

# STREET SMUT: GENDER, MEDIA, AND THE LEGAL POWER DYNAMICS OF STREET HARASSMENT, OR “HEY SEXY” AND OTHER VERBAL EJACULATIONS

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*I stepped on the bus cheerily anticipating the experiences of the day, unaware of the encounter that was about to take place. The bus driver spoke, “Hey cutie.” I explained to him that I was not his “cutie” and did not desire his unsolicited comments. He snatched my MTA pass, and taunted, “Now, you have to say ‘please’ to get it back.” I made several attempts to grab the card but could not. Feeling as if I had no other options, I was forced to do as he said. He gave me back my card and grabbed my backside as I walked towards the back of the bus. No one on the bus said a word.<sup>1</sup>*

*Recently I found myself in midtown and decided to take a walk through Bryant Park . . . [Within moments, one man] invited me to take my clothes off and . . . another . . . wanted to know why I wasn’t smiling . . . [There] were perhaps fifty men, strolling, ambling, striding along eating hot dogs, sitting on benches and reading the paper or trading illegal substances as though they had all the time in the world—and three women, all walking quickly and grimly, as I was now doing, as though late for an appointment with the dentist.<sup>2</sup>*

*I am walking home, and a slightly drunk and slightly disheveled man is following me, saying, “Mamma, oh*

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<sup>1</sup> Description of one woman’s experience, shared at a Street Harassment Project Meeting in New York, NY (Dec. 1, 2003).

<sup>2</sup> Katha Pollit, Hers, N.Y. Times, Dec. 12, 1985, at C2.

*mamma, baby please, I wanna fuck you, I give good tongue, oh sweetheart, please . . . " My body is no longer mine. On the street my body is theirs. I can define myself all I want, but in their eyes I am a body on the street, two tits and no head and a big ass. My body becomes a cunt, and although I'm not physically raped, psychically I am, and I ache from it.*<sup>3</sup>

Unfortunately, these women's experiences are not rare. Indeed, such astonishing encounters occur in the daily lives of women throughout the world.<sup>4</sup> Rarely is it the case that a woman in a public space is not confronted with unsolicited comments and gestures of a sexual tone by men unknown to her. Yet, it is precisely the ubiquity of this phenomenon that distills its perceived effects on women and on society as a whole. Most men view the occurrence as harmless and even desired by women, while most women resign themselves to the inevitability of the acts and the absence of a vehicle to remedy such harm. Notwithstanding these somewhat discouraging facts, there is hope for a remedy to this problem. Those who fight against the sexual harassment of women in public places may find encouragement in the advancements made towards the recognition and redress of other harms that largely affect women, such as sexual harassment in the workplace.

The notion of sexual harassment in the workplace was unknown fifty years ago, but is now recognized as a valid harm to women and to society. Great strides have been made in this arena, and women now have legally cognizable claims under Title VII and state non-discrimination laws. Further, this type of sexual harassment is socially condemned; it is no longer "what bosses do," but carries with it a condemnation that reflects the changing ethical judgments of society. Thus, progress has been made, and this advancement helps to fortify the convictions of those who currently fight against the harassment of women in public places and other forms of sexual harassment that are not yet recognized as real injuries to women.

Yet, even the illustration of sexual harassment in the workplace underscores the limitation of discourse about sexual harassment. In the majority's collective consciousness, the term sexual harassment connotes sexual harassment in the workplace; often the add-on, "in the workplace," is unnecessary. Certainly, sexual harassment is not unique to employment contexts, yet the conversation largely has been limited to this arena. It is

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<sup>3</sup> Muriel Dimen, *Surviving Sexual Contradictions: A Startling and Different Look at a Day in the Life of a Contemporary Professional Woman* 3 (1986).

<sup>4</sup> Cynthia Grant Bowman, *Street Harassment and the Informal Ghettoization of Women*, 106 Harv. L. Rev. 517 (1993) (noting the worldwide pervasiveness of sexual harassment of women in public places). Although such harassment is ubiquitous, this paper focuses on occurrences within the United States.

time to begin to expand and develop this discourse in order to obtain remedy for other types of sexual harassment.

Critical discourse concerning sexual harassment in public places began approximately a decade ago. The scholarship that arose at that time explored the harms of such harassment on women and society, existing legal remedies, and formulations for a more effective legal redress. For instance, Deirdre Davis focused on the effect of harassment in public places on black women,<sup>5</sup> while Cynthia Bowman explored the shortcomings of the legal remedies that have been used to address such harassment.<sup>6</sup> These illustrations show that the conversation has begun about sexual harassment of women in public spaces, yet much more discussion must take place. As Deborah Tuerkheimer observes, "We have barely begun to articulate the nature of the harm."<sup>7</sup>

Several occurrences have transpired in the last ten years to prompt a renewal of the discussion of the harassment of women in public places. The highly publicized accounts of sexual harassment and assault of women during public events—the 1998 Greek Festival in Philadelphia's Fairmount Park, the 2000 National Puerto Rican Day Parade in Manhattan's Central Park, and the 2001 St. Patrick's Day Parade in Manhattan—are jarring reminders that we have a long way to go in eradicating the harm of sexual harassment of women in public spaces.

In tension with these events, as times change and we evolve towards a (hopefully) more inclusive society, we gain acceptance of feminist discourse and of attempts to create remedies for injuries against women. This evolution translates to the ever-increasing critical mass of women who are aware of gender inequalities, and who will be in positions of power—arguing in courtrooms, sitting on benches, legislating in Congress, reporting in newsrooms on issues that are influential on a national scale, running national and international media companies, and more. Thus, more women will be reflected in our legal system and our media industries. Both law and the media are transformative mechanisms that, by the nature of the manners in which they operate, have the ability to change behavior and to shape perceptions, ethics, and values. The growing convergence of law and media lends even more potency to the potential that law and the media have to achieve transformative goals.

The purpose of this Article is to examine the manners in which these two transformative vehicles may lead us to recognize the harms of, and the remedies for, the harassment of women in public spaces. The nexus between harassment of women in public spaces and the media is clear. The

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<sup>5</sup> Deirdre Davis, The Harm That Has No Name: Street Harassment, Embodiment, and African American Women, 4 UCLA Women's L. J. 133 (1994).

<sup>6</sup> Bowman, *supra* note 4.

<sup>7</sup> Deborah Tuerkheimer, Street Harassment as Sexual Subordination: The Phenomenology of Gender-Specific Harm, 12 Wis. Women's L. J. 167, 168 (1997).

media may be used as a platform to enlighten and educate the public about this type of sexual harassment. Further, the media's ability to bring injustices to the forefront converges with the law to bring about change and social justice.

The interplay between law and media in the context of the harassment of women in public arenas may be examined through different media representations and through the legal outcomes of a specific occurrence of sexual harassment of women in a public space. This Article focuses on the sexual assaults that took place after the 2000 Puerto Rican Day Parade.

The issue of the sexual harassment of women in public places is examined within the framework set forth by William Felstiner, Richard Abel, and Austin Sarat in The Emergence and Transformation of Disputes: Naming, Blaming, Claiming.<sup>8</sup> Framed within the discipline of the sociology of law, the model examines the manner in which an act becomes identified as a harm, an agent is blamed for the harm, and a remedy is demanded for the harm.<sup>9</sup> The Article is presented within this framework for several reasons. First, it is helpful in evaluating and understanding an issue that has not been established as a recognized harm by the individual harmed or by society. Often the tendency is to leap into an examination of the legal remedies that may be afforded for a harm under the presumption that the experience has been accepted as an injury by the person acted upon. However, Felstiner et al. remind us that problems are not the sum of their reduction to numbers and formulas; rather, they are social constructs first.<sup>10</sup> The contextualization of the manner in which an occurrence becomes perceived as an injury is useful in explaining why the harassment of women in public spaces has not been recognized as a social harm. In addition, the Felstiner et al. methodology does not approach a problem in a vacuum, but is careful to take into account the racial, class, gender, and sexual orientation categories one falls within that often influence one's position with respect to political and socioeconomic power.<sup>11</sup> Such acknowledgement is undoubtedly useful for this conversation precisely because women are a marginalized group representing a political, economic, and social minority in terms of power and control. Lastly, the Felstiner et al. framework underscores the notion of the transformative process of naming, blaming, and claiming, and the manners in which media and law, both transformative mechanisms themselves, act as catalysts in this transformation process.

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<sup>8</sup> William Felstiner, Richard Abel & Austin Sarat, The Emergence and Transformation of Disputes: Naming, Blaming, Claiming, 15 Law & Soc'y Rev. 631 (1981).

<sup>9</sup> *Id.* at 631-33.

<sup>10</sup> *Id.* at 631.

<sup>11</sup> *Id.* at 635.

Part I gives background on the authors of the Felstiner et al. framework and briefly introduces the socio-legal discipline. This section frames the discussion of street harassment by setting forth the concept of naming, blaming, and claiming as presented by Felstiner et al. This construct is utilized throughout the remainder of the Article to analyze the issue of the harassment of women in public arenas.

Part II attempts to name the harm, by defining the phenomenon of sexual harassment of women on the street and identifying it as street harassment, a term that has been used by several scholars<sup>12</sup> to describe this phenomenon. This section explains specifically what street harassment is, through identification of its characteristics, and explores its effects on women and on society.

Part III identifies the perpetrators—those who should be blamed for the injury of street harassment. The line of blame does not end simply with identifying the harassers; rather, it extends beyond and points a finger at the phallogocentric systems that foster and encourage such acts. This section examines the self-perpetuating manner in which popular, mainstream media both feed on and nourish an environment that is hostile to women, creating an atmosphere of what Carole Sheffield labels as sexual terrorism.<sup>13</sup>

Part IV addresses the issue of claiming the harm. The legal treatment of the Puerto Rican Day Parade prosecutions and the general manners in which the legislature and judiciary have addressed the harm of street harassment are examined. The deficiencies of these methods are noted, and improvements on these methods and alternative solutions are suggested.

Part V concludes the Article, reaffirming the assertion that street harassment indeed is a real injury that must be named, blamed, and claimed. This section summarizes the transformation of an injury from a grievance into a dispute and the manners in which the media and courts have responded to and influenced such transformations. Further, this section calls on the engagement of collaborative effort by those within the mass communication and legal communities in order to transform a seemingly invisible harm into a perceived injury with identifiable offenders. Finally, this section offers remedies to correct the wrong perpetrated.

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<sup>12</sup> See Bowman, *supra* note 4; Micaela di Leonardo, Political Economy of Street Harassment, Aegis, Summer 1981, at 51; Elizabeth A. Kissling & Cheris Kramarae, Stranger Comments: The Interpretation of Street Remarks, 14 Women's Stud. in Comm. 75 (1991).

<sup>13</sup> See generally Carole Sheffield, Sexual Terrorism: The Social Control of Women, in Analyzing Gender: A Handbook of Social Science Research (Beth B. Hess & Myra Marx Ferree eds., 1987).

## I. THE FRAMEWORK

The ideas that led to a development of the socio-legal discipline began to foment among the flurry of changes that occurred during the New Deal Era.<sup>14</sup> During this period in American history, notions of laissez-faire economics, social Darwinism, and traditions of local government were being erased and replaced with concepts of social welfare, group rights, state governance, and economic regulation.<sup>15</sup> These developing ideas created the law and society movement, which focuses on the study of law as a social phenomenon.<sup>16</sup> Under this umbrella, scholars, lawyers, and social scientists explored, among other considerations, the impact of law as a societal domain, the myth of the neutrality of law, and the manners in which the law may be used to solve social problems.<sup>17</sup> These concerns dominated the structure and implementation of studies, research programs, and other scholarship.

However, as the Felstiner et al. framework recognizes, many of these studies approach disputes as a given phenomenon to which economic, social, and legal considerations could be applied.<sup>18</sup> The sociological study of disputes tends to concentrate on the dynamics at the end of the process, during which claimants demand remedy for wrongs or the exercise of rights.<sup>19</sup> Felstiner et al., on the other hand, recognize that the process from an unnamed occurrence to its development into a dispute is one that must be examined critically.

