prosecutions than any other crime in the United States.<sup>160</sup> These comments fly in the face of numerous studies finding that victims of rape—and, particularly, acquaintance rape—are the least likely victims of violent crime to report the incidents to authorities.<sup>161</sup> They also convey a misunderstanding about law on the books. Although Tweets frequently reduce the determination of whether the crime of rape has occurred to a question of consent, in reality, about half of the states in the United States still maintain some force requirement.<sup>162</sup> Further, although civil suits in response to rape have grown in the past several years, such suits remain extremely rare.<sup>163</sup> Tweets suggest that, among the American public, there is an over-estimation of the success of the reforms of the feminist movement. There also appears to be a lack of understanding about the processes by which victims of gender-based violence engage with the legal system, with Twitter users perceiving the law as more accessible than it actually is.

Although expressed in a particularly demeaning or insulting manner, Twitter users' disdain for sexual assault accusers who sue their alleged attackers is not unique. Engel, for example, critiques a widespread belief that civil plaintiffs are rational, profit maximizing actors, noting that "injury victims are not like consumers who coolly and dispassionately choose among different brands of toothpaste. Rather, they are . . . frail and fallible beings . . . [who] may not yet have recovered from a physiologically, emotionally, and psychologically devastating experience."<sup>164</sup> As Engel observes, opinions about those who engage the law reflect social boundaries and in-group and out-group status.<sup>165</sup> Legal claims today arise in the shadows of the overarching tort reform movement, which has reframed public perceptions of claimants across the spectrum of personal injury suits.<sup>166</sup> In recent years, the public has been privy to the

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160. Krista M. Anderson, *Twelve Years Post Morrison: State Civil Remedies and a Proposed Government Subsidy to Incentivize Claims by Rape Survivors*, 36 HARV. J. L. & GENDER 223, 225 (2013); see also Edgar, *supra* note 11, at 139.

161. Fewer than 20% of rapes are reported to the police, making rape the least reported violent crime. Anderson, *supra* note 160, at 231.

162. John F. Decker & Peter G. Baroni, "No" Still Means "Yes": *The Failure of the "Non-Consent" Reform Movement in American Rape and Sexual Assault Law*, 101 J. CRIM. L. & CRIMINOLOGY 1081, 1083, 1085–86 (2011).

163. Anderson, *supra* note 160, at 226; Lininger, *supra* note 34, at 1615.

164. Engel, *Explaining the Infrequency of Claims*, *supra* note 94, at 301.

165. Engel, *Insiders, Outsiders, and Personal Injuries*, *supra* note 10, at 580.

166. For example, Bloom critically evaluates personal injury lawsuits, arguing that, in order to achieve the goal of compensating disabled victims, such lawsuits convey the potentially harmful message that "disability is tragic." Anne Bloom, *The Radiating Effects of Torts*, 62 DEPAUL L. REV. 229, 242 (2013). McClellan et al. identify a widespread and

details of several public lawsuits and numerous large settlements in which sexual assault victims sought or received compensation from deep-pocketed third parties, including universities, religious organizations, and the United States government.<sup>167</sup> Mendlow argues that tort suits today may be perceived as a form of “institutionalized revenge,” driven by the assumption that plaintiffs bring such suits to inflict harm on tortfeasors or to achieve personal gain rather than to be compensated for injury or made whole.<sup>168</sup> As Howe observes, and as the United States tort system recognizes with its “eggshell skull” admonition, parties do not all feel injury the same way.<sup>169</sup> She writes,

The success of the tort ‘reform’ movement . . . has hinged upon this idea that there are greedy or drama-seeking parties who feel injuries more acutely than others. Punitive damages, then, are characterized as serving the special interests of a few, demanding plaintiffs rather than penalizing bad actors on behalf of the collective good.<sup>170</sup>

