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Getting Past Legal Analysis … or How I Learned to Stop Worrying and Love Teaching Rape

Michelle Oberman
Santa Clara University School of Law, moberman@scu.edu

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GETTING PAST LEGAL ANALYSIS . . . OR
HOW I LEARNED TO STOP WORRYING
AND LOVE TEACHING RAPE

MICHELLE OBERMAN

Long after the rape chapter was over, when we had moved on to
inchoate crimes and cases involving "call girls" and conniving defend­
ants who took messages for them in an era before voicemail—protago­
nists with whom my students, it seemed safe to wager, were
unacquainted—the thoughtful young man from the third row stopped
in to ask, "What was the take away from the classes on rape?"

I know I answered using too many words. It is what I do when I
feel slightly defensive. Now that I have had some time to think about
it, I offer him, and all of you, this answer. My hope is that, in explain­
ing my approach to teaching rape, I will also address the deeper
themes afoot in contemporary critiques of legal education: whether
and how law schools are training students for the practice of law, and
what practical use, if any, is served by scholarship among legal aca­
demics. At the very least, I will tell you a story about how I stopped
worrying and learned to love teaching rape.

I. TEACHING RAPE

Semester after semester, I tread anxiously into rape's domain in
my first year Criminal Law class. Unlike most other crimes we study,
coerced sex is something my students inevitably know something about. In any classroom of eighty, or even of forty, it is likely both victims and perpetrators of sexual offenses are present. Rape is so prevalent in society that I believe it is unconscionable for a criminal law professor to skip the topic. And yet, the casebook method of using cases to elucidate underlying doctrine seems calculated to cause pain by disconnecting the students from their lived experiences.

A. THE PROBLEM WITH CASEBOOK APPROACHES TO TEACHING RAPE

The conventional criminal law casebook approach to rape, like its approach to other criminal law topics, emphasizes "hard" or "close" cases. The professor uses these cases to hone the students' abilities to apply the same skills they have been learning all semester: legal analysis and reasoning. Unlike other crimes, the rape sections of criminal law casebooks tend to feature prefatory materials that aim to set the context for the cases that follow. Typically, this context includes statistics on the paradox of rape's high prevalence and low reporting rates, coupled with summaries of rape law reform endeavors and some personal anecdotes about rape. This introduction alerts the students to rape law's uniqueness, as other topics generally begin with a paragraph or two of background, followed by appellate cases and all but inscrutable questions meant to guide the students toward the fault lines in the case law.

Those of us who teach rape (and not all criminal law professors do), typically do not know what to do with the background readings. They are emotional, and little in teaching law prepares a professor to

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2. Two recent New York Times articles on rape victims and re-victimization emphasize that female victims of sexual assault are more common than at first may be expected and once they have become a victim, they are at a high risk of re-victimization. See Jane E. Brody, The Twice-Victimized of Sexual Assault, N.Y. TIMES, Dec. 13, 2011, at D7, available at http://www.nytimes.com/2011/12/13/health/the-twice-victimized-of-sexual-assault.html?_r=2&ref=health (referring to the United States Department of Justice statistics showing 188,280 victims of sexual crimes); see also Roni Caryn Rabin, Nearly 1 in 5 Women in U.S. Survey Say They Have Been Sexually Assaulted, N.Y. TIMES, Dec. 15, 2011, at A32, available at http://www.nytimes.com/2011/12/15/health/nearly-1-in-5-women-in-us-survey-report-sexual-assault.html?_r=1&ref=health (explaining that the National Intimate Partner and Sexual Violence Survey results indicate one-third of women were victims of a beating, stalking, rape, or a combination of assaults, and quoting the director of the National Center for Injury Prevention and Control, Linda C. Degutis, who stated "[t]hat almost one in five women have been raped in their lifetime is very striking and, I think, will be surprising to a lot of people ... I don't think we've really known that it was this prevalent in the population").


4. An informal poll of my four colleagues teaching criminal law at Santa Clara shows two first-year criminal law professors teaching rape for two days, one teaching rape for one day with a focus on mens rea and one not teaching rape at all, except in the context of international war crimes.
acknowledge, let alone to harness, an emotionally sensitive subject like rape. As for the students, the background readings seem to scream: “This material will not be on the final exam.” Given the emotional pain of the topic, why would a student who is otherwise uninterested in the subject bother to struggle through this background? And the student who looks to these readings to help make sense of their personal experience with the crime of rape—be it their own or that of a friend—will find that the introductory readings fail to clarify anything they do not already know: the criminal justice system does a poor job addressing sex crimes.

In view of the experiences students bring with them to the topic of rape, it is easy to see why the “hard” cases approach to teaching the subject is ill advised. How can we expect a rational assessment of the implications of rape law’s definition of mens rea or actus reus from a student whose freshman roommate dropped out after she had intercourse with seventeen drunk boys at a fraternity party? Many subjects in the conventional first-year curriculum are well suited to teaching legal reasoning, but really, what is gained by teaching students to ignore their emotional responses to rape, and to focus instead on learning the “rules” that purportedly govern the crime?

B. Teaching Skills v. Teaching Theory: The False Dichotomy

In view of the foregoing concerns, I decided to reach outside of the casebook in teaching rape. My approach was informed not simply by my sense that the casebook was misguided, but also by two debates simmering in the legal academy. The first involves whether professors are teaching students what they need to know in order to practice law. The second involves whether legal scholarship is a parasitic, narcissistic endeavor, in which schools funnel students’ tuition dollars into the production of articles so disconnected from the law as to be worthy of ridicule. Try as I might to ignore these debates and focus on teaching my classes, I am a relatively productive scholar at a school whose students do not easily waltz into the arms of waiting employers. Both debates make me feel the need to justify my secure foothold in this tilting universe.

First, a word about the allegation that law schools are not teaching students the skills they need to become lawyers. I have been cognizant of this argument since 1992, when the American Bar Association (“ABA”) published and circulated the MacCrate Report.

