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Challenges to Women Finding their Voice: A Case Study of Speaking up Against Sexual
Assault When the Perpetrator is a Federal Judge

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Challenges to Women Finding their Voice: A Case Study of Speaking up Against Sexual Assault When the Perpetrator is a Federal Judge

by

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Dedication

To my children, they are my heart, breath, and soul.

Without them, nothing else matters.

Ken, Kei and Joe
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First I must acknowledge Cathy McBroom and Donna Wilkerson, the women whose bravery in finding their voices is told in this thesis. Their willingness to share their stories with me was yet another act of bravery, with hopes that its telling might prevent someone else from being another victim of silencing or sexual assault.

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I also want to acknowledge all the friends, family and colleagues who have stood by, cheered, counseled, encouraged and supported me in this adventure started in the 3rd quarter of my 100-year plan.
Abstract

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The University of Texas at Austin, 2011

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Abstract

Examining historical ideology of women’s position within society and how that socialization has influenced historical legal cases of gender inequality is the backdrop for a modern case study of sexual harassment and sexual assault. This thesis explores how women’s voices have been, and continue to be, silenced socially and legally through ages old ideology of women’s subordination to men. By examining a 2007 legal case of ongoing sexual harassment and sexual assault perpetrated by Federal Judge Samuel Kent against women in subordinate positions working within his courthouse it is demonstrated that socialization of gender inequality is stronger and slower to change than the laws prohibiting it.
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Introduction

Early in 2011, I was involved in promoting two female speakers from Galveston, Texas who were scheduled to present at the University of Texas at Austin campus. The women, Cathy McBroom and Donna Wilkerson, were to speak on their personal experiences of sexual harassment in the workplace. I decided to visit them in Galveston so I could get to know them and offer any assistance they might need. Little did I know these women would open my world and eyes to what feels like a secret society, pledged to protect each other at all costs and to cover or minimize any wrong doings; I’m speaking of those in power who minimize and silence complaints of sexual harassment in the workplace, even occurring in the legal system. Cathy and Donna’s story involves a Federal Judge, Samuel Kent, his removal from the bench, surrender of his license to practice law and loss of his retirement benefits from the bench. However, Kent’s continued harassment and assault of Donna and Cathy, though spanning several years, is not the crime that sent him to prison. Although Kent admitted his guilt to the charges of harassment and assault, this was not what he was convicted of or punished for. Ultimately, he admitted to and was sentenced for obstruction of justice (Flood 2009). Why was physically assaulting women in his chambers and courthouse not enough to warrant loosing his position as a federal judge? This is the question of my thesis. I will examine incidents in which women’s voices were silenced when they tried speaking up against social and legal inequality and injustice perpetrated against them and then ask, why were the women’s voices not enough?
Women continue to be silenced by societal rhetoric supported by legal opinion. To maintain this position, I will examine the legal socialization of American women by examining court cases where women’s voices were unheard or denied by those in power, starting with a historical exploration of European influences on American legal theory and the social ideology of the new Republic. Through this investigation, it will be noted that changing laws do not necessarily constitute a change in behavior or social discourse among citizens. The courtroom is a place where the human voice should have no race, gender or social standing, though history has dispelled this notion continuously.

This story has many additional facets worthy of exploration but they are beyond the scope of this thesis. I will not attempt to try and understand the motivations behind Samuel Kent’s behavior; I will only examine the behaviors themselves. Nor will I evaluate Donna and Cathy’s reactions to Kent’s behaviors. I will simply tell them as they were told to me. One cannot help but question the motives, attitudes, and reactions of all involved in this case. The victims, Cathy and Donna are still dealing with many of these same questions for themselves, along with family members, therapists and friends. However, it is beyond the scope of this project to do that here.

After meeting Cathy and Donna, I began working on this case study for my thesis. As friends and family interested in my graduate school progress asked about my thesis topic, I enthusiastically shared the story of tyrannically abused power, sexual harassment and assault by a federal judge and the agonizing journey his female victims have endured. True to the societal history that is under examination in this thesis, but still surprising to me, many of those asking about my thesis topic, responded with disbelief. They would
ask, “Do you really think he did it?” Even though I had told my inquisitors that Kent was no longer sitting on the bench, had lost his pension and was in prison, they still doubted the women’s story, the victims of Kent’s actions. Why does our society deny the voice of women and disbelieve them when they speak-up? Building blocks to potential answers can be found in legal history. I will examine some of our American social standards created for women that later were reflected in court cases, as I search to find some answers.

The legal concept of sexual harassment in the workplace did not exist before the mid to late 1970s (Memoir of a Revolution 281). However, some working women may have suffered from the behaviors of ill-mannered male superiors, or from a boss who had “a personal proclivity, peculiarity or mannerism” as it has been referred to by at least one male judge.¹ The incidents have even been described as occasions of a male supervisor or boss who was merely “satisfying a personal urge”.² Naming the workplace sexual advances women had endured as sexual harassment was first coined in an Ithaca, New York feminist’s meeting in 1975, as a diverse group of women from secretary to filmmaker to assistant professor, were preparing for a media blitz to bring awareness to an upcoming speakout on sexualized workplace issues (Baker 2007). Working Women United, Cornell University’s Human Affairs Program and the Ithaca chapter of the National Organization sponsored the group (Baker 2007).

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² ibid.
Once the topic was raised and named, the conversations and energy around the subject grew. Women’s voices were heard en masse for the first time through a 1976 women’s magazine, Redbook, when it asked its readers, “How do you handle sex on the job?” Over 9,000 female readers responded. Nine out of ten of the respondents reported that they had experienced sexual harassment on the job (Redbook 1976). The overwhelming impact of both the response rate and the description of their experiences was enough to cause Redbook magazine to describe these experiences as pandemic (ibid.). Shortly after, in 1979, the voice of an attorney and legal scholar, Catherine MacKinnon, validated these experiences in a landmark legal battle and sexual harassment was born.

I argue that the issue cannot be dealt with in any truly significant manner with only changes in academic rhetoric and laws; sexual harassment will continue to be an issue until women equally share power with men in the home and the workplace. Specifically, I aim to build a bridge between the historical position of gendered inequality demonstrated by silencing and ignoring women’s voices socially and within the legislative system. I advance this argument using a single case study of the 2007 sexual harassment and assault case of Federal Judge, Samuel Kent.
Methodology

This case study is derived from multiple sources including a literature review, personal in-depth interviews with Cathy and Donna, a review of court documents surrounding the case, and an examination of media coverage of the case. I will show the historical base of women’s subordinate position created by the courts through a review of historical cases outlining and/or seeking women’s equal rights. Added to these items I will introduce twentieth century cases of working women harassed in the workplace seeking relief. Rulings on these cases will demonstrate how deeply imbedded the idea of male dominance is within our court system and society. I will examine the questions of this thesis through this multifocal lens.

In the spirit of full disclosure, I must admit that questions from my upbringing are included in many of the components that I will examine in this thesis. I was raised in a very patriarchal family with a self-proclaimed “woman hating” misogynistic father, where men were to be appeased, kept from being angered and were to be catered to. Women were to be silent and certainly not to have independent opinions. Women were thought of as less than men, needing to be cared for and protected from the outside world at best or not considered smart enough to deal with the outside world at worst. Women were taught to live in fear; fear of a man’s anger and fear of whatever was lurking in the public sphere waiting around every turn.

Even though this was the rhetoric of my upbringing, endorsed and reiterated through religious teachings, it is contrary to my lived experiences. The women in my family are tough survivors that have worked hard and held the family together when the
men were either physically or emotionally unavailable, including my father who left when I was six. In the midst of this dichotomy of prescribed roles with contrary action, the women, including myself, have struggled to find their balance between roles and at times have found themselves in positions of being bullied or harassed by men while at the same time feeling dependent on them financially, emotionally, and socially. The Kent case is a condensation of many of my life questions on gendered roles. I recognize and admit my personal lens is one included in my examination of the Kent case.

Finally, there are a few things to keep in mind while interviewing McBroom and Wilkerson regarding the Kent case. First, interviews are situated historically, politically and contextually (Fontana and Frey 2005). As such, it is important to remember that each of their interviews is unique and those differences must be considered. Further, being a researcher who has experience with the some of the dynamics being studied, I must remember that I am not neutral (Fontana and Frey 2005). Therefore I must be aware of any of my own prejudices and any interpersonal influence my interviewees may have over me, even though it may be subtle, due to the friendships formed during our multiple interviews (Yin 2009). I have tried to outline these prejudices as clearly as I can above. Feminist research methodologies attempt to capture lived experiences to “legitimate women’s voices as knowledge” (Campbell and Wasco 2000, 783); therefore, it was essential to allow these women to speak openly and report their experiences in a way that is accurate to them and captures their intentions.
**PRAGMATIST FEMINISM**

I will approach my argument from the perspective of pragmatist feminism. Pragmatist feminism is based on a grouping of American philosophic ideas from the late nineteenth century through early in the twentieth century that were very influential in the Progressive Era (Whipps 2010; Seigfried 1991). Feminist leaders and activists such as Jane Addams, Mary Parker Follett, Charlotte Perkins Gilman, Lucy Sprague Mitchell and Ella Flagg Young worked to change women’s lives through critical examination of “the intersection of theory and practice, bringing philosophic thinking into relation with the social and political environment” (Whipps 2010, 1). Using intellectual engagement and activism of social change, pragmatist feminists continually examine and reexamine feminist issues with an eye always towards pragmatic reform. They go beyond searching for academic argument of truths to the continual pursuit of ideas always open to change.

Pragmatist feminism is a seldom-cited theory among the more commonly listed forms of feminism. Liberal, Marxist, radical and social feminism are most frequently sited (Duran 1993; Seigfried 1991). Interestingly, in my studies earning a bachelor’s degree and a master’s degree in Women’s and Gender studies, I have only recently encountered, during my personal research, readings positioned from a pragmatist feminist perspective. Pragmatist feminism is the combination of basing a philosophy of experience occurring in the social environment with feminist philosophic thinking (Whipps 2010).

A commonality in early and modern pragmatist philosophy is rejecting the idea of certain inherent “Truths” to explain women’s societal inequalities (Whipps 2010). Instead women’s domination must be discussed and exposed through consciousness raising,
making public the issues of inequality defining women’s roles through inescapable force, and then exploring social actions necessary for combatting these inequalities (Capps 1996). Then, the process starts again, with yet another examination through consciousness raising, exploration, and action. With this cycle of examination and reexamination, pragmatist feminism can represent real answers to real problems in the social experience, abandoning pure rhetoric and academic ponderings, while combining philosophy, theory and action pragmatically toward feminist goals. With the power of women’s voices, consciousness raising brings about change (Capps 1996). This philosophical lens of pragmatist feminism is well suited to examine the Kent case.
Historical Roles and Rights of Women

COVERTURE

Social standards and practices do not occur in a vacuum, they evolve over time reflecting dominant ideology. Women’s subordinate place in American society and its laws of gender inequity can be traced to the early days of the country’s beginnings. Blackstone’s Commentaries on the Laws of England written in 1765-1769 were a major influence in pre-revolutionary America. Blackstone describes a woman’s civil rights as a mother and wife. As an unmarried child and young woman she was under, “The legal power of a father (for a mother, as such, is entitled to no power, but only to reverence and respect)…” (Blackstone 1765). Adulthood did not bring independence to women, instead a woman traded her position of dependence and obedience to her father to the same oppressed position to a husband.