The framework takes as its beginning point the experience of an act that may undergo several transformations,<sup>20</sup> depending on a myriad of factors that come to bear on the occurrence.<sup>21</sup> Each transformation is

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<sup>14</sup> See William J. Novak, *The Legal Origins of the Modern American State*, in *Looking Back at Law's Century* 249-53 (Austin Sarat, Bryant Garth & Robert A. Kagan eds., 2002).

<sup>15</sup> *Id.* See also Gerald L. Fetner, *Ordered Liberty: Legal Reform in the Twentieth Century* 67-69 (1983).

<sup>16</sup> See David M. Trubek, *Back to the Future: The Short, Happy Life of the Law and Society Movement*, 18 Fla. St. U.L. Rev. 4 (1990).

<sup>17</sup> *Id.* at 38-45.

<sup>18</sup> Felstiner et al., *supra* note 8, at 631-32.

<sup>19</sup> *Id.* at 632 (noting that a preoccupation with the last step in a dispute—a demand for remedy—focuses on those legal institutions most removed from society, doing injustice to the study of law within a social context).

<sup>20</sup> The term “transformation” is used in this paper, and in the Felstiner et al. framework, to describe the study of the social process in which an experience becomes a grievance, a grievance becomes a dispute, and attempts are made to resolve the dispute. *Id.* at 632.

<sup>21</sup> *Id.* at 631 (the transformations “are caused by, and have consequences for, the parties, their attributions of responsibility, the scope of the conflict, the mechanism chosen,

subjective, reactionary, unstable, and incomplete.<sup>22</sup> The first transformation occurs when an unperceived injurious experience becomes a perceived injurious experience.<sup>23</sup> This transformation is the most critical one for two reasons. First, without this initial transformation, the subsequent ones cannot follow, and second, this transformation, perhaps more so than those it precedes, largely is dependent on the status in the world at large of both the party that experiences the harm and the party that inflicts the harm. Specifically, the identification of an experience as injurious is shaped by a person's cultural, educational, and economic status; by the social network that surrounds such a person; by the power dynamics that exist between the injured and the party that injures; and by the manipulation of information by the perpetrator.<sup>24</sup> A member of a minority group that is consistently marginalized, blamed, and victimized may be more likely to attribute the occurrence of an injury to herself and see herself as the cause of such harm. Thus, she may internalize the blame that a dominant group has placed on her. When a person blames herself, she is less likely to identify an experience as injurious,<sup>25</sup> and even if she recognizes the experience as an injury, she is less likely to externalize the harm and blame someone other than herself.

The transformation of a perceived injurious experience into a grievance is the process of blaming.<sup>26</sup> During this stage, the injured person attributes the harm to another person, identifying the second party as the perpetrator of the harm. At times, the perpetrator may not be easily identifiable, either because of the indirectness of the relationship with the injured, or because of the seeming invisibility or anonymity of the injuring party.<sup>27</sup> Thus, investigations may have to be conducted, and patterns may have to be recognized, in order to identify those who may be blamed. The identification of the perpetrator is usually followed by the injured electing a forum in which to voice the injury.<sup>28</sup> This choice may be based on the individual's perception of the audience that is most receptive to her

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the objectives sought, the prevailing ideology, reference groups, representatives and officials, and dispute institutions").

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 633-35.

<sup>24</sup> *Id.* at 633, 640.

<sup>25</sup> *Id.* at 641.

<sup>26</sup> *Id.* at 635.

<sup>27</sup> *Id.* at 639-41.

<sup>28</sup> *Id.* at 642, 647-49.

concerns, or of the vehicle through which transformative action is most possible.<sup>29</sup>

The act of claiming occurs when a grievance is transformed into a demand for remedy. In this step, the demand is made specifically to the perpetrator. When the remedy is contested, a dispute arises.<sup>30</sup> The construction of the harm and the degree of liability that the conflict engenders are affected by the mechanism elected to resolve the dispute.<sup>31</sup> For example, legal courts tend to narrow disputes, excluding the more widespread circumstances within which an occurrence may have arisen.<sup>32</sup> This position is taken in order to make a case more administratively manageable and efficient.<sup>33</sup> In contrast, a forum such as the media may be more willing to take into account the wider, more attenuated reasons for which an injury occurred. The process utilized will also affect the remedies that are available, the rules of evidence used, and the costs incurred, for example.

In addition, while attrition may occur at each stage, it may arise more often in this last step due to the prevailing sense of powerlessness that a person in a minority group may experience. She may feel unable to harness the authority of established systems to help her obtain redress, largely due to the fact that those systems historically may have been used to perpetuate her oppression within society. An individual's sense of entitlement also shapes the transformation of grievance into dispute.<sup>34</sup> If one feels, and has been reassured through prior experiences, that one is entitled to a right, one will be more apt to act when that right is infringed upon. In this sense, the first transformation, naming, is conflated with the sense of entitlement—when a notion of entitlement exists, there is no need to recognize the harm; all that is left is to identify the perpetrator and demand a remedy. Based on this idea, we can see how law is a highly effective way of transforming ideology to create a sense of entitlement.<sup>35</sup> Once a thing has been held to be a right, a sense of entitlement develops over time, which in turn molds a society's values and ideals.

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<sup>29</sup> This Article argues that media and the law are such vehicles of transformation, although they are not without shortcomings.

<sup>30</sup> Felstiner et al., *supra* note 8, at 644.

<sup>31</sup> *Id.* at 642, 647-49.

<sup>32</sup> For example, a court hearing a drug sale case probably will not take into account wider social factors such as the environment in which the defendant grew up, in which selling illegal drugs may be the only perceived option available to the defendant; the fact that members of a particular race are disproportionately prosecuted; or other contextualizing issues.

<sup>33</sup> See Bowman, *supra* note 4, at 548-49.

<sup>34</sup> Felstiner et al., *supra* note 8, at 643.

<sup>35</sup> *Id.*

It is important to recognize that these processes are fluid, constantly changing as each stage relates to another, to surrounding circumstances and pressures, and to new information that is obtained.<sup>36</sup> As the processes are unstable and shifting, so too are the positions of the parties. The parties are “agents” as well as “objects” in the transformation process, both acting and being acted upon, constructing and being constructed.<sup>37</sup> Further, the parties are constantly being politicized and depoliticized. In the forum of the courts, with its focus on individualization and its eschewing of the political through a structural modality, the parties are more or less depoliticized. However, in the media, where individual experiences may be collected and constructed in a looser manner than in the courts and where the author may have an agenda she wants to communicate—as opposed to a judge who is supposed to be impartial—there is more tendency to politicize.

Lastly, we must recognize that although this discussion of naming, blaming, and claiming has been framed from the perspective of the individual who is harmed, it is usually through the collective power of a group that the stages are realized.

Having described the framework, we are now able to structure the discourse of street harassment within its parameters. Such a structuring proves helpful as we examine the manners in which street harassment may be named, blamed, and claimed.

## II. NAMING

Feminist legal scholar Robin West explains that “an injury uniquely sustained by a disempowered group will lack a name, a history, and in general a linguistic reality.”<sup>38</sup> Naming is an act of recognition, transforming that which was formless and unable to be articulated. It is the process of gathering up the dispersed, seemingly unrelated, unexpressed characteristics of a “thing” and forming an identity by which all may recognize it.<sup>39</sup> In the context of the harassment of women in public places, naming requires an articulation and a sharing of experiences, attachment of a term that accurately describes such experiences, identification of the common characteristics of such occurrences and the effects of those experiences, and a contextualization of the occurrence within the larger social and political arenas.

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<sup>36</sup> *Id.* at 636-39.

<sup>37</sup> *Id.* at 640.

<sup>38</sup> Robin West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 *Wis. Women's L.J.* 81, 85 (1987).

<sup>39</sup> Tuerkheimer, *supra* note 7, at 174-75.

### A. Defining Street Harassment

Scholars have defined street harassment as the unsolicited verbal and/or nonverbal act of a male stranger towards a female, solely on the basis of her sex, in a public space.<sup>40</sup> This name is appropriate because it does not couch the injury in euphemism, but calls it what it is: harassment. Some trivialize the harm to women by terming the experience "street remarks" or "hassling"; however, these terms are inadequate because the experience is more than a remark or a hassle, but an assault on women's psychic sensibilities and a tool used to systematically subjugate women.

The term street harassment appropriately prefaces "harassment" with "street" to underscore that this specific type of sexual harassment occurs in public spaces such as the street, parks, public transportation, and the like. However, the term lacks any mention of the act as a gender-specific harm, an aspect which lies at the core of the marginalization and perpetuation of the injury. Nevertheless, the term street harassment sufficiently names the phenomenon it describes.

A fair rebuttal to my assertion that the name attached to street harassment should include a gender-specific term may be that such a name and definition of street harassment is inaccurate in that it excludes both men who are harassed by women and persons who are harassed by members of the same sex. Thus, it may be unfair to characterize street harassment as a harm done solely to women by men. It is prudent to answer the exclusion of each group separately. First, an argument that equates the experience of a woman harassed by a man with the experience of a man harassed by a woman assumes an equal, objective world in which men and women experience the effects and harms of an occurrence in the same manner. Although it is true that some women harass men, the opposite is so much more prevalent and is so deeply rooted in phallocentric hegemony that the power dynamics, the implications of the experience, and the psychic harms that result are radically different. This is not to say that women do not harass, but that motivations of the harasser and the effect on the harassed in these two contexts are wholly dissimilar.<sup>41</sup> When these two occurrences are compared, the social construction that equates male with power and female with powerlessness is ignored.<sup>42</sup> Thus, the effect of women's subjugated position is that women experience harms that men either do not experience at all, or that they experience as non-injurious.<sup>43</sup> This explains why many

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<sup>40</sup> Bowman, *supra* note 4, at 523; Leonardo, *supra* note 12, at 51-52; Kissling & Kramarae, *supra* note 12, at 75-76.

<sup>41</sup> Tuerkheimer, *supra* note 7, at 171-89.

<sup>42</sup> *Id.* at 172-73.

<sup>43</sup> *Id.* at 176.

men believe that an occurrence of street harassment is harmless; as one man opined, he would take such incidents as compliments.<sup>44</sup> Second, interesting power dynamics are at play when a person harasses someone of the same sex and such a study would greatly add to the discourse. Unfortunately, such a discussion is beyond the scope of this Article. Hence, I as well as others define street harassment as a gender-based harm that has among its defining characteristics an identifiable female target and a male perpetrator.<sup>45</sup>

In order for the term street harassment to be useful as an identifier, it is crucial to delineate the common characteristics of this form of harassment. This ensures that all individuals using the term identify the same socio-cultural power dynamics present in the harassing relationship. Elizabeth Kissling identifies certain characteristics of street harassment: 1) a female target, and 2) a male harasser, 3) who are strangers and have, 4) in a public space, 5) a face-to-face encounter, 6) solely on the basis of the woman's gender, and 7) the content (remark and/or act) of which is not intended to spark conversation or mutual interaction.<sup>46</sup> The last element is worth elaboration. As has been noted by scholar Deirdre Davis, most forms of street harassment are not words or actions that would engender mutual interaction; comments such as "Hey, cunt," and gesticulations of private parts certainly would not move most women to engage in conversation with the actor.<sup>47</sup> To the contrary, a harasser's expectations are disrupted when the harassed woman steps outside of her socially constructed role as the "acted upon" and responds to the harasser's words and/or actions. Davis examines this disruption when a woman responds with a "thank you" to a harasser's "compliment," finding that harassers are often taken aback when women respond to their comments or gestures.<sup>48</sup>

Arguably, a "thank you" is never the appropriate response to an injury, no matter how seemingly harmless or "flattering" it may be.<sup>49</sup> Here, the harms of invasion and assertion of male power to act upon a woman have occurred, although they may come in a "harmless" form. A thank-you response in this situation translates into a compromised rebellion because it

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<sup>44</sup> *Id.* at 186.

<sup>45</sup> See Bowman, *supra* note 4; Leonardo, *supra* note 12, at 51-52; Kissling & Kramarae, *supra* note 12.

<sup>46</sup> Elizabeth A. Kissling, Street Harassment: The Language of Sexual Terrorism, 2 *Discourse & Society* 451, 453 (1991).

