

# **Pornography's Eclipse: Exposing Rape in Popular Film**

by Brittanie Pearson

Historically, the discourse over media and rape has been dominated by the topic of pornography. Since the 1970s, anti-pornography feminists have argued that x-rated material promotes the objectification, dehumanization and sexual assault of women.<sup>1</sup> But as liberals and conservatives, pro-sex and anti-porn feminists, and all levels of the U.S. legal system have collided trying to define “pornography” and its place in society, important avenues with potential to impact the debate have been ignored. The first of these avenues is the fact that popular media, especially when examined through the same media effects research used to promote censorship of pornography, frequently features graphic accounts of sexual violence and is far more accessible to the lay public. The second avenue of ignorance is the male rape victim. The incapability of our legal system as well as the unwillingness of our culture to recognize male rape presents important narratives about gender construction and its impact on our categorizations of sexual assaults.

Though each state is allotted the opportunity to define its own standard of rape, the Federal Bureau of Investigation’s definition is the dictating force of rape statistics nationwide. “Forcible rape,” as defined by the FBI in the Uniform Crime Reporting Handbook, is “the carnal knowledge of a female forcibly against her will,”<sup>2</sup> including when she is mentally or physically incapable of consenting or under the legal age. The handbook then goes on to state that “agencies must not classify statutory rape, incest, or other sex offenses, i.e. forcible sodomy, sexual assault with an object, forcible fondling, etc. as forcible rape.” By definition, any sexual attack upon a male is disqualified from the label of rape and is categorized as assault or under the heading of another sex offense “depending on the nature of the crime and the extent of the injury.” Quite simply, under this standard, men cannot be raped.

Most of us can agree that this rigid classification is flawed. After all, with popular humor surrounding “dropping the soap” in prison, there certainly are socially-acknowledged instances of male-on-male attacks. And few would have a problem classifying such assaults as rape. Yet the shallow categorization of rape by the FBI seems to play out in the stories we tell and are willing to accept when addressing sexual assault. Men can rape men, men can rape women—women cannot rape anyone. Therefore, when popular films display female-on-male rape,

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<sup>1</sup> Catherine A MacKinnon, “Pornography, Civil Rights, and Speech,” *Analyzing Moral Issues* (Boston: McGraw Hill, 2005): 454-456.

<sup>2</sup> <http://www2.fbi.gov/ucr/handbook/ucrhandbook04.pdf>. (pgs 18-20) “Carnal knowledge is defined by Black’s Law Dictionary, 6<sup>th</sup> ed. as ‘the act of a man having sexual bodily connections with a woman; sexual intercourse’”

unflinching audiences code it as something else, and that coding tells a story about gendered expectations.

With the feminist movement at a standstill over pornography and the legal system failing to fully help victims of sexual assault; it is time for change—a lot of change. As a sort of reverse inspection, this article will examine two popular films portraying “non-statutory female-on-male rape”<sup>3</sup> where the occurrence is unproblematic, simply driving the plot forward. By starting here, we can begin to explore the cultural assumptions over male and female behaviors that are then reflected in the myths we tell about rape. Hopefully such an exploration will intrinsically circle back to pornography as the epitome of conflict over consent and provide direction for galvanizing a movement to adequately address sexual assault.

The two films to be explored are Michael Lehman’s *40 Days and 40 Nights* (2002) starring Josh Hartnett and Shannyn Sossamon and Barbet Schroeder’s *Single White Female* (1992) starring Bridget Fonda and Jennifer Jason Leigh. Popular films were selected in an attempt to explore suggestions made by media effects research, used most frequently in censorship battles over pornography, that such films create higher levels of exposure to sexualized violence. The two films specifically examined for this case study were chosen because they each depict a presumably healthy, financially stable white male being engaged sexually in a manner against his wishes but where the violation serves only to drive the plot forward towards the film’s climax and not as the focal point of the movie. Also, utilizing web forums for movie critiques and discussions, each film presented dialogue over the recognition and denial of the act as male rape that provides pivotal insight to the discussion at hand. Finally, one of the films conforms to research expectations of sexualized violence in a sort of “slasher” variety or thriller genre, while the other actually serves as a romantic comedy flick. The competing genres create an additional layer of depth to the suggestion that rape, rape myths and gender dictation are deeply and covertly imbedded within our everyday lives.

