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THE GRADUATE COLLEGE
WESTERN MICHIGAN UNIVERSITY
KALAMAZOO, MICHIGAN

Date December 14, 2010

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Sarah Brightman

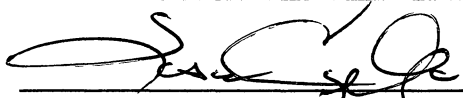
ENTITLED Systematic Sexual Violence by U.S. State Agencies: A Victimology Approach

AS PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE

DEGREE OF Doctor of Philosophy

Sociology

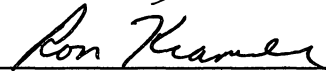
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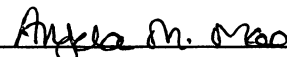
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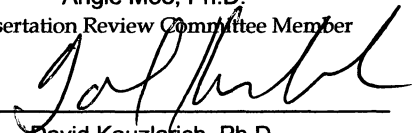
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SYSTEMATIC SEXUAL VIOLENCE BY U.S. STATE AGENCIES: A VICTIMOLOGY APPROACH

Sarah Brightman, Ph.D.

Western Michigan University, 2011

Women experience sexual violence at the hands of the United States military, police, corrections officers and border patrol agents. The study of state crime has been expanding rapidly in criminological research, however there has been little attention paid to its victims, particularly women, and especially to women's sexual victimization. The purpose of this research is to expand current research to develop a gendered analysis of state crimes in the context of sexual violence against women. This research applies Kauzlarich, Matthews and Miller's (2001) six propositions of a Victimology of State Crime to four cases of sexual victimization by U.S. agencies. The findings illuminate the comparable yet varied experiences women have as victims of sexual violence at the hands of state actors within the U.S. agencies of the military, police, corrections and border patrol and serve to further develop a victimology of state crime, especially as contextualized by women's disenfranchised positions and vulnerabilities. Analysis across the four cases demonstrate the systematic nature of sexual violence women experience across state agencies. Conclusions highlight directions for further research and refinement to enhance understanding of state crime across a variety of agencies, and the endemic violence, particularly sexual violence, by state actors against virtually any category of female victims.

SYSTEMATIC SEXUAL VIOLENCE BY U.S. STATE AGENCIES:
A VICTIMOLOGY APPROACH

by

Sarah Brightman

A Dissertation
Submitted to the
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Advisor: Susan Caringella, Ph.D.

Western Michigan University
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CHAPTER I: INTRODUCTION

Women around the world are victims of sexual violence by U.S. state actors. Members of the U.S. military have been accused of sexual violence in conflict zones, as well as areas where the U.S. has permanent bases. Inside of the U.S., police officers and corrections officers have faced accusations of sexual violence. On the border between the U.S. and Mexico, U.S. border patrol agents have been the sexual offenders (Falcon 2001). This form of violence against women is prohibited under various laws, yet it continues.

Rape has been documented as a weapon of war tracing back prior to the formation of professional armies (Brownmiller 1975). Numerous scholars have written and discussed the reasons rape has continued to be a tactic in war. Rape can be used as an intimidation tactic against targeted populations, humiliating and demoralizing the victims and their communities, to completely controlling and destroying a particular population (Brownmiller 1993, Barstow 2000, Farwell 2004). In addition to the tactics used against populations, scholars have suggested that rape can reinforce that patriarchal and militarized components which are seen as necessary to a successful military (Farwell 2004). Rape in war and in the military has also been suggested to be a form of bonding in the military and even necessary for group cohesion (Card 1996). These elements have come to be seen as fundamental components of what a military does and is, thus rape reinforces factors necessary to military operation (Jeffreys 2007). What has been lacking

in this research, however, is a thorough investigation of the victims; who they are, how they are targeted, and what remedies are available to the victims.

Research conducted on rape and sexual violence committed by police officers originally focused on consensual sexual relations between police officers and “groupies” and largely discounted the notion that police officers engaged in sexual activity on the job which would be considered “criminal” (Kraska and Kappeler, 1995). However, additional research conducted through interviews with police officers and police chiefs dispelled these early notions (Maher 2003, Maher 2008). Furthermore, research into police organization identified several factors which contribute to police officers committing these crimes as well as identifying factors which had made researching and gathering data on sexual violence by police officers so difficult. For example, organizational factors, such as isolated and unsupervised work, combined with a male dominated and patriarchal structure as well as problematic reporting procedures and the “blue wall of silence” kept the incidences of police sexual violence hidden (Kraska and Kappeler 1995, Maher 2003, Maher, 2008).

Women in prison can experience rape and many other forms of sexual violence on a daily basis due to their incarceration and interactions with corrections officials. These women are at a particular disadvantage when trying to report or seek redress for their victimization because their criminal histories make it easy for the guards and others not to see them as credible (Vaughn 1999). The guards exercise total power over the prisoners in the institution, and can use that to coerce and force sexual violence on the prisoners. The power the guards have means they can use the institutional policies against the

women. For example, they are able to control privileges, such as a job, restrict activities, or use tools such as protective custody or solitary confinement to keep the women quiet (Baro 1997). When such abuse has been reported, the consequences to the corrections officers has tended to be viewed through the lens of a work action, rather than a crime which should be prosecuted, where the individual officers may be able to keep their jobs and victimize women again.

The rape and sexual violence committed against women by border patrol agents is epitomized by and coincides with the militarization of the U.S.-Mexico border over the last several decades (Falcon, 2001). The rape of women has often been the price women pay to cross the border, handed out by border patrol officers. There has been limited research in this area because of the significant barriers these women face to reporting. These women may speak limited English, have little understanding of the U.S. legal system, and their illegal status makes it easy for them to quickly be deported when they do talk. The militarization of the border and the war on immigration by the U.S. has been played out on women's bodies, much like it has in the traditional military and historical wars.

While research on rape and sexual violence against women by the military, police, corrections officers and border patrol agents has already focused on the organizational and patriarchal causes, more research is needed to identify the organizational and structural factors that contribute to this violence against women across these particular agencies. Specifically, because of the limited attention victims of state crime have received and the wide spread occurrence of sexual violence against women by state

actors globally, research is needed to fill the gap in these areas. Therefore, this research addresses the question: What are the organizational/structural factors that contribute to these crimes and impact women's victimization? In addition, the second question this research addresses is: What factors put some women at greater risk of being victims of state crimes? Furthermore, not all women experience the same form of sexual violence by state actors, and further research is needed to identify the different forms of sexual violence women experience. For example, some women may experience forcible rape, while others are raped in the coercive situations in which they come into contact with state actors and overt force is not needed. Still other women experience sexual abuse which stems from inappropriate viewing and comments made towards them. Therefore, the third question this research addresses is: What is the Nature/array/pervasiveness of sexual violence of women by U.S. state actors?

State crime literature has traditionally focused on defining state actions as crime and applying various criminological theories to understand why such crimes occur. What has been lacking until recently is a **victimology** of state crime (Quinney 1972, Friedrich 1983 and Kauzlarich, Matthews and Miller 2001), as well as a specifically **gendered** analysis of state crime. This research addresses the need for a gendered victimology of state crime by asking a final research question: How does the victimization of women by agents of four U.S. agencies fit within the six propositions of a victimology of state crime? Rather than attribute sexual violence as a crime committed by individual actors, or "bad apples," this dissertation demonstrates that these crimes are a systematic part of a broader patriarchal and militarized culture throughout U.S. institutions. It contributes to

feminist literature by broadening definitions of sexual violence, as well as contributes to the understanding of rape and sexual violence as a control mechanism of the state. This dissertation also investigates the women who are victims of these crimes by comparing the similarities and differences of victims at the hands of different state actors.

In the following chapters this dissertation reviews the literature on state crimes, human rights, rape and sexual violence in each of the four state agencies, as well as provides a theoretical framework grounded in radical feminism and a victimology of state crime (Chapter 2). I describe the case study method used to conduct this research (Chapter 3), and provide a background and description of a case within each of the four agencies, as well as an analysis of the findings (Chapter 4). Finally, I offer a discussion of the findings considered in toto, and address the limitations and contributions of this research while providing recommendations for future research (Chapter 5).

CHAPTER II: LITERATURE REVIEW

Defining State Crime and Considering Gender

Definitions of state crimes have been evolving since Sutherland's landmark presidential address to the American Sociological Society in 1939 (Poveda 1994: 31). His original conceptualization was to point out "white-collar" crimes or "crimes committed by people of respectability and high social status in the course of their occupations" (Barlow and Kauzlarich 2002:443). Thus, Sutherland first identified a wide range of harmful acts that had been ignored by traditional criminologists with their focus on street crimes and the formal legal definitions and criminal justice system. Since Sutherland's address, white-collar criminologists have elaborated and expanded on this definition and critique of traditional criminology. Chambliss, in his Presidential Address to the American Society of Criminology, extended the field of study to "state-organized" crime (Mathews and Kauzlarich 2007). Significantly, "scholars argued that organizations are social actors in their own right and can be studied criminologically because they persist over time, develop and maintain procedures, and pursue goals" (Barlow and Kauzlarich 2002:443). This definition allowed criminologists to study organizations, such as corporations and government agencies, as actors who commit crimes. Chambliss's concept of "state-organized" crime has been further deconstructed into different forms, for example, Friedrichs explains that "the term *governmental crime* is used as a broad term for the whole range of crimes committed in a governmental context" (emphasis in original 2004: 116). He goes on to differentiate that "the term *state crime*

denotes harmful activities carried out by the state or on behalf of some state agency, whereas *political white collar crime* refers to illegal activities carried out by officials and politicians for direct personal benefit” (emphasis in original. 2004: 116). Within these subcategories, my focus will be on what Friedrichs has defined as state crime.

The definitional issues of state-crime extend beyond identifying government agencies which carry out crimes or social harms to benefit the agency or the government as a whole, and individuals who do so for direct personal benefit in these contexts, but get to the core of the definition of crime itself. Traditionally, criminologists have studied crimes as defined by criminal law developed and defined by governments themselves. The problem, then, for state-crime criminologists is that “states not only have the ability to define crime, but they may be powerful enough to resist definitions of crime that label their own behavior as criminal” (Mathews and Kauzalrich 2007:44). Due to this definitional debate, state-crime criminologists have two options, a legalistic approach and a social harm approach.

Following the legalistic approach, Kramer, Michalowski and Rothe (2005: 56) define state-crime as violations of:

Public international law, international criminal law, or domestic law where these actions are committed by individuals acting in official or covert capacity as agents of the state pursuant to expressed or implied orders of the state, or resulting from state failure to exercise due diligence over the actions of its agents.

Thus state crimes can be defined as the violation of laws committed by state actors in the course of their employment to further the interests of the state, “as well as incidents of states or state agencies failing to take actions which they are obligated to address”

(Mullins and Rothe 2008:8). Specifically, in the cases which will be presented here, there is an obligation for the state to act, otherwise the “state is engaged in crime because it is allowing institutions and actors to remain inequitable, harmful, and marginalizing” (Kauzlarich, Mullins and Mathews 2003:250). Caulfield and Wonders (1993) “posit that it is a crime of omission when the state allows a culture of violence to flourish” (in Kauzlarich, Mullins and Mathews 2003:250).

When applying a legalistic approach, state crime criminologists should rely on definitions of crime that are defined in an organizational way and are applied to the state, rather than definitions that are applicable to individuals. International laws, treaties and conventions are some of the legal tools that are applicable to the state as an organization, as well as individual actors. Due to the variety of agencies identified in this dissertation, the laws pertaining to sexual violence would be individual in nature, as well as specifically defined for each agency. The individual nature of these laws obscures the responsibility of the organization to identify policies and practices which enable sexual violence to flourish. Therefore, the laws that currently apply to individuals in each agency are not as applicable as a definition that addresses the action or inaction of the state because the state is an organization and its agents are acting in the interests of the organization. Because of the organizational nature of these crimes, laws that apply to the state are more appropriate. In addition, the organizational approach can identify underlying goals and culture of an institution by uncovering the practices that degrade and dehumanize women, leading to high rates of sexual violence.

As previously mentioned, one of the limitations of the legalistic approach is that states have the ability to resist definitions of crime, or as in the case of international laws they are able to decline becoming a signatory and/or ratifying international laws, treaties and conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Under the CEDAW, the U.S. would be obligated under article 2 to:

Pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

While the CEDAW is a good framework for defining sexual violence against women as a state crime, the U.S. has signed, but not ratified this document, and therefore is not bound to put the provisions into practice. Thus while crimes are traditionally only applicable when there is a law that can be applied directly to a state or an agency through ratification, for criminologists it should be equally important to recognize the ways states are able to pick and choose what applies to them.

An alternative to the legalistic approach which seeks to address some of the problems and limitations is a social harm or human rights approach. This approach, advocated for by scholars such as the Schewendingers (1970), Green and Ward (2000^{ab}) and Kramer (1985), expands the definition of crime. This approach addresses “the problematic way in which crime is defined, the highly political nature of defining harms as crimes (while ignoring equally harmful behaviors)” and therefore enabling “criminologists to focus their efforts not on defining the actions of the state as criminal, but rather cataloging the wide range of state behaviors that are harmful” (Mathews & Kauzlarich 2007). Guidelines for human rights are available to criminologists at the international level through the United Nations, as well as human rights organizations.

Application of a social harms approach allows the researcher to identify behaviors which don’t fall under legal standards, but which can push for the evolution of them. For example, genocidal rape, which is when rape is used as a tactic of war to wipe out a racial or ethnic group by forced impregnation or spoiling the reproductive capacity of women in a society, can create a collective fear of future victimization, where the threat of violence can amount to psychological torture. Although not genocidal rape, this can also be

viewed as the subjective anticipation of victimization by women, such as stories of rape told on the U.S.-Mexico border to prevent more women from attempting to cross. Thus a social harms approach is able to take into account that social harms are gendered, the victimization is disproportionate, if not uniquely affecting women, which leads to the victimization of women going unrecognized as harmful by criminologists, let alone societies or international communities. A feminist and gendered transformation is needed in the social harms approach to identify the variety of harms women may directly or indirectly experience sexual violence.

Traditionally human rights have been problematic for women in this way and in recent decades human rights have had to be extended to include women's rights more specifically. There are several reasons why women's rights as human rights developed in international law. In part, some women argue that the universal notions of human rights were in reality only applicable to men. This was due to several reasons. For one, some of the founding notions of human rights were developed by men and related to issues specific to men's situations. As Jaggar explains "the early conception of 'the rights of man' in the seventeenth century and the original conception of international 'human rights' in the mid-twentieth century were formulated with male household heads in mind" (1998). For example, ideas of human rights traditionally focused on rights in the public sphere of society, a space where women were often excluded or where violence against them was less likely to occur in comparison to the private sphere. These historic rights extended into men's home, implying that under his roof, man ruled and made decisions about his family without interference from the state. Jaggar gives the example of man's

absolute rule in the home, citing Locke in that “the private matters that no one would consider interfering with, a father’s decision about whom his daughter should marry” (Locke [1689] in Jaggar, 1998). Under these conceptualizations of human rights, women and children’s rights often fell out of view and were unrecognized.

Bunch breaks the opposition to women’s rights as human rights down further into four categories of responses. According to Bunch:

When it is suggested that governments and human rights organizations should respond to women’s rights as concerns that deserve such attention, a number of excuses are offered for why this cannot be done. The responses tend to follow one or more of these lines: (1) sex discrimination is too trivial, or is not as important, or will come after larger issues of survival that require more serious attention; (2) abuse of women, while regrettable is a cultural, private, or individual issues and not a political matter requiring state action; (3) while appropriate for other action, women’s rights are not human rights per se; or (4) when the abuse of women is recognized, it is considered inevitable or so pervasive that any considerations of it is futile or will overwhelm other human rights questions (1990:488).

Where did this leave women?

In her article “Women’s Rights as Human Rights”, Bunch (1990) describes four basic approaches that are available to link women’s rights to human rights. First, Bunch (1990) describes women’s rights in terms of political and civil rights. This approach takes existing standards for human rights and focusing on how those standards differentially impact women. Second, Bunch describes women’s rights as socioeconomic rights. This approach, according to Bunch, focuses on rights such as “rights to food, shelter, health care, and employment (1990:494).” Third she argues for women’s rights and the law. This approach focuses on utilizing existing laws, such as the CEDAW and ensuring it is enforced. Finally, Bunch (1990) argues for a feminist transformation of

human rights. This approach calls for a specifically feminist, and women centered approach to human rights issues. This approach can work furthest outside the existing human rights framework to raise issues that have previously not been seen as human rights issues, such as sexual violence or rape, where there may be no existing laws or codes to rely on.

One of the solutions developed by the international community was to formulate human rights conventions that pay attention to the different situations of women. In 1979 the United Nations introduced and signed the CEDAW, which then came into force in 1981. This UN convention specifically addressed issues that impact women (Women, Law & Development International and Human Rights Watch Women's Rights Project 1997). The CEDAW calls on governments to identify and eliminate policies that have a negative impact on women's lives, as well as creating legal pathways for women to gain equality.

In addition to UN conventions, there also have been international conferences focusing on women's issues held all over the world. These conferences include a diverse pool of participants from governments to nongovernmental organizations (NGO's), both small and large, representing women from many areas in the world. One of the problems that have come out of these conferences is the question of "respecting cultural differences". This perspective has been viewed by some feminists as "a euphemism for restricting or denying women's human rights" (Jaggar 1998). This is where addressing the issues of women's rights globally by Western feminists becomes particularly problematic and difficult to traverse. There are problems of the antiessentialist side,

“asserting that no generalizations at all can or should be made about women, gender, mothering or many other topics” (Jaggar, 1998). Additionally, it has been charged that Western women can not address the experiences of other women’s culture or religion without being cultural imperialists. Western feminists tread on shaky ground when dealing with a wide range of issues relating to women’s human rights. One perspective that has found particular favor outside of the West is the conclusion that “Patriarchy which operates through gender, caste, class and ethnicity, is integral to the problems facing women” (Jaggar, 1998). This conclusion, reached by many non-Western women in the Asia-Pacific region and presented at the Beijing Conference of NGO’s, should indicate a new direction for the women’s rights as human rights agenda. This conclusion comes at a time in Western feminism where many were turning away from such broad statements against patriarchy and instead trying to understand the oppression of many marginalized groups of women in the West. While women’s issues are not the same in every corner of the world, women’s rights are getting nowhere without some sort of recognition about the terrible abuses women face. Therefore, “one of the most significant innovations of the Program for Action that emanated from the Beijing Conference was its unprecedentedly strong rejection of “cultural” justifications for violating women’s human rights” (Jaggar, 1998). This is a landmark step in addressing women’s rights globally, and providing space to criticize those violations without attacks based on cultural or religious differences.

The task of addressing women’s human rights globally has been monumental. There have been many barriers that have been overcome, and many more yet to tackle.

The future requires further documentation of women's rights violations under existing frameworks, as well as an innovative approach to social justice (or harms) which will uncover the gaps in applying the existing legal framework. Due to the limitations of defining the actions of U.S. agencies as state crimes using the legalistic approach, this dissertation will use the social harms approach of sexual violence that is guided by, but not restricted to, definitions of crime legalistically speaking in a global context. The reason for this is that there are definitions that provide a framework or definition to strive for, such as the, International Covenant on Civil and Political Rights (ICCPR) as well as recognizing the importance of pressuring states to ratify treaties, such as the CEDAW, that would provide for the protections that are needed for women.

Terms and Definitions

Sexual violence refers to a broad category of behaviors, which includes rape, as well as sexual humiliation, genital mutilation, forced undressing, forced impregnation, genocidal practices, forcible rape, anal penetration, and penetration with objects and various forms of non-penetrating sexual assault. Definitions of sexual assault, sexual violence and sex crimes can be difficult to pin down, although these terms are frequently used interchangeably (Askin 1997). Sexual assault is used as the most broad category to include instances “(a) that the accused unlawfully inflicted, or caused to be inflicted, an act, omission or injury (physical or mental) of a sexual nature on a certain named or described person; (b) that such act, omission, or injury was inflicted by means of

coercion, force, threat, or intimidation” (Askin 1997:381). This definition of sexual assault encompasses a broad range of behaviors that are sexual in nature and result in injuries both physical and mental. Under this definition forced or coerced undressing could apply, because although no physical touching may transpire, there is still the potential of mental injury, or even if the mental injury is from social ramifications from the woman’s society. Although this definition encompasses rape as a form of sexual assault, Askin argues that “all elements of rape amount to sexual assault; however, all elements of sexual assault do not amount to rape” thus rape has a separate definition (1997:382).

Definitions of rape have been problematic due to the inclusion of the requirements of force, resistance, as well as specifically defining the penis and vagina as the only form of penetration, and the specifically gendered nature of the victim and the perpetrator (Caringella 2009, McGregor 2005). The requirements of force and resistance have become problematic because of the recognition that the majority of rapes are not committed by strangers, violently in dark alleys. There has been an acknowledgement that rape can occur in a variety of forms of relationships and acquaintances, and that these rapes do not have the same violent, forced and physical character rape had been defined by. The requirement of penile/vaginal contact has also been problematic as rape, a sexual penetration of the body, can be done to the anus or vagina with any number of objects, such as broomsticks, coke bottles and guns (Caringella 2009), and can be committed against any gender. Therefore, a definition of rape should be broad enough to address these prior limitations. One proposed by Askin appears to accommodate this:

“(a) that the accused unlawfully committed an act of sexual penetration or sodomy against a certain named or described person; (b) that such act was against the persons will, without their consent, or of a coercive nature” (1997:381). “The commonality, irrespective of rape, sexual assault, type of penetration or contact, violence or force, is the lack of consent to any of the offensive *sexual* violations of the body” (Emphasis in original Caringella 2009:18).

The notion of consent or lack of consent has been another problematic issue for definitions of rape and sexual assault. Is “no”, non-consent? What about the absence of a verbalized “no”, is that then consent? Is a verbalized “yes” the only form of consent? Does body language indicate consent, such as a wink? Is resistance non-consent? What about coerced consent, under threat or duress? Is it then non-consensual coercion? One proposed solution to the problem of consent that can be used to advance the social harms approach to sexual assault is put forth by Schulhofer (1998). In Schulhofer’s conceptualization of “sexual autonomy” “he contends that the only way to get away from all of the sundry problems attending the legal response to sexual assault is to reconceptualize fundamental rights, and hence violations, that the law is supposed to safeguard” (Caringella 2009:88). Schulhofer “asserts that the law should protect women’s right to sexual autonomy, or sexual self-determination” (Caringella 2009:88-89).

Rape and sexual violence have been identified as crimes under a variety of international laws and human rights documents, although not directly applicable to the U.S. as a country. Particularly important are the definitions used in international courts,

such as the International Criminal Tribunal for the former Yugoslavia (2001), which defines sexual violence and rape as a crime against humanity, recognizes that rape and sexual violence may involve coercion or force, and that women can be “criminally abused even if they have not been subjected to physical violence, injury, or pain” (Bergoffen 2003:118). This decision is an important step in expanding the definitions of rape and sexual violence and recognizing the variety of circumstances where a woman can be sexually violated, humiliated and physically harmed.

International Human Rights Framework

“Violence against women is a human rights issue” (Amnesty International 2005). “The 1993 UN Declaration on the Elimination of Violence against Women defines it as any act of gender-based violence – that is, violence directed against a woman because she is a woman or that affects women disproportionately – that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (Amnesty International 2005).

“The state is accountable under international human rights law for rape and sexual abuse carried out by, at the instigation of, or with the consent or acquiescence of any person acting in an official capacity” (Amnesty International 2005). “Torture, ill-treatment, rape and other sexual abuse, irrespective of whether the perpetrator is a state official or agent, are also proscribed under international humanitarian law” (Amnesty

International 2005). “Depending on the circumstances they may constitute war crimes or crimes against humanity for which the perpetrators can be held individually responsible under international criminal law” (Amnesty International 2005). “These acts are proscribed as war crimes and crimes against humanity under the Rome Statute of the International Criminal Court” (Amnesty International 2005). However, the US is not a party to the ICC. “They are also proscribed under the statutes of the ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda, which have convicted a number of perpetrators” (Amnesty International 2005).

Persons in Custody

There are a variety of international treaties and conventions that provide a standard and guidelines for the treatment of persons in custody. The U.S. has signed and ratified some of these treaties and conventions, it has also attached many reservations that limit the full scope of international remedies. In other instances, the U.S. has completely refused to ratify international conventions.

The International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations General Assembly in 1966, “is the principal international treaty setting out fundamental civil and political rights for everybody” (Amnesty International 1999).

Included in this are:

No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 7)

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person (Article 10)

No one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence, nor to unlawful attacks on his honour and reputation (Article 17) (International Covenant on Civil and Political Rights 1966).