<sup>47</sup> See Bowman, *supra* note 4, at 524-25.

<sup>48</sup> Davis, *supra* note 5, at 139.

<sup>49</sup> Deborah M. Thompson, The Woman in the Street: Reclaiming the Public Space from Sexual Harassment, 6 *Yale J.L. & Feminism* 313, 318 (1994) (quoting Elizabeth A. Kissling & Cheris Kramarae, Stranger Compliments: The Interpretation of Street Remarks, 14 *Women's Studies in Communication* 75, 83 (1991)).

ultimately acquiesces to the social construction of women as passive, meek, and accepting of men's actions upon them, while it simultaneously attempts to reject objectification and reclaim the woman's sense of personhood. Whatever the content of the woman's response, any affirmative action she takes disrupts the harasser's goal of objectifying her, which may lead to a heightened level of abuse.<sup>50</sup>

## B. Effects of Street Harassment

Lastly, the process of naming requires identification of the effects of street harassment on women and on society generally. I frame this discussion of the injuries that result from street harassment within the proposition, put forth by Robin West, that women suffer differently from men.<sup>51</sup> Such difference is created by our political and social histories, which are constructed by, and in turn construct, the manners in which women react to an occurrence.<sup>52</sup> However, because the manner in which women suffer is based on our phenomenological and ontological selves, the injury may be difficult to understand. Hence, the injury must be described in a way that may be understandable to the larger, more powerful, male culture.<sup>53</sup> In attempting to describe the manners in which women are harmed by street harassment, we must be true to our experiences, without diluting or distilling them, but also speak about the harm in words and expressions that may be understood by and accessible to the larger culture.

The work of scholar Stuart Hall regarding the manner in which different groups communicate complements West's argument. His research demonstrates that the differences between men's and women's processes of encoding and decoding messages help to explain the lack of understanding by men of women's injuries. As Hall notes, coding mechanisms are the method by which the mind interprets the world.<sup>54</sup> A person's method of encoding/decoding is rooted in her experiences and in her place within the political, social, and ideological order.<sup>55</sup> A group in the dominant role in terms of gender, race, and sexuality will encode/decode an occurrence in a manner consistent with its own privileged position and view of "reality"

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<sup>50</sup> Davis, *supra* note 5, at 139.

<sup>51</sup> West, *supra* note 38, at 85.

<sup>52</sup> By this comment, the author does not assert the essentialist view that all women share the same experiences; certainly, women have different experiences as a result of race, socio-economic status, past experiences of violence, cultural norms, etc.

<sup>53</sup> See also West, *supra* note 38.

<sup>54</sup> Stuart Hall, Encoding, Decoding, in The Cultural Studies Reader 91-94 (Simon During ed., 1993).

<sup>55</sup> *Id.* at 98-99.

and thus in a manner different from a marginalized group.<sup>56</sup> Due to the hegemony created by the dominant group, the marginalized group may also ascribe to the manner in which the powerful group codes, resulting in false consciousness.<sup>57</sup> However, there are inconsistencies between the dominant group's coding of an experience and the reactions of the marginalized group to that experience. These tensions cause tears within the constructed fabric of reality the dominant group has woven, and it is through these gaps that the marginalized group is able to recognize another reality.

The disparity between the manner in which the dominant group has coded the experience of street harassment, i.e. as harmless and perhaps even flattering to women, and the manner in which most women experience street harassment, i.e. as a harm, has led to an imagination of different methods of coding the experience of street harassment, which in turn leads to a recognition of street harassment as a valid harm. Street harassment injures women's psychic, emotional, and intellectual sensibilities, economic opportunities, and social rights. First, street harassment harms women psychically and emotionally. A comment such as, "I'll bet you taste real good," or a crude gesture reinforces for women the ubiquitous message of female objectification embedded in nearly all aspects of society, accentuates the perpetual male gaze that allows a man to view a woman, and forces a woman to view herself as object rather than subject.<sup>58</sup> The injured woman is dehumanized and is taught by these continual experiences to associate emotions of humiliation and powerlessness with her identity as a sexual being. Thus, a woman is taught to accept, and silently endure, injuries as a definitional part of her sexuality.

In addition to this psychic injury, street harassment provokes in women a fear of physical harm and rape, acting as "a salient warning of the omnipresent threat of sexual violation."<sup>59</sup> According to the Bureau of Justice Statistics, one in six women will suffer rape or attempted rape at least once in her lifetime.<sup>60</sup> This figure most likely is underestimated, given the number of unreported rapes. Further, this number does not take into account survivors who have been raped more than once. These alarming numbers justly put in women's minds an apprehension of such harm

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<sup>56</sup> *Id.* at 100.

<sup>57</sup> *Id.* An example of false consciousness is failure to perceive systematic injustices or disadvantages, such as where an individual of a racial minority subscribes to the notion that the overrepresentation of his or her racial group in prisons is due completely to culpability and has nothing to do with racial profiling, educational and economic disadvantages, etc.

<sup>58</sup> Tuerkheimer, *supra* note 7, at 183.

<sup>59</sup> *Id.* at 188.

<sup>60</sup> Bureau of Justice Statistics, *National Crime Victimization Survey: Criminal Victimization, 2002*, at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cv02.pdf> (August 2003) [hereinafter *National Crime Victimization Survey*].

occurring to them. Many women's fears of rape are based on the stereotypical (and often real) notion of the "stranger" rapist<sup>61</sup>—the intimidating stranger in the dark—which is the imaginary figure that street harassers resemble.<sup>62</sup> Indeed, approximately thirty percent of all rapes are committed by strangers.<sup>63</sup> Further, it is documented that some rapists use street harassment as "rape-testing," a process a rapist uses to determine how much a woman may resist by physically fighting her attacker.<sup>64</sup> Hence, the fear of rape inflicted upon women by street harassers is warranted and traumatizing. In *Ellison v. Brady*, the Ninth Circuit Court of Appeals recognized:

Women who are victims of mild forms of sexual harassment may understandably worry whether a harasser's conduct is merely a prelude to violent sexual assault. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive.<sup>65</sup>

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<sup>61</sup> *Id.*

<sup>62</sup> This assertion does not ignore the racial and class biases that reflect some women's tendencies to categorize a potential rapist based on physical appearance. However, this paradigm of street harasser as potential rapist is based not simply on appearance, but on the acts (words or gestures) that the harasser performs.

<sup>63</sup> *National Crime Victimization Survey*, *supra* note 60.

<sup>64</sup> A large number of rapes are premeditated. See Owen D. Jones, *Sex, Culture and the Biology of Rape: Towards Explanation and Prevention*, 87 Cal. L. Rev. 827, 873 (1999); Earlham College Rape Statistics, at <http://www.earlham.edu/~aar/stats.html> (Fall 2002) (stating that twenty-one percent of perpetrators premeditated the rape). Hence, a rapist typically will target a victim who is expected to show the least amount of resistance. A potential rapist may use tactics such as abusive language, vulgar gestures, and invasion of the woman's personal space to determine whether or not a woman will fight her attacker. If a woman passively accepts such preliminary conduct, a potential rapist may use her acceptance to conclude that she will not resist sexual assault. See Dorothy E. Roberts, *Rape, Violence and Women's Autonomy*, in *Symposium: Is the Law Male?*, 69 Chi.-Kent L. Rev. 359, 378 n.95 (1993) (revealing that "rape testing" was used on a woman in her neighborhood who was raped by two men after she ignored their comments); Martha J. Langelan, *Back Off! How to Confront and Stop Sexual Harassment and Harassers* 45 (1993); Carol Dana, *Talking Back To Street Harassers*, Wash. Post, Aug. 19, 1986, at C5; Cristina Del Sesto, *Our Mean Streets: D.C.'s Women Walk Through Verbal Combat Zones*, Wash. Post, Mar. 18, 1990, at B1. Certainly, this phenomenon does not discount the existence of rapists who obtain satisfaction from a victim's struggle.

<sup>65</sup> *Ellison v. Brady*, 924 F.2d 872, 879 (9th Cir. 1991), reversing the district court's summary judgment in favor of the appellee employer, where the district court held that the appellant did not state a prima facie case of sexual harassment arising from a hostile working environment because the co-worker's offensive conduct was "isolated and genuinely trivial." In this sexual harassment action brought under Title VII of the Civil Rights Act of 1964, the court established the reasonable victim standard for sexual harassment and concluded that in the instant

The court perceived that because men typically are not the victims of sexual violence, they likely will interpret a woman's experience of street harassment as an isolated and discrete event. Because, more likely than not, men lack experiential basis, they do not connect street harassment with an escalation of harm.

In addition to apprehension of rape, women who suffer street harassment fear general physical harm. A woman who confronts her harasser, even one who ignores him, risks the danger of angering him. In such cases, often the harasser's words escalate to an increasingly virulent pitch. Indeed, one man attacked a woman with a knife and another pushed his victim onto train tracks when the women fought against the men's harassing remarks and actions.<sup>66</sup> Often, when a woman ignores such sexual conduct, the harasser's comments and/or actions become more threatening.<sup>67</sup> Thus, women are trapped because they most often cannot afford to either actively confront or to passively ignore the perpetrator for fear of enraging him. These reactions may be difficult for men to understand because, as the powerful group in a culture of sexual domination, occurrences of rape and physical harm based on sex-power dynamics are nonexistent. Thus, men may perceive a case of street harassment as separate and isolated, while for women, such an experience is rooted within the pervasive and intentional systems of terroristic violence and subordination visited upon them. The words and actions of the harasser engender in the harassed feelings of fear and impuissance to resist what is apprehended as a forthcoming harm.

Not only does street harassment offend women's psychic and emotional sensibilities, but it also offends women's independent identities.<sup>68</sup> Comments and gestures of street harassment invade a woman's sense of privacy and are attempts, based on the assumption of woman as "open" to man, to control her attention.<sup>69</sup> The disregard of one's right not to be intruded upon, and the resulting undermining of one's sense of autonomy is a real harm, regardless of how "flattering" the remark is. In a university-wide discussion of street harassment over a one month period performed by Elizabeth A. Kissling and Cheris Kramarae, one woman commented,

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case, a reasonable woman could consider the co-worker's behavior to be sufficiently severe and pervasive to alter the conditions of appellant's employment and create an abusive working environment.

<sup>66</sup> College Student Slashed In Head On Subway Platform, The Associated Press, at [http://www.streetharassmentproject.org/news/reports/media\\_011003.html](http://www.streetharassmentproject.org/news/reports/media_011003.html) (Jan. 10, 2003); Man Pushes Woman Onto Subway Tracks Because She Rebuffs His Advances, at [http://www.streetharassmentproject.org/news/reports/media\\_021801.html](http://www.streetharassmentproject.org/news/reports/media_021801.html) (Feb. 18, 2001).

<sup>67</sup> Bowman, *supra* note 4, at 525.

<sup>68</sup> Thompson, *supra* note 49, at 324.

<sup>69</sup> *Id.* at 318-20.

"[i]magine if someone just walked into your apartment and complimented you on how nice it was. Chances are you would be more offended by his intrusion than flattered by his compliment."<sup>70</sup> Similarly, the command by a man for a woman to "smile" invades her privacy and sense of autonomy. The invitation may be regarded as harmless on its face, yet it is a demand by a man that a woman disregard her own emotions in order to satisfy him with a smile. No matter that the woman's grandmother or dog may have just died that day, or even that she simply does not wish to smile. These invasions of privacy reassert men's dominance over women and the privilege of men, constructed as natural and invisible, freely to act upon women.

In addition to these injuries, women are also harmed economically by street harassment. As Deborah Thompson recognizes, there is a pervasive notion that women in the street, regardless of their business there, are sexually open to men.<sup>71</sup> This invites harassment, which dissuades many women from venturing into occupations that require them to work outside because they do not want to endure harassment they may face from their predominantly male co-workers and from strangers in the street. Indeed, there is a substantial amount of empirical data that evidences this pattern among women street vendors and construction workers.<sup>72</sup>

Further, a woman's economic opportunities may be affected by street harassment in less obvious ways.<sup>73</sup> To illustrate, a woman, engrossed in her own thoughts, perhaps boosting herself up for a meeting or presentation, is subjected to a comment or gesture as she travels to work, thereby disrupting her concentration.<sup>74</sup> A woman, engaged in conversation with her interviewers as they walk back to the office from lunch, must fight against a shattering of her sense of confidence and professionalism as a man walking past the group loudly comments on her breasts and backside.<sup>75</sup> Such occurrences loudly resonate in a woman's mind, reminding her that no matter what she may accomplish in life, to many men she is still just a body to be possessed and intruded upon.

