

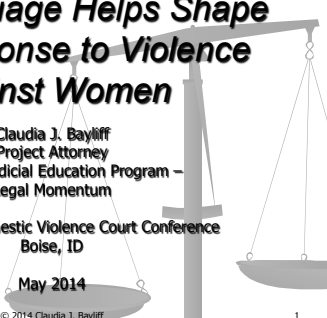
***How Language Helps Shape  
Our Response to Violence  
Against Women***

Claudia J. Bayliff  
Project Attorney  
National Judicial Education Program –  
Legal Momentum

2014 Idaho Domestic Violence Court Conference  
Boise, ID

May 2014

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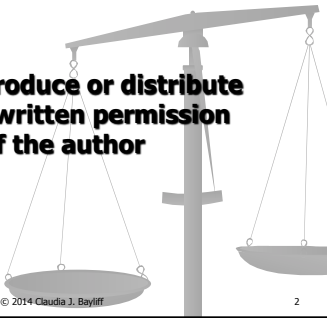
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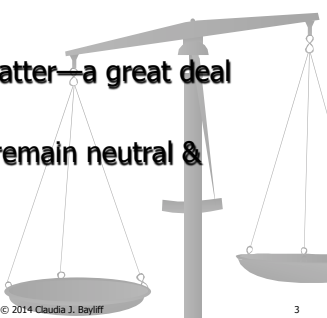
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**The Judge's Role**

- Your words matter—a great deal
- Important to remain neutral & impartial

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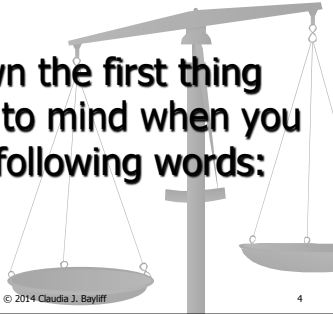
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### Word Association

Write down the first thing that comes to mind when you hear the following words:



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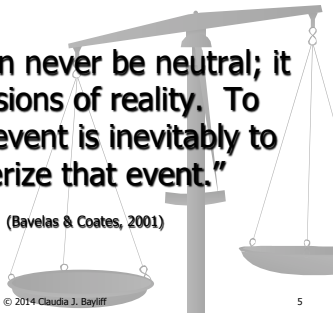
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### Choice of Language

"Language can never be neutral; it creates versions of reality. To describe an event is inevitably to characterize that event."



(Bavelas & Coates, 2001)

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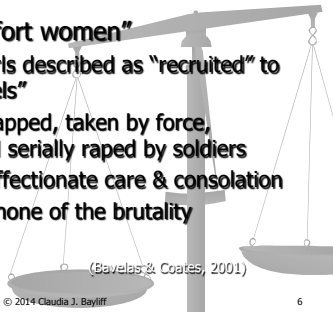
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### Choice of Language

- The term "comfort women"
  - Women and girls described as "recruited" to "work in brothels"
  - In reality, kidnapped, taken by force, imprisoned and serially raped by soldiers
  - Term implies affectionate care & consolation
  - Term conveys none of the brutality



(Bavelas & Coates, 2001)

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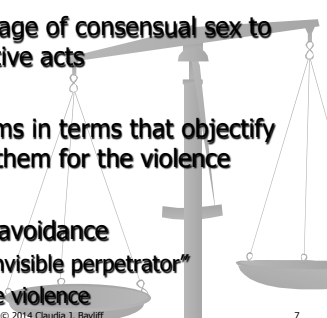
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### Topics Covered

- Using the language of consensual sex to describe assaultive acts
- Describing victims in terms that objectify them or blame them for the violence
- Using linguistic avoidance
  - To create an "invisible perpetrator"
  - To minimize the violence



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### Topics Covered

- Other difficult questions
- How we are going to change how we talk about sexual violence



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### Importance of Legal Language

"Written judgments not only express current law, but also shape future law and society itself."

(MacMartin, 2002)



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### Importance of Legal Language

"Potentially drawing on the discourse of lawyers, witnesses, previous judgments or the discourse of the broader society, the language of legal judgments represents a public discourse (and not uncommunicated thoughts, attitudes or motivations) that has an impact and is acted upon."