5. See supra note 1 and accompanying text.

6. See Segal, supra note 1 (“Law schools have long emphasized the theoretical over the useful, with classes that are often overstuffed with antiquated distinctions like the variety of property law in post-feudal England.”).
Robert MacCrate, a retired partner at Sullivan & Cromwell LLP, chaired the ABA's Task Force on Law Schools and the Profession and authored the Report, which argued that law schools should be revamped to provide students with a practice-oriented curriculum, as opposed to a theory-oriented curriculum.\(^7\)

In 1992, I was new to teaching law, and susceptible to the Report's message that I probably was not doing a good job preparing my students for the practice of law. After all, no one taught me how to teach law, and my ideas about the skills my students needed were fuzzy, having spent so little time in the practice of law myself. Who was I to merit the responsibility of training a new generation of lawyers?

Apparently others agreed with me, because rather than being ignored, MacCrate's ideas percolated through the curriculum at numerous law schools around the country. As Brian Leiter noted in his response to David Sloan's lament about law schools' failure to train students for practice, virtually every school in the country now offers a host of practice-oriented classes.\(^9\) No longer content to offer three straight years of doctrinal teaching, schools now pride themselves on the skill-based opportunities they offer their students, whether in the form of clinics, field placements, or skills classes.\(^10\) What is less clear is how to incorporate the teaching of skills into the large classroom setting.\(^11\) The tone of the debate, which registers largely as attack on law schools for failing to train lawyers, does little to illuminate this project.\(^12\)

I understand the passion beneath the attack on the state of legal education. Since the most recent economic downturn, law school graduates have struggled, along with many other Americans, to find

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\(^7\) See generally MacCrate Report, supra note 1.

\(^8\) Id. at 4-7.


\(^12\) See Leiter, supra note 9 (discussing possible curriculum changes and criticizing law professors' limited experience).
work.\textsuperscript{13} It is only natural for graduates to question the legitimacy of the enterprise that led them to incur debt in exchange for the promise of becoming a professional. I wonder, though, how much of the blame belongs at the feet of law school professors?

I have yet to see data linking the underemployment of recent law school graduates to the skills they failed to learn in law school.\textsuperscript{14} Nonetheless, as one who remains scathed by the hazing rituals of a conventional legal education, I am sympathetic to the idea that the legal academy could be improved by diversifying the skill set it imparts to law students. As a result, I spent considerable time in this, my twentieth year as a law professor, thinking about how I might impart a richer variety of useful legal skills in the first-year class I teach.

But it was not only the debate over what law professors teach that registered with me as I taught my fall classes. In addition, I found myself wincing at the attacks leveled against legal scholarship. The \textit{New York Times} published a number of critiques on the nature of the scholarship produced and valorized by the legal academy.\textsuperscript{15} My body of work, though lacking the fancy titles of articles being mocked, stands guilty of many of the charges these critics have leveled.\textsuperscript{16} I cannot boast a long line of judicial opinions citing to my work, and although lawyers occasionally contact me to discuss the issues I have studied, typically they seek background information rather than, just say, guidance on how to craft a defense for a particular client.

I found myself questioning the utility of my scholarship, particularly from the perspective of my students. Increasingly, my articles have veered away from normative arguments about how the law \textit{should} address a given issue and steered into ethnographic explora-

\begin{itemize}
\item \textsuperscript{14} Others more experienced in law firm practice than I have framed the debate in economic terms, as involving who should bear the cost of training first-year associates. Sloan, \textit{supra} note 10. Given how few of mid- and lower-tier law school graduates reach the ranks of the large firms, I wonder how law schools ranked beneath the top tier fit into that debate. Must we teach more skills, or simply different ones? Or must we cut our class size so as to produce fewer lawyers for a smaller workforce? Smith, \textit{supra} note 13.
\item \textsuperscript{15} Segal, \textit{supra} note 1.
\end{itemize}
tions of the messy reality found at the intersection of women's health and the law.17 I encourage my readers to understand my arguments by showing them what I see, rather than by telling them what to think.18 In short, I have embraced storytelling as a methodology—a modality that long has been the target of intense criticism even by those within the legal academy, let alone by members of the bar.19

I spent most of the 2011 summer writing an article recounting the stories I had heard when I investigated the background of a rape case that had long puzzled and intrigued me.20 With fall's arrival, I set aside the article and put my energy into teaching a criminal law class of eighty. But the critique of legal scholarship joined by the broader critique of law school teaching heightened my awareness of the disjunction between the seasons, my passion for writing, and my delight in teaching. I knew the dichotomies were false, and yet, I had never consciously set about teaching skills by using scholarship in the first-year classroom.

And so this year I decided to jettison the casebook method, and I taught rape as a three-day unit that targeted skills often overlooked in the first-year curriculum: problem solving, practical judgment, client advice and counseling, fact-finding, public speaking, listening, influencing, advocating, and negotiation.21 In order to hone these skills, I approached the classes using stories and storytelling, rather than the casebook's appellate opinions.

17. See, e.g., Judging Vanessa, supra note 16.
18. See, e.g., Eva and Her Baby, supra note 16.
20. Two Truths and a Lie, supra note 16.
21. In considering which lawyering skills I might use to frame these classes, I relied heavily on the work of Marjorie Shultz and Sheldon Zedeck, Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions, 36 LAW & SOC. INQUIRY 620, 623-26 (2011), for a general description of skills associated with lawyering effectiveness. My colleague, David Ball, worked with me to design this three-class endeavor, honing my stories into lessons and developing a drafting exercise that forced students not only to write, but also to critique others' writing. I owe him much of the credit for the approach I describe herein.
Storytelling is not a new phenomenon in law,22 nor is it new for me as a scholar.23 But until this fall, I did not “use” stories to teach; I offered them up by way of background or as entertaining hypotheticals. As you will see below, using stories and storytelling, as opposed to analyzing appellate opinions, provided an easy path to teaching new skills in the first-year curriculum. The stories helped students to hone their emotional intelligence; the multiple viewpoints they contained required students to recognize competing points of view and to understand the complexity of drafting legal solutions to redress rape. More importantly to me, though, using stories as a foundation for teaching rape felt like a way to bear witness to the suffering inherent in these cases. It permitted—indeed forced—students to reckon with the outrage and pain inherent in sexual coercion.