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<sup>70</sup> *Id.* at 318.

<sup>71</sup> *Id.* at 323, noting that the very idea of a woman working on the street connotes the sexual activity of prostitution. The phrase "street woman" means precisely this in a manner that "street man" does not, and is not even a common term.

<sup>72</sup> See Suzanne C. Carothers & Peggy Crull, Contrasting Sexual Harassment in Female- and Male-dominated Occupations, in My Troubles Are Going to Have Trouble With Me: Everyday Trials and Triumphs of Women Workers 219, 224 (Karen B. Sacks & Dorothy Remy eds., 1984); Vicki Schultz, Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument, 103 Harv. L. Rev. 1750, 1832-39 (1990).

<sup>73</sup> Thompson, *supra* note 49, at 324.

<sup>74</sup> *Id.*

<sup>75</sup> Author's own experience of harassment, in Philadelphia, PA (October 2003).

Lastly, street harassment infringes upon the social rights of women. Such harassment works to exclude women from public space, which they are entitled to share with men as equal citizens of the state. A fundamental aspect of liberty is mobility, yet free exercise of mobility often is denied to women.<sup>76</sup> Street harassment limits motion; women often change traveling routes and make decisions not to venture into the street late at night.<sup>77</sup> This limitation of women's mobility relegates them to the "private sphere of hearth and home."<sup>78</sup> Thus, street harassment tends to create what Cynthia Bowman terms an "informal ghettoization of women."<sup>79</sup> Public places are designated as male space, and women must negotiate the terms and conditions upon which they may enter these spheres.<sup>80</sup> Women, in order to escape harassment, often must travel with a male companion or in groups; this restricts a woman's autonomy by limiting her ability to go to a place by herself if she so desires and further reaffirms the notion that men control women's "rights to passage through public space."<sup>81</sup> Thus, street harassment "genderizes" the street as male, punishing women who enter such space and further consigning women to the private sphere.<sup>82</sup>

### III. BLAMING

After tackling the first step of naming, the next stage in the Felstiner et al. process that must be addressed is blaming. In attributing the harm of street harassment to another party, it is fairly straightforward to implicate the individual men who harass women in public places, for surely they are the most obvious culprits of the harm. However, the line of blame does not end with identifying the individual harasser, but goes beyond and points a finger at the phallogentric and misogynistic systems that foster and encourage such acts. As the Felstiner et al. framework notes, at times the perpetrator (in the case of street harassment, the social systems at large

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<sup>76</sup> Bowman, *supra* note 4, at 520 (connecting John Locke's observation of liberty as freedom from restraint with the restrictions of mobility that street harassment places on women, and the restraint and denial of freedom that result).

<sup>77</sup> Certainly, these negations are made by other members of society, but that women must make these decisions solely due to their sex is a phenomenon that must not be ignored.

<sup>78</sup> Bowman, *supra* note 4, at 520.

<sup>79</sup> *Id.*

<sup>80</sup> Thompson, *supra* note 49, at 322.

<sup>81</sup> *Id.*; see Bowman, *supra* note 4, at 530 (noting also that women often report fewer occurrences of harassment when they are in traditionally domestic spaces, such as the grocery store or the department store, or when they are physically in conformity with traditional female roles, such as when they are pregnant or in the company of a child).

<sup>82</sup> Davis, *supra* note 5, at 142.

which disseminate and validate values and ideals that are harmful to women) may not be easily identifiable because of its seeming objectivity and invisibility.<sup>83</sup>

### A. Identifying the Perpetrators

First, we address the most visible perpetrators: the individual men who harass. In an attempt to understand why men harass, it is important to examine the motivations underlying such acts and their effects within homosocial spheres.<sup>84</sup> Martha Langelan divides harassers into three categories: predatory harassers, dominance harassers, and strategic/territorial harassers.<sup>85</sup> Predatory harassers harass for sexual satisfaction; dominance harassers harass to reassert men's power over women; and strategic/territorial harassers harass to protect "male" environments.<sup>86</sup> In addition, there may be other possible motivations, including the racial/socioeconomic-based harasser who, due to his marginalized position in society, harasses to claim his own personal sense of power.<sup>87</sup> Men also harass because of a paternalistic motivation to "make a woman's day,"<sup>88</sup> specifically to anger and humiliate,<sup>89</sup> and on the

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<sup>83</sup> Felstiner et al., *supra* note 8, at 639-41.

<sup>84</sup> See Eve Kosofsky Sedgwick, Between Men: English Literature and Male Homosocial Desire 7 (1985). "Homosocial" has been defined as follows:

[A] term suggested by the feminist Gayle Rubin and developed by Eve Sedgwick, a theorist of gay and lesbian studies, homosocial refers to the bonds, often charged with eroticism, that connect men in ways that empower them socially. These connections frequently involve women as a 'third party' as a unit of exchange, as when a father seals a connection with another man by offering a daughter in marriage to the man's son, or as a shared object of sexual attraction, as when two men are linked emotionally through their competition for a woman.

English Department, University of Hawaii, CriticalLink Database, at <http://www.english.hawaii.edu/criticallink/plato/terms/homosocial.html> (last visited Dec. 13, 2004).

Hence, homosocial spheres are the systems within which these bonds are formed and reinforced.

<sup>85</sup> Langelan, *supra* note 66, at 41-42.

<sup>86</sup> *Id.*

<sup>87</sup> Davis, *supra* note 5, at 171 (citing Virginia R. Harris & Trinity A. Ordon, Developing Unity Among Women of Color: Crossing the Barriers of Internalized Racism and Cross-Racial Hostility, in Making Face, Making Soul: Haciendo Caras 304, 308 (Gloria Anzaldua ed., 1990)). This characterization of the harasser is presented in Phil McCombs, Stare Masters: Everyday at Noon, They Sit And Watch Their Dreams Go By, Wash. Post, Aug. 11, 1993, at D1.

<sup>88</sup> Cheryl Benard & Edit Schlaffer, The Man in the Street: Why He Harasses, in Feminist Frameworks: Alternative Theoretical Accounts of the Relations Between Women and Men 71 (Alison M. Jaggar & Paula S. Rothenberg eds., 2d ed. 1984).

trivializing reasoning that such encounters are just "harmless fun."<sup>90</sup> Although many different motives may be identified, it is important to recognize that a pervasive notion of male dominance and power underlie all of these motivations. From the harasser who attacks for sexual gratification, to the one who lashes out because of his own victimization, to the harasser who engages in "harmless flirting," the fundamental, driving assumption is that a man may impose freely, with impunity, upon a woman without her consent.

It is important to move from a discussion of the individual male's motives to harass to a wider recognition of society's role in this social ill, by identifying the effects of street harassment within homosocial spheres. Indeed, in a survey conducted by Benard and Schlaffer, approximately twenty percent of the men revealed that they harass women only when in the company of other men.<sup>91</sup> Thus, group gratification is harvested from the act of street harassment, a tool men use as a behavioral and verbal scythe to cut women down to their "place." The act reasserts the group identity of men as the dominant sex and reinforces the designation that to be male is to be the powerful Subject while to be female is to be the impuissant Object. Thus, street harassment is crucial to homosocial spheres because it is one of the tools through which men assert and reassert self-definition.

Women who suffer street harassment must not approach the step of identifying the perpetrator by microscopically connecting the injury only with individual harassers, or even with groups of men, but must recognize that the larger male dominant hegemony also may be implicated. The social systems, reflected through media, popular culture, and family and social structures, allow males to ejaculate their sexual frustrations and desires of dominance upon women. The unsuspecting women, in turn, are expected to accept such conduct, acting as receptacles for these verbal poisons and breeding the social ill of street harassment. The cultural mores implicitly and explicitly espouse gender hierarchy, female objectification, gender stereotypes, sexual terrorism, misogyny, and marginalization of women.<sup>92</sup> These realities are projected in media, which reflect and reformulate society's values, motives, and underlying assumptions. While media is

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<sup>89</sup> *Id.*

<sup>90</sup> Thompson, *supra* note 49, at 327.

<sup>91</sup> Benard & Schlaffer, *supra* note 88, at 71-72.

<sup>92</sup> *Id.* at 70-72; Muriel Dimen, *supra* note 3, at 1, 3. See generally Matilda Butler & William Pasley, Women and the Mass Media: Sourcebook for Research and Action (1980); Bonnie J. Dow, Prime-Time Feminism: Television, Media Culture, and the Women's Movement Since 1970 (1996); Katherine Fishburn, Women in Popular Culture: A Reference Guide (1982); Andrea L. Press, Women Watching Television: Gender, Class, and Generation in the American Television Experience (1991); Mediated Women: Representations in Popular Culture (Marian Meyers ed., 1999); Sue Wise & Liz Stanley, Georgie Porgie: Sexual Harassment in Everyday Life 83 (1987).

often described as a mirror to society, it is more of a funhouse mirror, which does not reflect perfectly, but distorts and re-characterizes, in turn affecting the manner in which society sees itself and responds to the image it perceives.

Popular mainstream culture, as portrayed by the media, fosters an environment that perpetuates street harassment.<sup>93</sup> Examples of popular culture depicted by the media reflect the manner in which society's constructed reality is based on stereotypes, assumptions, and values presented as objective and neutral. This reality does not place value on, and thus sees as invisible, the injuries women suffer as a result of street harassment. As Amiri Baraka observed, reference determines value.<sup>94</sup> One's vantage point determines the significance associated with an occurrence.<sup>95</sup> However, when the dominant perspective is promulgated as objective, neutral, and the only way to see, then the value, or, as here, non-value, assigned to the experience is embraced and rarely questioned by the majority. Hence, the general subjugation and objectification of women is ubiquitous in media—from radio, television, and film, to newspapers and magazines. Contrastingly, it is not commonplace to encounter a serious engagement of issues of gender dynamics, such as street harassment, in the mainstream culture or media.

## **B. The Media and the Portrayal of the Assaults at the 2000 National Puerto Rican Day Parade**

Although discourse about gender related issues is rarely encountered in popular media, there are arenas within the media in which street harassment is being analyzed in a critical manner. Specifically, this Article examines the media accounts of assaults that took place after the 2000 Puerto Rican Day Parade. The events that took place after the parade are distinguishable from many acts of street harassment in that these particular acts escalated to physical violence against women. However, the media, legal institutions, and society in general largely ignore the threat of

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<sup>93</sup> A necessarily limited list of examples includes the general substance of Rush Limbaugh's and Howard Stern's radio talk shows; television shows like *The Honeymooners* ("I'll knock you to the moon, Alice!") and *America's Top Models* (portrayal of women as objects on which commodities may be advertised and sold); films like *Charlie's Angels* (in which strong women are still characterized as sexy femme fatales); newspaper articles like Phil McCombs' *Stare Masters: Everyday at Noon, They Sit And Watch Their Dreams Go By*, *supra* note 87; and articles like "10 Ways to Please your Man" commonly found in popular magazines.

<sup>94</sup> LeRoi Jones (Amiri Baraka), *Blues People: Negro Music in White America* 4 (Quill ed., 1963).