“The USA became a party to the ICCPR in 1992 but it reserved the right to refrain from implementing certain provisions or to restrict their application” (Amnesty International 1999). In particular, the U.S. “considered itself to be bound by the prohibition of “cruel, inhuman and degrading treatment or punishment” in Article 7 of the ICCPR only to the extent that Article 7 referred to “the cruel and unusual treatment or punishment prohibited by... the Constitution of the United States” because the “ICCPR might cover treatment that would not be prohibited by the US Constitution (Amnesty International 1999). This reservation is in essence voiding the covenant and allowing the U.S. its own interpretation under the Constitution. The Constitution only limits “cruel and unusual treatment”, which can be viewed as a narrow definition of treatment or punishment, whereas the ICCPR is broader and encompasses treatment that is also “inhuman and degrading”. Thus the U.S. had limited the application of these terms to Constitutional definitions, rather than definitions interpreted and accepted at the international level.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted by the U.N. General Assembly in 1984, “requires governments to prohibit and punish torture in law and in practice” (Amnesty International 1999). “Governments must investigate whenever there are reasonable grounds to believe that an act of torture or cruel, inhuman or degrading treatment or punishment has been committed, and must bring those responsible to justice” (Amnesty International 1999). This includes the “rape of a woman in custody by

a correctional officer is considered to be torture” (Amnesty International 1999). The U.S. “ratified the treaty in 1994”, but “made a reservation stating that it considered itself obligated to prevent “cruel, inhuman or degrading treatment or punishment” only insofar as the term meant the cruel, unusual or inhumane treatment or punishment prohibited by the US Constitution” (Amnesty International 1999). This reservation is similar to the one made with the ICCPR and therefore also limits the applicability to a broader range of behaviors and crimes.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) “includes a number of rights and freedoms that are of particular importance to incarcerated women, including the right not to be subjected to gender-based violence” which is “violence that is directed against a woman because she is a woman or that affects women disproportionately” (Amnesty International 1999). The U.S. has failed to ratify the CEDAW, and is thus not bound by any part of the convention.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) “contain provisions specifically relating to women” (Amnesty International 1999). While the Standard Minimum Rules are not binding, “they set out international standards for the treatment of prisoners based on consensus and practice” (Report of the Special Rapporteur on Violence 1999). Some of the standards are:

Rule 8 (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate.

Rule 35 (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his (sic) category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all other such matters as are necessary to enable him (sic) to understand both his (sic) rights and his (sic) obligations and to adapt himself (sic) to the life of the institution.

Rule 46 (1) The prison administration, shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

Rule 53 (2) No male member of the staff may enter the part of the institution set aside for women unless accompanied by a woman officer.

Rule 53 (3) Women prisoners should be attended and supervised only by women officers (United Nations Standard Minimum Rules for the Treatment of Prisoners)

The Standard Minimum Rules outline specific guidelines for the treatment of female prisoners and include the hiring of personnel, as well as the housing and supervision of female prisoners.

The U.S. Constitution also provides protections for prisoners. The Eighth Amendment “bars cruel and unusual punishment” and the Fourth Amendment “provides a right to privacy” (Human Rights Watch 1996). “A number of federal courts have examined the protections provided by the Eighth Amendment in the context of sexual abuse” (Human Rights Watch 1996). For example, “in *Farmer v. Brennan*, the Supreme Court ruled that a prison official violates the Eighth Amendment if, acting with deliberate indifference, he exposes a prisoner to substantial risk of sexual assault” (Human Rights Watch 1996). It found that “sexual abuse “serves no legitimate penological objective” (Human Rights Watch 1996). Another example from “1993 in *Jordan v. Garner*, the

Ninth Circuit found that in light of the fact the 85 percent of the women prisoners in the Washington Corrections Center for Women had experienced sexual or physical abuse, pat searches conducted by male officers violated the Eighth Amendment's prohibition on cruel and unusual punishment" (Human Rights Watch 1996). Finally, "two recent cases in the District of Columbia have ruled that sexual contact between prison officials and prisoners violates the Eighth Amendment" (Human Rights Watch 1996).

In order to bring an Eighth Amendment claim, plaintiffs must satisfy the objective and subjective prongs of the Eighth Amendment" (Eschholz and Vaughn, 2001:401). "That is, they must show that the assault violated evolving standards of decency (*Trop v. Dulles*) or failed to provide inmates with the minimum civilized measure of life's necessities (*Rhodes v. Chappan*) and was perpetrated with the culpable mental state of deliberate indifference (*Farmer v. Brennan*) or malicious and sadistic intent for the very purpose of harm (*Hudson v. McMillian*) (Eschholz and Vaughn, 2001:401)".

The Fourth Amendment provides the "right of the people to be secure in their persons...against unreasonable searches and seizures, shall not be violated" (Human Rights Watch 1996). Cases brought to the lower federal courts have found that prisoners have a "limited right to bodily privacy" (Human Rights Watch 1996). These "courts have upheld limitations on cross-gender frisks and almost uniformly prohibited cross-gender strip searches" (Human Rights Watch 1996). In addition "several courts have held that occasional or infrequent viewing of prisoners naked during showers or during body searches is acceptable when it occurs respectfully and in the least intrusive manner possible" (Human Rights Watch 1996). However, "the regular viewing of prisoners of

the opposite sex who are engaged in personal activities, such as undressing, using the toilet facilities or showering, when not reasonably necessary, has been found to constitute a violation of the prisoners right to bodily privacy” (Human Rights Watch 1996).

Theoretical Framework

The theoretical framework used in this analysis will involve the application of feminist theory, specifically radical feminist theory. Radical feminist theory, along the lines of that developed by women such as Firestone (1970), MacKinnon (1989) and Bunch (1974) will be used. “One distinguishing features of radical feminism is its insistence that the subordination of women is primary, not secondary, to other forms of discrimination” (Jaggar& Rothenberg 1993: 120). This feature is highlighted in one of the key ideas connected to radical feminism, the “personal is political” (Donovan 1992:142). “The personal is political” is rooted in the idea that “patriarchy, or male-domination-not capitalism-is at the root of women’s oppression; that women should identify themselves as a subjected class or caste and put their primary energies in a movements with other women to combat their oppressors-men” (Donovan 1992:142).

In addition, “many radical feminists see the subordination of women as rooted in the social practices through which men control women’s bodies, especially women’s procreative¹ and sexual capacities” (Jaggar & Rothenberg 1993: 121). Rape and sexual violence is the epitome of control over women’s bodies. For example, Brownmiller

¹Capable of reproducing; related to procreation

(1993) argues that “rape became not only a male prerogative, but man’s basic weapon of force against women, the principle agent of his will and her fear” (14). Brownmiller (1993) concludes that rape “is nothing more or less than a conscious process of intimidation by which *all* men keep *all* women in a state of fear” (emphasis in original, 15). The constant state of fear of rape women experience is heightened in situations of war, or war like conditions where women experience the psychological torment of anticipatory victimization. Not only can rape be used to keep women in fear, but women’s bodies are used to communicate defeat to other men. According to Brownmiller (1993), “the body of a rape women becomes a ceremonial battlefield” it is “a message passed between men- vivid proof of victory for one and loss and defeat for the other” (38). From these foundations, radical feminist have continued their analysis of patriarchal oppression of women.

Quinney (1972) and Friedrichs (1983) have called for a “radical theory of reality” or “radical critique” of victimology. Quinney argues that:

With an alternative reality, we would certainly revise or at least expand our image of victimization. Breaking out of the theory of reality that has dominated criminological thought, we would begin to conceive of the victims of police force, the victims of war, the victims of the “correctional” system, the victims of state violence, the victims of oppression of any sort (1972: 321).

Using this view as a starting point, this research identifies cases where women have been sexually victimized by U.S. state actors, including the military, police, corrections officers and border patrol agents. Quinney goes on to say that:

Because criminologists have tended to rely on a particular theory of reality, they have excluded these victims. This theory of reality, in its support for the existing social order, has excluded those who might threaten that order and those who

suffer because of that order. These persons are indeed victims in terms of a radical theory of reality (1972: 321).

Friedrichs suggests that “radical criminology and victimology have both challenged long-standing premises of mainstream criminology: the radicals have challenged the professed apoliticality of the discipline and have sought to demonstrate the critical links between a capitalist system and the criminal law, the justice system and crime itself; students of victimology have challenged the almost exclusive attention of the discipline to ‘criminals’ and official agencies of the state which respond to them” (1983: 284). In this way, radical criminology looked to Marx for a theoretical foundation. In this vein, Friedrichs argues that victimology needs to incorporate the “radical concept of victimization as a class phenomenon” as well as “the differences between victimization linked with purely personal attributes and victimization linked with class position” (1982: 288). Using the radical feminist perspective, this analysis should be further extended to understand women’s sexual victimization, just as class or caste victimization, at the hands of state actors (Caulfield and Wonders 1993, Wonders and Danner 2006, Mullins 2009, Lenning and Brightman 2009). Gender should be added to this definition because women can be seen as a social location or as a class or a personal attribute.

Recently Kauzlarich, Matthews and Miller (2001) laid out the need and direction for a victimology of state crime. They describe a “working definition drawing on Kauzlarich’s prior work (1995: 39), which includes as state crime victims:

Individuals or groups of individuals who have experienced economic, cultural, or physical harm, pain, exclusion, or exploitation because of tacit or explicit state actions or policies which violate law or generally defined human rights (176).

Focusing on the victims of state crime can uncover the “structural patterns and relationships often preceding or facilitating state crime victimization” (Kauzlarich et al. 2001:176). Kauzlarich, Mathews and Miller (2001) argue that, “for example, the poor, racial and ethnic minorities, and women are explicitly or tacitly victimized by the state partly because of its support for larger structural and cultural definitions of worth, status, power, authority, and prestige” (Kauzlarich et al. 2001:176).

Kauzlarich, Matthews and Miller (2001) describe six propositions of a victimology of state crime. The first is that “victims of state crime tend to be among the least socially powerful actors” (183). “The authority of the state extends well beyond crude asymmetries in the ability to control others, and constitutional and due process protections also vary relative to the power of subjects” (Kauzlarich et al. 2001:183). Furthermore, “in the case of those victimized by criminal justice and the prison experiments, one senses a great deal of dehumanization and ideology, which allows unjust practices and policies to flourish” (Kauzlarich et al. 2001:184).

The second proposition is that “victimizers generally fail to recognize and understand the nature, extent, and harmfulness of institutional policies. If suffering and harm are acknowledged, it is often neutralized within the context of a sense of “entitlement”” (185). “Victimizers often do not acknowledge the degree to which their policies have caused harm while addressing the effectiveness of their policies to bring about desired change, maintain hegemony, or promote other forms of dominance” (Kauzlarich et al. 2001:185). In the tradition of Sykes and Matza, Kauzlarich, Matthews and Miller (2001) suggest that “denying responsibility, dehumanizing the powerless for

purposes of exploitation, and appealing to higher loyalties (i.e. the capitalist political economy and national security) are often employed in the victimology of state crime” (Kauzlarich et al. 2001:185).

Third proposition is that “victims of state crime are often blamed for their suffering” (186). “The poor, minorities, the homeless, and women become targets of criticism because of the false belief in the ease of achieving vertical intergenerational mobility in the U.S., even in the face of overwhelming structural odds” (Kauzlarich et al. 2001:186). Furthermore, “prisoners and those accused of crimes are less likely to be treated sympathetically because their assigned master status solipsistically leads to a marginalization of their human worth, morality, and potential” (Kauzlarich et al. 2001:186).

The fourth proposition is that “victims of state crime must generally rely on the victimizer, an associated institution, or civil social movement for redress” (186). The avenues for state crime victims to seek redress can involve remedies in “civil court, and often involve the efforts of special interest groups, people in social movements, and of course private attorneys” (Kauzlarich et al. 2001:186). Another avenue is that an “appeal may be made to the United Nations Human Rights Committee, through the United Nations General Assembly, or the International Court of Justice” (Kauzlarich et al. 2001:186). However, international avenues can be very limited as they require the cooperation of the state to become members to the different bodies.

The fifth is that “victims of state crime are easy targets for repeated victimization” (187). “The manner in which victims of state crime are harmed may change over time;

however, the harm incurred by most victims of state crime does not decrease- rather it merely takes another form” (Kauzlarich et al. 2001:187). “Additionally, some victims are continually victimized by the same organization” (Kauzlarich et al. 2001:187).

The final proposition is that “illegal state policies and practices, while committed by individuals and groups of individuals, are manifestations of the attempt to achieve organizational, bureaucratic, or institutional goals” (188). “A recurrent theme has been that the harms caused by the state are due to the actions of individuals or groups of individuals who are pursuing the larger goals of their respective organizations” (Kauzlarich et al. 2001:188). “Rather than viewing the harm to the victims of state crime as the result of a few people engaging in immoral, unethical, and/or illegal behavior, it is more instructive to conceptualize state crime as the product of organizational pressures to achieve organizational goals” (Kauzlarich et al. 2001:188). Each of the organizations identified in this research have different organizational pressures and goals which can be achieved through sexual victimization of women, and therefore should be viewed in an organizational, rather than individual context. This typology, combined with a radical feminist analysis will be applied to understand the victimization of women by U.S. state actors.

Background: Rape and Sexual Violence in War

A variety of research has been done on rape and sexual violence by the military, such as by documenting conflicts where violence has occurred to explaining why these

crimes occur. Sexual violence, particularly rape, has long been used as a systematic part of war. Prior to the development of professional armies, soldiers were motivated and paid with what they could loot from the conquered; this included the capture and servitude of women as wives (Brownmiller 1975; Mullins and Rothe 2008). The ancient Greeks captured and kept women in a variety of capacities, such as wives, concubines, slave labor or battle-camp trophy (Brownmiller 1993). Susan Brownmiller (1975) discussed the prevalence of rape during war from the ancient Greeks, the Crusades, the American Revolution, WWI and WWII, to Vietnam. More recently rape has occurred in conflict and war zones such as Bosnia-Herzegovina, Rwanda, the Democratic Republic of the Congo, and Sudan.

The goals or purpose of rape during conflict has been attributed to numerous tactics of the military. Brunet and Rousseau identify a range of these tactics and the conflicts they were employed in:

Rape may be used as part of a deliberate policy of ethnic cleansing (Bosnia-Herzegovina); a military strategy (Bosnia-Herzegovina); a political terror tactic (Haiti); an instrument of armed struggle (Kashmir, Bangladesh, Kuwait); sexual violence inflicted to remind women of the restrictions on their sex, on their presence in the public sphere (Peru). It can be a symbol of the destruction of the social and cultural underpinnings of a community (Bosnia-Herzegovina); a means of military propaganda; a method of persecution and intimidation of an ethnic, cultural or religious group; an act of genocide (Rwanda, Bosnia-Herzegovina); and act of terror aimed at discouraging women from pursuing leadership roles that bolster civil society or from carrying on the activities, however minimal that are necessary for economic survival; an act intended to “defile the enemy’s property”; a form of humiliation designed to hold up to ridicule the ability of a husband, brother or father to “protect” a woman. Finally rape can be used to boost the morale of the troops, or as an expression of victory (Brunet & Rousseau in Sajor 1998:37-8).

In some contemporary cases, rape has been explained away as the failing of individual men or as Maritn (2005) puts it, chalked up to a “boys will be boys” mentality as a technique of neutralizing the organizational harm which occurs to women. However, recent history “has produced widespread rape scenarios that go beyond the individualistic scenario of men satisfying their immediate sexual desires in a forceful demonstration of hypermasculinity” and “has been used as a tool of terror and of population elimination-a phenomena termed genocidal rape” (Mullins and Rothe 2008:21). Thus, “rape in warfare has a military effect” where there was a “recognizable pattern of national terror and subjugation” through the use of “intimidation and demoralization for the victims’ side (Brownmiller 1993:37). Morris (in Barstow 2000) argues that there has been “an increase in the targeting of civilians in conflict, due to a shift from the military campaigns of WW I and II to the many guerrilla conflicts, with women bearing the brunt of the violence” (3). These types of conflicts tend to “employ organized rape as a means of humiliating the enemy and destroying family life” (Barstow 2000:3). Mass rape has been used to destroy or control an ethnic group by the spoiling of lineage through forced impregnation. Mass rape, “when it is combined with a deliberate policy of forced impregnation, as by the Serbs in Bosnia and the Hutus in Rwanda, it aims at the destruction of an ethnic group” (Barstow 2000:45). Mass rape “becomes a technique of genocide: to so defile the enemy’s women that they will no longer be considered as future mothers for their own people” (Barstow 2000:45). Thus, these crimes range from individual instances of violence to systematic tactics used by states to control or eliminate populations.

Scholars have attributed the long term and wide spread nature of this violence to the patriarchal militarization of society. “A militarizing society calls on patriarchal values and mechanisms of domination and control, heightening hierarchal relations between men and women” (Farwell 2004:394). This militarization is reproduced and enforced in state agencies and institutions, such as the military, police, corrections and boarder control agencies. Jeffreys (2007) argues that masculinity in the military is “fundamental to what militaries are for and necessary for their operation”, thus it is “deliberately created by militaries” (18). The patriarchal militarization that is necessary to the operation of these organizations speaks to the reasons what sexual violence in these organizations should be viewed as state crimes, rather than the failing of individual men within these organizations. Jeffreys demonstrates how this is carried out by the US military against women who are seen as “other” in conflict zones, as well as against women in the US military itself. Card (1996) argues that rape is used “to display, communicate and produce or maintain dominance” and that rape by the military “can serve as a bonding agent among perpetrators” (2). This argument connects the radical feminist view of the rape as a tool by all men to dominate all women and places it into a specifically military context to explain how rape in the military can serve dual purposes in a patriarchal society. The dual purposes are to keep all women subservient in society as well as to strengthen the unity and bonding within the organizations. This model can be further extended to other agencies that are dominated by masculinity and militarization, such as police and corrections officers, as has been documented along the U.S.-Mexico border (Falcon 2001).

Morris (in Barstow, 2000) discusses some of the factors that may lead to increases in rape by the U.S. military. First, Morris (in Barstow, 2000) suggests that “when a closely bonded group (a “primary group”) shares group norms conducive to rape, the risk of rape by group members is increased” (190). Morris argues that “norms conducive to rape include certain normative attitudes toward masculinity, and to sexual and gender relations” (180). According to Morris, “standards of masculinity that emphasize dominance, assertiveness, aggressiveness, independence, self-sufficiency, and willingness to take risks and that reject characteristics such as compassion, understanding, and sensitivity have been found to be correlated with rape propensity” (181). Attitudes toward sexuality have also been found to be linked to rape propensity (Morris in Barstow 2000). For example, “adversarial sexual beliefs” or “the view that sexual relationships are inherently exploitative-that each seeks to benefit without regard for the other, and will use manipulation and deceit for the purpose- are associated with heightened rape propensity” (Morris in Barstow 2000:181). Also “sexual promiscuity” meaning “a high emphasis on sexuality and, in particular, a high number of sexual partners”, as well as “rape-myth acceptance” are also related to rape propensity” (Morris in Barstow 2000:181). Finally, Morris (In Barstow 2000) argues that attitudes towards women, such as hostility toward women and rigid sex-role stereotypes are also related to heightened rape propensity. “The rape-conductive attitudinal constellation including elements of hypermasculinity, adversarial sexual beliefs, promiscuity, rape-myth acceptance, and hostility toward women is reflected in various ways in military culture” (Morris in Barstow, 2000:182).

Background: Police Rape and Sexual Violence

The scholarly literature on sexual assault and rape committed by police officers while on duty traditionally “addresses the phenomenon as “police sexual misconduct,” emphasizing the on-duty “consensual sex” activities of a male officer with a female citizen” (Kraska and Kappeler, 1995:87). These types of scenarios are represented in the media and “point to society’s acceptance of male police officer’s using state authority and power to pursue women sexually” (Kraska and Kappeler, 1995:102). This approach “assumes implicitly that police are a desired sexual commodity who are routinely tempted by women willing to trade “sexual favors” for leniency” and therefore “inhibits alternative, more victim-based conceptualizations of police sexual violence” (Kraska and Kappeler, 1995:88). “This assumption of consensual sex also reinforces the untested notion that only the rogue, aberrant officer would use direct coercion, force, or the authority of the badge in such encounters” (Kraska and Kappeler, 1995:88). These assumptions deflect the focus on to an individual’s behavior, rather than taking into account the patriarchal structure of the police and the larger government which it operates.

Police sexual conduct misconduct (PSM) (Maher, 2008), also called police sexual violence (PSV) (Kraska and Kappeler, 1995) has been defined in the literature in a couple of different ways. Kraska and Kappeler (1995:93) use the definition for “those situations in which a citizen experiences a sexually degrading, humiliating, violating, damaging, or

threatening act committed by a police officer through the use of force or police

authority”. In other work addressing PSM, Maher (2003:357) uses the definition:

Any behavior by a police officer, whereby an officer takes advantage of his or her unique position in law enforcement to misuse their authority and power to commit a sexually violent act, or to initiate or respond to some sexually motivated cue for the purpose of personal sexual gratification. This behavior must include physical contact, verbal communication, or a sexually implicit or explicit gesture directed toward another person.

Central to both of these definitions are the use of “police authority”, as well as the “misuse of their authority and power” to commit sexual violence against women.

In research interviewing police officers about their perceptions and experiences with PSM, Maher (2003) found that PSM, especially less serious, non-criminal incidents were common. “Police work provides a unique opportunity for sexual misconduct... The combination of police authority, an unsupervised atmosphere, and the frequent isolated contact with the public helps create situations where police officers have ample opportunity to participate in various forms of this behavior” (Maher, 2003:355). “In addition policing is a predominately male institution dominated by the masculine culture” (Maher, 2003:355). The combination of an opportunity structure of isolated and unsupervised contact with women, the patriarchal culture of the police, as well as the authority invested in police officers by the state create an environment where police sexual violence can thrive.

Maher (2008:241) identified similar contributing factors in another study of “police chiefs’ perceptions of (1) the extent and nature of PSM, and (2) the factors that facilitate sexual misconduct in policing”. This research identified two categories of PSM.

The “serious forms of PSM as those incidents that violate written laws, and the non-serious forms as incidents that are typically not criminal in nature, but likely violate department rules, regulations, or policies regarding standards of behavior” (Maher 2008:243). Maher’s (2008) research also identified four factors which contribute to PSM. The first is “lack of knowledge of PSM” because “officers receive very little formal training or education of PSM” (Maher 2008:244). In fact, of the 20 police organizations represented in the research, none had policies specifically relating to PSM (Maher 2008). The second factor is the problematic nature of police complaint systems for victims of sexual violence (Maher 2008). Some of the departments required that complaints against police officers be made in person and in writing, and for the most part these complaints are investigated internally, by the department itself (Maher 2008). This can certainly deter a citizen complaint if they must go, in person, and file a complaint with the same organization which violated them. The third factor which Maher (2008) found contributes to PSM by the police is the particular opportunity environment which police work operates in. The “police authority and power, an unsupervised work atmosphere, and the frequent isolated contact with the public and potential victims of sexual misconduct combine to create situations whereby officers have ample opportunity to participate in various forms of such behavior” (Maher 2008:246). Lastly, Maher (2008:246) found that “chiefs made comments related to the police culture and its influence on PSM more than any other single factor influencing such behavior”. A number of factors in the police culture were identified as facilitating PSM including “the power and authority of police officers, the dangerous nature of law enforcement, the

isolation from the public due to unique work schedules, the perception of policing as a male-dominated, masculine profession, and the willingness or commitment of officers to ‘stick together’ and to ‘keep quiet’” (Maher 2008:246). This research indicates that there are four areas within policing where changes to organizational policies and procedure can reduce the incidences of PSM.

Conducting research on PSV is complicated because of “the blue wall of silence” as well as limited victim reporting (Kraska and Kappeler, 1995). “Victims of sexual violence in general have few incentives to pursue a formal complaint, as well as many disincentives including the fear of being blamed for the incident and the fear of not being believed” (Kraska and Kappeler, 1995:92). In their research on PSV, Kraska and Kappeler (1995) developed a continuum of PSV which “ranged from invasions of privacy of a sexual nature to forcible rape” (93). On one end, Kraska and Kappeler (1995) describe “unobtrusive” sexual victimization, or “secondary victimization” where “the police violate a victim’s privacy rights” (98). The authors argue that this form of victimization “demonstrates deception by police and a lack of sensitivity, which result(ed) in “official” victimization” (Kraska and Kappeler, 1995:98). Kraska and Kappeler (1995) argue that it is “significant that the violation occurred in the administrative setting of both the police institution and municipal government; it was not the act of a rogue officer” (98).

Next, in the middle of the continuum, Kraska and Kappeler (1995) identify “obtrusive” sexual victimization, such as strip searches and body-cavity searches (99). The authors found that “almost 74 percent of the federal litigation cases examined here

involved the alleged illegal use of strip body-cavity searches; the police lost nearly 70 percent of these cases” (Kraska and Kappeler, 1995:99). Police conduct strip searches and body- cavity searches out of “operational necessities”, and can be seen as legal “behaviors that would be considered criminal if performed in a different context” (Kraska and Kappeler, 1995:99). The women in the cases studied, however, “likened the experience to “rape” and “being violated in the most extreme way” (Kraska and Kappeler, 1995:99). In their research, Kraska and Kappeler (1995) “illustrate how the police sometimes employ this tactic for their own pleasure or to sexually degrade, humiliate, or intimidate women”, which connects to what radical feminists have stated (99). Furthermore, “illegal strip and body-cavity searches have remained civil rights violations rather than crimes, even though the law allows excessive force by police to be conceptualized as both a civil and a criminal act” (Kraska and Kappeler, 1995:101). Therefore the authors argue that “the differential treatment of these cases by the judiciary serves to condone these practices” (Kraska and Kappeler, 1995:101). They go on to argue that the “component of the masculine belief system in policing which supports unnecessary strip and body-cavity searches may also exist in the judiciary and the bar” (Kraska and Kappeler, 1995:101). This leads the authors to ask, “to what degree this type of PSV is linked to legal, organizational, and cultural elements of the police and justice system” (Kraska and Kappeler, 1995:101).

