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Beyond Seduction: Lessons Learned about Rape, Politics, and Power from Dominique Strauss-Kahn and Moshe Katsav

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BEYOND SEDUCTION:
LESSONS LEARNED ABOUT RAPE, POLITICS, AND
POWER FROM DOMINIQUE STRAUSS-KAHN
AND MOSHE KATSAV

*Hannah Brenner**

In the last decade, two influential international political figures, Dominique Strauss-Kahn, former head of the International Monetary Fund, and Moshe Katsav, former President of Israel, were accused of engaging in extreme and ongoing patterns of sexual violence. The collection of formal charges against the two men included rape, forcible indecent assault, sexual harassment, and obstruction of justice. The respective narratives surrounding the allegations against Katsav and Strauss-Kahn have their own individual characteristics, and each of the cases unfolded in diverging ways. Yet, the actions of these two men taken together, and the corresponding response of the legal systems in France, Israel, and the United States, offer an opportunity to evaluate contemporary issues of rape and power from a comparative perspective.

This Article begins by telling the stories of how Strauss-Kahn and Katsav engaged in systematic patterns of sexual violence. It provides important background and context against which the two men are evaluated, offering a comparative analysis of the laws under which they faced accusations, formal charges, and in some instances, convictions. It is difficult to understand the ways in which the legal system and even the media responded to these allegations of sexual violence.

This Article considers the victimization of women by the politically powerful by utilizing a framework created originally by Norwegian sociologist Nils Christie that identifies a set of characteristics

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describing the “ideal victim.” It next examines some of the legal issues impacted by stereotypes of “ideal” victims that conflict with the reality of “real” victims, making recommendations for expanding Christie’s framework to include an equally comprehensive evaluation of perpetrators and more importantly, the power differential that exists between victim and perpetrator. Midway through this Article, I explore the connection between sexuality, seduction, and sexual violence, and argue for a disentangling of these constructs. Finally, this article concludes by considering how the allegations against these powerful international political figures might advance the conversation on the intersection of sexual violence and power.

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INTRODUCTION

*“All rape is an exercise in power, but some rapists have an edge that is more than physical. They operate within an institutionalized setting that works to their advantage and in which a victim has little chance to redress her grievance.”*¹

Susan Brownmiller’s groundbreaking feminist text, *Against Our Will*,² first published in the early 1970s, identified many of the characteristics that have become part of the accepted rhetoric of sexual violence.³ Today, rape and other forms of violence against women⁴ are commonly understood to be about power and control that is wielded by a perpetrator against a victim⁵ in a variety of contexts. Still, a dominant part of our collective consciousness associates these crimes with the idea of the stranger attacking a

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1. SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 256 (1975). Brownmiller’s work was a groundbreaking feminist expression of the depths and dynamics of sexual violence in the 1970s. It remains an important and relevant resource today.
 2. *Id.*
 3. I use the term sexual violence in this Article as somewhat of an umbrella term to describe acts such as rape, sexual assault, and sexual harassment. Although “[t]here is no universally agreed definition of sexual violence,” my use of the term is consistent with that promulgated by the United Nations and The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. EUROPEAN INST. FOR GEND. EQUAL., *THE STUDY TO IDENTIFY AND MAP EXISTING DATA AND RESOURCES ON SEXUAL VIOLENCE AGAINST WOMEN IN THE EU 7* (2012). Although I do not use it in this Article, I am intrigued by the new framework proposed by Michal Buchhandler-Raphael, that argues for a new way to conceptualize rape as a “sexual abuse of power.” Michal Buchhandler-Raphael, *The Failure of Consent: Reconceptualizing Rape as Sexual Abuse of Power*, 18 MICH. J. GENDER & L. 147 (2011).
 4. In this Article I primarily focus on sexual violence that is perpetrated against women by men. In doing so, I refer to victims using the pronoun “she” and to perpetrators using the pronoun “he.” In the context of this specific Article, the inquiry rests exclusively on women who were victims of repeated patterns of sexual abuse by men in positions of power. It is also important to note that statistically, it is much more common for women to be victims of sexual violence and men to be perpetrators of such violence; however, this should not serve to detract from the experience of male victims or to ignore that women can also perpetrate violence. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NATIONAL CRIME VICTIMIZATION SURVEY, 2003 STATISTICAL TABLES tbl.44 (2005), available at <http://dx.doi.org/10.3886/ICPSR22901.v2>.
 5. I consciously use the term victim to refer to those individuals who are harmed as a result of sexual violence; while the term is imperfect, it effectively connotes the power imbalance inherent in such situations and also is inclusive, in a way that the term survivor is not, of those individuals who have been killed as a result of such crimes.

woman walking home alone at night or jogging alone through the park, ignoring the well-documented reality that most rapes are committed by someone known to the victim, often by an acquaintance, such as a work colleague, dating partner, or even a spouse.⁶ Many of these offenses, though common, take place within a very private realm.⁷ Privacy is maintained because many victims opt not to report or even talk about what happened to them for a myriad of reasons.⁸ Sometimes, highly visible or well-known individuals, such as Hollywood actors, elected officials, or professional athletes, perpetrate these offenses.⁹ As a result, what once existed as an almost

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6. Research suggests that in the United States two-thirds of all rapes are committed by someone known to the victim. BUREAU OF JUSTICE STATISTICS, *supra* note 4, at tbl. 34. This statistic holds true across the countries analyzed in this Article. In France, Bulletin 2000 of the *Collectif Féministe Contre le Viol* reports that in as many as 74% of cases, the victim knew the aggressor. *Rape: The Statistics*, SOS FEMMES (July 2000), <http://www.sosfemmes.com/english Rape/statistics.htm>. In Israel, the Association of Rape Crisis Centers reports an even higher number of cases; in this context, “eighty-seven percent of calls come from women who know their attacker.” Ruth Eglash, *Nice Girls Don’t Get Raped*, JERUSALEM POST (Mar. 8, 2010), <http://www.jpost.com/Features/In-Thespotlight/Nice-girls-dont-get-raped>.
 7. Reva B. Siegel, *Civil Rights Reform in Historical Perspective: Regulating Marital Violence*, in REDEFINING EQUALITY 29, 34–35 (Neal Devins & Davison M. Douglas eds., 1998). Domestic violence, for example, was construed as a matter between husband and wife that did not rise to the level of requiring legal intervention and instead was thought best to remain in the very private sphere of the home. *Id.* Similarly, rape was considered a private matter. Even sexual harassment “was rejected as a personal matter having nothing to do with work or a sexual assault that just happened to occur at work.” Reva B. Siegel, *A Short History of Sexual Harassment*, in DIRECTIONS IN SEXUAL HARASSMENT LAW 11, 11 (Catharine A. MacKinnon & Reva B. Siegel eds., 2004).
 8. Most rapes and sexual assaults against females are not reported to the police: “Thirty-six percent of rapes, thirty-four percent of attempted rapes, and twenty-six percent of sexual assaults were reported to police” in the United States in the years 1992–2000. CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS, RAPE AND SEXUAL ASSAULT: REPORTING TO POLICE AND MEDICAL ATTENTION 1992–2000 1 (2002), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=317>. Barriers that prevent victims from reporting include distrust of law enforcement, fear of not being believed, and are often informed by cultural reasons. *See, e.g.*, Eglash, *supra* note 6 (reporting that only a fraction of the women seeking services from a national rape crisis center come from Arab women, who often have a very real fear of the police, and whose cultural practices keep them from talking about sex); *see also* Michelle J. Anderson, *Women Do Not Report the Violence They Suffer: Violence Against Women and the State Action Doctrine*, 46 VILL. L. REV. 907, 935 (2001) (“States are such chronic bad actors in the area of violence against women that most women who suffer rape have no faith that the state will take their claims of victimization seriously. As a result, the vast majority of women do not report to state authorities when they suffer sexual violence.”).
 9. The accusations of sexual violence against Katsav and Strauss-Kahn are not unique. The details of other cases vary, but each shares the dynamic of a male in a superior

exclusively private matter becomes a public spectacle that plays out in the media: from occupying space in the newspaper, television, and internet, to that of conversations on the subway, at the grocery store, or café.

What is characteristic of these particular examples is that the perpetrators are powerful, wealthy, well-known, and respected individuals. This speaks to Brownmiller's description of how the power dynamic in cases of rape often transcends the physical.¹⁰ Brownmiller makes reference to an "edge" possessed by perpetrators, that can make it seemingly impossible for a victim to come forward, or if she does, that she will face scrutiny on a wide range of issues extending beyond what happened during the assault. These issues may include her sexuality, her sexual history, etc., resulting in a process of re-victimization.¹¹ Historically, the legal system has not responded positively toward victims of sexual violence.¹²

Focusing exclusively on victims does not adequately promote an understanding of the dynamics of sexual violence. This article therefore takes a unique approach by analyzing sexual violence primarily vis-à-vis two perpetrators. Over the last decade, two influential international political figures, Dominique Strauss-Kahn, former head of the International Monetary

position who harms women "beneath" him. *See* *Jenson v. Eveleth Taconite Co.*, 130 F.3d 1287 (1997) (discussing class action claim for sexual harassment and discrimination that violated Title VII and the Minnesota Human Rights Act, which was filed by female employees in reaction to women being regularly harassed in a sexual and threatening manner by male coworkers throughout the 1970s and 1980s); *The Nomination of Clarence Thomas to be Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 102nd Cong. 36–40 (1991) [hereinafter *Nomination of Clarence Thomas*] (testimony of Anita F. Hill, Professor of Law, University of Oklahoma) (testifying that while she was his assistant, Clarence Thomas often made comments about his sexual prowess, discussed pornographic or other sexually explicit content both with her and while in her presence, and made sexual advances and innuendos); Kirk Johnson, *Settlement Is Reached in Bryant Case*, N.Y. TIMES (Mar. 3, 2005), http://www.nytimes.com/2005/03/03/national/03kobe.html?_r=0. (reporting allegations of sexual assault against Kobe Bryant).

10. BROWNMILLER, *supra* note 1.

11. BROWNMILLER, *supra* note 1, ch. 11.

12. *See generally* SUSAN ESTRICH, *REAL RAPE* (1987) (providing an overview of the myriad ways in which the law has not served the interests of rape victims). For an excellent description of some of the very specific ways state actors in particular have failed rape victims, like refusing to investigate or take complaints seriously, see Anderson, *supra* note 8, at 909.

Fund,¹³ and Moshe Katsav, former President of Israel,¹⁴ have been accused of engaging in extreme and ongoing patterns of sexual violence that exemplify such institutional power dynamics.¹⁵ Taken together, the two men were accused of, charged with, and in some instances convicted of numerous crimes committed against multiple victims that spanned three countries on three continents.¹⁶ The collection of formal charges included rape, forcible indecent assault, sexual harassment, and obstruction of justice.¹⁷

The specific details of the various allegations against Katsav and Strauss-Kahn are different and the cases have unfolded in diverging ways. Katsav was sentenced to seven years in prison following his conviction on counts of rape and sexual harassment.¹⁸ Strauss-Kahn faced numerous accusations from multiple victims, ranging from sexual harassment to rape.¹⁹ He ultimately faced criminal charges for one attack on a woman in the United States; these charges were subsequently dropped,²⁰ and he has sustained no criminal sanctions in France or in the United States as of the publication of this Article. A civil lawsuit was settled before trial, though details of the

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13. With 188 member countries, the International Monetary Fund (“IMF”) “promotes international monetary cooperation and exchange rate stability, facilitates the balanced growth of international trade, and provides resources to help members in balance of payments difficulties or to assist with poverty reduction.” *Overview*, INT’L MONETARY FUND, <http://www.imf.org/external/about/overview.htm> (last visited Nov. 14, 2013). The IMF is a United Nations agency with its own charter and it “keeps track of the economic health of its member countries, alerting them to risks on the horizon and providing policy advice [,] . . . lend[ing] to countries in difficulty, and provid[ing] technical assistance and training to help countries improve economic management.” *Id.* Dominique Strauss-Kahn served as the IMF Director from November 2007 until his resignation in light of the Diallo allegations in May 2011. *Dominique Strauss-Kahn*, INT’L MONETARY FUND, <http://www.imf.org/external/np/omd/bios/dsk.htm> (last visited Nov. 14, 2013).
 14. Moshe Katsav was President of Israel from 2000–2007. *Former Israeli President Moshe Katsav Begins Jail Term for Rape*, GUARDIAN (U.K.) (Dec. 7, 2011), www.guardian.co.uk/world/2011/dec/07/former-israel-president-moshe-katsav.
 15. For simplicity of expression, I use the terms victim and perpetrator without the “alleged” preface. It is important to note that many of the incidents described in this Article have not resulted in convictions or they remain unresolved from a legal standpoint. I explicitly make clear that particularly in the case of Strauss-Kahn, and to a lesser degree with Katsav, many of the allegations have not been substantiated. They are nonetheless useful examples through which to evaluate many of the issues raised in this Article; such an analysis is not dependent upon a positive legal determination.
 16. *See infra* Table 1 and Table 2.
 17. *Id.*
 18. *CrimC (TA) 1015/09 State of Isr. v. Katsav* (Mar. 22, 2011), Nevo Legal Database (by subscription) (Isr.).
 19. *See infra* Table 1 for an overview of accusations made and charges filed against Strauss-Kahn.
 20. *See infra* Part I.A.

settlement are unknown.²¹ Although the circumstances surrounding the two men's misconduct differ in terms of the nature of the crimes alleged, the actual charges that were filed, the ultimate disposition of the cases, the convictions or lack thereof, and the ways in which these cases played out in the courts and in the media, the two cases nonetheless provide an opportunity to explore issues of how power and politics intersect with sexuality, seduction, and sexual violence in the twenty-first century.²² Despite the differences, the actions of these two men and the corresponding response of the respective legal systems and media in France, Israel, and the United States, taken together, offer a mechanism through which to evaluate contemporary issues of rape and power from a comparative perspective.

Even across continents, there are important commonalities in the way the criminal justice system, the media, and society more broadly, treat and view victims and perpetrators.²³ Each of these systems is connected with the other; they do not exist in isolation. As one scholar notes, "[i]n the context of rape, as in other media coverage, societal attention is often driven by high-profile incidents. In the language of political science, such events are called 'focusing events.'"²⁴ These events, which are highly visible, make important contributions to the creation of laws and public policy.²⁵ The characteristic treatment of victims, or perpetrators, is not unique to one country or region; the problem of sexual violence crosses geographic borders as well.²⁶

I remember learning about the allegations of sexual assault against Dominique Strauss-Kahn in the United States, in the late spring of 2011. As I started reading the news articles, my initial response was one of marked surprise. That the New York Police Department reacted to the allegations with such seriousness and swiftness represented a significant shift in how

21. Complaint and Demand for Jury Trial, *Diallo v. Strauss-Kahn*, No. 307065-2011 (N.Y. Sup. Ct. Aug. 8, 2011), 2011 WL 3435858 [hereinafter Complaint]; see also Joseph Ax, *Strauss-Kahn, NYC Hotel Maid Settle Civil Lawsuit Over Alleged Assault*, REUTERS (Dec. 10, 2012), <http://www.reuters.com/article/2012/12/10/us-strauss-kahn-idUSBRE8B90K620121210>.

22. See *infra* Part I for a comprehensive discussion of these issues.

23. See *infra* Part I.C.

24. Francis X. Shen, *How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform*, 22 COLUM. J. GENDER & L. 1, 43 (2011).

25. See *id.*

26. The widespread problem of violence against women is well documented. The World Health Organization notes that "[i]ntimate partner violence and sexual violence are serious and widespread problems worldwide." WORLD HEALTH ORG. & LONDON SCH. OF HYGIENE AND TROPICAL MED., PREVENTING INTIMATE PARTNER AND SEXUAL VIOLENCE AGAINST WOMEN: TAKING ACTION AND GENERATING EVIDENCE 3 (2010), available at http://www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pdf.

law enforcement has historically responded.²⁷ I remember feeling uneasy about this perceived evolution. On the one hand, I was optimistic that law enforcement seemed committed to the pursuit of justice even when the accused was someone as politically powerful as Strauss-Kahn. On the other, I remained concerned about how the case might unfold over time. I wanted to believe that we had arrived at a place where a relatively powerless victim of sexual violence could accuse her politically powerful attacker and be taken seriously—that justice for rape victims could be served. But before even finishing that first article, I was overcome by skepticism. I wondered if the law would ultimately serve this particular victim, and indeed my fears were founded as the story unfolded in the intervening days and weeks. The media coverage of the case against Strauss-Kahn was extensive both in the United States and abroad.²⁸

The allegations against Katsav were similarly strewn across international headlines in mainstream news and the blogosphere.²⁹ Technology al-

27. Others shared my initial reaction. In a Letter to the Editor that appeared in the New York Times, the author wrote, “[w]hatever the result of the case against Dominique Strauss-Kahn . . . his arrest is an exhilarating example of the evolution of justice. For most of human history, a servant accusing a politically powerful man of rape would have been laughed at. In much of North America and Europe this is no longer the case; if there is sufficient evidence, anyone can be tried and convicted.” David Hayden, Letter to the Editor, *The I.M.F. Chiefs Arrest*, N.Y. TIMES (May 16, 2011), <http://www.nytimes.com/2011/05/17/opinion/l17kahn.html>.

28. Kantar Media, an organization devoted to measuring the impact of media, reported that the news about Strauss-Kahn graced the front-page headlines of 150,000 newspapers across the globe during the first ten days after he was arrested in the United States for allegedly assaulting Diallo. *L'affaire DSK: le summum du bruit médiatique*, RADIO FRANCE INTERNATIONALE (May 26, 2011), www.rfi.fr/france/20110526-affaire-dsk-le-bruit-mediatique-chiffres. The amount of media coverage was unprecedented. *Id.*

29. As one measure of the media attention focused on this case, I asked my research assistant to gather articles from the first allegations against Katsav until his sentencing from the Israeli newspaper, *Haaretz*. The search was also expanded to include *The New York Times*, *The Guardian*, and other internet resources. See, e.g., Roni Singer-Heruti, *Former Katsav Employees Tell Similar Stories of Sexual Assault*, HAARETZ (Isr.) (Jan. 31, 2007, 12:00 AM), www.haaretz.com/print-edition/news/former-katsav-employees-tell-similar-stories-of-sexualassault-1.211581; Roni Singer-Heruti & Haaretz Correspondent, *Eighth Allegation of Sexual Assault Filed Against Katsav*, HAARETZ (Isr.) (Sept. 20, 2006, 12:00 AM), www.haaretz.com/print-edition/news/eight-allegation-of-sexualassault-filed-against-katsav-1.197754; *Israeli President Misses Parliament Opening*, GUARDIAN (U.K.) (Oct. 16, 2006), <http://www.guardian.co.uk/world/2006/oct/16/israel1>; *Police in Israel Question President*, N.Y. TIMES (Aug. 24, 2006), www.nytimes.com/2006/08/24/world/middleeast/24israel.html?ref=moshekatsav&_r=0; *Israeli Police Investigate Sex Harassment Allegations Against President*, FEMINIST MAJORITY FOUNDATION (Aug. 23, 2006), <http://feminist.org/news/newsbyte.uswirestory.asp?id=9840>; Ian Mosley, *Jewish Politics: Rapists Welcome*, STORMFRONT (Oct. 16, 2006), www.stormfront.org/forum/

lows for an unprecedented exchange of information that crosses international borders. In this context, it affords the widespread distribution of knowledge and information about issues that have historically remained in the very private realm, allowing a very public discourse to take place. Highly publicized events like these often have an impact that goes beyond the mere dissemination of information. The media can shape culture, change laws, and affect both individual and collective decision-making in both positive and negative ways. This is particularly true when it comes to issues like rape, sexual harassment, and other forms of sexual violence.

There is a significant power in telling the stories of victims of sexual violence. A number of scholars recognize that “[s]torytelling theory is an important theme in rape reform.”³⁰ Moreover, the media plays a fundamental role in carrying out this storytelling function and shaping the public’s perception of such crimes.³¹ Although the public coverage of such private kinds of victimization can have far-reaching, negative effects on the individuals involved, it also affords an opportunity to analyze the current state of sexual violence and sometimes even moves the political and legal agenda forward. This analysis and resulting political movement has the potential to create new laws and policies as well as shifts in attitudes and opinions.

As a point of illustration, perhaps one of the most famous examples in recent history occurred when Anita Hill testified before Congress in 1991 as part of the Supreme Court nomination hearings for Clarence Thomas.³² Hill was called to speak about the sexual harassment she endured while working for Thomas when he was director of the EEOC and a supervisor at the U.S. Department of Education.³³ Although Hill was testifying in the context of Thomas’s confirmation hearings, it appeared throughout much

+334140; Jonathan Lis & Yuval Yoaz, *Police: Enough Evidence Found to Indict Katsav on Sex Charge*, HAARETZ (Isr.) (Sept. 19, 2006), <http://www.haaretz.com/news/police-enough-evidence-found-to-indict-katsav-on-sex-charges-1.197569>; *Police: Enough Evidence Found to Indict Katsav on Sex Charges*, 911BLOGGER.COM, <http://911blogger.com/news/2006-09-21/police-enough-evidence-found-indict-katsav-sex-charges> (last updated Sept. 20, 2006, 4:31 AM).

30. Buchhandler-Raphael, *supra* note 3, at 190 (contending that the use of storytelling and narrative is particularly important “when it comes to sexual abuse of power in the workplace, academia, and other professional and institutional settings”).