II. THE FIRST LESSON: TEACHING STUDENTS TO TELL STORIES

The stories I used as the foundation for our classes were derived from In re John Z.,24 a “close case” that appears in many Criminal Law casebooks.25 The case involved three minors; two boys, and a girl who was persuaded or coerced into having intercourse with the boys while alone in one of their homes.26 Honestly, though, I am convinced that most of my students carried stories of their own that would have worked equally well for our rape classes. I used In re John Z. because its story of a bad sexual encounter between acquaintances is both accessible and paradigmatic of what most bothered me about trying to teach rape law: the decision ignores the familiar tragedy of the story and instead turns on a super-imposed doctrine—in this case, withdrawn consent.27 Joshua Dresser’s casebook, adopted by sixty percent

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23. See, e.g., MICHELLE OBERMAN & CHERYL L. MEYER, WHEN MOTHERS KILL: INTERVIEWS FROM PRISON (2008); Eva and Her Baby, supra note 16; Judging Vanessa, supra note 16.
24. 60 P.3d 183 (Cal. 2003).
27. See John Z., 60 P.3d at 185-88 (concluding withdrawn consent by the victim supported upholding conviction).
of the nation’s criminal law professors, calls it “One Final Wrinkle.” In so doing, the casebook overlooks and mischaracterizes the numerous stories that led to John Z.’s prosecution and conviction.

I also used *In re John Z.* because my curiosity about the case led me to write an article in which I interviewed the major players in John Z.’s case: prosecutors, defense lawyers, the trial judge, various rape victim advocates, and former prosecutors from other jurisdictions. These interviews, combined with years of teaching the edited appellate opinion in my casebook, convinced me that I could use the case to surface themes and teach skills often left out of the first-year classroom.

For the first class, the students did not read the *John Z.* opinion, nor did I alert them to its existence. Instead, I had them read two versions of the facts underlying the *John Z.* case, which I said were statements given to police by both the victim and the alleged perpetrator. In reality, however, they were stories I had written, after my interviews with the lawyers and others involved in the case, projecting what might have happened in the minds of the teens.

Before class, I divided the students into small groups, assigning each group a distinct rape statute, and required them to apply their statutes to the police statements in order to advise the state’s attorney about the merits of prosecuting the case. At the start of class, we took straw polls and each group reported their results: four of the groups had voted to prosecute; one, with an old common law statute requiring resistance, declined to prosecute; and the final group was divided.

In order to assess their analysis, I asked each group to identify the “good facts” and the “bad facts” that informed their conclusions. The good facts/bad facts exercise is one I employ all semester, requiring students to identify facts that help their side of a given case, those that hurt it, and ways in which the “bad facts” might be neutralized, if not turned to their client’s advantage. In a class on rape, the search for “bad facts” forces students to retell two stories—the victim’s and the defendant’s—in legally relevant ways. In so doing, we moved

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29. See Two Truths and a Lie, supra note 16. Because they were minors at the time of the incident in question, when researching the forthcoming Article, I chose not to identify and interview the parties themselves.

30. See infra Appendix (containing the two versions of facts).

31. See infra Appendix (containing the list of statutes I assigned to the groups).
quickly beyond the application of doctrine into the realm of advocacy. More importantly, identifying “bad facts” entails putting the victim “on trial.” This experience necessarily discomforted many of the students, who thought the law was there to help the victim.

This first exercise in storytelling became an experiential learning moment for my students. Within their small groups, the students became physically and emotionally involved in the story; they embodied the roles of prosecutors forced to make decisions about whether this given case was worth pursuing. Research tells us that this direct experience helps students to reinforce and acquire skills in a way that simply cannot be accomplished by reading or listening to someone lecture about the problem of prosecutorial discretion.32

Consensus quickly disintegrated as the students realized that the law would not necessarily lead to a conviction in view of the “bad facts” of their case as alleged by the perpetrator—or indeed, even as recounted by the victim. She entered the house voluntarily; she stayed in spite of having professed her desire not to have sex; she let the boys undress her; and she did not leave after the first of the boys had sex with her.33 Rather than saying, “No—I don’t want to have sex,” she said, “I have to go home.”34 Many students became outraged by the extent to which rape law embraces the right of perpetrators to presume consent in the absence of convincing evidence of non-consent. Others defended this particular line, arguing that sexual encounters often are ambiguous, particularly between relative strangers, and that the burden of requiring a victim to make clear her position is far less than the harm of a rape accusation.

Suddenly, the students were telling stories—passionately endeavoring to tie their moral and practical sensibilities to the statutory language. Subgroups formed, with students telling personal stories to one another and noting how the law generally failed to remedy the wrongs. Unlike most law school discussions, this exercise was designed to encourage the students to attend to their own stories. Self-awareness is a vital asset to lawyers, and recognizing the emotional “baggage” one carries is the first step in determining whether and how one’s personal experience affects the way one sees a given issue.

As the discussion quieted, I asked each group to elect a leader to present the class with their group’s statute and to justify their deci-

33. John Z., 60 P.3d at 184-85.
34. Id. at 185.
sion regarding prosecution. These presentations took on a passionate tone. The students told stories to justify their use, or refusal to use, the state’s power in order to vindicate what all the students, well-versed in campus education against dating violence, recognized as John Z.’s immoral behavior.

The class was not a celebration of the students’ performances, as often occurs when I ask individual students to address the entire room. Instead, it was sober. They were cautious as they retold the story on behalf of their group, making inferences about what a jury might and might not be expected to believe and drawing conclusions about the law’s capacity to remedy this particular incident of unwanted sex. They spoke not simply for themselves, but for their classmates, and as such, they experienced both the power and the responsibility of being an advocate for others. Those who supported prosecution did so knowing that a jury might well acquit.

III. THE SECOND LESSON: TEACHING STUDENTS TO LOOK BEHIND STORIES

The assignment for the second class required students to complete some background reading about rape, both from the casebook and the interviews with the lawyers and other experts I consulted regarding John Z.’s case. Our class discussion encompassed themes I discussed in passing in earlier classes—themes that emerged with great clarity in the context of this case. In particular, I selected three themes for our discussion: prosecutorial discretion; plea bargaining; and ethical obligations between the state and crime victims. Each of these themes encouraged the students to grapple with the stories told by the various legal players involved in the case, helping them to understand the context that shapes decisions about prosecution, as well as the manner in which these decisions are justified and rationalized.