<sup>95</sup> For instance, a person will typically be more affected by the death of a close friend or family member than by the death of thousands of people in a distant country.

violent escalation that the act of street harassment presents.<sup>96</sup> Yet the public, consciously or unconsciously, looks to systems like media and the law to understand their grievances and possible resolutions.<sup>97</sup> Often, as in many of the media accounts related here, when sexual abuse incidents occur, the focal point is the physical assaults that victims suffered; there is seldom any mention of the crass language and conduct that led to violent physical assaults. Consequently, the transformative effects of media and the law are limited because of the myopic viewpoint that is often used to analyze the problem. Where a more comprehensive lens is used by the media and the law and the connection between verbal and physical assaults is recognized, this perspective may act as a catalyst for transformation of a woman's experience of street harassment from an unnamed incident into a recognized harm or from a harm to a dispute that demands a remedy. This analysis calls to attention the crucial nexus between acts of street harassment and escalation to physical sexual abuse. In addition, such examination may reveal manners in which newspaper sources construct, frame, and characterize street harassment, and promises to yield insights into the ways an injury is named, blamed, and claimed. Further, such an analysis may offer new methods through which to approach, and creative solutions through which to remedy, the problem of street harassment, using media as a transformative tool.

A recognition of the transformative power of media is reflected in the manner in which victims, feminists, and others concerned with the problem of street harassment have turned to the media. Certainly the media has the ability to alter the manner in which a phenomenon is recognized and evaluated. Yet the forum is not without its flaws. Thus, the challenge is to expose the failings of the media and the construction of media accounts while simultaneously harnessing its transformative power.<sup>98</sup> Concern about the construction of the stories and characters within the stories frame the evaluation of discourse about street harassment that is occurring in the media.

The construction of the discussion is crucial to the manner in which it is received and evaluated. Namely, there must be an examination of the rhetorical tools used to construct the "characters" of the story, whether through demonization, deification, romanticizing, caricature, etc., and to

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<sup>96</sup> Wise & Stanley, *supra* note 92, at 83.

<sup>97</sup> Although the authors do not mention the role of the media explicitly, the role of such an agent in the transformation process may be inferred. See Felstiner et al., *supra* note 8, at 633-37 (describing generally manners in which external, as well as internal, forces affect whether and the ways in which a transformation occurs), 639 (noting the role of institutions in the transformation process), 645-49 (relating the role of lawyers and the courts in the stages of transformation).

<sup>98</sup> Donna E. Young, *Introduction*, in *Feminism, Media and the Law* (Martha A. Fineman & Martha T. McCluskey eds., 1997).

construct the story itself, through polarization, use of ethos, propaganda, and the like.<sup>99</sup> Deborah Rhode identifies the harm of polarization as the absence of "anything sensible in between."<sup>100</sup> Hence, when positions and holders of positions are polarized, there is little attention given to the middle ground from which may sprout understanding and a solution to the problem. Rather, mischaracterization of the problem and the resulting lack of resolution persist.<sup>101</sup> Further, polarization is a divisive tool that oversimplifies and causes further ruptures amongst groups. Hence, it is crucial to take note of the positions, the characters, and the details that are omitted because this process of selection is also a constructive tool.<sup>102</sup>

### 1. Naming the Harm

The parade, which began in 1958, is an annual celebration of the achievements and contributions of Puerto Rican people throughout the history of New York City.<sup>103</sup> On June 11, 2000, thousands gathered in Central Park to commemorate this event, but the celebration did not end peaceably. During the parade, many women endured the comments and gestures characteristic of street harassment, yet these acts were unrestrained by the numerous officers policing the event.<sup>104</sup> As the parade ended, and masses began to exit the park that evening, actions turned more sinister. In a confused series of separate incidents by various groups of men, nearly sixty women were surrounded and assaulted as they tried to leave the park. The women were subjected to lewd comments, gestures, grabbing, and groping, and were doused with water and beer.<sup>105</sup> Their clothes were torn off, they were robbed and sexually abused, and their desperate attempts to escape were videotaped by those in the crowd.<sup>106</sup>

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<sup>99</sup> See Deborah L. Rhode, Media Images/Feminist Issues, in Feminism, Media, and the Law 8-21 (Martha A. Fineman & Martha T. McCluskey eds., 1997).

<sup>100</sup> *Id.* at 18.

<sup>101</sup> *Id.* at 19 (citing Naomi Wolf, Fire with Fire 97-101 (1993)).

<sup>102</sup> Wise & Stanley, *supra* note 92, at 20.

<sup>103</sup> Puerto Rican Day Parade, at <http://www.ny.com/holiday/pdparade.html> (last visited Dec. 14, 2004).

<sup>104</sup> C.J. Chivers & Kevin Flynn, 35 Scary Minutes: Women Tell Police Of Assaults in Park, N.Y. Times, June 13, 2000, at A1.

<sup>105</sup> Mike Claffey, Suspect's Own Words Detail Rampage in Park, N.Y. Daily News, July 25, 2000, at 5; Anne Peyton Bryant, After Attack In Central Park Will I Ever Feel Safe Again?, Virginia Pilot & Ledger Star, July 23, 2000, at J1.

<sup>106</sup> 15 Men Indicted In Central Park Crime Spree, L.A. Times, July 25, 2000, at A14; Murray Weiss, 17 Still Sought In Park Wilding, N.Y. Post, July 17, 2000, at 21; Elaine D'Aurizio, Sharing The Pain Of Central Park Attack, The Record, (Bergen County, N.J.), July 16, 2000, at N1; Melissa Grace & John Marzulli, Central Pk. Cops Boosting Patrol After 2 Attacks, N.Y. Daily News, July 12, 2000, at 12.

The first news reports of the sexual assaults that took place during the Puerto Rican Day Parade of 2000 surfaced in evening editions of newspapers the day following the parade. The account developed into a major news story over a period of approximately one week, with the first news accounts reporting the assaults in a cursory manner. For example, in a very concise style, the New York Times' first report explained that four women were "sexually abused" and that the attacks were not connected with the parade.<sup>107</sup> At this point, the injury had not been named, and the assaults were seen as isolated incidents of little importance. Over the next several days, however, more information was discovered and the individual stories began to amalgamate, forming a shared experience and gathering a name within public consciousness. The stories that emerged in newspapers across the nation and around the world within the next few weeks reported that between fifty and sixty women were physically and sexually assaulted by approximately fifty men.<sup>108</sup>

In the process of naming the harm and the construction of the victims which accompanied this process, most articles focused on reporting only the facts—the what, when, and where—while often noticeably leaving out the why and how. Some articles went further, either giving personal accounts by the women or constructing the women without their input. One editorial that attempted to analyze "our social codes in more than simple terms,"<sup>109</sup> instead resorted to the age-old notion of blaming the victim. First describing the attackers as "spiritual scrapings from the bottom of the shoe of society,"<sup>110</sup> the writer, Stanley Crouch, went on to construct the women in an overly simplistic manner under the guise of looking at "the issues in a larger context."<sup>111</sup> He patronizingly claimed that some women cannot tell the difference between a dangerous and a safe situation, and they may flirt with men by laughing and wearing revealing clothing without knowing the attendant dangers.<sup>112</sup> Thus, the blame for the harassed women's injuries collapses on the women themselves because of their unwise, reckless behavior. The onus is on women to distinguish between "friendly" and injurious acts of harassment, while men escape liability for their acts.

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<sup>107</sup> Andy Newman, 4 Women Report Sexual Attacks in or Near Park, N.Y. Times, June 12, 2000, at B3.

<sup>108</sup> Police do nothing as 24 women attacked, The Daily Telegraph (Sydney, Australia), June 15, 2000, at 33; Warren Woodberry & Michele McPhee, 6<sup>th</sup> Graders Nabbed In Copy Sex Attack, N.Y. Daily News, June 23, 2000, at 6.

<sup>109</sup> Stanley Crouch, They Flirted With Danger, N.Y. Daily News, July 3, 2000, at 31.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* For instance, Crouch suggests that the "scantily clad" women, whose exposed body parts stimulated the men, may have just wanted to show off their fit bodies.

<sup>112</sup> *Id.*

Further, Crouch characterizes the women as children, describing them as preoccupied with childlike games of joking, teasing, and playing with the men. Then, as if he has taken no part in the construction of the story, Crouch asks if the culture requires women to act as "hoochies," condemning the portrayal while acting as an accomplice to its construction. He presents a picture of the world "as it is," without accounting for the manner in which he alters and recasts that world. Thus, Crouch makes sweeping characterizations of all of the fifty-odd women attacked as reckless "hoochies," while denying his constructive power, doing injustice to the telling of the tale.

Unlike Crouch's article, which constructs the victims of the attacks without any participation by the women themselves, other articles attempt to name the harm from a victim's perspective. A positive effect of this method is that it makes concrete an event that is easily abstracted due to the sheer number of the victims. One such account, focusing on two of the women attacked, a sixteen-year-old and a nineteen-year-old, casts them in a sympathetic light as victims.<sup>113</sup> The article centers on the emotional distress experienced by the women and the powerlessness they felt at the hands of their attackers. However, the women themselves are silenced; instead, their family members speak for them.<sup>114</sup> Another article takes an interesting approach, writing in first person, but with no attribution of the words to any specified speaker.<sup>115</sup> The account retells the experience of the speaker and her friend, Stephanie, who were surrounded and verbally and physically harassed. The story includes a curious statement made by the unidentified speaker. She recalls her reasoning as she and Stephanie walked past the group of harassing men; she had assumed "the guys would be too busy bothering some other women to notice us."<sup>116</sup> The unidentified speaker subscribes to the notion that the attack she experienced was simply a personal, individual situation to be dealt with and makes no connection between herself and the "other women" whom the men were "bothering." Although a benefit of personal accounts is that it places a face on a seemingly abstract issue, the young woman's statement exhibits a negative effect of personal account stories, which run the risk of creating microscopic vision in its readers, and reaffirms the age-old technique used to minimize women's injuries by reducing them to a single story. In this manner, the connection between each woman's story is broken, veiling and thereby perpetuating patterns of systematic harm.

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<sup>113</sup> Patrice O'Shaughnessy, Teen Scarred By Sex Attack, Won't go outside mom says, N.Y. Daily News, June 14, 2000, at 5.

<sup>114</sup> *Id.* The victims are not quoted at all in the story; rather, the mothers of the victims and the brother of one victim are quoted.

<sup>115</sup> Kate Ginn, Hell in the Park, The Scotsman, June 15, 2000, at 4.

<sup>116</sup> *Id.*

## 2. Identifying and Blaming the Perpetrators

The transformative process from naming to blaming occurs quickly within the media, but with curious results. The media quickly and rightly identified the men who took part in the assaults as the group to be blamed. However, in blaming the men, the media constructed them as caricatures; they became demonized, one-dimensional characters with over-simplified motivations. Indeed, the majority of the reports included a peculiar phrase coined by a witness, which describes the assaulters as a “wolf pack of thugs.”<sup>117</sup> This expression became the identifier of the attackers, resurfacing again and again in news stories. In addition, the assaulters were called “a gang,” “a herd of hoodlums,” “hoods,” and the like.<sup>118</sup> The effect of these epithets is to dissociate the attackers from the average, good-intentioned, male on the street or in a public place. The names demonize the attackers, transforming them from complex human beings into something altogether different. They become animals, lesser creatures with only one motivation: animalistic brute lust. Notably, few accounts mention that most of the attackers had no prior criminal records,<sup>119</sup> a fact that undermines the construction of the men as the “dregs of society.”

Not surprisingly, only a minority of the news stories deviate from this simplistic construction of the attackers. One such article reported a personal account of John Taylor, one of the accused. The article attempted to humanize Taylor, mentioning his acts of service to his community and the barbershop that he operates there.<sup>120</sup> However, the account is not without its own constructions and assumptions. For example, the writer legitimates, through inclusion of a young girl’s opinion, the notion that because all Taylor did “was pour water on one girl,” and because “she

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<sup>117</sup> O’Shaughnessy, *supra* note 113; C.J. Chivers & William K. Rashbaum, Inquiry Focuses on Officers’ Responses to Violence in Park After Parade, N.Y. Times, June 14, 2000, at B1; Alice McQuillan, Barbara Ross, Corky Siemaszko et al., 2 Busted In Park Rampage [sic] Brit Tourists, 18, IDs Suspects After Attack By Gang, N.Y. Daily News, June 13, 2000, at 3.

<sup>118</sup> McQuillan et al., *supra* note 117; Put The Blame Where It Belongs, N.Y. Daily News, June 16, 2000, at 58.