As Engel compellingly articulates, “[i]njuries are not objective facts; rather, they are events that humans perceive and interpret within ideational frameworks that reflect a deep interaction between self and culture . . . . [A]lthough nearly all humans are susceptible to pain, they experience and interpret it differently in different social and cultural contexts.”<sup>171</sup> That the tort system allocates power away from the state and onto individuals to reallocate resources may arouse suspicion of dishonest motives not only in sexual assault cases but

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mistaken perception among medical professionals that litigants in malpractice cases are more likely to come from low-income families, impressions that lead to differential treatment of poor clients. Frank M. McClellan, Augustus A. White III, Ramon L. Jimenez & Sherin Fahmy, *Do Poor People Sue Doctors More Frequently? Confronting Unconscious Bias and the Role of Cultural Competency*, 470 *CLINICAL ORTHOPAEDICS & RELATED RES.* 1393, 1393 (2012).

167. See, e.g., Jake New, *Major Sexual Assault Settlement*, *INSIDE HIGHER ED* (July 21, 2014), <https://www.insidehighered.com/news/2014/07/21/u-connecticut-pay-13-million-settle-sexual-assault-lawsuit> [<http://perma.cc/58NA-83PY>]; Cathy Lynn Grossman, *Clergy Sex Abuse Settlements Top \$2.5 Billion Nationwide*, *USA TODAY* (Mar. 13, 2013), <http://www.usatoday.com/story/news/nation/2013/03/13/sex-abuse-settlement-cardinal-roger-mahony/1984217> [<http://perma.cc/ANF9-588K>]; Rick Daysog, *Military Pays to Settle Sexual Misconduct Claims by Civilian Employees*, *HAW. NEWS NOW* (May 13, 2014, 11:27 AM), <http://www.hawaiinewsnow.com/story/25499605/exclusive-sex-har> [<http://perma.cc/VKW6-4LSE>].

168. Gabriel Seltzer Mendlow, *Is Tort Law a Form of Institutionalized Revenge?*, 39 *FLA. ST. U. L. REV.* 129, 132, 134 (2011) (arguing that, other than punitive damages, “tort remedies . . . might diminish a defendant’s welfare, but they do not thereby cause her harm”).

169. See Howe, *supra* note 148, at 164.

170. *Id.* at 162.

171. Engel, *Explaining the Infrequency of Claims*, *supra* note 94, at 319.



across all personal injury claims.<sup>172</sup> Such suspicion, however, may be exacerbated, in discussions of celebrity sexual assault cases, where claimants do not have the “status shield” of celebrity and historically have been vulnerable to stigmatization and exclusion.<sup>173</sup>

Although it is in cases of rape and sexual assault where victims’ narratives most visibly are interrogated, researchers find that persons who suffer all sorts of harms have complex goals in resorting to the justice system.<sup>174</sup> Felstiner et al. observe that most injuries do not become legal disputes; in order for an injury to become a civil legal dispute, the plaintiff must undergo a process of “naming, blaming, and claiming.”<sup>175</sup> Morgan similarly finds civil plaintiffs motivated by intertwined desires, including not only the hope of profit but also the assertion of dignity and self-worth.<sup>176</sup> For example, a driver who is a defendant in a personal injury suit may at once wish to minimize her financial responsibility for the incident and also believe that she may be at fault or that the plaintiff should be compensated.<sup>177</sup>

Across criminal cases, victims’ objectives in pursuing charges, too, are complex and ambivalent; a party may file criminal charges “only intend[ing] to have the arrested person removed from the house . . . ,”<sup>178</sup> or may resort to the criminal justice system because of the limited use of restorative justice practices,<sup>179</sup> and the expense of civil legal assistance.<sup>180</sup> Victims of myriad crimes choose to drop charges once they fully understand the consequences of a criminal proceeding for themselves and for the perpetrator.<sup>181</sup> It is not just for rape victims, but for anyone engaging legal systems and processes that “disputing is a *complicated* process involving ambiguous behavior, faulty recall, uncertain norms, conflicting objectives, inconsistent values, and complex institutions.”<sup>182</sup> For a person who perceives he or she has suffered a harm, the motive in filing a criminal complaint versus a civil suit may be the same—achieving justice by whatever means possible.<sup>183</sup> No matter the crime, victims’ conceptions of “justice” may be less than clear at the start and may change over time.