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<sup>3</sup> "Single White Female" (1992) *The Internet Movie Database (IMDb)* <http://www.imdb.com/title/tt0105414/> (February 2011)

### **Single White Female**

After discovering that her fiancé, Sam Rawson (Steven Weber), slept with his ex-wife, Allison “Allie” Jones (Bridget Fonda) kicks him out of her Manhattan apartment. Recognizing her inability to pay the rent by herself, Allie places an ad petitioning for roommates. After meeting plenty of unsettling characters, Allie finally discovers Hedra “Hedy” Carlson (Jennifer Jason Leigh) who seems to be everything Allie dreamed of and more. But as the relationship progresses, Hedy alters her appearance to look like Allie, becomes agitated when Allie is with other people and eventually kills the people Allie holds most dear. She then tries to kill Allie so that she may assume her full identity.

Throughout the film, there are, in fact, two scenes of importance. The first occurs when Allie, working as an up-and-coming software producer in the fashion industry, is a victim of attempted rape by her male boss. In the scene, Allie is cleaning up her work space when the company supervisor offers her a glass of champagne. Allie politely declines, stating that she has somewhere to be and that it is rather late. The man then begs Allie to show him “just a little something” about the software so that his subordinates are not more knowledgeable than he. When Allie agrees to a quick tutor session and sits down at the computer, he begins to caress her and kiss her neck. Allie states, “Don’t,” and tries to escape, but her assailant wraps his arms around her, pinning her to the chair. Switching strategies, Allie asks the man to let her turn around so that she may face him. He agrees, assuming she has become submissive. She then hits him in his genitals and runs from the room with cries of “You fucking bitch” following her out.

The second scene of mention involves the sexual assault of Allie’s partner, Sam. After returning from a business trip, Sam calls Allie to alert her of his arrival. Hedy intercepts the phone call and, despite the fact that Allie is in the shower, tells Sam that she is asleep. When asked if she should wake her, Sam replies, “No, just tell her to surprise me.” The next scene shows a woman, either Allie or Hedy as they now look the same, approaching a building. Using a key, the woman enters the room where Sam is sleeping, unbuttons her coat to expose her bare body and climbs into bed with him. She kisses down his body into a position for oral sex. Sam smiles and rolls over onto his back to give who he thinks is Allie access to his penis. As the act begins, Sam opens his eyes to discover that the woman performing oral sex on him is not Allie but Hedy. Confused, he makes motions to stop her, but she begins to suck harder and he

ejaculates. Hedy then kisses a stunned Sam as he lays there in disbelief before rising to get dressed.

After Hedy says she will tell Allie that her fiancé was yet again unfaithful, Sam announces that he will tell her first and heads for the door. Agitated by the backfiring of her plan, Hedy throws her stiletto high-heel at Sam as he attempts to exit the room. It ricochets, narrowly missing its target. This forces Sam over the edge as he turns on Hedy in an aggressive stance, lunging toward her screaming, “You fucking bitch!” Hedy is ready though and, in one swift move, lodges her spare stiletto into Sam’s forehead, instantly killing him.<sup>4</sup>

There are indications that the dynamics of the film want the audience to draw a correlation between the two scenes. For instance, while dressing, Sam tells Hedy that Allie cannot stand her, and she replies that Allie needs her, that Hedy was the person who was there for her when Allie was almost raped by her boss. There is also the subtle connection that both men call the woman involved a “fucking bitch” as the scenes hit their climaxes. Both were acts of sexual assault, yet their roles within the film seem intrinsically different. Allie’s attempted rape explores her as the victim, but Sam’s oral attack is focused around his participation. Hedy, as an actor in both, serves as an avenue to explore two different narratives about rape. In one, the woman is the victim of sexist power, and in the other, the man is incapable of maintaining his sexual desires and thus incapable of turning down sexual advances. Allie’s experience is labeled as attempted rape within the text of the film while Sam’s is left open to interpretation and is then ultimately silenced by his murder.

### **40 Days and 40 Nights**

In the second film, Matt Sullivan (Josh Hartnett) has been dumped by his “super-hot” girlfriend Nicole (Vinessa Shaw), and his inability to move on is impacting his sex life, leading him from random hook-up to random hook-up without sexual fulfillment. After visiting with his brother who is studying to become a priest, Matt decides to give up sex for Lent, meaning no sexual contact (personal or interpersonal) for 40 days and 40 nights, in an attempt to regain control over his life. As he embarks on his adventure, he inadvertently falls for Erica Sutton (Shannyn Sossamon) after several run-ins at the local Laundromat. The remainder of the film

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<sup>4</sup> Barbet Schroeder, Director, *Single White Female*, 1992.

focuses on comical plots against Matt to make him break his vow and the ways in which his decision impacts his budding relationship with Erica.