(MacMartin, 2002)

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### Importance of Legal Language

- In a large-scale study of 230 articles about domestic violence homicides or attempted homicides:
  - One in five articles relied on law enforcement sources
  - One in four articles relied on court records

(Weller, 2009)

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### Language of Sexual Assault

- Language often used to assess actions, ascribe blame and minimize perpetrator's responsibility:
  - Use of language of consensual sex to describe assaultive acts
  - Describing victims in terms that objectify them or blame them for the violence
  - Use of linguistic avoidance: the "invisible perpetrator"

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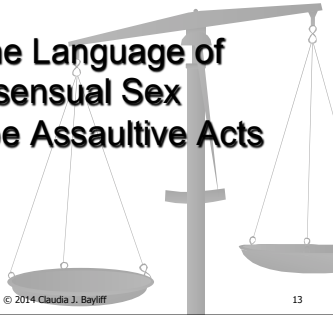
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**Using the Language of  
Consensual Sex  
to Describe Assaultive Acts**



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**Using the Language of  
Consensual Sex**

- Describing acts in terms usually used for pleasurable and affectionate acts:
  - Minimizes and hides the intrinsic violence of an assault
  - Makes it harder to visualize the acts as unwanted violations
  - Allows society to rationalize, justify and excuse sexual aggression

(Bavelas & Coates, 2001)  
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**Language of Consensual Sex**

- Eroticized language that creates an intimate and non-threatening scene
  - "He fondled her breasts"
  - "He kissed, hugged, caressed or had sex with her"
- Statements that imply consent without the context of force (physical or emotional)
  - "They had intercourse"
  - "She performed oral sex"

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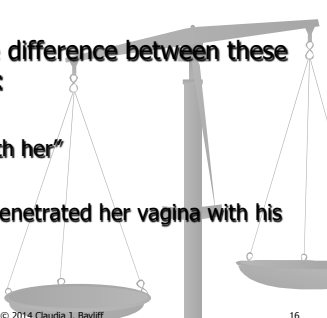
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### Language of Consensual Sex

- Think about the difference between these two statements:
  - "He had sex with her"
  - "He forcefully penetrated her vagina with his penis"



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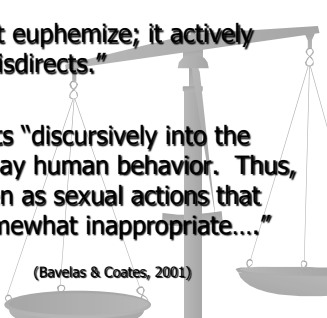
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### Language of Consensual Sex

- It "does not just euphemize; it actively misleads and misdirects."
- It brings the acts "discursively into the range of everyday human behavior. Thus, they can be seen as sexual actions that were simply somewhat inappropriate...."

(Bavelas & Coates, 2001)



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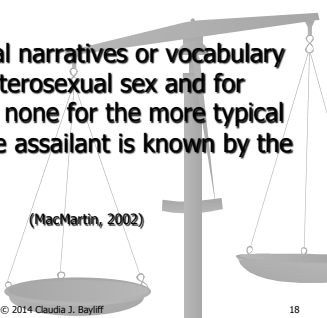
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### Lack of Appropriate Language

"There are cultural narratives or vocabulary for consensual heterosexual sex and for stranger rape but none for the more typical cases in which the assailant is known by the victim."

(MacMartin, 2002)



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## Lack of Appropriate Language

"Analytic attention to the deployment of discourses of stranger rape and consensual sex highlights a possible lack of alternative discourses to describe many victims' experience of sexual assault."

(MacMartin, 2002)

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## Language of Consensual Sex

- Study of Canadian judicial opinions showed:
  - Judges frequently characterized sexual assaults as erotic, romantic or affectionate acts
  - Assaultive acts reformulated as "they had French kissed," "intercourse" & "fondling"

(Coates & Wade, 2004)

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## Language of Consensual Sex

- Study of Canadian judicial opinions showed:
  - Accounts failed to reflect unilateral nature of sexualized violence or the victim's experience of those acts
  - Language implied the victim was at least partly to blame

(Coates & Wade, 2004)

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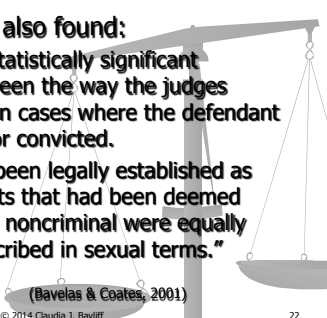
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### Language of Consensual Sex

- Canadian study also found:
  - There was no statistically significant difference between the way the judges described acts in cases where the defendant was acquitted or convicted.
  - "Acts that had been legally established as assaults and acts that had been deemed consensual and noncriminal were equally likely to be described in sexual terms."

