

**To Break the Silence or Be Broken by It:
A Genealogy of Women Who Have Refused to Shut Up About Harassment at Yale**

By Nicole Allan
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2015: Nicole Allan is a student at Stanford Law School. She was previously a senior editor at *The Atlantic* and *The California Sunday Magazine*. This article, reprinted with her permission, is an excerpt from her Yale undergraduate thesis.

Excerpt: Case Study of Alexander v. Yale

Having helped found the Undergraduate Women's Caucus a few years after Yale went coed, Ann Olivarius was more than familiar with the gender imbalances at her university, in which women amounted to only 37 percent of the student body.¹ She had confronted university health center staff who didn't know how to perform pelvic exams, an athletic department unwilling to give female athletes practice space or uniforms, and story after story of professors who, in one way or another, brought sex into the classroom—a hand on a knee, a lewd comment, a request for sex in exchange for a grade. Ann Olivarius was fed up. She had heard and seen enough to reject the popular notion that, as one of the lucky few to slip past Yale's gates, she should grit her teeth, look the other way, and be happy to be inside.²

As Olivarius and other Caucus members began preparing a report for the Yale Corporation on the status of women now that the College had been co-ed for almost ten years, they heard many stories from other women who were also fed up. They found that an overwhelming number of these stories involved professors verbally or physically coming on to female students, but there was one that overshadowed all the others. Ronni Alexander was a senior who had travelled to Yale from California to study music, and she'd been playing in the Yale Band and taking private flute lessons with its director, Keith Brion. He was the only faculty flute instructor for undergraduates; if she wanted to reach a level at which she could train with a Music School professor, she had to improve her skills with Brion. She liked him, at first. "I'd never really been on the East Coast," Alexander remembers, "and I thought I was really cool and adult. But I really wasn't, and I didn't know anybody, and I was just beginning to find all my friends." Brion was someone she could talk to, about more than just music.³

Then, sometime during her freshman fall, he began locking the door during their lessons. She didn't think too much of it, or didn't let herself, because she'd become close to him. But soon, he began touching her breasts while "checking her breathing." One day, he followed her into a closet-sized room and grabbed her, kissing and fondling her despite her protests. "He knew very well how to choose his victims," she says, upon thirty years of reflection. "I wanted somebody I could be dependent on and I didn't have anybody I could tell."

¹ *A Yale Book of Numbers, 1976-2000*. Ed. Beverly Waters, Yale Office of Institutional Research. October, 2001. http://www.yale.edu/oir/pierson_update.htm#A

² Interviews with Ann Olivarius, 2.4.09 and 4.3.09.

³ Interview with Ronni Alexander, 3.2.09.

As Brion might have expected, Alexander did not tell anyone about this incident, but she did stop taking lessons with him. When she returned for her sophomore year, however, she decided to give him another try. She really wanted to progress to the Music School and she couldn't figure out how to work around him. So she picked up her lessons in his office, swallowing some sexual innuendoes and "breathing checks" with the hope that she would soon be ready to audition for the Music School professor.

One day that fall, Alexander was getting out of a friend's car when she bumped her head against the doorframe and received a concussion. Her friend drove her to the health center but eventually had to leave, so Alexander set off for her dorm on her own. "Dizzy, nauseous, cross-eyed, and pretty incoherent," as she recalled in a letter she wrote to the secretary of Yale two years after the incident,⁴ she ran into Brion. He offered her a ride back to her dorm and she agreed. But first, he took her to an apartment he kept near campus. Inside, he laid her out on the bed, which she remembers smelled of dirty sheets. Then he had sex with her. She didn't struggle, but thirty years later she can't recall exactly why—perhaps because she didn't want him to be violent, or because she was concussed, or maybe because she wanted to pretend it wasn't happening. "I remember thinking, 'I guess this is where all of this was leading and I may as well just let him do what he wants to do and take me home,'" she says.