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: [U]nder whose wing, protection, and cover, she performs everything; and is therefore called in our law-french a feme-covert [married woman]; is said to be covert-baron, or under the protection and influence of her husband, her baron, or lord. As such, her condition during her marriage is called her coverture. (Blackstone 1765). In seeking an historical understanding of women’s silencing, Blackstone clearly demonstrates the melding of moral standards with statutory inequality that took away women’s voices and benefitted men.
With Blackstone as an influence for the development of laws to govern the new colonial government, it is no surprise that the words woman, girl, child, lady, or mother is not to be found in the United States Constitution. It goes without saying that the Constitution is the foundation to all American laws. By these omissions women’s legal position is clearly stated, she is invisible and without a voice. The opening lines of the United States Constitution plainly state,

We hold these Truths to be self-evident, that all Men [not men and women or people] are created equal, [however, the word equality never appears in the Constitution until the 14th amendment added in 1868] that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed…

The American legal system is built upon precedent, using past case rulings along with close examination and interpretations of our founding documents as a basis for argumentation in citizens’ rights and ruling as noted above. American history tells of many debates, trying to understand what the Founding Fathers had in mind on topics such as their consideration of whom they were thinking to be considered a citizen. The first few lines of the Declaration of Independence as noted above says, “all men are created equal” and “Governments are instituted among Men”. What is to be inferred by the lack of capitalization in “men” and their creation and the subsequent capitalization of the “Men” who are to institute Governments? Nowhere in the Declaration of Independence are the words, woman, women, she or her used.
Original thinking of at least one of our forefathers seems clear in letters exchanged between the husband and wife of the second First Family. The oft-quoted plea from Abigail Adams in 1776, to her husband, John Adams, as he was assisting in drafting The Declaration of Independence usually only includes Mrs. Adam’s appeal and not the response she received. Mrs. Adam’s plea of, “[I]n the new code of laws which I suppose it will be necessary for you to make, I desire you would remember the ladies and be more generous and favorable to them than your ancestors” is rarely followed by her husband’s reply of, "As to your extraordinary code of laws, I cannot but laugh” (Adams and Adams). Based on John Adam’s quip, it appears that not only were the rights of women not implied or accidentally omitted from the Constitution to the exclusivity of men, but also the idea of women’s inclusion was so ridiculous as to be humorous.

Women are not a monolithic group, intersectionality of race, class and education converge making distinctions between women. All women were denied rights; however, rights and voices of women of color, poor women, newly immigrated women, Native American women and certainly slave women were not even considered in these debates. Regardless of progress made, even the most privileged of women are still socially inferior to men. All women nonetheless suffer from gender discrimination in multiple arenas, robbing them of their voice and opportunities.

**REPUBLICAN MOTHERHOOD**

By the early 1800s: Republican Motherhood. Which was – accept not having a public role, even though the son’s in the movie were not young she was still teaching them,
Throughout the colonial era and into the early 1800s the thinking was women did not possess as much reason as men, they should be submissive and were not considered to be individuals within the public realm (Kerber 1976). Women have no role in politics or society, but do have a role in the household; they can influence the new society by influencing her sons, by teaching them honest, citizenship and sacrifice. Inside the Republican Motherhood dogma we see a direct link to the ideology of English law as outline in Blackstone’s Commentary prescribing women’s role in society and politics only through their nurturing functions as mothers and wives. Their role as a mother, teaching her son to sacrifice for the state, was arguably woman’s political involvement in the country. Still remaining within her home, integrating her “politics” with her domestic responsibilities and not voicing any independent opinions, women were told this was their role and they were told it was an important role (Kerber 1976).

Powerful men of thought, politics and philosophy weighed in on the role of the Republican Mother. Locke, Montesquieu, Condorcet and Rousseau are examined in Kerber’s 1976 paper of the topic, outlining their positions. When viewed from a feminist lens, one must clearly see that the loud voices of a few men were silencing multitudes of women. The ideology devised appeared to give women a voice, one in which they were teachers, but it was teaching only their sons and daughters, and it was within the walls of their domestic realm. With this in mind, it’s doubtful there was room for independent teachings to occur. Women’s ideas were silenced and she was only rewarded for spreading the overriding rhetoric of male dominance and female submissiveness.
**SEPARATE SPHERES**

Women, decent ones, were to stay in their assigned societal place, in the sphere surrounding the homes and not to venture beyond. Men however traversed the home sphere where he was the ultimate voice to the public sphere of work and socializing where he also had the voice of voting, business, law making and independent opinion. Men and women lived in “separate spheres”, a term used to describe gendered societal roles for men and women during the Victorian era where women were to stay in and near the home to guide family morals, the household, children’s upbringing and to create a safe haven for her husband’s return from his daily foray into the world of business which was his proper place to be (Kerber 1988).

The concept of separate spheres is, credited to the French politician Alexis Tocqueville. In his 1840 writings about women’s roles in the new republic following his trip to America, he describes the ladies role in the developing nation. The American “public circumscribes woman to the narrow circle of domestic interests and duties, and forbids her to step beyond it” (de Tocqueville 1862, 240). The idea was de Tocqueville’s but the term “separate spheres” was made popular through feminist writings that also traced notions of women being unfit for public life to the writings of Aristotle (Kerber 1988, 18).

This ideology of separate spheres lacks interaction with class, ethnicity or race, quickly dismissing this rigid dichotomy of gender relations as an ideology for all women. Obviously this is a clear illustration of societal ideology targeted at middle to upper class white women, not taking into consideration all women, not even all white women.
Nevertheless separate spheres ideology is an historical cornerstone of thinking in cultural gender norms (Lasser, 2011). It is another social script serving to silence women keeping them separated from the rest of society, even from large groups of other women. If women were to come together and start having conversations, comparing stories and developing a discourse, as we will see in the Kent case, truths can emerge and power gained in camaraderie. These conversations can be enlightening to the women and threatening to the men. Women’s combined voices are powerful.

THE CULT OF WOMANHOOD

The next evolution of ideological propaganda directing women’s proper behavior was “True Womanhood” from approximately 1820 – 1860, complete with rules by which she was judged (Welter 1966). The strict standards of True Womanhood were espoused in ladies journals of the day, sermons, religious tracts and books; the teachings are also reflected in women’s diaries, memoirs, autobiographies and personal papers of the period (Welter, 151). Four categories of characteristics outlined the making of a virtuous woman: piety, purity, submissiveness and domesticity (Welter, 152).

A teaching physician Dr. Charles Meigs defended women’s “natural” piety with the weighty authority of the medical community behind his argument. He explained the biological basis of his argument to a graduating class of medical students when he told the students “hers is a pious mind” (Welter, 153). Women were kept in the home and tied to religious teachings keeping them silent wedged into a societally sanctioned position grounded in medical explanations of the gendered workings of a woman’s mind to the writings of a women’s magazine stating that religion “give[s] [women] that dignity that
best sits her dependence” (Welter, 153). Without enforced religious piety to keep women’s thoughts appropriated guided, women might grow “restless or unhappy” (Welter, 153). Silenced and guided with threats of being a social outcast or to burn in hell from going against the natural order God created, few women dared to speak up or to venture outside of their ordained space. These ideas are taught as unquestionable truth over generations from mother to daughter, reinforcing the ideology to a point where the silencing of women is thought of as only proper and as it should be, not as a socially sanctioned mechanism of suppressing women.

Repression and lack of agency were de rigueur, “A series of suppressed emotions - how little power has any woman to change or obviate the causes of her annoyance” (Burnap 1848, 172-3). She did not have a voice towards her role or destiny, it was spelled out for her. “One of woman’s most important roles was that of comforter and nurse” (Welter, 1966, 163). Comforting and care of the family exemplifies the idea that regardless of the time or age, women’s roles were not ones requiring speaking or thinking, instead the roles were doing for others at the cost of her own needs, through sacrifice.

Late in the nineteenth century, women’s roles restricting them in their homes was not only the place they were told they should be, the position was socially glorified, perhaps to make the arrangement of women kept at home more palatable if it held value. It was a time of heightened participation in and attention paid to domestic occasions. Family centered or rather female centered, holidays of Thanksgiving and Christmas are vehicles to elevate and reaffirm women’s idealized role of uniting the family (Pleck
From separate spheres to true womanhood women are restricted in the home and denied access to the public realm.

The cult of womanhood also glorified women’s homebound role through the belief in their moral superiority and the idealization of motherhood. It was woman’s role to:

- to maintain their virtue, although men, being by nature more sensual than they, would try to assault it. Thomas Branagan admitted in The Excellency of the Female Character Vindicated that his sex would sin and sin again, they could not help it, but woman, stronger and purer, must not give in and let man "take liberties incompatible with her delicacy." "If you do," Branagan addressed his gentle reader, "You will be left in silent sadness to bewail your credulity, imbecility, duplicity, and premature prostitution (Welter, 155).

This theme of women being placed in the role of moral superiority and propriety is a specific example where women are made responsible for men’s impulses. She is the morally stronger one, placing a gendered burden on her that she will be asked to carry as she begins entering the workplace. With the coming of industrialization and the need for cheap labor to run the machines, women will join the paid workforce in record numbers.

With the opportunity of employment will come the burden of keeping male workers at a socially appropriate distance. We will see this burden of women being positioned as the moral superior to men in the current case study with Kent as well.

**Industrialization**

The turn of the twentieth century brought new and increased work for pay opportunities for women while transporting nineteenth century ideas of proper roles for men and women (Gibson 2007). Social mores and business had overlapping and often incompatible boundaries. Business, created by men was a man’s domain where his
socially prescribed characteristics of harshness, shrewdness, and dominance were appropriately valued and rewarded with remuneration for his labor and political opportunities (Gibson 2007). Women had no historical role in this man’s world. Even though working class women were afforded new opportunities with the increasing need for a low paid labor force, conversely, they could be hired and fired at a whim without social outcry since they were considered supplementary income to a male-headed household. No consideration was given to women as equals or primary breadwinners.

Women’s wages were kept low thereby keeping them dependent on male support (Tentler 1923). Then when women complained of the poor wages, society blamed the women, the victims, of these unfair and unequal labor practices and did not find blame with the industrialists, who were all male. A Bureau of Labor investigation in 1915 found in many women “a lack of self assertion which makes them willing to take low wages” (quoted in Tentler, 17). How could women have ever learned self-assertion, especially when dealing with men? Women who had been taught to be pious and quiet were now finding themselves incredibly vulnerable, not only to spouses, but to men outside of the family as they sought paid employment. Society and capitalism had come together silencing and exploiting women in the workplace.