The next category of the continuum is “obtrusive/criminal”, where “police sexual harassment falls into the grey area between the “obtrusive” and the “criminal” categories” (Kraska and Kappeler, 1995:101). However, “such harassment of female citizens in

itself, unlike harassment in the workplace, is not directly proscribed by law; even in its most serious forms, it is rarely handled as “crime” by a police department or the criminal justice system” (Kraska and Kappeler, 1995:101). The authors argue that “certain behaviors involved in police sexual harassment could be defined as crime, such as false imprisonment, battery, or sexual abuse” (Kraska and Kappeler, 1995:102). “The sexual harassment of women by male police officers is particularly significant: the often-discussed power differential exists not only because the harasser is male, but also because he has the state-sanctioned power to detain, arrest, and used physical force if the female does not cooperate” (Kraska and Kappeler, 1995:103). “The police officer can invoke operational necessity, sometimes with institutional support, to engage in a range of potentially abusive behaviors, most significantly the legitimate use of violence”, including sexual violence (Kraska and Kappeler, 1995:103).

On the far end of the continuum is the criminal: police rape (Kraska and Kappeler, 1995). Kraska and Kappeler (1995) found similar patterns in the rape cases to what they found in the sexual harassment cases in that “they involve a police officer who pulls over a female citizen for some traffic violation (generally driving under the influence), threatens her with arrest, and takes her to a secluded location for some outwardly legitimate reason” (103). The authors emphasize how police officers are “members of the select group of persons empowered to enforce the state’s laws and protect the citizens, exploited their unique access to female citizens, and their power and authority as police, to engage in sexually violent behavior” (Kraska and Kappeler, 1995:104). Kraska and Kappeler (1995) emphasize the “pattern of raping women who

are out late at night and suspected of being intoxicated” (104). Another aspect the authors emphasize is the problematic nature of the assumption that force is used in rape. They argue that “the assaulting officer’s possession of state-sanctioned power, along with the power of being male, rendered the overt use of force unnecessary” (Kraska and Kappeler, 1995:106). This is an example of what Caringella (2009) calls inherently coercive circumstances.

Kraska and Kappeler (1995) conclude that “the extreme power differential between policemen and female citizens comprises only one of several links connecting the various forms of PSV against women” (Kraska and Kappeler, 1995:106). “Others are a sexist organizational ideology, judicial and legal support or tolerance for some types of PSV, and the structural position of the police” (Kraska and Kappeler, 1995:106). The authors argue that “a sexist culture in any organization which has access to women can constitute a governing structural factor in sexual violence” (Kraska and Kappeler, 1995:107). In addition, “another common element on the PSV continuum is the structural position and situational opportunity of the police to commit acts of PSV” (Kraska and Kappeler, 1995:107). “The police possess exceptional access to women, often in situations with little or no direct accountability” (Kraska and Kappeler, 1995:107). Kraska and Kappeler’s (1995) research illuminates a variety of factors that lead to the sexual victimization of women by male police officers, as well as the possibility of sexual violence against police officers wives and female officers. The research also highlights a “way we can avoid viewing police crime as simply an aberration committed by a rogue officer; we can place it within an entire range of less

obtrusive behaviors, all of which have common structural and cultural roots” (Kraska and Kappeler, 1995:108).

The literature discusses that “civil remedies are available to victims of PSV” (Vaughn 1999:335). “They may file suits under federal or state law against the governmental entity employing the perpetrator or against the individual officer who commits PSV” (Vaughn 1999:335). “Although PSV is almost always unauthorized by agency policy makers, agency authorization is not the controlling factor in the inquiry about scope of employment” (Vaughn 1999:354). “Criminal justice personnel may act within the scope of employment when the PSV is committed under the guise of apparent agency authority, when PSV is incidental to authorized agency activities, when the PSV is a foreseeable consequence of agency activities, and when the PSV is committed during accomplishment or furtherance of agency objectives” (Vaughn 1999:354).

“Recognizing the power inherent in government positions, Title 42 of the U.S. Code (USC) Section 1983 establishes civil liability for individuals who “under color of any statute” deprive an individual of “any rights, privileges, or immunities secured by the Constitution and laws” (Eschholz and Vaughn, 2001:390). “As a threshold issue in Section 1983 litigation, it must be shown that officers acted under color of law” (Eschholz and Vaughn, 2001:390). “To show that defendants acted under color of law, plaintiffs must prove that the officer exercised official state-sanctioned authority to perpetrate the sexual assault” (Eschholz and Vaughn, 2001:390). For example, an officer “acted under color of law” if the misconduct “occurred while he was on duty, wearing his uniform, driving a marked patrol car, and conducting official business” (Eschholz and

Vaughn, 2001:391). An additional avenue for victims of PSV is the Fourteenth Amendment. “With respect to law enforcement, the U.S. Supreme Court has held that the substantive due process clause of the Fourteenth Amendment contains a right to bodily integrity” (Eschholz and Vaughn, 2001:400).

Background: Rape and Sexual Violence in Prisons

Until the 1990’s, nearly all the research on prison sexual coercion was focused on male prisoners (Hensely et al. 2000). In 1996, Struckman-Johnson et al. found a 7% incident rate of coerced sex for female inmates in a sample of 43. Of the three reported incidents of sexual coercion, one of those incidents was perpetrated by staff (Struckman-Johnson et al., 1996). A follow-up study of female inmates in three facilities found that one facility had a sexual coercion rate of 19%, and of those, “almost half of the incidents reported by female targets were perpetrated by staff” (Struckman- Johnson and Struckman-Johnson 2002:226). In these incidents, “a male staff member would corner an inmate in an isolated area and forcefully fondle her (Struckman- Johnson and Struckman-Johnson 2002:226). In addition, an important finding to note in this study was that “a number of incidents involved female staff who used similar strategies to victimize women” (Struckman- Johnson and Struckman-Johnson 2002:226).

In the literature on sexual violence by corrections officers, “within corrections, practitioners report that the “majority” of guard-inmate sex cases result from “manipulative inmates” who experience a “gotcha’ reaction when first having sex with

the staff. They recognize their own power over the staff member's future, being able to disgrace, sue, or have him fired" (Vaughn 1999:334). "In countering any attempt by victims to report the sexual abuse, staff members and their defenders use the victims' social status and criminal histories to discredit their stories" (Vaughn 1999:334). "Bad girls," like female prisoners, prostitutes, women who have previously consented, women who dress or act as if they have any sexual interest in any man, and even wives (in some states), are presumed to have granted sexual access" (Baro 1997:66). Thus, corrections officers often take the approach of blaming the victims for the sexual violence that occurs.

"Correctional environments are inherently coercive, and some guards take advantage of this power by raping prisoners in their care" (Eschholz and Vaughn, 2001:398). The guards have absolute authority and physical control over women at all times. This provides many opportunities for guards to abuse their authority and coerce women in to sexual acts. "Some prisons are so permeated with sexual abuse and violence that managerial disorganization and administrative breakdown have become normalized within the facility, rendering legal action necessary" (Eschholz and Vaughn, 2001:399). The sexual violence against women that occurs in prisons is a part of the institutional culture.

Corrections officers may use the policies and practices of the prison institution to their advantage. "Rape of a prisoner by a correctional officer sometimes is perpetrated under a threat of punitive isolation or administrative segregation" (Eschholz and Vaughn, 2001:399). For example, Baro (1997) found in Hawaii at the Oahu Community

Correctional Center (OCCC) women involved with the reporting of a rape by a corrections officer were put into “protective custody” which “meant being housed in a separate cottage with a small group of women and being denied access to program services” (72). Which “in effect, protective custody was a punitive condition of confinement that may have discouraged future reporting” (Baro 1997:72). Another study by Struckman-Johnson et al. (1996:74) found reasons for not reporting among both male and female victims of prison sexual coercion, “the major reasons were fear of harm from the perpetrators, poor treatment by staff, and shame and embarrassment”. A 2002 follow-up study by Struckman- Johnson and Struckman-Johnson found that “only a third of the women told a prison administrator about the incident” (226). And “when asked why they did not report, inmates typically responded that they feared retaliation from the perpetrators, especially staff who could make prison life difficult for them (Struckman-Johnson and Struckman-Johnson 2002:226). Therefore, “victim blaming by officials may further exacerbate the problem of PSV because victims may be afraid to report the abuse for fear of punishment” (Eschholz and Vaughn, 2001:400).

Fear of reporting is only one problem with understanding the full extent of the problem of sexual violence against women in prisons. This is because “most cases of staff sexual misconduct are not litigated or reported to the media” but are “much more likely to be treated as highly confidential personnel investigation” (Baro 1997:63). Baro (1997) identifies some “lessons learned” from the literature and research in Hawaii:

- (1) Female inmates are highly vulnerable to sexual abuse and exploitation and ‘rumors’ of staff sexual misconduct should always be fully and competently investigated;
- (2) staff training programs in cross gender supervision and about the

vulnerability of female prisoners must be developed and implemented; (3) laws that make any staff/inmate sexual contact a crime must be enforced; and (4) the social status of women in general and women inmates in particular is probably not high enough to generate the political will to comply with equal protection or sexual assault laws (79).

Baro (1997) suggests a variety of factors to understand why “female prisoners are extremely vulnerable to sexual abuse and exploitation” (69). Many female prisoners have histories of sexual abuse prior to being incarcerated (see Moss 1986, Chesney-Lind and Rodriguez 1983). Baro (1997) argues that “these victims often become women who are emotionally and sexually vulnerable” (69). “Another characteristic of female prisoners that can make them vulnerable to staff sexual abuse and exploitation is that a considerable number have drug abuse and addiction histories and they appear to be more dependent on corrupt staff supplying drugs than their male counterparts” (Baro 1997:69).

Background: Border Patrol Rape and Sexual Violence

The rape and sexual violence committed against women by border patrol agents on the U.S.-Mexico border occurred against the background of changes in immigration patterns and globalization. From the 1940’s-60’s, Mexican men came to the U.S. as temporary and seasonal workers, thus, the “costs of raising and educating these workers were incurred in Mexico, as were all of the social costs of their families (Carpenter 2006:168). By the 1970’s this trend had changed so that undocumented women and their families were establishing permanent homes in the U.S. (Carpenter 2006). This pattern increased over the next several decades and prompted the 1994 passage of Proposition

187 in California “which cut off many public benefits to undocumented immigrants” (Carpenter 2006:168). The second change in 1994 was the implementation of Operation Gatekeeper, which funneled millions of dollars to border protection, which pushed the entry points of illegal immigrants to remote areas and had the effect of turning “immigration back into a form that favors young, fit men and discourages women and children” from entering the U.S. (Carpenter 2006:170). The combined impact of these two policies has led in part to the increased militarization along the U.S.-Mexico border.

The majority of transformation and militarization of the border patrol has occurred since the 1970’s (Luibheid 2002). The 1980’s “war on drugs” led to the end of the separation between policing and the military when it came to the border patrol (Luibheid 2002). The “war on drugs” “Generated cooperation between the Drug Enforcement Administration, the FBI, the Coast Guard, and the Border Patrol in carrying out border monitoring (Luibheid 2002:119). “The militarization of the U.S.-Mexico border involves two key elements: the introduction and integration of military units in the border region (the War on Drugs is the primary motivator for involving military units) and the modification of the Border Patrol to resemble the military via its equipment, structure, and tactics” (Falcon, 2001:32)”. “Timothy Dunn employs low-intensity conflict (LIC) military doctrine to contextualize the militarization of the U.S.-Mexico border” (in Falcon, 2001:32). “LIC doctrine advocates “unconventional, multifaceted, and relatively subtle forms of militarization” and emphasizes “controlling targeted civilian populations” (Falcon 2001:32). “The execution of LIC doctrine can create a climate conducive to rape” (Falcon 2001:33). “When LIC doctrine is applied to

controlling people and threats to national security, rape can be an outcome because of the association of militarized rapes to power, control, and national security” (Falcon 2001:33). “A form of colonization occurs at the border in the symbolic connection between women’s bodies and territory” (Falcon 2001:46). “Migrant women’s bodies represent a country over which the U.S. has maintained long-term colonial rule” (Falcon 2001:46). “Thus, women’s bodies denote an “alien” or threatening presence subject to colonial domination by U.S. officials” (Falcon 2001:46).

“Certain practices distinguish militarized border rape from other forms of militarized rape” (Falcon 2001:34). “Many women report that being raped was the price exacted of them to cross the border without being apprehended or deported, or to receive their confiscated documents” (Falcon 2001:32). Carpenter (2006:174) found that “border patrol agents who have raped women have tended to release them into the United States rather than return them to Mexico”. This can be seen as a symbolic strategy, rather than a literal enforcement of the border, intended to “keep them ‘in their place’ in terms of social, racial, gender and national hierarchies” (Carpenter 2006:174).

“Border-crossing women who have been sexually violated and who decide to prosecute confront not only an individual, but also challenge an institutional system of social control and power” (Falcon 2001:35). “Proceeding with an investigation is particularly difficult for women since INS officials, who are arguably invested in the organization (typically male), tend to interrogate them over the alleged incidents” (Falcon 2001:35). “Because of their undocumented and “illegal” status in immigration law, women form a highly vulnerable group” (Falcon 2001:45). “The criminalization attached

to crossing the border without appropriate U.S. government documents facilitates a disregard for human rights” (Falcon 2001:45). Immigration violations are constructed in the U.S. as individual violations, where by the individual is to blame for the law breaking, rather than “larger structures, including globalization processes and neocolonial relations, clearly also condition immigration” (Luibheid 2002:128). Because of this, “undocumented women can not easily (of at all) call on the law or other social systems for protection from rape and sexual abuse” (Luibheid 2002:128). In addition, “limited resources accessible to women unfamiliar with U.S. laws and the English language compound the problem” (Falcon 2001:45). “The nature of militarism and border enforcement work allows agents to work at their own discretion on an individual level” (Falcon 2001:41). “The power differential in the relationship between a U.S. official and an undocumented woman is substantial because this official represents an INS institution and a powerful nation” (Falcon 2001:41).

Falcon (2001) identifies several factors that are associated with militarized border rape. First, “border enforcement agents have wide discretionary power while on the job” (Falcon 2001:42). “Border enforcement agents who patrol the border have wide discretion in how they perform their jobs” (Falcon 2001:42). “Therefore, the potential exists to abuse the power that accompanies the job” (Falcon 2001:42). Second, “ineffective and misguided hiring leads to the employment of questionable staff” (Falcon 2001:42). “The INS has hired individuals at an unprecedented rate... A major concern resulting from this rapid growth in personnel pertains to the quality of the individuals being hired” (Falcon 2001:42). “The Immigration Control and Reform Act (1986)

provided funds to increase the number of Border Patrol agents from 2,500 to about 4,800” and the “Illegal Immigration Reform and Immigrant Responsibility Act (1996) authorized the hiring of 1,000 additional Border Patrol agents per year during the period 1997-2001, more than doubling the number of agents” (Luibheid 2002:119-120). Third, “the failure to enforce and abide by law enforcement standards places human rights in jeopardy” (Falcon 2001:43). “Since civil rights are a component of human rights and law enforcement standards incorporate civil rights, the failure to enforce basic law enforcement standards, including human safety concerns, ultimately risks human rights” (Falcon 2001:43). “Mismanagement and the lack of a proportionate increase in investigative staff exacerbate the problem” (Falcon 2001:43). Fourth, “the “code of silence” found in law enforcement and military culture prevents agents from reporting on each other” (Falcon 2001:43). “This cultural norm sustains human rights violations because agents fail to report one another during incidents of wrongdoing” (Falcon 2001:44). “The “code of silence” is integral to the militarized border system because it maintains the system’s legitimacy” (Falcon 2001:44). Finally, “the level of militarization produces warlike characteristics that make rape and other human rights violations an inevitable consequence of border militarization efforts” (Falcon 2001:44). “U.N. monitors have documented the systematic rape of women during war, and categorize rape as a war crime, a weapon of war, and a form of torture” (Falcon 2001:44). “Warlike conditions at the border reinforce a climate that sustains the rape and systematic degradation of women” (Falcon 2001:44).

The literature on rape and sexual violence against women in the four areas of the U.S. military, police officers, corrections officials, and border patrol agents share some common elements across the agencies. First, the positions occupied by these groups in society hold significant state authorized power and authority over the populations they interact with. Particularly they are all in some way charged with controlling some population. This leads to several consequences. The one is that with power and authority come significant opportunities for abuse, and rape and sexual violence against women can be one. Second, this power and authority creates coercive environments where sexual violence can be committed without the use of physical force, which can make that assault harder to identify and prove.

The second theme of the literature is that all of these agencies have historically been male dominated. Characteristics associated with masculinity permeate the military, police, corrections and border patrol institutional cultures. They each emphasize and place value on characteristics such as assertiveness, dominance and control, aggressiveness and violence to reach organizational goals. Furthermore, each of these organizations relies on strong bonds between its members. Sharing sexual experiences and conquests (possibly rape or sexual violence) can act as bonding experiences within these groups. An additional consequence of the strong bonds created in these organizations is that it contributes to the lack of reporting or evidence of cases of sexual violence. The “blue wall of silence” and the “code of silence” provide a protective environment which can be conducive to hiding sexual violence.

The literature also reveals that the women who are raped and experience sexual violence by actors in the institutions of the military, police, corrections, and border patrol share similar characteristics as a group. First, they are all 'other' from the men in the sense that they are a population under control; foreign enemy and civilian women in war, civilian women, incarcerated (i.e. criminal) women, and illegal immigrants. In addition, the women's status also puts them into a position subordinate to the men in these organizations and can lead to situations where the women can be coerced because of the power differential in the circumstances.

CHAPTER III: METHODOLOGY

Research Question

Given the limited attention devoted to victims of state crime and the wide spread occurrence of sexual violence against women by state actors globally, research is needed to fill this gap. Specifically:

What are the organizational/structural factors that contribute to these crimes and impact women's victimization?

What factors put some women at greater risk of being victims of state crimes?

What is the nature/array/pervasiveness of sexual violence of women by U.S. state actors?

How does the victimization of women by agents of four U.S. agencies fit within the six propositions of a victimology of state crime?

I used a multiple case study approach, situated within the existing literature on state sexual violence against women to understand why these crimes occur. Identifying what women are most vulnerable, understanding why violence is so wide spread in these institutions of the state not only contribute to the research literature on feminism, victimology and state crime, but can be used to challenge and elaborate definitions of sexual violence that can be changed and/or implemented to ultimately provide some new directions in recourse for victims, attributions of culpability for offenders and work to eliminate this problem.

Research Design

The method for this research involved a multiple and comparative case study approach. The case study approach allows for a variety of information to be collected which provides the context for analysis. In addition, case studies provide in-depth details for the analysis, such as institutional, offender and victim characteristics. A case study is “an in-depth, multifaceted investigation, using qualitative research methods, of a single social phenomenon” and is “conducted in great detail and often relies on the use of several data sources” (Fegan, Orum& Sjoberg 1991:2).

The use of multiple sources has also been identified as triangulation in qualitative research. This is one of the strengths of the case study because it allows the researcher to “assemble complementary and overlapping measures of the same phenomena” (Fegan, Orum& Sjoberg 1991:19). The use of multiple secondary sources also raises questions of reliability, however data reliability will be ensured as I alone will collect and analyze it. I will also be going through all the data multiple times during the research process. Triangulation is also used to check for the validity and reliability of the data in terms of identifying consistent themes or patterns across data sources, as well as the use of “rich, thick description to convey the findings” (Creswell 2003:196). Validity is ensured through the saturation of sources and comparison of the content of the different sources. For this dissertation, triangulation will occur during in the data collection for each agency or organization representing the state.

For this dissertation, each case is focused on an agency or organization of the U.S. government. “In case study research the nature of the social phenomenon studied has varied”, for example “it can be an organization; it can be a role or role-occupants; it can be a city; it can even be an entire group of people” (Fegan, Orum& Sjoberg 1991:2). While the focus of this dissertation is be on the U.S. as a whole, individual cases or examples from each of the categories (military, police, correctional officers, and border patrol agents) allows detailed analysis of how and why these crimes continue to occur in the state context. Within each category different examples will be discussed which provides the background and the larger organizational structure within with the specific case is situated. The background for each case demonstrates why these crimes should be viewed as a state crime because it provides evidence as to how multiple incidences occur within the same institution, by individuals acting in an official capacity, following implied orders and where the state is failing to address the harms that occur (Kramer et. al. 2005; Mullins and Rothe 2008). The background also provides information on the factors which put some women at greater risk of being victims of state crime, identifies the nature/array/pervasiveness of sexual violence, as well as illustrates how the victimization of women fits within the six propositions of a victimology of state crime. One specific example will then be discussed which will involve a more in depth description to provide more details as to what one particular victims experienced. Identifying with one particular victim highlights the way the larger structural and organizational factors operate on the individual level and identifies information which

might not be apparent at the other level. The benefit of this approach is the rich and thick data that can be gathered and analyzed.

Research Process: Overview

Information for the cases is collected from a variety of secondary sources. First, previous research creates the foundation for each category of state actors and provides the starting point for further data collection. This foundation involves documenting the known history, extent and array of sexual violence in these organizations, as well as theoretical perspectives used for understanding sexual violence. Then I conducted internet based searches for news articles and press releases for information to identify cases for each category. In addition to stories uncovered by the media, this can be a good way to identify reports from NGO's and the U.N. as press releases will coincide with the release of various reports. Finally I searched international NGO's, such as Human Rights Watch (HRW) and Amnesty International (AI), as well as U.N. and U.S. government reports. For each stage and search is built off of initial cases for each category once identified. This can be thought of as a snowball method for secondary data. It also uses a convenience sample, which although limiting the generalizability of this research, enables purposeful selection of cases rich in detail and thick description. Once cases were identified, I found more information on the specific case, while continuing to identify new cases. This was necessary because there was limited information in areas available

so the net has to be cast wide enough to ensure enough information for analysis of each case.

Research Process: Specifics

The first step in this process was to review the scholarly literature on sexual violence by the U.S. military. This provided information on the extent, forms, and legal/human rights responses to sexual violence against women. This literature also provided the theoretical perspective on why this violence occurs. Next I conducted internet based searches for rape and sexual violence in Iraq. I focused on this location because it was where the most public interactions with a civilian population the U.S. military was engaged in. I discovered several NGO and media reports related to sexual violence against women in U.S. run prisons in Iraq. Then I began to search for an individual case with which I was familiar from the news, namely, a rape by U.S. soldiers in Haditha Iraq. But when I started searching google for articles on rape in Haditha, I ran into some problems. Apparently the case I was looking for occurred in Mahmoudiya, Iraq, which I found from readings and news article that came up when I did my first search. I started by looking for news articles by searching google for: Rape in Mahmoudiya. This search produced many more results. I read through and printed off a first round of stories related to the Mahmoudiya case. I found news sources such as the BBC, CNN, The New York Times, The Guardian etc. I read these articles, underlined important details and took notes on a pad of paper identifying all dates and people

identified in the news article. I also identified any additional sources identified in an article. Some of these were other media sources, some were reports and official court documents. Using one article at a time and my notes, I began to type up a description of the case. First I began sections on each person I had identified so far. Then I started a section chronicling the events. Next I exhausted each source for any information on the people and events and put all quotes in each section. After this initial write up, I went back to google searching for the news sources I had identified, as well as new sources and followed hyperlinked sources in articles. This approach sometimes leads to less legitimate sources, such as blogs, however many of these have links to original news sources. This round lead to new sources from CNN, BBC, etc. I would then add any new information to my write up and double check the information I already had with the new sources. I continued the process until I was had exhausted all the sources, was only finding repeated information and my write up was as complete as the information available to me. In order to keep track of all the hardcopies I had printed, I bought a plastic crate that could hold hanging file folders and started a file on the U.S. military.

In the next stage I began by reviewing the scholarly literature on police sexual violence (PSV)/police sexual misconduct (PSM). Next I conducted a search for NGO reports about PSV/PSM. While there was some information on the police, these searches seemed to lead me to corrections literature, focused less on the police. As I was tracking down cases, I found that I would come across an initial report of police sexual misconduct, but there was little to not follow up in the media on what happened to the officer and almost never any information on the victim. This is discussed later as one of

the findings. The case I decided to use was recent and had a small amount of follow up information on the officers involved, however, I decided to use this case because it had the most available information of all the cases I researched. While this case was different than the scholarly literature and background information because it did not involve a traffic stop, as most of the literature indicated, it did provide important information about the organization as well as the specific victim. I used google, pro quest and info track to locate more articles. I printed the articles I found and read through them. I underlined and took notes on the information in the articles, such as the timeline and people involved, as well as made note of additional sources. I then typed up a description of the case, which follows the chronology and identifies individuals involved. Once all the information from these sources was written up I conducted a new search of the additional sources I had found, as well as looked for any new sources. I continued to write up the new information I found and conducted searches until the information was saturated. Finally, I created a file for the hardcopies in my plastic crate.