He raped her on at least one other occasion, she now asserts, though it never occurred to her to use the word "rape" until several years later. She was convinced that, by not telling anyone and not putting up a fight, she had been complicit in her assault. "The second time, actually, is why it became particularly difficult to talk about it," she remembers. "Because... basically, I went more or less willingly. And, uh, hated myself for doing it, and didn't feel like I had much of a choice."

Soon after that first evening in Brion's apartment, Alexander asked a freshman counselor she knew what would happen if a student was forced into a sexual relationship with a professor. The counselor asked her dean, Alexander remembers, who told her that he would call the professor and the student into his office and talk it through. Alexander did not report her experience with Brion.

She did, however, get on a Greyhound bus and head up to Canada; she was later talked out of suicide by a friend. She didn't initially want to return to Yale but eventually decided to change her major and make every effort to avoid Brion. Back on campus, she gave up music—though she still owns her flute, she barely touches it—and moved out of her dorm and into an apartment. Brion stalked her for a while, showing up at the dining hall where she worked and outside her window, but eventually he left her alone. Alexander was sure it was because he'd found someone else; she knew that Brion was notorious for coming on to his female students. Women quit the band periodically, and Alexander remembers their tacit acknowledgement of the reason why. "By the time I was maybe a junior, you could walk into any dining hall and say, 'I used to play flute in the band.' And everyone would say, 'Oh, me too,'" she says, lingering on the "Oh" in a knowing drawl. Brion lived with his wife and children—one of whom was a male undergraduate living in Alexander's residential college—in a house in New Haven, but Alexander suspects he

⁴ Letter from Ronni Alexander to Henry "Sam" Chauncey, 5.14.1977. Included in brief on behalf of plaintiffs appellants, *Alexander v. Yale University*. 79-7547.

kept his apartment near campus in order to be able to do to many female students what he did to her.

A year or two after she'd cut off contact with Brion, she ran into him on the street. "Somebody's accused me of rape," she remembers him saying. "What are you trying to do to me?" Since Alexander had told no one of her experiences with Brion, she guessed that someone else had, finally, spoken up.

When Ann Olivarius heard about Ronni Alexander's experience with Keith Brion, she vowed to make sure that no Yale woman had to go through something like that ever again. She had already approached Sam Chauncey, secretary of the university, with her concerns about the harassment of female students by their male professors. He'd expressed support, she remembers, and suggested that she have a few students write him with their experiences, promising that all of these students would remain anonymous. So Olivarius asked Alexander, along with several other women, to write Chauncey letters. But when Chauncey read them, she remembers, "He was absolutely, gobsmacked shocked, incredulous. And then he said the women must have led them on, that you couldn't trust these women. He had the most old-fashioned views on the earth." Soon, she says, Chauncey called Keith Brion, who'd been mentioned in Alexander's letter as well as three of the others, into his office and told him about the accusations, including the names of the women involved.

Chauncey, who is now retired, does not remember the content of the letters. As secretary of the university, he often received up to 500 a day. He also does not remember whether or not he took these letters to Keith Brion. "I hope very much that I treated them as confidential," Chauncey says, "but I can't tell you what happened after that. I can't swear, but I hope I did."⁵

Recalling the incident thirty years of legal experience later, Olivarius, now a successful lawyer, still seethes at what she remembers as Chauncey's breach of their agreement. "He traded us in—in direct violation of the deal," she says, incredulous. It wasn't long before Brion's wife, LaRue, who was the secretary of Olivarius' residential college, knocked on her door. "She cried her heart out," Olivarius remembers. "She said she couldn't control her husband, that I was tearing her family apart. If I was a feminist, how could I be hurting her, et cetera." LaRue's pleas soon turned menacing, however, as she threatened to alter Olivarius' academic file, to which she had full access.