<sup>119</sup> Approximately four articles in the over fifty consulted for this Article contained the fact that most of the men did not have criminal records. See C.J. Chivers, 17th Man Arrested in Park Sex Attacks, N.Y. Times, June 19, 2000; James Bone, Home videos identify rampage suspects, The Times (London), June 21, 2000; Brent Staples, Playing ‘Catch and Grope’ in the Schoolyard, N.Y. Times, June 26, 2000, at A16; Kathleen Parker, Gender: A Blame-All For The Ills Of Society, Orlando Sentinel Tribune, June 28, 2000, at E1.

<sup>120</sup> Sarah Kershaw, Only in a Water Fight, A Park Suspect Says, N.Y. Times, June 16, 2000, at B4.

laughed," no injury was caused.<sup>121</sup> The underlying assumptions conclude that the woman's external response is reflective of her internal reaction and that if the woman was not "hurt," then no one is injured, because the event is an isolated occurrence between two people and not a social problem.<sup>122</sup>

Another article noted that among the accused were "a minister's son who wants to be a lawyer, a barber, a student and a father of two."<sup>123</sup> Articles like this are useful because they reveal the complexities of the issue.<sup>124</sup> Instead of blaming the assaults on "sick, crazy, criminals or drunk kids" that do "sick things,"<sup>125</sup> these articles avoid simplistic conclusions and tackle much more difficult considerations. Such articles pose the question of what it means for society when "regular, average males" like Taylor and others mentioned are involved in such an attack. By recognizing that these acts are committed by "ordinary" men, a challenge arises to understand and change those normalized behaviors, encouraged by underlying systems, which influence the average male in society to act in this manner. Such an analysis would transform the manner in which street harassment is understood. Yet most of the newspaper accounts are preoccupied with distinguishing the attackers from "normal" men, resulting in the exclusion of this conversation from the discourse.<sup>126</sup>

Thus, although some of the news stories focus on the blaming aspect of the dispute, asking the question "how," many are satisfied with a superficial answer, not bothering to probe further to examine the underlying causes of the assaults. Often quoted is a police source's explanation that the assaults were "an overdose of testosterone and stupidity mixed in."<sup>127</sup> Others blame the hot weather.<sup>128</sup>

Many of the news stories implicate the police officers, focusing on the lack of police assistance that the women experienced when they reported their attacks. However, then-Mayor Rudolph Giuliani's stance that the attacks were an aberration and that the city indeed is safe, is enough evidence to counter the disturbing attacks that occurred in the park,

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Michael Ellison, NY police 'ignored' park sex attacks, The Guardian (London), June 17, 2000, at 2.

<sup>124</sup> Staples, *supra* note 119.

<sup>125</sup> Chivers & Rashbaum, *supra* note 117 (quoting then-Mayor Rudolph Giuliani).

<sup>126</sup> O'Shaughnessy, *supra* note 117; McQuillan et al., *supra* note 117; Crouch, *supra* note 109; Chivers & Rashbaum, *supra* note 117.

<sup>127</sup> McQuillan et al., *supra* note 117.

<sup>128</sup> Chivers & Flynn, *supra* note 104.

according to many of the newspaper accounts.<sup>129</sup> Yet some accounts were not placated by Giuliani's soothing words. These articles construct the officers as insensitive wielders of authority who failed to use their position to protect those who most needed their help. One article quotes a witness as saying, "the police were lined up, just standing with their arms crossed and kind of blankly staring. They didn't do a thing. They didn't try to interact. They were basically on the sideline, kind of frozen."<sup>130</sup> This image contrasts with another construction of the New York Police Department as overly-charged and impetuous.<sup>131</sup> One article goes further, revealing an attempt by the mayor's office to restore the police department's public image.<sup>132</sup> In the report, the mayor's office and police department were cast as conspirators who attempt to deceive the unknowing public. According to the article, the mayor's office attempted to arrange an interview between the news media and a French couple who were harassed after the parade and who, unlike most of the other victims, praised police response to their complaints. However, the article reveals that there were stipulations attached to the interview, namely that the reporters could not reveal that the mayor's office arranged it, and they could not ask certain questions. Most reporters declined the offer.<sup>133</sup>

The article further criticizes Giuliani for his slow response to the events and his initial downplay of the attacks. The writer points out that the stance of political leaders on such harms is highly influential and affects the manner in which the public weighs the importance of an occurrence.<sup>134</sup> When leaders marginalize the injuries of women, the cause is undermined and trivialized by the general public. Markedly, this article is the only one that points a finger at the mayor and admonishes him to use his influential position more responsibly.

Newspaper articles on the ongoing investigation of certain police officers shift the discourse, deepening the level of analysis used to evaluate the events that occurred. Nine officers eventually faced disciplinary sanctions as a result of their failure to act when informed about the

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<sup>129</sup> *Id.* See also Police do nothing as 24 women attacked, The Daily Telegraph (Sydney, Australia), June 15, 2000, at 33.

<sup>130</sup> Chivers & Rashbaum, *supra* note 116.

<sup>131</sup> Ellison, *supra* note 123.

<sup>132</sup> Joyce Purnick, Candor Is a Casualty of Park Attack, N.Y. Times, June 15, 2000, at B1.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* ("Fact is, it matters how public leaders respond to troubling events. They set a tone. Even—especially—when tone-deaf").

attacks.<sup>135</sup> Yet the fact that many officers blatantly disregarded victims who complained is a matter merely reported by the newspapers. No one bothered to ask why these complaints were so easily dismissed. Critical consideration of the historical marginalization by law enforcement of crimes against women is missing in all of the news accounts.<sup>136</sup> Further, victims were disappointed with the results of the investigation and felt that sanctions, like disciplinary letters and reduced vacation time, were not commensurate to the failure of the officers to perform their duties.<sup>137</sup>

Other articles look to sources besides the individual men and the police officers when placing blame, implicating the visual mass media and the culture of sex and violence it both depicts and helps to create. The Christian Science Monitor, recognized for its influential reporting, blames modern pop culture and asserts, unlike the majority of reports, that the parade's events are "not surprising."<sup>138</sup> The article claims that the connections between sex and violence that are prolific on television, in movies, and in video games help to condition viewers to perceive violence as erotic. Yet this article is limited because it does not address the power dynamics and the linkages between power and desire that underlie most gender-specific injuries. Further, the article focuses on the modern media, nostalgic for the past. Hence, most of the articles ignore the manner in which the assaults that occurred after the parade are connected to the systematic subjugation of women throughout history.

One New York Times article that makes the necessary connections between power and sex and the escalation of "harmless" acts of street harassment to physical assaults, quotes a police supervisor who observed, "It seems like what happened was the mob would do one bad thing, and then they would do something worse."<sup>139</sup> However, few other articles make this critical connection. Throughout the parade, women were subjected to street harassment, and these attacks, unchecked, escalated to physical violence.<sup>140</sup> Yet the newspaper articles describe the assaults as bizarre and

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<sup>135</sup> Michael Ellison, NYPD carpets nine for park rampage assaults, *The Guardian* (London), July 5, 2000, at 13; Kevin Flynn, 9 Police Officers Facing Discipline In Park Attacks, *N.Y. Times*, July 4, 2000, at A1.

<sup>136</sup> Often, the media's belief is that its role is simply to present the facts. However, many people assume the media will provide them with a comprehensive picture of an event. Further, silence itself speaks volumes; when further investigations are not made, such absence may imply that what is left out is unimportant. Therefore, the media must be challenged to delve more deeply into issues.

<sup>137</sup> Greg Kirschling & Marilyn Anderson, Victim 'Disappointed' / Says discipline for officers at parade is not enough, *Newsday*, July 7, 2000, at A3.

<sup>138</sup> Alexandra Marks, Central Park attacks on women—is MTV to blame?, *Christian Science Monitor*, June 19, 2000, at 2.

<sup>139</sup> Chivers & Flynn, *supra* note 104.

<sup>140</sup> *Id.* See also Chivers & Rashbaum, *supra* note 117; Flynn, *supra* note 135.

perplexing, especially since they occurred in “broad daylight” in a “quintessential public space.”<sup>141</sup> Such thinking, reflected in the majority of the newspaper accounts, fails to recognize the essential links between “harmless” types of gender-specific harm, such as street harassment, and “serious” injuries like rape, and the harms that occurred after the parade. The failure to understand that all of these injuries are “serious” entrenches the notion that men are free to act upon women without their consent. Kathy Rodgers, president of Legal Momentum (formerly NOW Legal Defense and Education Fund) observed, “I think for sexual assaults, which are anything other than rape, people still think it’s no big deal: ‘Nothing happened to you, right? You didn’t get raped?’”<sup>142</sup> Sexual harms that befall women often are perceived as a dichotomy; if a woman is raped, then she has been harmed, but if a woman is not raped, then she is seen as uninjured. When social and legal rules allow some injuries to women to go unregulated, there is much more potential to slide down a slippery slope; this is precisely what occurred in the parade assaults. This connection is recognized in a New York Times editorial, which reveals, “Most of the women I spoke with saw the attacks in the park as a logical extension of the public sexual harassment that has shadowed them throughout their lives, from grade-school playgrounds into middle age, up and down nearly every street in the city.”<sup>143</sup> The men

worked up from hooting at women, to grabbing them, to drenching them with water and pulling off their tops and pants. The escalation from verbal harassment to unwanted touching to full-fledged physical assault is crucial to understanding this problem. The cycle reflects the pervasive sense among many American men that they are entitled to own women’s bodies.<sup>144</sup>

This connection is essential to understanding the range of injuries that street harassment causes for women and society. Street harassment is not a single, isolated remark or gesture but is intricately related to the spectrum of harms visited upon women, based on the ingrained notion that men have the right to intrude upon women’s selves.

Even more fundamental than recognizing the connection between “harmless” flirting and physical attacks is the comprehension of the assaults as gender-specific injury. One article notes, “When the men got caught up in a mob mentality, their victims were not other men or even property, but

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<sup>141</sup> Chivers & Flynn, *supra* note 104; William J. Bratton, The Vigilance That Can’t Let Up, N.Y. Times, June 15, 2000, at A27.

<sup>142</sup> Joyce Purnick, Park Rampage Stirs Anguish On 2 Fronts, N.Y. Times, June 19, 2000, at B1.

<sup>143</sup> Staples, *supra* note 119.

<sup>144</sup> *Id.*

women.”<sup>145</sup> Such actions are based on the entrenched belief that expression of male power and dominance is found in the sexual terrorization of women. Yet few newspaper reports analyze the complex motivations of the group of harassers. Most articles focus on the sexual aspect of the attacks, ignoring the motives of domination and power, the interconnections between power and desire, and the resulting reaffirmation of homosocial power. Reference to the act as a reassertion of male identity as the dominant sex and its role in sustaining self-definition is missing in most accounts.

An opinion-editorial by Kathleen Parker attempts to discredit those who would characterize the events that occurred as gender-based violence. She argues that “random deviant events”<sup>146</sup> should not be forced under a pseudo-theory of gender-based violence and isolated events should not be transformed into “cataclysmic social summaries.”<sup>147</sup> Criticizing Staples’ editorial, she contends that sexual harassment is “not the story of [her] life.”<sup>148</sup> She concludes by deriding any connection between the parade attacks and the construction of male-female interactions that begin in childhood. Parker’s article reveals her ascription to the manner in which the powerful group codes. In her article, she explicitly denies the experiences of overt and covert sexual harassment that, more likely than not, have characterized her life to some extent. Yet this false consciousness<sup>149</sup> cannot remedy the problem; ignoring the ill will not cure it, but will only pass it onto the next generation.<sup>150</sup>

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<sup>145</sup> Marks, *supra* note 138.