31. See generally Kristen Gilchrist, “Newsworthy” Victims?, 10 FEMINIST MEDIA STUD. 373, 376 (2010) (discussing how race and status affect media portrayal and blame-worthiness of female victims of violent crime).

32. See *Nomination of Clarence Thomas*, *supra* note 9.

33. For a comprehensive account of Hill’s personal experience during and after giving testimony at the Thomas confirmation hearings, see ANITA HILL, *SPEAKING TRUTH TO POWER* (1997).

of the ordeal that she herself was on trial or under investigation.³⁴ The impact of her testimony took its toll as Hill was vilified by the media and by many of her own friends and colleagues.³⁵ Beyond Hill's own experience, however, lies a more global story that unfolded both in the United States and abroad in the years that followed, which would forever change the landscape of sexual harassment.

The Article proceeds in the following way. Part I tells the stories surrounding the accusations of sexual violence against Strauss-Kahn and Katsav as alleged by each of the respective victims. Drawing on media coverage and legal and court documents, this Article uses these two men as case studies to illustrate the intersection of politics, power, sexuality, and sexual violence. The value in this exercise is not entirely dependent on whether the allegations, particularly in the case of Strauss-Kahn, are or are not ultimately substantiated by the legal process. Indeed, there is much to be learned from analyzing the way in which alleged victims come forward in the first place, how they are framed in the media, and their respective interactions with the legal system, regardless of the outcome of the case. The Article next explores the laws that govern the crimes Strauss-Kahn and Katsav were accused of committing in their respective countries. Part II takes on a more theoretical perspective, exploring the relationship between sexuality and seduction, and arguing for a disentangling of the two insofar as they relate to the perpetrators of sexual violence. Part III analyzes what happens when victims of rape collide with the politically powerful, utilizing Norwegian sociologist Nils Christie's framework of what constitutes the "ideal" rape victim as a starting place for analysis and advocating for the addition of new dimensions to his categorization that reflect the current reality of sexual violence. Finally, in Part IV, the Article considers the broader legal and societal implications of these heavily media-covered events and what the related but perhaps not so obvious outcomes of these two cases might ultimately be.

34. *Id.*; see also *Nomination of Clarence Thomas*, *supra* note 9. Hill's account of what happened during the confirmation hearings, together with the official record, reflect a process that by its nature was more indicative of an adversarial proceeding. Scholars have noted this connection. See, e.g., Lynda Lee Kaid, John Tedesco & Clifford A. Jones, *Tracking Reactions: Audience Evaluations of the Hill-Thomas Hearings*, in *THE LYNCHING OF LANGUAGE: GENDER, POLITICS, AND POWER IN THE HILL-THOMAS HEARINGS* 169 (Sandra L. Ragan et al. eds., 1996) [hereinafter *THE LYNCHING OF LANGUAGE*]. As an example, Hill was subjected to a polygraph test. HILL, *supra* note 33, at 223. Hill writes, "Simpson must have forgotten I was not being considered for the Supreme Court. I was not being scrutinized for a position of public trust. I was simply giving evidence as a witness." *Id.* at 216.

35. HILL, *supra* note 33, at 199–218.

I. SYSTEMATIC PATTERNS OF SEXUAL VIOLENCE PERPETRATED BY THE POLITICALLY POWERFUL

Dominique Strauss-Kahn and Moshe Katsav occupied similar positions of political power, albeit in different countries and contexts. Strauss-Kahn was once chief of the powerful International Monetary Fund and a member of the French Socialist Party³⁶; he was, in fact, that party's likely presidential candidate.³⁷ Katsav was elected by the Knesset, Israel's parliament made up of 120 members elected in proportional elections,³⁸ as the eighth Israeli President in 2000, where he served in this role for seven years before he resigned, just days before the end of his term.³⁹ Although a comparison of their accomplishments and backgrounds reveals differences in their specific roles in politics, they share a striking similarity as two highly credentialed and powerful individuals who enjoyed significant success throughout their careers, and who seemed destined for even greater professional achievement.

Both Strauss-Kahn and Katsav have been accused of engaging in sexual misconduct such as sexual harassment and rape. Their patterns have manifested in a variety of ways, often involving their professional lives. It is difficult to imagine that such behavior could be disentangled from their respective positions of political power. Both men had reputations of being "womanizers" or having "troubling" relationships with women. Strauss-Kahn was described in one article as possessing a "frenzied desire to seduce women."⁴⁰ Such characteristics, without more, are hardly noteworthy in today's political climate that is filled with stories of politicians engaging in extramarital affairs and seeking sex for money.⁴¹

A proclivity for seduction or desire to have sex does not inherently make one a rapist, but neither does being generally seductive mean that one is less likely to commit rape. It is true that rape and other kinds of gender-based violence have at their core a sexual component; that is, sex is often

36. Steven Erlanger, *One Prospect for President Isn't Talking, but France Is*, N.Y. TIMES (Feb. 17, 2011), <http://www.nytimes.com/2011/02/18/world/europe/18france.html>.

37. *Id.*

38. *See supra* note 14.

39. Bibliography of *Moshe Katsav*, ISR. MINISTRY FOREIGN AFF., <http://mfa.gov.il/MFA/MFA-Archive/2002/Pages/Moshe%20Katsav.aspx> (last visited Nov. 14, 2013); *Israeli President Katsav Resigns*, BBC NEWS (U.K.), http://news.bbc.co.uk/2/hi/middle_east/6252340.stm (last updated June 29, 2007).

40. Rapahelle Bacqué, *Dominique Strauss-Kahn: A Scandal Waiting to Happen*, TIME (May 18, 2011), <http://www.time.com/time/world/article/0,8599,2072205,00.html>.

41. See Ashley Reich, *David Petraeus Affair and 12 Other Politicians' Infidelities*, HUFFINGTON POST (Nov. 9, 2012), http://www.huffingtonpost.com/2012/11/09/david-petraeus-affair_n_2104855.html, for a summary of the coverage of politicians caught in infidelity and paid sex scandals that were extensively covered by the media.

used as a weapon to wield power and control over another person, though it is important to remember that such crimes are not about sex. I am troubled by the trend of connecting seduction or sexuality generally with crimes like rape. Strauss-Kahn may in fact be a womanizer or a seducer, but the accusations against him, in my view, occupy a very different category. The media routinely connects the two in a problematic and unproductive way by emphasizing Strauss-Kahn's reputation as a seducer. I argue for a disentangling of rape from seduction.

Strauss-Kahn and Katsav transcended the boundaries of seduction. They were both repeatedly accused by numerous women of various forms of sexual violence and other legally cognizable offenses, perpetrated in the context of their positions of power.

A. *Dominique Strauss-Kahn*

Strauss-Kahn has been accused of various forms of sexual violence by at least three different women.⁴² At the end of the day, at least the day on which this Article went to press, there has not been a single criminal conviction sustained against Strauss-Kahn for any of these incidents. The criminal justice systems in France and the United States have investigated Dominique Strauss-Kahn on numerous occasions, the media has written about him extensively and, except for an out of court settlement in a civil suit, he has escaped liability for his conduct.⁴³ It is important to carefully construct the discussion surrounding Strauss-Kahn's actions.⁴⁴ Although the allegations against him remain legally unsubstantiated, the accompanying narrative is nonetheless a useful way to explore how issues of rape and power play out in the French and American legal systems and in the media.

Public knowledge about the pattern of Strauss-Kahn's alleged sexual misconduct unfolded out of order from its actual chronology. The allegations that he sexually assaulted Nafissatou Diallo in the United States and the accompanying media attention ultimately prompted another woman,

42. This Article considers the allegations by Nafissatou Diallo, Tristane Banon and a woman named Marie-Anne. For a summary of these three incidents, see *infra* Table 1. A fourth woman, Piroska Nagy, worked with Strauss-Kahn at the IMF; her relationship with Strauss-Kahn became subject of an independent investigation, which resulted in the IMF concluding that the two had a brief but consensual relationship, but that Strauss-Kahn did not engage in harassment, favoritism, or abuse of his authority. Landon Thomas Jr., *Woman in 2008 Affair Is Said to Have Accused I.M.F. Director of Coercing Her*, N.Y. TIMES (May 16, 2011), http://www.nytimes.com/2011/05/17/world/europe/17fund.html?_r=0. No charges were ever filed. Nagy maintains that Strauss-Kahn used his power and influence to have a relationship with her. *Id.*

43. See *infra* Table 1.

44. See *supra* note 15.

Tristane Banon, to publicly reveal her own experiences with the former IMF head.⁴⁵ This phenomenon, whereby a victim of sexual violence comes forward after a significant amount of time has passed, is not uncommon.⁴⁶ In the United States, after Anita Hill testified before Congress against Clarence Thomas during his confirmation hearings,⁴⁷ women who had endured sexual harassment began talking more openly about their experiences. This came to be known as the “Anita Hill effect.”⁴⁸ This section considers three different allegations of sexual violence against Strauss-Kahn and analyzes the response of the respective legal systems. While there may be other victims who allege wrongdoing, these examples offer a diverse representation from a legal and media perspective.

Although Strauss-Kahn has long been the subject of attention in the media, both for his powerful dealings as a political and business figure and for his proclivity for seduction, the first time he faced criminal charges for sexual violence was in the United States in 2011. The events leading to the filing of criminal charges occurred on May 14, 2011 in Strauss-Kahn’s hotel room with a woman named Nafissatou Diallo who was employed as a housekeeper for the Hotel Sofitel in New York City.⁴⁹ According to official records, Diallo entered the suite pursuant to her job as a housekeeper; she

45. Banon came forward earlier with accusations of sexual misconduct, but she did not publicly disclose the identity of the man who harmed her until a television interview in 2007. During the course of the interview, she did name Strauss-Kahn, but the television station decided not to broadcast it. See *Profile: Dominique Strauss-Kahn*, ALJAZEERA (Qatar), <http://www.aljazeera.com/news/europe/2011/05/20115156173137271.html> (last updated Dec. 19, 2012). Banon also wrote about the encounter in her book *Le Bal des Hypocrites*, but again, did not identify Strauss-Kahn. TRISTANE BANON, *LE BAL DES HYPOCRITES* (2011). It was not until the Diallo allegations manifested in the United States that she spoke publicly about what happened, naming Strauss-Kahn as the perpetrator. Kim Willsher, *Tristane Banon: Why I Still Can't Bear to Say Dominique Strauss-Kahn's Name*, TELEGRAPH (U.K.) (Nov. 5, 2011), www.telegraph.co.uk/news/worldnews/europe/france/8871786/Tristane-Banon-why-I-still-can't-bear-to-say-Dominique-Strauss-Kahns-name.html.

46. Pa. Coal. Against Rape, *Common Victim Behaviors of Survivors of Sexual Abuse*, PCAR PINNACLE (Mar. 26, 2013), www.pcar.org/blog/common-victim-behaviors-survivors-sexual-abuse.

47. *Nomination of Clarence Thomas*, *supra* note 9.

48. Scholars and others have used this term to describe the impact Hill’s testimony has had on the visibility of sexual harassment and the resulting trend of women coming forward to talk about their own experiences. See, e.g., THE LYNCHING OF LANGUAGE, *supra* note 34; Julianne Malveaux, *The Year of the Woman or Woman of the Year: Was There Really an “Anita Hill Effect”?*, in *AFRICAN AMERICAN WOMEN SPEAK OUT ON ANITA HILL-CLARENCE THOMAS* 159 (Geneva Smitherman ed., 1995). The “Anita Hill effect” has also been used to describe a positive impact on the prevalence and success of women in politics. See, e.g., LINDA WITT ET AL., *RUNNING AS A WOMAN: GENDER AND POWER IN AMERICAN POLITICS* (1995).

49. Complaint, *supra* note 21, at para. 1.

thought the room was unoccupied.⁵⁰ She alleged that she found Strauss-Kahn in the room, naked, and that is when he assaulted her.⁵¹ According to the complaint, Strauss-Kahn “forc[ed] Ms. Diallo to her knees at the end of a corridor and outside of a bathroom in the back of the hotel suite, violently grabbing the back of her head with his hands and shoving and thrusting his penis back and forth into her mouth against her will until he ejaculated.”⁵²

Diallo immediately complained to her supervisor, who in turn called the police.⁵³ Strauss-Kahn was apprehended by police minutes before his flight to Paris was set to take off from New York’s JFK airport; he was subsequently arrested based on Diallo’s complaint.⁵⁴ Shortly after the alleged attack, he resigned from his position with the IMF and denied all allegations against him.⁵⁵ On May 19, a Manhattan Grand Jury indicted Strauss-Kahn on two counts of a criminal sexual act in the first degree, forcible touching, unlawful imprisonment in the second degree, sexual abuse in the first degree, sexual abuse in the third degree, and attempted rape in the first degree.⁵⁶ Two and a half months later, on August 22, prosecutors filed a motion to drop the charges.⁵⁷ What transpired as part of the criminal and civil legal proceedings during those intervening summer months reveals a great deal about how victims of sexual violence fare in the United States’ legal system today.

If convicted on all charges, Strauss-Kahn faced a potential maximum of seventy-four years in prison.⁵⁸ He was released from custody after he agreed to pay one million dollars in cash and a five million dollar bond and submit to house arrest.⁵⁹ He was arraigned and entered a “not guilty” plea

50. *Id.* at para. 19.

51. *Id.* at para. 20.

52. *Id.* at para. 4.

53. *Id.* at para. 5.

54. Al Baker & Steven Erlanger, *I.M.F. Chief, Apprehended at Airport, Is Accused of Sexual Assault*, N.Y. TIMES (May 14, 2011), <http://www.nytimes.com/2011/05/15/nyregion/imf-head-is-arrested-and-accused-of-sexual-attack.html>.

55. Gerry Mullany, *Strauss-Kahn Resigns from I.M.F. in Wake of His Arrest*, N.Y. TIMES (May 19, 2011), <http://www.nytimes.com/2011/05/19/business/19imf.html>.

56. Indictment, *People v. Strauss-Kahn*, No. 2526/11 (N.Y. Sup. Ct. 2011), 2011 WL 1892770.

57. Recommendation for Dismissal, *People v. Strauss-Kahn*, No. 02526/2011 (N.Y. Sup. Ct. Aug. 22, 2011), 2011 WL 3659989 [hereinafter Recommendation for Dismissal].

58. *Dominique Strauss-Kahn, Ex-IMF Director, To Be Tried On Aggravated Pimping Charges*, HUFFINGTON POST (June 26, 2013), http://www.huffingtonpost.ca/2013/07/26/dominique-strauss-kahn_n_3658776.html (view fourth slide in Huffington Post slideshow).

59. William K. Rashbaum, *Evidence Said to Tie Ex-I.M.F. Chief to Housekeeper*, N.Y. TIMES (May 23, 2011), <http://www.nytimes.com/2011/05/24/nyregion/evidence-said-to-tie-imf-chief-to-housekeeper.html>.

on June 6.⁶⁰ The following months involved investigations by prosecutors who ultimately dropped the charges.⁶¹ Strauss-Kahn, in a television interview in September, admitted to having a sexual encounter with Diallo, one that he characterized as “a moral error” and “inappropriate.”⁶²

In its motion to dismiss, the prosecution identified two significant problems with the case: insurmountable credibility issues involving Diallo and a lack of physical evidence to suggest the existence of a forced sexual assault.⁶³ It is not uncommon in rape cases for the physical evidence to be insufficient to prove a lack of consent; at best, it might prove the existence of sexual contact of some kind.⁶⁴ Here, the prosecution found that the evidence “[c]onclusively establishes that the defendant engaged in a sexual encounter with the complainant . . .”⁶⁵ but that it did not “[p]rove or corroborate that their encounter was forcible or non-consensual.”⁶⁶

The focus of the police and prosecutorial investigation in this case primarily rested on Diallo’s credibility, regarding issues both related and unrelated to the alleged assault. In terms of the actual charges, the prosecutor’s motion to dismiss focused on the discrepancies in Diallo’s account of what happened, not during, but in the aftermath, of the assault.⁶⁷ According to prosecutors, Diallo gave three conflicting versions of what she did in the moments immediately following the assault.⁶⁸ The prosecution did not identify in its motion anything to suggest that Diallo’s account of the inci-

60. John Eligon, *Housekeeper Will Testify on Sex Assault, Lawyer Says*, N.Y. TIMES (June 6, 2011), <http://www.nytimes.com/2011/06/07/nyregion/strauss-kahn-pleads-not-guilty-in-sofitel-sex-attack-case.html>.

61. Recommendation for Dismissal, *supra* note 57.

62. Interview by Claire Chazal with Dominique Strauss-Kahn, Former I.M.F. Chief, TF1, Paris, Fr. (Sept. 17, 2011), *available at* <http://lci.tf1.fr/politique/dsk-s-exprime-au-20-heures-6712527.html> [hereinafter Interview].

63. Recommendation for Dismissal, *supra* note 57.

64. See Nicholas J. Little, *From No Means No to Only Yes Means Yes: The Rational Results of an Affirmative Consent Standard in Rape Law*, 58 VAND. L. REV. 1321, 1330 (2005).

65. Recommendation for Dismissal, *supra* note 57, at 17.

66. *Id.*

67. *Id.*

68. *Id.* It is worth noting that it is a common phenomenon for victims not to remember with certainty the details as they might have unfolded during an assault. Hillary E. Gomez, *The Evolution of the First Complaint Doctrine: How Further Change Is Necessary Before It Can Account for the Trauma of Rape*, 39 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 135, 163 (2013); Kim Lane Scheppelle, *The Ground-Zero Theory of Evidence*, 49 HASTINGS L.J. 321, 332 (1998) (discussing how the author’s primary research revealed myriad ways rape victims disclose what happened to them). It is possible that Diallo’s inconsistent testimony surrounding the events immediately following the assault was a manifestation of trauma.

dent itself was inconsistent.⁶⁹ Instead, the prosecution dismissed the case based on her inability to provide a “consistent narrative,”⁷⁰ which, in their view, made it impossible to know whether she would tell the truth at trial. Prosecutors were also concerned with Diallo’s prior false statements outside the context of the sexual assault, specifically related to her falsification of a rape in the context of her asylum application.⁷¹

Diallo hired an attorney during the early stages of the criminal investigation. In response, the prosecutors interviewed her about “potential financial motivations” that she might have related to the assault.⁷² Although she denied that she was interested in monetary gain, prosecutors considered this fact in their decision on whether or not to move forward with the case, relying on recorded evidence of a conversation Diallo had with her fiancé in which the two discussed the “potential for financial recovery.”⁷³ The prosecution’s motion includes the statement that “[t]here is nothing wrong with seeking recovery from a defendant in a civil suit . . .”⁷⁴ and further maintains that the problematic component of this particular issue was not that Diallo retained counsel or wanted to pursue financial recovery from the defendant, but rather that she denied having any sort of a financial interest in the case.⁷⁵ This appears, however, to be a thinly veiled explanation to cover up the bias against a victim who chooses to pursue a financial remedy against her attacker. On August 8, 2011, Diallo sued Strauss-Kahn in civil court for the torts of battery, assault, intentional infliction of emotional distress, and false imprisonment.⁷⁶ According to the complaint, the case was brought “to redress the violent and sadistic attack by Defendant Strauss-Kahn on Nafissatou Diallo when he sexually assaulted Ms. Diallo inside of a hotel room . . . on May 14, 2011.”⁷⁷ The civil case was ultimately settled before trial and the details remain unknown.⁷⁸

In a multitude of ways, the evolution and eventual resolution of the case against Strauss-Kahn reflects the reality of rape investigations and out-

69. See Recommendation for Dismissal, *supra* note 57, at 17.

70. *Id.* at 13.

71. *Id.* at 14–15.

72. *Id.* at 17.

73. *Id.*

74. *Id.*

75. *Id.*

76. Complaint, *supra* note 21, at 11–14.

77. *Id.* at 1.

78. Russ Buettner, *Hotel Worker Settles Claim Strauss-Kahn Forced Sex*, N.Y. TIMES (Dec. 10, 2012), http://www.nytimes.com/2012/12/11/nyregion/strauss-kahn-and-hotel-maid-settle-suit-over-alleged-attack.html?_r=0.

comes generally.⁷⁹ With little more to evaluate than competing testimony of the victim and perpetrator and minimal forensic evidence that may show the existence of a sexual encounter, but does not necessarily prove the existence of the (required elements) of force or lack of consent, many rape investigations never move beyond the investigative stage.⁸⁰ As Wendy Larcombe explains, the investigations are often influenced by characteristics of a victim that are unrelated to the rape itself: “As a number of feminist critics have identified, the legal discovery of rape becomes a test of the complainant’s character and credit, particularly in terms of her sexual morality but also in relation to her moral integrity and trustworthiness as a witness.”⁸¹ To be sure, in the motion to dismiss against Strauss-Kahn, prosecutors conceded that there was evidence consistent with a “non-consensual sexual encounter between the defendant and the complainant.”⁸² Nonetheless, the issues with Diallo’s credibility superseded the legitimacy of her complaint and ultimately informed their decision to drop the case.