As the 40th day approaches, Matt is struggling to control his sexual urges and, on day 38, is given leave from work after showing up to a client meeting sporting an offensively noticeable erection. The proceeding scenes show him working on various projects to keep his mind off of sex when there is a knock at his apartment door. Nicole bursts in, crying over her recent breakup and clearly expects that Matt is still under her spell, waiting to take her back. Notorious in their relationship for being passive and allowing Nicole to commit transgressions without consequence, Matt surprises Nicole when he informs her that he is over her. When she points out that his implied erection says different, Matt in no uncertain terms states: “My little friend’s not in charge anymore, so maybe you should go.” As a confused Nicole starts to move toward the door in angry disbelief, she announces that Matt’s assertiveness has made her “hot” and then begs him to slam the door in her face to spike her arousal. Matt does but then rushes out the backdoor to walk off the sexual temptation he just endured.

The next day, Nicole overhears a conversation about the infamous gambling pool run by Matt’s coworkers, placing bets on when and how he will break his vow, certain he cannot complete the task. On day 40, Nicole appears at Matt’s work while he is still on sabbatical and places a \$3,500 bet that he will crack before the day is up. The man taking her bet informs her that this is a poor decision since it is the last day and Matt seems on track to make it to midnight. Nicole merely smiles and insists on adding her money to the pot.

Meanwhile, Matt is trying to stay busy until midnight when Erica is set to come over and they can end the vow together. But everywhere he looks his imagination conjures naked women. Frantically, he rushes home to get drunk and chain smoke in an attempt to thwart off temptations. When his roommate returns home with a woman of sexual prospect, the drunken Matt requests to borrow the woman’s furry handcuffs and be restrained to his bed until Erica arrives. His roommate concedes, cuffing each of Matt’s wrists to the bed post and encourages Matt to sleep. With the celibate male restrained, the roommate then leaves with his date and upon exiting the apartment building, the camera scales out to reveal Nicole watching casually from behind a book.

The next scene opens with Matt’s sexual dreams and begins to flicker between his erotic fantasies and a very real torso on top of him. In a graphic depiction of his ejaculation, the

washing machine in Matt's semi-conscious dream opens and opaque water comes rushing out. He then opens his eyes to find that it was Nicole's body with which he was just engaged, not Erica's as he thought. Horrified, he asks her why she would do such a thing. She replies that the situation began with her and should end with her and that he may now have the apartment key back that she conveniently forgot to return. A flash to the clock reveals that it is minutes before midnight. Matt broke the vow, Nicole won the bet and Erica is about to discover that Matt had sex with his ex-girlfriend. As Nicole leaves, she passes Erica with an arrogant remark. Erica then finds Matt still handcuffed to the headboard of his bed, frantically trying to explain that he was asleep and that it is all a misunderstanding. Erica leaves and the rest of the movie surrounds how Matt convinces her to forgive him.<sup>5</sup>

The succession of events following Matt's encounter with Nicole suggest that, unlike *Single White Female*, the film did not intend for the audience to read the interaction as rape or sexual assault but merely as an archetypical plot line of romantic drama. The male attempts to do something "against his nature," fails in a way that hurts the female protagonist and then must work vigorously to make it up to her. Erica's reference to past relationships implies a pattern of cheating boyfriends, a category in which Matt now falls. She never asked his side of the story and did not take seriously his assertions that he was asleep and out of control. Neither Erica nor the film discusses the handcuffs and the possible different roles they played in the events, placing in juxtaposition the reality that Matt had someone else tie him up to keep his promise (and then was made incapable by their restraint to stop Nicole) and the narrative that they were kinky props in play while Matt willingly engaged with his ex-girlfriend. There is no space for Matt to say, "I was raped," and be heard; it simply is not the point of the movie and is far too heavy a theme for the comedy genre in which the film exists.