<sup>146</sup> Parker, *supra* note 119.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> False consciousness has been described as “(1) lack of clean awareness of the source and significance of one’s beliefs and attitudes concerning society, religion, or values; (2) objectionable forms of ignorance and false belief; (3) dishonest forms of self deception. Marxists (if not Marx) use the expression to explain and condemn illusions generated by unfair economic relationships . . . . Collingwood interprets false consciousness as self-corrupting untruthfulness in disowning one’s emotions and ideas.” John Linarelli, *Nietzsche in Law’s Cathedral: Beyond Reason and Postmodernism*, 53 Cath. U. L. Rev. 413, 423 n.73 (2004) (citing *The Cambridge Dictionary of Philosophy* (Robert Audi, ed., 2d ed. 1999)). It has also been described as “minority group members’ belief in unfavorable group stereotypes.” Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and The Theory of Black Electoral Success*, 89 Mich. L. Rev. 1077, 1120 n.202 (quoting Bruce A. Ackerman, *Beyond Carolene Products*, 98 Harv. L. Rev. 713, 735-37 (1985)). It is arguable that Parker’s statements amount to false consciousness in that her opinions seem uninformed by a recognition of male hegemony within the larger social milieu. She takes as a given a neutral world, minimizing the power dynamics through which the influence of a dominant group in the opinions and views of a minority group becomes invisible.

<sup>150</sup> See Amy Rubin, *Peer Sexual Harassment: Existing Harassment Doctrine and its Application to School Children*, 8 Hastings Women’s L.J. 141-68 (1998) (noting that recognition of the nexus between sexual harassment in early stages of children’s lives is

As described in Staples' editorial, transferring these misogynistic notions to future generations is one of the most dangerous effects of street harassment. The cycle perpetuates when female children are subjected to these injuries and when male children observe other males engaging in this behavior. In a chilling and disturbing incident, reported by the New York Daily News and Newsday, sixth-graders attacked a schoolmate, reenacting the events of the parade that they had seen on television, and chanting, "Puerto Rican Day Parade."<sup>151</sup> More likely than not, the television account was not the first time the boys had observed such behavior by men, and they, true to human nature, imitated that which they recognized to be a pleasurable and accepted behavior. The general trivialization of such injuries is reflected in the actions of the principal, who, after directing the young girl to write down the account, sent her back to class, taking no further action.<sup>152</sup> Such reactions are based on ideas that "boys will be boys," and that the actions of children, who are closer to nature, are simply instinctual drives that are natural and normal.<sup>153</sup> When adults allow this behavior in children, children form the opinion that the actions are acceptable, and the cycle perpetuates. To illustrate, one woman in Staples' article recounted"

'I remember growing up it happened on the schoolyard from elementary into middle school. We had this game in which boys converged on girls, and groped them and pulled at their clothing, then ran away . . . I grew up thinking it was normal. I thought that because no one at school did anything about it.'<sup>154</sup>

As long as little is done to rid society of the ills of street harassment, many more little girls will continue to be victimized and many more little boys will rationalize their actions as acceptable and normal.

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crucial to prevention and breaking the vicious cycle of harassment that occurs in adulthood in the workplace and public spaces).

<sup>151</sup> Woodberry & McPhee, *supra* note 108; Karen Freifeld & Sean Gardiner, School Sex Assault / Police: 6<sup>th</sup>-Grade Boys Invoked Central Park Rampage, Newsday, June 23, 2000, at A3.

<sup>152</sup> *Id.* This response is reminiscent of those taken by the police officers when the parade attackers reported their ordeals.

<sup>153</sup> Jane Caputi, The Pomography of Everyday Life, in Mediated Women: Representations in Popular Culture 57, 59 (Marian Meyers ed., 1999) (observing that in American racist and ageist culture, people of color and children are regarded as closer to nature and act based on biologically determined impulses).

<sup>154</sup> Staples, *supra* note 119.

### 3. *Punishing the Victims*

The graphic images viewed by the young sixth-grade boys who assaulted their schoolmate in the schoolyard are supplied by the media. In the media's approach to presenting the assaults to the public, one interesting pattern that develops is the display of close-ups of attacked women's faces and bodies on television news programs and in newspapers. In one opinion-editorial, the writer reproached television stations and the New York Post, who displayed naked pictures of the victims.<sup>155</sup> These organizations play a dangerous game of portraying sexual violence against women as enticing and appealing, submitting to the pressures of ratings that require news reporting to also be entertaining.<sup>156</sup> Notably, only two articles were found on the appropriation of the women's bodies by the media as a means to improve ratings—the op-ed above and an article by the now-infamous Jayson Blair.<sup>157</sup> Blair reports that the conservative Fox news, as well as CBS, UPN, WB, and New York 1, aired identifiable pictures of the women, and some of the television stations aired a slow-motion video of one woman who was attempting to escape from her attackers. Officials at those stations and at the Post admitted that competition was the basis for displaying the pictures.<sup>158</sup> Certainly, ratings were the driving motivation of airing these tapes, which raises notions about the economic rewards of possessing women's bodies, but perhaps an unconscious motivation was to characterize the women as “sluts” and to punish them by exposing their nude bodies.<sup>159</sup> Throughout history, women have been constructed as vamps and temptresses, thus “deserving” of sexual harms that were visited upon them.<sup>160</sup> It was largely accepted that such harms were punishment that befell

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<sup>155</sup> Ellen Goodman, Shame on the Media for Exploiting the Horror in Central Park, *The Boston Globe*, June 22, 2000, at A25.

<sup>156</sup> *Id.*

<sup>157</sup> Jayson Blair, When Competition Influences Judgment, *N.Y. Times*, June 19, 2000, at C13.

<sup>158</sup> *Id.*

<sup>159</sup> See generally Wise & Stanley, *supra* note 92. As is known all too well, historically, victims of sexual crimes have been blamed for their victimization, and have been subject to punishment, either through social ostracism or character destruction during trial.

<sup>160</sup> Michelle Anderson, From Chastity Requirement to Sexuality License: Sexual Consent and a New Rape Shield Law, 70 *Geo. Wash. L. Rev.* 51, 52-53 (2002) (observing that women whose past revealed that they were not “chaste” were seen as being indiscriminate and consenting to all sexual encounters visited upon them); see Cheryl B. Preston, Consuming Sexism: Pornography Suppression in the Larger Context of Commercial Images, 31 *Ga. L. Rev.* 771 (1997) (connecting images of women in mainstream media, such as in this context, the exposure of the victims' bodies and the eroticism of the fear the women experience, with pornography and resulting harms on women).

“loose” women. Although the media did not explicitly construct the women as vamps, the exposure of their nude bodies implicitly portrayed the women as sexually “open” and punished them as such.

#### 4. *Underlying Prejudices Surface*

In the construction of the stories, underlying racial dynamics do not pass without comment. The fact that predominantly minority men attacked, among others, British, French, and other Caucasian women, is largely avoided by US news reports, but interestingly was addressed by Australian newspapers. One article describes, “[w]ith the police standing back for fear of appearing racist, with the sun hot and their hormones hotter, the youths found the presence of scantily clad white women irresistible.”<sup>161</sup> The article goes on to blame rap songs, to connect the parade incident to Harlem teens “wilding” in the eighties, and to conclude that “men who join in the parade have little respect for women.”<sup>162</sup> The racist ideas that are reflected in the article construct the men as sexually-charged animals lusty for white women, the universal standard of beauty and desire. In addition, the author makes illogical connections between the attackers and symbols of urban culture, such as rap music, and with past acts of crime committed by other minorities. These linkages reveal the gaps and schisms within racist thought. Such inconsistencies may be obvious in cultures in which racism is not a defining issue; yet, for many readers in highly racialized societies, the characterization of the assaulters and other ideas presented in the article reflect a world they recognize.

The race issue is carefully and deliberately constructed to polarize. This polarization shifts the focus, discouraging readers from identifying a gender-specific injury to women and instead encouraging them to concentrate on the racial divide on which the writer capitalizes. The writer reduces the incident to an attack of white women by men of color and writes everyone else out of the tale. This condensation of the story allows him to further remove himself from the characters and the world he constructs, permitting readers to examine the phenomenon as observers to this constructed world and not as accomplices in creating and perpetuating an environment that is hostile to women.

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<sup>161</sup> Daniel Jeffreys, How a wild mob stripped women in broad daylight, The Daily Telegraph (Sydney, Australia), June 16, 2000, at 35.

<sup>162</sup> *Id.*

#### IV. CLAIMING

##### A. Prosecuting the Harassers

Prosecution of the accused men followed in the aftermath of the assaults. The blaming and claiming processes of the dispute were more challenging to conduct within a legal context than they would have been in a media context. When, as in the parade situation, the perpetrators are not easily identifiable because of the seeming anonymity of individual perpetrators that act as part of a large group, an investigation must be conducted to identify those responsible for the harm. Indeed, newspapers predicted that the case would be difficult to substantiate; in the frenzied confusion of the attacks, it would prove challenging to establish that the men on trial indeed had committed the specific acts of which they were accused.<sup>163</sup> Also, a defense attorney could successfully argue that the victim, surrounded by a large group of men, could not possibly be able to identify a specific face from the crowd with certainty.<sup>164</sup> Due to the spontaneity of the attacks, another difficulty concerns the challenge in showing intent to harm the victims.<sup>165</sup>

Because of the characteristic tendency of legal systems to restrict the analysis of a case to the issues at hand, there was no room in the investigation to introduce broader concerns of perpetuation of male dominance, police entrenchment of that dominance, the dangerous slippery slope from street harassment to sexual assault, and other pertinent issues presented by the parade attacks. Yet the legal system's transformative power is potent. Judicial rulings establish standards of behavior, creating expectations as to one's rights. With the establishment of a right, a sense of entitlement develops over time, which in turn reshapes society's values and ideals. Such a modification occurred as a result of the judicial rulings on the parade attacks, and individuals as well as feminist groups began to demand that women be protected from street harassment and other forms of gender-specific harm.<sup>166</sup>

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<sup>163</sup> Barbara Ross, *DA Has Uphill Battle On His Hands*, N.Y. Daily News, June 17, 2000, at 5.

<sup>164</sup> *Id.*

<sup>165</sup> Intent is an element of second and third degree criminal assault and of civil assault. See N.Y. Penal Law §§ 120.00, 120.05 (Consol. 2004); *McDonald v. McDonald*, 193 A.D.2d 590, 591 (N.Y. App. Div. 1993); *Figueroa v. Kirmayer*, 32 A.D.2d 923, 924 (N.Y. App. Div. 1969); *Madden v. D.C. Transit System Inc.*, 307 A.2d 756, 757 (D.C. 1913).

<sup>166</sup> The parade incidents sparked dialogue about street harassment and helped to develop a sense of entitlement to protection against such injuries. See Erin Lee Mock, *Commemorating the Central Park Attacks of 2000*, New York City Alliance Against Sexual Assault Newsletter, at [http://www.nycagainstape.org/about\\_newsletter\\_article\\_110.html](http://www.nycagainstape.org/about_newsletter_article_110.html) (Sept. 2002); *Mother of alleged abducted teenager claims harassment—reports matter to police*, Stabroek News (Guy.), at <http://www.stabroeknews.com/index.pl/article?id=8656212>

In the end, two men were convicted by a jury of assault, one was acquitted, sixteen pled guilty, and charges were dismissed against the remaining eleven.<sup>167</sup> Pleased with the convictions, Manhattan District Attorney Robert Morgenthau noted, “[w]hen we started, people had doubts that we would get any convictions . . . . People feel there is safety in numbers. If other people are doing it, you can get away with it. This case proves you are not going to get away with it.”<sup>168</sup> The convictions helped to establish in the public mind that at least some forms of sexual harassment of women in public spaces will be censured.

## B. Claims Under Which Street Harassment May Be Brought

While criminal prosecution is beneficial, other legal claims could have been brought to assign blame to the perpetrators. Although largely unknown and unstudied (by students, say, in a torts or criminal law class), there have been past attempts at legal remedy for street harassment. These legal actions include not only claims of criminal assault<sup>169</sup> such as those seen in the parade incident, but also civil claims of assault<sup>170</sup> and invasion of privacy.<sup>171</sup> Also possible may be an action under intentional infliction of emotional distress.<sup>172</sup> However, difficulties exist in applying any of these claims to street harassment. Although advantages of a criminal proceeding include free representation and the accompanying condemnation of an act that attaches to criminal prosecution, victims are deterred from bringing criminal charges because prosecution is left to the police and state attorneys who may not vigorously investigate and prosecute, the prejudice present in the criminal justice system may pervert the case, and no money damages

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(May 28, 2004); National Organization for Women, NOW President Patricia Ireland Calls for Passage of Federal Hate Crimes and Violence Against Women Bills in Wake of Central Park Attacks, at [http://www.now.org/press/06-00/06-16-00\\_html](http://www.now.org/press/06-00/06-16-00_html) (June 18, 2000).