35 I was very reluctant to assign my own article as reading for my class—let alone one that was in draft form. It felt both like embarrassing self-promotion and also like I was permitting them to see the “real” me, rather than the professorial image I adopt in front of the class. It is worth pondering whether the debate over the utility of legal scholarship derives in part from the failure of legal academics to consider issues of audience when they write. In this situation, my students ended up being an ideal audience for an article that I had written without a clear sense of whom, if anyone, would ever read it. My research yielded divergent perspectives on John Z.’s prosecution, which provided my students a safe space to practice making unpopular or challenging arguments—arguments that may have aligned with their personal convictions, but that might otherwise have been silenced for fear of being “too personal,” or of triggering a hostile response from their classmates.
A. PROSECUTORIAL DISCRETION

A discussion of prosecutorial discretion seems particularly apt when teaching rape law. The history of rape law is replete with reference to the need for selectivity in prosecuting and adjudicating rape cases.\(^{36}\) Over the course of the twentieth century, the fear of lying "victims" was joined by an awareness of the risk of re-victimization via prosecution.\(^{37}\) My interviews with prosecutors and rape victim advocates underscored the extent to which the incident underlying \textit{In re John Z.}\(^{38}\) was not one that typically led to prosecution.\(^{39}\) The prosecution deliberately chose to prosecute this case. It was part of a campaign to deter acquaintance rape within the community, and the prosecutors had no ambivalence about charging this defendant, who already was known as a "bad kid." It also was part of their office's endeavor to use prosecution to shift social norms. The prosecutors hoped the news of John Z.'s prosecution and conviction would send a message to other kids that this sort of behavior was not okay.\(^{40}\)

The candid conversations I recorded when researching John Z.'s case provided abundant evidence of the prosecutors' deliberative process when they elected to try this case. But one need not use this particular story to flag the issue of prosecutorial discretion in the acquaintance rape context. Indeed, other cases may do a better job raising the issue of discretion, as factors often integral to the exercise of discretion were omitted from John Z.'s particular case. For instance, the interviews yielded little discussion of the risks of losing this case, and of whether, in view of these risks, the prosecution itself intended to stigmatize or punish the defendant. The prosecutors I interviewed from other jurisdictions expressed concern about the fact that the two defendants seemed to be from poor and/or minority subsets of the community, asking whether a message regarding norm-change might better be sent by prosecuting a more affluent or mainstream defendant.

\(^{36}\) See, e.g., \textsc{Matthew Hale}, \textsc{History of the Pleas of the Crown} 635 (1st Am. Ed. 1847). Seventeenth century English jurist Sir Matthew Hale believed rape "is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho' never so innocent." \textit{Id.} at 636. His viewpoint was adapted into common law jury instructions, which cautioned jurors about the risk of false rape accusations.

\(^{37}\) See Ronet Bachman \& Raymond Paternoster, \textit{A Contemporary Look at the Effects of Rape Law Reform: How Far Have We Really Come?}, 84 \textsc{J. Crim. L. \& Criminology} 554, 558-59 (1993) (discussing society's awareness that rape laws were antiquated, leading to rape law reform).

\(^{38}\) 60 P.3d 183 (Cal. 2003).

\(^{39}\) \textit{Two Truths and a Lie}, supra note 16.

\(^{40}\) \textit{Id.}\n
The students were disturbed by the article’s candid portrayal of the variety of factors that shape prosecutorial discretion, as well as by the suggestion that many similar cases would not have been prosecuted. They had, after all, voted overwhelmingly to convict John Z. in the first class. In order to drive home the challenges prosecutors face in determining when and whether to press rape charges, I asked each group to imagine they shared the goal of wanting to change norms around coercive adolescent sexuality. How would they endeavor to do so? Assuming prosecution was part of their strategy, what sort of fact patterns would they have sought for test cases? Would John Z. have fit that pattern? Could they identify alternative strategies for sending a message or changing norms besides prosecution? With whom would they want to work in devising a community-wide campaign?

The ensuing discussion stressed skills not typically tapped in the first-year classroom, such as practical judgment and advocacy. In order to make a case for prosecuting John Z., the students had to confront the limitations of the criminal justice system’s capacity to alter problematic yet entrenched social norms. They also were forced to consider prosecution as a process that might harm, rather than benefit, crime victims. The arguments they made were intuitive in nature; rather than pointing to ways in which the case fit the elements of rape as dictated by the statute, they spoke about issues of victim compliance, mental health, and forging alliances with non-lawyers such as teachers and community groups.

Our inquiry into prosecutorial discretion was not one that emerged from reading cases; rather, it required students to employ practical judgment about acts and their consequences, and about the nature of advocacy. Our discussion of the purposes of prosecution in this case was far more intense than the one we had in August, when we opened the semester with a review of cannibalism at sea and a discussion of utilitarian versus retributive theories of punishment.41

Perhaps it was unsurprising that the most active participants in this discussion were not those who contributed daily, but rather, those who had experience as activists or those who had particularly strong feelings on the issue of sexual assault. This exercise invited them to share their insights by harnessing rather than ignoring their emotional response to rape. As such, the discussion presented yet another chance to reinforce the importance of emotional intelligence as a lawyering skill.42

41. See Dressler, supra note 3, at 30-50 (discussing inter alia Regina v. Dudley & Stephens, (1884) 14 Q.B. 273 (Eng.).
42. For more on this subject, see Marjorie A. Silver, Emotional Intelligence and Legal Education, 5 PSYCHOL. PUB. POL’Y & L. 1173, 1174 (1999).
In re John Z.\(^43\) also contained an interesting "subplot" involving a second defendant—one who pled guilty to the misdemeanor crimes of sexual battery and unlawful sexual intercourse after the victim testified.\(^44\) I had always advised my students of the unreality of studying criminal law via appellate cases, given that the overwhelming majority of cases never reach trial, let alone appeal.\(^46\) Like other crimes, prosecuting rape cases consumes scarce resources in terms of time and money, and necessitates the use of careful discretion in determining when to prosecute and when to offer the defense a plea bargain.\(^46\) But setting a discussion of plea bargaining in the context of a rape case illuminated the extent to which the practice contributes to, or undermines, justice.

John Z. was prosecuted along with a codefendant, Juan G.\(^47\) The state charged both boys with rape, and at first blush, the facts underlying Juan G.'s sexual encounter with Laura seem similar to John Z.'s.\(^48\) Both boys pressured her to have sex with them; they were together in John Z.'s bedroom, touching and undressing her.\(^49\) The facts suggest that her verbal and nonverbal responses to Juan G.'s advances were similar to those she expressed to John Z.\(^50\) Upon closer examination, though, important distinctions emerge between how Laura may have viewed Juan G.—distinctions that might suggest either more or less culpability.