### **Gender Construction**

What do these films tell us about depictions of men, women and sex? Together and separately, the films create stereotypical performances of gender that are easy to recognize and be accepted by their audience. Matt, when held against the ridicule of his male friends, represents the unnatural act of a man seeking time away from sex— unfathomable when a man is run by his sexual desires. His consistent erections and the amount of work put into maintaining his vow of

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<sup>5</sup> Michael Lehmann, Director, *40 Days and 40 Nights*, 2002.

celibacy throughout the film further highlight this point. Men have to work against their primal sexual urges. When they don't or when they allow such enticements to cross a certain threshold, they no longer maintain control and must fulfill their need for sexual pleasure, often encompassed in ejaculation. Sam, too, fulfills this prophecy when, despite his body language that suggests contempt at the realization that Hedy is the person in his bed, he is too far gone and cannot stop her before climaxing. The fact that both males maintain their erection during the act and then ejaculate at the close, reinforce this idea that they wanted it or perhaps couldn't help it; either way they are slaves to their desires.<sup>6</sup> This, compared with the theme of cheating, almost in a "what do you expect" type of way, implies that masculinity and monogamy are not conducive with each other because men will seek sex whenever possible.

Women, on the other hand, seem to be in control in more ways than one. Hedy and Nicole both seek sex with their male counterparts in line with ulterior motives, not in the interest of personal sexual pleasure. In fact, each serves merely as a vessel for the male to reach sexual climax. Their ability to incite arousal is never questioned, and their skills suggest an almost natural ability to please their male partners without any input. Erica and Allie, on the other hand, represent the moral and "self-respecting" parts of femininity. They are naïve and vulnerable, yet desirable on a different level than that of their opponents. All four characters suggest that women have complete control over and significantly less passionate sexual desires.

In the divide of men and women, a tightrope of gender performance arises. Matt and Sam represent two able-bodied men that presumably could have stopped their attack with due force, yet they couldn't, because they were out of control with sexual need. To claim rape, the men would be assumed to have been incapable of restraining or fending off the women, conflicting with narratives of successful masculinity in which men are stronger than women and can always assert control. This is thwarted, however, by the paralysis of the male primitive sexual necessity. We do not expect the man to fight back in an attempt to fend off sexual advances and in fact doing so would bring his masculinity into question.

Similarly, femininity is set to serve as the moral policing agent in relation to male sexuality but also as the vessel through which it must be fulfilled.<sup>7</sup> Too much restraint will drive the man into the arms of another partner, but too much participation will render the woman

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<sup>6</sup> David S. Gutterman, "Postmodernism and the Interrogation Of Masculinity," in The Masculinities Reader (Malden: Blackwell Publishers, 2001), 60-63.

<sup>7</sup> Stephanie Coontz, *Marriage, a History: How Love Conquered Marriage* (New York: Penguin, 2005), 189.



undesirable. Erica and Allie attempt to manage control over their own bodies, establishing boundaries of behavior men must meet in order to gain sexual access. This results in cheating partners. Hedy and Nicole on the other hand have no visible standards regarding the levels to which they will sink to utilize their sexual power. Women are expected to recognize the impact they have on men and not abuse it. If they are too prude, then the man may potentially exert force to correct their femininity or seek sex elsewhere without consequence. If the woman is too promiscuous, the man may deem her undesirable, thus diminishing her sexual currency altogether. Men and women in our narratives of their interactions assert absolute control over one another that is paradoxical against the assumption that each has no control to begin with.

### **Media Effects Research**

None of this, however, is important when separated from the impact such rape and gender depictions have upon the film's audience. Despite the lack of corroborating evidence, there is widespread acceptance that media can have negative impacts upon viewers. We see media effects research most prominently in cases advocating for pornography bans and access restrictions on violent material. In examining the two films above, both characteristics worthy of censorship are present and the suggestions often ignored in the research support exploring popular film as a potentially more influential avenue of media desensitization to sexual violence than x-rated films.

The stance of anti-pornography feminists is that porn directly promotes sexualized violence toward women through its objectification and dehumanization.<sup>8</sup> They use media effects research to prove desensitization to and sexual arousal from acts of violence towards women when paired with sexual content. This narrative is furthered by similar claims accepted by the U.S. Supreme Court as well as ruling bodies in other nations.

The U.S. Supreme Court, though acknowledging the lack of correlative evidence, upheld Georgia's right to ban public showings of "smut" in 1973, stating "that such material was not protected under the First Amendment on the grounds that there was a 'possible' connection between the circulation of obscene material and 'anti-social' behavior."<sup>9</sup> In her article over

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<sup>8</sup> Catherine A MacKinnon, "Reflections on Law in the Everyday Life of Women." *Law in Everyday Life* (Ann Arbor: University of Michigan, 1995): 115.