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172. Mendlow, *supra* note 168, at 129.

173. Salter, *supra* note 15, at 233–34.

174. Thomas, *supra* note 127, at 250–51; *see also* Felstiner et al., *supra* note 127, at 638; Morgan, *supra* note 43, at 85.

175. Felstiner et al., *supra* note 127, at 635–36.

176. Morgan, *supra* note 43, at 67–68.

177. Felstiner et al., *supra* note 127, at 638.

178. Thomas, *supra* note 127, at 267.

179. *See id.* at 274.

180. *See id.* at 269 n.123.

181. *See* Felstiner et al., *supra* note 127, at 637–38.

182. *Id.* at 638.

183. *See* Lininger, *supra* note 34, at 1563–64.

Although false accusations may be no more likely in the case of rape or sexual assault in comparison to other crimes,<sup>184</sup> and although mixed motivations are present across crime victims, there continues to be a particular focus on victims' character in rape prosecutions. More than twenty years ago, during Mike Tyson's sexual assault trial, witnesses testified that the alleged victim, prior to the assault, had "talked about Tyson's money."<sup>185</sup> In their opening arguments, the defense pointed out that she could become very rich via a civil suit.<sup>186</sup> These same comments resonate throughout Ben Roethlisberger's civil suit, with his lawyer characterizing the plaintiff as both "disturbed and calculating."<sup>187</sup> Jameis Winston's attorney, similarly, notes of his civil trial: "This *stunt* was expected."<sup>188</sup> The first page of Winston's counterclaim for defamation describes his accuser as engaging in a game in which she is "0 for 6" in her claims against the player. The complaint describes that the alleged victim has been successful in one major area: "She has mounted a false and vicious media campaign to vilify Mr. Winston with the objective of getting him to pay her to go away. [The alleged victim] is motivated by the most insidious objectives—greed."<sup>189</sup> That they are engaged immediately and directly in the pleadings indicates that the characterization of a potential survivor as a gold digger is not merely an insult. These conceptions continue to contribute to the development of reasonable doubt in rape cases.<sup>190</sup> Lininger describes how "[e]vidence of parallel civil litigation inflames jurors' instinctive prejudice in much the same way that evidence of prior sexual history inflames prejudice against accusers."<sup>191</sup> Tweets demanding that sexual assault accusers conform to a specific honest victim script indicate that, in an environment of widespread distrust of personal injury suits in general, victims of sexual assaults may be held to an even higher standard than other claimants. The "blackmail myth" that historically has

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184. These statistics are widely disputed. In 1996, Sanday noted that false complaints for rape were around two percent—the same as for other crimes. SANDAY, *supra* note 31, at 30. Other research places the rate of false reporting of crimes of sexual violence as high as 50%. Tracey Owens Patton & Julie Snyder-Yuly, *Any Four Black Men Will Do: Rape, Race, and the Ultimate Scapegoat*, 37 J. BLACK STUD. 859, 865 (2007).

185. SANDAY, *supra* note 31, at 235.

186. *Id.*

187. *Steelers QB*, *supra* note 66.

188. Rachel Axon, *Jameis Winston's Attorney Calls Sexual Battery Lawsuit "A Stunt"*, USA TODAY (Apr. 17, 2015, 12:27 PM), <http://www.usatoday.com/story/sports/ncaaf/2014/04/17/jameis-winstons-attorney-calls-sexual-battery-lawsuit-a-stunt/25927709> [<http://perma.cc/DAC3-G5SQ>] (emphasis added).

189. *Jameis Winston Files Counterclaim Against Sex Accuser . . .*, NBC NEWS (May 9, 2015, 4:00 AM), <http://www.nbcnews.com/news/us-news/jameis-winston-files-counterclaim-against-sex-accuser-erica-kinsman-n356391> [<http://perma.cc/CQ57-WWWP>].

