WHOSE LIBERTY?

RETHINKING THE STATUS OF WOMEN AND RAPE IN THE CRIMINAL JUSTICE SYSTEM

Wendy J. Murphy, J.D.
New England School of Law, Boston, MA
617-422-7410 - Wmurphy@fac.nesl.edu

WHEN IS LIBERTY AT STAKE?

ANY LOSS OR THREATENED LOSS OF A FUNDAMENTAL CONSTITUTIONAL RIGHT, SUCH AS FREEDOM AND EQUALITY

PAST REFORMS

Proclaiming an interest in promoting freedom and equality

- Rape Shield Laws
- Marital Rape Exception
- Corroboration Rule
- Utmost Resistance Requirement
- Hale Instruction

…TO REDRESS BIASES & MYTHS

- False Allegations
- Women are Vindictive
- Women are Mentally Ill
- Women Like Being Overpowered
- Women are Vamps
- Men are “naturally” Aggressive
- Women are Masochists

DID REFORMS WORK?

Ask the Kobe Bryant victim

false allegation, vindictive, ill, promiscuous vamp, Kobe-stud

REFORMS WERE NOT RIGHTS-BASED

New laws but no voice

RIGHTS-BASED REFORM
Hold the government accountable for lack of freedom and equality!

Legislative
Executive
Judical

LEGISLATIVE

OFTEN USELESS
unless codifying procedures or giving money for education, etc.

PROCEDURES WORTH CODIFYING

- Statements of Equality-20J=20A; Martial rape=non-martial=acquaintance=stranger
- Privacy “Miranda” Rights
- Procedural Due Process
- Eliminate “force” Requirement
- Require “uncoerced” consent
- Sanctions Against Defense Counsel
- Exclusionary Rule Remedy
- Jury Selection

OTHER LEGISLATIVE "FIXES"

Abolish Rape-Shield

Abolish Fresh-complaint

EXECUTIVE

- Political Mobilization re: Election of District Attorney (show me the data; VAW "report cards"; no-drop policies; appeals; "hate crimes", etc.)
- YOU DON'T HAVE TO BE A VICTIM TO CARE ABOUT VIOLENCE, JUSTICE AND EQUALITY!

JUDICIAL

- Judicial Conduct Commission/Governor's Council
- Court Watch (including the O'Reilly Factor)
- Centralized Data On-Line
- Appellate Decisions (language, too)
- Amicus Briefs - ALASKA example
- Victim Lawyers - NOT handholders
- Contempt Proceedings/Impact Litigation

DIRECT ADVOCACY IN COURT

- JURY SELECTION
- JURY INSTRUCTIONS
- RACISM/SEXISM
- FOURTH AMENDMENT
- PRIVACY - 14TH Amendment, Statute, Common Law, Regulation (Federal and State)
- VICTIMS' RIGHTS
- SAFETY - (No Contact Enforcement)
- DUE PROCESS - (substantive AND procedural)

AT THE WATER COOLER

- Compare to larceny
- Flip the gender roles
- My right to swing my fist
- Criminal law is not the place to discuss moral responsibility
- Bodies are more important than stuff
- Be radically nonpartisan!