<sup>167</sup> Helen Peterson, 2 Guilty In Park Attack, N.Y. Daily News, Apr. 3, 2001, at News 4.

<sup>168</sup> *Id.*

<sup>169</sup> See Shields v. State, 44 S.W. 844 (Tex. Crim. App. 1898); State v. Williams, 120 S.E. 224 (N.C. 1923).

<sup>170</sup> See Reed v. Maley, 74 S.W. 1079 (Ky. 1903).

<sup>171</sup> See, e.g. Christie v. Greenleaf, 78 Pa. D. & C. 191 (1951); Bowman, *supra* note 4, at 567-69.

<sup>172</sup> Bowman, *supra* note 4, at 563-67. Where an agent of a common carrier harassed and assaulted her, a woman recovered damages for mental suffering. See Cracker v. Chicago & Northwestern Ry. Co., 36 Wis. 657, 679 (1875). In a more recent case, a young woman brought suit against Redd Foxx for intentional infliction of emotional distress and slander. The court reversed the lower court's dismissal of the complaint and remanded the case for a new trial. The new proceedings are unrecorded. See Branda v. Sanford, 637 P.2d 1223 (Nev. 1981).

are awarded to the victims.<sup>173</sup> Disadvantages also exist in civil suits, namely, the costs of bringing suit relative to the speculative probability of prevailing.<sup>174</sup>

In addition, there are statutes and ordinances in effect that prohibit harassment and the use of "fighting words" in public places.<sup>175</sup> However, the element of intent in these cases is often a high threshold to overcome.<sup>176</sup> Further, "fighting words" statutes are based on a reasonable person standard of provocation to fight when emotionally injured. However, women are not socialized to fight; rather, they are taught to be passive and to endure pain silently.<sup>177</sup> Hence, women are far less likely to exhibit the requisite conduct upon which such a claim may be brought.<sup>178</sup>

### C. Reform Methods

Legal remedies, although not without their limitations, play important roles toward legitimizing the injury of street harassment. However, to make these remedies more accessible as satisfactory vehicles of redress for victims of street harassment, several changes must be made. Most of the causes of action and statutes make use of the reasonable person standard, which in turn translates to the reasonable man standard.<sup>179</sup> Because street harassment is a gender-specific harm in which men have no experiential basis, it is wholly inconsistent to apply such a standard to female victims. Another shortcoming of these remedies is the requirement of intent to harass or cause harm. As has been stated, most men do not harass women with the conscious intent to cause such injury; however they are often reckless or negligent in doing so and should be held accountable. It is arguable that the focus ought to be on the harm caused, not the intent of the perpetrator. A showing of recklessness should be enough to satisfy the

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<sup>173</sup> *Id.* at 548-55.

<sup>174</sup> *Id.*

<sup>175</sup> See N.Y. Penal Law §§ 240.20 (2004) (disorderly conduct); 240.25 (2004) (harassment in the first degree); 240.26 (2004) (harassment in the second degree); 240.30(1) (2004) (second degree aggravated assault); 240.31 (2004) (aggravated harassment in the first degree). These statutes are interpreted to apply to "fighting words." See *People v. Yablov*, 706 N.Y.S.2d 591 (City Crim. Ct. 2000); *People v. O'Leary*, 583 N.Y.S.2d 881 (City Ct. 1992); *People v. Baker*, 569 N.Y.S.2d 907 (City Ct. 1991); *People v. Dietze*, 549 N.E.2d 1166 (1989); *People v. Morgenstern*, 531 N.Y.S.2d 751 (City Ct. 1988).

<sup>176</sup> See *People v. Malausky*, 485 N.Y.S.2d 925 (Rochester City Ct. 1985) (holding, in a clearly racist opinion, that a reasonable person in the (white) man's position would think that the black women walking on the street late at night were prostitutes and thus, the defendant did not have the intent necessary for conviction).

<sup>177</sup> Bowman, *supra* note 4, at 561.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 549, 556.

intent requirement. Further, perhaps intent should be removed as an element to establish the harm and used only to grade the level of sanction imposed.

In addition, laws should be enacted specifically to protect women against street harassment. The Supreme Court's holding in U.S. v. Morrison that the Constitution's Commerce Clause cannot be used to create the civil remedy provision of the 1994 Violence Against Women Act,<sup>180</sup> coupled with the events of the parade and other considerations, compelled the legislature of New York City to pass the Victims of Gender-Motivated Violence Protection Act, allowing women the right to sue their attackers for gender-based crimes.<sup>181</sup> This act, stronger than the city's 1994 gender-based anti-violence act, carries a seven-year statute of limitations, as opposed to the 1994 act's four-year limit, and allows women to collect compensatory and punitive damages for their injuries.<sup>182</sup> The act was signed by Mayor Rudy Giuliani and went into effect on December 19, 2000.<sup>183</sup> Similar bills are pending in the States of New York, Illinois, and Arizona.<sup>184</sup> Such a law should be enacted in other jurisdictions to help to bring justice to women harmed by sexual harassment in public places. However, relief under these acts is most able to be realized only when the defendant has been convicted of a crime arising out of the same occurrence; this raises special challenges in proving the gender-based harm. In order to help women combat street harassment and other forms of gender-motivated abuse these bills must work in conjunction with other established remedies.

The media plays a crucial role in winning the fight against street harassment. Although the attacks of the Puerto Rican Day Parade were tragic, the wide reporting—though not without its own shortcomings—brings to the forefront the issue of the harassment of women in public spaces. For many readers, this was possibly a first encounter with serious discourse about this problem. Because of its accessibility to the masses, the media's characterization of street harassment has the potential to increase awareness and understanding, or conversely, to further entrench the widespread notion of street harassment as innocuous and therefore an everyday occurrence that must be accepted. Here, the statement rings true that "the press has come to play so essential and important a role for individuals and society that it has 'lost the common and ancient human

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<sup>180</sup> U.S. v. Morrison, 529 U.S. 598 (2000) (maintaining, by a 5-4 majority, that laws regulating crime fall under state, and not federal, power).

<sup>181</sup> Victims of Gender-Motivated Violence Protection Act, N.Y.C. Admin. Code § 8-901-07 (2000); Karen Orlando, New York Permits Gender Violence Victims to Sue, Women's E-News, Dec. 29, 2000, at <http://www.womensenews.org/article.cfm?aid=388&mod>.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

liberty to be deficient in its function . . . ."<sup>185</sup> Disappointingly, in analyzing the accounts, most newspaper sources utilized the myopic lens created by the hegemonic group. This method stifles expansive, unrestrained examination of the systems and ingrains ideologies that help to perpetuate street harassment. However, a few news stories accepted the challenge, and their efforts resulted in transformative effects. Many victims were able to recognize street harassment as a harm; others were able, for the first time, to articulate their injuries and to demand change.<sup>186</sup> These transformations are reflected in the enactment of laws and resurgence of grassroots group activism. Thus, the media can help to bring street harassment within the realm of cognizable harm through its representation. To that end, there should be more coverage of women's encounters with street harassment, and it should be reflected in increased inclusion of such accounts in news stories, editorials, magazine articles, and other media. Also, public service announcements on street harassment would greatly increase awareness and recognition of street harassment as a valid harm.

In addition to steps taken by the judicial and legislative branches and in the media, other methods are available to counter street harassment. For one, grassroots activist groups, like the Street Harassment Project in New York, may be formed to fight against the problem. The Project, of which the author is a member, organizes workshops at construction sites, universities, and high schools; sponsors campaigns; stages street theater to increase awareness of street harassment as a societal problem; and trains others to establish their own chapters. Thus, the power of collective action may be garnered and used to radicalize the manner in which the public thinks about street harassment.

Lastly, education about street harassment included in school curricula can help to change the notions about street harassment that children learn at a young age. Education at all levels, from grade school through college, will help to accelerate the perception of street harassment as a valid injury and reduce the occurrence of such harms. Such education may also take place outside of academic settings in extracurricular organizations like Girl and Boy Scouts, religious youth groups, fraternities, sororities, and the like.

These efforts will raise the level of consciousness of the problem of street harassment and its injuries to women and to society at large. Most importantly, an increase in discussion about street harassment will validate

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<sup>185</sup> Robert E. Dreschel, Media Ethics and Media Law: The Transformation of Moral Obligation into Legal Principle, 6 Notre Dame J.L. Ethics & Pub. Pol'y 5, 5-6 (1992) (quoting a statement made by the Commission on Freedom of the Press, A Free and Responsible Press v-vi (1947)).

<sup>186</sup> For instance, at a street harassment meeting, several women stated that they had never thought of street harassment as a harm, while others had thought that no action could be taken against such behavior. Street Harassment Meeting, New York, NY (Dec. 17, 2003).

for many women the experiences that they have been constructed to either enjoy or ignore.

## V. CONCLUSION

Contrary to popular belief, street harassment is a real injury that must be named, blamed, and claimed. It is a harm that is experienced by nearly every woman in the country, and to ignore this pervasive, widespread harm is to put in jeopardy the sense of human dignity and safety of millions of women.

The attacks that occurred after the Puerto Rican Day Parade reveal the danger of the dismissal of "harmless" incidents of street harassment. "Innocent" remarks escalated into physical assault and resulted in injuries to over fifty women. Although the media and legal treatments of the attacks were effective to the extent that they assisted in reshaping the manner in which the public approaches the harassment of women in public places, the incident is a stark reminder that our societal culture fosters a breeding ground for such behavior. In pointing the finger at those that may be blamed, individual men who harass women are not solely responsible. Society at large must also be implicated.

The 2000 Puerto Rican Day account exemplifies the manner in which the law and media are transformative mechanisms. Women and men in these arenas should begin the work to remedy the problem of street harassment. In doing so, collaborative effort must be engaged in order to find solutions to this pervasive harm. More newspaper, magazine, and television news stories must be written; more scholarly analyses must be undertaken; more study and discussion of such harms must take place in grade school, high school, college, and law school classrooms. Serious discourse about street harassment must be as ubiquitous as the harm that occurs to women everyday in the street because the notion must be destroyed that street harassment is a natural occurrence that women must silently suffer.

The fight must continue, lest we remain in a world like the one Phil McCombs depicts in Stare Masters: Everyday at Noon, They Sit And Watch Their Dreams Go By.<sup>187</sup> McCombs legitimizes the objectivity of the world he creates by convincing readers that such a world is natural. According to McCombs, the men's motives for harassing women are not to exercise and reinforce male dominance; rather, their actions are legitimized as a type of courting.<sup>188</sup> Thus, the street becomes a social setting and women entering

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<sup>187</sup> McCombs, *supra* note 87.

<sup>188</sup> *Id.*:

They watch the women going by and they talk about them because, in the end, a man's fantasy, his life and his purpose and his dream, comes down somehow to a woman, one way or another. It's just the way it is . . . "I'm not married yet," [Cat Man] confides. "I'm

into the space are presumed "open," freely intruded upon.<sup>189</sup> In the world that McComb constructs, things are "as they should be," and the problem which must be addressed is the immediacy of a rupture to this world. Tewell, one of the men interviewed in the article observes, "[t]hings have definitely changed . . . . You can't even whistle anymore, they'll get a cop and a lawyer. All you can do is look. It's women's lib went haywire."<sup>190</sup> Thus, women's "hypersensitivity" is recognized as a threat to the "natural" world. If the "natural" world is indeed such a hostile environment in which women must endure incessant and ubiquitous psychic, emotional, economic, and social injuries due to street harassment, then such a world rightly must be destroyed.

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looking for a good wife. When I come into my home, I want a woman cooking and cleaning my clothes and cleaning my home good. I'd be happy forever! That's what I need, a good woman."

<sup>189</sup> However, this construction is erroneous because a social setting assumes reciprocity of interest and opportunities to communicate, which is lacking in instances of street harassment.

<sup>190</sup> McCombs, *supra* note 87.