<sup>9</sup> *Paris Adult Theatre I v Slaton* (1973), Theresa Cronin, "Media Effects and the Subjectification of Film Regulation." *The Velvet Light Trap* (2009): 8.

media effects research, Theresa Cronin acknowledges this trend in all censorship debates worldwide. As U.S. films storm international box offices, political debate revolves around U.S.-based research over the effects of media upon consumers—especially in Great Britain.<sup>10</sup> In fact, the British Board of Film Certification (BBFC) as of 2003 reported that “the BBFC continues to work on the assumption that particular violent scenes with the potential to trigger sexual arousal may encourage a harmful association between sexual violence and sexual gratification.”<sup>11</sup>

Under this ideological frame, policies have been put in place to censor film. In the U.S., we have seen the implementation of rating systems and the built-in mechanism of parental controls within our technological devices. In Britain, there have been similar policies barring certain groups of consumers from public screenings of movies and a strict review board that decides if theatre films will be mass produced for in-home viewing (Video Recording Act of 1984). There is no question about it: the institutionalized acceptance that media can negatively impact society is the foreground for all censorship debates.

Yet scenes of sexualized violence against men and women, potentially more graphic in their depictions of assault than mainstream pornography, slip through absolute censorship and are almost masked as unproblematic. Possible explanations for this are found within the flaws of the research itself and the ways in which it is applied to modern debates.

As rhetoric around film censorship has evolved, it has shifted from a focus on policing the content of media to controlling the responses of audience members. Cronin posits, “The ‘problem’ of cinema is clearly defined not as the text per se but as the inappropriate physiological and affective responses of the potential spectator,” of which is always gendered as male.<sup>12</sup> Therefore, researchers sought out the physiological and emotional responses of subjects to graphic depictions of sexual violence and if the spectators did not adhere to the researchers’ definition of what *should* happen, they would be categorized effectively as “deviant”.

This is problematic on a number of fronts, the most prevalent of which is the power differentiation between the researcher and the subject, resulting in a skewed presentation of research findings. The scientists performing such experiments establish the grid by which they measure each subject’s response. If the grid dictates that the only “normal” reaction to such films would be physical offense and emotional “depression, anxiety or annoyance,” the scope for

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<sup>10</sup> Theresa Cronin, “Media Effects and the Subjectification of Film Regulation.” *The Velvet Light Trap* (2009): 4.

<sup>11</sup> Cronin, 5

<sup>12</sup> Cronin, 6

personal experience without deviance is very limited. Additionally, the subject's personal evaluation of his experience with the films is not considered beyond the answers of the narrowly crafted framework for the experiment. Such actions suggest an assumption that the subjects themselves are incapable of critically analyzing their relationship with media, removing the expectation of a "reasonably-minded" individual and replacing it with the predisposition towards predatory sexual deviance.<sup>13</sup> The subjects are set up to fail; the researcher's assumptions that negative images will produce negative pathologies cannot be proven wrong under the guise of such skewed testing.

Distorted as they may be, however, the findings in such studies serve as the basis for censorship policy and discourse; but even the researchers suggest that censorship laws as they stand focusing around sexually explicit, x-rated material are possibly misguided. In one of the leading studies performed by Dr. Edward Donnerstein, the results report states that "'slasher' films" are more likely to produce a desensitization or sexual arousal connected with sexualized violence than most of the content available in 'adults only' pornographic materials. Donnerstein posited that it was not the sexual explicitness of the material that was problematic, but the context that put it in juxtaposition with graphic violence. When the sexual material is present, the subject may become sexually aroused and then witness violence. Continual exposure may result in a continued sexual arousal even in the absence of sexual material but where the graphic violence is maintained. Similarly, in an investigation performed by Attorney General Edwin Meese's Commission on Pornography in 1986, the examining board "unanimously agreed that 'non-violent' and 'non-degrading' materials were little cause for concern if not made available to children [or] foisted on unwilling viewers." The research itself could only show a correlation between sexually violent material and aggressive behavior, not aggression restricted specifically towards women. But its findings served to further the push towards rigid censorship.<sup>14</sup>

Though graphic in their own nature, few would deem Matt and Sam's sexual encounters as pornographic and in necessity of the x-rating label. Yet each places sex in the arena with violence, force and violation. The sequence of events in Sam's encounter with Hedy, position dynamics of sexual coercion, sexual fulfillment and homicide all within a five minute storyboard that would be unacceptable in mainstream erotica. Sam's initial enjoyment and subsequent

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<sup>13</sup> Cronin, 12

<sup>14</sup> Cronin, 9

climax invite the audience to identify with the pleasure while his clear discomfort creates a sense of guilt over such arousal within his character and potentially within the audience. Then, while still trying to work through such responses, he is violently murdered with a sexualized object: the stiletto high-heel. If Donnerstein's findings are correct, then continual exposure to such images, while slowly removing the sexual content, could result in the behaviors of aggression feared to come habitually from pornography.