The media attention surrounding the charges filed against Strauss-Kahn was, perhaps unsurprisingly, significant.⁸³ There was a strong response to the case from the public generally. Opinion pieces and letters to the editor proliferated throughout the pages of mainstream news media and serve to illustrate the juxtaposition of public opinion about the allegations against Strauss-Kahn.⁸⁴ One particular set of Letters to the Editor that ap-

79. The fact that the case against Strauss-Kahn was dropped is not an anomaly in the criminal justice system. In fact, “[r]ape and sexual assault are the crimes with the lowest reported arrest and prosecution rates in the United States.” Jane Kim, *Taking Rape Seriously: Rape as Slavery*, 35 HARV. J.L. & GENDER 263, 272 (2012); see also, Shen, *supra* note 24 (explaining how despite decades of work on the problem of rape, there has been little change in how the legal system responds). The data on prosecution of sexual violence in the United States suggests that “less than ten percent of all sexual assault assailants will be convicted for their crime.” *Id.* at 8.

80. Anderson, *supra* note 8, at 909 (explaining how the discretion of state actors often leaves rape victims without remedy).

81. Wendy Larcombe, *The ‘Ideal’ Victim v. Successful Rape Complainants: Not What You Might Expect*, 10 FEMINIST LEGAL STUD. 131, 134–35 (2002).

82. Recommendation for Dismissal, *supra* note 57, at 8.

83. As one measure of the media attention focused on this case, I asked the Michigan State University John F. Schaefer Law Library staff to gather every article published in the New York Times and Washington Post dealing with this case for the time period between the first reports of allegations against Strauss-Kahn through the week following the case being dropped by prosecutors. This collection of hundreds of articles will form the basis for future content analysis.

84. See, e.g., Maureen Dowd, Op-Ed., *Powerful and Primitive*, N.Y. TIMES (May 17, 2011), <http://www.nytimes.com/2011/05/18/opinion/18dowd.html>; *Dominique Strauss-Kahn: The American commentary on France’s reaction to DSK’s Alleged Sex Scandal*, L.A. TIMES (May 17, 2011, 3:02 PM), <http://opinion.latimes.com/opinionla/2011/05/dominique-strauss-kahn-the-american-commentary-on-frances-reac>

peared in the New York Times, all written by lawyers illustrates the variation in public opinion. Law professor Leonard Cavise wrote,

I completely disagree . . . that dismissing the sexual assault case against Dominique Strauss-Kahn was the right thing to do. The hotel maid whom he allegedly assaulted was pilloried in the media for credibility issues that had absolutely nothing to do with the sexual incident in question. Even the prosecutors, in their motion to dismiss, admitted that she had been “materially consistent” every time she discussed the case.⁸⁵

A lawyer from Michigan took a different stance, arguing that prosecutor Vance used the wrong standard but emphasized that indeed, a liar can still be raped.⁸⁶

The standard for bringing a criminal case to trial is whether there is reason to believe that a crime was committed and that the defendant committed the crime. It is for the jury to decide guilt beyond a reasonable doubt, not the prosecutor. The prosecutor [is] troubled by the fact that Ms. Diallo has been found to have lied in the past. Both of my grandmothers lied and broke immigration laws to get impoverished and persecuted relatives into this country. They may have been liars, but I consider them heroes. My point is that even liars can be raped, just as felons can be raped, just as prostitutes can be raped.⁸⁷

This concluding sentence perhaps gets at one of the most important underlying issues, and begs, in my opinion, for the disconnection of rape from extraneous factors regarding the identity and characteristics of the victim. Finally, the last letter in this trilogy expressed the opinion that the prosecutors did proceed appropriately by dismissing the case.

The principle that . . . [is] distill[ed] from the Dominique Strauss-Kahn case should be carved into the desk of every prose-

tion-to-dsks-alleged-sex.html (offering a series of lay people’s comments, reactions, and opinions on the allegations against DSK). Analysis of the media coverage surrounding this case would undoubtedly be revealing.

85. Leonard Cavise, Letter to the Editor, *When Should a Case Be Brought to Trial?*, N.Y. TIMES (Aug. 30, 2011), <http://www.nytimes.com/2011/08/31/opinion/after-strauss-kahn-when-should-a-case-be-brought-to-trial.html>.

86. Richard Lenter, Letter to the Editor, *When Should a Case Be Brought to Trial?*, N.Y. TIMES, (Aug. 30, 2011), http://www.nytimes.com/2011/08/31/opinion/after-strauss-kahn-when-should-a-case-be-brought-to-trial.html?_r=0.

87. *Id.*

curator in the land: I will prosecute only when I am convinced of guilt beyond a reasonable doubt. To do otherwise—to ask for a verdict that the prosecutor herself would not render—risks wrongful convictions and undermines the integrity of the system itself.⁸⁸

The power of the media in these contexts is far reaching and often encourages additional victims to come forward to tell their stories. In the case of Strauss-Kahn, it prompted the public disclosure by Tristane Banon that Strauss-Kahn had previously assaulted her. Banon, a French journalist and daughter of Anne Mansouret,⁸⁹ came forward publicly after she learned about the allegations in New York and accused Strauss-Kahn of rape and sexual assault, eight years after the alleged incident occurred.⁹⁰ She actually spoke publicly for the first time about the assault in 2007 on television. During the course of the interview she mentioned that the man who attacked her was Strauss-Kahn, but the television station opted not to broadcast the disclosure.⁹¹ Banon also wrote about the encounter in her book *Le Bal des Hypocrites* but she did not name the man who attacked her.⁹² It was not until the Diallo allegations manifested in the United States that Banon finally came forward formally about what happened and ultimately named Strauss-Kahn.

Banon talked with prosecutors in Paris who subsequently opened an official investigation into the allegations, but eventually concluded that there were not sufficient facts to establish a rape charge.⁹³ The statute of

88. Kevin Marino, Letter to the Editor, *When Should a Case Be Brought to Trial?*, N.Y. TIMES (Aug. 30, 2011), <http://www.nytimes.com/2011/08/31/opinion/after-strauss-kahn-when-should-a-case-be-brought-to-trial.html>.

89. Anne Mansouret is the Socialist Vice President of the General Council Eure. Ellen Killoran, *Who is Tristane Banon? Dominique Strauss-Kahn's Latest Accuser is a Family Friend*, INT'L BUS. TIMES (July 5, 2011, 5:29 PM), <http://www.ibtimes.com/who-tristane-banon-dominique-strauss-kahns-latest-accuser-family-friend-296157>.

90. Venetia Rainey, *Tristane Banon's Mother Had 'Brutal' Sex with DSK*, WEEK (U.K.) (July 19, 2011), <http://www.theweek.co.uk/people-news/3767/tristane-banon%E2%80%99s-mother-had-%E2%80%98brutal%E2%80%99-sex-dsk>. Mansouret has publicly accused Strauss-Kahn of having “brutal” sex with her in the past. *Id.*

91. *Id.*

92. Kim Willsher, *DSK Rape Accuser Tristane Banon Writes Book About Assault by 'Baboon'*, GUARDIAN (U.K.) (Oct. 13, 2011, 7:48 PM), <http://www.theguardian.com/world/2011/oct/13/dominique-strauss-kahn-tristane-banon>.

93. Rape is defined in the French penal code as “[a]ny act of sexual penetration, whatever its nature, committed on the person of another by violence, constraint, threat or surprise.” CODE PÉNAL [C. PÉN.] art. 222-23 (Fr.), *translated in Current Legal Framework: Rape and sexual assault in France*, INTERNATIONAL MODELS PROJECT ON WOMEN'S RIGHTS (June 21, 2012, 9:54 PM), <http://www.impowr.org/content/current-legal-framework-rape-and-sexual-assault-france>.

limitations for attempted rape in France is ten years,⁹⁴ so it was at least theoretically possible that had the evidence supported such a crime, charges could have been filed. Prosecuting a rape case almost ten years after its occurrence, however, would prove challenging. Prosecutors did in fact find evidence to support a case against Strauss-Kahn for sexual assault,⁹⁵ but a three-year statute of limitations barred the case from moving forward.⁹⁶

Allegations of involvement in a prostitution ring put Strauss-Kahn back into public scrutiny in 2012. On February 21, 2012, Strauss-Kahn was held overnight in Lille, France after voluntarily coming in for questioning about his knowledge and involvement in the prostitution ring.⁹⁷ He was released the next day and denied all complicity in the prostitution ring.⁹⁸ Nonetheless, Strauss-Kahn was charged with “aggravated procurement in an organized gang”⁹⁹ in April. Following this charge, Strauss-Kahn faced rape allegations by a Belgian prostitute, known as Marie-Anne.¹⁰⁰ Marie-Anne claimed she and another Belgian prostitute were hired and flown to Washington D.C. for a sex party and at the party she was held down by another man while Strauss-Kahn sodomized her.¹⁰¹ In addition, she told police she had also “refused him” another time, but she couldn’t get free because Strauss-Kahn “used force.” She stated, “he held my hands, he pulled my

94. Michael Weissenstein & Angela Charlton, *Tristane Banon to File Sexual Assault Lawsuit Against Dominique Strauss-Kahn*, HUFFINGTON POST (July 4, 2011), http://www.huffingtonpost.com/2011/07/04/tristane-banon-dominique-strauss-kahn-dsk_n_889684.html.

95. Sexual assault in the French Penal Code is defined broadly, as “other than rape.” C. PÉN. art. 222-27 (Fr.). Sexual assault is a misdemeanor, *id.* art. 222-31, and as such it is covered by a shorter, three year statute of limitations, CODE DE PROCÉDURE PÉNALE [C. PR. PÉN.] art. 8 (Fr.).

96. Steven Erlanger & Maïa de la Baume, *Strauss-Kahn Is Not Charged in French Case*, N.Y. TIMES (Oct. 14, 2011), http://www.nytimes.com/2011/10/14/world/europe/dominique-strauss-kahn-cleared-of-attempted-rape-of-tristane-banon.html?page-wanted=all&_r=0.

97. Kim Willsher, *Strauss-Kahn Arrested by French Police Investigating Alleged Prostitution Ring*, GUARDIAN (U.K.) (Feb. 21, 2012), <http://www.guardian.co.uk/world/2012/feb/21/strauss-kahn-arrested-prostitution-investigation?INTCMP=SRCH>.

98. Maïa de la Baume, *French Police Detain Strauss-Kahn for Questioning*, N.Y. TIMES, (Feb. 2, 2012), <http://www.nytimes.com/2012/02/22/world/europe/french-police-detain-strauss-kahn-for-questioning.html>.

99. Maïa de la Baume, *Strauss-Kahn’s Prostitution Scandal Taints Image of a City’s Beloved Hotel*, N.Y. TIMES (Apr. 11, 2012), <http://www.nytimes.com/2012/04/12/world/europe/strauss-kahn-scandal-puts-unwanted-attention-on-hotel.html>.

100. Henry Samuel, *Dominique Strauss-Kahn Could Face Gang Rape Charges After US Hotel Orgy*, TELEGRAPH (U.K.) (May 4, 2012), <http://www.telegraph.co.uk/finance/dominique-strauss-kahn/9245639/Dominique-Strauss-Kahn-could-face-gang-rape-charges-after-US-hotel-orgy.html>.

101. *Id.*

hair, he hurt me.”¹⁰² The woman admitted she didn’t scream, but claimed she did tell him to stop.¹⁰³ She never made a formal complaint with police in Washington D.C., where the alleged attack took place. Marie-Anne later recanted her allegations of rape.¹⁰⁴ As a result of the recantation, authorities in France were forced to drop the gang rape charges against Strauss-Kahn. He maintained his innocence from the moment the allegations were made and insisted what had actually occurred was consensual sex and that the authorities in France were seeking to “criminalize lust.”¹⁰⁵ There is a distinction between lust and rape. Here, it seems that Strauss-Kahn was attempting to use his proclivity for seduction as a defense of sorts against the allegations of rape. Perhaps he was even exploiting the myth that a prostitute cannot be raped.¹⁰⁶

Given the limited information available, and ultimate recantation, it is hard to know what happened between Strauss-Kahn and Marie-Anne. From a criminal justice perspective the matter has been resolved. However, the accusations themselves raise interesting questions for a number of reasons, particularly given the identity of the accuser as a prostitute.¹⁰⁷ Assuming the allegations to be true, one wonders whether she would have had any likelihood of success within the criminal justice system. As a practical matter,

102. *Id.*

103. Doreen Carvajal and Maïa de la Baume, *Strauss-Kahn Faces Allegations of Sexually Assaulting Woman at a Hotel in Washington*, N.Y. TIMES (May 4, 2012), <http://www.nytimes.com/2012/05/05/world/europe/new-sex-allegations-against-strauss-kahn.html>.

104. Henry Samuel, *Dominique Strauss-Kahn Gang Rape Charges Dropped*, TELEGRAPH (U.K.) (Oct. 2, 2012), <http://www.telegraph.co.uk/finance/dominique-strauss-kahn/9581496/Dominique-Strauss-Kahn-gang-rape-charges-dropped.html>.

105. Doreen Carvajal & Maïa de la Baume, *Sex Life Was ‘Out of Step,’ Strauss-Kahn Says, but Not Illegal*, N.Y. TIMES (Oct. 13, 2012), http://www.nytimes.com/2012/10/14/world/europe/dominique-strauss-kahn-says-lust-is-not-a-crime.html?pagewanted=all&_r=0.

106. Many feminists see prostitution as a component of patriarchy, believing that any sexual act with a prostitute is inherently non-consensual because engaging in prostitution in the first place is not a choice made freely. For the purposes of this Article, however, I will sideline this issue, as it adds layers of unnecessary complexity to the problem of understanding sexual violence in the legal system. *See, e.g.*, Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271 (2011).

107. Michelle J. Anderson, *Prostitution and Trauma in U.S. Rape Law*, 2 J. TRAUMA PRAC. 75 (2004) (discussing the low rate of reporting among prostitutes despite the high frequency and violent nature of these crimes, and identifying challenges with evidentiary issues in these cases).

Marie-Anne is not an “ideal victim,” meaning it is unlikely that her claim will be favorably resolved by the legal process.¹⁰⁸

TABLE I: SUMMARY OF ALLEGATIONS, CHARGES, AND CONVICTIONS AGAINST DOMINIQUE STRAUSS-KAHN

| Alleged Victim | Allegations | Charges Filed | Conviction | Countersuit |
|------------------------------|--|---|--------------------------------------|--|
| Tristane Banon | Rape and sexual assault. ¹⁰⁹ | None. Prosecutors found no evidence of rape, but did find evidence of sexual assault; statute of limitations precluded filing charges on sexual assault. ¹¹⁰ | N/A | Slander. |
| Nafissatou Diallo (Criminal) | Criminal sexual act, attempted rape, and unlawful imprisonment. ¹¹¹ | Forcible touching, unlawful imprisonment in 2nd degree, sexual abuse in 3rd degree, criminal sexual act in 1st degree (2 counts) attempted rape in 1st degree, sexual abuse in 1st degree. ¹¹² | Charges dismissed. ¹¹³ | N/A |
| Nafissatou Diallo (Civil) | Sexual assault in “violent sadistic attack.” ¹¹⁴ | “Battery, sexual assault, battery, false imprisonment, and intentional infliction of emotional distress.” ¹¹⁵ | Settled before trial. ¹¹⁶ | “. . . baseless accusations” that cost him his position at IMF. ¹¹⁷ |
| Marie-Anne | Gang rape. ¹¹⁸ | Aggravated procurement in an organized gang. ¹¹⁹ | Charges dropped. ¹²⁰ | N/A |

108. For a comprehensive discussion of what makes a victim “ideal,” according to the paradigm set forth by Norwegian sociologist Nils Christie, see *infra* Part III.

109. Erlanger & de la Baume, *supra* note 96.

110. *Id.*

111. Baker & Erlanger, *supra* note 54.

112. Recommendation for Dismissal, *supra* note 57.

113. John Elignon, *Strauss-Kahn Drama Ends with Short Final Scene*, N.Y. TIMES (Aug. 23, 2011), http://www.nytimes.com/2011/08/24/nyregion/charges-against-strauss-kahn-dismissed.html?pagewanted=all&_r=0.

114. William K. Rashbaum & John Eligon, *Hotel Housekeeper Sues Strauss-Kahn*, N.Y. TIMES (Aug. 8, 2011), <http://www.nytimes.com/2011/08/09/nyregion/nafissatou-diallo-sues-strauss-kahn.html>.

115. Complaint, *supra* note 21, at 1, 2.

116. Matt Williams, *Dominique Strauss-Kahn Settles Sexual Assault Case With Hotel Maid*, GUARDIAN (U.K.) (Dec. 10, 2012), <http://www.theguardian.com/world/2012/dec/10/dominique-strauss-kahn-case-settled>.

117. Colin Moynihan, *Strauss-Kahn Sues Housekeeper, Saying She Hurt His Career*, N.Y. TIMES (May 15, 2012), http://www.nytimes.com/2012/05/16/nyregion/strauss-kahn-countersues-housekeeper-who-accused-him-of-rape.html?_r=0.

118. Carvajal & de la Baume, *supra* note 105.

119. De la Baume, *supra* note 99.

120. Samuel, *supra* note 104.

B. *Moshe Katsav*

Former Israeli President Katsav was officially charged with rape, indecent assault, and sexual harassment against three separate victims who were referred to in the media and official court documents as A.2 (Tourism), H, and L.¹²¹ A fourth victim referred to as A.1 (Residence) came forward in the context of the investigation alleging that Katsav raped and sexually harassed her, but no charges were ever filed.¹²² Israeli law prohibits the media or others from revealing the identity of victims of sex offenses.¹²³ As a result, the women who accused Katsav of these crimes are referred to in official legal documents, and in media, only by their initials, or by the Hebrew name for the respective letter. The allegations of these women were formally investigated, and there were others who also came forward throughout the process, making similar allegations of sexual harassment against Katsav.¹²⁴ Their stories, conveyed primarily to the news source *Haaretz* on the condition of anonymity, reflect an overarching fear of Katsav's power.¹²⁵

121. See *infra* Table 2.

122. See *infra* Table 2.

123. Penal Law, 5737-1977, 6 LSI 1, § 352 (Isr.), translated in PENAL LAW 5737-1977 105 (6th ed.), available at <http://www.oecd.org/investment/anti-bribery/anti-bribery-convention/43289694.pdf>. Chapter Ten, Article Five of the Penal Code, which governs “sex offenses,” specifically provides that:

(a) If a person published a person's name or anything that can identify a person was [sic] injured by an offense or who complained that he was injured by an offense under this Article, then he is liable to one year imprisonment.

(b) A person shall not bear criminal responsibility under subsection (a), if the person whose name or identity were made public gave his consent to the publication before a Court or if a Court permitted publication for special reasons that shall be recorded.

Id. Interestingly, during the course of the Katsav investigations, one radio station publicly disclosed the first name of one of the victims. Ronny Koren-Dinar, *Radio Tel Aviv Announcers Suspended for Airing First Name of President Katsav's Accuser*, HAARETZ (Isr.) (Aug. 30, 2000, 12:00 AM), <http://www.haaretz.com/print-edition/business/radio-tel-aviv-announcers-suspended-for-airing-first-name-of-president-katsav-s-accuser-1.196185>. This occurred during a phone call in which the talk show hosts called the victim, did not disclose to her that she was on the air, and in the course of their conversation revealed her first name. The hosts were suspended for a week. *Id.*

124. Roni Singer-Heruti & Esti Ahronovitz, *Six More Women Accuse Katsav of Sexual Harassment*, HAARETZ (Isr.) (July 12, 2006, 12:00 AM), <http://www.haaretz.com/print-edition/news/six-more-women-accuse-katsav-of-sexual-harassment-1.192819>.

125. *Id.*

The case against Katsav began, ironically, when he alleged that a former employee at his residence, A.1, was blackmailing him.¹²⁶ When the media first broke this story, Katsav denied filing a blackmail complaint against A.1.¹²⁷ However, according to Israeli Attorney General Mazuz, Katsav in fact alleged that his “former employee demanded hundreds of thousands of dollars in ‘hush money’ and threatened to file a criminal complaint of sexual harassment” against him during a meeting with the employee the week prior.¹²⁸ Katsav did not file a formal complaint, but instead provided Mazuz with a summary of the facts surrounding the blackmail incident.¹²⁹ A.1 denied the extortion allegations as vehemently as Katsav denied any misconduct.¹³⁰ He claimed that “he never had relations that went beyond strictly professional work ties with any of the female employees at the President’s Residence.”¹³¹

On July 11, 2006, Attorney General Mazuz ordered a “‘preliminary criminal investigation’ to examine ‘all aspects of the affair’” surrounding Katsav’s allegations of blackmail.¹³² The investigation was launched in response to Katsav’s failure to provide the tape of his and A.1’s meeting and other requested materials to Mazuz.¹³³ A day after the investigation was opened, the news source *Haaretz* reported that six or more women claimed that Katsav had sexually harassed them in the years before he became President,¹³⁴ suggesting “a pattern in which Katsav took advantage of his position to sexually harass them [T]hat when [the women] refused his [sexual] overtures, [the women] encountered a cold and patronizing attitude

126. Roni Singer-Heruti, *Former Employee Testifies: Katsav Coerced Me into Sex*, HAARETZ (Isr.) (Aug. 17, 2006, 12:00 AM), <http://www.haaretz.com/print-edition/news/former-employee-testifies-katsav-coerced-me-into-sex-1.195372>.

127. *Pres. Katsav Denies Lodging Blackmail Complaint with AG*, HAARETZ (Isr.) (July 9, 2006, 12:00 AM), <http://www.haaretz.com/print-edition/news/pres-katsav-denies-lodging-blackmail-complaint-with-ag-1.192555>.