(Bavelas & Coates, 2001)

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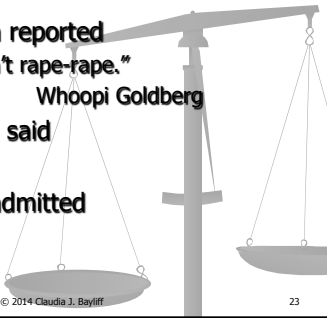
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### The Roman Polanski Example

- What the media reported
  - "I know it wasn't rape-rape."  
Whoopi Goldberg
- What the victim said
- What Polanski admitted

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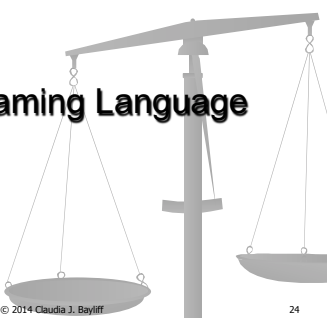
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### Victim-Blaming Language

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### Victim-Blaming Language

“Residents of the neighborhood where the abandoned trailer stands—known as the Quarters—said the victim had been visiting various friends there for months. They said she dressed older than her age, wearing makeup and fashions more appropriate to a woman in her 20s. She would hang out with teenage boys at the playground, some said.”

(McKinley, 2011)

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### Victim-Blaming Language

- Blames and pathologizes the victims by portraying them as catalysts who excited the sexual desire of an otherwise good person
- Reformulates victims into perpetrators (responsible for acts committed against them) and perpetrators into victims (not responsible for their own actions)

(Coates & Wade, 2004)

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### Jastorff Pleads Not Guilty Exercise

- Read the article
- Identify examples where the author uses the language of consensual sex to describe assaultive acts

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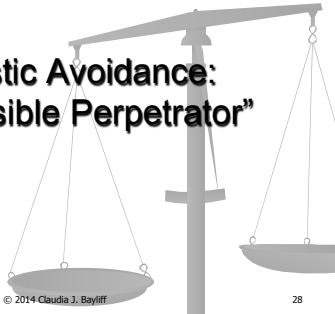
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**Linguistic Avoidance:  
The “Invisible Perpetrator”**



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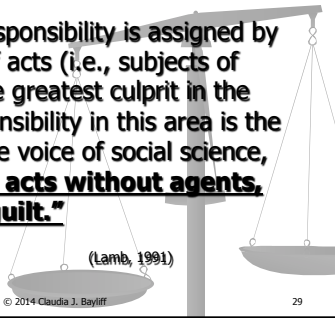
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**The “Invisible Perpetrator”**

“Linguistically, responsibility is assigned by naming agents of acts (i.e., subjects of verbs). Thus, the greatest culprit in the diffusion of responsibility in this area is the ubiquitous passive voice of social science, **which presents acts without agents, harm without guilt.**”

(Lamb, 1991)



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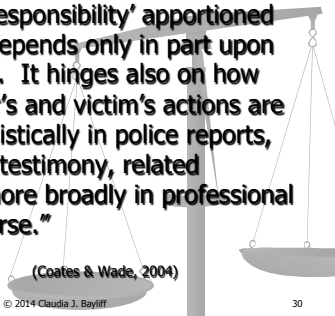
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**The “Invisible Perpetrator”**

“The ‘degree of responsibility’ apportioned to any offender depends only in part upon his or her actions. It hinges also on how both the offender’s and victim’s actions are represented linguistically in police reports, legal arguments, testimony, related judgments and more broadly in professional and public discourse.”