It would be naïve to suggest that no such scenes exist within the adult film industry. There certainly are fringe films that depict a man, or more likely a woman, being assaulted and then murdered, but the stigma around consumption serves as a potential deterrent that is not present in popular films such as *Single White Female*. Therefore, the violence and violation is reinterpreted in popular cinema as an acceptable force of plot progression, especially within thriller and horror genres. *Single White Female*, while potentially unique or special in its portrayal of female-on-male rape and murder is certainly not alone. Paris Hilton's murder in *House of Wax* (2005), shirtless and on her knees ready to perform oral sex, or the succession of murders after Neve Campbell surrenders her virginity in the slasher-classic, *Scream* (1996), serve as just two examples of classically accepted sexualized violence that, when consumed, do not result in the labeling of the viewers as "sick."

Matt, on the other hand, is not even seen as a victim of sexualized violence; the attempt of his peers to coerce him into having sex serves as the comedic relief within the film. If sex and violence increase possibilities for internalized desires for sexual aggression when placed together, what are the possible outcomes of sexual violation posited as common everyday practice?

Lois Pineau would argue that such normalizations serve to further the myths we tell around seduction that directly impact our policies and attitudes towards sexual assault. In her article over date rape, Pineau tells the story of a woman on a date with a man. The man wants sex, the woman does not. The man continues to persist and the woman continues to resist, not necessarily in an angry way because she understands her ability to arouse the male and perhaps fears the potential escalation should she not remain calm. Eventually, simply to stop the interaction and end the night, the woman concedes. "Later," Pineau posits, "she feels that she has been raped but paradoxically tells herself that she let herself be raped."<sup>15</sup> This narrative is not

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<sup>15</sup> Lois Pineau, "Date Rape: A Feminist Analysis", *Analyzing Moral Issues* (Boston: McGraw Hill, 2005): 413.

unlike the one outlined above in the dictations of masculinity where the only option is that the man “let” the acts occur and thus cannot be absolved of guilt nor sympathized with as a victim of rape.

That myth, the myth of the uncontrollable male sex drive, is one of the driving forces behind occurrences of date rape and our legal system’s inability to handle them, according to Pineau. If we accept the myth of “insistent male sexuality,” then we also accept the myth surrounding the female’s necessity to contain and control male sexuality and thus a certain story about seduction. Classical seduction is often presented as skillful coercion to convince an uninterested party that they in fact want the seducer; it is a dance of aggression and reluctance. The dance begins when the reluctant party agrees to go on a date with the aggressive party, often gendered as the male chaser and the female chasee. At some point, usually through the assertion that the female has acted provocatively beyond the point of no return, a sort of social contract is assumed concretizing that the man and the woman will later engage in sexual acts of some kind. To not fulfill the aggressor’s needs at this point, the reluctant party would then be seen as having violated the contract, led the other party into false assumptions and be responsible for whatever outcome occurred. It is the typical “she asked for it” rationale.

We see this line of reasoning in the course of legal history over sexual assault. Until the 1970’s, rape rhetoric was gendered as male-aggressor; female-victim. Rape was restricted to vaginal penetration and officially required an eyewitness account or corroborating evidence in order to prosecute. Today, not much has changed as we have seen from the FBI definition in the opening of this paper, but most states have since adopted policies that make the law’s language gender-neutral and accepts that acts of anal and oral intercourse can constitute violation equal to forced vaginal penetration. Evidence requirements have been altered less, and it is within these standards that we witness the reflections of the myths portrayed by Pineau and furthered by popular films.

### **The Legal Realm of Rape**

The progression of evidence necessary for a conviction of rape reflects the social constructions of acceptable behavior between citizens during a specific point in history. In 1889, the Nebraskan Supreme Court ruled:

Voluntary submission by the woman while she has the power to resist, no matter how reluctantly yielded, removes from the act an essential element of the crime of rape... if the carnal knowledge was with the consent of the woman, no matter how tardily given, or how much force had theretofore been employed, it is not rape.<sup>16</sup>

Today, many jurisdictions have recognized the problematic assumptions within this line of reasoning but not to the point of complete absolution. The evidence examined in rape cases include the relationship between the defendant and the prosecution, the amount of force used, eyewitness accounts and corroborative materials. Under these standards, a very narrow scope is deployed when accepting the claim of rape.