190. Waterhouse-Watson, *supra* note 130.

191. Lininger, *supra* note 34, at 1564 (internal footnote omitted).

haunted rape claimants continues to frame discussions about sexual violence. In the context of severely underreported crimes of rape and sexual assault, the intensely public condemnation of accusers on social networking sites also may have the material consequence of further stigmatizing victims and discouraging reporting. As Engel observes, relatively few injured parties resort to the civil system; the decision to “lump it,” or walk away from a potentially actionable claim, tends to occur when victims feel disempowered, or when, based on their particular cultural environment, they are not encouraged to perceive particular harms as a legally cognizable injuries.<sup>192</sup> As Engel writes, “socially marginalized or disempowered persons who fear personal or social consequences may avoid claiming even when they perceive themselves to be the victims of injustice . . . .”<sup>193</sup> Perhaps tellingly, the Affidavit Declining Prosecution filed by the accuser in Patrick Kane’s case cites personal and familial stress as a reason for no longer cooperating in the case.<sup>194</sup>

As envisioned by many Twitter users, in the adversarial arena of the law, a person’s gender is more predictive of the likelihood of success than his or her socio-economic status. As *Playboy* magazine noted, “[E]ven if the wife is a ‘trollop’ . . . or ‘a spendthrift’ . . . the judge [usually] grants ‘the little missus a healthy stipend . . . .’”<sup>195</sup> Users display little sympathy for women who “cry rape from a star” because, today, “All it takes is one thirsty bitch to cry rape before a perfectly innocent man gets “rapist” attached to their name. #Kobe #BigBen #Winston.” As one user puts it, “They tried to Kobe Jameis Winston . . . Every bitch wanna cry rape when it involves a sports star.” Another describes what seems to be an age-old avenue for achieving financial or social success: “Ahh old scumbag woman have sex with a guy and then say its rape when he becomes famous trick. Not this time bitch #FamousJameis #Heisman.”

A commonality across recent accusations is that the wealthiest parties are recast as the victims, and the party with the least access to resources, the abuser, a narrative that suggests it is the dominant groups within society that retain the resources to “shape . . . cultural images.”<sup>196</sup> As Boisseau observes, it is likely that there are “powerful or at least privileged men who have been brought low . . . [and] made to respond to awkward questions and made to endure scrutiny

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192. See Engel, *Explaining the Infrequency of Claims*, *supra* note 94, at 320, 323.

193. *Id.* at 323.

194. Sarah Connors, Katie Esmonde, Achariya Rezak, Emily Wang & Ari Yanover, *The Patrick Kane Case Shows How Much Power Fans Wield in the Way Athlete Investigations Are Handled*, SB NATION (Nov. 4, 2015, 3:55 PM), <http://www.sbnation.com/2015/11/4/9669752/patrick-kane-accuser-nhl-and-rape-culture> [<http://perma.cc/UGA3-346F>].

195. SANDAY, *supra* note 31, at 150.

196. RIDGEWAY, *supra* note 9, at 67.

injurious to their dignity due to the unfair and unsubstantiated accusation of a . . . subordinate woman of some sort.”<sup>197</sup> However, naming these men, who have been divested of liberty and property, is a challenging proposition.

Further, on Twitter, not only do accusers of celebrities face the stigma of being labeled “bitch,” “ho,” or other gendered terms, they also face very real threats of physical violence as they attempt to engage the legal system to resolve their claims. The widespread and public approbation of those who accuse public figures may provide a visceral object lesson for victims considering coming forward in an everyday context.