(Coates & Wade, 2004)



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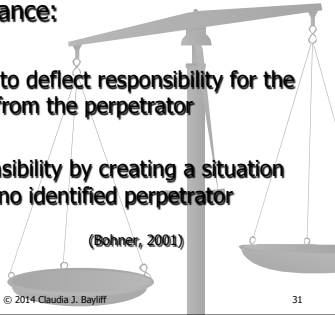
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### The "Invisible Perpetrator"

- Linguistic avoidance:
  - Uses language to deflect responsibility for the violence away from the perpetrator
  - Diffuses responsibility by creating a situation where there is no identified perpetrator



(Bohner, 2001)

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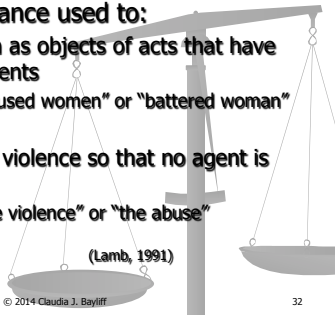
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### The "Invisible Perpetrator"

- Linguistic avoidance used to:
  - Present women as objects of acts that have no specified agents
    - Examples: "abused women" or "battered woman"
  - Nominalize the violence so that no agent is necessary
    - Examples: "the violence" or "the abuse"



(Lamb, 1991)

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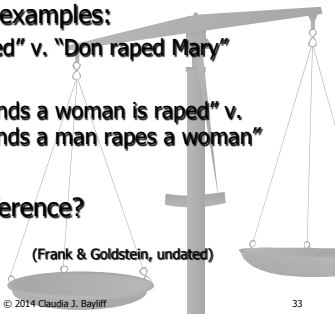
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### The "Invisible Perpetrator"

- Consider these examples:
  - "Mary was raped" v. "Don raped Mary"
  - "Every 46 seconds a woman is raped" v. "Every 46 seconds a man rapes a woman"
- What is the difference?



(Frank & Goldstein, undated)

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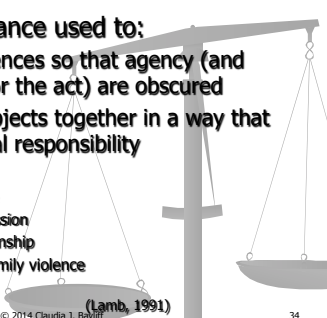
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### The "Invisible Perpetrator"

- Linguistic avoidance used to:
  - Construct sentences so that agency (and responsibility for the act) are obscured
  - Identify the subjects together in a way that suggests mutual responsibility
    - Examples:
      - Spouse abuse
      - Marital aggression
      - Violent relationship
      - Parental or family violence

(Lamb, 1991)

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### The Evolution of "The Invisible Perpetrator"

- Andrew beat Jessica.

(Jackson Katz, 2013)

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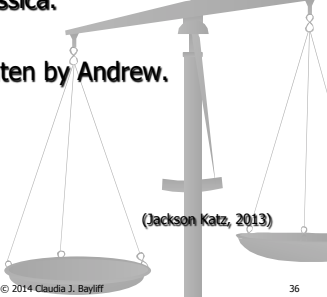
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### The Evolution of "The Invisible Perpetrator"

- Andrew beat Jessica.
- Jessica was beaten by Andrew.

(Jackson Katz, 2013)

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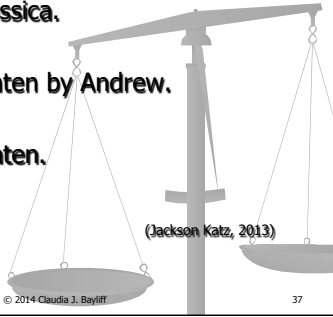
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**The Evolution of  
"The Invisible Perpetrator"**

- Andrew beat Jessica.
- Jessica was beaten by Andrew.
- Jessica was beaten.



(Jackson Katz, 2013)

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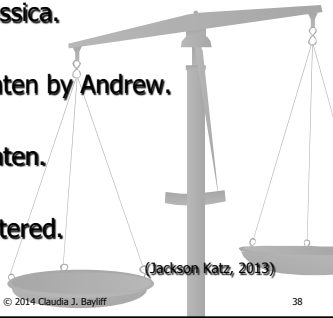
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**The Evolution of  
"The Invisible Perpetrator"**

- Andrew beat Jessica.
- Jessica was beaten by Andrew.
- Jessica was beaten.
- Jessica was battered.