Next, I began with the scholarly literature on sexual violence by corrections officers. As just noted, some of this was found during research into the police literature. Then I began following up on research from human rights groups finding there is a lot of information from HRW and AI, much of which contained information of the Michigan Department of Corrections. In addition, I looked into the Detroit Free Press series on the Michigan Department of Corrections (MDOC) class action law suit, which had been identified in the HRW and AI reports. I found this to have a wealth of information and it corresponded to some of the information from human rights groups. This selection is

unique compared to the other cases her because it includes the background, like the others presented here, but it also provides additional information on a class action lawsuit. I selected a prisoner in the suit who appeared to have the most public information about her story. Once I printed and read the articles, took notes on the timeline and people involved and wrote up the information I had. I then went back to searching using my sources and the names I had identified to locate other sources. After the second round of searches, I added all the new information to the existing write up and continued the process until I had exhausted the sources and found repetitive information. Lastly, I put it in a file with the other cases in the crate.

For the final case, I once again began by reviewing the scholarly, but found that although there is a lot about women's immigration across the U.S-Mexico border, little specifically addresses rape and sexual violence by the border patrol. Next I began researching reports from human rights organizations, such as HRW, AI and the Border Action Network, as well as investigative reports from local news sources, such as the Tucson Citizen. Local news sources led me to select the specific case because of the large amount of detail. Once this was identified I searched for information using the victim and the perpetrators' names. This led me to identify more news sources as well as a legal document from the officers' appeal trial. I printed, read the articles and began to write up the timeline and individuals involved from these sources, and continued to follow up on additional sources I identified. I continued to write up new information and conduct new searches until the information became saturated and repetitive. Like the other cases, the hardcopies were filed in the crate.

Data Analysis Procedures

Making sense of the data when using a case study approach can be a messy process. I began by synthesizing the different sources for each case into a write up to provide the details and the context of the case. This helped to create a chronology of the events, as well as to identify of the various actors involved and situate the case within the broader institutional context. Additional research was needed during this process when gaps or missing information was identified. Once the data were organized, I began looking for themes identified according to the six propositions of a victimology of state crime outline by Kauzlarich, Matthews and Miller (2001). This process involved inserting abbreviations of the six propositions into the text. While these propositions are predetermined, the case study also allows for an inductive approach, where themes may emerge that extend beyond the predetermined categories.

The analysis was simultaneous with the data collection process. I began the research with the Iraq case, collecting data then writing the case up; first as notes, then as a chronology. As I went through this process, information began to emerge that corresponded with the six propositions so I created a new document for these notes. I also found there was information about the victims' experiences that did not fit neatly within the existing six propositions, so I made notes on these as well. I repeated this process for each case. Once I had reached the point of information saturation for each case, meaning that all subsequent sources contained only redundant data, I focused solely on the analysis. I read through each case with the six propositions at my side. I made

notes where I identified information that corresponded to the six propositions, and wrote question marks and thoughts where I identified information on the victims that did not fit the propositions. When I finished this phase, I returned to the very first notes for each case that I had made during the research process where I had identified the propositions as I went along. This process ensured that I included the identification of the propositions at every phase; in the original notes, in the cases as they were written up and in the proposition document.

Strengths, Weakness and Limitations of Design

This research will benefit women in the U.S. and abroad by drawing attention to the nature and causes of sexual violence by state actors. Raising awareness is the first step in addressing problems such as these. It is my hope that this research will ultimately contribute to the future amelioration of these types of violence against women.

The greatest limitation of this approach is that it is dependent on the information available, which is a typical problem with the use of secondary data. Due to the nature of these crimes being committed by state actors, often in facilities run by the state, the state has the ability to control the information available. Thus, there may be limited information for each category, not to mention each case. Furthermore, the focus on these specific U.S. agencies, together with a convenience sample of cases (predicated on data/detail availability) limits the generalizability of this research. This research is intended to illustrate themes in the literature and data, not to generalize to other U.S.

agencies, let alone other states. Future research will be needed on other aspects and agencies of the U.S. as well as other states. This research is also limited by its focus on crimes that are committed during the course of doing one's job or occupation and the women they encounter during the job (one could also look at how men employed in these institutions commit sexual violence against other women, such as peers and significant others).

However, given the limited research on women, victimology and state crime, this research will be a stepping stone for future research. With more research may come more awareness and more pressure for information. Furthermore, not only will this research will contribute to victimology and state crime literature on sexual violence against women, it can be used to aid advocacy groups and policy makers by illuminating why and how these crimes continue by the U.S actors of the state.

CHAPTER IV: FINDINGS AND ANALYSIS: DESCRIPTIONS OF VIOLENCE AGAINST WOMEN BY BRANCHES OF THE STATE AND BY INDIVIDUAL CASE EXAMPLES

Findings

Background: U.S. Military

“Well-publicized images of U.S. soldiers torturing and humiliating male Iraqi prisoners may be overshadowing evidence gathered by several human rights groups and Pentagon investigators indicating U.S. military personnel have raped and sexually abused Iraqi women held at Abu Ghraib prison and other detention facilities” (Shumawy 2004). Amal Kadham Swadi, an Iraqi attorney representing women detainees, told *The Guardian* that “she believes that sexualized violence and abuse committed by U.S. soldiers against female prisoners goes far beyond a few isolated cases (Shumawy 2004). “It’s ‘happening all across Iraq,’ she said” (Shumawy 2004). Often the women were detained to be used as bargaining chips to elicit information from relatives about insurgents or because their relatives were part of the Baathist party (Rosen 2006). Swadi, along with six additional women who are Iraq lawyers, began to investigate claims of sexual assault after a prisoner, Noor, managed to get a note out of Abu Ghraib (Shumawy 2004). Noor claimed that she had been impregnated after she was raped by U.S. soldiers, and that there were other women in the prison who had been raped as well (Shumawy 2004). Swadi and the other lawyers were able to interview some of the women who had been raped or had witnessed the rapes of other women (Shumawy 2004). “During a visit to

Abu Ghraib in March, Swadi said, one of the prisoners told her U.S. soldiers had forced her to undress in front of them, an act that would be seen as particularly demeaning in conservative Muslim culture” (Shumawy 2004). “She was the only woman who would talk about her case” (Shumawy 2004). “‘She was crying. She told us she had been raped,’ Swadi said (Shumawy 2004). “Several American soldiers had raped her. She had tried to fight them off and they had hurt her arm” (Shumawy 2004). Swadi also found women who had been raped by soldier at a location in Baghdad (Shumawy 2004).

The head of the International Occupation Watch Center, which is an organization which investigates human rights abuses under the U.S.-led occupation, ImanKhamas, was told by a former prisoner about how her cellmate at Abu Ghraib was raped (Shumawy 2004). “On another occasion, a woman whispered cautiously to Khamas – even though no one else was in the room – intimating that soldiers had raped her at Abu Ghraib” (Shumawy 2004). “A day later, Khamas said, the woman returned and asked her to tear up the statement” (Shumawy 2004).

A Pentagon report by Army Major General Antonio Taguba acknowledges the photographing and videotaping of female prisoners, naked, at Abu Ghraib (Shumawy 2004). “Photographs taken by U.S. soldiers and shown to members of Congress, but not yet made public, reportedly depict at least one Iraqi woman being forced at gunpoint to show her breasts” (Shumawy 2004). While the report also acknowledges a rape case which occurred at Abu Ghraib, “Taguba described the incident as a male prison guard “having sex” with a female detainee” (Shumawy 2004).

According to a 2004 report on the abuses in Abu Ghraib, Major General George Fay, reported that three US military personnel were punished for the assault of a female prisoner in October 2003 (Amnesty International 2005). According to the report:

First the group took her out of her cell and escorted her down the cell block to an empty cell. One unidentified soldier stayed outside the cell; while another held her hands behind her back, and the other forcibly kissed her. She was escorted downstairs to another cell where she was shown a naked male detainee and told the same would happen to her if she did not cooperate. She was then taken back to her cell, forced to kneel and raise her arms while one of the soldiers removed her shirt. She began to cry, and her shirt was given back as the soldier cursed at her and said they would be back each night (Fay Report 2004).

Amnesty International (2005) published a report documenting the wide range of violence women in Iraq experience. "Reports about the torture and cruel, inhuman and degrading treatment of detainees in Abu Ghraib prison and other US detention centers in Iraq have included allegations that women have been subjected to sexual abuse, possibly including rape" (Amnesty International 2005). Women who spoke to AI have "reported beatings, threats of rape, humiliating treatment and long periods of solitary confinement" (Amnesty International 2005). Women in Iraq are very hesitant to report sexual crimes because they are stigmatized and face social consequences rather than the perpetrators themselves (Amnesty International 2005).

The Case: AbeerQasimHamza Al-Janabi

“The Iraqis have been shouldering lots of murders and crimes by the Americans and have been silent. But they will not stand the crime of rape.”

-Adnan Janabi, the leader of the Janabi tribe,
Mahmudiya, Iraq (Abdul-Ahad 2006).

The case of the U.S. military took place in Mahmudiya, Iraq on March 12, 2006. The victim was AbeerQasimHamza Al-Janabi, whose age had been debated, but it appears she was 14 when she died. “It had previously been suggested in court documents that she was 25, while the U.S. military documented her as 20. Local officials and relatives said she was 15 or 16. But her identity card and a copy of her death certificate, obtained by Reuters, show she was 14” (Macdonald 2006). Abeer was born in Baghdad on August 19, 1991 and her I.D. card “features a photograph of her at 18 months, wide-eyed and with a lick of dark hair over her brow” (Macdonald 2006). On her death certificate which was dated March 13 indicates that a relative found her body at home and that she was found with burns on her body and gunshot wounds to her head (Macdonald 2006). However there was no mention of the rape because rape is a taboo subject in Iraq (Macdonald 2006). One relative has commented that Abeer experienced harassment by the U.S. soldiers in the area saying “She complained to her mother about trouble from American soldiers” (Macdonald 2006).

On the night of March 12, 2006 several U.S. soldiers left the checkpoint they were watching and entered the Iraqi family's home (Goldenberg 2006). It was reported that the soldiers, along with Private Green had been targeting Abeer during the week before the attack (Jervis and Stone 2006). "Private Green and at least three others planned the rape and told another soldier to monitor the radio while they went to the house" (Stout and Semple 2006). "Green and other unnamed soldiers are alleged to have left their post, drunk alcohol and changed into dark clothing, and entered the victims' home" (Goldenberg 2006, Jervis and Stone 2006). Prior to the rape, Private Green put Abeer's relatives into a separate room and then "shots were heard inside, after which Private Green came to the door and said, 'I just killed them, all are dead'" (Stout and Semple 2006). "Then Private Green and another 'known participant' were seen raping the woman before Private Green shot her in the head 'two to three times'" (Stout and Semple 2006). The soldiers had changed their clothes and were later seen with blood on their clothes (Stout and Semple 2006). After the attack, they burned their clothes and then "told the comrade who had been left to monitor the radio that "this is never to be discussed again" (Stout and Semple 2006).

Abeer's uncle, Ahmad Qassim, told a reporter what he had witnessed at Abeer's house when he arrived following the attack (Abdul-Ahad 2006). "'When I arrived that morning there was still a smell of burning plastic,' Ahmad recalls" (Abdul-Ahad 2006). The reporter describes what the house looks like during the visit: "Inside the modest house, the walls and ceiling are covered with soot at the far right end of the room. Under the window sill, the wall and part of the floor are covered with a thick layer of burned

grease, and next to it the corner wall is stained with and arc of splattered blood” (Abdul-Ahad 2006).

A neighbor woman and Omar, her 13-year-old son, describe what happened the day of the attack (Abdul-Ahad 2006). “Omar explains how he was outside the house showing his bicycle to Ahmad’s brother, Hamza [Abeers father] in the yard next door when he heard noises” (Abdul-Ahad 2006). “I told him: ‘I think the Americans have gone into your house’. Hazma went to see what was happening. About half an hour later, the boy said he heard a sound, ‘like beating a tin barrel with a stick a few times’. He went outside and saw five Americans leaving. One carried two guns” (Abdul-Ahad 2006). “His mother takes up the story: ‘We went to the house and shouted through the door, are you OK? Are you OK? No one answered, then we saw the smoke coming from that window. I went to the street screaming for help, the young men from the street came in and we broke the door down’” (Abdul-Ahad 2006). “The poor girl, she was so beautiful she lay there, one leg was stretched and the other was bended and her dress was lifted to her neck” (Abdul-Ahad 2006). “Ahmad explained to me why locals had not reported the incident. ‘We knew about the rape all along, but in the tribes of you can’t do anything about it better to shut your mouth. No one will say our daughter was raped and we can’t do anything’” (Abdul-Ahad 2006). “Iraqi tribal society is deeply patriarchal. Honour and reputation are valued much more highly than property. Shame can only be wiped clean by blood and there is no worse shame for a family than rape” (Abdul-Ahad 2006). “He said his brother asked him a week before the incident if he could bring his

family to stay in Ahmad's house. He complained that the Americans were harassing his daughter as she came in and out of the house" (Abdul-Ahad 2006).

"They gathered over cards and booze to come up with a plan to rape and murder that girl,' Pickands said. 'She was young and attractive. They knew where she was because they had seen her on a previous patrol. She was close. She was vulnerable'" (CNN.com 8/8/06). "Army investigator Benjamin Bierce testified that Barker told authorities the soldiers were drinking whiskey, playing cards and hitting golf balls when Green brought up the idea of raping the girl" (CNN.com 8/8/06). "Brice also testified that Barker admitted pouring kerosene from a lamp on the girls' body, although it was unclear from the testimony who set the girl on fire" (CNN.com 8/8/06).

In all, six men have been charged in connection with the rape and murder of Abeer and the death of the parents and young sister. They are all from the "502nd Infantry Regiment, attached to the Fourth Infantry Division" (Wong 2006). Steven D. Green, 21, was discharged from the Army after a psychiatric evaluation revealed a personality disorder before the March 12 incident came to light (von Zielbauer 2007). Green was charged in a "civilian court in Kentucky with murder and sexual assault" where "he has denied the charges" (BBC News 1/18/07). Green is "subject to civilian prosecution under the Military Extraterritorial Jurisdiction Act, which allows crimes committed in foreign countries by members of the United States military to be prosecuted as if they had been committed within the United States" (Stout and Semple 2006). "In an FBI affidavit, Mr. Green and two other soldiers are accused of stalking the rape victim" (Goldenberg 2006). "Green is alleged to have shepherded the victim's parents, and her

sister, who may have been as young as five, into a room, where each was shot in the head” (Goldenberg 2006). “The soldiers are then to have alleged to have tried to set fire to the bodies” (Goldenberg 2006). “Prosecutors have said he was the ringleader and enthusiastically urged the other soldiers to join in the attack on the family” (von Zielbauer 2007). “It was Green, prosecutors say, who after raping Abeer killed her and her family, and set her body alight with kerosene to destroy the evidence” (von Zielbauer 2007).

Specialist James Barker pled guilty to rape and murder, he “agreed to the plea deal at the start of his court-martial in the U.S. to avoid the death penalty” (BBC News 11/15/06). He “agreed to co-operate with prosecutors and will testify against the others” (BBC News 11/15/06). Barker was sentenced to life in prison (BBC News 1/18/07) and could serve 90 years (BBC News 11/16/06). “Barker told the court that Mr. Green had come up with the plan for the rape and killings” (BBC News 11/16/06). “He brought it up and asked me what I thought about it,” Barker said (BBC News 11/16/06). “By the time we started changing clothes, it was more or less a non-verbal agreement that we were going to go along with what we were discussing” (BBC News 11/16/06). Specialist James Barker was sentenced to 100 years in prison by an army judge (von Zielbauer 2007).

Sergeant Paul Cortez avoided “the death penalty and has agreed to co-operate in the trials of three other men” (BBC News 1/18/07). “‘Sgt Cortez is going to go and accept the responsibility for his part in what occurred,’ his lawyer William Cassara said” (BBC News 1/18/07). “Our version of events is that he knew what was going to take

place and participated as an observer” (BBC News 1/18/07). In the end, Cortez was sentenced to 90 years in prison for his part in the murders and rape (von Zielbauer 2007).

“Two other soldiers- Pvt Jesse Spielman and Pvt Bryan Howard-are facing court-martial proceedings on charges related to the attack” (BBC News 1/18/07). Private Jesse Spielman, was convicted for rape and four counts of murder (von Zielbauer 2007). “He was sentenced to 110 years in prison. He was also found guilty of conspiracy to commit rape and housebreaking with the intent to commit rape” (von Zielbauer 2007). “Unlike Cortez and Barker, who each pleaded guilty to rape and murder in exchange for a term of years, Spielman sought an acquittal at his court-martial because, according to his lawyers and the other soldiers convicted in the case, he did not physically participate in the rape or murders” (von Zielbauer 2007). Sergeant Anthony Yribe, a fifth soldier involved, was charged with making a false statement and dereliction of duty (Dawn 2006).

The Prime Minister of Iraq, Nouri al-Maliki, has called for an independent investigation (Jervis and Stone 2006). The Prime Minister also “questioned why U.S. troops receive immunity from prosecution in Iraqi courts for crimes committed there” (Jervis and Stone 2006). “The Iraqi Prime Minister, Nuri Kamal al-Maliki, lashed out at the American military, saying that violence against Iraqi civilians by American troops was a ‘regular occurrence’” (Wong 2006). “Iraq’s Prime Minister, Nuri al-Maliki, has demanded an independent investigation into the alleged rape and killings, and said the immunity granted to U.S. troops in Iraq has encouraged abuse” (Goldenberg 2006).

Background: Police

In a March 2002 report “Driving While Female”: A National Problem in Police Misconduct found that “across the country, police officers sexually harass or abuse female drivers, using the pretext of alleged (and often baseless) traffic violations” (Walker and Irlbeck 2002). The “reports of ‘driving while female’ (DWF) abuses are found in every part of the country, and the level of abuse runs the gamut from harassment to sexual assault and even murder” (Walker and Irlbeck 2002). The authors argue that “these are not isolated incidents” (Walker and Irlbeck 2002). “A review of media reports reveals an average of nearly 20 media-covered cases per year in each of the last six years” (Walker and Irlbeck 2002). The authors also argue that these are a small number of all the possible cases because “many victims do not come forward because of humiliation and fear of reprisal” and that “departments do not accept and investigate complaints from many victims who do come forward” (Walker and Irlbeck 2002).

Walker and Irlbeck (2002) found several patterns in their research. They found that police officers abuse their powers during traffic stops to sexually abuse women (Walker and Irlbeck 2002). They also found consistent failures in the investigation policies of the departments when allegations did come to their (Walker and Irlbeck 2002). “Third, as in the case of DWB, DWF abuses continue because police departments tolerate them by failing to act on citizen complaints, failing to adopt necessary policies and training, and failing to supervise their officers in a professional manner” (Walker and Irlbeck 2002). Finally, the authors argue that “DWF abuses are symptomatic of a

pervasive sexist culture within a police department” and that “this sexist culture manifests itself in several ways:

- (1) employment discrimination against women, including the failure to promote women to supervisory positions;
- (2) tolerance of sexual harassment within the department;
- (3) a systematic failure to investigate domestic violence incidents where the alleged perpetrator is an officer in the department;
- (4) inadequate policies regarding pregnancy and leave (Walker and Irlbeck 2002).

Walker and Irlbeck released a follow up report Police Sexual Abuse of Teenage Girls: A 2003 Update on “Driving While Female” (2003) which found “police sexual abuse of women includes a disturbing pattern of police officer exploitation of teenage girls” specifically involving “girls who are enrolled in police department-sponsored Explorers programs designed to give teens an understanding of police work” (Walker and Irlbeck 2003). The updated report identified 123 news cases of police sexual violence against women since the prior report from 2002 (Walker and Irlbeck 2003). “Some of these cases involved incidents that occurred prior to May, 2002 but were either not reported or not discovered by the authors until recently” (Walker and Irlbeck 2003). The authors suggest that a similarity in both of their reports is that, by virtue of their authority, police officers are able to use their power to take advantage of less powerful and vulnerable individuals (Walker and Irlbeck 2003). The authors conclude that police officers exert this power and authority because of their positions (Walker and Irlbeck 2003).

The Case: Unknown Victim

In the East Village, an investigation into a police officers' conduct began after reports surfaced that he raped a woman after he escorted her home because he had been informed she was drunk (Gendar and Sederstrom 2009). Sources identified the police officers as Kenneth Moreno, a 17-year veteran of the NYPD, and Franklin L. Mata, who had been with the NYPD for three years (Hamilton and Weiss 2009). The two officers were responding to a 911 call from a cab driver who had a woman in his car who had vomited and could not pay the fare (Gendar and Sederstrom 2009). The two officers escorted the intoxicated woman back to her apartment after midnight on December 7th and came back later to look in on her condition (Hamilton and Weiss 2009). One the second visit is when Moreno is alleged to have raped the woman while Mata was standing by (Hamilton and Weiss 2009).

The two officer's actions were captured by a surveillance camera near the woman's apartment building at Heather's bar on East 13th Street (Hamilton and Weiss 2009). The owner of the bar, Heather Millstone, who had seen the tape, reported that they had entered the building around 1 a.m. and were in the building for around seven minutes (Hamilton and Weiss 2009). Millstone said they came back two more times, once after about 40 minutes and were in the building for about 20 minutes, then again after another 20 minutes they stayed for an additional 40 minutes (Hamilton and Weiss 2009). According to Millstone, the officers had noticed the camera on the second trip and after that did their best to avoid it (Hamilton and Weiss 2009). According to sources,

a key was used to enter the apartment on the third visit and other sources confirmed that a key of the victim's was used for entry into the apartment (Hamilton and Weiss 2009). It was reported that Moreno raped the woman during the third and final visit to the apartment (Hamilton, Italiano and Mangan 2009).

Originally, Officer Mata insisted that the "woman willingly agreed to sex with married Officer Kenneth Moreno" (Hamilton, Italiano and Mangan 2009). However the investigators did not buy in to Mata's story (Hamilton, Italiano and Mangan 2009). "The working theory as of now is that it was not consensual, said a source familiar with the probe by the Police Department's Internal Affairs Bureau and the Manhattan DA's sex-crime unit" (Hamilton, Italiano and Mangan 2009). The source went on to say that "investigators have proof the woman was "falling-down drunk," and thus incapable of consensual sex" (Hamilton, Italiano and Mangan 2009). "That proof includes statements by witnesses who saw the woman earlier and a surveillance video showing one cop supporting her arm as he guides her into the East 13th Street building" (Hamilton, Italiano and Mangan 2009). A person found having sex with someone who is intoxicated can be found guilty of rape under the law (Hamilton, Italiano and Mangan 2009). Mata then did an about face and "admitted to investigators that his partner raped a drunken woman – and that he himself stood by" (Hamilton, Weiss and Mangan 2009). In the end, Mata agreed to testify against Moreno if the case went to trial (Hamilton, Weiss and Mangan 2009).

The timeline of the officer's locations during the night call into question the story they told investigators and indicate they were lying to cover up their actions (Hamilton,

Weiss and Mangan 2009). Following the first encounter with the woman when they took her back to her apartment, the two officers were sent on a “radio run” for an accident (Hamilton, Weiss and Mangan 2009). The officers’ should have reported in when the run was over, but instead they went to the woman’s apartment hoping the run would cover them (Hamilton, Weiss and Mangan 2009). Their use of the radio run as a cover was blown when the time on the surveillance video was looked at closely (Hamilton, Weiss and Mangan 2009). Raising additional suspicions, Mata claimed to have lost his memo book, which should have detailed the movements and interactions of the two officers on that night (Hamilton, Weiss and Mangan 2009).

The Manhattan District Attorney’s Office was alerted to the rape after the woman, who had been out drinking with other women she worked with, confided in a friend who encouraged her to report the attack (Hamilton and Weiss 2009). According to NYPD records, the two officers, Moreno and Mata were put on modified duty on December 19th, but they were not arrested (Hamilton and Weiss 2009). The Internal Affairs investigators conducted a search of both of the officers’ lockers where they discovered a packet of heroin (Gendar and Sederstrom 2009) along with the personal information of women other than the victim in Moreno’s locker (Hamilton and Weiss 2009). The women all lived in Moreno’s precinct and an investigation was launched to see if their information matched any incidents Moreno had responded to in the past couple of years (Hamilton, Italiano and Mangan 2009). Moreno claimed to have forgotten to turn in and catalog the heroin he had confiscated in a different case (Gendar and Sederstrom 2009).

On Tuesday, April 28, the two officers were arraigned “on charges of rape, burglary and official misconduct” (Hauser and Moynihan 2009). The officers entered not guilty pleas to the charges after they turned themselves in to authorities (Hauser and Moynihan 2009). Manhattan district attorney, Robert M. Morgenthau “said that while Officer Moreno assaulted the woman, he was ‘assisted in doing so by his partner, Mata’” (Hauser and Moynihan 2009). “The prosecutor did not say that Officer Mata himself physically assaulted the victim, but that he made ‘false, incomplete and misleading statements to central command’ about the two officers’ actions and whereabouts” (Hauser and Moynihan 2009). “Mr. Morgenthau said Officer Mata acted as a ‘lookout’ and failed ‘to take lawfully required police action when he knew his partner was having sex with a semiconscious woman’” (Hauser and Moynihan 2009). “An assistant district attorney, Randolph Clarke Jr., said in court that no DNA evidence linked the officers to the victim or the crime scene” (Hauser and Moynihan 2009). “He added, however: ‘Defendant Moreno admitted to using a condom during a recorded conversation with the victim’” (Hauser and Moynihan 2009). “Prosecutors have a recording of a 14-second telephone conversation between Officer Moreno and the woman on Dec. 15, and another recording of a 23-minute conversation they had in front of the Ninth Precinct station in the East Village two days later” (Hauser and Moynihan 2009). “Officer Mata’s lawyer, Edward J. Mandery...questioned the reliability of the woman’s account” (Hauser and Moynihan 2009). “She was basically saying, ‘I was so drunk I don’t know what happened,’” Mandry said (Hauser and Moynihan 2009). Assistant DA Clark “responded:

‘The complainant does have a memory of being sexually assaulted and remembers them in her apartment’” (Hauser and Moynihan 2009).