128. Zvi Zrahiya et al., *Ex-President’s Residence Employee Denies Threatening Katsav*, HAARETZ (Isr.) (July 10, 2006, 12:00 AM), <http://www.haaretz.com/news/ex-president-s-residence-employee-denies-threatening-katsav-1.192652>.

129. *Id.*

130. Gideon Alon et al., *AG Mazuz Orders Criminal Probe into Katsav Blackmail Affair*, HAARETZ (Isr.) (July 11, 2006, 12:00 AM), <http://www.haaretz.com/news/2.220/ag-mazuz-orders-criminal-probe-into-katsav-blackmail-affair-1.192792>.

131. *Id.*

132. Amiram Barkat & Yuval Yoaz, *Mazuz Orders Police to Open Criminal Investigation Into the Katsav Affair*, HAARETZ (Isr.) (July 12, 2006, 12:00 AM), <http://www.haaretz.com/print-edition/news/mazuz-orders-police-to-open-criminal-investigation-into-the-katsav-affair-1.192820>.

133. *Id.*

134. Singer-Heruti & Ahronovitz, *supra* note 124.

to the point where they felt compelled to quit.”¹³⁵ All the women requested anonymity in speaking with the paper for “fear of Katsav’s power.”¹³⁶

Despite the criminal investigation into the allegations of blackmail and sexual harassment, no formal complaints were filed by Katsav or A.1. During the investigation however, A.1 accused Katsav of “us[ing] his position to coerce her into having sexual relations with him” and that since the beginning of the investigation “[Katsav’s] men had been pressuring her in an attempt to silence her.”¹³⁷ By mid to late August the investigation took a turn, and Katsav, who first brought attention to himself by crying foul over his own victimization, was now under suspicion of forcing A.1 to have a sexual relationship with him “by threatening to fire her if she refused.”¹³⁸ A second complaint was filed two months later.¹³⁹

A.2 was a woman who worked for Katsav while he was the Tourism Minister.¹⁴⁰ She filed a complaint alleging that Katsav made “unwanted sexual advances . . . and attempt[ed] to touch her inappropriately when they worked together.”¹⁴¹ In addition to the two formal complaints that had been filed, by the end of September the media was reporting that a total of eight allegations of sexual assault had been made against Katsav.¹⁴² Just before the official indictment was released, Katsav’s attorney dismissed the idea that rape would be an official charge because “the claims of rape were

135. *Id.*

136. *Id.*

137. Singer-Heruti, *supra* note 126.

138. Amiram Barka et al., *Katsav Faces Police Grilling in Blackmail, Rape Probe*, HAARETZ (Isr.) (Aug. 23, 2006, 12:00 AM), <http://www.haaretz.com/print-edition/news/katsav-faces-police-grilling-in-blackmail-rape-probe-1.195671>.

139. Jonathan Lis & Roni Singer-Heruti, *Second Complaint Filed Against Katsav*, HAARETZ (Isr.) (Sept. 6, 2006, 12:00 AM), <http://www.haaretz.com/print-edition/news/second-complaint-filed-against-katsav-1.196669>.

140. *Id.*

141. *Id.* “A., who worked in the Tourism Ministry during Katsav’s term as minister, related that she had entered his office and was standing with her back to him when he pressed against her and began caressing her. He then forcibly stripped her and raped her from behind.” Roni Singer-Heruti, *Former Katsav employees tell similar stories of sexual assault*, HAARETZ (Isr.) (Jan. 31, 2007, 12:00 AM), www.haaretz.com/print-edition/news/former-katsav-employees-tell-similar-stories-of-sexualassault-1.211581. The facts surrounding this incident mirrored those that were conveyed by A.1, who came forward in response to Katsav’s claims against her for blackmail. *Id.* The police did not charge him for raping A.1, however, because she did not file a report independent of the blackmail claim, and it was also alleged that they were engaged in a consensual affair. *Id.*

142. Singer-Heruti & Haaretz Correspondent, *supra* note 29.

unfounded, delusional and baseless.”¹⁴³ When Attorney General Mazuz released the preliminary draft indictment in January of 2007, however, the charges included “sexual harassment, forceful indecent act, and utilizing his position to obtain sex.”¹⁴⁴ In April a rape charge was added to the indictment.¹⁴⁵ In total, there were three women whose accusations against Katsav formed the basis of the formal criminal complaint.¹⁴⁶ The charges ultimately filed included rape, sexual harassment, indecent assault, and obstruction of justice.¹⁴⁷ H. and L. were the other women whose allegations were included in the final indictment, in addition to A.2’s.¹⁴⁸ Allegations against H. rested on sexual harassment, of which Katsav was ultimately convicted. H. was an employee at the President’s Residence and during her employment she alleged that Katsav repeatedly hugged her against her will.¹⁴⁹ L. similarly alleged that Katsav “hugged and kissed [her] on the neck against her will.”¹⁵⁰

Katsav eventually resigned from his position as President as part of a plea deal that also caused the rape charges against him to be dropped.¹⁵¹ The plea bargain contained charges from three women, A.2, H. and L., and consisted of forcible indecent assault, sexual harassment, and harassing a witness.¹⁵² While there was significant turmoil and public resistance to the plea bargain,¹⁵³ the resistance ended up being all for naught because several months after formally accepting the plea, Katsav, in a surprise move, an-

143. Jonathan Lis & Yuval Yoaz, *Police to Question President a Sixth and Final Time Today*, HAARETZ (Isr.) (Nov. 15, 2006, 12:00 AM), <http://www.haaretz.com/print-edition/news/police-to-question-president-a-sixth-and-final-time-today-1.205239>.

144. Yuval Yoaz, *Secret Talks Being Held on Plea Bargain in Katsav Rape Case*, HAARETZ (Isr.) (June 27, 2007, 12:00 AM), <http://www.haaretz.com/news/secret-talks-being-held-on-plea-bargain-in-katsav-rape-case-1.224187>.

145. *Id.*

146. Tomer Zarchin, *Three Women to Take the Stand Against Katsav in Sex Crime Trial*, HAARETZ (Isr.) (Mar. 12, 2009, 1:24 AM), <http://www.haaretz.com/print-edition/news/three-women-to-take-the-stand-against-katsav-in-sex-crime-trial-1.271937>.

147. *See infra* Part II for a comprehensive discussion of Israeli law on these crimes.

148. Zarchin, *supra* note 146.

149. Tomer Zarchin, *Former President Katsav to Face Rape Indictment*, HAARETZ (Isr.) (Mar. 9, 2009, 2:50 AM), <http://www.haaretz.com/news/former-president-katsav-to-face-rape-indictment-1.271744>.

150. *Id.*

151. Tomer Zarchin, *Katsav’s Accuser: I Am Not Afraid of a Trial*, HAARETZ (Isr.) (Mar. 8, 2009, 4:41 PM), <http://www.haaretz.com/news/katsav-s-accuser-i-am-not-afraid-of-a-trial-1.271685>.

152. *Id.*

153. *Id.*

nounced that he instead intended to reject the plea and wished to stand trial.¹⁵⁴

After rejecting the original plea, Katsav was convicted by the Tel Aviv District Court on charges of rape, sexual assault, sexual harassment, and obstruction of justice.¹⁵⁵ The court refuted each line of defense used by Katsav during the trial, finding that he withheld information and that his testimony was overwhelmingly manipulative and untruthful.¹⁵⁶ The court's decision reflected the opinion that Katsav committed the crimes as alleged based on the repetitive nature of his actions and Katsav's abuse of power.¹⁵⁷

Katsav's defense team argued that he should not have to serve substantial time in prison because of his status as a powerful politician.¹⁵⁸ The court, however, dismissed this argument and ultimately ordered Katsav to serve a seven-year prison sentence and pay restitution to his victims.¹⁵⁹ The court found that Katsav's high-ranking position should be taken into account in the sentencing decision: "The judges said in their ruling that the fact that Mr. Katsav had been president was no reason for leniency. On the contrary, they said, he had abused his authority and standing in order to carry out his crimes."¹⁶⁰

The court went even further and rejected the defense's arguments that the sentence should be lessened because there was no force used in these crimes. In its opinion, the court discussed how the force, while not physical, was derived instead from the power inherent in Katsav's political position.¹⁶¹

154. Haaretz Serv., Ofra Edelman & Agencies, *Complainant Against Katsav Seeks to Reenter Rape Charge in New Indictment*, HAARETZ (Isr.) (Apr. 8, 2008, 12:00 AM), <http://www.haaretz.com/news/complainant-against-katsav-seeks-to-reenter-rape-charge-in-new-indictment-1.243541>.

155. CrimC (TA) 1015/09 State of Isr. v. Katsav (Dec. 30, 2010), Nevo Legal Database (by subscription) (Isr.).

156. CrimC (TA) 1015/09 State of Isr. v. Katsav (Dec. 30, 2010), Nevo Legal Database (by subscription) (Isr.).

157. Ron Friedman, *Analysis: Moshe Katsav to Be Sentenced*, JERUSALEM POST, <http://www.jpost.com/National-News/Analysis-Moshe-Katsav-to-be-sentenced> (last updated Mar. 22, 2011, 12:51 AM).

158. Ron Friedman, *Prosecution, Defense Make Case for Katsav Punishment*, JERUSALEM POST, <http://www.jpost.com/National-News/Prosecution-defense-make-case-for-Katsav-punishment> (last updated Feb. 22, 2011, 5:23 PM).

159. CrimC (TA) 1015/09 State of Isr. v. Katsav (Mar. 22, 2011), Nevo Legal Database (by subscription) (Isr.).

160. Isabel Kershner, *Ex-President of Israel Sentenced to Prison in Rape Case*, N.Y. TIMES (March 22, 2011), http://www.nytimes.com/2011/03/23/world/middleeast/23katsav.html?_r=0.

161. CrimC (TA) 1015/09 State of Isr. v. Katsav (Mar. 22, 2011), Nevo Legal Database (by subscription) (Isr.).

Katsav appealed the decision to the Israeli Supreme Court, which rejected his appeal and sustained the opinion of the Tel Aviv District Court.¹⁶² The Israeli Supreme Court held that there was no basis on which to overturn the district court's decision. The Supreme Court methodically refuted the arguments raised by Katsav's attorneys.¹⁶³ The opinion is particularly well-reasoned in that it demonstrates a fundamental understanding of some of the key dynamics that are involved in cases of sexual violence. What follows is an overview of some of the Court's major rationales in support of its opinion.

The Court expressed that the lower court correctly rejected the evidence presented by the defendant that A.2 conspired and developed a plot against Katsav, fabricating the charges filed.¹⁶⁴ It appears from the opinion that the court was persuaded by the fact that this particular victim never reported the assault in the first place. In its view, had she desired to seek revenge on Katsav, there were other things she could have done to accomplish this end.¹⁶⁵

The Court also rejected the defense's argument that the victim's behavior following the incident suggested that a rape did not occur. Specifically, the Court was not persuaded that what happened was not legitimate rape simply because the victim did not use the word rape, but instead merely described what had occurred.¹⁶⁶ The defense tried to use the fact that A.2 continued to work for Katsav following both rapes to suggest that what happened between the two must have been consensual.¹⁶⁷ The Court, however, was persuaded by evidence showing she was forced to retain her position working for Katsav because she needed to continue to earn a living.¹⁶⁸ The Court found that in the context of the events related to the rape allegation, the victim's testimony was credible.¹⁶⁹ It was willing to allow for small inaccuracies, particularly those that were unrelated to the crux of the

162. CrimA 3372/11 Katsav v. State of Isr. (Nov. 10, 2011), Nevo Legal Database (by subscription) (Isr.).

163. *See generally* CrimA 3372/11 Katsav v. State of Isr. (Nov. 10, 2011), Nevo Legal Database (by subscription) (Isr.).

164. CrimA 3372/11 Katsav v. State of Isr. (Nov. 10, 2011), Nevo Legal Database (by subscription) (Isr.).

165. CrimA 3372/11 Katsav v. State of Isr. (Nov. 10, 2011), Nevo Legal Database (by subscription) (Isr.).

166. CrimA 3372/11 Katsav v. State of Isr. (Nov. 10, 2011), Nevo Legal Database (by subscription) (Isr.).

167. CrimA 3372/11 Katsav v. State of Isr. (Nov. 10, 2011), Nevo Legal Database (by subscription) (Isr.).

168. CrimA 3372/11 Katsav v. State of Isr. (Nov. 10, 2011), Nevo Legal Database (by subscription) (Isr.).

169. CrimA 3372/11 Katsav v. State of Isr. (Nov. 10, 2011), Nevo Legal Database (by subscription) (Isr.).

case. The opinion reflected an understanding that after a period of time and in a case of trauma, such small details may be forgotten or remembered differently than they may have actually occurred.¹⁷⁰ It also represents a departure from the U.S. prosecution's approach regarding Diallo's allegations against Strauss-Kahn, where it seemed that any inconsistencies or problems with her credibility, whether they went to the core of the case or not, weighed heavily in their decision to drop the charges.

TABLE 2: SUMMARY OF ALLEGATIONS, CHARGES, AND CONVICTIONS AGAINST MOSHE KATSAV

| Victims | Allegations | Charges Filed | Conviction |
|-----------------|---|---|---|
| A.1 (Residence) | Rape and sexual harassment. ¹⁷¹ | No charges filed. ¹⁷² | N/A |
| A.2 (Tourism) | Rape, sexual harassment, and forcible indecent assault. ¹⁷³ | Rape and forcible indecent assault. ¹⁷⁴ | Rape and forcible indecent assault. ¹⁷⁵ |
| H | Indecent assault and sexual harassment. ¹⁷⁶ | Sexual harassment. ¹⁷⁷ | Sexual harassment. ¹⁷⁸ |
| L | Indecent assault, sexual harassment, and obstruction of justice. ¹⁷⁹ | Indecent assault, sexual harassment, and obstruction of justice. ¹⁸⁰ | Sexual harassment, indecent assault, and obstruction of justice. ¹⁸¹ |

170. The court's opinion on this issue in particular was viewed quite favorably by victims' rights advocates. "Ronit Ehrenfreund-Cohen of the Women's International Zionist Organization called the verdict a substantial advance on the victims' behalf, saying the court had recognized that the testimony of the victims could lack coherence and could at times even be contradictory, 'because that is an inseparable part of the pathology of victims of crime, but it is still the truth.'" Dana Weiler-Polak, *Women's Groups Slam 'Problematic' Trial Despite Satisfaction at Outcome*, HAARETZ (Isr.) (Dec. 31, 2010, 12:55 AM), <http://www.haaretz.com/print-edition/news/women-s-groups-slam-problematic-trial-despite-satisfaction-at-outcome-1.334385>.

171. Lis & Singer-Heruti, *supra* note 139; Singer-Heruti, *supra* note 29.

172. Zarchin, *supra* note 151.

173. Lis & Singer-Heruti, *supra* note 139; Singer-Heruti, *supra* note 29.

174. Tomer Zarchin & Ofra Edelman, *Katsav vows to prove his innocence as rape trial begins*, HAARETZ (Isr.) (May 14, 2009, 1:57 AM), <http://www.haaretz.com/print-edition/news/katsav-vows-to-prove-his-innocence-as-rape-trial-begins-1.275979>.

175. Friedman, *supra* note 158.

176. Zarchin, *supra* note 151.

177. Zarchin & Edelman, *supra* note 174.

178. Friedman, *supra* note 158.

179. Zarchin, *supra* note 151.

180. Zarchin & Edelman, *supra* note 174.

181. CrimC (TA) 1015/09 State of Isr. v. Katsav (Mar. 22, 2011), Nevo Legal Database (by subscription) (Isr.).

C. Comparative Perspectives on the Strauss-Kahn and Katsav Crimes

Sexual violence is a global phenomenon,¹⁸² but the systems developed to address it vary widely across nations and jurisdictions. The laws governing the crimes that Strauss-Kahn and Katsav were accused of span three different countries. To be sure, the fact that this article considers intersections of power, politics, sexuality and sexual violence across the spectrum of these different nations may present an appearance of disconnection. Although all democracies, the legal systems in France, Israel, and the United States are markedly distinct; nonetheless, there is much to be learned from their respective approaches.

Unlike most English-speaking countries, France does not have an adversarial common law legal system.¹⁸³ Instead, France operates a dual legal system consisting of public law and private law.¹⁸⁴ France's civil law system is inquisitorial in nature and the criminal justice system functions through independent, investigating magistrates, created by Napoleon in 1804.¹⁸⁵ The magistrates "collect [all possible] evidence [and testimony] that is then used by justice officials to either try or dismiss a case."¹⁸⁶ France's court structure consists of an "intricate matrix of tribunals" due to its separation of administrative and judicial courts.¹⁸⁷

Israel is a democratic hybrid system, neither common nor civil law.¹⁸⁸ Previously a parliamentary system, Israel now has an independently elected Prime Minister who coexists with the Knesset, and the President of Israel, who "is elected by the Knesset and acts as head of state."¹⁸⁹ The Israeli court system consists of "[c]ivil, religious, and special jurisdiction courts[, which] compose the body of its legal structure."¹⁹⁰ Israel has three hierarchical judicial levels: the magistrate courts, the district courts, and the Supreme Court,

182. According to the World Health Organization, "[i]ntimate partner violence and sexual violence are serious and widespread problems worldwide." WORLD HEALTH ORG., *supra* note 26.

183. Bruce Crumley, *Will France Americanize Its Legal System?*, TIME (Jan. 9, 2009), <http://content.time.com/time/world/article/0,8599,1870443,00.html>.

184. A civil law jurisdiction, like the French system, creates law only through legislative statutes and codes and does not create binding judicial precedent. Nicolas Marie Kublicki, *An Overview of the French Legal System from an American Perspective*, 12 B.U. INT'L L.J. 57, 58 (1994).

185. Crumley, *supra* note 183.

186. *Id.*

187. Kublicki, *supra* note 184, at 58.

188. Levush, *supra* note 239.

189. *Id.*

190. Lee Epstein, Karen O'Connor & Diana Grub, *Middle East, in* LEGAL TRADITIONS AND SYSTEMS: AN INTERNATIONAL HANDBOOK 219, 227 (Alan N. Katz ed., 1986).

in ascending order.¹⁹¹ The religious courts in Israel exist and function independently in the different religious communities and “rely[] on the religious principles and doctrines of their respective faiths.”¹⁹² Israel’s courts do not utilize juries, though other aspects of courtroom procedure are modeled on the British system.¹⁹³ Without juries, judges are left with discretion and significant authority in courtroom procedure, conduct, and the ultimate decision of a case,¹⁹⁴ “although a judge is always accountable to a higher court.”¹⁹⁵ The judiciary is not entangled with politics, which preserves the integrity of the courts by “ensur[ing] that a judge is ‘subject to no authority but the law[,]’” which “is fulfilled through the provisions of the Judge’s Law.”¹⁹⁶

Finally, the United States is a federal system subject to the United States Constitution, which creates a national government with specific designated powers and leaves all other powers to the state governments.¹⁹⁷ Each state has a separate government structure, judiciary, and body of laws.¹⁹⁸ The federal judicial system of the United States consists of the United States Supreme Court, district courts, and circuit courts of appeal.¹⁹⁹ States have a separate court system; each state determines its own judicial levels and structure.²⁰⁰ The United States is founded on an adversarial legal system that consists of protected rights and rules both created by law and as required by the Constitution.²⁰¹

Even more specifically, France, Israel, and the United States differ when it comes to how they address sexual harassment and rape.²⁰² Nonetheless, there is much to be learned from exploring the various laws and policies, particularly those which are related to the allegations against Strauss-Kahn and Katsav. Such an exploration provides not only a glimpse into the reality of the legal process for victims and experience of perpetrators, but

191. *Id.*

192. *Id.* at 229.

193. *Id.* at 235.

194. *See id.* at 235–36. If a judge chooses to close the proceeding, “strict prohibitions exist on publication of proceedings” and “it is forbidden to publish anything concerning a pending matter in court that could tarnish the trial.” *Id.* at 236.

195. *Id.* at 235.

196. *Id.* at 236.

197. FED. JUD. CENTER, THE U.S. LEGAL SYSTEM: A SHORT DESCRIPTION 1, *available at* [http://www.fjc.gov/public/pdf.nsf/lookup/U.S._Legal_System_English07.pdf/\\$file/U.S._Legal_System_English07.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/U.S._Legal_System_English07.pdf/$file/U.S._Legal_System_English07.pdf).

198. *Id.*

199. *Id.* at 1–2.

200. *Id.*

201. *Id.* at 4.

202. *See infra* Part I.C.2.

more importantly provides important lessons to guide the future of policy decisions surrounding sexual violence.