Laura and Juan G. knew one another before that evening, and Laura, at least, thought she and Juan were in a relationship.\(^51\) They had "hooked up" on an earlier occasion, and Laura had performed oral sex on Juan G.\(^52\) Earlier on the night of the incident, Laura and Juan

\(^{43}\) 60 P.3d 183 (Cal. 2003).
\(^{44}\) See In re John Z., 60 P.3d 183, 185 (Cal. 2003) (describing Juan G.'s as an original codefendant).
\(^{45}\) See, e.g., Stephanos Bibas, Plea Bargaining Outside the Shadow of Trial, 117 Harv. L. Rev. 2463, 2497 (2004) (discussing the Department of Justice statistic that ninety-four percent of criminal cases in the federal system do not make it to trial).
\(^{46}\) See generally Steeve Mongrain & Joanne Roberts, Plea Bargaining with Budgetary Constraints, 29 Int'l Rev. L. & Econ. 8 (2009) (demonstrating, via an economic argument, the manner in which plea bargains are inevitable in a system in which prosecutors are concerned about conviction rates, yet constrained by limited resources).
\(^{47}\) John Z., 60 P.3d at 185.
\(^{48}\) See id. at 184-85 (noting Juan G. was originally a co-defendant who admitted a lesser offense, and describing both defendants' conduct on the night in question).
\(^{49}\) Id.
\(^{50}\) See id. at 185 (noting that Laura suggested they "shouldn't be doing this," as opposed to saying "no" or "stop").
\(^{51}\) Id. at 189 (Brown, J., dissenting).
\(^{52}\) Two Truths and a Lie, supra note 16.
G. were alone in John Z.'s parents' bedroom, and although she did not agree to have sex with him, she did not leave the house when he pressured her. Arguably, Juan G. may have been confused by what he perceived as mixed messages from Laura. Certainly, she liked Juan G. and welcomed at least some sexual attention from him. But these facts might as easily cut against Juan G., rendering him guiltier than John Z. He knew from his earlier encounter with Laura that night that she did not feel ready to have sex with him. He also knew that she liked him, that she did not just want to fool around with him, and that she wanted to be his girlfriend. He exploited her trust. As a matter of law, the case against Juan G. was no harder for the prosecution than was the case against John Z.

My interview with the prosecutor shed some light on the decision to permit Juan G. to plead guilty to a lesser offense. First, Juan G. accepted responsibility for his actions. After Laura's testimony, he turned to his lawyer and asked, "If everything she said is true, then did I commit a crime?" When the lawyer said yes, Juan G. told him he needed to change his plea. These facts, coupled with the knowledge that Juan G. had had only minor skirmishes with the law prior to this offense, seem to have informed the prosecutor's decision to permit him to plead.

It is sort of a heart-warming story. Juan G. heard Laura's version of the events and understood and accepted responsibility for the harm he had caused. In view of his response, it might be that the experience of being prosecuted would deter him from criminal sexual conduct in the future. But for the criminal justice system in general, as well as for the local community's endeavor to change norms around acquaintance rape, it is less clear what was gained by accepting Juan G.'s guilty plea. As a result, the story was a perfect launch pad for our classroom discussion about when and whether to permit defendants to plead guilty.

This discussion, like the conversation about prosecutorial discretion, generated an appreciation for the pragmatic considerations that factor into case disposition. Were we to have had more time, this topic

53. John Z., 60 P.3d at 184 (majority opinion).
54. Id.
55. Id. at 185 ("Although Juan G. was originally a codefendant, at the close of the victim's testimony he admitted amended charges of sexual battery . . . and unlawful sexual intercourse . . . a misdemeanor."); Two Truths and a Lie, supra note 16.
56. See Two Truths and a Lie, supra note 16 (describing the prosecutors' references to the following events as relevant to their decision regarding Juan G.'s plea to a lesser offense).
57. Id.
58. Id.
59. Id.
would have lent itself to an interesting role-play, in which the students worked in pairs, with one side playing John Z.’s lawyer and the other side playing the prosecution. By asking each pair to attempt to negotiate a plea agreement that would have been amenable to both sides, the exercise would have encouraged students to develop an awareness of the skills that underlie negotiation and advocacy.

C. ETHICAL OBLIGATIONS TO CRIME VICTIMS

Finally, the class addressed ethical obligations to victims and pondered the extent to which Laura, the victim in this case, felt vindicated or harmed by the prosecution. Technically, victims are not prosecutors’ clients. Instead, prosecutors serve the interests of justice, and their concern lies with protecting society as a whole. But unlike most other crimes, a rape prosecution inevitably affects the victim.

My research did not reveal much about what happened to Laura after the prosecution. I learned that her parents, by arranging to take service of the petitions, had endeavored to shelter Laura from news that John Z. appealed his verdict.60 The prosecutor described Laura’s cross-examination as “everything short of water-boarding,” noting that the judge had permitted both defense lawyers great latitude in asking her questions about whether she invited or enjoyed the boys’ sexual advances.61 There was no way to measure whether the prosecution and conviction had a positive impact on the culture of sexual coercion, whether at Laura’s school or in the community at large. It was impossible to calculate the costs of the prosecution, from Laura’s perspective, or whether she considered them worth paying.

Nothing that happened to Laura at trial was a surprise. Indeed, most experts believe that the underreporting of rape stems not only from the shame of having been sexually humiliated, but also from the fear of re-victimization at trial.62 It would have been easy for a prosecutor to foresee the risks to Laura in taking the case to trial. As such, I used this scenario as a basis for exploring the professional and ethical obligations owed by prosecutors to crime victims.