(Jackson Katz, 2013)

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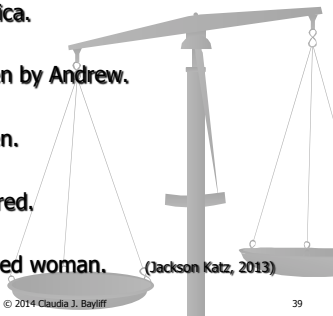
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**The Evolution of  
"The Invisible Perpetrator"**

- Andrew beat Jessica.
- Jessica was beaten by Andrew.
- Jessica was beaten.
- Jessica was battered.
- Jessica is a battered woman.



(Jackson Katz, 2013)

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**Unaccountable Language:  
To Minimize the Violence**

- "Accuser"
- "Date rape"
- "Domestic dispute"



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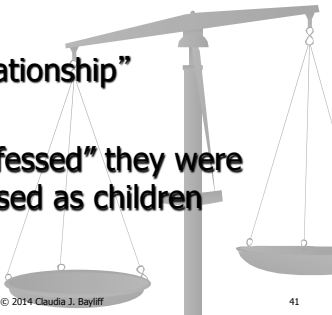
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**Unaccountable Language:  
To Minimize the Violence**

- "Abusive relationship"
- Victims "confessed" they were sexually abused as children



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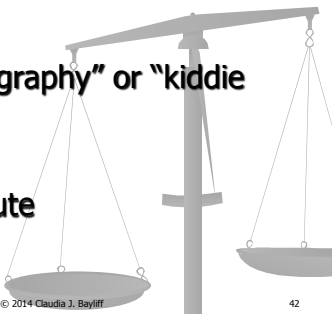
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**Unaccountable Language:  
To Minimize the Violence**

- "Child pornography" or "kiddie porn"
- Child prostitute



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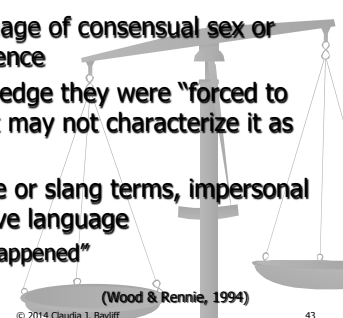
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**Victims' Use of Language**

- May use language of consensual sex or mutual experience
- Often acknowledge they were "forced to have sex," but may not characterize it as rape
- May use vague or slang terms, impersonal verbs or passive language
  - "Something happened"

(Wood & Rennie, 1994)

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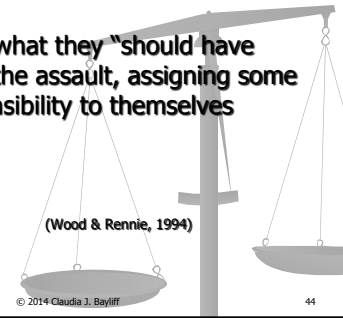
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**Victims' Use of Language**

- May describe what they "should have done" to end the assault, assigning some level of responsibility to themselves
- Why?

(Wood & Rennie, 1994)

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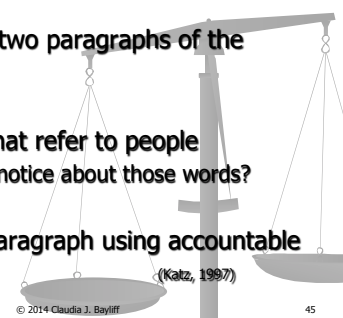
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**"Violence Against Women " Accountable Language Exercise**

- Read the first two paragraphs of the article
- Circle words that refer to people
  - What do you notice about those words?
- Rewrite one paragraph using accountable language

(Katz, 1997)

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## Other Difficult Language Issues



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## More Questions

- "He said/she said"
- Forcible rape
- "Legitimate" rape
- Victim v. survivor



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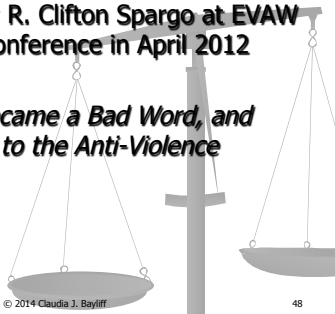
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## Reclaim "Victim"

- Presentation by R. Clifton Spargo at E<sup>VAW</sup> International Conference in April 2012
- *How 'Victim' Became a Bad Word, and Why It Matters to the Anti-Violence Movement*



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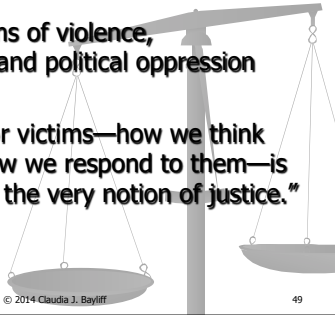
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### Spargo's Thesis

- Rights for victims of violence, discrimination, and political oppression
- "What we do for victims—how we think about them, how we respond to them—is fundamental to the very notion of justice."