1. Prevalence of Sexual Violence in France, Israel, and the United States

Sexual violence affects women everywhere, but the availability of reliable and systematically collected data is insufficient.²⁰³ The Israeli Public Security Ministry reports that one in three Israeli women are sexually abused in their lifetime.²⁰⁴ This statistic mirrors the incidence in the United States, where some reports give the same estimate.²⁰⁵ The French government reports that 75,000 women per year are raped in France, which, when broken down, suggests that one woman is raped every seven minutes.²⁰⁶ The United Nations collects data on violence against women, but the French data included in their research is lacking.²⁰⁷ The same dynamics that prevent rape victims from coming forward in other countries are present in France, but perhaps a French culture that has historically been resistant to addressing sexual violence poses additional societal barriers.²⁰⁸

Data reflecting the prevalence of sexual harassment is especially difficult to obtain, and that which is available is unreliable because of underreporting. Although sexual harassment occurs in a myriad of contexts, in the United States, it is recognized as its own distinct cause of action primarily in two contexts: the workplace and education.²⁰⁹ The data collected by the Equal Employment Opportunity Commission (“EEOC”), the agency responsible for promulgating regulations and handling complaints, reflects

203. EUROPEAN INSTITUTE FOR GENDER EQUALITY, *supra* note 3, at 12.

204. *One-Third of Israeli Women Subject to Sexual Abuse: Report*, PRESSTV (Nov. 11, 2012, 4:47 PM), <http://www.presstv.com/detail/2012/11/11/271627/israeli-women-subject-to-sex-abuse/>.

205. *See, e.g., Sexual Violence Statistics*, WOAR, <http://www.woar.org/resources/sexual-assault-statistics.php> (last visited Nov. 14, 2013).

206. Katrin Bennhold, *A Change in French Sexual Views*, N.Y. TIMES (May 31, 2011), http://www.nytimes.com/2011/06/01/world/europe/01iht-letter01.html?page-wanted=all&_r=3&_.

207. *See* U.N. Women, *Violence Against Women Prevalence Data: Surveys by Country*, VIRTUAL KNOWLEDGE CENTRE TO END VIOLENCE AGAINST WOMEN & GIRLS (Mar. 2011), http://www.endvawnow.org/uploads/browser/files/vaw_prevalence_matrix_15april_2011.pdf.

208. *See* Bennhold, *supra* note 206.

209. *See* Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000e-2000e-17 (Westlaw through P.L. 113-36) (governing sexual harassment in the workplace); Title IX of the Education Amendments of 1972, 20 U.S.C.A. 1681-1688 (Westlaw through P.L. 113-31) (governing sexual harassment in education); 34 C.F.R. § 106 (Westlaw through 2013) (implementing Title IX). Victims may also have the possibility of redress under civil or criminal law for some types of sexual harassment occurring in other situations.

only those situations in which victims filed reports. These limitations noted, the EEOC reported 11,364 cases of sexual harassment reported in 2011; of this number, 84% of the cases were reported by women.²¹⁰ In Israel, available statistics are limited to the realm of employment and suggest that 11% of working Israeli women were sexually harassed at work in 2011, and a total of “[n]o less than 35 to 40% of Israeli women have experienced sexual harassment at work.”²¹¹ France has the broadest legal definition and corresponding remedy for sexual harassment, recognizing conduct that falls both within and outside of the workforce.²¹² However, statistics on the prevalence of this problem are largely unavailable.

2. Laws Addressing Rape and Sexual Harassment

For purposes of this Article, the most relevant definition of sexual harassment is the one created by Catharine MacKinnon in 1979: “Sexual harassment, most broadly defined, refers to the unwanted imposition of sexual requirements in the context of a relationship of unequal power.”²¹³ Like

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210. *Sexual Harassment Charges: EEOC & FEPA's Combined*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm (last visited Nov. 14, 2013). This number includes reports filed with the EEOC state and local Fair Employment Practices Agencies across the United States. *Id.* Interestingly, the number of reported incidents of sexual harassment has declined steadily since 1997, when 15,889 incidents were reported. *Id.* The American Association of University Women also collects data on sexual harassment in the context of colleges and universities. Their data reflects that both male and female college students experience sexual harassment at about the same rate, just above 60%, that 66% of college students know someone who has been sexually harassed and that less than 10% of student victims actually report the harassment to an employee at the university. CATHERINE HILL & ELENA SILVA, AAUW EDUC. FOUND., *DRAWING THE LINE: SEXUAL HARASSMENT ON CAMPUS* 4, 14, 18 (2005), *available at* <http://www.aauw.org/files/2013/02/drawing-the-line-sexual-harassment-on-campus.pdf>.
211. PRESSTV, *supra* note 204; Haim Bior, *A Third of Israeli Women Experience Sexual Harassment at Work*, HAARETZ (ISR.) (June 9, 2010, 1:43 AM), <http://www.haaretz.com/print-edition/news/a-third-of-israeli-women-experience-sexual-harassment-at-work-1.295009>.
212. *See* C. PÉN. arts. 222-33, 222-33-2 (Fr.), *translated in* Legifrance, Penal Code 39 (John R. Spencer trans., last updated Oct. 12, 2005), *available at* http://www.legifrance.gouv.fr/content/download/1957/13715/version/4/file/Code_33.pdf; *see also* LABOR & EMP'T CLIENT SERV. GRP., BRYAN CAVE, PARIS, *BRIEFING: A NEW LAW ON SEXUAL HARASSMENT IN FRANCE* (2012), *available at* <http://www.bryan-cave.com/files/Publication/674affd9-55b3-4ac5-b253-0dd3d1d27cda/Presentation/PublicationAttachment/6cbd179d-3b28-4f1c-abce-1a56e96fc5d8/ClientAlertHarc%C3%A8lementENG.pdf> (discussing the amended law).
213. CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* 1 (1979). While this concept has evolved to include harassment that creates a hostile work environment for employees, this Article does not explore any accusations that

other forms of violence against women, it has power and control at its core, with the perpetrator using these dynamics to either, in the words of MacKinnon, “lever benefits or impose deprivations” against someone else.²¹⁴

Katsav was accused by numerous women of engaging in sexual harassment and rape in the context of his various professional roles, including during his time as Tourism Minister and as President of Israel. Although the reach of sexual harassment extends into all areas of life, the discussion in this paper focuses primarily on the workplace, since that is where the allegations against Katsav took place.²¹⁵

In Israel, the current sexual harassment law was formally codified in 1998 as the Prevention of Sexual Harassment Law.²¹⁶ The law is widely regarded as one of the most progressive pieces of legislation of its kind.²¹⁷ Tzili Mor’s research illustrates this point and she explains the law’s impact: “Today, Israel boasts an extraordinary law, billed as one of, if not the most, progressive laws of its kind in the world. The new law provides wider protection and holds greater potential for social change than any existing laws in the United States, Canada, and most European nations.”²¹⁸ Unlike other locales whose sexual harassment laws are based on notions of equality and sex discrimination, “Israel adopted a broader theoretical justification” grounded largely in the concept of dignity.²¹⁹ In doing so, the drafters of the law were mindful of the competing beliefs that had to be assuaged. Mor explains: “Since the concept of equality is neither enshrined in a basic law nor widely accepted socially, proponents chose to emphasize the harm to

Straus-Kahn or Katsav created such an environment and is thus outside the scope of the Article. Catharine A. MacKinnon, *The Logic of Experience: Reflections on the Development of Sexual Harassment Law*, 90 *Geo. L.J.* 813, 814 (2002).

214. *Id.*

215. This is not to deny the prevalence or impact of sexual harassment in other contexts. “Sexual harassment of working women . . . is undoubtedly a major issue, but it is not necessarily more significant than sexual harassment in the street, school, or family.” Orit Kamir, *Israel’s Sexual Harassment Law*, in *DIRECTIONS IN SEXUAL HARASSMENT LAW* 561, 564 (Catharine A. MacKinnon & Reva B. Siegel, eds., 2004).

216. Prevention of Sexual Harassment Law, 5758-1998, SH No. 166 (Isr.). The law replaced an existing law that addressed sexual harassment only in the context of equal employment opportunity. Noya Rimalt, *Stereotyping Women, Individualizing Harassment: The Dignitary Paradigm of Sexual Harassment Law Between the Limits of Law and the Limits of Feminism*, 19 *YALE J.L. & FEMINISM* 391, 401–402 (2008). The law did not previously define sexual harassment. *See id.* at 402. For a full discussion of the former law’s inadequacies, see generally *id.*

217. Tzili Mor, *Law as a Tool for a Sexual Revolution: Israel’s Prevention of Sexual Harassment Law-1998*, 7 *MICH. J. GENDER & L.* 291, 292 (2001).

218. *Id.* For an excellent comprehensive overview and analysis of Israel’s new law, including a discussion of how it has been interpreted in case law since its adoption in 1998, see Rimalt, *supra* note 216.

219. Mor, *supra* note 217, at 304.

human dignity and liberty, rather than attempt to argue for a predominately equality-based statute.”²²⁰ Sexual harassment law in Israel is not limited to a narrow context like employment. Rather, “[s]exual harassment in the workplace is defined as one of many manifestations of a wider social phenomenon.”²²¹

Israel includes a provision in its sexual harassment law that speaks to an abuse of power as a possible defining feature. Specifically, if the victim is a minor or helpless person, or if one exploits a relationship of authority, dependence, education, or treatment.²²² Despite the focus on power dynamics, the Supreme Court has interpreted the law to apply even in cases where such a dynamic is missing.²²³ “It was interpreted as attesting to the Israeli Supreme Court’s expressed, firm support of the sexual harassment law, and to its fierce condemnation of the social practice of sexual harassment In the five years that followed, this judicial attitude has been reinforced in the cases tried by the lower courts under the new law.”²²⁴

The Prevention of Sexual Harassment Law has both criminal and civil components.²²⁵ The law characterizes it as an offense when one person sexually harasses another, and provides for increased prison terms, ranging from two to four years, depending on the circumstances.²²⁶ As Israeli scholar Noya Rimalt notes: “From a global perspective, Israeli sexual harassment law provides both an intriguing example of an effort to use the law as a tool for social change and a realization of contemporary doctrinal and normative challenges to sexual harassment law in the United States and in Europe.”²²⁷

Israel’s law also provides for civil liability in sexual harassment cases, acknowledging that sexual harassment and adverse treatment are civil wrongs.²²⁸ The law is inherently victim-centered.²²⁹ It provides that a court may award compensation for sexual harassment and for prejudicial treatment to an amount which shall not exceed IS 50,000 [roughly \$15,000]

220. *Id.*

221. Orit Kamir, *Sexual Harassment Law in Israel*, 7 INT’L J. DISCRIM. & L. 315, 320 (2005) (discussing the terms of the law).

222. *Id.* at 321.

223. *See, e.g., id.* at 331 (discussing *The State [of Israel] v. Zohar Ben-Asher* (unpublished), in which Justice Zamir “stressed that abuse of authority, though a factor that enhanced the behaviour’s severity, was not a necessary element in the definition of sexual harassment; sexual harassment could occur even in the absence of power relations.”).

224. *Id.* at 331.

225. *Id.* at 316.

226. *Id.* at 316.

227. Rimalt, *supra* note 216, at 392

228. Kamir, *supra* note 221, at 315.

229. *Id.*

without a requirement of proving actual damages.²³⁰ Orit Kamir explains how this aspect of the law sets it apart from other Israeli laws: “The law, therefore, clearly proclaims that a harassed person need not wait for an emotional breakdown or for any other “quantifiable” injury in order to demand the harassment stop and to sue for sexual harassment.”²³¹ In this way, the legal remedies are available even to those victims who are strong and may not show any visible injury as a result of the harassment. As Kamir explains: “The harassment itself infringes on their dignity, right to respect and joy of life, even though their stamina did not allow the harasser to inflict ‘tangible’ injuries on them.”²³²

In an effort to avoid preventing someone from filing a complaint, the law does not impose any burden of proof. A victim “is not to be required to prove a ‘social position,’ a ‘good reputation’ or other special life circumstance that makes her particular dignity or right to respect ‘worth’ a certain amount In Israel, by law, any incident of sexual harassment injures the harassed person’s dignity and her rights to respect, equality, freedom and privacy, thus damaging her.”²³³

The Israeli sexual harassment law includes provisions that speak to prevention in the employment context,²³⁴ making it unique in this regard as well. To this end, employers must create an efficient procedure for the filing and examination of sexual harassment complaints.²³⁵ The law also contains a requirement that employers exercise diligence in trying to prevent a recurrence of the act.²³⁶ Employers who have more than twenty-five employees must also create and publish a code of practice which governs these issues in the workplace.²³⁷ There are penalties that may be imposed on employers who fail to comply with the preventative aspects of the law.²³⁸

Israel’s sexual harassment law was recently amended on January 30, 2012.²³⁹ The amendment, which again reflects an understanding of the experiences of victims, extends the statute of limitations from three years from the date of the act to seven years.²⁴⁰ This measure was undertaken because

230. *Id.* at 325

231. *Id.* at 326.

232. *Id.*

233. *Id.*

234. *Id.* at 326–30.

235. *Id.* at 328.

236. *Id.*

237. *Id.*

238. *Id.* at 221.

239. Ruth Levush, *Israel: Statute of Limitations for Sexual Harassment Suits*, LAW LIBR. CONGRESS (Feb. 9, 2012), http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205402983_text.

240. *Id.*

victims sometimes have a difficult time coming forward for a variety of reasons, ranging from failing to appreciate the actions as harassment to personal feelings of guilt and shame that may surround the event.²⁴¹

Neither Katsav nor Strauss-Kahn were accused of sexual harassment in the United States or France, so a comprehensive discussion of the laws in these countries falls outside the scope of this Article.²⁴²

Katsav was also accused of rape. The operative concept in Israel's penal code is consent; rape is defined as when a person "ha[s] intercourse with a woman without her freely given consent."²⁴³ In her comparative research, scholar Beth Miller explains:

Unlike American law, the victim's consent is the central issue in a rape case under Jewish law . . . Jewish law has never required force as a predicate to a rape conviction, nor has the law ever formally required resistance. Rather, Jewish law focuses its inquiry on whether the rape victim had any choice in the decision to engage in intercourse.²⁴⁴

The Israeli law is not gender-neutral. The law refers to the perpetrator as "he" and provides for punishment of sixteen years in prison. It defines a series of circumstances in which one is guilty of rape even if the woman did consent; such circumstances include if the woman was under fourteen or the woman was unconscious or mentally ill.²⁴⁵ There are certain aggravating

241. *Amendment to the Prevention of Sexual Harassment Law No. 5758-1998*, THE UN SECRETARY-GENERAL'S DATABASE ON VIOLENCE AGAINST WOMEN, <http://sgdatabase.unwomen.org/searchDetail.action?measureId=54423&baseHREF=country&baseHREFId=668> (last updated Mar. 21, 2012).

242. This Article will not include a complete comparative analysis of all of the crimes for which Strauss-Kahn and Katsav were implicated. Although such an undertaking is beyond the scope of this Article, it forms the basis for future scholarly inquiry by this author. The reasons for analyzing these three countries from a comparative perspective stem from their relation to Strauss-Kahn and Katsav, but they are also ripe for comparison in their own right. A comparative study of laws governing rape and sexual harassment would allow for comparison of the countries in which these powerful political figures have been accused of repeated sexual transgressions, and provide a sense of how democratic countries, albeit different in their legal systems and cultures, have decided to address these serious problems.

243. Penal Law, 5737-1977, 6 LSI. § 345(a)(1) (Isr.), translated in PENAL LAW 5737-1977 105 (6th ed.), available at <http://www.oecd.org/daf/anti-bribery/anti-bribery-convention/43289694.pdf>. The code further defines "intercourse" to mean "introduces any part of the body or any object into the woman's sex organ." *Id.* § 345(c).

244. Beth C. Miller, *A Comparison of American and Jewish Legal Views on Rape*, 5 COLUM. J. GENDER & L. 182, 194 (1996).

245. Penal Law § 345(a)(2)-(5).

circumstances, which, if present, increase the term of imprisonment to twenty years.²⁴⁶ It is in the context of these aggravating circumstances that the Israeli law considers the issues of force or physical harm to the victim.

The French Penal Code addresses rape and sexual assault as separate crimes. It defines rape as an act of sexual penetration, whatever its nature, committed on the person of another by violence, constraint, threat or surprise.²⁴⁷ The crime of rape is punishable by a prison sentence of fifteen years, but increases to twenty years when certain exacerbating circumstances are present.²⁴⁸ Sexual assault falls under the very broad category of “sexual aggressions,” which is only defined by the qualifier “other than rape.”²⁴⁹ It carries only a five-year prison sentence with accompanying fines, but is increased to seven or ten years when certain exacerbating circumstances are present.²⁵⁰ Sexual assault in France, which is a misdemeanor carries a shorter statute of limitations, just three years.²⁵¹ The French law does not address the issue of consent on the part of the victim, but rather takes the approach of defining rape in the context of force or manipulation.²⁵² In this way, the focus remains on the actions of the perpetrator.

Strauss-Kahn was formally charged with a number of related crimes like sexual abuse, forcible touching and attempted rape,²⁵³ against Diallo in the United States. Depending on the jurisdiction, penal code provisions surrounding rape in the United States vary, though there are marked similarities across state-based legislative provisions.²⁵⁴ The most significant

246. Such aggravating circumstances include having intercourse with a person who is under the age of sixteen, using or threatening the victim with a firearm, committing the offense while the victim is pregnant, abusing the woman in other ways before/ during/after the rape or engaging in rape with one or more other individuals. *Id.* § 345(b).

247. CODE PÉNAL [C. PÉN.] art. 222-23 (Fr.), translated in *Current Legal Framework: Rape and sexual assault in France*, INTERNATIONAL MODELS PROJECT ON WOMEN'S RIGHTS (June 21, 2012, 9:54 PM), available at <http://www.impowr.org/content/current-legal-framework-rape-and-sexual-assault-france>.

248. C. PÉN. arts. 222-23, 222-24 (Fr.). Such circumstances include, among others, where it is committed: on a minor under fifteen; against a person whose particular vulnerability, due to age, illness, physical or mental disability or state of pregnancy, is apparent or known to the perpetrator; with the use or threat of a weapon; or because of the victim's sexual orientation. *Id.*

249. C. PÉN. art. 222-27 (Fr.).

250. C. PÉN. arts. 222-27, 222-28 (Fr.).

251. Weissenstein & Charlton, *supra* note 94.

252. See C. PÉN. art. 222-23 (Fr.) (defining rape as penetration committed through violence, coercion, threat, or surprise).

253. See *infra* Table 1 for a comprehensive list of the charges filed against Strauss-Kahn.

254. “In the United States, all the states enacted rape law reforms by the mid-1980s, although these varied in scope and comprehensiveness. They include rape shield laws that restricted using evidence at trial about a victim's sexual history, elimination of

difference surrounds whether a law requires consent, like the Israeli law, and/or the use of force, like the French law. The Federal Bureau of Investigation in the United States recently changed its definition of rape, moving away from the previous force requirement. It now defines rape as “[p]enetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”²⁵⁵ In this Article, discussion of rape focuses on the New York penal code, since this is the jurisdiction in which Strauss-Kahn was indicted. In New York, the focus is on force: “[a] person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person . . . by forcible compulsion”²⁵⁶ The same is true for the lesser offense of sexual abuse: “[a] person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact . . . by forcible compulsion”²⁵⁷ Finally, it provides a category of “forcible touching” for which one is liable when:

Such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor’s sexual desire. For the purposes of this section, forcible touching includes squeezing, grabbing, or pinching.²⁵⁸

II. BEYOND SEDUCTION: DISENTANGLING SEDUCTION FROM SEXUAL VIOLENCE

When sexual violence first gained recognition in the literature and in the law, and simultaneously started to emerge in the context of consciousness-raising groups in the 1970s, it was discussed largely in terms of extreme

the corroboration rule, and in some states, elimination of evidence of physical resistance. The definition of rape expanded from the single offense of rape (vaginal intercourse with the penis) to a series of graded offenses that were associated with aggravating circumstances and acts. Sexual intercourse was broadened to include oral and anal penetration and male victims. By 1993, marital rape was criminalized in all states.” Kathleen Daly & Brigitte Bouhours, *Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries*, 39 CRIME & JUST. 565, 577 (2010) (citations omitted).

255. Criminal Justice Info. Servs., *UCR Program Changes Definition of Rape*, FBI (Mar. 2012), <http://www.fbi.gov/about-us/cjis/cjis-link/march-2012/ucr-program-changes-definition-of-rape>.

256. N.Y. PENAL LAW § 130.35(1) (McKinney 2003).

257. N.Y. PENAL LAW § 130.65(1) (McKinney 2003).

258. N.Y. PENAL LAW § 130.52 (McKinney 2003).

forms of physical violence, namely rape, battery, or incest.²⁵⁹ Over time, a broader range of behaviors, beyond just those that included physical violence, were identified and situated along a continuum.²⁶⁰ Stalking and harassing phone calls, for example, were considered among the more obvious physical forms of violence.²⁶¹ Ledig describes how this operates: “[a]long the proposed continuum, violent acts against women extend from brief, annoying contacts, such as street hassling, to brutal incidents of incest, battering, and rape.”²⁶² Conceptualizing it in this way allows for recognition that many kinds of unwanted behaviors have the potential to similarly impact victims. This range also indicates that “[s]exual violence exists in most women’s lives, whilst the form it takes, how women define events and its impact on them at the time and over time varies.”²⁶³ In other words, even women who may not experience rape or domestic violence in their lifetime may still encounter forms of sexual violence that may render them powerless or vulnerable.

In college, as a victim-advocate for rape survivors at a campus rape crisis center, I recall developing my work around this idea of the continuum of sexual violence. The continuum helped explain, for example, how it was that a woman who was being stalked, but had not been physically assaulted, could have many of the same responses to such an incident as a woman who was raped. It was useful in helping to contextualize and illuminate the seriousness of a range of unwanted, nonconsensual behaviors.