Women, or at least proper wealthy white women, were to be cared for and kept at home with their natural duties of child rearing and household duties, away from the world of paid labor, therefore depriving them of opportunities for pay, but protecting the women from the unseemly side of life that might upset her. The wealthier a woman, the more delicate it seemed she was and the fewer opportunities afforded to her. This same
scenario could also be viewed from another perspective, the wealthier a man, the easier it was for him to control his wife’s life and decisions. Male power and male controlled access to money and opportunity kept women constrained.

Woman’s socially and legally historical paths show her being treated as property of her father or her husband, having no rights or legal voice, through her exclusion in the United States Constitution to socially prescribed roles of family caretaker and nurse, using her superior moral compass enabling her to control men’s passions and to reason with her life, thereby relegating her choices to home and low paying gendered work. If a woman were to need or dare to seek employment in the growing market, she did so without agency or skills to negotiate men’s world of industry; but it was she who was blamed for her failures or low wages for not speaking up. It does not take much imagination to think what actually would have happened if a woman spoke up asking for increased wages, personal protection or rights. It’s doubtful she would have had a job any longer and the blame laid at her feet for her troubles.
Gender Inequality in the Courts

These founding principles about women have been injected into court rulings and justice’s rhetoric. The dividing line of gendered rights is so engrained into societal thinking that it was and continues to be arguably natural. Christian churches in the United States often reinforce ideology of a divine gender line showing that the woman is rightly subjected to man through verses such as, “the head of the woman is the man” (I Corinthians 11:3). As we will see, even The United States Supreme Court has weighed in on where the societal line should be drawn separating men and women’s places using divine justification. The Bible, we must remember, has deep roots heavily influencing United States law and societal thinking, going back to Blackstone’s commentaries as described above. Blackstone’s Law describes the condition of coverture as one when a man and woman, when married, become one with the man “covering” the woman, socially and legally. She many not sign a contract, be in control of her own money or even be easily charged for a crime, because she is not considered capable of acting under her own free will, anything she does must have been under his directions. This gender inequality is a cornerstone of legal precedence used to build the American legal position of women as different, having less power and limited voice, if any, compared to men.

It would be over one hundred years after the 1776 signing of the United States Constitution before gendered inequality would be challenged in the courts. With the inclusion in 1868, of the Fourteenth Amendment, section one, or the Equal Protection Clause, women felt they were about to be included and their voices heard. Women argued
that their sex should be included under the amendment’s opening words, “All persons born or naturalized in the United States”. We will see that the courts disagreed.

How and why do men so readily exert their gendered power over women and what happens when it goes awry? The case of a federal judge well versed in the laws of equality which forbid sexual misconduct in the workplace, is extraordinary in itself, but the court’s lack of serious attention given the case should be equally surprising. However, on examining the history of gendered court decisions, it is clear that gender inequality favoring men is not new in legal discourse or court decisions.

**Bradwell v. Illinois – 1879**

In 1879 the Court heard its first case challenging women’s inequality of rights based solely on her gender. An Illinois resident, Myra Bradwell studied law under the tutelage of her husband and passed the Illinois state bar examination but was refused admittance by the Illinois Supreme Court due to her sex. Mrs. Bradwell sought relief from the United States Supreme Court in *Bradwell v. Illinois* based on the violation of her according to the equal protection clause of the Fourteenth Amendment, which reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws within the 14th amendment.

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3 Bradwell v. State of Illinois, 83 U.S. 130 (1872)
The Court ruled against Bradwell. It was argued by the Court that the Fourteenth Amendment to the Constitution was designed to protect against race discrimination only and did not extend to the protection of women’s rights.

Discourse regarding the decision as quoted below shows the Justice’s view, one that is reflective of society at the time. Women were seen through an ideological prism maintaining separate spheres for the lives of women and men. Adding weight to his already powerful decision, Justice Bradley’s supports his opinion on women’s proper place to be in the home, by beseeching an even higher law than that of the Court or society; he invokes the law of God to be on his side.

Man is, or should be, woman’s protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfit it [emphasis added] for many of the occupations of civil like. The constitution of the family organization, which is founded in the divine ordinance, as well in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and function of womanhood…. The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.

Justice Bradley’s patriarchal attitude, indicative of his peers’, towards women’s need for protection demonstrates an historical approach, teaching women they were controlled by powerful others, fathers, brothers, doctors, judges and God. In the quote above, Bradley even goes so far as to deny women a proper pronoun denoting a living creature, instead of referring to women as “her” he uses “it” when he says the nature of women “unfits it for many of the occupations…” I think how he stated his opinion is as powerful as what he said in his opinion as to the place women were positioned.
The beginning of the twentieth century saw the courts adjudicating cases that would be used as case law precedents on gender, decided under the argument of protecting the delicacies of women. These cases would be cited throughout the upcoming century as more women fought for equality in the courts. One such case was key, *Muller v. Oregon* in 1905 in which the state of Oregon brought charges against a laundry owner who required his female employees to work overtime in violation of a state law setting a maximum number of hours that women could work in mechanical establishments. The case eventually found its way to the Supreme Court, which held the state law constitutional. A mixed blessing, the ruling protected women, but it set them apart as a distinct group in need of a special classification reinforcing the social idea that women needed protection. This single-sex legal protection shows a shift in the Court and in commerce. Women were becoming involved in the industrial revolution and working out of the home but the jobs were primarily in gendered, home-like labor of women, such as doing laundry or sewing. One power shift in *Muller v. Oregon* from earlier rulings, was that woman’s need for protection was not by design of a divine creator or powerful other as decreed twenty-five years earlier in Justice Bradley’s ruling from 1879. Instead, it was Justice Brewer’s called on a more scientific and Darwinian philosophy popular of the times influencing his opinion that woman:

…is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained,” and that women have a “special physical

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4 *Muller v. Oregon*, 208 U.S. 412 (1908)
organization” which is supported by “abundant testimony of the medical fraternity” (Gibson, 2003).

Even though shifts were being made at the turn of the twentieth century to allow women’s becoming wage earners in the boom of factories, the social narrative of a woman’s place opposed to men was firmly grounded and was reflected in the justice’s rhetoric and the framework of his decision. Not only her position but her body, her physicalness was thought to keep her separate and in need of special attention. As mentioned earlier in this text, but worthy of a reminder, these societal rules were for working class and wealthier white women only. The reverence and respect to women’s “special physical organization” is not referring to poor uneducated women and certainly not women of color.

Justice Brewer’s opinion of women in reference to their bodies in Muller v. Oregon began a focus on the female body in deciding cases involving women’s rights, taking women’s voices about their bodies away from them and placing it with the male dominated courts that continues today (Gibson 2007). Whether the court’s early twentieth century opinions are based on biblical philosophy or the emerging trust in developing science of the time, men continued to provide “evidence” that women are naturally weaker and need to be under the rule and protection of men. The judgments seem only natural when God and the science of men agree, especially to the men.

5 Muller, p 327.
As the twentieth century moves forward, more women are seeking financial and social independence, many leaving rural homes and joining the urban paid workforce, living away from family. In 1924 Radice v. New York was argued over a New York statute prohibiting women to work in restaurants between the hours of 10:00pm to 6:00am. The statute applied only to women, and only to those working in restaurants. The premise of protecting women and enacting laws for women’s own good is the basis of confining their options. Presumably the dangers in the street, late at night would expose women to the hands of wayward men. If that were the case, then why were statutes not focused on holding men responsible and accountable for their actions, instead of restraining women’s choices?

The statute prohibited employment of women in restaurants in large cities (cities of the first and second class) between the hours of 10 p.m. and 6 a.m. The law was found by the courts to not be an arbitrary nor an undue interference with the women’s liberty of a right to employment, but instead, justifiable as a health measure based on women’s differences from men in the “peculiar and natural functions”.7

Night work of the kind prohibited so injuriously affects the physical condition of women, and so threatens to impair their peculiar and natural functions, and so exposes them to the dangers and menaces incident to night life in large cities that a statute prohibiting such work falls within the police power of the state to preserve and promote the public health and welfare. 8

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7 Radice (1924)  
8 Radice (1924).
This ruling exemplifies women’s long held responsibility for constraining men by being assigned the role of their moral guardians. More than sixty years after *Radice v. New York*, Harvard graduate and self proclaimed, “America’s Number-One Antifeminist” (Faludi 1991) George Gilder’s speaks out on women’s role as men’s moral compass in his response to the sexual liberation movement with *Men and Marriage*, a rewrite of his 1973 book, *Sexual Suicide*. He reaffirms a centuries old edict of women’s role in constraining men’s impulses; “Woman’s morality is the ultimate basis for all morality” (Faludi, 169) “because women are the sole bearers of a morality that can constrain men’s impulses” (Faludi, 40). He also decrees, “The power of a woman springs from overcoming these socially and personally self-defeating ways of men” (Faludi, 17) (Gilder 1973). It seems men have not been able to restrain themselves, it wasn't their fault; it was merely their nature.

It’s worth a side note to reflect on what else was happening in the United Stated around the time of *Radice v. New York*; women finally won the battle of the vote. Legally, women finally have a voice. Historian Fredrick Lewis Allen’s 1931 perspective on women’s rights being “an accomplished goal” with the nineteenth amendment seems to imply that women were merely lacking the vote to make all things just. He surmised, “[T]he winning of the suffrage had its effect. It consolidated woman’s position as man’s equal” (Allen 1931). This narrow male view of equality does not include women’s rights in the workplace, financial opportunities, a voice to choose her own destiny nor to speak against injustice or to control her own body (Freeman 1974). Allen’s examples of women’s new freedom and equality were about women’s use of tobacco (95), their short
hair (3, 91), their risqué skirt length barely covering the knee (254), which once again demonstrates women’s role as gatekeeper to men’s impulses, and their brazen drinking in local speakeasies (86). Short-haired women, drinking and smoking in short skirts was such a divergence from separate spheres only a generation earlier, it must have been hard for Allen to imagine women wanting more still.

The full issues of woman’s workplace challenges and inequality will not come to the social and legal attention of most Americans, men and women, until the 1960s spurred on by the Civil Rights Movement.

**HOYT V FLORIDA – 1961**

Nearly four decades after *Radice v. New York*, in 1961 a Florida woman, Gwendolyn Hoyt, was convicted by an all-male jury of murdering her husband. Since the state automatically exempted women from jury duty unless women, on an independent basis, specifically requested to serve, an all male jury was the norm. Mrs. Hoyt appealed her conviction based on the jury not being one of her peers, one that included women who might have been more sympathetic to her marital situation. Hoyt felt the all male jury was prejudicial against her and would have naturally sympathized with her husband, depriving her of a fair and balanced hearing. The court noted in response to her appeal that:

Despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life

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formerly considered to be reserved to men, woman is still regarded as the center of home and family life. 10

There is no mention in the court note of what it is about being “the center of home and family life” that prevents a woman from also having a voice in a jury or being able to participate in a jury, the court ruling was presented as if women’s roles were an understood position. Childcare responsibilities were not mentioned nor were any other aspect that might have explicitly restricted a woman’s ability to give time to jury duty, only that her place was in the home. The key point from this case pertinent to the discussion of this thesis, is that in 1961 discourse of women’s place was still grounded in separate spheres, with rhetoric about women still focusing on women belonging primarily in the home. By normalizing the woman’s place within the home, society keeps her removed from first-person exposure to current events, hinders her from exercising her critical thinking about the world beyond her family and thereby decreases her active involvement and opinions to equally participate in her larger community.