Background: Michigan Department of Corrections

Pursuant to the Civil Rights of Institutionalized Persons’ Act, the U.S. Department of Justice launched an investigation into prison conditions for women incarcerated at the Scott and Crane facilities in June 1994 (HRW 1996). The purpose of this was to investigate claims that there were violations of the prisoners’ constitutional rights in these facilities (HRW 1996). U.S. Department of Justice found that “sexual misconduct pervades Michigan’s women’s prisons, including rape, sexual abuse, sexually aggressive acts by guards, and violations of the female prisoners’ legitimate privacy interests” (HRW 1996). The report by Assistant Attorney-General on the Crane and Scott Correctional Facilities to the Governor of Michigan found that constitutional rights of the prisoners had been violated (Report of the Special Rapporteur on Violence 1999).

Among other things the report argues that:

There is sexual abuse by both male and female guards. Pregnancies have resulted from these activities and the authorities have punished women by revoking their parole. Nearly every inmate interviewed by the Justice Department reported various sexually aggressive acts by officers who corner inmates in cells and during work. Corrections officers are also said to expose their genitalia and make suggestive comments. Sexually suggestive comments and verbal abuse are so rife that they are treated as commonplace (Report of the Special Rapporteur on Violence 1999).

The report also found that:

Inappropriate pat-searches are conducted by the corrections officers. During routine pat-searches the officers touch all parts of the women's bodies; fondling and squeezing breasts, buttocks and genital areas in a manner not justified by legitimate security needs. In addition, many searches are conducted when women are in their nightgowns in the evening (Report of the Special Rapporteur on Violence 1999).

The report also describes that:

There is improper visual surveillance by the corrections officers. Many officers stand outside cells and watch prisoners undress and use the showers and toilets. Maintenance workers, in addition to corrections officers, are allowed to view women in various degrees of undress. The degree and kind of surveillance employed exceed legitimate security needs (Report of the Special Rapporteur on Violence 1999).

The U.S. Justice Department similarly found that:

There is a lack of due process in the prisons. The means of punishment and the placement of people in disciplinary segregation is arbitrary and the issuance of misconduct tickets is constantly abused by guards. Though there is a grievance procedure, the inmates have little confidence in the system and therefore rarely file grievances (Report of the Special Rapporteur on Violence 1999).

Following the report, the U.S. Department of Justice joined the 1996 filing of a civil suit against the MDOC for violation of the Civil Rights of Institutionalized Persons Act, a federal statute.

In 1996, Human Rights Watch released a report, All Too Familiar: Sexual Abuse of Women in U.S. Prisons, which documented sexual abuse of female prisoners by male guards in prisons in California, Georgia, Illinois, Michigan, New York, and the District of Columbia. They found that sexual violence experienced by women were manifest in a number of ways, for example, "male correctional employees have vaginally, anally, and

orally raped female prisoners and sexually assaulted and abused them” (HRW 1996). In addition HRW found that the male corrections officers abused mandatory pat-frisks and searches of the prisoners room’s to feel the women’s buttocks, breasts and vaginal areas, as well as viewing them improperly while the women were in the bathroom and housing areas (1996). They also found that the male corrections officers would use their authority to deny or provide privileges and personal items to the inmates in order to coerce them to have sex or for having done so in the past; in addition the corrections officers used physical force or the threat of force (HRW 1996). Human Rights Watch (1996) opposes the practice of allowing male correctional officers to oversee female prisoners in roles where they have constant physical contact following the guidelines set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Human Rights Watch (1996) found many problems with the complaint and discipline policies for sexual misconduct. Of particular concern was that complaints were handled within the prison where the violation occurred. For example, some policies required prisoners to confront the officer before filing an official complaint and in some instances officers were assigned to investigate themselves. HRW found the practices to be problematic and to lead to prisoners experiencing retaliation or punishment for complaints of sexual misconduct. Even policies designed to protect the prisoners following a complaint, such as isolation, can leave women feeling punished and make others reluctant to report abuse. HRW recommended the implementation of a complaint process that was external to the prison and MDOC, such as referral to the state police or an ombudsman who reports to the legislature, rather than the MDOC.

Human Rights Watch (1996, 1998) found no specific group of inmates who experience sexual violence more than others, however they did find that individuals who are young, in prison for the first time or are mentally ill are more vulnerable to. They also found that transgendered and lesbian inmates have been singled out, as well as inmates who have somehow challenged a corrections officer, such as reporting him for sexual misconduct or for refusing his demands for sex (HRW 1996).

Specifically regarding Michigan, HRW found “that rape, sexual assault or abuse, criminal sexual contact, and other misconduct by corrections staff are continuing and serious problems within the women’s prisons in Michigan [and] have been tolerated over the years at both the institutional and department levels” (1996). HRW traced the history of allegations of sexual misconduct in Michigan women’s prisons to the mid 1980’s and documented cases beginning in 1984 and continuing through 1996. The first case occurred in 1994 at Huron Valley Women’s Facility when corrections officer Alfred Beaster was accused of rape by an inmate (HRW 1996). In 1996 a male corrections officer named Raymond Raby told police that on a nightly basis he had sex with different female prisoners at Crane Correctional Facility, Raby was dismissed from his job (HRW 1996). A woman identified as Kim J. reported she was raped one night by a corrections officer at Crain in 1988 (HRW 1996). In 1990, Officer Bernard Rivers confessed to sexually assaulting a prisoner in a segregation cell (HRW 1996). The victim, Lisa G. reported that Rivers had “told her he could positively or negatively affect her parole, depending on how she responded to his sexual advances” (HRW 1996).

Among the primary concerns of HRW in Michigan were privacy violations, which included inappropriate visual surveillance in housing units, showers and toilets, as well as abusive pat-frisks (1996). Regarding the system's response, HRW raised concerns that Michigan failed to "recognize the problem of sexual misconduct" and therefore has "failed to take adequate steps to respond to this abuse" (HRW 1996). Specifically, "the departments grievance, investigatory, and disciplinary procedure and practices and its manner of treating prisoners who have complained of sexual misconduct are in urgent need of reform" (HRW 1996). In addition, the report recommended that the criminal justice system take a more active and improved role in the investigation and prosecution of sexual misconduct by corrections officers (HRW 1996).

Human Rights Watch interviewed several women during their period of investigation from 1994-1996. Stacy Barker told HRW how she was "raped and sexually assaulted by the same officer, Craig Keathy, over a period of nearly a year and a half, beginning in October 1989" (1996). She told HRW

He would come to my room or detail [once or twice a week] and force me to perform different sexual acts on him. He would threaten or harass me, like 'I'll make your time hard for you... I have the keys' (1996).

Barker went on to say that

He'd say things like, 'Come on and suck my dick'... He'd pull my hair, unzip his pants and force himself in my mouth (HRW 1996).

"Keathy was convicted in December 1991 on two counts of fourth-degree sexual conduct with a prisoner, a misdemeanor" and was "sentenced to community service" (HRW 1996).

Inmate Charlene Billups-Hein told HRW of her experience with corrections officer David Rose. Billups-Hein said that Rose asked her to have sexual relations with her and she did so “because she felt that she did not have any choice” (HRW 1996). When the corrections officer came into contact with her on later occasions the officer brought her various personal items, such as candy, cookies perfume and makeup (HRW 1996). “She said they had sexual intercourse and that she performed oral sex on him a number of times” (HRW 1996). The corrections officer, David Rose was later charged with criminal sexual conduct in the third degree, however he was later acquitted (HRW 1996). Later, Rose went back to work at Scott where he once again came under investigation for charges of sexual misconduct with another inmate (HRW 1996).

Prisoner Anne B. told HRW (1996) how she was raped in 1993 in a back room during her work assignment. Gloria P. told of a sexual relationship with a corrections officer that began with her visit to a hospital outside of the prison and continued once she returned to the prison. Although Gloria P. was moved to a different unit, she “continued to see Officer A in the yard, or he would switch shifts with officers on either her unit or a neighboring unit in order to see her” (HRW 1996).

In a 1998 follow-up report, Nowhere to Hide: Retaliation Against Women in Michigan State Prisons, Human Right Watch alleges that:

Male corrections employees vaginally, anally and orally raped female prisoners and sexually assaulted and abused them. In the course of committing such gross abuses, male officers not only used actual or threatened physical force but also abused their total authority to provide or deny goods and privileges to female prisoners to compel them to have sex or to reward them for having submitted to sexual acts. In other cases, male officers violated their most basic professional duty and engaged in sexual contact with female prisoners absent the use or threat

of force or any material exchange. In addition to engaging in sexual relations with prisoners, male officers used mandatory pat frisks or room searches to grope women's breasts, buttocks and vaginal areas and to view them inappropriately while in a state of undress in the housing or bathroom areas. Male corrections officers and staff also engaged in regular verbal degradation and harassment of female prisoners, thereby contributing to a custodial environment that was... highly sexualized and excessively hostile (Human Rights Watch 1998).

Human Rights Watch found targeted acts of retaliation against the women who spoke out about the sexual violence committed by the guards(1998). These acts of retaliation are targeted at women who were witnesses against the guards in criminal prosecutions or were the plaintiffs in a civil lawsuit (Human Rights Watch 1998). Specifically, "the most vicious retaliation is aimed at the women who are perceived as articulate, strong, even charismatic leaders within the inmate population or women who have successfully challenged the abuse-particularly if their challenge has resulted in a guard's losing his job" (Human Rights Watch 1998). Human Rights Watch (1998) argues that "by targeting inmates who have successfully fought back against the abuse, the corrections department sends a message that even if an inmate is successful in court, she is not protected within the walls of the prison".

Human Rights Watch (1998) found that the "most common form [of retaliation] reported is verbal harassment, but many women reported being threatened with physical or sexual abuse, subjected to abusive pat-frisks, and written up for rules violations they did not commit". The report argues that "all levels of the Michigan Department of Corrections are implicated in these retaliatory campaigns: the guards who carry out the individual acts of retaliation, the wardens who look the other way, and the corrections

department officials who have, through their inaction, created a climate of impunity” (Human Rights Watch 1998).

In 1999 the U.N. Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy, submitted a report to the UN Commission on Human Rights which investigated the “issues of violence against women in the state and federal prisons” in WashingtonD.C., New York, Connecticut, New Jersey, Georgia, California, Michigan and Minnesota (Report of the Special Rapporteur on Violence 1999). The Special Rapporteur found that “it is clear that sexual misconduct by male corrections officers against women inmates is widespread” (Report of the Special Rapporteur on Violence 1999). The Special Rapporteur also found that it was problematic for states not to have policies regarding the type of procedures for grievances which can depend on outside monitoring, rather than dealing with grievances within the institution (Report of the Special Rapporteur on Violence 1999). She also found that corrections officers have a high level of impunity because “corrections officers had a very strong trade union with important political connections” (Report of the Special Rapporteur on Violence 1999). She cited the specific example of Michigan where “one of the reasons why the political institutions of government were so adverse to reform was their dependency on the block vote of those involved in corrections” whereas the prisoners “are not a voting constituency”, which “creates a climate of impunity and may help to explain why officers who transgress rules are more often transferred then terminated” (Report of the Special Rapporteur on Violence 1999).

During her visit to Michigan, the Special Rapporteur encountered a major road block. Despite her prior arrangements with the MDOC, the Governor of Michigan cancelled her arrangements to meet with state representatives and to visit the women's prisons in Michigan (Report of the Special Rapporteur on Violence 1999). However, she "nevertheless continued with her journey to Michigan and had meetings with lawyers, academics, former guards and former prisoners" and was "able to speak to some prison inmates on the phone to hear their complaints" (Report of the Special Rapporteur on Violence 1999). "Given the seriousness of the allegations, corroborated by diverse sources, the Special Rapporteur decided that these allegations should form part of her report despite the lack of cooperation from Michigan State authorities" (Report of the Special Rapporteur on Violence 1999).

The Special Rapporteur was also very concerned about retaliation, to both the victims and other corrections officers. "One former corrections officer who spoke with the Special Rapporteur said that she had left the Department because she tried to assist an inmate who had been abused and she was stabbed by other corrections officers" (Report of the Special Rapporteur on Violence 1999). The former officer "claimed that corrections officers were shielded by a powerful union with enormous political power which allowed them to act with impunity in the State of Michigan" (Report of the Special Rapporteur on Violence 1999). In particular, women who were involved with a civil suit against the state claimed that they had been the targets of retaliation from the guards (Report of the Special Rapporteur on Violence 1999). For example, one woman "said she had been criminally prosecuted on a trumped-up charge of substance abuse, as a

result of which she has been denied visitation rights for the rest of her life and kept in punitive segregation for 275 days” (Report of the Special Rapporteur on Violence 1999). And “despite the suit, she alleges that she was sexually assaulted again by one of the defendants” (Report of the Special Rapporteur on Violence 1999). In addition to these allegations, the Special Rapporteur was able to corroborate that the alleged retaliation had occurred against the women who reported sexual abuse by the guards (Report of the Special Rapporteur on Violence 1999).

The Class Action Law Suit

Deborah LaBelle, a prisoners’ rights attorney, filed a class action lawsuit, *Neal/Nunn* on March 27, 1996 on the behalf of seven female prisoners in the state of Michigan, as well as all other females incarcerated in Michigan. The lawsuit charged the MDOC and several other individuals with various degrees of sexual assault, sexual harassment, violations of privacy, as well as physical threats and assaults (HRW 1996). LaBelle points out that “the suit wasn’t against the guards” because “they didn’t create the system” and “they didn’t have money to pay for damages”, although they were the ones raping and assaulting the prisoners (Seidel 1/5/2009). Thus LaBelle had to do more than show that the guards had sexually assaulted the women, but she had to convince jurors that prison officials had been informed of the abuse and failed to do anything to end it (Seidel 1/5/2009).

“The female prisoners brought a class action... against defendants for gender-based discrimination, sexual harassment, and retaliation arising out of allegations that male corrections officers had systematically engaged in a pattern of sexual harassment of female inmates” (Neal v. Department of Corrections 6/5/1998). The “defendants are the department, its director, and several MDOC wardens, deputy wardens, and corrections officers” (Neal v. Department of Corrections 6/5/1998). In part the lawsuit reads that the:

Plaintiff’s complaint alleges that the MDOC assigns male officers to the housing units at all women’s facilities without providing any training related to cross-gender supervision; that women are forced to dress, undress, and perform basic hygiene and body functions in the open with male officers observing, that defendants allow male officers to observe during gynecological and other inmate medical care; that defendants require male officers to perform body searches of women prisoners that include pat-downs of their breasts and genital areas; that women prisoners are routinely subjected to offensive sex-based sexual harassment, offensive touching, and requests for sexual acts by male officers, and that there is a pattern of male officers’ requesting sexual acts from women prisoners as a condition of retaining good-time credits, work details, and educational and rehabilitative program opportunities (Neal v. Department of Corrections 6/5/1998).

The class action grew over the years and included more than five hundred plaintiffs and was set up to be tried in different stages, with each stage involving different groupings of the plaintiffs (Neal v. Department of Corrections 1/27/2009). The first trial took place in January 2008 which involved “ten plaintiffs, who raised claims of sexual harassment occurring at the Scott Correctional Facility from 1991 through 1999” and the jury “found in favor of the ten plaintiffs and against the defendants MDOC, Joan Yukins (the Scott warden), and Kenneth McGinnis (the MDOC director) (Neal v. Department of Corrections 1/27/2009)”. When the jury concluded, they came to separate verdicts for

the individual plaintiffs, totaling \$15,545,000, and the trial court later entered individual judgments (Neal v. Department of Corrections 1/27/2009). The individual judgments were awarded to the individual women and were based on the sexual violence they testified they experienced.

During the trial evidence and testimony were brought forward which detailed that Scott Correctional Facility was a sexually hostile environment (Neal v. Department of Corrections 1/27/2009). During the trial “all of the women said they were touched inappropriately—some several times a day—as the guards filled a daily pat-down quota” and that this “constant touching emboldened some guards to sexually molest the prisoners” (Seidel 1/5/2009). Tracy Neal and Ikemia Russell claimed that they had been sexually assaulted by male correctional officers at the Scott Correctional Facility in 1994 (HRW 1996). Another woman, Helen Gibbs, claimed that she was sexually assaulted by a male corrections officer at the Florence Crane Women’s Facility, also in 1994 (HRW 1996). In two separate incidents at the Scott facility, Bertha Clark claimed that a male officer squeezed her breasts and grabbed her crotch during pat-frisks, and another woman, Linda Nunn, contends she faced derogatory and abusive name calling, which was sex based, as well as and sexually threatening comments (HRW 1996). Another woman at the Scott facility, Stacy Baker asserted that she faced constant harassment and retaliation after she reported sexual misconduct by staff members (HRW 1996). Another woman identified only as ‘Jane Doe’ claimed that male officers at the Crane facility subjected her to constant and inappropriate viewing while dressing and undressing, when she was showering, as well as when she was using the toilet facilities (HRW 1996). “All

seven women report experiencing sex-based insults, sexual harassment, excessively intrusive cross-gender body searches, constant viewing by male staff and threats of retaliation for reporting staff misconduct” (HRW 1996).

One prisoner, named Jennifer Pruitt, who entered the Scott facility at the age of 17 and was serving life in prison for murder, reported that just days after arriving at Scott, a guard forced her to perform oral sex him (Seidel 1/4/2009). Following the assault, the officer said “You’ll get better” (Seidel 1/4/2009). Another inmate, “Michele Bazzetta, sent to Scott after being convicted of second-degree murder, said an officer frequently took her to an isolated place” (Seidel 1/4/2009). “‘He had a bald head and he wanted me to rub his head at the same time that I had my hand on his penis,’ she said”. (Seidel 1/4/2009). Finally, “Amy Black, who also entered prison at 17, had sex with a guard two or three times a week over several years” (Seidel 1/4/2009). “For him, I think it was about sex,” Black said “for me, it was about staying alive” (Seidel 1/4/2009).

In addition to the prisoner testimony, exhibits were presented to demonstrate that the defendants were informed of the sexually hostile environment in the facilities (Neal v. Department of Corrections 1/27/2009). This was because Annabelle Romero was hired in 1997 investigate the reported problem of sexual harassment at Scott as well as in another facility (Neal v. Department of Corrections 1/27/2009). In her extensive report, admitted as an exhibit at trial, she stated:

It is my opinion that the level of sexual assault, sexual abuse, sexual harassment, and invasions of privacy reflected in inmate interviews, employee depositions, and the MDOC’s own documents,...is far beyond the level that would be expected in a prison system that has made a serious, concerted effort to minimize instances of staff-inmate relationships, sexual assault, sexual abuse, sexual

harassment, and invasions of privacy, and indicates that the [d]efendants are deliberately indifferent to protecting inmates from sexual misconduct of all types (Neal v. Department of Corrections 1/27/2009).

“Another trial exhibit revealed that there were nearly two hundred sexual misconduct allegations at Scott from 1991 to 1999, out of a population of around eight hundred women” (Neal v. Department of Corrections 1/27/2009). “Another exhibit indicated that from 1994 to 1997, around thirty percent of the male staff at Scott were alleged to have taken part in sexual assaults” (Neal v. Department of Corrections 1/27/2009).

Additionally, the 1996 Human Rights Watch report discussed above was entered, which demonstrated that “Michigan has failed to take adequate steps to protect against the potential for custodial sexual misconduct in prisons” (Neal v. Department of Corrections 1/27/2009).

The Case: Toni Bunton

In January 2009, Detroit Free Press Staff Writer Jeff Seidel wrote a five part expose on the women involved in the class action law suit against the Michigan Department of Corrections, former DOC Director Kenneth McGinnis and former Scott Correctional Warden Joan Yukins. Specifically, Seidel focused on the story for Toni Bunton. At the age of seventeen, Toni found herself in a drug deal gone horribly wrong. It began on the night of June 10, 1991 in Detroit(Seidel 1/4/2009). She was with three guys, Pook and Timbo and Poodle, all who were friends of her cousin (Seidel 1/4/2009). The three guys

had a plan to sell some marijuana, but they still needed a ride to carry out the deal they had set (Seidel 1/4/2009). Rather than the guys steal a car, Toni offered them a ride. She was told “just drive around the block and come back”, but about halfway around she heard the sound of gunshots (Seidel 1/4/2009). Toni then drove faster, but she ended up going down a dead-end street and when she turned around the three teens were running toward her waving their guns (Seidel 1/4/2009). The three “jumped into her car, screaming and shouting, saying they had ‘popped’ somebody”... “the two buyers had been shot” (Seidel 1/4/2009). The drug deal had been “a set up – by both sides” (Seidel 1/4/2009). “The buyers didn’t have any money to make a deal. All they had was a wad of blank paper, wrapped with a \$20 bill. The sellers, meanwhile, didn’t have any pot” (Seidel 1/4/2009). Toni said she “dropped the teens off and went home”, but “the next day police took her to police headquarters for questioning” (Seidel 1/4/2009). Toni signed a statement detailing her role and she thought she was going home, but what she didn’t know was that she could be held just as responsible for pulling the trigger as the other teen who did (Seidel 1/4/2009). One teen with Toni that night, Jose Burgos, 16, was identified as the shooter and he was convicted of first-degree murder and is now serving life in prison, however the other two teens who were with them that night did not go to trial (Seidel 1/4/2009). For her part in the events, Toni was “convicted of second-degree murder, armed robbery and assault with intent to murder” and was sentenced to 25 to 50 years” (Seidel 1/4/2009). In December 1991, following the conviction, Toni was sent to Huron Valley Correctional Facility in Ypsilanti where she

would stay for six months prior to being transferred in the summer of 1992 to Scott Correctional Facility in Plymouth Township (Seidel 1/4/2009).

Toni recalled that “on one of her first nights at Scott, she woke up from a loud voice outside her door” (Seidel 1/4/2009). Toni “tiptoed to the door” and then “she looked out the window and saw a prisoner performing oral sex on a guard” (Seidel 1/4/2009). This first experience would be repeated and escalate throughout her stay with the Michigan Department of Corrections. Toni described the institution as “wild, with few rules and almost no physical boundaries between the guards and inmates” (Seidel 1/4/2009). She recalled an early incident when “one day, she was taking a shower, and one of the male guards pulled back the curtain” (Seidel 1/4/2009). “‘I’m naked,’ Bunton said, scrambling to cover her body” (Seidel 1/4/2009). “‘Oh, hush,’ the guard said. ‘I got a wife at home, I know what it all looks like’” (Seidel 1/4/2009). After a while Toni began to keep her mouth shut. The guards controlled every aspect of her life from when she ate, when she slept, to when she went to the bathroom (Seidel 1/4/2009). Her status as a prisoner weighed heavily on her. Toni “was a prisoner, after all, a convicted felon, afraid the allegations would not be taken seriously” and “afraid of retaliation” (Seidel 1/4/2009).

As time went on, the blatant nature of that abuse was apparent one day, when Toni was stopped in the recreation yard by a corrections officer:

“How old are you?” he asked.

“Eighteen,” she replied.

“Umm, just the way I like ‘em, young and fresh.

“Give me a shakedown,” he said

“She lifted her arms, standing in a group of prisoners, according to what she wrote in her prison journal. The guard rubbed his hands down her neck, across her back and around to her chest. He caressed her breasts.”

“He rubbed her stomach. He squeezed her buttocks, rubbing up and down her thighs.”

“His hand brushed against her pelvic bone, as he pulled himself closer to her.”

“Another officer watched.”

“Bunton said she wanted to scream, but she was too afraid.”

“The second officer took his turn with Bunton. He rubbed her neck, then her back. He moved around to her breasts and the officers egged each other on. The other prisoners cheered and applauded” (Seidel 1/4/2009).

The sexual assaults extended beyond viewing and touching. Toni “said she was raped seven times by prison guards between 1993 and 1996” (Seidel 1/4/2009).

During the trial, Toni was asked by Dick Soble, one of the lawyers for the women about the “first time she was assaulted” (Seidel 1/6/2009). “‘It was the winter of ’93,’ she said, so softly it was hard to hear” (Seidel 1/6/2009). The “Judge Timothy Connors asked her to speak up” (Seidel 1/6/2009). Toni recounted that “he took me in there and, like, he was kissing me” she “said of her rape by a guard in a prison bathroom at Scott Correctional Facility when she was 19” (Seidel 1/6/2009). Toni “motioned to her neck and chest, as if trying to scrape away the memory” and said “he pulled my jogging pants down. My butt was against the sink. And he penetrated me” (Seidel 1/6/2009).

Toni “said she did not report the incident to prison officials because she feared retaliation from the guard or others” (Seidel 1/6/2009). She recalled that “he said he would make my life miserable” (Seidel 1/6/2009). “I was away from my family, 18 years old” Toni said of being in prison (Seidel 1/6/2009). “I had never been around people like that” she said, I just don’t think I was sophisticated enough to deal with the types of

people that I had to deal with” (Seidel 1/6/2009). Toni also explained that she “felt this was part of prison life” and that she “didn’t know any different” and that “nobody sat me down and told me” (Seidel 1/6/2009). Emotionally, Toni said “I felt it was part of my punishment” and said that “I blamed myself” (Seidel 1/6/2009).