The rape victim advocates with whom I spoke unanimously voiced their sense that this was not a case in which they would have advised the victim to press charges. Instead, they thought a guilty verdict was unlikely, and that regardless of the outcome, a trial would traumatize Laura by forcing her to endure questions about and challenges to her

60. Two Truths and a Lie, supra note 16.
61. Id.
story of how she was treated that night. The rape victim advocates also felt there were better ways for her to move forward with her life. She might, for instance, have sought civil restraining orders against the boys, preventing them from bothering her or from discussing the events. If she were inclined to protect her reputation and/or to sanction the boys, she might have enlisted the rape victim advocates and their referral network to work with the school district to devise appropriate remedies. Perhaps the boys could be transferred to another school, or even out of the district. Either way, rape victim advocates felt certain that civil remedies could have offered Laura more than criminal law did. And the advocates were not alone in their concerns about prosecution. The former sex crimes prosecutors I interviewed agreed and wanted to know whether Laura had been warned about what was likely to happen to her on the stand at trial.63

These concerns squarely raised ethical issues about the interests and rights of victims in the criminal justice system. The casebook and our readings, in addition to any personal experiences with sexual coercion, led many in the class to be outraged by our society's tolerance of rape and our failure to prosecute the crime more vigorously. But by considering the events from Laura's point of view, a host of hitherto invisible considerations emerged: What should prosecutors have told Laura prior to securing her agreement to cooperate with the prosecution? Was the state ethically obligated to warn her about how she was likely to be treated by defense lawyers during trial? Should the state have offered her other opportunities, or at least a referral to those who might know of other ways of remedying the harms she had suffered? Should prosecutors have told her that they viewed her case as part of a campaign against acquaintance rape in the community, and expressed their hopes that prosecution would help change local norms? And if so, what sort of evidence, if any, did they have about how prosecution (let alone conviction) would serve her interests?

IV. THE THIRD LESSON: DRAFTING STATUTES AND TEACHING STUDENTS TO ADVOCATE FOR CHANGE

The third and final class session on rape was logistically the most complicated, and yet easily the most satisfying. Working again with six small groups, I invited each group to draft and submit a proposed rape statute to a mock legislative assembly. I assigned each of the groups to represent a particular constituency.64 There were five days

63. Two Truths and a Lie, supra note 16.
64. The six interest groups I used were the following:
(1) Group 1 represented the California Coalition Against Sexual Assault, an organization dedicated to promoting the civil and criminal protection of rape victims.
between the second and the third classes, so I assigned the drafting exercise immediately after the first class, and required each group to submit their statute to me forty-eight hours prior to the third class. I then re-distributed each of the draft statutes to another group—one with opposing concerns—and required the other group to prepare a formal critique of the other group’s statute for the third class.

Some groups worked as a committee of the whole in undertaking the drafting process; others formed subgroups that developed competing proposals or worked on sub-issues, such as actus reus or mens rea. Perhaps because they feared their classmates’ critiques, or maybe because they were excited by the challenge of drafting a better law, each group worked hard to fulfill their obligation to their constituents. I made an exception to my normally laptop-free class and permitted each of the six groups to use the projection screen in order to explain their detailed edit and critique of their classmates’ statutes.

Each group had ten to twelve minutes for their presentations, at the end of which we stepped out of character and processed their ideas for law reform as a whole. I intended to end the class with a vote for their preferred statute, but instead, the class wanted to discuss whether the law, in any form, makes much of a difference in combating rape. I realized that, for all of my efforts to teach my students new skills and information, they had taught me something I already should have known: when it comes to human suffering the law is, at best, a limited healer.

V. LEGAL EDUCATION, SKILLS, AND SCHOLARSHIP

In the event that I lost you along the way, I want to remind you that this Article is not simply my story of how I taught rape to first-year law students this past fall. It is more than a response to those who wonder how one might use law stories in the classroom. It is the

(2) Group 2 represented the California Association of Criminal Defense lawyers.
(3) Group 3 represented the California Association of District Attorneys, an association of prosecutors working at the trial and appellate levels.
(4) Group 4 worked for State Representative Marjorie Smith, whose son was prosecuted for rape (and found not guilty) after a drunken encounter with a woman he met at a fraternity party at a California State University last spring.
(5) Group 5 worked for State Representative Frank Card, who is motivated by his frustration with the local prosecutor’s refusal to indict his daughter’s adult drama teacher on the grounds that their sexual relationship was “consensual,” even though she claimed the relationship only began after he informed her that he would not write her a college recommendation unless they “really got to know one another.” At the time, his daughter was an 18 year-old high school senior.
(6) Group 6 represented the California Coalition to Stop Prison Overcrowding, a group representing a coalition of subgroups united by their conviction that California cannot afford to remedy the currently unconstitutional conditions in its state prisons by increasing prison capacity, nor can it sustain its current rates of incarceration.
result of my ruminations over the skills we teach our law students, and about my worry that there is too thin a connection between the research I do and the classes I teach. As such, it is a retort to those who argue that legal scholarship is arcane, serving no one but the scholars themselves. Let me explain.

I believe all legal academics should attend to the suggestion that law schools are not adequately preparing their students for the practice of law. It is difficult for contemporary law professors to transform the skill set they seek to impart, given that we, ourselves, typically are the product of poorly rendered quasi-Socratic classroom experiences. That said, the legal profession today is offering support in the form of detailed lists of the skills students will need in order to find their way in today’s market. Our job is to find meaningful ways to impart those skills in classrooms that often have a student to teacher ratio of eighty to one. What I have suggested here is a way in which one might teach problem solving, practical judgment, client advice and counsel, fact-finding, speaking, listening, influencing and advocating and negotiating in a large classroom, and working with a sensitive topic.

In response to the contemporary attack on legal scholarship by those who view the enterprise as largely parasitic, I would say the following: Although it is easy to poke fun at the titles of many top-placing law review articles, my experience with law professors who engage in research and writing suggests that the critics have overlooked the ways in which such engagement benefits students and the profession. Our research sustains and informs our teaching, even when its subject matter is far removed from the classes we teach. It was, of course, my research on In re John Z. that provided the foundation for my lesson plans for the skill-based unit I taught on rape. As my colleague Stephanie Wildman often says, “I am a better teacher because I write, and a better writer because I teach.”