When examining possible rape cases, a distinction between “aggravated” and “simple” rape is often made. “Aggravated” rape includes cases that involve extrinsic violence, multiple assailants and/or no prior relationship with the offender; “simple” rape is any other claim devoid of these components. “Simple” rape is often overlooked or even denied, however, because the standards for evidentiary support as outlined above are assumed under the conditions of “aggravated” assaults only. In cases where a previous relationship is identified, the amount of physical force often declines, impacting the ability to produce corroborative medical evidence or eyewitness accounts of assured coercion. In cases where there is no prior recorded violence, there simply is no standard for addressing assault of this type. Put frankly, “simple” rapes are seen as unimportant, misreported or impossible acts.<sup>17</sup>

The likelihood of conviction in cases of rape void of physical brutality falls short from the first step in the process. When a person reports a sexual assault to the police, the interviewing officer is allotted a certain amount of personal discretion in deciding if the reporter’s claim is “founded” or “unfounded” before passing it on for prosecution.<sup>18</sup> Such practices impact the quality of evidence collected in the case and frequently result in discouraging the victim from pursuing further action.<sup>19</sup> “Many women, no matter how violated they were, do not call what happened to them rape if they [or the police officers] do not think a court would agree with

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<sup>16</sup> *Reynolds v. State*, Susan Estrich, *Real Rape* (MA: Harvard UP, 1987): 29

<sup>17</sup> Susan Estrich, *Real Rape* (MA: Harvard UP, 1987): 18-24

<sup>18</sup> Estrich, 15

<sup>19</sup> Estrich, 15

them.”<sup>20</sup> The assault then is reinterpreted as something else, something not definable in criminal law.

If the case is submitted for prosecution, the deciding factor remains as the amount of force and physical resistance enacted by the survivor. The assumption made by the court is that any rational person who does not wish to partake in an act of sexual engagement will physically fight to the brink of their capabilities in order to stop the act. Even in cases where the court recognizes the threat of violence as a deterrent for victims to fight back, evidence of a struggle is needed in most convictions beyond statutory rape.

Sexual assault prosecution, as it stands today, continues to focus on the victim in the assault, forcing them to prove beyond a reasonable doubt that the violator knew that consent was never offered or had been clearly withdrawn. Though most states have passed legislation forbidding the use of the victim’s sexual history and providing some protection from assault in the most intimate of contract, marriage, there is a running consensus that victims cannot be trusted to tell the truth about their assault, but the accused certainly may.

Under these standards, neither Matt nor Sam would be able to secure a conviction for the violations they each endured. Neither of the men used force to stop the act—even Matt, who was handcuffed to the bed, could have used the rest of his body to resist—nor was force used by their attackers to ensure compliance. On the contrary, both men had an erection, suggesting a level of desire, and both climaxed. Since our culture constructs male ejaculation as an orgasm, these features suggest sexual pleasure resulted from the acts, ruling out rape since sexual assault is not an enjoyable experience. Furthermore, they each knew their attackers, and Matt had even had previous sexual relations with his. Ultimately, neither of them even said, “No.” Yet the classification of *Single White Female* as number 36 out of 100 for the best “non-statutory female-on-male rape” movies<sup>21</sup> and the collection of commentaries found on IMDB.com amongst other movie databases and critic sites speaking out on the revulsion that Matt was raped in *40 Days and 40 Nights*,<sup>22</sup> suggests that the public seems to recognize both acts as sexual assault. The fear remains though: how to thwart false reports?

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<sup>20</sup> MacKinnon (1995), 114

<sup>21</sup> IMBD Key words List, "Single White Female" (1992) *The Internet Movie Database (IMDb)* <http://www.imdb.com/title/tt0105414/> (February 2011)

<sup>22</sup> "40 Days and 40 Nights" (2002) *The Internet Movie Database (IMDb)*, <http://www.imdb.com/title/tt0243736> (February 2011)

### **Push for Social Shift**

Pineau suggests that a possible answer to the predicament between protection from assault and false accusations is a social paradigm shift from the current courtship structure of seduction to one of “communicative sexuality.” Under this model, each partner “has an obligation either to ensure that the encounter really is mutually enjoyable, or to know why [the other person] would want to continue the encounter in spite of [his or her] lack of enjoyment.”<sup>23</sup> If accepted, the burden of proof would then shift to a standard of consent beyond a reasonable doubt as opposed to one of rational resistance. We have seen the power of awareness-raising in feminist movements; why not deploy such methods again in pushing for a new standard in sexual pleasure—one where both parties are pleased beyond a reasonable doubt? It is a movement to communicate while we fornicate.