Opinions abound beyond those from the minds of Court Justice’s and great male thinkers; renowned and often quoted scientists have weighed in with authority on women’s subordination as well. According to the writings of Charles Darwin, the nineteenth century naturalist who proposed the theory of natural selection,

The chief distinction in the intellectual powers of the sexes is shown by man’s attaining to a higher excellence in whatever he takes up, than can woman, whether requiring deep thought, reason, or imagination, or merely the use of the senses and hands (Gibson, 169).

10 (1961).
With such a consistent unified hegemonic discourse of women’s weakness, inferiority and their subsequent need to be cared for, emanating from the androcentric pulpit, the male dominated legal bench and in the scientific classrooms of male scientists, it appears that what is deemed “natural” gender differences, is a tenable guiding principle of women’s subordination to men whether through his role as protector/brother or as aggressor/conqueror (Gibson 2007).

**CIVIL RIGHTS ACT - 1964**

Roots of sexual harassment legislation are based in Title VII of the Civil Rights Act of 1964, legislation instigated by the civil rights movement of the 1960s (EEOC 1980; C. A. MacKinnon 1979). According to the United States Equal Employment Opportunity Commission (EEOC), “Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin” (Hadfield 1995). It is worth a mention here to scrutinize the wording of Title VII, realizing the only arena afforded protection is employment. Even within employment there are restrictions exempting small companies from complying with the law, as is the Federal government in its relations with employees. In addition, other areas such as sexual discrimination in the military, education, housing, banking and healthcare are left for other battles whereby women have no recourse under Title VII.

The Equal Employment Opportunity Commission (EEOC) was created to investigate charges of discrimination as outlined by The Civil Rights Act by reviewing

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claims of inequality but was not originally empowered to bring lawsuits on its own. Part of that responsibility included decided how to define the broadly worded Act and how to apply the legislation. The first year the organization expected to see about 2,000 claims. They received 9,000 (EEOC: The Early Years). Early EEOC claims of sex-based discrimination in the workplace were dismissed. The greater challenge was how to deal with sex as a category of discrimination. According to the EEOC’s own reflections on the early days of Title VII, the “Officials initially note that there is virtually no legislative history explaining Congress’s intent in outlawing sex discrimination” (EEOC). It seems since the commission did not know how to handle them; the cases citing sexual harassment were not considered the same as cases based on racial inequality and discrimination and were thereby dismissed. It would be years before a case of sexual discrimination against a woman in the workplace would actually reach the courts.

There was debate on exactly what was considered sexual discrimination but there is no dispute as to how the three-letter word sex was inserted into the 1964 Civil Rights Amendment. Representative Howard W. Smith from Virginia suggested it, but why it was inserted is another matter for discussion (Freeman 1991). Smith was a staunch Southerner and opponent of all civil rights legislation and did what he could to block it. The House Rules Committee that Smith chaired successfully bottled the Civil Rights Bills for years from its first introduction in 1957. When the bill was finally coming to a vote in 1964, Smith claimed he wanted the word sex added to the amendment’s other categories of race, color, religion or natural origin, “to prevent discrimination against
another minority group, the women”. However, it is generally believed that Smith’s true intention was to block passage of the bill by adding the word, sex, to an already heavily debated bill (Lingren, et.al, 2011, 79). Smith’s proposal was met with members of Congress engaging in several hours of guffawing and comical debate (Freeman 1974). Civil Rights giving protection to Black Americans, whether one agreed or disagreed was debated as a serious matter, but giving rights to women appeared to be so ridiculous as to turn a room of Congressmen into not much more than fraternity brothers discussing the hysterical topic of women’s rights. Regardless of Smith’s reasons, sex as a category, was added and approved as an equally protected class.

This occurred less than fifty years ago, in the very memorable past for many including me. Legislation including women as a protected class might have been born amidst male laughter and wedged in with civil rights, but it was a powerful tool in women’s struggle for equal rights in the workplace. Although it would be another ten years before sexual harassment legislation was enacted.

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12 110 Cong. Rec., Feb. 8, 1964, 2577.
Sexual Harassment

Before indictments can be judged as sexual harassment, first the term must be defined. The definition is very simple yet quite complex. Sexual harassment as broadly defined by the EEOC is, “unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature” (EEOC website). Sexual harassment is usually perpetrated by a male superior against a female subordinate. There are two basis categories of sexual harassment. The first and most easily identifiable is a direct quid pro quo situation as simple as “put out or get out” – sexual favors in exchange for job security, promotions, money or other items important to the victim. The second category of sexual harassment is one of a hostile environment, which is not so easily identifiable and can take on many different forms. Hostile environment may present in the situations from persistent inappropriate sexual comments to unwelcome touching.

For the purposes of this thesis I will briefly examine a few of the first cases alleging sexual discrimination under Title VII that created a base for future cases. The allegations of the victims are nearly interchangeable with women filing claims against male supervisors. I will focus on the portion of these sexual harassment cases cited where the woman’s complaint was not heard and/or rejected and the reasoning as to why her complaint was dismissed or minimized. The cases all involve women filing complaints regarding situations involving men with power over them, in a supervisory employment role, and who treated them unjustly through unwanted sexual advances while the women were in their employ. The rhetoric in the rulings will show how early socialization informs judicial decisions on men’s freedom to express and force sexual attention on
women in subordinate positions. The cases also show the slow progression of the courts’
views changing to recognize sexual harassment as sexual discrimination.

**Barnes v. Train - 1974**<sup>13</sup>

The 1974 lawsuit of *Barnes v. Train* is considered the first sexual harassment case
in America even though the actual term “sexual harassment” was not used in the case
(Woerner and Oswald 1990).<sup>14</sup> As is true in all the cases cited, a female worker claimed
discrimination against her male boss because she rejected his sexual advances and his
invitations to accompany him in after-hours engagements. The courts ruled that
discrimination of this type was not what The Civil Rights Act was to rule on. Continuing
with the idea that men and women working together engaging in person relationships and
it was not a matter of a generalized discrimination against women. In the courts words, it
was “an inharmonious personal relationship” that was the workplace problem in this
case.<sup>15</sup>

**Corne v. Bausch – 1975**<sup>16</sup>

In 1975 two female plaintiffs alleged they had no other choice than to resign their
positions because of their intolerable work environment where they were constantly
subjected to verbal and physical advances from their male supervisor<sup>17</sup>. Judge Frey

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<sup>14</sup> The Supreme Court would not hear a sexual harassment case until 1986 *Meritor Saving Bank v. Vinson*.
<sup>15</sup> Barnes (1974).
<sup>17</sup> Corne (1975).
claimed that sexual advances were not the same as sexual harassment, and the supervisor was “satisfying a personal urge”. He further stated:

It would be ludicrous to hold that the sort of activity involved here was by the Act because to do so would mean that if the conduct complained of was directed equally to males there would be no basis for suit. Also, an outgrowth of holding such activity to be actionable under Title VII would be a potential federal lawsuit every time any employee made amorous or sexually oriented advances toward another. The only sure way an employer could avoid such charges would be to have employees who were asexual.

The primary arguments in this ruling is finding that sexual harassment in the workplace is not a matter of acting out social inequality against but women but is a personal issue between two people and were not employment related, reminiscent of the historical idea that sexual harassment is better handled as a tort case. And it was the act of the individual supervisor and did not have any relationship to the employing company.

**WILLIAMS v. SAXBE (BELL) – 1976**

In *Williams v. Saxbe* the charges are similar but the court took a slightly different view of the circumstances. The plaintiff alleged that her supervisor of sexual harassment, threats and eventually firing her, she stated, because of her refusal to engage in sexual activity with him. Her male supervisor claimed the dismissal was due to poor job performance. The first review of her complaint found no causal relationship between the supervisor’s sexual advances, the plaintiff’s rejection of him and her subsequent dismissal. She appealed to district court where Judge Richey held that the retaliation that

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18 Corne (1975)
19 Corne (1975)
occurred to the female employee after she rejected sexual advances from her boss caused her complaint to be actionable under Title VII. The harassing behavior in and of itself was not considered sexual discrimination; it was the idea that the “conduct of the plaintiff’s supervisor created an artificial barrier to employment which was placed before one gender and not the other, despite the fact that both genders were similarly situated”.  

Even though this is a step in the right directions, the idea that a woman being approached with unwanted sexual attention by a male in a power position over her within the workplace is still considered personal and not a matter of a societal ideology and discrimination towards women as a group in the workplace.

**Tomkins v. Public Service Electric and Gas Co. – 1976**

In the case of *Tomkins v. Public Service Electric and Gas Co.* the plaintiff alleged she was harassed, disciplined and ultimately fired from her job when after she rejected her supervisors sexual assault and suggestions of a sexual relationship in exchange for possible job advancement. The significance of court rhetoric on this case is:

> Title VII was enacted in order to remove those artificial barriers to employment, which are based upon unjust and long encrusted prejudice. Its aim is to make careers open to talents irrespective of race and sex. It is not intended to provide a federal tort remedy for what amounts to physical attack motivated by sexual desire on the part of a supervisor and which happened to occur in a corporate corridor rather than in a back alley.

If the harassment did not prevent an artificial barrier then it was not to be considered discrimination. It is once again, considered personal.

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23 *Tomkins I*, cited at note 15.
MILLER v. BANK OF AMERICA – 1978\textsuperscript{24}

A black female employee of Bank of America received and refused a proposition from her white male boss, the exchange of sexual favors for a better job. Miller filed a complaint against the company for allowing male supervisors’ demeaning behavior towards women. The court held that it was a personal issue and the bank had a policy against such behavior that Miller had not taken advantage of. The court indicated if they ruled in favor of the employee it might be a poor precedent causing a surge of cases where employee faced with any unfavorable employment decision would seek legal redress. Since attractions between men and women are a “natural sex phenomenon…[and] play at least a subtle part in most personnel decisions.\textsuperscript{25} Interesting that the court was concerned of setting a poor precedent causing an influx of cases and not in setting a precedent that was not in complete compliance with the intent of the law to protect employees from unjust employment practices.

\textsuperscript{24} Miller v. Bank of America, 600 F. 2d 211 - Court of Appeals, 9th Circuit (1979).