It is important to note, as I discuss elsewhere,<sup>198</sup> that it is not only accusers who are expected to conform to specific norms in engaging law in the aftermath of an alleged rape. Public opinion of alleged perpetrators, too, is influenced by the manner in which they reckon with the allegation that they have committed a crime. In the eyes of the armchair quarterbacks who closely follow the litigation game, alleged perpetrators are not free to behave in any way they please. A refrain in Kanye West’s song *Gold Digger* is: “If you ain’t no punk, holla We Want Prenup!”<sup>199</sup> The phrase implies that those who do not engage the legal mechanisms available to them to ward off potential gold diggers are “punks.” Like “gold digger,” “bitch,” and “ho,” “punk” is a gendered term, originating in prisons and referencing to the “bottom” in a coercive sexual relationship.<sup>200</sup> In other words, those who are “targeted” by ambitious women and do not use law as a shield are themselves analogized to victims of sexual assault. For these men, the roles of victim and perpetrator fully have been transposed, and a new relationship is forged where the former victim is now, at least legally speaking, in the dominant position and the alleged perpetrator is a feminized “punk.”

Comments on Twitter abound reflecting the sentiment that, if they are actually innocent, the accused will deploy any and all legal mechanisms available to defend their honor and exact punishment against their accusers. Tweets provide copious legal advice: “Famous Jameis should sue that bitch, her family, and the police”; “Jameis’s next move is to sue the fuck out of that bitch for defamation and slander”; “So two white women can slander Bill Cosby and it’s okay . . . and yes it’s slander . . . I’d press charges!!!”; “Fight the

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197. Boisseau, *supra* note 144, at 930–31.

198. Francine Banner, *Armchair Legal Quarterbacks: Intersections of Athletics and Rape Metaphor on Social Networking Sites* (in progress).

199. *Gold Digger*, *supra* note 1.

200. Mary Anne Franks, *How to Feel Like a Woman, or Why Punishment Is a Drag*, 61 UCLA L. REV. 566, 572 n.17 (2014).

slander, Ben!"; "My prediction is that Jameis Winston uses the Kobe Bryant strategy. Give the bitch a couple mil, shave his head, and change his jersey #"; "2015 AND THE BILL COSBY SLANDER CONTINUES. I HOPE HE BEATS EVERY SINGLE ONE OF THE ALLEGATIONS AND SUES EM BACK FOR TRAUMA"; "Gloria Allred . . . should probably be sued for slander by Bill Cosby"; "Winston lawyers need to go for slander and defamation of character"; and "I would love for Winston to sue for slander/libel. Only thing that ends it." Conflating criminal and civil law, a Tweet notes, "Why doesn't the girl get charged with slander in Winston's case. Tarnished his name because he's a stud and you're a dum bitch #checkplease." Another bemoans, "Ben Roethlisberger QB for Pittsburgh Steelers settles Lake Tahoe sex scandal. That is a sign of guilt . . . how did he get away with twice . . ." For the accused, the expectation that innocent parties will engage law smoothly as a shield envisions a universe in which public figures are as protected from untoward attacks as fantasy football fans would desire them to be. The assumption that law is easy to use as a sword or as a shield harms both accusers and the accused by ignoring that lawsuits are costly and time consuming. The ideas that a victim can easily "throw a case" at an offender or that a defendant is a "punk" if he does not counter-sue are contrasted by the Winston cases themselves, which may not reach federal court until 2017.<sup>201</sup>

Although not always explicit, another vital element underlying many of the Tweets discussed herein is the way in which race and ethnicity influences public perceptions of claimants and perpetrators. A very small sample of Tweets regarding recent accusations against Bill Cosby reveals an astute public consciousness of and anger about the disproportionate impact of criminal justice practices on African-American men and the discriminatory manner in which rape laws historically have been applied in the United States. Just a few of the comments referencing rape law's horrific past include: "[F]ool! Cosby is Black. If he raped white women in the 60's and 70's, they would have hung him"; "Black ass Bill Cosby was raping white women in the '60s and '70s America and wasn't lynched? Get. The. Fuck. Outta. Here. With. That. Bullshit."; "U mean to tell me Bill Cosby was raping white women in the early 60s and 70s with impunity? They would have hoisted bill up from the finest oak tree"; "And they say Bill Cosby was rapin white women 50 years ago? Lmnfao somebody lying"; "i just saw on Facebook "they killed Emmett Till for whistling at a white woman you think they would let Cosby rape 20 white women"; and "So . . . Y'all really just gone

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201. Yasinskas, *supra* note 69.

believe that Bill Cosby, a negro, raped more than 5 WHITE women in the 50s and 60s and they just let him slide.”