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### Spargo's Thesis

- Backlash against the victims' rights movement
  - Blaming the victim
  - "Victim" used as a term of contempt or notoriety
  - Examples from pop culture



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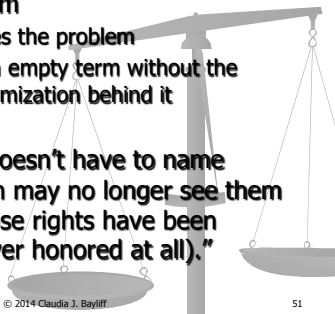
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### Spargo's Thesis

- Survivor v. victim
  - "Versus" creates the problem
  - "Survivor" is an empty term without the premise of victimization behind it
- "A public that doesn't have to name 'victims' as such may no longer see them as persons whose rights have been violated (or never honored at all)."



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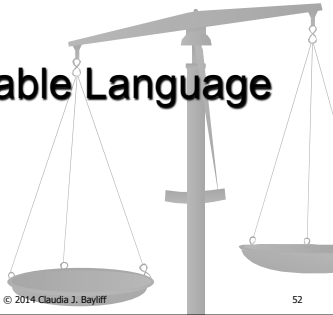
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**Accountable Language**

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**The Visible Perpetrator:  
"Sexual Assault Prevention Tips  
Guaranteed to Work!"**

- "Don't put drugs in people's drinks in order to control their behavior.
- When you see someone walking [alone], leave [her] alone!
- If you pull over to help someone with car problems, remember not to assault [her].
- NEVER open an unlocked door or window uninvited."

(Jamison, 2009)

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**The Visible Perpetrator:  
"Sexual Assault Prevention Tips  
Guaranteed to Work!"**

- "If you are in an elevator and someone else gets in, DON'T ASSAULT [HER].
- Remember, people go to the laundry to do their laundry, do not attempt to molest someone who is alone in a laundry room.
- USE THE BUDDY SYSTEM! If you are not able to stop yourself from assaulting people, ask a friend to stay with you while you are in public."

(Jamison, 2009)

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**The Visible Perpetrator:  
"Sexual Assault Prevention Tips  
Guaranteed to Work!"**

- "Always be honest with people! Don't pretend to be a caring friend in order to gain the trust of someone you want to assault. Consider telling [her] you plan to assault [her]. If you don't communicate your intentions, the other person may take that as a sign that you do not plan to rape [her]."
- Don't forget: you can't have sex with someone unless [she is] awake."

(Jamison, 2009)  
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**The Visible Perpetrator:  
"Sexual Assault Prevention Tips  
Guaranteed to Work!"**

- "Carry a whistle! If you are worried that you might assault someone '[by] accident' you can hand it to the other person you are with so [she] can blow it if you do."
- And, ALWAYS REMEMBER: if you didn't ask permission and then respect the answer the first time, you are committing a crime—no matter how 'into it' others appear to be."

(Jamison, 2009)  
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**What Are We Going  
To Do About It?**

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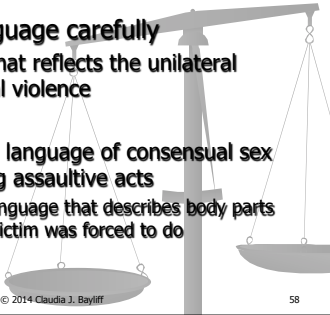
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**What Are We  
Going To Do About It?**

- Choose our language carefully
  - Use language that reflects the unilateral nature of sexual violence
  - Avoid using the language of consensual sex when describing assaultive acts
    - Instead, use language that describes body parts and what the victim was forced to do



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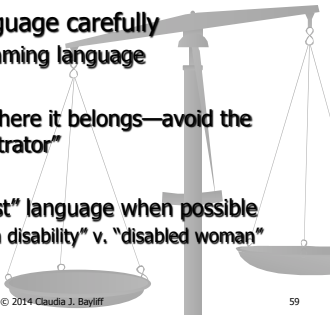
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**What Are We  
Going To Do About It?**

