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## Rape Case is Evidence of Legal Bias

By Diane Carman

For a moment, let's imagine the controversy involves a robbery. Let's say a military man has accused another man of theft. The attorney for the accused learns that the alleged victim was so traumatized by the experience of being robbed that he sought counseling, and the attorney seizes this as evidence that the robbery victim is lying.

In your wildest fantasies, can you imagine a judge ordering the therapist to turn over the victim's counseling records to help acquit the defendant?

"There's no way a judge would even let that question be asked," said attorney Wendy Murphy, an expert on gender bias in the criminal justice system.

"The guy could have talked about having an affair or taking Viagra and everyone would agree that it was very, very important to keep that information private."

The public, meanwhile, would be outraged by the bias exhibited by the judge in his effort to intimidate the victim and undermine the prosecution.

Activist judges indeed.

But when it comes to perpetuating myths about women – that they are dishonest, promiscuous, vindictive, blameworthy and inherently mentally unstable – judges are only too eager to cooperate.

The fact that the federal courts are even entertaining the motion to review the counseling records of alleged rape victim Jessica Brakey with therapist Jennifer Bier is proof that the criminal justice system is biased against women, said Murphy, Bier's attorney. And that institutional bigotry is widely accepted.

"The system has a natural resistance to the misuse of racial prejudice as a toy for the defense strategy," she explained. "The exact opposite is true when it comes to gender bias."

And that's especially true in rape cases.

"The very people who complain when race prejudice is used against men celebrate the use of gender prejudice," she said. It's considered brilliant, effective defense work. But the cost is enormous.

“If you’re going to do bad things in the name of winning and in the process you’ve promoted wide-scale social prejudice, it creates a hierarchy of freedom,” Murphy said. “You’re asking women to lie down in the name of liberty.”

While gender bias has been around forever – it took American women 142 years to get the right to vote, after all – the exploitation of it by the legal system really took off when rape laws began to evolve over the last century.

For decades, rape laws were aimed at protecting men’s property values, Murphy explained. As long as women were considered property under the law, rape was a fairly easy crime to prove.

“Once it became a crime against women’s bodies, their autonomy, their sexual freedom and the woman’s right to say no, all of a sudden the mythology began to develop around a woman being vindictive and mentally ill.

“And it really stuck like glue.”

Judges don’t allow male victims of violent crimes to be “beaten up” by the defense, Murphy said, so the only explanation for why they allow female victims to be brutalized in rape trials is “because of the system’s desire to be not as effective in deterring sexual violence.”

“The murkier we make rape law, the harder it is to prosecute in general and the more sex men get,” she said.

Murphy is concerned that the subpoena of Bier’s counseling records is just a cynical ploy to derail the prosecution of Joseph Harding.

Brakey has accused him of raping her when they were both cadets at the Air Force Academy.

“Rape is a particularly hot issue for the military,” she said. “They want this case to go away tomorrow.

“I fear the court-martial date will come and they will dismiss the charges” against Harding, she said. “They’ll say, ‘Because Jen didn’t give us the records, we had no choice.’”

“They’re going to do their best to lose this case any way they can,” she said. “They’ve had 60 reported rapes since women were admitted to the academy in 1993, and not a single conviction.

“How much do you think they really care?”

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