Tweets in Winston’s case also clearly reference the race of alleged perpetrator or accuser, observing “[t]hat white girl couldn’t wait for Jameis Winston to go pro so she can get some money smdh”; “Jameis Winston CANNOT trust white girls when he’s in the league moving forward bruh”; “GUESS: it was a white girl!”; “That white chick out to get Jameis Winston [crying emoji] she will not stop until justice is served”; “[Y]ou SHOULD NOT fuck with white girls, they’re crazy & will claim rape on anyone, smh”; and “Jameis said no. White bitch said rape. End of story.” One asks Winston’s accuser, “Does To Kill a Mockingbird ring a bell? You should know better. Why advancing false narrative? Confused.” Some commenters borrow (or, perhaps, co-opt) this discourse, premised in historical discrimination against African-American men, to emphasize the extent to which white male athletes, too, are being targeted by false claims: “Can’t believe this bitch is trying to get my nigga Patrick Kane caught up and sent to jail! This bitch should be locked up for being a hoe . . .”

Cases such as that of Emmett Till and narratives like that of *To Kill a Mockingbird*, referenced by commenters, offer examples of the ways in which rape accusations and rape law “have been a means of exercising white power over black male bodies.”<sup>202</sup> While rape law functioned to exclude Black women as potential legal subjects, for Black men, as Angela Harris describes, “‘rape’ signified the terrorism of black men by white men, aided and abetted, passively (by silence) or actively (by ‘crying rape’), by white women.”<sup>203</sup> These comments highlight a public awareness that, historically, Black men have been treated as “rapist[s], or . . . potential rapist[s], or . . . rapist[s] in waiting,” regardless of their actions or intentions.<sup>204</sup> Capers uses the term “white letter law” to describe the “reallocat[ion of] . . . burdens of proof and persuasion” and racially motivated under- and over-prosecution of perpetrators in the context of United States rape laws.<sup>205</sup> He points out that it is not only women, but also Black men whose testimony has been excluded and systematically discredited in the criminal legal system.<sup>206</sup> Just as judicial and societal distrust of female complainants has not magically evaporated with the eschewing of *Hale* instructions, distrust of African-American men has not become obsolete with changes in law. While

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202. Brenner, *supra* note 42, at 523.

203. Harris, *supra* note 120, at 599.

204. Capers, *supra* note 40, at 1390.

205. *Id.* at 1349–50.

206. *Id.* at 1377.



the movement away from force requirements may have benefitted women as a group vis-à-vis men as a group, a standard based solely on consent may continue to prejudice Black defendants, particularly in cases involving cross-racial accusations.<sup>207</sup>

Leonard and King, who analyzed online comments regarding allegations against Kobe Bryant, observe that “every public act unfolds as an occasion for reconnecting race and sexuality, for destabilizing racial difference, and for reaffirming racial hierarchies.”<sup>208</sup> “Typically, when Black athletes do something wrong in public, they find themselves ensnared in . . . the White racial frame . . . consist[ing] of ‘stereotyped racial knowledge, racial images and emotions and racial interpretations’ along with ‘several “big picture” narratives . . . .’”<sup>209</sup> Many Twitter users display an awareness of the ways in which the media operate to frame African-American men as threats or thugs, and their comments seek to destabilize these misconceptions by comparing accusations against African-American male celebrities and professional athletes to the lynchings of the early to mid-1990s. Tweets describe, “#RayRice The Media is creating a ‘Lynch Mob’ atmosphere,” and ask, “[d]oes anyone else see how quick #America is to form a lynch mob mentality lately? Jesus.” One user describes “fascist lynch mob organizers in the media [who] claim to be acting on behalf of Jany.” These comments express a collective, societal fear that “race supersede[s] rape”—that regardless of the facts of the incident, Black men will pay the price.<sup>210</sup> One Tweet notes, “The only black men in America who got treated like rich white people by the police this year were Jameis Winston & Bill Cosby.”