A shift of this nature could ultimately alter the narratives we tell about gender and redefine the typical sexual encounter. It is not a new venture to seek a change in the stories we tell and the demands we put upon gender performance. With organizations such as Men Can Stop Rape and gender-queering movements nationwide,<sup>24</sup> from the grassroots to the national level, people are combating the idea that there is one way to be masculine and one way to be feminine. However, the idea that a man doesn’t always want sex and that a woman does not always want a man’s attention are relatively hush-hush compared to men wearing pink and dating female CEOs. A man resisting sex still runs the risk of being labeled “defective” or “gay” or must fight excessive coercive tactics by those around him to make him conform. Women resisting male attention are given similar stigmas of “man-hating feminists,” “lesbians” or reconstructed as “whores” that the rejected party no longer wants. We degrade both genders into compliance, “seducing” them into the “pleasures” of privilege that conformity offers. True communicative sexuality could alter all of this, one masculine-feminine challenge at a time.

Such a swing could alter the base of x-rated films. If communication became central to sexual intercourse, the plot of pornography could be altered from one of silent submission and crafty editing to one of chatty consent, re-humanizing the actors and producing potentially authentic pleasure displays amongst the actors—a feature often sought by consumers. Imagine a

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<sup>23</sup> Pineau, 416

<sup>24</sup> Marcia Pally, *Sex & Sensibility: Reflections on Forbidden Mirrors and the Will to Censor* (N.J.: Ecco, 1994)



film that actually shows one actor asking the other if they are okay, sincerely asking if they like the new position *and then adjusting if either does not*. Most porn consumers accept that this occurs and is merely edited out. But if communicative sexuality were running the show, would the editing be needed? Many mainstream adult film stars have quite a bit of experience in the sex industry. They know what they like, what they don't and many establish boundaries with their co-stars before production. It could be revolutionary to include such discussions in the films themselves coupled with explorations and position changes orchestrated by the actors themselves instead of by directors. This has the potential to increase the legitimate sexual pleasure of those involved in the film which could have a similar impact upon viewers. With the influx of internet pornography, where lay citizens are uploading their videos, there is an avenue for such videos to break into the scene of adult material and begin working their way toward the mainstream. Low-budget or no-budget films already lack the director calling the shots, and many are stationary cameras set up in bedrooms. Real adults have sex that involves awkward experiments and blissful corrections. Pornography could serve as an educative venue for raising awareness. Communicative sexuality can liberate us from our fear of expressing desires and withholding critiques, all of which diminish the pleasure involved for one if not all parties.

Given the inherent flaws within media effects research and the lack of direct correlation between sexually violent depictions in the media with tangible acts of sexual assault, it is not my intention to argue that films such as *40 Days and 40 Nights* or *Single White Female* be censored. Nor is it my desire to stigmatize viewers of such films. Instead, it is my hope to show that debates over pornography are not only misguided but, in fact, detract from the more pressing issue at hand: our nation's failure to create an infrastructure that addresses sexual assault in an adequate manner, establishing clear consequences for transgressors. While feminists have stood divided over adult material, actors in erotic films have been assaulted with no avenue of redress, and popular films have done potentially more harm through covert perpetuations of gender and rape myths that influence our national consciousness. Even our primetime television spots and news broadcasts are filled with violence and sex that help to sell products and ring in ratings. We are drowning in the wrong messages and sex crimes are being ignored because of it. The law does not operate outside of society and society does not operate outside of the law. Therefore, we must combine efforts in altering social narratives while shifting the legal precedent. This is a platform all feminists should be able to unite upon.

It is time to shift our focus from the content of pornography to the content of the modern rape laws and to the promotion of an awareness-raising movement to debunk the gendered myths in which current cultural conception over sexual assault procreate. Let us move towards a new kind of sexual liberation, liberation from “seduction” and coercion and towards a new standard of absolute communication where consent can never be confused. No person deserves to be forced into sexual complacency. Bodily autonomy is a human right, and it is time our laws and culture became humane.

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