My current conception of the continuum includes things like harassing phone calls and emails, physical groping of a woman on the subway,

259. See Marjorie Whittaker Ledig, *The Continuum of Violence Against Women: Psychological and Physical Consequences*, 40 J. AM. C. HEALTH 149, 149 (1992).

260. *Id.* Ledig identified the continuum of violence as a mechanism by which researchers and service providers may understand that physical abuse is but one form of harm perpetuated against women. Though she addresses the continuum specifically in the realm of college health provision, it is applicable in a much broader context.

By conceptualizing violence against women along a continuum, college health professionals can appreciate the entire spectrum of victimization, recognize the objectification of women underlying such episodes, and become more sensitive to the impact that these acts have on the lives of students. Such a continuum can also serve as a device that bonds women around their common oppression and impresses men with the consequences of their entitlement and aggression.

Id.

261. *Id.*

262. *Id.*

263. Liz Kelley, *The Continuum of Sexual Violence*, in *SEXUALITIES: CRITICAL CONCEPTS IN SOCIOLOGY* 127, 129 (Ken Plummer ed., 2002) (rejecting the idea that one kind of violence is more or less harmful than another and arguing that all forms of violence against women are serious).

emotional or financial abuse by one's partner. It also includes the most physically injurious sexual assault or beating by one's spouse or intimate partner. The metaphor of the continuum forces a recognition that even incidents that do not rise to the level of physical abuse are still appropriately considered sexual violence.²⁶⁴ In my view, however, the continuum is not a place to situate sexuality more generally. There are very real dangers in doing so. There may be valid and well-reasoned arguments about a range of behaviors that push the boundaries of consent, and there are also those who contextualize all sex as problematic if not nonconsensual because of the oppressive patriarchal context in which we live.²⁶⁵ To be sure, the concept of consent is inherently complex. While there may be strong theoretical reasons to conceptualize the continuum in such a way, I argue that in practical intersection with the legal system, it becomes complicated to do so.

The way in which Strauss-Kahn in particular has been portrayed (in media and otherwise) takes the continuum metaphor and distorts it in a problematic way. In the same sentence, a reporter might discuss on the one hand, Strauss-Kahn's proclivity for engaging in overtly sexual relationships with women and, on the other, as if an extension of this behavior, the allegations that he sexually assaulted a woman, resulting in a minimization of the seriousness of sexual assault.²⁶⁶ It squares with the reputation of Strauss-Kahn, that he loves sex and women, making it at least plausible that he had consensual sex with the victim in this case. After the charges were dropped in New York, Strauss-Kahn told the public in a television interview that his interaction with Diallo was consensual.²⁶⁷ News articles focusing on Strauss-Kahn's seductive persona allow for the implication that Diallo must have consented. Or, taken another way, that Strauss-Kahn was capable of attracting any woman, making it unthinkable that he would have to force someone to have sex. One has little to do with the other and to suggest otherwise detracts from the seriousness of the allegations. Stated another way, such a characterization suggests that rape is just an extension of one's wildly womanizing tendencies; if it is so closely connected, how could it also be construed as something that is problematic, legally or otherwise? I argue, therefore, that we must disentangle seduction from sexual violence in the

264. As a feminist, I still like the metaphor of the continuum, particularly as it relates to the context of providing support to individuals who have been subject to some kind of sexual violence. As a lawyer, I recognize the limitations of the continuum in describing the kind of behavior that may be legally actionable.

265. See, e.g., CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1991).

266. See, e.g., William K. Rashbaum, *I.M.F. Chief May Claim Consensual Sex as a Defense*, N.Y. TIMES (May 17, 2011), <http://www.nytimes.com/2011/05/18/nyregion/strauss-kahn-may-claim-consensual-sex-as-defense.html>.

267. Interview, *supra* note 62.

context of perpetrators, much in the same way as we have tried to do in the context of victims.

Sexual violence is a crime that utilizes sex as a means of exercising power and control over another person. The absence of consent, and/or the presence of force, distorts and changes an otherwise appropriate sexual act. Because of this complexity, it has long been the practice to scrutinize, attack, and ultimately blame victims of sexual violence for what happened to them, based on their sexual relationships in other contexts. Feminists have long argued for a disentangling of a victim's past sexual history from a case of sexual violence.²⁶⁸ Though the legal system has been slow to recognize it, one has little to do with the other.

In the same way, I suggest that we move beyond seduction insofar as it relates to the perpetrator when talking about sexual violence. The case against Strauss-Kahn, at least in terms of how it played out in media, resulted in disturbing connections being drawn between his proclivity for sex and the sexual assault he was accused of committing.²⁶⁹ It is a confusing interplay, to be sure, signaling any number of ideas that ultimately serve to discredit the victim and downplay the seriousness of the crime. A number of scholars, reporters, and others have identified this problematic connection between sexuality and sexual violence among perpetrators. As a point of illustration, New York Times reporter Katrin Bennhold expresses this disconnect: “[t]he number of consenting mistresses and prostitutes Mr. Strauss-Kahn may or may not have entertained over the years, and the number of times he attended a high-society swingers’ club a stone’s throw from the Louvre, are utterly irrelevant to the legal case against him.”²⁷⁰

Distinguishing between behavior that is consensual or not, or that which involves force or not, is not exacting nor is it something that is always

268. For a discussion of the passage of rape shield laws, see I. Bennett Capers, *Real Women, Real Rape*, 60 UCLA L. REV. 826, 839 (2013).

269. Others have also noted this connection. See, e.g., Chrystia Feeland, *Don't Confuse DSK's Sex Life with Assault*, REUTERS (May 19, 2011), <http://blogs.reuters.com/chrystia-feeland/2011/05/19/don%E2%80%99t-confuse-dsk%E2%80%99s-sex-life-with-assault/> (addressing the danger of connecting sexual relations with sexual violence/crime); see also Jessica Grose, *French Feminists on DSK: Stop Conflating Sexual Assault and Seduction*, SLATE (May 18, 2011), http://www.slate.com/blogs/xx_factor/2011/05/18/dominique_strausskahn_alleged_sexual_assault_french_feminists_respond.html (alleging an error in French feminist connection of seduction and sexual assault or harassment); and *Elisabeth Guigou évoque la "réputation" de DSK, Gisele Halimi fustige l'esprit de clan*, LE MONDE.FR, http://www.lemonde.fr/dsk/article/2011/05/18/elisabeth-guigou-evoque-la-reputation-de-dsk-gisele-halimi-fustige-l-esprit-de-clan_1523663_1522571.html (last updated May 18, 2011, 11:43 AM) (denouncing the connection between DSK's reputation for loving women and sexual crimes).

270. Bennhold, *supra* note 206.

met with agreement. Take, for example, the opinion Elisabeth Badinter²⁷¹ expressed about Anita Hill's testimony at Clarence Thomas' confirmation hearings before the United States Senate. While most would find Thomas's behavior, if taken to be true, indicative of the most egregious sexual harassment, Badinter suggests that this was a case of nothing more than a man acting out his natural seductive tendencies; she believes that his behavior was wildly distorted and unquestionably (mis)characterized as sexual harassment. Scholars Beverley Earle and Gerald Madek explain: "The media in the U.S. and abroad fuel the illusion that the view of sexual harassment in the United States is odd and an aberration. During the Thomas-Hill hearings, French philosopher Elisabeth Badinter commented that Justice Thomas was vilified for having sexual desires Badinter blamed a 'pitiless feminist Inquisition.'"²⁷²

Article after article written in the media included details about the alleged rape against Diallo by Strauss-Kahn, but also tended to include references to his interest in women and sex,²⁷³ unnecessarily and inappropriately entangling the two. One reporter quoted a former student who admitted that Strauss-Kahn "had a real power of attraction" and that "[t]here were always hoards of female students waiting to talk to him at the end of his classes."²⁷⁴ It is hard to understand how these references shed any light on the legitimacy of the allegations against him. Again, it is troubling that in the same article, in the same sentence even, the dots are connected between one's interest in sex and the propensity to rape.

III. "IDEAL" VS. "REAL" VICTIMS OF SEXUAL VIOLENCE

Somewhat ironically, when analyzing the politically powerful men who are accused of crimes like rape and sexual harassment it becomes apparent that they are often portrayed as victims themselves. To this end, a lynch-

271. Elisabeth Badinter is a French philosopher and intellectual who studies social relationships of men and women, and who has close connections to the French Socialist Party. Paula E. Hyman, *Elisabeth Badinter*, JEWISH WOMEN ARCHIVES (Mar. 1, 2009), <http://jwa.org/encyclopedia/article/badinter-elisabeth>.

272. Beverley H. Earle & Gerald A. Madek, *An International Perspective on Sexual Harassment Law*, 12 LAW & INEQ. 43, 79 (1993) (quoting Sarah Catchpole, *Paris Pooh Poohs L'Affaire Thomas*, BOS. GLOBE, Nov. 7, 1991, at 93.).

273. See, e.g., Courtney Comstock, *The Fabulous Life of Dominique Strauss-Kahn (Before He Was Arrested)*, BUS. INSIDER (May 18, 2011, 3:25 PM), <http://www.businessinsider.com/the-fabulous-wife-of-dominique-strauss-kahn-before-he-was-arrested-2011-5?op=1> (referring to the women with whom he has had affairs and the women he has allegedly sexually assaulted).

274. Steven Erlanger & Katrin Bennhold, *Soul-Searching in France After Official's Arrest Jolts Nation*, N.Y. TIMES (May 16, 2011), <http://www.nytimes.com/2011/05/16/world/europe/16france.html?pagewanted=all>.

ing metaphor was utilized when Anita Hill testified before Congress about the sexual harassment she endured at the hand of Clarence Thomas earlier in his career.²⁷⁵ It was similarly used to describe the numerous accusations against Katsav by Katsav's own defense team.²⁷⁶ Katsav himself appropriated the "lynching" language during the period in which women came forward alleging his perpetration of sexual violence. In this way, one news source reported that "President Moshe Katsav said in a radio interview on Saturday that he was being publicly lynched after being accused of sexually harassing a former employee."²⁷⁷ Even Strauss-Kahn's lawyers used this language to describe Diallo's accusations against him.²⁷⁸ Inherent in all of these examples is this underlying idea that somehow these men were victims, accused and "tried" unfairly, without the existence of legal process.

Of course, the real victims are the ones against whom sexual violence is perpetrated. When women allege that politically powerful men rape or harass them, they are often met with a characteristic response. They are routinely disbelieved and discredited; they are portrayed in demeaning ways and their reliability and character are called into question.²⁷⁹ Their sexuality is used against them.²⁸⁰ They are treated unlike other victims of crime in that they are viewed as responsible for the violence.²⁸¹ Some of these skewed perceptions of victims of rape and sexual harassment stem from ideas of what a victim "should" look like; these ideas originate from various sources, including popular culture and media.²⁸² When the idea of what a victim should look like conflicts with what a victim actually does look like the outcome can be devastating, revealing fundamental flaws in our legal systems. So, what characteristics are used to define an "ideal" victim?

275. R.W. Apple Jr., *THE THOMAS NOMINATION; On Thomas: More Questions, Not Fewer*, N.Y. TIMES (Oct. 12, 1991), <http://www.nytimes.com/1991/10/12/us/the-thomas-nomination-on-thomas-more-questions-not-fewer.html>.

276. See, e.g., Ofra Edelman, *Defense: Katsav Won't Get Fair Trial*, HAARETZ (ISR.) (June 17, 2008, 12:00 AM), <http://www.haaretz.com/print-edition/news/defense-katsav-won-t-get-fair-trial-1.247962>.

277. Jonathan Lis & Roni Singer-Heruti, *Katsav Says is Being Publicly Lynched over Allegations of Rape*, HAARETZ (ISR.) (Aug. 25, 2006, 12:00 AM), <http://www.haaretz.com/news/katsav-says-is-being-publicly-lynched-over-allegations-of-rape-1.195860>.

278. Carvajal & de la Baume, *supra* note 105.

279. Larcombe, *supra* note 81.

280. *Id.* at 136.

281. *Id.* at 134–35.

282. See generally Gilchrist, *supra* note 31 (discussing how race and status affect media portrayal and blameworthiness of female victims of violent crime).

A. “Ideal” Victims as Described by Nils Christie

Victims of sexual violence represent different races, sexual orientations, ages, religions, abilities, and come from varied educational, socio-economic, and professional backgrounds. The crimes of rape, sexual assault, and sexual harassment similarly do not occur in a one-size-fits-all framework. These crimes do not always happen in the same way, in the same context, at the same time, nor are they committed by the same type of perpetrator. Despite the wide-ranging differences, there are very real expectations of what society thinks a rape victim “should” look like; these expectations are informed at least in part by images portrayed in media and culture.²⁸³ But what happens when the expectation of what a victim is supposed to look like does not square with the victim who actually presents herself to actors in the legal system—reporting to the police, appearing before a prosecutor, or testifying in front of a jury?

Ideas about what constitutes an “ideal” victim date far back in time. The famous jurist Blackstone proclaimed in the 1700s:

If she be of evil fame and stand unsupported by others, if she concealed the injury for any considerable time after she had the opportunity to complain, if the place where the act was alleged to be committed was where it was possible she might have been heard and she made no outcry, these and the like circumstances carry a strong but not conclusive presumption that her testimony is false or feigned.²⁸⁴

Inherent in Blackstone’s statement are intersecting ideas that suggest that victims ought to act a certain way or they will be subject to a presumption of dishonesty. In Blackstone’s view, when a woman does not report the crime immediately, does not cry for help, or does not have corroboration for her story, she will likely be perceived as lying about what happened. Hundreds of years later, similar ideas still permeate our legal systems. The conceptions follow a similar trajectory, basically imposing a set of ideas into the legal process that proscribe how a victim and the related crime itself should look.

283. See generally *id.*

284. BROWNMILLER, *supra* note 1, at 30 (quoting Blackstone as found in JOHN BETHUNE BAYLY, COMMENTARIES ON THE LAW OF ENGLAND, IN THE ORDER AND COMPILED FROM THE TEXT OF BLACKSTONE AND EMBRACING THE NEW STATUTES AND ALTERATIONS TO THE PRESENT TIME 545 (1840)).

Nils Christie, well-known Norwegian sociologist and criminologist, identified a series of characteristics²⁸⁵ that formally describe an “ideal” rape victim.²⁸⁶ From Christie’s perspective, an “ideal victim” is “[a] person or a category of individuals who—when hit by crime—most readily are given the complete and legitimate status of being a victim.”²⁸⁷ In other words, when someone who has been harmed at the hands of a criminal possesses a set of specific characteristics, she is most likely to be perceived as deserving of true victim status. Christie continues, “[t]he ideal victim is, in my use of the term, a sort of public status of the same type and level of abstraction as that for example of a ‘hero’ or a ‘traitor.’”²⁸⁸ Christie suggests that when individuals reflect certain characteristics, they are more likely to be successful in their pursuit of justice. His framework provides an important starting place for this discussion, but I argue that there is benefit to building on and expanding his characterization, a challenge I begin to undertake in this Article, and encourage other scholars to continue.

According to Christie, certain kinds of behavior and personality characteristics make it more likely that a victim’s allegations will be taken seriously by law enforcement and that a perpetrator will be successfully prosecuted. This phenomenon is problematic. A predetermined set of characteristics potentially biases the outcome against the victim and sends a message to those who do not fit within this model that their claims are not legitimate and are unlikely to succeed.

The specifics as outlined by Christie’s framework are still very relevant today and deserve revisiting, particularly in the context of legal scholarship.²⁸⁹ It provides a useful mechanism through which to begin to explore and understand how rape victims have fared in the legal system, both criminally and civilly, and how the outcomes of such cases are in turn highlighted in media and popular culture. The alleged victims of Strauss-Kahn and Katsav provide an excellent starting place to evaluate the relevance of Christie’s categories.

Christie’s framework outlines five characteristics of an “ideal victim.” They are: “(1) The victim is weak. Sick, old or very young people are partic-

285. For a complete description of these characteristics, see Nils Christie, *The Ideal Victim*, in FROM CRIME POLICY TO VICTIM POLICY: REORIENTING THE JUSTICE SYSTEM 17, 19 (Ezzat A. Fattah, ed., 1986).

286. *Id.* at 17.

287. *Id.* at 18.

288. *Id.*

289. Christie’s framework has not been widely utilized by legal scholars in the United States. Scholars have, however, taken a similar approach to describe the phenomenon of the “ideal victim,” relying instead on a framework of rape myths. See, e.g., Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV. 1013 (1991).

ularly well suited as ideal victims. (2) The victim was carrying out a respectable project—caring for her sister. (3) She was where she could not possibly be blamed for being—in the street during the daytime. (4) The offender was big and bad. (5) The offender was unknown and in no personal relationship to her.”²⁹⁰

Christie also adds an additional factor to his description of what constitutes an ideal victim, that a victim must be in a position to move forward with her case and publicly highlight her “ideal victim” status. He writes, “that you are powerful enough to make your case known and successfully claim the status of an ideal victim. Or alternatively, that you are not opposed by so strong counter-powers that you can not be heard.”²⁹¹ In some ways this factor is at odds with the requirement that a victim be weak, or powerless, and demonstrates the difficulty for victims to be successful in their claims. In other words, in his view, it is not simply enough to possess the five characteristics without the corresponding ability to present oneself to the world, highlighting publicly all of the reasons that make one an ideal victim.

Christie’s work is widely cited in the literature and relied on by scholars as a foundation to construct their own victim-based theories. Professor of Criminology James Dignan, for example, explains the impact of Christie’s work: “Christie perceptively identified six attributes that—at the level of social policy—are most likely to result in the conferring of complete, legitimate and unambiguous victim status on someone who has had a crime committed against them.”²⁹² Other scholars have also identified criteria or characteristics that make a victim more likely to succeed within the context of the criminal justice system without necessarily relying on Christie’s framework. Wendy Larcombe, for example, writes:

Rape testimony is systematically discredited by making it appear that the complainant did not do what the simultaneously constructed, valourised—and hypothetical—victim would have done. The complainant’s failing is engineered, it must be stressed. Anyone would have difficulty conforming to the requirements of ‘common sense’ or the normative behaviour of the ‘ideal’ victim²⁹³

290. Christie, *supra* note 285, at 19.

291. *Id.* at 21.

292. JAMES DIGNAN, UNDERSTANDING VICTIMS AND RESTORATIVE JUSTICE 17 (2004).

293. Larcombe, *supra* note 81, at 134.

Larcombe's analysis suggests that an ideal victim's "conduct and character are always consistent and blameless,"²⁹⁴ and that as an "imaginary construct" she is basically void of anything in her identity that would be discrediting or subject to scrutiny. She discusses and challenges the widely held notion that there are both "rapeable and unrapeable women,"²⁹⁵ and further emphasizes that those who do not conform to a set of expected characteristics are not afforded victim status.²⁹⁶

Christie's attempt to categorize and analyze what characteristics make victims successful remains a relevant inquiry even today. His framework is not specific to one country or jurisdiction; the universality of victims' experiences allows for widespread applicability. His ideas are particularly informative and instructive when used to analyze the characteristics of victims who filed complaints of sexual misconduct against Strauss-Kahn and Katsav. It is useful to evaluate the allegations levied against Strauss-Kahn through Christie's ideal victim paradigm as a means of understanding, perhaps, how the reality of victims' lives does not always square with the expectations of the legal system. Such an exercise may also help reveal new directions in which to move Christie's framework. I suggest, for example, that his framework be expanded to consider not only characteristics of victims and perpetrators, but also the relationship between the two.²⁹⁷ There is value in attempting to cultivate an understanding that even victims who do not present as "ideal" deserve to be taken seriously by the legal system.

B. Evaluating the Claims of Sexual Violence Against Moshe Katsav and Strauss-Kahn Vis-à-Vis the "Ideal Victim" Framework

An analysis of several of the Katsav and Strauss-Kahn victims through Christie's framework illustrates the continued relevance and importance of his ideal victim paradigm and allows for exploration of refinements that might make it even more powerful. In the interest of time and space constraints, this Section will primarily focus on Nafissatou Diallo, the woman who accused Strauss-Kahn of assaulting her in the New York City's Sofitel Hotel, and A.2 the woman Katsav was convicted of raping and assaulting. The value in analyzing these two cases against the backdrop of Christie's framework is to illustrate how the stereotypes and ideas surrounding victims of sexual violence are present not just in media and culture, but in the legal system as well. Exposing these ideas is an important step in remedying pervasive bias.

294. *Id.* at 137.

295. *Id.*

296. *Id.*

297. *See generally id.*

Christie's framework first requires an inherent weakness in a victim in order for her to be construed as "ideal." I find that this weakness might be interpreted in a variety of ways, ranging from one's actual physical characteristics to one's position in society generally and in this way take some liberty with Christie's category. In the context of the victims discussed in this Article, it is clear that weakness is as much a product of one's relative place in society as it is a physical characteristic. Perhaps most strikingly, the way that the allegations of Strauss-Kahn's sexual assault of Diallo in New York's prestigious Hotel Sofitel were reported in the news media, exemplifies the power imbalance between them. The news media construed Diallo's occupation as a very integral part of her identity, referring to her as a "maid" or "housekeeper" in almost every article. One article referred to her as "[a] widowed immigrant from Guinea who was granted asylum seven years ago"²⁹⁸ At the same time, the media emphasized the political power, influence, and wealth of Strauss-Kahn. The following language from a New York Times article is illustrative of the language used in many of the articles written about the case: "The country woke up to the tawdry allegations that Mr. Strauss-Kahn, 62, a leading Socialist and the managing director of the International Monetary Fund, had waylaid and tried to rape a maid in a \$3,000-a-night suite at a New York Hotel"²⁹⁹ It would be difficult to find a more pronounced, profound power imbalance than that which exists between a hotel housekeeper and the head of an international organization like the IMF who has aspirations to seek the presidency of a major world power. In this way, Diallo's relative weakness allows her to meet the criteria of an "ideal victim" according to a refined version of Christie's framework.