The Assistant Attorney General, Soros, “speaking in a dry, steady voice, with little flash or emotion”, “explained that he represented the prison system and its top officials, not the guards” (Seidel 1/5/2009). During the “cross-examination, Soros did not ask Bunton any specific questions about the rapes” and “he did not raise any doubt that it happened, other than noting that Bunton had not reported the abuse when it happened” (Seidel 1/6/2009). On the other hand he focused on Toni’s different achievements and education she received in prison (Seidel 1/6/2009). Toni had earned several degree’s while in prison, all the way up to a master’s degree (Seidel 1/6/2009). “In many ways, she was a model prisoner” and “Soros tried to raise a subtle point: If Bunton endured so many sexual assaults in prison, if she truly suffered, how could she be so successful?” (Seidel 1/6/2009).

During the class action trial, LaBelle, the attorney representing the female prisoners, focused on the prison system in Michigan. She began with a “little history and context,” LaBelle told the jury, “women used to be supervised in their cells and in their living units and in their showers and in their bathrooms by women” (Seidel 1/5/2009). LaBelle continued, “but that changed in 1986, when the DOC assigned men to work closer with female inmates” (Seidel 1/5/2009). LaBelle argued that the state of Michigan and the DOC “invited men into the women’s prison unit areas without training, without

restriction and without precautions for these women's safety" and that "prison officials had ignored years of warnings" (Seidel 1/5/2009).

Soros argued that "the women had had opportunities to tell the warden and others that they had been assaulted years earlier" and that the women "didn't report their allegations in a timely manner," he said. "That's crucial." (Seidel 1/5/2009). When allegations did arise, Soros argued that the DOC addressed them properly. "To say the department just sat back and did nothing, just let everybody run the place is just totally false" (Seidel 1/4/2009). Soros went on to say that the "department knew of some allegations of sexual assault and made changes, improving the way it investigates abuses. He added: "You can't solve everything" (Seidel 1/5/2009).

However, the testimony of a female guard sheds some light on the reality of reporting. She testified that "she saw guards take women down back stairways, go into their cells at night, flirt or talk vulgarly to them" and that "she did not report the incidents to her bosses because, she said, she was warned to stay quiet or face retaliation from other guards" (Seidel 1/6/2009). Soros said that "sexual misconduct is everywhere in society" that "it's in homes and offices, schools and churches" (Seidel 1/6/2009). He argued that the "level of abuse at Scott was unfairly characterized in this trial" (Seidel 1/6/2009). During the trial "Soros had presented no evidence to refute the women's testimony, he argued that the sexual abuse was not as rampant as the women and experts suggested" (Seidel 1/6/2009). He had "called only one witness to the stand, former Warden Joan Yukins, who testified that every guard received a handbook each year which outlined inappropriate behavior, including rules about physical conduct,

harassment and prohibiting sexual relations” (Seidel 1/6/2009). Warden Yukins also “testified that she believed officers had been properly trained in how to deal with female prisoners” (Seidel 1/6/2009).

LaBelle argued that it was some of the policies and procedures of the MDOC that lead to the systematic and widespread nature of the abuse. She stated that, “these guards—not all of them, certainly not all of them—these male guards went further,” that “they sexually assaulted these 10 women” (Seidel 1/5/2009). LaBelle went on to say that “after the groping’s, after the viewing, after the watching, then they assaulted them. They assaulted them over a period of years” (Seidel 1/5/2009). She continued to argue that “many women said they were routinely molested by guards who took advantage of rule that required them to meet a daily quota of pat-down searches for weapons, drugs or other contraband” (Seidel 1/4/2009).

LaBelle explained that “at Scott, as in every Michigan prison at the time, every guard was required to pat down five prisoners every shift for weapons, food, drugs, whatever” (Seidel 1/4/2009). That “it didn’t matter which prisoners they picked” so “some officers did it the proper way, quickly and with professionalism” however, “others exploited this directive, picking out the pretty women to search, the ones who were young and had long sentences” (Seidel 1/4/2009). According to the inmates, “guards ran their hands over the women’s legs, buttocks and breasts under the guise of security” (Seidel 1/4/2009). And that “when it became clear the guards wouldn’t be punished, some grew so brazen that they fondled women in front of other inmates and guards, or openly masturbated in the prison yard” (Seidel 1/4/2009).

The defense for the state “would claim later they had no idea that some guards abused the search policies by sexually assaulting the women” (Seidel 1/4/2009). The state argued that “they properly trained officers and had written policies against improper behavior” (Seidel 1/4/2009). Since the trial some of the policies and rules have changed. Male corrections officers no longer allowed to conduct pat downs of the women or be assigned to the housing units (Seidel 1/4/2009). The state has also instituted “tougher legal penalties for guards who have sexual contact with inmates and a policy to refer allegations to the Michigan State Police, as well Corrections Department internal affairs, for investigation” (Seidel 1/4/2009). “It is against the law for guards to have sexual contact with prisoners, even if there is consent. Some guards convinced women to submit to ongoing sexual relations in return for ‘protecting’ them from fellow guards” (Seidel 1/4/2009).

In closing, Soros argued that “a big part of this trial is commonsense” (Seidel 1/6/2009). He asked jurors “how could prison officials take action to prevent sexual assaults when so many of these women never reported being assaulted? “How can Warden Yukins take any action to help any of these plaintiffs when they are not telling her what their problem is? Then, they turn around and sue her” (Seidel 1/6/2009). He thusly placed all the blame on the women who had endured rape and sexual assaults in a hostile and confined environment.

In the end it was one of the lawyers, Soble, who reminded the jury of how horrendous the cruel and unusual punishment of rape and sexual assault had been for the women. He said “what you heard in this courtroom today is what women have heard

every single day of their lives in prison”, that “they are liars. They are cheaters. They can’t be believed. They are sluts. They are drug addicts. And they are prisoners... it’s outrageous.” (Seidel 1/6/2009). Soble reminded the jury of why it could be so difficult to report the assaults, of how the women’s status made it difficult for them to speak out.

At the end of the trial the jury found that Toni and the other plaintiffs were “subject to unwelcome sexual conduct or communication” and the “defendants had notice of a sexually hostile prison environment” (Seidel 1/6/2009). This was significant because it “meant that the three defendants—the Department of Corrections, former DOC Director Kenneth McGinnis and former warden Joan Yukins—knew there was a problem at Scott and failed to do something to stop the abuse” (Seidel 1/6/2009). In a surprising move, “a woman on the jury asked to read a statement” (Seidel 1/6/2009). She said “we the members of the jury, as representatives of the citizens of Michigan, would like to express our extreme regret and apologies for what you have been through” (Seidel 1/6/2009).

While this trial was significant for Toni and the other 10 women, the legal battle is not over. In October 2008, the next bundle of female plaintiffs went to trial and there was another verdict amounting to multimillions of dollars (Seidel 1/6/2009). There are over 500 women in the class action lawsuit and the cases could go on for years, including many of the same witnesses, the same experts, and even the same lawyers (Seidel 1/6/2009). And if the future cases follow the past and the other juries issue similar verdicts the damages may add up to hundreds of millions of the state taxpayer’s dollars (Seidel 1/6/2009).

At the end, Toni “says it’s important to listen to all of them, no matter their past” (Seidel 1/4/2009). She was “a high school dropout, focused on her education, earning associate’s and bachelor’s degrees in business administration and a master’s degree from a correspondence program” (Seidel 1/4/2009). “She earned vocational certificates in food management, computers and graphic arts” (Seidel 1/4/2009). Toni “became a yoga teacher and fitness trainer” (Seidel 1/4/2009). She said that “every time I accomplished something, I felt better about myself” (Seidel 1/4/2009). This gave her the confidence to stand up to the system that had abused her.

Background: Border Patrol

In the report *Brutality Unchecked*, Human Rights Watch (1992) documents “human rights abuses committed by the Immigration and Naturalization Service (INS) and its agents in the enforcement of U.S. immigration laws” (HRW May 1992). The HRW study was confined to four U.S. states that border Mexico: California, Arizona, New Mexico, and Texas and focused on human rights abuses committed in the course of the arrest and detention of undocumented immigrants (HRW May 1992). HRW calls the findings “appalling” and that “beatings, rough physical treatment, and racially motivated verbal abuse are routine” (HRW May 1992). Furthermore, very serious abuses, such as unjustified shooting, torture, and sexual violence were documented (HRW May 1992).

HRW attributes the ongoing human rights violations, which take so many forms, to a variety of factors. “One reason INS misconduct is so pervasive is that the agency

does not adequately train or supervise its agents” (HRW May 1992). “Another explanation that goes hand in hand with poor training and supervision is low agent morale”, which “results from the perceived futility of enforcing U.S. immigration laws” (HRW May 1992). According to HRW, the “most outrageous is the INS’s willingness to cover up or defend almost any form of egregious conduct by its agents” (HRW May 1992). Some of the very tools of the INS are used to manipulate and cover up some of the abuses. For example, “INS agents are aware that most abused migrants- because of their unprotected status; unfamiliarity with English, U.S. law, and culture; and fear of deportation- will not defend themselves against trumped up charges and will instead accept deportation or other offered plea deals, rather than pursue complaints against abusive agents” (HRW May 1992).

The HRW report (1992) documents different forms and examples of sexual abuse. The report describes how in several cases, INS agents have been prosecuted for rape of undocumented migrant women, far more frequently rapes are reported (HRW May 1992). The one example provided in the report describes the experience of a 19-year-old who alleged that she was sexually assaulted during a Border Patrol raid at an immigrant labor camp (HRW May 1992). “She asserted that during the September 12, 1990 raid, an officer took her off alone, told her he was conducting body searches for drugs, ordered her to lift her blouse, and inserted a finger between her breasts” (HRW May 1992). “He then told her to pull down her pants and inserted a finger in her vagina” (HRW May 1992).

In the 1993 HRW report, *Frontier Injustice*, HRW found that beatings along with other forms of mistreatment were still common during the arrest and detention of undocumented immigrants, as well as U.S. citizens and legal residents (HRW May 1993). HRW also found that unjustified shootings as well as sexual violence occurred, although they were less frequent than beatings and other forms of mistreatment (HRW May 1993). The report discusses the high profile story of Border Patrol agent Luis Santiago Esteves, who reportedly was engaged in three different incidents of committing sexual violence against women whom he first came into contact with while on duty (HRW May 1993). Although Esteves did not rape and assault the women while on duty, he abused his position as a Border Patrol agent to gain access to the women. Furthermore, Esteves's supervisor had first received a complaint about his contacting a woman he had pulled over by phone, and subsequently called and sexually harassed, prior to the two incidents that resulted in rape and sexual assault (HRW May 1993). This speaks to the problems with the complaint and disciplinary procedures within the organization.

Human Rights Watch released a follow up report to their 1992 and 1993 reports on violence along the U.S.-Mexico border in 1995. The report again discusses a variety of forms of violence including excessive use of force, shootings, beatings and sexual assaults. HRW found that "U.S. Border Patrol agents are committing serious human rights violations, including unjustified shootings, rape, and beatings, while enjoying virtual impunity for their actions" (HRW April 1995). HRW argues that these types of violations persist because the Border Patrol agents responsible for the violence are not held accountable for the abuse they commit (HRW April 1995). They suggest that the

policies within the Border Patrol which relate to reporting and investigating complaints of misconduct are inadequate and that the agents are able to avoid any punishment for their actions due to these failures (HRW April 1995). Thus, “even if a victim or witness is resolute and able to overcome the many barriers to filing and pursuing a complaint, the structural flaws in the investigatory and disciplinary process virtually guarantee that even the most brutal agents will remain on the force” (HRW April 1995). These findings applied to all the abuses HRW found along the border.

Specifically regarding sexual violence, HRW documented several cases. Juanita Gomez, who was 22 on September 3, 1993, was reportedly raped near Nogales, Arizona by a uniformed Border Patrol agent (HRW April 1995). Juanita and her cousin Ana had crossed the border through a hole in the fence between Nogales, Sonora, and Nogales, Arizona, so they could shop on the U.S. side (HRW April 1995). Juanita and Ana had gone to a McDonalds, and then to another restaurant to meet two male friends (HRW April 1995). The group exited the restaurant and was crossing a street when they were stopped by Border Patrol agent Larry Dean Selders, in his Border Patrol vehicle (HRW April 1995). Selders stopped and talked with all four of them, but kept just the two women and did not request the women’s identification (HRW April 1995). Selders then instructed both women to get into the Blazer, and only then, did he ask if the women had papers, which they did not (HRW April 1995). Selders “then propositioned them, saying that if one of them had sex with him he would let them both go without taking them to the Border Patrol station for processing and return to Mexico” (HRW April 1995). Juanita and Ana “told him they would rather be processed at the station” (HRW April

1995). Next, Selders “instructed Ana to get out of the truck, and he drove away with Juanita as Ana tried to run after the vehicle” (HRW April 1995). Juanita reported that “once Selders had her alone he raped her” (HRW April 1995). “Afterward, Selders told Juanita not to say anything to anybody and that he would not do anything else to her” (HRW April 1995). Selders then dropped Juanita off in a parking lot in Nogales, Arizona (HRW April 1995).

Juanita learned that Ana had gone to the Mexican consulate in Nogales, Arizona, to report Juanita’s abduction (HRW April 1995). Once at the consulate, Juanita, described to a consulate official the abduction and rape and the official then contacted the Nogales Police Department as well as the Nogales Border Patrol station, after which two agents from the Border Patrol along with several police officers arrived (HRW April 1995). “Both Juanita and Ana identified Selders from a photo line-up” (HRW April 1995). However, “one of the Nogales detectives reportedly told her that he didn’t believe her statements or Ana’s” and accused both women of being prostitutes (HRW April 1995). Juanita told HRW that “they treated me as if I were guilty of something, not a victim” (HRW April 1995). “After several hours at the police station and the hospital, where samples were taken of her hair, nails, and pubic hair, INS agents took Juanita to the Nogales port of entry, and she returned home” (HRW April 1995).

The second case, reported by HRW, began when Haime Flores was stopped in her van on October 18, 1993, at the San Clemente checkpoint (HRW April 1995). Haime was driving alone and was ordered to get out of her vehicle (HRW April 1995). The Border Patrol agent asked for and examined her documents, of which she had a valid temporary

visa and the agent determined the document was invalid (HRW April 1995). Haime was taken to the station where the Border Patrol agents decided she should be searched and they requested a female agent” (HRW April 1995). The female agent, in front of three male agents, examined Haime’s bra and then inserted a finger into Flores’s vagina, however nothing was found (HRW April 1995). During the search the male officers are reported to have laughed and joked as they watched (HRW April 1995). “On September 26, 1994, an attorney filed a two million dollar civil lawsuit on Flores’s behalf against the U.S. and five unnamed Border Patrol agents, alleging sexual assault and battery, false imprisonment, infliction of emotional distress, and violation of her civil rights” (HRW April 1995).

A 1998 “report describes the findings of Amnesty International’s research into human rights concerns along the United States’ southern border with Mexico, primarily recent allegations of ill-treatment and brutality by officers of the Immigration and Naturalization Service (INS), in particular the Border Patrol, the law enforcement branch of the INS” (Amnesty International May 1998). “The allegations of ill-treatment Amnesty International collected include people struck with batons, fists and feet, often as punishment for attempting to run away from Border Patrol agents; denial of food, water and blankets for many hours while detained in Border Patrol stations and at Points of Entry for INS processing; sexual abuse of men and women; denial of medical attention, and abusive, racially derogatory and unprofessional conduct towards the public sometimes resulting in the wrongful deportation of US citizens to Mexico” (Amnesty International May 1998).

In the section of the 1998 AI report addressing women detained by the INS, AI documented examples of Border Patrol agents abusing frisk searches to sexually violate women. One example is that of Luz Lopez and Norma Contreras, which is discussed below. The second example began in January 1997, when teenaged Guatemalan girl was detained by the Border Patrol while with a group of migrants near Corpus, Christi, Texas, and was taken to a Border Patrol station (Amnesty International May 1998). “In the early hours of the morning, on the pretext of searching her for contraband, a male Border Patrol agent allegedly took her to a separate cell and fondled her breasts under her shirt and brassiere, and put his hand down the front of her pants” (Amnesty International May 1998). “Afterwards, she later told another girl in the group what had happened, and the other girl said she had been touched in the same way” (Amnesty International May 1998).

“Amnesty International believes that allowing male Border Patrol agents to perform intimate body searches of female detainees is a practice which amounts to ‘cruel, inhuman or degrading treatment’ (in violation of Article 7 of the ICCPR) and that, if confirmed, the above incident may also have been in violation of Article 17, which states, ‘No one shall be subjected to arbitrary or unlawful interference with his privacy...’ (Amnesty International May 1998). “The Human Rights Committee, which interprets the ICCPR, has stated with regard to Article 17:

So far as personal and body searches are concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body searches by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex (Amnesty International May 1998).

In their recommendations, AI argues that “any female detainee who alleges she has been raped or sexually abused must be given an immediate medical examination, preferably by a female doctor” and that “intimate body searches of detainees should be performed only by an officer of the same sex” (Amnesty International May 1998).

According to the Border Action Network (n.d.), “the U.S. border Patrol is the nation’s largest law enforcement agency”. These “armed agents carry enormous power to expel someone from this country” and are “granted significant authority to disrupt people’s lives” (Border Action Network n.d.). Their research on a variety of border issues, including sexual assault, included more than three hundred people living on the border and their report found that “incidents in which Agents’ ‘crossing the line’ do not appear to be isolated occurrences or the actions of one or two bad apples” instead there are “systematic problems within the institution” (Border Action Network n.d.). At every stage, from the initial screening of applicants, to the training of Border Patrol agents, to an overall climate of impunity and protection, Border Patrol agents are sent the message that disrespect and corruption are tolerated (Border Action Network n.d.).

In an investigative report by Susan Carroll (2/1/02) “the Tucson Citizen examined police reports, court files and federal documents to find out what happens when an agent is accused of a serious crime”. They found that there was no clear policy of removing officers from duty while under investigation for serious crimes (specifically an on duty shooting, also the prime suspect in a homicide). They also found that “the INS does not demand accountability of its employees” and that “discipline against INS employees who

have committed misconduct is “spotty and uneven.” Local lawyer and activist, Isabel Garcia “claims a double standard exists in the handling of Border Patrol cases” and that this is “especially so because agents deal with undocumented immigrants”. The second part of the report (Carroll 2/2/2002) describes the understaffing of the Department of Justice’s Office of Inspector General and their inability to keep up with the number of complaints filed. In addition, Carroll (2/2/2002) argues that many potential complaints are not reported because the main population that agents interact with are undocumented immigrants who are unlikely to report misconduct and mistreatment.

An article in *The Progressive* (Light 1996) details the ordeal experienced by two women, Luz Lopez and Norma Contreras, when they crossed the border and were apprehended by a border patrol agent. Inside the vehicle he sexually assaulted both women, fondling their breasts and forcing his fingers into their vaginas. The assaults continued in front of a supervisor, and again at back at the offices. When the women were released the agent “gave each a dollar bus fare, and reportedly told them, ‘You owe me a bundle, because you won’t be able to repay the favor I did in your lifetime’” (Light 1996). While this case came to light, advocates of human rights report that these types of cases will rarely make it to court and that “the prosecution rate is incredibly low... something like one or two complaints actually make it to an indictment stage out of hundreds that are received by the Justice Department,” explains Allyson Collins, a senior researcher with Human Rights Watch who is familiar with the case” (Light 1996). “There are a lot of ways that INS officials have figured out how to dissuade people from pursuing complaints, and they are usually very successful,” notes Collins (Light 1996).

“There is harassment, and there is also misdirection” (Light 1996). “In the case of rape, Collins says that agents count on women not to come forward and hold their perpetrators accountable. When alleged crimes require the corroborating testimony of a fellow agent, the code of silence among law-enforcement officials is virtually unbreakable—many of the officers charged with investigating such allegations were once themselves field agents” (Light 1996).

The Case: Blanca Amaya-Flores

Blanca Amaya-Flores departed her hometown in El Salvador in August 2000 for the U.S. The journey would take her across Guatemala and Mexico by bus to Agua Prieta, a town south of the Arizona border. By this time, it was late September. From Agua Prieta, accompanied by five men, Blanca crossed the desert into the U.S on September 28. Once in the U.S., the group acquired a car, however on Arizona 80, south of Tombstone the group was stopped by Border Patrol agents (Steller 10/13/2000).

There were three Border Patrol agents involved in the stop of the group Blanca was with, Agent Sandi Goldhamer, Agent-in-Training Daniel McClafferty, and Agent Dennis M. Johnson, the perpetrator of the sexual assault and the acting supervisor that night. Agent Goldhamer initially spoke with the group and began the necessary paperwork for the stop. This included an I-826 form for Blanca and included her name, biographical information, along with information documenting time, date and location of

the stop. All of the completed paperwork was given to Agent Johnson (U.S. Court of Appeals).

At this point, Blanca was separated from the rest of the group by Agent Johnson and he brought her over to his patrol car and instructed her to get inside where she remained while the rest of the group was taken in Border Patrol SUV's to the border patrol check point in Douglas. "Johnson testified he did so because a vehicle used to transport the entrant group was full" (Steller 2/20/2002). "Agent Goldhamer testified that it was 'unusual' for her to have in [sic] Johnson's car. She further testified that if she had realized that Amaya-Flores was in Johnson's car she would have made room for her in one of the SUVs" (U.S. Court of Appeals). Male Border Patrol agents do transport females in their vehicles, but the procedures require male agents to make a '10-97' call announcing that they are transporting a female, however Johnson failed to make the call (U.S. Court of Appeals).

Nor did Agent Johnson take Blanca directly to the Douglas station. With Blanca in the car, Agent Johnson drove "to a Circle K gas station and bought a cup of coffee and then drove to the Douglas checkpoint. When he arrived, there was a bus holding about twenty-five people whom the Border Patrol were preparing for voluntary return to Mexico. Johnson testified that he told other Border Patrol agents at the checkpoint to load the bus and "get the one from my vehicle" (U.S. Court of Appeals). Yet Blanca remained in Agent Johnson's vehicle. "She testified that she sat in the car at the checkpoint for somewhere between an hour and an hour and a half" (U.S. Court of Appeals).

What happened next would change both Blanca's and Agent Johnson's lives. Agent Johnson left the checkpoint with Blanca in his car. "He testified that she tapped on the plexiglass divider and asked him to release her, and then, when he refused, that she offered to perform oral sex in return for her release" (U.S. Court of Appeals). Agent Johnson testified "that he declined several times before making what he called the biggest mistake of his life in agreeing" (Steller 2/20/2002). Amaya-Flores testified that she did not speak to Johnson during the car ride. Johnson drove to an isolated spot in the desert near Tombstone, not far from where he had apprehended Amaya-Flores" (U.S. Court of Appeals).

Once Agent Johnson was alone in the desert with Blanca, "while she was still in the car, Johnson had her remove her clothing piece by piece", then "he inspected each piece with a flashlight, then laid it on the trunk" (Steller 10/13/2000). "Blanca recalled, 'He told me to take my pants off,' then she asked Johnson, 'Hey listen, why are you doing that?' He said, 'just take them off' (Steller 10/13/2000). "Then, wearing only her socks, Agent Johnson ordered Blanca out of the car. 'I told him I couldn't get out like this,' she testified. 'He told me, 'Get out, get out.''" (Steller 10/13/2000).

After she was out of the car, "Johnson then handcuffed Amaya-Flores's hands behind her back and told her to get onto her knees. While handcuffed, Johnson "told her to give him oral sex" and "when she hesitated, he threatened her" (Steller 10/13/2000). "Amaya-Flores testified that he told her that he would leave her in the desert if she did not perform oral sex" (U.S. Court of Appeals). She told the court, "He grabbed all my clothes and said, 'If you don't do it, you can stay here naked,'" (Steller 10/13/2000).

Blanca “testified that she was crying and that Johnson physically forced her to perform oral sex by pulling her hair and moving her head back and forth” (U.S. Court of Appeals). Agent Johnson recounted these events very differently.

During his testimony, Johnson insisted that the “oral sex was consensual” and “that Amaya-Flores removed her clothes, but he maintained that he did not ask her to do so” (U.S. Court of Appeals). Agent Johnson admitted to handcuffing her, but insisted “that he did so because he “didn’t trust her.” (U.S. Court of Appeals). During testimony Agent “Johnson agreed that Amaya-Flores knelt in the desert to perform the oral sex, but testified that she did so voluntarily”, while she was handcuffed (U.S. Court of Appeals). Agent Johnson further testified that “she made ‘a sound that might have been a cry,’ but he specifically denied that he pulled Amaya-Flores’s hair or held her head” (U.S. Court of Appeals).