\textsuperscript{25} Miller 1979.
Power

Even though sex was named as a category of discrimination in the Civil Rights Act, how to interpret its application was debatable as seen in the above discussion. The inequality in gendered power was not clearly seen, being so omnipresent as to appear normal and unquestionable. Early, mid-twentieth century cases of sexual harassment, even before the term “sexual harassment” was used, were ruled to be personal issues between individuals and more appropriately viewed as tort cases (Sexual Harassment 1978, 1011; C. A. MacKinnon 1979, 2). Such was the case until a new voice, a woman’s voice that would be heard, joined the debate. She was critical of the courts’ analysis of sexual harassment and is one of the earliest and most long-standing voices in this argument, legal scholar and attorney Catharine MacKinnon. MacKinnon is credited for She argued that socioculturally constructed power differences between the sexes created inequalities in the workplace and because of these concepts, sexual harassment constituted sex discrimination under Title VII of the 1964 Civil Rights (C. A. MacKinnon 1979). This view of socially constructed inequality and discrimination privileging male power based solely on biological sex created a hegemonic masculinity benefitting heterosexual men over women and over any other type of masculinity (Connell 1987). The argument now takes the focus off of individuals in the workplace and turns to societal construction of the male dominated workplace and its gendered power inequities.

Men’s performance of masculine power and women’s acquiescence to male power is learned and reinforced though a process of social constructivism (Uggen and
This learning of masculine power to dominate, lead and boss is socially acculturated as early as elementary school, as are feminine responses to it of obedience, silence and follow (Murnen and Smolak 2000, 13). Marilyn Frye, a distinguished woman philosopher and feminist theorist on faculty at Michigan State University who takes an extreme feminist approach to male power domination comparing it to a master and slave relationship (Frye 1983). She contends control is gained through access, whether it is to the defining of terms or force to create barriers that might challenge power, and men have it, women do not and Frye even claims that women are “queasy about …actually taking power” (Frye 1983, 107). Then a few years later, according to Catharine MacKinnon, female power is socially speaking, an oxymoron; it cannot exist (MacKinnon 1989, 53). In her works, she reinforces the distinction between sex, the biology of a person, and the gender of a person which refers to the socially constructed traits and characteristics that differentiate men and women socially. These constructed differences divide the powerful and the powerless in the home, school, workplace or anywhere the sexes are mixed. More recently, research shows when the workplace is most modeled after gender stereotyping of performance and power, sexual harassing behaviors are more likely to be exhibited (Uggen and Blackstone 2004), but egalitarian relationships are not the norm. At the core of performing masculinity, is to have power, and particularly to have influence over women (Vescio, Schlenker and Lenes 2010).
POWER IN THE KENT CASE

Kent held many resources of power making him quite formidable. If we choose to accept the definition of power as “a property of the individual, of the interpersonal relationship, or of the structure of an organization” (Ragina and Sundstrom 1989, p 51) from among the many possible definitions, then Kent scored in all categories. He was a white male, with a controlling personality in the role of a federal judge in a single judge district. Kent’s power as a judge is given to him by the government and is recognized by the citizenry, he has societal power as a white, educated male and he commands power with his size and domineering personality. His cumulative synergistic powers make him a formidable force for anyone to challenge, consider female administrative court staff, nearly a foot shorter and one hundred pounds lighter resisting any advances from him, verbal or physical. Thus, sets the stage with Kent, Cathy and Donna.

Feminist theories of power concur that sexual harassment has been rendered invisible by a male dominated culture. Foucault posits that inequities of power arise from the discourses men and women are subject to, and made subject by, which becomes the “truth” of themselves (Foucault 1977). We are taught that men have the power and thus we give them this power (Foucault 1977; Vescio, Schlenker and Lenes 2010). Male gendered traits not associated with femininity or traits that are socially undesirable in women are correlated with greater power. Assertiveness in men is socially valued, whereas assertive women are attacked with pejoratives. Male gendered actions are often
subtle and smothered in acts of seemingly innocent kindness or sweet paternalism with men claiming to take care of or protect women (Vescio, Schlenker and Lenes 2010). This benevolent sexism can characterize women who reject this gendered caring as more than assertive of their wishes on how they want to be treated, but hostile and angry. The social scorn of a woman verbalizing her desire to be treated as an equal can serve as a silencing mechanism in yet another way than the smothering paternalism.
The Kent Case

This case exposes that sexual harassment is still occurring at egregious levels, even at the very highest echelon of power. Kent, a Federal Judge, was sent to prison, but not for the sexual assaults he committed, even though he confessed to the allegations against him. Instead, he was convicted of obstruction of justice when he lied about the sexual assault. The following account of Cathy McBroom’s and Donna Wilkerson’s experiences involving sexual harassment and sexual assault perpetrated by Samuel Kent is taken from a public appearance Cathy and Donna made at The University of Texas at Austin in the spring of 2011 to share their stories, from multiple interviews I have had with them, in person, and on the phone or internet and media coverage of the case. Some interviews were with Cathy and Donna together and others were with them individually. Any of Cathy’s or Donna’s thoughts or feelings stated in this thesis, were self-proclaimed by the women during the above named situations. Their thoughts and feelings are many and varied; some will be with them for a lifetime. Limitations of this thesis prevent me from going into extensive details covering the years of incidents and the subsequent legal battle waged by the victims. I will try however, to weave within the case study enough specifics to create a clear picture of this convoluted example showing how women are dehumanized, suppressed and silenced in the workplace, even when that workplace is the system of justice they depend on to protect them.

Cathy and Donna have suffered, and continue to suffer mentally and physically from their ordeal with Kent, as do most sexual assault victims (Schneider, Swan & Fitzgerald 1997; Rospenda, et. al. 2005; Salisbury, et. al. 1986; Perry, Kulik &
Schmidtke; Piotrkowski 1998; Wasti & Cortina 2002) with symptoms ranging from insomnia to dyspepsia to post traumatic stress. Cathy lost her marriage to divorce over the incidents and Donna nearly lost hers. Both women have sought therapy and medication to deal with their issues of distrust, shame, guilt, anger, and the myriad of other confusing emotions. Even though Donna’s marriage did not dissolve, the relationship was heavily damaged and has deep scars around issues of trust and honesty. Donna also suffered the devastating loss of a lifelong female friend over the friend’s inability to understand how Donna could have, “allowed it to happen”. These women will carry the emotional scars of Kent’s physical and psychological attacks with them forever. Kent’s power was not limited to adjudicating justice; it extended into injuriously affecting lives.

President George H.W. Bush appointed Samuel Kent to the bench as a Federal Judge in 1990. Federal judges’ presidential appointments are lifetime positions are well paid including a generous pension after retirement, paid to them until they die. The only way to remove a sitting federal judge from the bench is by impeachment through Congress. During the majority of Kent’s tenure as a Federal Judge was sitting on the bench in Galveston, Texas as the only federal judge in a four county area, a part of the U.S. District Court for the Southern District of Texas. At several inches over six feet tall and well over 250 pounds, he was ominous in power and size. The self-proclaimed “King of Galveston” served for 19 years, until 2009.

Donna Wilkerson’s journey leading her to the Galveston courthouse was part of a deathbed promise to her sister. Donna had promised her that she would quit what she
described as her “perfect job…the best job she had ever had” working for a Houston law firm, to seek a job closer to home to spend time with her family. The job she found in October of 2001 was working as a judicial assistant to federal Judge Samuel Kent.

Donna’s stated that her pre-employment interview with Samuel Kent felt surreal, with the grandeur of his office and the history of the building. She describes her first impressions of him as his appearing larger than life, funny, charismatic, loud, and intelligent. During her first meeting with Kent, he gave her warnings of what constituted grounds for immediate dismissal focused on those who betrayed him, “talking out of school, disloyalty or engaging in behavior that would be embarrassing to the court” (Interview ). He then told her how great it was to be in Galveston, in a single judge division. This first meeting was also the first time Donna heard Kent refer to himself as the King of Galveston as he expounded on the benefits of his post and its location. He said, “It’s good to be King, I am the Lion King. I am the government, the Emperor of Galveston”. Donna would be reminded of his royal ideas when she served him his daily coffee in his Disney Lion King mug. She got the job.

Donna would not only work closely with the judge by knowing his schedule and accompanying him to meetings, luncheons and events, she would also work physically close to the judge in his apartment like chambers. The job’s nature of close proximity to the judge made it impossible to stay away from the judge, as we will see Cathy do as a mechanism dealing with Kent’s unwanted attention.

Her new job as Kent’s personal assistant, paid more money and benefits than any other job Donna had held working in the private sector for twenty years. Donna is the
primary wage earner in her family and had struggled balancing her work life with being actively involved in her children’s lives and their school sports schedules. One of the benefits of being Kent’s assistant was that Donna was allowed great freedom to come and go as she or her children’s schedules dictated. The job situation was exactly what Donna’s dying sister had wanted Donna to find, closer to home allowing Donna more time with her family and as a bonus the pay was greater than expected. The situation seemed perfect. These generous job benefits may have played a role in Donna’s choice of coping mechanisms to deal with Kent’s abusive behavior.

At the end of Donna’s first week working for the judge, a good-bye luncheon was held for the outgoing secretary. Upon returning to the courthouse after the luncheon everyone gathered in the judge’s chambers to say their last goodbye’s to the departing secretary. The judge calls Donna to join him in his office, located immediately next to chambers. As she enters his office, he says from behind his desk how happy he is that she is on his team. She feels flattered and tells him thank you. As they proceed to exit his office returning to the party in the next room, Kent reaches over Donna’s head and blocks the door with an outstretched arm, trapping her between the door and him. As she turns to ask what he is doing, he kisses her. She is stunned and says nothing. Donna states her thoughts were confused and scattered with questions of, “What am I going to do? What did that mean? Why did he do that?” There was a room full of people on the other side of the door waiting in chambers for their return. Donna went home and said nothing. This first incident of sexual misconduct by the judge towards Donna happened on her fifth day working for him.
She chose to cope, as many do in similar situations, by trying to appease the perpetrator, without angering him, tolerating the behavior at times and at other times denying to herself and to others that it was happening (Schneider, Swan, & Fitzgerald). However conversely, she did what many do not do; she confronted him directly telling him to stop, not with a forceful confrontation, but a confrontation nevertheless. During our interviews, Donna described her acts of defiance with Kent as, asking him to stop, by telling him that he was a “pig”, to “cut it out”, and that he wasn’t “funny”. Later when she described working for him as if she were, “walking a tightrope between begging him to stop and being in fear of infuriating him so she would be fired.” This description of her situation describes her reasoning why her confrontations with him were not more forceful.

Donna was silenced even before she began working for Kent. He had already told her in the pre-employment interview that if she tells tales, or makes the court look badly that she will be let go, he has no tolerance for disloyalty. Then within the first five days of her employment it is Kent who has betrayed a trust, Donna was trusting that she was working in an emotionally and physically safe environment and finds out her body and feelings are not secure. He hadn’t outlined what the rules were to be when it was he that was disloyal, or perhaps he had, the rule was to keep silent. Kent made it clear, if Donna wanted to keep her new, well paying job secure, with its great benefits, she was to be silent.