In addition to recognizing the rampant discrimination that African-American men have faced and continue to face in the context of the criminal justice system, implicit—or, as often, explicit—in Tweets is a recognition of the White privilege that historically has inhered in making claims of sexual assault. Capers explains that, while rape is no longer formally treated as a crime against the property of fathers or husbands, the public outrage that emerges when there is a suggestion of interracial sexual assault, such as in the cases of Kobe Bryant or the Central Park jogger, suggests that there remains a sense of “trespass to a racial collective” when such crimes occur.<sup>211</sup> Twitter users observe, “I’m not defending Bill Cosby . . . but

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207. *Id.* at 1380–81.

208. David J. Leonard & C. Richard King, *Lack of Black Opps: Kobe Bryant and the Difficult Path of Redemption*, 35 J. SPORT & SOC. ISSUES 209, 211 (2011).

209. *Id.* (quoting J.R. FEAGIN, *THE WHITE RACIAL FRAME: CENTURIES OF RACIAL FRAMING AND COUNTER-FRAMING* 13 (2009)).

210. Patton & Snyder-Yuly, *supra* note 184, at 877.

211. Capers, *supra* note 40, at 1365.

too many white women accusers”; “I support Bill Cosby against the accusations of selfish white women”; “[T]he white women are a trip. Why are they attacking Bill Cosby for no reason. Why?”; “No love at all for Bill Cosby but—Criminologist: 90% of black men falsely accused of rape are accused by white women”; “they [hoes] all got together to plot on him”; and “The Jameis Winston case shows you exactly why you SHOULD NOT fuck with white girls, they’re crazy & will claim rape on anyone, smh.” Another Tweet about Winston’s alleged victim: “She played the ‘black men beat me over the head card.’”

Although, as I discuss above, many commenters single out individual accusers as solely responsible for targeting celebrities because they are “crazy,” “psycho,” or “out to get” particular persons, myriad others attribute women’s actions to the work of a group, agenda, or conspiracy. Not infrequently, what is characterized as the deliberate and calculated targeting of Black male athletes and celebrities by deploying law against them is attributed to the work of a “feminist agenda.” Tweets about the Winston accusations include, “Not all white people believe her: just the feminists”; “Predicting that #FSU will cave in to #feminist pressure”; and “Athletes, the Leftist/Feminist Machine is out for blood. Behave!” Within the 140-character limit Tweets articulate an awareness that United States history is replete with stories of White women allegedly raped by Black men that were manufactured in order to ensure the continued entrenchment of racial hierarchies and to preserve the elite, white, status quo. Users identify this practice, in which a “gendered hierarchy, based on White patriarchal dominance [exists], where one woman is protected over another.”<sup>212</sup>

The Tweets described in this Article clearly convey recognition of the continued existence of the stranger mythology in rape law and awareness about the ways the persistence of this mythology is dependent upon belief in the stereotypes of the thuggish Black male perpetrator. While commenters recognize the ways in which the stranger myth traditionally has operated to perpetuate harmful and inaccurate assumptions about Black men as a group, they are less likely to acknowledge how the stranger rape myth has served to delegitimize nonconforming victims, not only women of color but also women who were attacked by an acquaintance, drank before their attack, walked alone at night, or engaged in sex work. Tweets applying #cleatchaser or #puckslut, for example, or a comment reasoning, “[i]f she really was raped then by no means is she a slut . . . but I don’t think she was so in my eyes she’s just a slut,” suggest that, while

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212. Patton & Snyder-Yuly, *supra* note 184, at 876.

recognizing that rape myths exist, the public continues to consider survivors' sexual histories salient to sexual assault prosecutions.