Blanca and Agent Johnson describe different accounts of what happened and the physical evidence confirms that the encounter took place. Blanca “testified that Johnson ejaculated in her mouth, and that she spit out the semen onto her legs” (U.S. Court of Appeals). Later, “when she got dressed, some of the semen was transferred to the inside of her pants” and then a “DNA test identified the semen as that of Johnson” (U.S. Court of Appeals). Agent Johnson could not deny that he had sexual contact with Blanca. Following the sexual assault in the desert, Agent Johnson left with Blanca, but instead of taking Blanca to the Douglas station where he was based, he took her twenty-five miles west to the Naco, Arizona border crossing (U.S. Court of Appeals). However as Blanca “walked through the port of entry, the Mexican immigration inspector suspected she was

Central American because of her accent” (Steller 10/13/2000). Blanca said that “she told the Mexican official, ‘I don’t want to go back to the people from Immigration because I felt a great fear with them’” (U.S. Court of Appeals). The Mexican official did send Blanca “back to American immigration inspectors, to whom she told a cleaned-up version of the story, in which Johnson asked her to take off her clothes but she declined” (Steller 10/13/2000). After “hearing that, the inspectors turned her over to a Border Patrol agent at the Naco station, and she told them the whole story” (Steller 10/13/2000).

It was 4:00 a.m. when Agent Daniel Testa received the call from the Mexican official at Naco to get a “kickback”, Blanca. He then “transported Amaya-Flores back to the Border Patrol office in Naco and entered her into the IDENT/ENFORCE system in order to see who caught her the first time, how long ago” (U.S. Court of Appeals). Agent Testa found that Blanca had no record in the system because Agent Johnson had never entered her I-826 form or fingerprinted her (U.S. Court of Appeals). It was “about 6:00 a.m., Agent Jose Proenca, a native Spanish speaker, spoke with Amaya-Flores” where “she described the events of the evening to him, including the oral sex with Johnson” (U.S. Court of Appeals). The next day, “Agent Ricky Mauldin showed Agent Goldhamer a picture of Amaya-Flores” in which “she recognized Amaya-Flores immediately, recalled filling out her I-826 form, and stated that she had seen Johnson talking with her” (U.S. Court of Appeals).

Following this interview, “agents then notified the Justice Department’s Office of Inspector General-an internal investigation agency- whose agents called the Cochise County Sheriff’s Department” (Ibarra and Steller 10/4/2000). It was “those investigators

worked to track down the suspect agent” which resulted in them “obtaining an arrest warrant for Johnson” (Ibarra and Steller 10/4/2000). Johnson “was the second Arizona Border Patrol agent in seven weeks accused of sexually assaulting a migrant woman” and “he is also the fifth Arizona officer of the Immigration and Naturalization Service to be arrested on felony charges since Aug.21” (Ibarra and Steller 10/4/2000).

After the arrest, “Agent Maudlin and Cochise County Investigator Vince Madrid interviewed Johnson on October 2nd, three days after Amaya-Flores was ‘kicked back’ from Naco” (U.S. Court of Appeals). During the interview, “Johnson at first said that Amaya-Flores had been placed on the bus with the other voluntary returnees”, but “Investigator Madrid warned Johnson that he was ‘catching’ him in ‘a couple of things’” (U.S. Court of Appeals). Following this, “Johnson then changed his story and admitted that he had driven with Amaya-Flores to the Circle K for coffee and then to the Douglas checkpoint, and that he had dropped her off at the Naco border crossing” (U.S. Court of Appeals). Once again, “Agent Mauldin told Johnson that there was “physical evidence,” Johnson changed his story again and finally admitted that Amaya-Flores had performed oral sex on him, but insisted that it was at her instigation, stating, ‘I allowed her to convince me to do something I shouldn’t have’” (U.S. Court of Appeals). Johnson “finally admitting that the oral sex occurred” (Steller 10/13/2000).

Following the interview, officer Johnson brought the investigator to the location where the incident had occurred off of Arizona 82 (Steller 10/13/2000). Investigator Madrid “said he asked Johnson why it happened, and the agent said, ‘Stupidity’” (Steller 10/13/2000). According to Inspector Madrid, Johnson “then stated that he let her talk

him into doing something he shouldn't have done", Johnson went on to say "I let her perform fellatio on me" (Steller 10/13/2000). Johnson continued to insist that the encounter was Blanca's idea (Steller 10/13/2000).

Johnson's claim continued into the trial where, "during a preliminary hearing, the attorney for agent Dennis M Johnson disputed that the Sept. 28 sex act was forced and was a crime, but not that it occurred" (Steller 10/13/2000). Johnson's attorney Michael Storie went on to say that "there is no doubt, judge, that that night he used poor judgment and he committed administrative violations" (Steller 10/13/2000). However, prosecutors didn't charge Johnson with poor judgment or administrative violations, rather he was charged with kidnapping and sexual assault, both felony counts (Steller 10/13/2000). The Assistant U.S. Attorney, Sean Chapman, said that "Johnson 'used his authority to prey on the weak and the defenseless'" (Steller 2/20/2002).

Blanca's status as an illegal entrant into the U.S. was specifically addressed by the defense for Johnson. During the trial, "defense attorney Mike Storie argued" that Blanca "changed her story several times and therefore was not credible" (Steller 2/20/2002). Storie went on to say, "let's not mistake her for some sort of babe in the woods" (Steller 2/20/2002). However, "Flannigan, a deputy Cochise County attorney, called the defense argument an attempt to "turn the victim into the perpetrator" (Steller 2/20/2002). Storie's tactics did not sway the jury. In an interview following the trial, "Hofstra, the jury foreman, said the panel gave the victim's illegal status in the country 'no weight whatsoever'" (Steller 2/20/2002). Hofstra went on to say that "by entering the country

illegally,” he said, “she did not abrogate her rights to the protection of the law of the United States” (Steller 2/20/2002).

At the end of the trial, Johnson “was convicted and sentenced to seven years on the sex-assault charge and a concurrent term of five years for kidnapping” (Fisher 12/18/2003). According to the jury foreman, the jury rejected the claim made by Johnson that the sex was consensual (Steller 2/20/2002). Hofstra, the jury foreman, elaborated that “the evidence on both counts that was most telling was the fact that the defendant admitted he had handcuffed (the victim) with her hands behind the back,” which he thought “flew in the face of the idea that it was consensual” (Steller 5/1/2002).

Johnson appealed his case, but the court refused to throw out his conviction. One point that was at issue was the kidnapping charge. Clarifying this point, “Appellate Judge William Fletcher, writing for the court, said Johnson, as a Border Patrol agent, did have authority to stop and detain the women” (Fisher 12/18/2003). Judge Fletcher went on to say that Johnson “had no legal authority to continue to confine her in the back of his patrol car, to drive her to a remote spot in the desert, to handcuff her while she performed oral sex, and then to take her to the Naco border crossing roughly 25 miles west of his ordinary duty station” (Fisher 12/18/2003).

The public discourse that followed Johnson’s conviction reflected two different perspectives about misconduct within the Border Patrol. George Lopez, assistant chief of the Border Patrol’s Tucson Sector said “the arrest is not a sign of widespread wrongdoing in the Border Patrol, but rather a sign of good internal controls” (Ibarra and Steller 10/4/2000). Lopez went on to say that “the way the allegation came to light

should instill confidence” because “the allegations came to us by way of the migrant, showing that the safeguards that we have in place allowed us to take immediate action” (Ibarra and Steller 10/4/2000). And that “the Border Patrol’s immediate notification of all the proper authorities ensures that all issues and concerns are addressed in a timely and professional manner,” Lopez said (Ibarra and Steller 10/4/2000). In addition, a special agent in the inspector general’s office, William King Jr. said, “I think it shows that the Border Patrol, Inspector General’s Office and FBI are very vigilant in looking at matters of misconduct” (Ibarra and Steller 10/4/2000). King went on to say that “there are policies in place that safeguard against this type of occurrence,” but that Johnson had “violated Border Patrol policy in several instances” (Ibarra and Steller 10/4/2000).

On the other hand, “Ron Sanders, a former chief of the Tucson Sector, thinks there may be deeper problems”, saying that Johnson’s “arrest, along with others recently, show’s lack of concern for integrity on the part of the INS, of which Border Patrol is a part” (Ibarra and Steller 10/4/2000). Blanca’s case may be an example of some of the procedures and controls that bring these cases to light. However as numerous sources bring to light other victims, and the type of crime as well as the status of the victims might obscure the true extent of sexual violence committed by Border Patrol agents. Finally, that Blanca’s sexual assault occurred in the first place gives weight to the need to investigate the deeper problems of the agency and of other U.S. agencies.

Analysis

U.S. Military

Propositions of a Victimology of State Crime

First: “victims of state crime tend to be among the least socially powerful actors”

During times of war, women have occupied a variety of roles and have been used for a variety of strategic purposes because of their lower status than men in society (Jaggar& Rothenberg 1993, Brownmiller 1993). Patriarchal cultures have used women’s bodies as a site to humiliate the enemy and to demonstrate the power of an army to control the others (Brownmiller 1993, Mullins and Rothe 2008, Jeffreys 2007, Farwell 2004). Women are also the site of reproduction for any society and rape can spoil a woman, community or race/ethnicity (Mullins and Rothe 2008, Barstow 2000). Women have been used as pawns in a chess game to create or break alliances between competing armies.

In Iraq, women’s status has dropped since the invasion and occupation by U.S. forces. Prior to the fall of Saddam Hussain, women’s status was among the highest in the Muslim world. Women wore western style dress, were educated and occupied professional positions. The invasion led to a fall in women’s status, they once again were required to be fully covered, are no longer educated at the same levels due to fears of the lack of security in the country and their ability to move about in public has been strictly limited. The social power of women in Iraq has been severely curtailed because of the

presence of U.S. forces and the U.S. military has taken advantage of this. For example, women were arrested and held in Abu Grahیب to be used as pawns to get Iraqi men to cooperate with the U.S. military. “Some of them were arrested by Americans for political reasons – because they were relatives of Baathist leaders or because the occupying forces thought they could use them as bargaining chips to force male relatives to inform on insurgents or give themselves up” (Rosen 2006). The use of women as pawns between armies, as bargaining chips used against men or as a “military strategy” has been used in a variety of conflicts (Brunet & Rousseau in Sajor 1998).

Once in the custody of U.S. soldiers and held in a U.S. run prison, the women’s status, their social power, dropped even lower. They became subordinate and dependent on the guards for every day survival, as well as for the hope of their eventual freedom. The guards now held all the power over them. The guards could threaten sexual assault to make the women cooperate, and threaten to return every night (Fay Report 2004). Not only do the women have the low social status of being women, they now occupy an even lower status as female prisoners.

Women in some Muslim cultures face insurmountable challenges when they are raped. The rape of a woman is seen as spoiling her for marriage, the rape is often blamed on the woman and women may be killed for having sex out of marriage, even if she is forced. Women are often powerless in situations of rape, which severely limits their willingness to report a rape, let alone pursue any form of prosecution. For example, “For women in Iraq, the stigma frequently attached to the victims instead of the perpetrators of sexual crimes makes reporting such abuses especially daunting” (Amnesty International

2005). In addition, family members are reluctant to report a rape, arguing that “in the tribes of you can’t do anything about it better to shut your mouth. No one will say our daughter was raped and we can’t do anything” (Abdul-Ahad 2006). The stigma of rape in Iraqi society can significantly prevent the reporting, but in addition the knowledge of the stigma of rape in Iraq within the military can empower soldiers and could also lead to increased sexual violence for the above sorts of reasons.

Young women and girls are especially vulnerable to rape because married and widowed women are more likely to have protection from husbands and the community because of their higher status. Young girls and women are also more vulnerable because they are easier to manipulate and take advantage of because they are young and may be naive. For example Abeer “was young and attractive. They knew where she was because they had seen her on a previous patrol. She was close. She was vulnerable” (CNN.com 8/8/06). Furthermore, one relative had reported that Abeer experienced harassment by the U.S. soldiers in the area saying “She complained to her mother about trouble from American soldiers” (Macdonald 2006).

Women in Iraq during the U.S. occupation were among the least socially powerful actors. Women generally were at risk to be used as pawns in the conflict, as a military strategy. Abeer specifically was at risk due to her age, her unmarried status, as well as her close proximity and frequent contact with U.S. soldiers. In addition, her only recourse for the trouble she experienced from the U.S. soldiers was to tell her mother, and her father was unable to move her to other family before the trouble escalated to her rape and murder.

Second: “victimizers generally fail to recognize and understand the nature, extent, and harmfulness of institutional policies. If suffering and harm are acknowledged, it is often neutralized within the context of a sense of “entitlement””

No evidence of this proposition was indicated anywhere in this case.

Third: “victims of state crime are often blamed for their suffering”

No evidence of this proposition was indicated anywhere in this case.

Fourth: “victims of state crime must generally rely on the victimizer, an associated institution, or civil social movement for redress”

In Iraq, the cases of rape and sexual assault at Abu Arahb were brought to light by lawyers and human rights organizations, as well as the larger abuse scandal at the prison. The culture in Iraq and women’s status makes reporting rape shameful. For the women held in custody, reporting a rape is even more challenging. There are language barriers, as well as concerns over whom to trust and tell about the rape. The women are guarded by Americans, some of whom have raped and humiliated the women and others who were present or know of the rapes and did nothing about it at the time. In these situations, the women only have their captors to disclose the rape to and the barriers surrounding this may seem insurmountable. The prisoner Noor is an example of the lengths one woman had to go through to tell the world about her sexual assault (Shumawy 2004). But Noor is not a common example, most women are too fearful to

come forward or may retract an accusation of rape, even if it is to a NGO, rather than a U.S. soldier (Shumawy 2004).

In the case of Abeer we can see even more challenges to the disclosure and avenues of redress available to Iraqi's. The shame brought to a family or the community is one barrier to reporting a rape. Another barrier is the problematic nature of the laws that apply to U.S. soldiers. They are immune from prosecution under Iraqi law, and victims must rely on military prosecution of offenders. However, informal codes of brotherhood and silence prohibit reporting on another soldier and can hamper investigations once allegations come forward (Card 1996, Morris in Barstow 2000, Jeffreys 2007). The occupation of a country, gaps in the applicable laws, complete control over its civilians and prisons, and the limiting of access of human rights organizations, by design or due to violence, severely limits the ability of victims of state crime to receive redress for sexual violence committed against them by state actors.

Fifth: "victims of state crime are easy targets for repeated victimization"

Women in U.S. custody are at risk of repeated victimization due to their confinement and repeated contact with the same personnel on a daily basis. Women in Iraqi prisons might be confined for years at a time, which leaves them vulnerable to repeat victimization. Women who are used as pawns or bargaining chips face a great risk of repeated victimization because of this role and threats of sexual assault if they do not cooperate. The stigma attached to reporting a rape is another reason women are at risk for repeated victimization. The U.S. soldiers may be aware of this aspect of the culture

and take advantage of women's unwillingness to report a rape or sexual assault to continually victimize her.

In the case of Abeer, she was particularly vulnerable to repeated victimization and according to reports was repeatedly harassed by American soldiers prior to her rape and murder. The physical proximity of Abeer's home to a U.S. checkpoint gave soldiers repeated access to Abeer. Although Abeer's father was concerned about her safety around the American soldiers, he was unable to move her away before the rape occurred. This speaks to the problematic nature of supervision of soldiers and reporting procedures for complaints, such as harassment.

Sixth: "illegal state policies and practices, while committed by individuals and groups of individuals, are manifestations of the attempt to achieve organizational, bureaucratic, or institutional goals"

The practice of arresting women for political reasons and holding them in conditions where they are supervised by male guards, speak to the practices and policies which attempt to achieve organizational, bureaucratic, or institutional goals (Mullins and Rothe 2008, Brownmiller 1993). Arresting women as pawns violates their rights and places them in a situation when they are at potential risk of rape and sexual assault. This is yet another example of how women are used by the state to achieve their military goals, such as arresting the relatives of Baathists or 'terrorists'.

It is clear how the arrest of women helps achieve military goals, however in the case of rape it is less clear how this serves to achieve these goals, and even more

unbelievable that the U.S. government tolerates such behavior. Yet the U.S. has a well documented history of rape in peace and war (Brownmiller 1993). The motivations are the same as they have been historically, to control populations, to conquer, instill fear into populations and so on (Brownmiller 1993, Barstow 2000, Mullins and Rothe 2008). The key to the state's responsibility is the omission of a sincere and aggressive course of action to eliminate sexual assaults and rape committed by U.S. soldiers. Elimination of sexual assaults and rape by soldiers would need to involve commitment at every level, including things like a revamping of training, and condoned practices used in informal contexts. For example, dehumanizing and degrading male soldiers by using language such as 'pussy' or 'bitch' perpetuate the devaluation of women (Morris in Barstow 2000, Card 1996, Jeffreys 2007). Furthermore, women's historic absence in the military is extremely important to creating barriers and placing men superior to women. Additionally, soldiers often learn disdain rather than respect for people of other cultures. The 'othering' of women from our own military to different cultures, races and ethnicities further contributes to the dehumanizing of women the soldiers encounter (Jeffreys 2007).

Police

Propositions of a Victimology of State Crime

First: "victims of state crime tend to be among the least socially powerful actors"

Women and girls in a patriarchal society are among the least socially powerful actors. Police officers are in frequent contact with female citizens, with little direct

oversight (Maher 2003). Due to the status of police officers, it is often taken for granted that women and girls in contact with police officers are free from the threat of sexual violence. In fact, in this situation women might be less likely to report a sexual assault or rape because of the trust and respect police officers have in society and therefore unlikely to report (Walker and Irlbeck 2002). In addition, there is a blue wall of silence that tends to protect police officers from allegations of sexual violence (Kraska and Kappeler 1995).

In the case of the EasyVillage rape, the woman was especially vulnerable because of her being alone and intoxicated late at night (Kraska and Kappeler 1995). Her intoxication alone makes her less socially powerful than two uniformed police officers. In the state of New York, as well as others, an intoxicated person is unable to consent to sex, and therefore sex would be considered rape.

Second: “victimizers generally fail to recognize and understand the nature, extent, and harmfulness of institutional policies. If suffering and harm are acknowledged, it is often neutralized within the context of a sense of “entitlement””

No evidence of this proposition indicated anywhere in this case.

Third: “victims of state crime are often blamed for their suffering”

In the case of the East Village rape, the police officers originally argued that the sex was consensual, that she wasn’t raped. For example, “originally, Officer Mata insisted that the “woman willingly agreed to sex with married Officer Kenneth Moreno” (Hamilton, Italiano and Mangan 2009). Later, the officers and their lawyers tried to

blame the woman for being drunk, changing her story and arguing that she didn't really know what happened. For example, "Officer Mata's lawyer, Edward J. Mandery...questioned the reliability of the woman's account" (Hauser and Moynihan 2009). "She was basically saying, 'I was so drunk I don't know what happened,'" Mandry said (Hauser and Moynihan 2009). This is not an uncommon tactic used against rape victims, as it is often the word of a man against a woman. In an instance where police officers are involved, there is the additional burden of the "code of silence" (Kraska and Kappeler 1995).

Fourth: "victims of state crime must generally rely on the victimizer, an associated institution, or civil social movement for redress"

When a woman is raped, one of the sources of reporting is to the police. So when the police are the perpetrators, reporting becomes especially problematic and unlikely to occur. Codes of silence, bands of brotherhood, as well as problematic investigative processes further complicate reporting and prosecution of rape by police officers (Kraska and Kappeler 1995, Walker and Irlbeck 2002). Police departments consistently fail to investigate allegations that come to their attention (Walker and Irlbeck 2002)". Victims are fearful of reporting sexual violence by police to police departments "because of humiliation and fear of reprisal" (Walker and Irlbeck 2002).

In addition to the problematic institutional culture of the police, officers have the ability to try and cover up an offence such as rape. In the case of the East Village, the officers tried to use their official duties to cover up the rape, as well as mislead the

investigation with their own paper work and reports. For example, “law-enforcement sources point out that a timeline of the cops’ whereabouts the night of the incident suggests they were trying to cover their tracks” (Hamilton, Weiss and Mangan 2009). The East Village case also illustrates the problems of reporting to the agency itself. In that case, the victim’s friends reported the rape directly to the District Attorney’s Office, rather than to an officer or at the station house (Hamilton and Weiss 2009).

Fifth: “victims of state crime are easy targets for repeated victimization”

In the East Village case, the victim was contacted on separate occasions by the officer who had raped her. “Prosecutors have a recording of a 14-second telephone conversation between Officer Moreno and the woman on Dec. 15, and another recording of a 23-minute conversation they had in front of the Ninth Precinct station in the East Village two days later” (Hauser and Moynihan 2009). The content of these conversations has not been disclosed, however their existence implies the officer may be trying to persuade the woman to change her story or withdraw her complaint (Hauser and Moynihan 2009). This could be considered a form of harassment and repeat victimization as the woman is likely to revisit the rape over and over (Kraska and Kappeler 1995). Police officers have access to a variety of resources to track down and harass one of their victims. This is particularly true if they remain on the job following an accusation of sexual misconduct.

Sixth: “illegal state policies and practices, while committed by individuals and groups of individuals, are manifestations of the attempt to achieve organizational, bureaucratic, or institutional goals”

No evidence of this proposition was indicated anywhere in this case.

Corrections

Propositions of a Victimology of State Crime

First: “victims of state crime tend to be among the least socially powerful actors”

Women in custody are among the least socially powerful actors because they are totally reliant on the guards and prison officials for every aspect of their daily survival. Women in prison who are victims of sexual violence are subordinate, dependent and completely under the authority of their offenders. This leads to an environment where power differences, such as the ability to reward and punish victims, essentially control their future, in the prison and their ability to get out (Eschholz and Vaughn, 2001). Their status as prisoners can make it difficult for them to report sexual violence because they may feel they won't be believed or may face retaliation (Baro 1997, Vaughn 1999). For example, HRW found that “male officers have not only used actual or threatened physical force, but have also used their near total authority to provide or deny goods and privileges to female prisoners to compel them to have sex or, in other cases, to reward them for having done so” (HRW 1996).

The most vulnerable women in prisons are those who are young, in prison for the first time and don't know or understand the prison system. These women might feel that the violence they experience is part of their punishment or that they deserve it because of their crimes. Women who are strong willed, who stand up for themselves and challenge an officer are also at risk for sexual violence. Human Rights Watch (1996, 1998) found that "no one group of prisoners appears to suffer sexual misconduct more than any other, although those in prison for the first time and young or mentally ill prisoners are particularly vulnerable to abuse". They also found that "lesbian and transgendered prisoners have also been singled out" as well as "prisoners who have in some way challenged an officer, either by informing on him for inappropriate conduct or for refusing to submit to demands for sexual relations" (HRW 1996).

Women's social status in prison is further lowered when they are portrayed as what Baro (1997) describes as the "bad girls", women such as prisoners, drug users/dealers and prostitutes, who's status is used to discredit their reports of rape and sexual violence (also see Vaughn 1999). This characterization was used against the women in the Michigan class action law suit. The defense for the MDOC portrayed the women as "liars", "cheaters", "sluts", and "drug addicts" (Seidel 1/6/2009).

In the case of Toni, she was only 18 years old and in prison for the first time when her experience with rape and sexual harassment in prison began. She was young and naive to the prison system. Toni explained that she "felt this was part of prison life" and that she "didn't know any different" (Seidel 1/6/2009). Toni felt that her experience was part of being in prison, saying "I felt it was part of my punishment" (Seidel 1/6/2009).

Second: “victimizers generally fail to recognize and understand the nature, extent, and harmfulness of institutional policies. If suffering and harm are acknowledged, it is often neutralized within the context of a sense of “entitlement””

The Michigan Department of Corrections is the most glaring example of the problems of institutional policies. HRW (1998) found that “male officers used mandatory pat frisks or room searches to grope women’s breasts, buttocks and vaginal areas and to view them inappropriately while in a state of undress in the housing or bathroom areas”. According to the inmates, “guards ran their hands over the women’s legs, buttocks and breasts under the guise of security” (Seidel 1/4/2009). And that “when it became clear the guards wouldn’t be punished, some grew so brazen that they fondled women in front of other inmates and guards, or openly masturbated in the prison yard” (Seidel 1/4/2009). The policy of “a daily pat-down quota” created a situation where guards were constantly touching the prisoners, and the lack of a clear policy of who was to be searched, all allowed the officers the discretion to single out and repeatedly harass women (Seidel 1/4/2009). Beginning with the practice of allowing male guards to observe female prisoners in bathrooms and shower, to mandatory searches conducted by male guards, the MDOC is in violation of international standards, specifically the U.N. Standard Minimum Rules, which can help protect women from sexual violence in prisons.

The institutional policies designed to handle complaints by prisoners are ineffective and can even empower male guards because they feel there will be no

consequences for rape and sexual violence. HRW found in the MDOC that “the departments grievance, investigatory, and disciplinary procedure and practices and its manner of treating prisoners who have complained of sexual misconduct are in urgent need of reform” (HRW 1996). Policies that handle complaints “in house” (Baro 1997), or, as appalling as it sounds, allow an accused officer to investigate themselves (HRW 1996), need to be eliminated and replaced with policies that follow international standards. In addition, “the role of the state criminal justice system in investigating and prosecuting criminal sexual misconduct needs to be enhanced and its record improved” (HRW 1996).