The sexual misconduct that started with a kiss and hug progressed to more kisses and more hugs, then to groping Donna’s outside her clothes and beyond. The incidents
are detailed in her court testimony and need not be repeated here in their entirety. Incidents were sometimes once a month, other times they were weeks or months apart. Donna describes the unpredictable pattern of his abuse as a way of “reeling in the women,” having times when he was horribly bad then he would retreat for a while so the women would let down their guard.

Donna became adroit at positioning herself in such a way that furniture or other objects would be between her and the judge as a maneuver to keep out of the judge’s reach. Donna described that if physical barriers failed, sometimes she could, “talk down” the 6’4” 250 – 275 pound federal judge. Donna felt alone and isolated; she had no one to go to. She kept the stories of Kent’s behavior to herself. Donna did not tell her husband of the incidents at work. She describes her husband, as a “red neck”, who she was afraid would do something rash and/or stupid if she told him about Kent’s behavior. She felt there was no one that she could talk to; so she kept all of the stress of the incidents to herself. Since she was a direct employee of Kent’s, she did not have any type of human resources manager or supervisor to turn to.

The only conversations she ever had, even with the judge, about the incidents were on rare occasions when Kent would apologize for making her feel “uncomfortable” followed by his saying, “you can’t tell me that you don’t like it”. In one breath he apologizes for his admitted behavior then silences her by feeding into her confusing thoughts telling her that he knew she enjoyed it. Donna has questioned herself and continues to do so, wondering how and why the events happened and why she continued to return to work. She admits that a great job working for a powerful man, with ample
time off and good pay is difficult to walk away from. Why should she have to give up her job when she is the victim?

Donna added even more defensive coping strategies and behaviors to deal with Kent. First, she started wearing clothes that Kent couldn’t easily “get into” such as turtleneck tops. Next she refrained from drinking out of water bottles in front of him or applying hand lotion. She implemented these defenses after he commented on how much he liked watching her drink from the bottles and then on another occasion how he enjoyed watching her while she was applying lotion.

Kent’s illegal sexual behavior was not daily; sometimes it would be weeks or months in between incidents of harassment and assaults on Cathy. During times of calm, Donna would have thoughts that maybe the behaviors had ceased and Kent would behave as her boss and not her harasser.

**SUMMER 2002**

In the summer of 2002 Cathy McBroom joins Kent’s team working in the Galveston courthouse in what she describes as her dream job of a court case manager. Her interview with Kent included the same warnings that Donna had received on the price to be paid if she defied him or disgraced the court. It appears from comparing Donna and Cathy’s recollections of their pre-employment interviews that it was important to Kent to establish his power position straightaway, as if his position as federal judge were not enough to warrant respect. Was Kent insecure? Why did he have to demand loyalty and silence? If we are to assume that his sexually harassing behavior and assaults were premeditated then it appears he might have been setting the stage to
protect himself in anticipation of his upcoming illegal acts. Even though Cathy’s office was on a different floor in the courthouse from Kent and her responsibilities did not involve daily contact with him. Cathy and Donna worked in tandem with each other but were not socially close. Cathy’s dream job quickly turned into a bizarre nightmare.

A first sign that things weren’t right was when Kent instructed Cathy that he didn’t want her involved in the civil cases. He said that she was too pretty and he wanted all of the attention to be on him and not to be on her in the courtroom. What is the proper response to one’s boss, a high ranking official who tells his new employee that she is too pretty and that is the reason she will be prohibited from performing a usual duty of her position?

According to Cathy, within her first days in Galveston, her manager, the Deputy-in-Charge, Mary Ann, warned Cathy that Kent “has a volatile temper and will let you go in a snap, so stay away from him”. However, the manager did not warn Cathy of Kent’s history of sexual harassment, which, according to Cathy, Mary Ann had personally experienced. Being forewarned of Kent’s unpredictable temper, it was easy for Cathy to keep her distance from Kent for the first several months of her employ since the judge’s chambers were on a separate floor. But he would begin to seek her out by stopping by her office and with phone call. Concurrently, all the while Cathy is beginning her career in Galveston, Kent is still sexually harassing and groping Donna.

Unknown to Cathy at the time, Kent had begun from the start of her employment to tell Donna repeatedly that Cathy was “after him” and that she was “all breathy around him”. He was laying the groundwork to make the women compete. By creating animosity
and distrust between the two women, the judge was assured of keeping the women apart. If the women did not talk, then they could not share and compare stories about Kent. The judge also told Cathy’s supervisor that Cathy was flirting with him. Then he started telling Donna that Cathy wanted her job.

Several months after Cathy began working at the Galveston courthouse Kent visited Cathy’s office unannounced and without any business purpose. Kent casually sat across from Cathy’s desk and begins telling her what a great job she’s doing and how glad he is to have her on the team. She was flattered to have her work recognized by the highest ranking man in the building. When Kent rose to leave her office, he asked her to come around from behind her desk and give him a hug. At the time, Cathy didn’t think anything suspicious of the hug; she felt he was merely welcoming her to the team. However, in hindsight Cathy says that she feels Kent was testing her and grooming her for future encounters.

The first incident of sexual assault perpetrated by Kent on Cathy was about a year after she began working with him. She encountered the judge as they were both walking in the courthouse hallway. The judge had just returned from lunch and was staggering. He asked her to show him the tiny workout room available to court employees. Cathy did not feel comfortable but there was no legitimate reason to deny the judge’s request, and he was the judge. However she felt fairly safe knowing there were two courthouse guards standing very near the workout room door. The door is left propped open after they enter the tiny room. Upon entering, Kent grabs Cathy trying to kiss her while putting his hand under her shirt and under her bra. She struggles with the judge and tells him if he does
not let her go she will scream. He releases her. Disheveled, upset and in tears, she rushes out through the partially open door, past the guards who she was sure had heard the assault. Later when she asks one of the guards why he didn’t do anything to help her; he explained to her that their job is to protect the judge and they did not want to lose their jobs, their job was important to them just like her job was important to her. They did, however, agree to, and fulfilled their agreement, to call and warn her when they knew the judge had been drinking.

After the incident in the workout room, Cathy immediately goes to her boss’ office and tells her what has happened. Cathy states that Mary Ann, her supervisor, asks if she wants to file a complaint. Cathy’s immediate response is that she does not want to lose her job by filing a complaint. Mary Ann says that she feels Cathy would indeed lose her job and reminds her that Kent is a federal judge and a very powerful man. Cathy in fear of losing her job if she filed a complaint decided to listen to her supervisor’s warning and chose not to file a complaint.

Subsequently, Mary Ann said that since Cathy was not going to file a complaint she would speak to her off the record and asked her to close the office door. Cathy tells of Mary Ann confiding that Kent has tried to kiss her once before also, but he apologized later and no further incidents occurred. Cathy hoped this would be the same with her that it was a one-time incident and it would not happen again. On returning home that evening, Cathy tells her husband everything that happened. His solution was for her to quit but she said that would be letting Kent take away the job she had worked so hard to earn and she would not let that happen. So she chose to stay. Cathy and Donna are now
embroiled in trying to keep their jobs, staying away from Kent, especially when he is intoxicated and trying to deal with the emotional confusion within their workplace without knowing the other is being subjected to Kent’s illegal behaviors.

A turning point in the incidents was one day when Donna had been called to the judge’s chambers. As she entered his office he instructed her to close the door. Turning around from closing the door Cathy finds herself being enveloped by an unwanted embrace from the judge. Before having time to react, Donna opens the door as she is opening it to announce the judge’s wife has arrived to see him. Donna witnesses the embrace. Hours later, the judge calls Cathy amused about the incident, saying he thought the whole thing was quite funny and he didn’t know who to expect coming through his door next, laughingly questioning that it might even be Mother Teresa next.

After this embarrassing and uncomfortable episode Cathy invites Donna to lunch to discuss the incident and to try and relieve some of the tension between them. It seems to Cathy that there might be a personal relationship developing between Kent and Donna. Cathy’s intent it to assure Donna that she has no interest in Kent and she is not competing with Donna for Kent’s attention or for her job. Meanwhile, Kent is still telling Donna that Cathy wants her job and that Cathy is flirting with him. The judge is also talking with Cathy’s manager and is reporting back to Cathy about his managerial level conversations with her boss and is advising her to stay under Mary Ann’s radar.

Kent has successfully kept his two victims from talking to each other, and especially about him. He’s created an environment in which the women do not trust each other because of the information he is feeding them. To further ensure his dominant
power position, Kent has included thinly veiled threats to Cathy that she is at risk of losing her job if she goes to Mary Ann. All of the women are successfully silenced. Kent has accomplished keeping them separated by fear and distrust. All three women know they can’t trust Kent from their own personal interactions with them, however even though they know he has lied in the past, they know he is powerful so they believe him and do as he tells them to stay quiet.

When Cathy and Donna go to lunch each is cautious and skeptical but by connecting and sharing stories, the women realize Kent is the nexus of the tension and mistrust in their work environment; Cathy and Donna agree to help each other by forming an alliance. Donna agrees to let Cathy know when the judge has been drinking or when it seems his intentions are not work related. Cathy agrees to not come forward against Kent without letting Donna know about it first.

The next day Donna meets with a friend, a young attorney who had been a law clerk in the Galveston courthouse. Embarrassed and humiliated Donna asks him for help by saying that she is “in a jam, the judge is messing with her”. Too ashamed and afraid of being judged by her friend, she does not go into detail. According to Donna’s recollection of the conversation, the young attorney tells Donna that Kent had recently visited his office and had “molested half his staff” prompting him to tell the judge that he couldn’t do that and then to assure his staff that the judge would never be invited to visit their offices again. He questioned Cathy as to what could she do, since her assailant was a judge. The attorney had witnessed the judge’s inappropriate behavior towards his staff.
and had done nothing more than to tell the judge to stop, the same as Donna had been doing. Donna is believed, but it prompted no action.

As for Cathy, for nearly a year she attempts to evade the judge’s inappropriate behaviors by leaving early, hiding in empty offices, not answering their phones and by warning each other when Kent had been drinking or acting inappropriately. With the guards’ and Donna’s warnings she was often able to avoid Kent, but not always. Kent would call Cathy on her phone and with sexually explicit language tell her what he wanted to do to her or what he wanted her to do to him. On occasion he would come down to Cathy’s office where he would subject her to sexually harassing language and on one occasion assaulted her, groping at her and pinning her against her credenza. While trying to do her work and to keep her job, Cathy is burdened with the additional stress of hiding from a powerful and frightening man who can instantly take away her livelihood and ruin her reputation in the Greater Houston area legal community, or so she fears.