In addition, the extent of Tweets referencing #feminism as responsible for targeting public figures in the context of rape claims warrants further exploration. On one hand, these comments indicate an awareness of the imbalances long inherent in prosecutions for rape and sexual assault, imbalances premised both on perceived dangerousness of perpetrators and perceived value of the bodies of victims. However, while numerous Tweets posit that a White feminist agenda is behind the pursuit of rape charges against (sometimes, but not always) Black male athletes, few question the role of White male power in the creation and maintenance of law and norms. In contrast, Tweets engage a false dichotomy positing feminism against anti-racism, asking “[s]o when does the conversation about Jameis switch from rape culture to the willingness of the public to condemn a black man of a false acc?”; and “[r]acism or war on women? Ok liberals, take your victim side”; and note “Jameis Winston is the victim of attempted EXTORTION”; Oldest trik in book #whitechicks #feminism #extortion.” The assumption underlying many Tweets, that women are a collective source of oppression of Black men, locates in (often, but not exclusively, white) female accusers an agentic competence that stands in contrast to a United States legal history founded upon excluding, doubting, and devaluing all women’s claims. Descriptions of female accusers as part of a “#feministmediamachine” or “feminist agenda” not only mischaracterize accusers as wielding more legal power than they actually do, but also fail to acknowledge that, although privileged in comparison to their African-American counterparts, white women historically were deployed as “markers in symbolic power plays” in debates between Black men and the White power structure.<sup>213</sup> In engaging an oppositional characterization that posits the interests of White women as opposite those of women of color, users engage what Fellows and Razack identify as “competing marginalities.”<sup>214</sup> Rather than acknowledging commonalities among historically disenfranchised groups, Tweets grasp at differences and rank accusers in a hierarchy of honest to dishonest, and perpetrators by guilt or innocence. Although White women as a group are privileged in comparison to African-American women, Tweets conflate the possession of individual advantage with the capacity to exercise group power and privilege. Although many accusers coming forward have been women

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213. *Id.* at 863.

214. Fellows & Razack, *supra* note 125, at 335.

of color, in keeping with historical trends devaluing claims of African-American women, Tweets by and large ignore the rape of African-American women entirely. While Tweets astutely identify the ways in which Black males disproportionately have been accused of rape and have faced and continue to face discrimination within the United States' legal system, fewer comments recognize that accusers, also, speak from the boundaries of the status quo.

### CONCLUSION

More than twenty years ago, when discussing widespread reforms in rape law, Carol Smart cautioned, presciently, that “we should not make the mistake that law can provide the solution to the oppression that it celebrates and sustains.”<sup>215</sup> Since the 1970s there have been myriad significant changes embracing claimants who, historically, would have been left outside the courthouse doors. This one investigation into contemporary discussions about rape and sexual assault suggests, however, that changes in law constitute one, sometimes small, part of social change.

The analysis of Tweets regarding recent allegations of gender-based violence made against celebrities provided herein supports the claim that the internet is not a comfortable place to be a woman. Online, “bitches,” “hoes,” “gold diggers,” and other dubious characters abound. These derisive terms reduce subjects to gendered bodies, at once reinscribing stereotypical views of women as hyper-corporeal, emotional, and illogical and punishing actors who do not conform to these tropes.

Tweets not only discipline those perceived to challenge the status quo, they also reveal a deep discomfort with the manner in which the United States' legal system deals with both victims and perpetrators of gender-based violence. Honest victim scripts are deployed to protect masculine, socio-economic privilege and to chastise accusers who are perceived as seeking a “come up” via civil recovery. As legal scholars weigh the future trajectory of rape and sexual assault laws, Tweets reflect an astute understanding among the American public that society is experiencing a moment of cultural crisis concerning not only how we reckon with crimes of gender-based violence but also who is able to access the legal system. Instances of interpersonal violence involving celebrities become sites at which feminist and anti-feminist debates are replayed and re-enacted in the public sphere. In this way, Twitter might be viewed as

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215. SMART, *supra* note 17, at 49.

a micro-courtroom in which victims' veracity and perpetrators' responses are evaluated, interrogated, and assessed. Deeper than blaming victims and exalting perpetrators, these very brief statements convey important critiques of rape law in the United States and reveal deeply held concerns about the capacity of the criminal and civil systems to afford justice in the context of gender-based violence.