Third: “victims of state crime are often blamed for their suffering”

Women in prison are easy targets to blame for the rapes and sexual violence they experience. In Toni’s case, she was made out to be too successful to have been raped. Her success was ‘proof’ that she hadn’t been raped because, how could a woman who endured so much overcome the rapes and be successful (Seidel 1/6/2009)? Toni and the other women in the class action law suit were also blamed for not reporting the abuse sooner (Seidel 1/6/2009). Despite the challenges the women faced in reporting the abuse, they were blamed for not having reported it. The women were also blamed for their past actions that landed them in prison in the first place (Baro 1997, Vaughn 1999, Seidel 1/6/2009). The women were characterized as “liars”, “cheats” and “sluts” who should not be believed because of the stereotypes associated with prisoners (Seidel 1/6/2009).

These portrayals of women also imply that the women are in some way less than human and as shown indifference to their suffering.

The women sexually assaulted in prison are more than blamed for their suffering. These women's claims are also being dismissed, as evidenced by the long history of reports of sexual violence, specifically in Michigan. Thus, this proposition should be elaborated and expanded to recognize how women are not only blamed, but also dismissed, discredited, treated with indifference, as if they are not fully human because of their social status.

Fourth: "victims of state crime must generally rely on the victimizer, an associated institution, or civil social movement for redress"

As previously discussed, women in prison have a hard time reporting and receiving redress for the rapes and sexual assaults they experience in prison. The U.S. Justice Department found that:

There is a lack of due process in the prisons. The means of punishment and the placement of people in disciplinary segregation is arbitrary and the issuance of misconduct tickets is constantly abused by guards. Though there is a grievance procedure, the inmates have little confidence in the system and therefore rarely file grievances (Report of the Special Rapporteur on Violence 1999).

These women must face their victimizers every day, and the guards can threaten them with the few comforts and privileges the women might have (Baro 1997, Eschholz and Vaughn, 2001). For example, one of the women who spoke with HRW described how the officer who had sexually assaulted her "told her he could positively or negatively

affect her parole, depending on how she responded to his sexual advances” (HRW 1996).

Toni also described how she “learned to keep her mouth shut. The guards controlled everything: when she ate, when she slept, when she went to the bathroom, when she spoke” (Seidel 1/4/2009).

A lack of outside monitoring of the complaints prisoners have also limits their avenues for redress (Report of the Special Rapporteur on Violence 1999). Reporting abuse outside of the prison is can be risky. Guards can monitor visits, phone calls and letters, so that if women try and report outside of the prison, the guards will know first and either retaliate or discredit the women before and investigation can even begin. People at the highest levels of the state government also can shut down investigations by outside monitoring, such as Governor Engler’s shutting down the visit by the Special Rapporteur on Violence Against Women from the United Nations.

Fifth: “victims of state crime are easy targets for repeated victimization”

Women held in custody are in a situation where repeated victimization can occur. They are confined on a daily basis, in contact with the same guards over and over. For example, Stacy Barker told HRW how she was “raped and sexually assaulted by the same officer, Craig Keahy, over a period of nearly a year and a half, beginning in October 1989” (1996). Another inmate, Charlene Billups-Hein, also recounted to HRW (1996) how she had had “sexual intercourse” with a corrections officer and “that she performed oral sex on him a number of times”. Charlene said that she did so “because she felt that she did not have any choice” (HRW 1996). Women in prison are easy targets for threats

or coercion by male guards to keep quiet (Baro 1997, Eschholz and Vaughn, 2001).

Guards can use their authority to continue sexual contact with women confined in prison.

The lack of oversight and strict punishment of offenders contributes to a climate where women are targets for repeated victimization. This situation not only leads to individual women being targets for repeated victimization, but for guards to be repeat offenders, targeting different victims.

In the case of Toni, she was young and naive of the prison system. She appears to have blamed herself for the repeat victimization. Toni talked about how she didn't know any better and thought this was part of her punishment. A guard who sees these qualities in a young prisoner is likely to continue to rape and sexually assault a prisoner. Toni learned to keep her mouth shut like the other prisoners. The guards controlled every aspect of her life. This also made Toni a more likely target for repeat victimization.

Sixth: "illegal state policies and practices, while committed by individuals and groups of individuals, are manifestations of the attempt to achieve organizational, bureaucratic, or institutional goals"

In the MDOC, policies such as the frequency of pat or frisk searches, while designed and justified as part of prison security, was abused by guards to sexually violate the female prisoners. The complaint and punishment policies, or lack of, serve to achieve institutional goals of keeping prison employees, as well as maintain a public image that is not constantly marred by "prison sex scandals". Finally, although not specifically a policy, the rape and sexual violence committed against female prisoners can serve the

institution by keeping prisoners under control. Sexual violence, or the threat of, can serve to keep prisoners in line, just like tactics used by the military to control populations (Brownmiller 1993, Mullins and Rothe 2008). While these may not be articulated goals of the organization, the omission and lack of aggressively addressing the problems in the prisons achieves the same goal.

Border Patrol

Propositions of a Victimology of State Crime

First: “victims of state crime tend to be among the least socially powerful actors”

Women who are victimized by border patrol agents are among the least socially powerful actors and are an incredibly vulnerable group (Falcon 2001). There is an extreme difference in the social power of an immigrant woman and that of a Border Patrol agent because this official represents an INS institution and a powerful nation” (Falcon 2001:41). They often don’t speak English, may be traveling alone and if they are not, one woman is easy for a border patrol agent to separate from the others she is traveling with. HRW (1995) found an instance where a Border Patrol agent stopped four people, although he “only detained the two women”. Women who are first entering the U.S. might not have any idea about how to report a rape or sexual assault and their illegal status is a further deterrent to any form of reporting. For example, HRW (1992) found that “INS agents are aware that most abused migrants- because of their unprotected status; unfamiliarity with English, U.S. law, and culture; and fear of deportation- will not

defend themselves against trumped up charges and will instead accept deportation or other offered plea deals, rather than pursue complaints against abusive agents”.

In the case of Blanca, she entered the country as the only woman in the group of travelers. She was easily separated from the men by Officer Johnson. Her status as an illegal immigrant empowered Johnson to sexually assault her than release her with little fear that she would report the abuse. Blanca’s case is an example of how vulnerable immigrant women are. The language barriers, unfamiliarity with U.S. laws, and significantly their illegal status make women, such as Blanca, some of the least socially powerful actors.

Second: “victimizers generally fail to recognize and understand the nature, extent, and harmfulness of institutional policies. If suffering and harm are acknowledged, it is often neutralized within the context of a sense of “entitlement””

Policies such as pat searches, even when they are to be conducted by a female agent, provide opportunities for border patrol agents to abuse their power (Amnesty International May 1998). For example, one woman told HRW (April 1995) that “she was taken into the station” where “the agents decided she needed to be searched” and “summoned a female agent”. Then, “In front of three male agents, the female agent allegedly examined Flores’s bra and inserted a finger into Flores’s vagina; no contraband was found” (HRW April 1995). “The male officers reportedly laughed and joked as they watched the search” (HRW April 1995). Allowing male agents to observe a pat search provides an opportunity for sexual harassment during the search. Although pat searches

are necessary for the security in many institutions, there are many safeguards that can be taken to ensure that women are not harassed or sexually violated.

Third: “victims of state crime are often blamed for their suffering”

Women who are raped or sexually assaulted by Border Patrol agents are blamed for their suffering. For example, HRW (April 1995) documented a case where a detective in Nogales, Arizona, accused two women who had reported sexual assault of being prostitutes. This is reflective of the idea that women are split into categories of “good girls” and “bad girls”, and bad girls are somehow asking for it or are responsible for their sexual victimization (Baro 1997).

The case of Blanca demonstrates how victims of sexual violence are not only blamed for their suffering, but also discredited and their claims dismissed. For example, Officer Johnson tried to argue that Blanca performed oral sex “voluntarily”, although she was hand cuffed at the time (U.S. Court of Appeals). Johnson also tried to argue that “he let her talk him into doing something he shouldn’t have done” and insisted that “it was the women’s idea” (Steller 10/13/2000). At Johnson’s trial, his attorney tried to discredit Blanca, saying that Blanca “changed her story several times and therefore was not credible” (Steller 2/20/2002). The attorney went on to say, “let’s not mistake her for some sort of babe in the woods” (Steller 2/20/2002). This is an example of how victims of state crime are not only blamed for their suffering, but also attacked and discredited because of their social status.

Fourth: “victims of state crime must generally rely on the victimizer, an associated institution, or civil social movement for redress”

Women who are victimized by Border Patrol agents have limited avenues for redress. For example, in an investigative report by Susan Carroll (Carroll 2/1/2002) “the Tucson Citizen examined police reports, court files and federal documents to find out what happens when an agent is accused of a serious crime”. They found that there was no clear policy of removing officers from duty while under investigation for serious crimes (Carroll 2/1/2002). Another investigation found that “there are a lot of ways that INS officials have figured out how to dissuade people from pursuing complaints, and they are usually very successful,” such as “harassment, and there is also misdirection” (Light 9/1996). Another limitation to reporting is the “code of silence” that exists in the Border Patrol, as it does in other state agencies (Barro 1997, Falcon 2001). “When alleged crimes require the corroborating testimony of a fellow agent, the code of silence among law-enforcement officials is virtually unbreakable—many of the officers charged with investigating such allegations were once themselves field agents” (Light 9/1996).

The case of Blanca demonstrates the importance of reporting a sexual assault outside of the agency. Following her release by Agent Johnson, Blanca was taken into custody by Mexican immigration, where she first told her story. After she was returned to the U.S., immigration official had no choice but to begin an investigation into her claims because the Mexican immigration officials were already aware of her accusations.

Fifth: “victims of state crime are easy targets for repeated victimization”

Women who are raped or sexually assaulted by Border Patrol agents are at risk for repeated victimization due to their confinement. Women who have contact with Border Patrol agents are also at risk for repeated victimization because agents are able to collect personal information about the women. For example, HRW (1993) reported on the story of “Border Patrol agent Luis Santiago Esteves, who “was reported to be involved in three incidents of sexual misconduct committed against women whom he first encountered while on duty”. Finally, women can be victims of repeat victimization when they have to recount their traumatic experience multiple times, or when, in the case of Blanca, they are blamed, discredited and their accusations dismissed.

Sixth: “illegal state policies and practices, while committed by individuals and groups of individuals, are manifestations of the attempt to achieve organizational, bureaucratic, or institutional goals”

Rape and sexual violence occur within the Border Patrol due to policies and practices that achieve the institutions goals. The Border Patrol has been a rapidly growing agency, and in its haste has failed to adequately train and supervise the influx of new hires (HRW May 1992, Falcon 2001). Policies and resources available to the Border Patrol for investigating and responding to complaints are inadequate (HRW May 1992, Falcon 2001). These failures serve to protect the agency’s reputation and to keep the accusations out of the public eye. Finally, the use and abuse of frisk searches and cross gender supervision are policies serve to maintain the threats to a woman’s bodily

integrity and foster an environment that is conducive to the sexual abuse and violence experience by women caught by the Border Patrol (Falcon 2001).

CHAPTER V: DISCUSSION AND CONCLUSIONS

The purpose of this research has been two fold. First, the purpose was to document the systematic sexual violence committed by the U.S. government against women across four agencies: the military, police, corrections and border patrol. The second purpose was to apply the six propositions of a victimology of state crime to each of the four agencies.

In the first instance, these cases clearly document the systematic nature of sexual violence against women within and across these agencies. Within each case, the background and individual case provide the opportunity to see that sexual violence is a systematic part of each agency. In the case of the U.S. military, the literature review demonstrates that rape and sexual assault has been systematic and present historically in the U.S. military. Furthermore, the background information on the sexual violence committed at Abu Ghraib demonstrates the systematic nature of sexual violence in Iraq. The individual cases provide an in-depth understanding about the factors that lead to the women being victimized. Specifically, the case of Abeer provided the opportunity for in-depth analysis of the victimization experienced in one specific case. Second, the use of four agencies, with background and individual cases for each, demonstrates the systematic sexual violence against women by U.S. state actors across multiple agencies.

Benefits of the application of the six propositions of a victimology of state crime were also two fold. First, the propositions were able to illuminate specific factors of the individual victimization and how it was responded to by the organization, the news media

and human rights organizations. Second, the application of the propositions allow for comparison across the four institutions.

The first proposition, “victims of state crime tend to be among the least socially powerful actors”, was identified across all four of the cases. Most obvious is that all of the victims are women. In a patriarchal society women are less powerful than men and radical feminists argue that sexual violence is the dominant way to maintain this hierarchy in society. Women as a class have multiple strikes against them in terms of decreasing their power in society. Age, race and/or ethnicity, social class, sexual orientation and disability all intersect as sources of decreasing their power and impact women’s status in society. As the details of each case are explored, other factors emerge which provide additional information about the victims. For example, being from or living in a country other than the U.S. and speaking a different language were factors for Abeer and Blanca, who were victims of sexual violence by the military and border patrol.

The second proposition, “victimizers generally fail to recognize and understand the nature, extent, and harmfulness of institutional policies. If suffering and harm are acknowledged, it is often neutralized within the context of a sense of “entitlement””, was identified in the corrections and border patrol cases, but not in the cases for the military or police. I believe this disparity exists because of the lack of available information on these two cases, perhaps because these agencies are better equipped to control information outside of the agency. Recall that the police case was the only one where the victim was not identified by name. It might also be the case that the police and military policies have been more highly scrutinized and are more benign than corrections and

border patrol. Future research is needed to identify if this lack of information is specific to these cases or if there is a differences between the agencies themselves.

The third proposition, “victims of state crime are often blamed for their suffering”, was identified in the police, corrections and border patrol cases, but not in the military. I believe this is because the military case occurred during a very high profile war, where information was already being tightly controlled. The fact that the military rape was the only one of the cases where the victim (Abeer) was killed by state agents, may also contribute to its absence in this category. Future research is needed to understand why this case stands out in this way. This research has also identified the need to elaborate this proposition to include the ways women are not only blamed for their suffering, but also dismissed, discredited, treated with indifference, and/or as if they are not fully human because of their social status. The need for this addition is most apparent in the case of Toni’s experience in the MDOC.

The fourth proposition, “victims of state crime must generally rely on the victimizer, an associated institution, or civil social movement for redress” was identified in all four of the cases. All of the cases were identified through publicly available sources, meaning that they were identified and investigated publicly in some way. The more problematic application of this proposition is to the many cases that go unreported and unidentified. In addition to relying on the victimizer or the institution for redress, all of the cases demonstrate how these women also must rely on the agents/institutions for daily survival. This is particularly evident in the case of Abeer and Toni, however, as

citizens we must often rely on the police for safety and in the case of Blanca, her fate in the U.S.

The fifth proposition, “victims of state crime are easy targets for repeated victimization”, was also identified across all four cases. This finding is significant for two reasons. First, it is an indicator of how the victimization of women is frequent, widespread and systematic in these U.S. agencies. Second, the repeated victimization of women provides an opportunity for the military, police, corrections departments and border patrol organizations to identify points of risk and to intervene to prevent ongoing and future victimization. Additional factors that this proposition brings to light are that the victimization regularly happens, is often planned, is widely known and administratively tolerated by others in the state organization, who are often aiders and abettors are equally participating offenders and the violence escalates (harassment, looking, touching, rape). Further research is needed to support these interpretations and to elaborate on the proposition.

The sixth and final proposition, “illegal state policies and practices, while committed by individuals and groups of individuals, are manifestations of the attempt to achieve organizational, bureaucratic, or institutional goals”, was clearly identified in three of the four cases. In the cases of the military, corrections and border patrol, the population that the agency interacts with are not free American citizens. Each of these three institutions is directly or indirectly charged with controlling a specific population, where the institutional goal of control can create an atmosphere that facilitates sexual violence against women. The police are a somewhat different case. While the evidence

was not apparent in the background or cases, support can be found in the literature, for example, of the power to stop and detain as well as the abuse of pat down searches (Kraska and Kappeler 1995).

Of the four instances where the propositions don't apply to a particular agency, two instances occurred with the military and two occurred with the police. For the second proposition, "victimizers generally fail to recognize and understand the nature, extent, and harmfulness of institutional policies. If suffering and harm are acknowledged, it is often neutralized within the context of a sense of "entitlement"", no evidence of this was apparent in either the military or police cases. There are several reasons this might be; first is that the available information was limited and therefore not apparent. Second, there might be some organizational element, such as transparency and openness, which don't exist in these two institutions which is present in corrections or the border patrol agencies. In addition, the specific cases of the military and the police are not centered on institutional policies, rather they more likely reflect the informal elements which exist in these institutions, such as patriarchal and militaristic beliefs.

For the third proposition, "victims of state crime are often blamed for their suffering", the only organization which this proposition didn't apply was to the military. This may be attributed to the circumstances within which this particular event occurred. The War in Iraq was not popular internationally and civilian casualties were highly scrutinized by the international media. It seems unlikely that under these circumstances an unarmed young girl would be blamed for her suffering the same way armed insurgents or prisoners are blamed for their suffering.

The final proposition which was not supported by all four cases was the sixth proposition, “illegal state policies and practices, while committed by individuals and groups of individuals, are manifestations of the attempt to achieve organizational, bureaucratic, or institutional goals”, was not supported by the police case. This finding might indicate some redundancy in propositions two and six which is only apparent for this organization and/or this particular case. For the police case, there is no indication that *expressed* “institutional policies” or “organizational, bureaucratic, or institutional goals” contributed to the victimization. Rather, it is the underlying patriarchal, masculine and militaristic culture within the police organization. While these elements often are not expressly encouraged publicly, they are also not aggressively eliminated within the organization due to the benefits they provide the organization. Along these lines, the original six propositions may need to be elaborated to include a proposition along the lines of what Kauzlarich, Matthews and Miller (2001:189) point out are the “social, political, and historical contexts which shape the nature, form, and goals of state agencies”.

In conclusion, this research has addressed the question of “what factors put some women at greater risk of being victims of state crimes” and identified several factors. For example, being viewed as “other”, being from a different country and speaking a different language, as in the cases of Abeer and Blanca are important factors to recognize when understanding women’s victimization. In addition, the case of Toni and the background of Abu Ghraib demonstrate how vulnerable women are in an institutional setting, such as prisons and jails. This indicates that these specific institutions must

recognize that these settings can be inherently coercive and therefore particular attention must be paid to reducing the potential for rape and sexual violence. These factors, which are largely illuminated in proposition number one, contribute to the literature on sexual violence and state crime.

This research has addressed the question of “what are the organizational/structural factors that contribute to these crimes and impact women’s victimization” by identifying the problematic nature of patriarchal and masculine attitudes which appear to be foundational to these organizations. Sexist and degrading language against women used for training and to build camaraderie within the institutions promotes the sexual violence against women demonstrated here. In addition, the bonds of ‘brotherhood’ and codes of silence they instill make it difficult for people in these institutions to stand up to or report these harmful actions, which leads to the continued sexual victimization of individual women on multiple occasions, and well as contributing to additional first time victims. Given this finding, these institutions have specific organizational elements which need to be addressed in order to reduce or eliminate rape and sexual violence against women. Specifically, training programs and trainers need to be reviewed; policies must be put into place to address degrading and sexist language throughout the work place. Finally, extensive reporting procedures and policies which encourage individuals to speak out need to be implemented to help increase reporting by individuals in these organizations, as well as identifying ways to break the “code of silence”.

The question of “what is the nature/array/pervasiveness of sexual violence of women by U.S. state actors” was also addressed by this research. Specifically the nature

and array of the sexual violence was far more elaborate than I anticipated going into this research. Examples of the array of sexual violence are the videotaping and photographing of women exposing themselves at gunpoint in Abu Ghraib (Shumawy2004). Female prisoners in the custody of the MDOC experienced repeated sexually suggestive comments, verbal abuse and witnessed guards exposing their genitals (Report of the Special Rapporteur on Violence 1999). Women in the MDOC also endured searches which were inappropriate, meaning the searches included squeezing and groping, as well as repeated viewing of the women's bodies which extend beyond appropriate monitoring (Report of the Special Rapporteur on Violence 1999). Women in the custody of the MDOC, as well as Blanca, were forced to perform oral sex on the corrections and border patrol officers. Although the nature and array of sexual violence was manifested in different forms in each case, all four of the cases identified rape. The identification of the nature and array of sexual violence also illuminates the pervasiveness of sexual violence, in its many manifestations, across all of the institutions studied here. The recognition of the nature and array of the sexual violence women experience can help these organizations to identify early signs of problems before they escalate into other forms of sexual violence. These organizations need to take seriously the sexual violence which occurs when women are photographed, viewed, or spoken to in sexually suggestive or aggressive ways. The identification of, and commitment of the organizations to monitor and eliminate these forms of sexual violence could be significant in addressing other forms of sexual violence.

Finally, this research has addressed the question of “how does the victimization of women by agents of four U.S. agencies fit within the six propositions of a victimology of state crime” has been demonstrated within each case, as well as a point of comparison across the cases. The propositions provide a useful framework for understanding the factors which lead to victimization by state actors. This research has also shown some of the ways which the propositions could be elaborated. For example, proposition number three could be elaborated to encompass the ways victims are not only blamed for their suffering, but also can identify how this blaming can occur through dismissal or discrediting of their claims and the indifferent treatment victims may receive.

In addition, looking at each proposition across the four cases provides lessons for understanding the similar experiences of victims of state sexual violence. Women as a group continue to be victims of sexual violence due to patriarchy, particularly as it is institutionalized in male dominated institutions in society. Women continue to constitute a vulnerable population in society, which can be compounded by a variety of factors. Recognizing these factors and identifying the particular context in which victimization can occur can help researchers, women’s and human rights organizations, as well as the agencies themselves address the problem of state sexual violence against women. In particular, understanding the problems that inhibit acknowledgement of the ongoing sexual violence is crucial. A concerted effort must be made by each agency to formulate policies to address the unwillingness of individuals in the agency to come forward against their colleagues, which would be a critical step in addressing this violence. Initiating a culture within the organization where sexist and degrading language are not tolerated and

where mandatory reporting and various forms of sanctioning is encouraged and protected through whistleblower laws and policies, as well as supported through innovative incentives, can work to reduce sexual violence in these agencies.

Limitations, Directions for Future Research and Contributions

The greatest limitation of this research is the availability of data. State crime researchers must rely on the institution they are investigating to provide them with information, either through the publication of documents, public processes like hearings and trials or information accessed and disseminated by the media and human rights organizations. However, studying the victims of state crime has the potential to change this dynamic. Future research on the victims of state crime would benefit from having direct access to victims of these crimes to hear about the crimes and state agencies and the systematic nature of these crimes. Joining human rights organizations in their investigations and interviews could be one avenue for gaining access to women who are the victims of state crimes; another may be to contact groups who have campaigned publicly to bring awareness to the violence committed against them, such as the women in Iraq who spoke out to Amnesty International (2005) about their experiences in the prison at Abu Ghraib.

Another limitation of this research is that only four U.S. agencies were studied. Additional research is needed on sexual violence committed by other U.S. state agencies, such as the courts, social service agencies and others agencies that have frequent contact

with publics. Furthermore, additional research could be conducted with these four agencies in different countries. This would provide a starting point for comparison across countries and broaden the knowledge about the victims of sexual violence by state actors.

Finally, future research should combine the analytical tools available for analyzing state crimes. Combining the integrated theoretical framework developed by Kauzlarich and Kramer (1998) and expanded by Rothe and Mullins (2006: 179) with the propositions for a victimology of state crime (Kauzlarich, Matthews and Miller 2001) to individual cases can broaden our understanding of these crimes. This would help understand why these crimes occur, who the most likely victims are, as well as helping to understand ways to respond to these crimes, help the victims, control and even prevent such heinous and injurious behaviors.

Irrespective of limitations like these, this study makes a significant contribution in two areas. First, it contributes to the state crime literature by applying a victimology and a feminist approach to four cases of crimes of sexual violence committed U.S. state actors. A victimology approach has generally been absent in the literature on state crime, and the sexual violence experienced by women at the hands of state actors has specifically been absent. This research contributes to this literature by identifying organizational and structural factors in four U.S. agencies which contribute of rape and sexual violence against women. The identification of these factors can contribute to research on sexual violence in other agencies and organizations in the U.S., as well as in countries around the world. Second, it contributes to the feminist literature and literature on sexual violence by looking at sexual violence in multiple institutional settings. This

research has identified factors which put some women at greater risk of being victims of state crimes in these different settings. This can aid researchers and human rights organizations in future work to understand and help women who come into contact with these institutions. In addition, this research has identified the many different forms sexual violence can take in an institutional setting (unwanted viewing, excessive pat searches, etc.). This research contributes to the existing literature on sexual violence by identifying and documenting the similarity in characteristics that put women at greater risk of sexual victimization that is nearly exclusively directed against the female populations, organizational factors that facilitate sexual violence in the state institutions which were examined here, the pervasiveness of sexual violence against women, and the wide array of forms sexual violence can take, which can be used to identify sexual violence in other spheres of society (schools, public places, etc.). This research is one building block for further understanding the sexual violence women experience at the hands of the state.

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APPENDIX



Date June 5, 2008

To Susan Caringella Principal Investigator
Sarah Brightman Student Investigator

From Amy Naugle, Ph.D., Chair

Re Approval not needed for protocol 08-06-08

This letter will serve as confirmation that your project 'Systematic State Facilitated Sexual Violence Against Women' has been reviewed by the Human Subjects Institutional Review Board (HSIRB). Based on that review, the HSIRB has determined that approval is not required for you to conduct this project because you will use only publicly available information. Thank you for your concerns about protecting the rights and welfare of human subjects.

A copy of your protocol and a copy of this letter will be maintained in the HSIRB files.