**March 2007**

The final incident between Kent and Cathy happened in March 2007. Cathy made an error in court procedure promoting her manager to write a formal letter of reprimand. Per court procedure the judge was made aware of the incident. It was the first and only written reprimand Cathy had ever received. Kent summons Cathy to his chambers telling her to bring a copy of the letter. It is approximately three o’clock in the afternoon and there is no one in chambers except the judge. Kent reads the letter then tells Cathy that the letter is heavy handed. He tells her not to worry, he loves the quality of her...
work. It has been six months since Cathy has experienced any type of harassing behavior from Kent. He tells her to come and give him a hug – she tells him, “just because I’m down on my luck doesn’t mean that you can take advantage of me”. He responds, “he’s done a lot for her and the least she could do is give him a hug.” then proceeding to force his mouth onto her breast and shoving her head towards his crotch, “ordering her to do the obvious” (Olsen 2009). It was not the first incident of sexual misconduct by Judge Kent, but it would be the last. Cathy fled from the Judge’s chambers shaken and in tears with the Judge calling after her with foul and offensive language. It would take time and courage, but McBroom would fight back.

After spending several days at her mother’s shaken and distraught, Cathy agrees to meet with an attorney at the urging of her confidant and long time friend, Jan. The attorney advises her to sit down, remember when and how the harassing incidents have occurred, record everything, document it, and keep the records. Then he asked her what did she want to have happen? She didn’t want to lose her tenure. She wanted a transfer. He recommends she formally request a transfer in writing with a detailed letter stating why, including her documentation of the judge’s behavior. So, she does.

Next day Cathy’s manager, Mary Ann calls Donna saying she doesn’t know what to do, she has received a letter from Cathy claiming sexual harassment by the judge. According to procedure, Mary Ann should have notified her superiors in Houston instead of calling Donna. Cathy feels that Mary Ann was intimidated by the judge and was afraid of angering him; even knowing what he has done to Cathy and to herself. Donna tells me that she knows the allegations are true because Kent has done all of the same things to
her and she is also named in the letter as one of Kent’s victims. Donna has never told anyone the details about the judge’s behavior towards her, and now, here it was in an official document. Cathy had promised Donna that if she were to ever tell the story of Kent’s behavior, she would let Donna know first, but, Cathy did not give Donna any forewarning.

Donna describes calling the judge and telling him that she needs to see him right away, even though it is not during regular work hours, and it’s urgent. She drives to meet him and he angrily asks her, “what’s all the smoke and mirror bullshit.” Sitting in Donna’s car he reads the letter and explodes with, “That bitch. These are lies. She’s a disgruntled employee; she was about to be fired,” but Donna knows the truth. The judge rages, saying “You know she’s been after me – I know I’ve been a bad boy – I know I’ve hugged and kissed Donna – I did it once and she told me no more and that was it – you know the manager and I had an incident. But with Cathy it was consensual.” Kent has begun weaving a new web, one with the story he wants to be the new truth.

When executives of the Houston office receive Cathy’s request for transfer and her letter they meet with her to discuss next steps. She is offered her choice between two jobs, each seeming to be a demotion. Cathy says she is instructed to seek counseling from the Chief Judge of the Southern District if she wishes to pursue her complaint further. Cathy, still shaken and afraid, leaves the meeting feeling grateful just to have a job but not truly understanding the process to pursue a grievance. She realizes later that she did not ask enough questions. After two weeks of granted administrative leave trying to pull
herself together she begins her daily commute to her new job in the Houston courthouse where she starts learning a new job, while extremely stressed under the whole situation.

The Chief judge of the Southern District was in Houston and calls her and asks how she’s doing and wants to follow up on her expressed concerns of what was going to happen to Kent. He tells her Kent’s fate would depend on if she decided to file a grievance and if she didn’t then probably nothing would happen to him. When she expressed her dismay, he said that he wanted to let her know there was another option. She could file a complaint of judicial misconduct, a process usually used by litigants unhappy with judgments but he feel it will get attention, but, he warns her that there may be negative consequences.

Needing further legal counsel she calls her attorney from the courthouse stairwell, seeking a modicum of privacy. He immediately says unequivocally, no! Cathy recalls her attorney telling her “someone is trying to pull the trigger on this Kent” and Cathy has everything to loose. Feeling devastated and powerless she returns to her desk crying. That evening at home, still crying, she begins to get angry imagining her attorney, a man, in his cushioned desk chair, telling her to not pursue retribution. He was a man trying to silence her. The next morning she calls the Chief Judge back and asks if he thinks she’ll ever get a job as law clerk again if she persists with her complaint. He tells her that he thinks an honest judge will hire her. She files the complaint.

In response to her complain, three out-of-state judges interview Cathy. She told them everything. She told everything about the sexual harassment, and also included her feelings that Kent was mishandling cases in his courtroom.
May 2007

When Kent receives his official copy of the complaint of judicial misconduct with Cathy’s original letter attached, he immediately calls Donna and two law clerks into his office and reads the documents to them. Donna is panicked, afraid the proceeding will ruin her life by exposing the truth; her husband does not know about Kent’s behavior towards her. With Donna in the room, Kent then begins, once again, to spin the story he wants to become the truth, accepting that he might have done some wrong, but minimizing his actions to a level of near insignificance. He is creating an audience to hear his recreated version of the incidents.

Kent begins to tell Donna that he is suicidal, panicked about losing his position. He turns to Donna for support, calling her on one occasion at 2:00 a.m., narcissistically turning to someone he has injured to ease his own self-inflicted pain. According to Donna, he hires an attorney and begins therapy with a psychologist to prove that he is mentally able to remain on the bench. The investigation pulls everyone in to be interviewed who has been involved with Kent, and of course including Donna. Most of the questions Donna is asked have little to do with her, instead they are focused on Cathy’s dress, her behavior, demeanor, and searching for other facts about her personal life. Kent continues to prime Donna with his version of the story, minimizing it even further to say he only kissed Donna once, and in his version of the story, Donna tells him to stop and he does. His story, the way he tells it, makes Donna responsible for controlling his sexuality. Donna keeps hoping the whole thing will go away, but it doesn’t.
Cathy recalls as the investigation is coming to an end, Chief Judge of the Fifth Circuit of the United States Court of Appeals, Edith Jones calls Cathy to her office for a meeting. Judge Jones tells Cathy that she believes that Kent and his lawyer are going to request a hearing where she may be cross-examined. Cathy, nervous of having her past questioned asks Judge Jones if she needs to get an attorney to represent her. Cathy reports that the Judge responded that she didn’t know if Cathy needed an attorney or not, and stated that Cathy was just a witness, and she should do what she wanted to do. Jones is the highest-ranking Federal Judge in the fifth district, how could she “not know” if Cathy needed an attorney? Why would the judge tell Cathy that she is “just a witness” when Cathy is the victim in this case? Is this a case of a female judge, not just failing to support a female victim of sexual assault, but also actively minimizing and misrepresenting the situation to the victim? Cathy decides to get a lawyer.

When Cathy tells potential attorneys who might represent her, that she’s making a claim against a federal judge nobody wants to touch her case. On a suggestion from a friend, she meets for a consultation with a well-known and respected attorney, Rusty Hardin and five others from his office. After having told her story to so many people over the months, Cathy found herself surprised and greatly relieved that he believed her, someone finally believed her. Rusty agrees to take the case and to take it pro bono. He writes a letter to the circuit saying that he is representing her. Now that Cathy has an attorney representing her, suddenly there won’t be a hearing and a decision is made. The investigation finds that, indeed, there had been incidents of sexual harassment and the judge would be punished. His punishment was four months paid suspension.
Cathy and her attorney are outraged. While Cathy has had her life severely disrupted, her health jeopardized and her career track derailed, it seems Kent’s punishment is going on a four-month vacation. At this juncture, Rusty Hardin explains to Cathy that her case is not one of just sexual harassment, even though that is what she keeps calling it. Cathy’s attorney makes it clear that Cathy had been criminally assaulted. Cathy and her legal team decide, if the Fifth Circuit has not seen the case for how serious it really was then the next step was to turn it over to the Department of Justice in Washington, D.C. where hopefully the case would receive the attention he deserved. More investigations were done, a file was built and it was turned over to Washington. To Cathy’s relief, The Federal Bureau of Investigation (FBI) becomes involved. She feels that finally someone is going to help her and see how serious the charges are.

After Kent completes his punishment of four-months barred from the bench, with pay, he learns that he will not be allowed to return to Galveston, he will be reassigned to Houston, to the same courthouse where Cathy has been transferred. Cathy was consulted about Kent’s move even though it appeared to her that the decision had already been made. It was explained to her that he needed to be supervised and not left isolated in Galveston. Feeling guilted into agreement, somehow responsible to protect other women from Kent, Cathy acquiesced. The man who had assaulted her was now going to work in the same building where she was trying to learn a new position and move forward with her life while dealing with the stress of the assault investigation. When her family found out that Kent was being transferred to the same building as Cathy, they were livid. On Kent’s first day reporting to the Houston courts he found picketers in front of the
courthouse, all friends and family of Cathy’s, protesting against him. They marched all day in what would prove to be one of the coldest days of the year.

**FALL – 2008**

Even though the FBI is instrumental in bringing the case to a close, they also bring with them another level of stress and pain for Cathy and Donna. The FBI interviews anyone and everyone that might know anything about the women’s past or present that could be used in the case. Cathy began to feel as if she were the one who had broken the law. Finally her attorney stepped in telling the investigators to ease the pressure on Cathy or they wouldn’t even have her testimony, she was barely functioning emotionally.

As the FBI investigation ensues, Donna states she follows Kent’s lead and the guidance of his attorney’s minimizing Kent’s harassing behavior in her testimony when she is questioned. Cathy is asked by the FBI to call Donna and try to get her to admit to what she knows about Kent; the FBI feels Donna knows more than she is admitting. Hesitantly Cathy complies with the investigators by placing a wire tapped call to Donna. Suspicion of Cathy’s phone call after a year of no communicating between them, Donna offers no evidence. To the contrary, Donna comes to Kent’s defense asking Cathy if she hasn’t done enough already to make Kent suffer.

Not until Donna receives a disturbing call from the FBI while she is at a shopping mall with her children does she agree to meet with them. Donna says on the call the FBI reveal that they are following her and are in the mall also. On the verge of a nervous breakdown, being followed by the FBI, realizing she is not even being true to herself and
questioning the example she is setting for her daughter by lying and protecting Kent, she decides to tell the FBI everything. This also means that she will have to tell her husband.

Kent is still threatening suicide and trying to secure Donna’s loyalty. Having made her decision, Donna tells Kent to stay away from her, thereby breaking his hold on her. Donna engages an attorney then meets with the FBI and tells all. She says that night was the first time she had slept soundly in months.

**MAY - 2009**

So many people had told Cathy that she would never win, but when she finds out that Donna has come forward she felt power, the power of the situation changing from Cathy’s word against Kent to Cathy and Donna united against Kent. As the women and their attorneys prepare for trial, the investigators contact them on the Friday night before court was scheduled for the following Monday, with a proposed deal. The deal is that Kent will admit to the charges of sexual misconduct but he will be charged and sentenced for his lying to the court about the case with “obstruction of justice”. The women agree to the terms stating they would be satisfied with the proposal thereby avoiding a trial, which they were prepared to do but would gladly forgo.