A.2, the woman whom Katsav was convicted of raping and sexually harassing in the context of her work in Tourism, was weak in similar ways. Like Diallo, A.2's experience revealed a significant power differential in that she was victimized by a politically powerful man. In addition, she was financially dependent on him for her continued employment. In the Katsav trial, the judges characterized her in a way that emphasized her weakness as a victim without reference to her physical characteristics. They wrote "[t]hat A.2 'was not wily or sophisticated.' 'She is naïve and innocent, prone to pleasing her environment and respecting authority'"³⁰⁰ The court seemed to recognize her weakness as something that supported her believa-

298. Rashbaum, *supra* note 266.

299. Erlanger & Bennhold, *supra* note 274.

300. Ofra Edelman, *Excessive Media Coverage May Reduce Katsav Rape Sentence, Judges Say*, HAARETZ (Isr.) (Jan. 16, 2011, 12:03 PM), <http://www.haaretz.com/news/national/excessive-media-coverage-may-reduce-katsav-rape-sentence-judges-say-1.337310>.

bility. They refused to blame her for not leaving her position after she was raped by Katsav, noting that she was dependent on her job in order to earn a living, further illustrating how perceived weakness is an important consideration.³⁰¹

The second component of Christie's framework requires that one be engaged in a "respectable project" during the victimization in order to be perceived as an "ideal victim." In Diallo's case, she was working in a "legitimate" capacity as a housekeeper at a respectable luxury hotel in New York City at the time that she claimed that Strauss-Kahn assaulted her.³⁰² Similarly, A.2 was working for Katsav in a "legitimate" work-related role.³⁰³ Contrast these two examples, however, with the allegations that Strauss-Kahn raped Marie-Anne, the Belgian prostitute.³⁰⁴ In this particular scenario, Marie-Anne was not engaged in a project that would be construed as "respectable." Society at large would be more likely to view prostitution as the antithesis of what a legitimate project might be and therefore it would be difficult to characterize Marie-Anne as an "ideal" victim.

Christie's third category, requiring that a victim be "blameless" for what happened, presents a level of complexity that reflects the myths and attitudes about sexual violence generally. Victims are routinely blamed for all sorts of contributory actions ranging from what they wore, to where they were, to how they reacted (or did not react) to the assault. They are questioned about things such as how they responded during the assault.³⁰⁵ A "blameless" victim is one who has no ulterior motive for pursuing legal redress. She is not in need financially, and her actions in no way contributed to the violence perpetrated against her.

Diallo was not portrayed as blameless in most media sources and ultimately the criminal prosecutor chose to drop the case based on "inconsis-

301. CrimC (TA) 1015/09 State of Isr. v. Katsav (Dec. 30, 2010), Nevo Legal Database (by subscription) (Isr.).

302. Baker & Erlanger, *supra* note 54.

303. Ofra Edelman, 'Katsav Lied, Manipulated and Withheld Information', HAARETZ (Isr.) (Dec. 30, 2010, 6:01 PM), <http://www.haaretz.com/news/national/katsav-lied-manipulated-and-withheld-information-1.334311>. The woman that this Article refers to as A.2 is named in this particular news article simply as A.

304. Peter Allen, *Now Dominique Strauss-Kahn 'Faces Gang Rape Investigation After Prostitute Claims She Was Assaulted at Washington's W hotel'*, MAILONLINE (U.K.), <http://www.dailymail.co.uk/news/article-2147467/Dominique-Strauss-Kahn-scandal-French-prosecutors-investigate-claims-gang-rape.html> (last updated May 21, 2012, 7:58 PM).

305. DIANA E.H. RUSSELL, *THE POLITICS OF RAPE* (1975). Russell's pivotal historical text provides interviews with victims of rape, illustrating their experiences with blame and judgment. She discusses how one of the women she interviewed "[a]llowed herself to be raped" instead of causing harm to the perpetrator; after all, women were taught not to be violent. *Id.* at 109.

tencies” that made her a less ideal victim. In fact, some media sources even portrayed her as a prostitute working out of the hotel rooms while doubling as a maid, insinuating that what happened with Strauss-Kahn was a consensual affair and if it was not, she was certainly “asking for it” by her activities.³⁰⁶ As a low-wage immigrant worker, Diallo was in need financially and allegedly was recorded telling someone she would not have to worry because of the payout she expected related to the Strauss-Kahn case.³⁰⁷ This, in addition to other inconsistencies in her story, portrayed Diallo as less than “blameless” under the Christie framework.

A.2, on the other hand, was not portrayed as blameworthy for the assault.³⁰⁸ As reported by the news service *The Telegraph*, the judges dismissed Katsav’s “alternative scenarios[,]”³⁰⁹ in which Katsav suggested his affair with A.2 was a consensual sexual relationship.³¹⁰ The Court concluded that the harassment was a result of A.2’s refusal “to accept the defendant’s sexual advances” and that A.2’s “version of events” was the truthful version.³¹¹

Only one of Christie’s factors involves consideration of the perpetrator’s characteristics. His fourth factor requires that a perpetrator be “big and bad.”³¹² There are many rape myths that pervade our collective (and legal) consciousness. One such myth is that the perpetrator is a frightening man who jumps out of the bushes and attacks a woman unknown to him; this

306. Laura Italiano, *Maid Cleaning up as ‘Hooker’*, N.Y. POST (July 2, 2011, 4:00 AM), http://www.nypost.com/p/news/local/manhattan/maid_cleaning_up_as_hooker_0mMd759PLuYGYJyA0RNbl.

307. *Bombshell Revelation: Ex-IMF Chief, DSK’s Accuser, 32-year-old, Nafissatou Diallo, Taped Call (“Don’t Worry, I Know What I am Doing, This Guy Has a Lot of Money”) to a Boyfriend in Immigration-Jail in Arizona, Alarmed Prosecutors-Reports*, REPUBLIC REP. (July 2, 2011), <http://www.republicreport.com/bombshell-revelation-dsks-accuser-32-year-old-nafissatou-diallo-call-dont-worry-this-guy-has-a-lot-of-money-to-a-boyfriend-in-immigration-jail-in-arizona-alarmed-prosecutors-reports/>. *But see Dominique Strauss-Kahn Accuser ‘Did Not Exploit Case for Money’ Lawyer Says*, GUARDIAN (July 28, 2011, 5:38 PM), <http://www.theguardian.com/world/2011/jul/28/dominique-strauss-kahn-diallo-money> (indicating that a misinterpretation of the phone call led to “exploitation” rumors that were untrue).

308. Edelman, *supra* note 303.

309. *Israel Court Rejects Moshe Katsav Appeal Over Rape Conviction*, TELEGRAPH (U.K.) (Nov. 10, 2011), <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/8881028/Israel-court-rejects-Moshe-Katsav-appeal-over-rape-conviction.html>.

310. *Id.*

311. *Moshe Katsav’s Rape Victim: Seven Worst Years of my Life are Over*, HAARETZ (Isr.) (Dec. 30, 2010), <http://www.haaretz.com/mobile/moshe-katsav-s-rape-victim-seven-worst-years-of-my-life-are-over-1.334307>.

312. Christie, *supra* note 285, at 19.

myth, fortunately, has been exposed.³¹³ Yet, the idea that a perpetrator must be “big and bad” pervades. In the context of Strauss-Kahn and Katsav, both men were respectable, powerful, political figures who made significant contributions to society. It is hard to imagine either man as big and bad, though they are both undeniably powerful. As a result, this criterion is problematic for all of the respective victims, making it difficult for them to be construed as ideal because of the relative status of the men who perpetrated violence against them.

Applying Christie’s framework to Katsav and Strauss-Kahn, it is evident that focus should not just rest on the relative status of the particular victim (transcending physical weakness and including characteristics of money, education, and work) but also the relationship between victim and perpetrator.

Christie’s ideal victim framework suggests a fifth criterion that the perpetrator be unknown to the victim, further perpetuating the myth of the rapist as discussed previously.³¹⁴ This is a complex category explained at least in part by the reality that “[c]ases involving stranger rapes did not have to be corroborated as much as cases involving acquaintance rapes.”³¹⁵

What is particularly striking about this requirement is that it is directly at odds with the reality that most victims know their attackers.³¹⁶ In the case of Katsav, the four women who accused him of sexual violence as profiled in this Article were all acquaintances in that they worked for him in various employment contexts; this automatically makes them less than ideal. However, Diallo and Strauss-Kahn were complete strangers but for the context of their brief encounter in the hotel in New York. The relationship is problematic in light of Christie’s category requiring the lack of a personal relationship in order for a victim to be considered ideal. This criterion is particularly important as it highlights the relationship between victim and perpetrator.

In Israel, President Katsav tried to use the existing relationship with A.2 to counter the allegations against him, arguing that she had feelings for him.³¹⁷ In this particular example, however, Israeli courts were not persuaded by Katsav’s arguments. Katsav’s strategy, though unsuccessful, illus-

313. *List of Rape Myths*, UNIV. OF MINN. DULUTH, <http://www.d.umn.edu/cla/faculty/jhamlin/3925/myths.html> (last visited Nov. 14, 2013).

314. See discussion *supra* note 6.

315. Anderson, *supra* note 8, at 926.

316. See *supra* note 6 for a discussion of the relationship that routinely exists between victim and perpetrator.

317. *Supreme Court Upholds Ex-President Katsav’s Rape Conviction*, JERUSALEM WORLD NEWS (Nov. 10, 2011), <http://jerusalemworldnews.com/2011/11/10/supreme-court-upholds-ex-president-katsav-s-rape-conviction/>; Edelman, *supra* note 303.

trates the problems inherent in a context in which the victim and perpetrator are acquainted with one another.

Scholars have noted, in other contexts, the differences in outcomes when victim and perpetrator know one another. Francis X. Shen's empirical research, for example, reveals that victims are most successful in their civil claims when "they ha[ve] been abducted or ha[ve] been seriously physically assaulted" and as a related matter, that victims who were raped in the context of a dating relationship received significantly lower damages awards.³¹⁸

Of all of Christie's requirements, the ability of a victim to demonstrate her ideal status is perhaps the most critical. This almost suggests that a victim must be strategic about how to portray herself so as to make her appear in a way most likely to highlight her "desirable" characteristics.

Diallo presented herself as an ideal victim, satisfying most of Christie's categories. She was "weak," at least in terms of her relative position to Strauss-Kahn. She was unknown to him. She was engaged in "respectable" work as a housekeeper at a prestigious hotel at the time of the assault. She was not, however, blameless. Whether Strauss-Kahn meets the criteria as a big, bad perpetrator is perhaps subject to debate. Though Diallo meets most of Christie's criteria, there are additional characteristics which stand in the way of her achieving status as an "ideal" victim. These additional issues are worth exploring and beg the creation of additional categories in Christie's framework.

Christie does not articulate whether any of the particular factors carry more weight than others. Failing to satisfy even one has the potential to seriously diminish the ideal status of a particular victim, thereby seriously challenging her legal claim.

C. Reframing Christie's "Ideal Victim" Standard

Christie's framework remains a useful mechanism by which to evaluate the ways in which the legal system responds to victims of sexual violence. Despite the progress that has been made, there remain very real ideas about what a victim "looks" like that relate directly to believability and likelihood of success in the legal process. In addition to an increased focus on the characteristics of the alleged perpetrator, and careful study of the relationship between victim and perpetrator, there are a few additional factors that, when added to Christie's existing categories, make it a better reflection of the current reality. These factors including a lack of past sexual history on the part of a victim and no propensity toward seduction on the part of the perpetrator, timely reporting of the incident, and no financial incentive on

318. Shen, *supra* note 24, at 32.

the part of the victim. These refinements, together with Christie's existing categories, ultimately shed light on many of the obstacles faced by victims of sexual violence, and should inform the conversation about how to better serve the needs of sexual violence victims.

In order for a victim to be rendered ideal she should not have any past sexual history to speak of. An ideal victim is, in the best possible world, a virgin, who has never had any dating or sexual relationships with men.³¹⁹ Rape law has included the notion that:

A victim's lack of sexual chastity was considered relevant evidence on the issue of both consent and the victim's credibility as a witness, that is, her propensity to tell the truth. A lack of chastity on the part of the victim suggested both that she had a propensity to consent to sexual intercourse and that she had a propensity to lie.³²⁰

Diallo's past sexual history was not problematic per se and in some ways Diallo presented as an "ideal" victim. There were attempts by some news sources to portray Diallo as a prostitute who was using her legitimate position at the hotel as a cover for selling sex.³²¹ This was essentially an attempt to render unavailable one of the characteristics that makes her ideal. That there was not an existing relationship between Diallo and Strauss-Kahn may in part explain why her sexual history did not really become an issue. However, she did not escape scrutiny on this factor altogether as she was criticized for being untruthful in an unrelated rape allegation surrounding her application for asylum in the United States.³²²

Past sexual history did, however, play a role in the cases against President Katsav. A.2 in particular was heavily scrutinized. One news source reported that:

[Her] former boss, who said that she is not currently in contact with A., stated that A. 'was not sexually involved with any men in the office . . .' She is being presented as if she were a 'loose'

319. This notion has historical origins from biblical times, when the rape of a woman was seen as "theft of her chastity" and not about her autonomy. As law has evolved, the implicit requirement of sexual virtuousness has remained. Anderson, *supra* note 8, at 926.

320. *Id.*

321. Italiano, *supra* note 306.

322. *DSK Hotel Maid 'Dropped to Floor and Rolled Around Weeping After Rape Lies Were Exposed'*, MAILONLINE (Aug. 23, 2011, 12:47 PM), <http://www.dailymail.co.uk/news/article-2028684/Dominique-Strauss-Kahn-maid-Nafissatou-Diallo-dropped-floor-rape-lies-exposed.html>; Italiano, *supra* note 306.

woman, which is completely inaccurate,' the former boss said. 'She comes from a religious home, that's not how she was raised.'³²³

This inquiry into the past sexual history of A.2 reflects an almost obsessive tendency to ensure the sexual chastity of a rape victim; a woman who is sexually active is almost immediately discredited.

The sexuality of the perpetrator also plays a role in the characterization of an ideal victim. Strauss-Kahn is widely thought of as a "womanizer" who has a proclivity toward seduction; the media routinely describes these tendencies. It might follow then that someone like Strauss-Kahn would be similarly discredited in the context of allegations of sexual violence, in the same way that a victim who does not reflect sexual chastity might be. One interpretation might be that a man who is overtly sexual or has a "frenzied desire to seduce women"³²⁴ is more likely to cross the line and commit an act of sexual violence. But, the narrative as it has actually unfolded, insofar as it relates to Strauss-Kahn, does not appear to follow this trajectory. Instead, it is almost as if Strauss-Kahn's overt sexuality somehow absolves him of possible liability for the crimes for which he is accused.³²⁵ It is as if one can be either a seducer or a rapist, but certainly not both. Why would a man who routinely has his way with women force them to have sex? What is underlying this sentiment perhaps reflects a chronic misunderstanding of sexual violence.

Christie's framework would also benefit from a category that requires the victim to report the incident in a timely manner, without delay.³²⁶ Under such a categorization, Diallo is an ideal victim, in that it was only a matter of minutes between her encounter with Strauss-Kahn, and her reporting what had transpired to personnel at the Sofitel Hotel.³²⁷ Tristane Banon, on the other hand, waited about nine years after the incident to come forward and officially allege that Strauss-Kahn had harmed her.³²⁸ This fact made Banon appear inherently untrustworthy. There are many reasons victims do not come forward with complaints immediately: they

323. Jonathan Lis & Roni Singer-Heruti, *Katsav's Accuser Denies Reports of Extortion Attempts*, HAARETZ (Isr.) (Oct. 12, 2006, 12:00 AM), <http://www.haaretz.com/print-edition/news/katsav-s-accuser-denies-reports-of-extortion-attempts-1.201270>.

324. Bacqué, *supra* note 40.

325. *See supra* Part II.

326. There are other problems that arise when a victim does not come forward immediately. Many of the laws governing sexual violence have relatively short statutory limitations periods, making it imperative that a victim report what happened in a timely manner in order to be able to take full advantage of the legal process.

327. Baker & Erlanger, *supra* note 54.

328. Weissenstein & Charlton, *supra* note 94.

fear repercussions for reporting, they are afraid they will not be believed, and sometimes they do not even recognize that what happened to them was legally actionable. Despite this reality, however, individuals who delay their reporting may not be perceived as ideal victims. After the Katsav case was resolved, a new amendment of the country's sexual harassment law was passed.³²⁹ The law extended the statute of limitations, allowing for a sexual harassment claim to be brought up to seven years after the incident.³³⁰ This change illustrates a fundamental understanding of the dynamics, which might inform a victim in her pursuit of legal remedy against someone who harassed her.

A third and particularly important category to add to Christie's framework includes the requirement that a victim has nothing to gain personally or financially from the assault, that she has no financial problems, or any kind of financial needs that might be satisfied by a judgment against the perpetrator. An additional requirement that the perpetrator not have significant financial means might also be beneficial and contributes to the idea that the relationship between victim and perpetrator is important to explore. The addition of this category is responsive to the assumption that victims are motivated by financial gain (as opposed to redress for the wrongs committed against them) when they pursue civil litigation. Take for example this description about one of Katsav's victims: "[i]njustice is being done to her; that's not the A. I know. I also don't recall her being very interested in money."³³¹ A poor victim, therefore, is not ideal, as she would be seen as having motivations that are fueled by a desire to make money.³³²

A wealthy perpetrator is similarly problematic. A configuration of victim and perpetrator that includes a wealthy perpetrator and a poor victim is doubly so. In the case of Diallo, her status as a housekeeper at a hotel, while initially interpreted as something that made her ideal as a "weak" victim under Christie's framework, later served to complicate her case. Her ideal "weakness" as a vulnerable low-wage worker actually became problematic for prosecutors as she filed a civil lawsuit in the midst of the criminal inves-

329. Katsav began serving his seven-year sentence in late 2011. Ethan Bronner, *Avowing Innocence, Israeli Ex-President Enters Prison*, N.Y. TIMES (Dec. 7, 2011), <http://www.nytimes.com/2011/12/08/world/middleeast/moshe-katsav-ex-israeli-president-enters-prison.html?pagewanted=all&r=0>. The Prevention of Sexual Harassment Law was amended on January 30, 2012. Levush, *supra* note 239.

330. Levush, *supra* note 239.

331. Lis & Singer-Heruti, *supra* note 323.

332. A powerful example of a victim perceived as seeking monetary gain was hypothesized by Strauss-Kahn himself in front of reporters. "[Strauss-Kahn] imagined a scenario in which his reputation could be ruined by a false claim by 'a woman . . . raped in a parking lot and to whom someone promised 500,000 or a million euros in exchange for her story.'" Bacqué, *supra* note 40.

tigation. Prosecutors discovered that Diallo engaged in a conversation with a friend about Strauss-Kahn's wealth.³³³ That a victim must be perceived in this way is at odds entirely with the goals of the system of tort law, which seeks, among other things, to make a victim whole, to deter future bad conduct, and to promote fairness in the legal system. One who seeks to recover financially from the individual who committed a violent act against her should not be subject to this kind of scrutiny, which effectively puts her on notice not to pursue financial redress.

It is important to acknowledge that a victim who does not choose to pursue civil litigation may be also scrutinized for her lack of initiative in this regard. This no-win situation operates as a double bind,³³⁴ where there is not a good choice available because both are wrought with the potential for criticism. A victim who does not file a civil lawsuit may be subject to criticism, skepticism, and disbelief that her rape claim is legitimate in the first place. In this way, a "real" victim would pursue all legal options available to her. One scholar makes the argument that "an accuser might actually be *more* vulnerable to impeachment if she did not file a parallel civil claim. The standards of proof are much lower in civil court, so her failure to file a civil claim might invite the criticism that she doubts her own allegations."³³⁵ Further exploration of civil liability as an option for victims of sexual violence is warranted, although a full discussion exceeds the boundaries of this Article.³³⁶

333. News Desk, *Charges Against Former IMF Head Dominique Strauss-Kahn Dropped*, PBS NEWSROOM (Aug. 23, 2011, 12:44 PM), <http://www.pbs.org/newshour/run-down/2011/08/charges-against-former-imf-head-dominique-strauss-kahn-dropped.html>.

334. Legal philosopher Marilyn Frye describes how "[w]omen are caught [in binds] by networks of forces and barriers that expose one to penalty, loss or contempt whether one works outside the home or not, is on welfare or not, bears children or not, raises children or not, marries or not, stays married or not, is heterosexual, lesbian, both or neither." MARILYN FRYE, *THE POLITICS OF REALITY: ESSAYS IN FEMINIST THEORY* 3–4 (1983). Other scholars have also advanced this idea. Kathleen Hall Jamieson, for example, identifies five types of binds used strategically "by those with power against those without," thereby interfering with women's advancement. KATHLEEN HALL JAMIESON, *BEYOND THE DOUBLE BIND* 5 (1995).