65. Shultz & Zedeck, supra note 21, at 629.
66. 60 P.3d 183 (Cal. 2003).
67. This result was not a one-time occurrence, nor is it limited to my work on practical rather than theoretical inquiries. My ongoing research on the normative significance of abortion prohibitions in Latin America, for instance, shapes the way in which I understand and teach both health law and criminal law. Moreover and more often, the work of other academics inspires changes both large and small in my classroom approach. For example, Professor Paul Lombardo’s book, PAUL LOMBARDO, THREE GENERATIONS, NO IMBECILES: EUGENICS, THE SUPREME COURT, AND Buck v. Bell (2008) (a history of Buck v. Bell, 274 U.S. 200 (1927)), led me to understand eugenics as part and parcel of government endeavors to regulate population and reproduction, and resulted in my developing a seminar in which students are invited to consider the government’s role in policies ranging from adolescent contraception to immigration law. See Michelle Oberman, Thirteen Ways of Looking at Buck v. Bell: Thoughts Occasioned by Paul Lombardo’s Three Generations, No Imbeciles, 59 J. LEGAL EDUC. 357 (2010).
VI. CONCLUSION

It is true that the legal academic's position on the law often entails looking down from 35,000 feet. But our perch there is instrumental. Our jobs give us the latitude and the responsibility to see the legal system as just that—a system. The dance legal academics do with the legal system from a distance is every bit as important as the dances done on a more intimate basis by practicing lawyers and judges. The observations we make—and the dance steps we teach our students as a result of our observations—are an integral part of what keeps the law alive and worthy of passing down to the next generation of lawyers.
APPENDIX

DAY 1:

1. Background reading: Dressler Casebook, pp. 385-399; 404-421.
2. Read case study below.
3. Apply the facts to the statute assigned to your group, assuming the following: The district attorney has created a special prosecutorial task force to carefully consider acquaintance rape cases in order to insure a fair and consistent evaluation of reported cases prior to determining which cases merit prosecution.
4. Come to class prepared to discuss the extent to which you believe the case merits prosecution under your jurisdiction’s law. If so, should the state charge one or both of the boys? With what crime?

Rape Case Study:

Last week, police in Clair County referred the following incident to the district attorneys, who now must decide whether to press charges. Police took statements (included below) from both the victim and the alleged assailant. You are an assistant district attorney, and your supervisor has asked you to advise her about whether to charge John Z. with rape. Answer her question by applying the law relevant to your jurisdiction (see assigned statutes by section number), and advising her on the facts that might help and/or hinder a conviction.

This is Laura’s story:

Juan called me after school, while I was at work. I was happy because we had only hooked up for the first time a couple of weeks before, so it was good to know he was thinking of me. He asked if I could take him home.

“I have to go to this church thing,” I told him, “So I can’t take you home.”

I got to his house, and he told me how to get to his friend John Z.’s. When we got there, he was like, “Well, are you coming in?” And so I did. There were two guys there and that was it. They wanted me to drive them to get some beer, and I said, “Sure. But I’m not going to party or anything, because I still have to go to church.”

When we got back to John’s house, Juan whispered to me, “Let’s go into the bedroom.” And so we did. It felt great. At least at first it did. We were lying there together in the dark, rolling over each other with all our clothes on and kissing and stuff. We hadn’t been together in a bed before, only in the car. Juan kept wanting to go farther, putting his hands down my pants and stuff. I just kept pushing him away.
Then it was like he got pissed off or something because he just got
up all of a sudden and said, “I gotta pee.”
After a few minutes I got it that he wasn’t coming back, and I
tried to fix my hair, and I went out there and sat with John and Justin
on the couch where they were drinking beers.
“How come you won’t do stuff with Juan?” Justin asked me.
“Yeah,” said John, “He really wants to do it with you.”
“Well I’m just not ready for that,” I told them.
Juan came back into the room. I couldn’t find my keys. I said I
needed to go home, but I hung out there for another hour or so. Then I
decided to leave so I told John I really needed my keys.
John asked if he could talk to me first. We went into his bedroom.
“Juan’s a lousy boyfriend,” he said. “He doesn’t really like you, not the
way I would if I was your boyfriend.”
He put his hands on my shoulders when he said this, tilting his
head and moving it close, but not too.
Then Juan knocked on the door and came in.
“I gotta make a call,” said John, and he was gone.
Juan started kissing me, and then, before you know it, John was
back in the room and it was the two of them and me in the dark.
John came up and touched my back. “Is it your fantasy to have
two guys at once,” he asked.
“No,” I said.
But they weren’t really listening. They were like touching me,
and Juan’s hands were on my boobs and John’s were on my ass. And
it was sort of scary but sort of cool, at the same time. I mean, it’s hard
to describe. But then they started taking off my clothes and I told
them, “no.” It started to feel more and more scary. “Please stop,” I
kept saying, “cut it out.” They took off my pants. I was naked and
they had their clothes on.
“Get out,” Juan told John. He laid me down onto the bed and
started trying to put his dick inside of me.
I told him, “Don’t. I’m not ready to do this.” I kept trying to push
him off me, but he was laying on me and holding me with one arm. He
kept rubbing himself but his dick kept coming out.
“Maybe this is a sign we shouldn’t be doing this,” I said. I wanted
to get my clothes and leave. I didn’t want him to think I hated him or
anything, but I was so sad.
“Fine,” he said and walked out of the room.
I was sitting there in the dark trying to find my underpants when
John walked back in. He was naked except he was putting on a
condom.
“Oh my god,” I thought. I was shaking. I couldn’t find my clothes. He touched my face like they do in the movies, and he started kissing me. “You have a beautiful body,” he kept saying. I kept trying to get away from him, but he was so much bigger. He pushed me down onto the bed and he shoved his dick inside of me. He was holding onto me, but the condom kept falling off, so he kept having to stop and put it back on.

“Do you wanna be my girlfriend?” he kept asking me.

“Stop,” I said, “I need to go home.”

“Just give me a little time.” He rolled me over so he was completely on top of me. I couldn’t move.

“If you really cared about me you wouldn’t be doing this to me. I mean, you should wait and respect that I don’t want to do this.”

“Just give me a few more minutes.”

“No. I have to go home.”

Finally he stopped. Without turning on the lights, he found my underwear, my jeans, my shirt and my keys and passed them to me.

I walked out of the house alone and drove home.

This is John Z.’s story:

Here’s what I remember about October 23, but it isn’t much. My buddy Juan came over with this girl, Laura. I had just gotten out of Juvie that day, so we were celebrating. She was real cool at first—she drove him to my place, then drove us over to Justin’s stepbrother’s so he could buy us some beer and then brought us back home. I didn’t expect her to come in with us, but she did.

Juan and her went in my parent’s bedroom, and Justin and I were just hanging out and having some beers. Juan came out after awhile, and we gave him the thumbs up, but he was all pissed.