- Choose our language carefully
  - Avoid victim blaming language
  - Place agency where it belongs—avoid the “invisible perpetrator”
  - Use “person first” language when possible
    - “Woman with a disability” v. “disabled woman”



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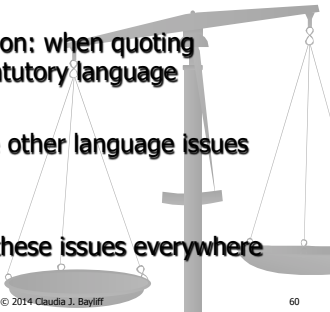
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**What Are We  
Going To Do About It?**

- Obvious exception: when quoting witnesses or statutory language
- Think about the other language issues discussed
- Educate about these issues everywhere we go



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### What Are **We** Going To **Do** About It?

- Respond to media coverage—good and bad
  - Example: *Washington Post* letter to editor
  - Example: Casey Gwinn's *The Birthday Boy*
  - Example: Judge Weller's project to educate the media about domestic violence
    - Stemmed from judge's personal tragedy
    - Judge created comprehensive media guide

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### Remember

“The difference between the almost right word and the right word is really a large matter—it's the difference between the lightning bug and the lightning.”

Mark Twain, in a letter to George Bainton (October 15, 1888)

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### We Can Make a Difference

- The Judicial Language Project at New England Law | Boston:
  - In September 2010, they wrote to the Chief Justice of the Georgia Supreme Court and the Chief Judge of the Georgia Court of Appeals about the use of the word “perform” to describe actions of child victims in sexual assault cases

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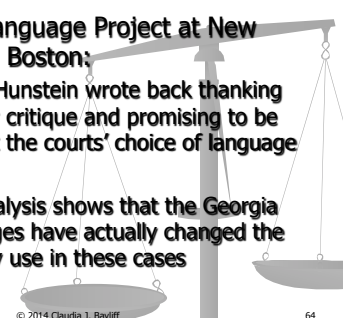
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**We Can Make a Difference**

- **The Judicial Language Project at New England Law | Boston:**
  - Chief Justice Hunstein wrote back thanking them for their critique and promising to be mindful about the courts' choice of language
  - April 2011 analysis shows that the Georgia appellate judges have actually changed the language they use in these cases



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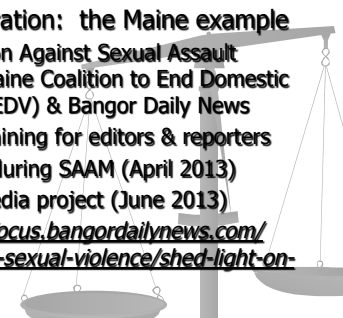
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**We Can Make a Difference**

- **Media collaboration: the Maine example**
  - Maine Coalition Against Sexual Assault (MECASA), Maine Coalition to End Domestic Violence (MCEDV) & Bangor Daily News
  - Mandatory training for editors & reporters
  - **Daily** op-ed during SAAM (April 2013)
  - *Proof* multimedia project (June 2013)
  - <http://mainefocus.bangordailynews.com/domestic-and-sexual-violence/shed-light-on-violence/>



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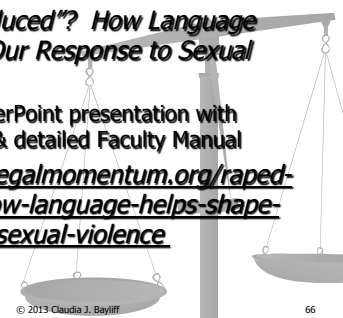
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**NJEP's Language Module**

- ***Raped or "Seduced"?: How Language Helps Shape Our Response to Sexual Violence***
  - Includes PowerPoint presentation with commentary & detailed Faculty Manual
  - <https://www.legalmomentum.org/raped-or-seduced-how-language-helps-shape-our-response-sexual-violence>



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## Closing Thoughts

**“Never doubt that a small group of thoughtful, committed citizens can change the world.**

**Indeed it is the only thing that ever has.”**

**Margaret Mead**

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**Thank you for what you do for all of us.**

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