335. Tom Lininger, *Is it Wrong to Sue for Rape?*, 57 DUKE L.J. 1557, 1564 (2008).

336. See generally Ellen M. Bublick, *Citizen No-Duty Rules: Rape Victims and Comparative Fault*, 99 COLUM. L. REV. 1413 (1999); Ellen M. Bublick, *Tort Suits Filed by Rape-Sexual Assault Victims in Civil Courts*, 59 SMU L. REV. 55 (2006) (discussing the intersection of tort law and sexual violence).

IV. CONTINUING THE CONVERSATION ABOUT SEXUAL VIOLENCE
AFTER STRAUSS-KAHN AND KATSAV: “ANITA HILL MOMENT”
OR SOMETHING ELSE?

Ideal or not, the Katsav and Strauss-Kahn victims have received significant attention. One wonders the impact of this widespread worldwide conversation. Drawing on another similarly high profile case provides potential insight.

The extensive media coverage of Anita Hill’s testimony before Congress about the sexual harassment she allegedly endured while working for Clarence Thomas unquestionably influenced public perception and policy.³³⁷ Explaining the impact, scholar Julia Wood writes: “The Hill-Thomas hearings in particular and sexual harassment in general have drawn the general public, scholars and others into a continuing conversation about what happened then and what it means now.”³³⁸ Both the domestic and global impact has been widely noted by scholars.³³⁹ Abigail Saguy, a scholar who writes extensively about French and U.S. sexual harassment laws reflects that “[v]ia the Hill-Thomas scandal, the mass media raised American public consciousness about a problem that, despite existing jurisprudence, was little known among the American public.”³⁴⁰ As a point of illustration, Saguy’s research reveals how in 1989, the *New York Times*, *Time*, and *Newsweek* published a total of only nine articles about sexual harassment.³⁴¹ Two years later, in 1991, the year Hill testified before Congress, that number jumped to 198 and in the years following, the number had not dipped to less than

337. Julia T. Wood, *Foreword to THE LYNCHING OF LANGUAGE*, *supra* note 34, at ix.

338. *Id.* at ix, x. “Interest in the Hill-Thomas hearings cuts across lines of class, race, and gender that often partition attention to topics of social life. White-and blue-collar workers were equally glued to the televised drama; women and men passionately debated what had ‘really’ happened . . .” *Id.* at ix.

339. For an engaging and comprehensive discussion reflecting the ideas of a variety of scholars about Hill-Thomas hearings and related issues, see *id.*

340. ABIGAIL C. SAGUY, *WHAT IS SEXUAL HARASSMENT?: FROM CAPITOL HILL TO THE SORBONNE* 73 (2003).

341. Abigail Cope Saguy, *Sexual Harassment in France and the United States: activists and public figures defend their definitions*, in *RETHINKING COMPARATIVE CULTURAL SOCIOLOGY: REPERTOIRES OF EVALUATION IN FRANCE AND THE UNITED STATES* 56, 58 (Michele Lamont & Laurent Thevenot eds., 2000); see also Ragan et al., *Introduction to a Communication Event: The Hill-Thomas Hearings*, in *THE LYNCHING OF LANGUAGE*, *supra* note 34, at xv (emphasizing how although there were legislation and court opinions addressing sexual harassment, until the Thomas confirmation hearings, “[i]t had not attracted widespread attention or been discussed by most employers and employees or the public.”) Indeed, sexual harassment lacked a “public forum” in which it could be discussed. *Id.* at xvi–xvii.

107 per year, as of 1999.³⁴² This phenomenon, commonly referred to as the “Anita Hill Effect,” has been extensively studied and documented.³⁴³

Prior to Hill’s testimony before Congress, sexual harassment was not really talked about or understood in mainstream culture. Its absence from the public conversation is reminiscent of the absence of other forms of gender-based violence such as rape. Indeed, it was not until women began engaging in consciousness-raising groups in the 1960s and 1970s and discussing the problem with one another, that rape became visible in the public discourse.

Kathrin Zippel further explains that “[e]ven if Anita Hill’s allegations did not preclude Clarence Thomas’s confirmation, her testimony created public awareness across North America and Europe. Many Americans and most Europeans heard the term sexual harassment for the first time during the Hill-Thomas hearings.”³⁴⁴ The reaction was not all positive, however.³⁴⁵ Particularly in France, many perceived the hearings to be akin to a “witch hunt” and felt that “America was largely over-reacting to Hill’s allegations of sexual harassment against Thomas.”³⁴⁶

The case against Strauss-Kahn occurred quite recently, but it has already had a significant impact. Although the case was ultimately dropped, it has nonetheless sparked a conversation that has crossed international borders, and arguably resulted in positive change. In her new book, *Rape is Rape*, lawyer Jody Raphael writes, “the Strauss-Kahn case may have pushed us forward. Perhaps the public began to understand that a much-accomplished public servant, reportedly happily married, could also have a propensity for aggressively forcing himself on women.”³⁴⁷ Raphael makes the point that until we are able to grasp this concept, those who accuse celebrities and other high-profile individuals of sexual violence will be presumed to be untruthful.³⁴⁸ Reminiscent of the impact the Hill testimony had on the

342. SAGUY, *supra* note 340.

343. See *supra* note 48 for a discussion of this phenomenon.

344. KATHRIN S. ZIPPEL, *THE POLITICS OF SEXUAL HARASSMENT: A COMPARATIVE STUDY OF THE UNITED STATES, THE EUROPEAN UNION, AND GERMANY* 213 (2006). “The sexual harassment regulations developed in the United States and subsequent case law clearly influenced legal developments in other countries.” Beverley H. Earle & Gerald A. Madek, *An International Perspective on Sexual Harassment Law*, 12 *LAW & INEQ.* 43 (1993).

345. ZIPPEL, *supra* note 344, at 214 (“The reception of the Hill-Thomas hearings in EU member states was more than ambivalent, and European media continued to misrepresent US law by decontextualizing allegations and reporting selectively on court cases.”).

346. SAGUY, *supra* note 340, at 43.

347. JODY RAPHAEL, *RAPE IS RAPE* 168 (2013).

348. *Id.*

conversation about sexual harassment in the United States, French journalist Valérie Touranian believes that “[t]his affair has been a catalyst. Some women are asking themselves what it really means to consent.”³⁴⁹ Speaking to the more global impact of the Strauss-Kahn allegations, Touranian said, “[t]here will be a before and an after.”³⁵⁰ It may be too soon to truly appreciate the impact that Strauss-Kahn and the numerous allegations against him may have on the broader dynamic of sexual harassment, but if history is any guide, it is unlikely that the landscape will remain unchanged. The “before” is quite clear, but the question remains what the “after” will look like.

It is hard to know with certainty whether or not recent changes in French sexual harassment law have anything to do with allegations against Strauss-Kahn, but there has been speculation to this effect, and it is not a stretch to imagine that this case could make lawmakers take notice. The discussion of sexual harassment in France occurs amidst a major upheaval and change in the law that occurred over the course of several months in 2012. The nation’s Constitutional Council overturned the old law governing sexual harassment on May 4, 2012,³⁵¹ leaving the country without a legal provision addressing sexual harassment for three months while Parliament worked to address criticism of the existing law;³⁵² the earlier version did not contain an actual definition of sexual harassment.³⁵³ On July 31, 2012, the Senate and the National Assembly adopted a new law that is more specific and addresses some of this earlier critique.³⁵⁴ Under the new law,

349. Bennhold, *supra* note 206.

350. *Id.*

351. Conseil constitutionnel [CC] [Constitutional Court] decision No. 2012-240 QPC, May 4, 2012 (Fr.), available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-114585.pdf>.

352. CC decision No. 2012-240 QPC.

353. France’s original sexual harassment law defined sexual harassment only as an abuse of authority. Rebecca DiLeonardo, *France Repeals Sexual Harassment Law*, JURIST (May 6, 2012, 8:35 AM), <http://jurist.org/paperchase/2012/05/france-repeals-sexual-harassment-law.php>. In 2002, the law was amended to define sexual harassment as “[t]he harassment another [sic] person for the purpose of obtaining favours of a sexual nature [shall be] punished.” C. PÉN. art. 222-33 (Fr.), translated in Legifrance, Penal Code 39 (John R. Spencer trans., last updated Oct. 12, 2005), available at http://www.legifrance.gouv.fr/content/download/1957/13715/version/4/file/Code_33.pdf. The law was repealed in 2012 when the Constitutional Council determined that its definition of sexual harassment was too vague to be enforceable. Rebecca DiLeonardo, *France Parliament Adopts New Sexual Harassment Law*, JURIST (Oct. 1, 2012, 1:20 PM), <http://jurist.org/paperchase/2012/08/france-parliament-adopts-new-sexual-harassment-law.php>.

354. The Senate voted unanimously to adopt the language of the new law on July 12, 2012. *French Senate unanimously agrees (sic.) new sexual harassment law*, RFI ENGLISH (July 13, 2012), <http://www.english.rfi.fr/france/20120713-new-law-sexual>

the definition of sexual harassment is the imposition of repeated remarks or behavior of a sexual nature that impairs one's dignity because of their degrading or humiliating character, or creates a situation that is intimidating, hostile or offensive.³⁵⁵

Scholars have studied the phenomenon of a highly publicized incident making a significant impact on public policy.³⁵⁶ As Professor Shen explains: “[t]hese events are an important part of the policymaking process because they focus the public’s attention on a certain subset of problems, and in response, lawmakers often craft new legislation.”³⁵⁷ As noted previously, there is speculation that the recent changes in French law can in fact be attributed back to the case against Strauss-Kahn in the United States. The news source *RFI* identified the connection, explaining how “[t]he law came into force shortly after the high-profile rape case alleged by a hotel chambermaid against former IMF-head and social party member, Dominique Strauss-Kahn, induced a flood of sexual harassment cases in France.”³⁵⁸ Similarly, in Israel, the Prevention of Sexual Harassment Act was recently amended to increase the statute of limitations from three to seven years, reflecting an appreciation of the barriers that often impede victims from coming forward in a timely manner.³⁵⁹

Sometimes the reporting on high profile cases encourages victims who might not ordinarily have come forward to do so.³⁶⁰ This trend was present

harassment-unanimously-accepted-french-senate. The National Assembly also unanimously passed the law a few weeks later on July 24. DiLeonardo, *France Parliament Adopts New Sexual Harassment Law*, *supra* note 353. Both bodies formally adopted the law on July 31, 2012. Maïa de la Baume, *France Passes a Tougher Sexual Harassment Law*, INTERNATIONAL NEW YORK TIMES (July 31, 2012, 4:05 PM), <http://rendezvous.blogs.nytimes.com/2012/07/31/france-passes-a-tougher-sexual-harassment-law/>.

355. MINISTÈRE DE LA JUSTICE, MEMO NO. CRIM 2012-15 / E8-07.08.2012, PRÉSENTATION DES DISPOSITIONS DE DROIT PÉNAL ET DE PROCÉDURE PÉNALE DE LA LOI N° 2012-954 DU 6 AOÛT 2012 RELATIVE AU HARCÈLEMENT SEXUEL [Presentation of the Criminal Law and Criminal Procedure Law No. 2012-954 of August 6, 2012 on Sexual Harassment] (2012) (Fr.), *available at* http://www.textes.justice.gouv.fr/art_pix/1_1_circulaire_07082012.pdf.

356. Shen, *supra* note 24.

357. *Id.* at 23.

358. *Women's Affairs Ministry Returns to French Politics*, RFI ENG., <http://www.english.rfi.fr/france/20120519-women-s-affairs-ministry-returns-french-politics> (last updated May 20, 2012).

359. Levush, *supra* note 239.

360. This was the case following Hill's testimony before Congress. The EEOC saw an increase of 150% in the nine months afterward. D.G. Bystrom, *Beyond the Hearings, in THE LYNCHING OF LANGUAGE*, *supra* note 34, at 268. In Israel, Orit Kamir, who was instrumental in the passage of that nation's sexual harassment law, noted a marked change that occurred after the law's enactment. "Thanks to massive media

in the Strauss-Kahn and Katsav cases. In both instances, the initial allegations against the two men prompted other victims to come forward;³⁶¹ it can apply to both the victims of the same perpetrator, as well as to victims more generally. For example, after the conviction of President Katsav, Israeli rape crisis centers saw an increase in calls to their crisis lines; the centers reported that some individuals called in direct response to the verdict being rendered and others who came forward to talk about the abuse that they themselves had endured.³⁶² An employee at the rape crisis center expressed optimism about the impact the case might have: “[t]here is great hope,” she added, “that the verdict will constitute a milestone and strengthen women who are deliberating over whether to file a complaint and that even instances of ‘just a kiss’ or ‘just a touch’ have received recognition as sexual harassment.”³⁶³ The organization Women Against Violence reports that “[t]he number of Arab women seeking assistance in dealing with sexual assault has risen as a direct result of the intensive media coverage of former president Moshe Katsav’s case.”³⁶⁴ Law enforcement even suggested that they expected additional complainants to come forward following the second Katsav victim who filed a report: “Police officers involved in the case believe that like other similar cases of sexual assault and harassment, once one woman comes forward to file a complaint—even if the alleged crime is covered by the statute of limitations—others will be encouraged to follow suit.”³⁶⁵

In Israel, after the conviction of Katsav, politicians and other public officials indicated an overwhelming sense of pride that justice could be served even in a case of accusations made against a powerful politician. The

coverage of the new legislation and the first complaints under it, women, employers, and the Israeli public at large have become aware of the social problem and the relevant legal duties, remedies, and sanctions. The term ‘sexual harassment’ has become widely familiar and meaningful.” Kamir, *supra* note 215.

361. See *supra* Part II for a comprehensive discussion of the events that followed the initial complaints filed against Strauss-Kahn and Katsav.

362. Weiler-Polak, *supra* note 170.

363. *Id.*

364. “The number of women who contacted the organization’s center for sexual-assault victims rose 23 percent in May and June, compared to the same months last year, to about 100 women, the group said. And according to center employees, many of these women cited the Katsav case in their decision to appeal for help. Even though this case convinced many women that complaining to the police is not necessarily effective, the employees explained, at the same time, it raised awareness of the fact that sexual assault is illegal and unacceptable.” Yoav Stern, *Katsav Case Spurs Upturn in Arab Women’s Complaints of Sexual Assault*, HAARETZ (Isr.) (July 9, 2007, 12:00 AM), <http://www.haaretz.com/print-edition/news/katsav-case-spurs-upturn-in-arab-women-s-complaints-of-sexual-assault-1.225130>.

365. Lis & Singer-Heruti, *supra* note 139.

pride was tempered only by a sense of sadness and perhaps embarrassment that such atrocities were committed by someone in such a respected and powerful position as the President of Israel.³⁶⁶ The sentiments expressed by some of the nation's most powerful political figures sent a clear message about the seriousness of sexual harassment and rape. Israeli Opposition leader and Kadima Chair Tzipi Livni lamented: "A day in which an elected public official is convicted of rape is not an easy day for the State of Israel."³⁶⁷ The court conveys a clear message with regard to public officials, but also to the victims."³⁶⁸ Former Prime Minister Netanyahu elaborated, "[t]hat all are equal before the law and that every woman has exclusive rights to her body."³⁶⁹

One of the prevalent messages in the verdict against Katsav was articulated by Labor MK Shelly Yachimovich, a witness for the prosecution. He indicated that the verdict has "proven that there is equality before the law, and that the justice system does not discriminate between an ordinary defendant, and one who has power, wealth and connections."³⁷⁰ There were many similar sentiments expressed by high-ranking officials and others, emphasizing that one of the outcomes of the case against Katsav was the very public expression that occupying a position of power and influence did not immunize one from accountability for acts of sexual violence.

The impact on public perception is not always positive for another set of reasons altogether. When the legal system fails to bring justice for victims, or when the media reflects criticism of aspects of victims' stories, this informs decisions about whether to come forward and report what happened; this perpetuates notions of what makes a victim ideal.³⁷¹ Wendy Larcombe describes the dilemma: "Every rape survivor has the right to make a criminal complaint; the question is whether it is in their best interests to do so."³⁷² The very public cases of politically powerful men like Strauss-Kahn or Katsav have the potential to influence other rape victims in their decision-making about whether to report what happened to them. Sometimes high profile cases involving victims of sexual or domestic violence result in a backlash of sorts, preventing victims from coming forward after they ob-

366. *Katsav Trial Judges Have Sent a Clear Message, Says Netanyahu*, HAARETZ (Isr.) (Dec. 30, 2010, 12:02 PM), <http://www.haaretz.com/news/national/katsav-trial-judges-have-sent-a-clear-message-says-netanyahu-1.334261>.

367. *Id.*

368. *Id.*

369. *Id.*

370. *Id.*

371. It was feared by some, for example, that the reaction to Hill's testimony before Congress would result in victims' unwillingness to come forward. Bystrom, *supra* note 360.

372. Larcombe, *supra* note 81, at 132.

serve the difficulty inherent in doing so. Nils Christie's ideal victim framework illustrates some of the problems that victims face.³⁷³ The stereotype of what constitutes an "ideal" victim is pervasive, and one who deviates from this stereotype may fear that her legal claim will be unsuccessful. Observations of how victims are treated by media, by the courts, by public opinion, inevitably have an impact:

In a rape prosecution the investigation, and particularly cross-examination, probe into and penetrate (and the sexual metaphors are obligatory here) all aspects of the complainant's domestic, social, and professional life in an attempt to discover or at least disparage her 'true' character. In order to secure a conviction for rape it seems that, increasingly, a woman must be prepared to endure an unprecedented level of scrutiny, not of her sexual history necessarily but of her private and personal records.³⁷⁴

It is widely understood that "[c]omplaining means exposure, reenacting the assault, embarrassing questions, skepticism, pitying looks and criticism of clothes that provoked the assailant."³⁷⁵ This phenomenon is commonly referred to in the literature as re-victimization, akin to a sort of second rape,³⁷⁶ whereby the victim is powerless against a process that expresses inherent skepticism, disbelief, and little empathy. Additionally,

[w]hen the man is a public figure, the message is even more injurious. The number of women who dare to complain against their superiors and commanders is even smaller. The fear of losing their job and livelihood and the heavy pressures of assistants and advisers and famous attorneys is added to the fear of complaining.³⁷⁷

373. See *supra* Part III.A.

374. Larcombe, *supra* note 81, at 136.

375. Ruth Sinai, *Mazuz's Decision / Why Indict Ramon and Not Katsav?*, HAARETZ (Isr.) (Jun. 29, 2007, 12:00 AM), <http://www.haaretz.com/print-edition/news/mazuz-s-decision-why-indict-ramon-and-not-katsav-1.224374>.

376. E.g., MACKINNON, *supra* note 265, at 179 ("Women who charge rape say they were raped twice, the second time in court.").

377. Sinai, *supra* note 375.

The judges involved in hearing the case against Katsav in Israel closed their doors to the public and media.³⁷⁸ Even after the verdict was handed down, the court did not immediately release full texts of its opinion, issuing instead a summary of the opinion. In weighing the pros and cons of revealing additional details, “[t]he judges said the release of the information would also deter rape victims in the future from filing complaints. This was what led them to bar a public trial in this case.”³⁷⁹

CONCLUSION

Sexual violence crosses cultures, ethnicities, and borders and is universally situated primarily as a private matter. The privacy sought by victims of rape and other forms of sexual violence is often influenced by negative perceptions of how the legal process functions. The positions of political power held by Strauss-Kahn and Katsav, and the corresponding media coverage of the allegations that were brought against the two men, transformed the nature of this issue. This relatively novel transparency allows for a somewhat unprecedented analysis of how issues of sexual violence, politics, sexuality and power converge. It is rare to have insight into what transpires in a legal system for victims of sexual violence in the way that these two cases have allowed for. While some progress has been made, for example, through the passage of legislation that addresses rape and sexual harassment, there often exists a significant disconnect between such laws and the realities of victims’ experiences.

This disconnect is illustrated quite powerfully by the framework created by Nils Christie that highlights what has made a victim “ideal” in the criminal justice system. The victims who accused Strauss-Kahn and Katsav of various kinds of sexual violence often did not match up exactly against the criteria that legal systems consider to be ideal, and indeed, the outcomes for these victims varied. Although scholars, victim advocates, lawyers and others have long been trying to highlight this disconnect with the goal of improving outcomes for victims of sexual violence, there remains much work to be done.

378. *TIMELINE / Katsav’s Rape Trial Comes to a Close After More than 5 Years*, HAARETZ (Isr.) (Nov. 10, 2011, 9:42 AM), <http://www.haaretz.com/news/national/timeline-katsav-s-rape-trial-comes-to-a-close-after-more-than-5-years-1.394762>.

379. Ofra Edelman, *Full Rape Verdict of Ex-President Katsav Set to be Released Sunday*, HAARETZ (Isr.) (Jan. 16, 2011, 1:03 AM), <http://www.haaretz.com/print-edition/news/full-rape-verdict-of-ex-president-katsav-set-to-be-released-sunday-1.337228>.

Analyzing the narratives surrounding the interplay of rape, politics, and power, under the Strauss-Kahn and Katsav framework serves as a starting point for creating change in our legal systems, making them more responsive to the diversity of experiences of sexual violence victims. ❀