“She won’t do anything,” he said, and he went to the can.

Then Laura came out of my bedroom and stood there looking at the t.v. like she was really interested in the game we were watching.

Justin asked her, “How come you don’t want to do nothing with Juan?”

“I’m just not ready,” she said. Her hair was a fucking mess. It was pretty funny, really.

She sat down on the couch next to me. She didn’t leave or nothing, and I know she probably wasn’t all that into our conversation. We were tossing around her keys, and playing with her, telling her she was stuck with us. She was laughing, I think. Either way, she stayed.

Finally, when it was all dark outside, she gets up like to go or something, and so I figured I’d see if she was more into me than Juan.
“Don’t go yet,” I said, “I wanna talk to you alone.”
We went into my room.
“You should be my girlfriend,” I told her. “Juan doesn’t even like you. I want you to be my girlfriend.”

Just then, Juan came in and it was the three of us in the darkness. It was a little tense, so I said, “Is it your fantasy to have two guys?” She said, “No,” but she didn’t go nowhere. We started getting into it with her. I mean, Juan was taking off her shirt and I was playing with her boobs and shit. She was into it. You could tell. She let us take off her panties and finger her and all that.

Juan wanted to fuck her, so he kicked me out of the room. I don’t know what happened with them, but when he came out, I figured she already liked me well enough that, you know, I could have a turn, too.

I took off my clothes so she wouldn’t feel weird or anything when I went in there. She was sitting on the bed, so I sat down next to her and gave her a kiss. She kissed me back, so I figured it was o.k. to lie back on the bed together.

I told her, “You have a really beautiful body.” To be honest, we weren’t talking all that much. We were kissing the whole time.

Then, I put a rubber on and started fucking her. I remember the rubber kept falling off.

I kept talking to her, and saying nice things like, “Do you want to be my girlfriend?” I remember asking her that: “Will you be my girlfriend?”

After a while, like maybe five or ten minutes, she said, “I really need to go home now.” I was about to come, so I said, “Just gimme a little more time.”

“If you really cared about me, you wouldn’t be doing this,” she said, which was really crazy because then she kept on making out with me for another ten minutes.

Finally, she said, “I have to go home now,” and I could tell she meant it. She was a fucking head case—couldn’t figure out what she wanted. So I rolled off her. I helped find her clothes and her keys. Then she left. I figured I’d never see her again.

Statutes:

Read your statute carefully, noting what actus reus and mens rea requirements the state must meet in order to secure a conviction.

GROUPS 1 & 5: California Statute (pp. 397-399, Dressler Casebook)
GROUP 2: N. Carolina law, pp. 404-408 & as applied in Alston case

16-6-1. Rape. (new Code number; same law as explicated in case)
(a) A person commits the offense of rape when he has carnal knowledge of a female forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ.

... Consent by the victim is a complete defense, but consent which is induced by fear of violence is void and is not legal consent.

Force or threat of force must be sufficient to overcome the will of the victim to resist the sexual intercourse alleged to have been rape.

GROUP 3: Wisconsin 940.225 Sexual assault.
(1) FIRST DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class B felony:
(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.
(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.
(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class C felony:
(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.
(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.
...
(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony. ...
(4) CONSENT. "Consent", as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact . . . .
(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) DEFINITIONS. In this section: . . . 
(b) "Sexual contact" means any of the following:
1. Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1):
   a. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.
   
   (c) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

GROUPS 4, 6: Pennsylvania Statute (p. 402-404)

DAYS 2 AND 3:

The assignments for next week require careful reading of the instructions below. The most vital thing to note is that your group statute drafted for Friday's class must be completed and submitted to me no later than Tuesday, 11/1, at noon. It will be analyzed and critiqued in class on Friday, 11/4, by another group of your classmates. In the meantime, (and in addition) you must read the materials for Wednesday's class, below.

Wednesday 11/2 Class:

1. In re John Z.—the case, the article and the policy implications of prosecuting acquaintance rape The John Z. case: pp. 447 – 452
Friday 11/4: Legislative Drafting Process:

In order to facilitate the study of criminal sexual assault, in addition to taking an opportunity to learn about legislative drafting, we will engage in an extended role-play. Your assignment will entail working with the classmates in your group to draft a model rape statute that meets the goals of your constituency. Your model statute must be submitted to me via email no later than Tuesday, 11/1 at 12:00 p.m.

On Friday, we will convene a legislative drafting session, in which each statute will be analyzed and critiqued by the group whose constituency is most diametrically opposed to your own. At the end of the session, we will step out of character and vote on the statute we think best serves the interests of the State of California.

The Legislative Drafting Exercise:

Six interest groups have been invited to submit proposed rape statutes to the Legislative Assembly. In undertaking the drafting process, groups may wish to form subgroups, which might develop competing proposals or work on sub-issues, such as actus reus or mens rea. Ultimately each group must develop a single proposed statute, which must be emailed to me no later than noon, on Tuesday, 11/1. Each group must elect a leader who will be charged with submitting the statute to me, and also with coordinating meetings to prepare the classroom-based critique of another group’s statute. (I will send the leader a copy of the statute to be analyzed by his/her group on Tuesday, 11/1, by 4 p.m.).

The six interest groups correspond to our regular classroom subgroups. The groups are as follows:

1. Group 1 represents the California Coalition Against Sexual Assault, an organization dedicated to promoting the civil and criminal protection of rape victims.
2. Group 2 represents the California Association of Criminal Defense lawyers.
3. Group 3 represents the California Association of District Attorneys (an association of prosecutors working at the trial and appellate levels)
4. Group 4 works for State Representative Marjorie Smith, whose son was prosecuted for rape (and found not guilty) after a drunken
encounter with a woman he met at a fraternity party at a California State University last spring.

5. Group 5 works for State Representative Frank Card, who is motivated by his frustration with the local prosecutor's refusal to indict his daughter's adult drama teacher on the grounds that their sexual relationship was "consensual," even though she claimed the relationship only began after he informed her that he would not write her a college recommendation unless they "really got to know one another." At the time, his daughter was an 18 year-old high school senior.

6. Group 6 represents the California Coalition to Stop Prison Overcrowding, a group representing a coalition of subgroups united by their conviction that California cannot afford to remedy the currently unconstitutional conditions in its state prisons by increasing prison capacity, nor can it sustain its current rates of incarceration.