Kent was sentenced to 33 months in federal prison. In his negotiation with the court, he was not sentenced for the charges he was originally indicted, “of abusive sexual contact and attempted aggravated sexual abuse of a female employee” (Wall street Journal). Even though Kent admitted to having “unwanted non-consensual sexual contact” with Donna and Cathy he was not sentenced for the wrongs committed against the women, but instead for obstruction of justice in the case. At the sentencing, Kent
apologized individually to multiple persons in the courtroom involved in the case; he did not offer an apology to Cathy or Donna. In his last contact with the women, he is implicitly making them responsible and guilty for his situation.

Even after being sentenced to prison Kent tried to retain the remunerative benefits of his position, approximately $176,000 annual salary and lifelong retirement benefits. Kent had not been officially removed from his position as part of his sentence. A Federal Judge can only be removed from the bench by Congressional impeachment; Kent had not been impeached and he refused to resign, thereby would continue to draw his six-figure salary, even while in prison and would retain his retirement. The investigators next step would be to pursue a Congressional impeachment. Cathy and Donna were asked to, and complied with, continuing with the case by testifying in front of Congress at impeachment proceedings to formally remove Kent from the bench.

Cathy and Donna traveled to Washington, D.C. and testified at the hearings, which Kent did not attend, he sent a letter instead, asserting illness and asking for leniency, making excuses for his actions. Kent claimed it was the stress in his life from dealing with his wife’s death from brain cancer and his subsequent increased drinking that responsible for his actions. In the final hour, Kent resigned from his position before the impeachment proceedings finished.

During the completion of this thesis, Kent, at 62 years of age, was released from prison to attend a family wedding after serving 25 months of his 33-month sentence. He was then placed on home confinement at his “vacation home” in west Texas (Olsen, 2011). Neither of his victims was notified of Kent’s release from prison, contrary to the
Bureau of Prison policy (Olsen). It is yet to be seen how Kent will further navigate life after prison. He was not convicted of a sexual crime so he does not have to register as a sex offender. He resigned from his position thereby it cannot be said that he was removed by Congressional impeachment, and he resigned from the Texas bar voluntarily. Throughout the Kent case, it was never said that he was not a smart man, just one who acted stupidly.
Conclusion

The Kent case as seen through this examination of historical law and society’s role in silencing women and usurping their power, demonstrates past influences of socially positioning women subordinate to men still informs behaviors. Cathy and Donna’s speaking out about their maltreatment was not enough to remove Kent from the bench. It was not until he lied to the boys that he lost his power. The historical influence of situations describing women’s gender subordination from over one hundred years ago to the Kent case are essentially the same story. A male boss is demeaning to female subordinates, treating them oppressively. He demonstrates male power keeping women silent under duress and his thinking that the women are in reality enjoying his special attentions. It must be explained through their socialized power inequality regardless of other factors involved.

I do not blame the victims for what happened to them, but I wish to examine historical socialization of women in their role as caretakers making the home a safe retreat for the powerful male who must be exposed to the harshness of the world all day. Kent’s chambers were designed like living quarters, with kitchen, living area with a sofa, etc. It was as if his chambers were his home and the courtroom the separate sphere. Donna was in charge of keeping the inner sphere of his chambers in order for his to return to. She brought him his coffee in his “Lion King” mug. The comparison to nineteenth century separate spheres ideology is remarkable. Women are socialized in this caretaking role and Cathy and Donna both self-identify as people pleasers. This position automatically places them as pleasers into a subordinate position to others, negating the
power of the pleaser, subordinating their wishes to the powerful by giving power to other
whether it is legitimate or deserved.

Kent looks to the women to tell him “no” when he sexually harasses them, and he
looks to them to help him, the perpetrator who is causing pain, to help him deal with his
own distress and emotions when the case begins. From his position of power, his
feelings, needs and job security are superior to any needs the women might have. As
seen in earlier court cases, Kent pleads the incidents are personal between him and the
women. Looking just within this limited time of Kent’s tenure on the bench, he forced his
attentions on at least three women mentioned in this narrative. It would be a reasonable
question to wonder if there have been others in his long judicial career. Kent’s harassing
behaviors are not personal interaction between two people as he claims; it is serial
harassment of women in subordinate positions by a powerful male. This perpetrator
obviously does not lack knowledge of sexual harassment behavior or the law; he
knowingly treated the women in his workplace like objects for his enjoyment and kept
them silenced with his threats and power, implicit and explicit. Kent’s behavior is
perpetrating the history of male domination over women from coverture to denial of
suffrage through to the glass ceiling.

Then the power is seen to shift when Cathy speaks up. Kent is incensed when
confronted with Cathy’s request for transfer and written documentation of the events
against her and speaking out against him. The scene is a federal judge, cursing and raging
in his assistant’s car, who is herself, one of his victims, who knows the truth firsthand,
admitting that he’s been “a bad boy” while reading a letter outlining how he sexually
attacked one of his female employees. As he replays his transgressions aloud he begins to rewrite the story, that his actions were minimal, without malice with one victim and consensual with another. Even though Donna is sitting next to him, witnessing his outburst, he dehumanizes her by acting as if she has no memories of the incidents perpetrated against her. Without saying it directly he is telling Donna the story that she is to retell. He is rewriting history from his perspective. As he struggles to regain his power, he is burdening Donna with responsibility to deal with his emotions.

Cathy was silenced at many points in the story. Before she ever began her job in Kent’s courthouse he silences her preemptively in the interview and warn her of the punishment dealt to those who betray the court, really meaning, those who betray him. After the first incident of sexual misconduct Cathy goes immediately to her boss and is silenced directly by her if she wants to keep her job. Even though an employee grievance plan is in place, both women are afraid of Kent, silencing both of them. Unofficially the boss tells Cathy that Kent has sexually harassed her as well. Even though a pattern has developed, the women remain quiet, speaking only to each other. Later Cathy and Donna share their experiences with Kent’s abuse, but again, not in a public forum. Whereas Cathy does share with her husband and family, Donna remains completely silenced not sharing the full truth with anyone and only a partial truth with Cathy. Later in the case Donna denies the abuse and assaults, even when questioned by the FBI.

Once Cathy decides to speak up about her assaults, officials involved in the case try to discourage or silence her. Crouched in the courthouse stairwell, her male attorney tells her to not pursue anything more about the case beyond Kent’s four month paid
“punishment”. If she had listened to this silencing, positioned in the role of legal advice, Kent would have returned to the bench virtually unscathed. She pursued however. Even when we see the highest ranking Federal Judge in the Fifth District, Edith Jones, indirectly silencing Cathy with erroneous advice about not knowing if she needed an attorney and telling Cathy that she was “just a witness,” it is gendered power speaking. Even though Jones is a woman, she is playing a role usually reserved for powerful males; she plays the role as originally scripted, siding to remain on the side of conventional power with the men.

Long standing social and slowly changing legal rhetoric continue to train women that it is right and proper for them to be in a subordinate role, thereby setting the stage for them to be victims of tyranny and power, leaving women to struggle with ambiguous feelings of how to act or react in abusive situations involving brutish men. Even though current legal rulings state that men and women are equal and are not to be subjected to unequal or harassing behavior; social and religious dialogue continue to reinforce women’s lesser role as compared to their stronger, natural protector and leader, men. I challenge women to critically examine these restraints, question them and make changes in how we as women think of our selves and how we teach our daughters and sons about gender equality, which will be imperative antecedents before a new generation of women can embrace their own power, finding an equal voice and live with full agency.

Present theory and research have done much to improve workplace equality opportunities. However, with the innate hierarchical structure of industry combined with the increase of women in more diverse job opportunities and within the rapidly, ever-
changing social and cultural landscape new situations of conflict within gendered power are occurring and men may be finding their power position more threatened. (Deutsch 2007).

Above I have presented examples of courts rulings on women’s position within society as to their equal position with men. Women have lived under laws made by men and enforced by men without representation and attempts to participate in the legal process were denied the opportunity such as in *Bradwell v. Illinois*. The court clearly stated who was in charge and where their authority came from, “God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth” (*Bradwell v. Illinois*). An axiomatic truth indeed, and from God, it is an argument difficult to challenge.

A history of incidents have been demonstrated wherein women have been dealt with a separate, delicate creatures to be protected and controlled setting a societally enforced weakening of women with weakening of their opinions and voices. The courts have reinforced laws to prevent women from working in professional occupations, from working nightshifts for the women’s own protection, women have been categorized too delicate to require their equal participation in society as jurors unless they felt the need to do so, and left to attend their natural duties within their position centered in the home.

The case of Samuel Kent is a confluence of this history, society, gender expectations, learned weakness and implicit domination mixed with tyranny. It seems obvious the issue under scrutiny is not a matter of education or laws but is the accumulation of forces minimizing and silencing women. Even though there are laws to
protect women in the workplace they are still up to the interpretation of judges to enforce. Judges, even female judges hesitate to believe women’s complaints of harassment. Centuries of societal positioning of women in submissive stations leave them vulnerable to perpetuation of the myth through familial teachings and societal expectations enforced by legislation. To break such a cycle will not occur with the passage of laws, it will instead take changes in how girls are socialized and how boys are socialized in their responses and respect to each other as equals.
Post Kent

After Kent is sent to prison, Cathy and Donna continue working for the court system and in fact, find themselves both working in the Galveston courthouse again. This time Cathy is Donna’s supervisor. It would seem reasonable to ask if their working together was part of someone’s plan to isolate them to where everyone already knows about the incidents and to in some way, keep an eye on them. The women have made peace with each other and for all appearances are able to work well together. Both agree that they share the bond of survivors enduring the same tragedy, making their relationship a special one.

Of note, is a dinner interview I conducted with Donna in the fall of 2011. During dinner she received several cell phone calls from her husband. She apologized to me for the interruptions stating that ever since the Kent incident she must answer whenever her husband calls. It appeared as if it were her burden to bear, always having to be accountable for her whereabouts at any time to her husband as a punishment for whatever role her husband feels she played in her victimization. I couldn’t help but feel that Donna is still silenced, this time by her husband’s constant vigil on her. She continues to lead a life untrue to herself, trying to please others. Cathy and her husband remarried in June of 2011. Donna and Cathy are collaborating with a university counseling psychologist to write their story and have hopes to see it made into a movie someday.
Future Study

What is happening within society to perpetuate these circumstances? On the other hand, what, if anything is changing that may

The implications of this study is demonstrating that sexual harassment is still not enough to convict, Kent got away with it and other men will too. The question begs to be asked, what if Kent had readily admitted to the sexual misconduct charges when he was first accused? Would he have been removed from the bench or have served prison time? These incidents of sexual misconduct are all occurring long after, Title VII legislation, the Anita Hill case, and amazingly, we are still having this discussion. It is almost as if the systematic misuse of power is exemplified by the judicial system’s handling of the Kent case. The judge was allowed to plea bargain taking advantage of the victims’ terror at the prospect of the case going to trial and having their lives exposed which would have been a further abuse against them. Examination of the parenting messages of cultural attitudes towards women’s role in American society through interviews would be a next step if I were to explore this topic further.
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