In the midst of her tussles with Chauncey and the Brions, Olivarius realized that it was about time she found herself a lawyer. She immediately turned to her friend and mentor Catharine MacKinnon, then a student at the Yale Law School. "Kitty," as Olivarius and most of MacKinnon's friends call her, had been studying the intersection of feminism and socialism at Yale's graduate school before she was accepted to the Law School, and she'd taught several undergraduate courses with feminist themes. Olivarius had taken a few of these courses and credits MacKinnon with awakening her to the political implications of feminism. Olivarius was the oldest of five girls from a lower-middle-class Catholic family in New Jersey, and she'd never met anyone like Kitty before. "Go back thirty years and imagine this incredibly built woman with leather trousers on all the time, tight top, gorgeous face and hair, just stunning," the still

⁵ Interview with Henry "Sam" Chauncey, 4.13.09.

slightly smitten Olivarius says, remembering MacKinnon as she swept into a room packed with undergraduates. “The sex was dripping off her, the power was dripping off her.”

Olivarius had heard MacKinnon talk about a community-minded, feminist law firm that she and a few friends had started, a group called the New Haven Law Collective. Though MacKinnon was still a law student when the Collective opened in 1976, she’d teamed with recent Yale Law alums Anne Simon and Kent Harvey to dream up this progressive legal project with offices overlooking the New Haven Green. Olivarius hadn’t even heard Alexander’s story when she first visited the Collective. But when she told Harvey some of the other tales she’d gathered, he immediately sensed a potential lawsuit, Simon remembers.⁶

If undergraduate women sued the University for failing to prevent or respond to their experiences, the Collective realized, they and their lawyers could break new ground in the budding field of sexual harassment law. Even as a law student, MacKinnon was largely responsible for shaping the legal landscape of sexual harassment in the workplace. In a paper she wrote for Professor Thomas I. Emerson, she defined sexual harassment, in its broadest sense, as “the unwanted imposition of sexual requirements in the context of a relationship of unequal power.”⁷ This paper was soon published as a book, *Sexual Harassment of Working Women*, which launched MacKinnon’s career as one of the most groundbreaking and radically controversial feminist legal theorists of the twentieth century. But when Simon, Harvey, and Olivarius were combing through it for clues to their emerging lawsuit, it was still a typed manuscript.

Over the next few months, Olivarius worked with the Collective and a rotation of other undergraduate volunteers to compile a group of plaintiffs with resonant stories that they were willing to share in court. Due to the nature of sexual harassment and assault, they knew this would not be an easy task. Stories of sexual violation are almost always private—two people behind a closed (in Keith Brion’s case, locked) door, one’s word against the other’s. Most cultures have long buried such stories in shame and silence, and the women trying to acclimate to Yale’s newly coed campus had a lot to lose by speaking out. But Olivarius and her lawyers also knew that any power they might be able to muster would come from the very act of voicing violation. If one of Keith Brion’s victims didn’t speak up, then the only way a freshman flute player would learn what the women before her already had would be when, one day, Brion started locking the door during his lessons with her. Olivarius knew that, for the sake of future generations, women had to start telling the stories that lay just beneath the surface of Yale’s triumphant embrace of coeducation. And in order to tell these stories in their truest, most powerful forms, she knew that the tellers would have to stand by their tales.

“The group made the decision that nobody was going to be anonymous,” Anne Simon remembers, “because nobody was ashamed or wanted not to be associated with the action.” Olivarius had already received a host of complaints about Brion, including the ones Chauncey eventually read. One student had quit the band after Brion began locking his door during their lessons, hugging her and kissing her cheek, and eventually began calling her room, even showing

⁶ Interviews with Anne Simon, 2.17.09 and 4.1.09.

⁷ MacKinnon, Catharine A. *Sexual Harassment of Working Women*. New Haven: Yale University Press, 1979. 1.

up there unexpectedly.⁸ Another abandoned her lessons with him—also conducted behind locked doors—when Brion placed a Playboy foldout on her music stand.⁹ Olivarius knew that Ronni Alexander used to play in the band with Brion but had quit. She told Simon and MacKinnon, who asked Alexander to come into the office to talk with them. There, to two women she now counts among her most treasured friends, Alexander told her story for the first time. Then she agreed to sign onto the lawsuit as a second plaintiff.

Olivarius was the first: With the blunt, businesslike approach that has since attracted high-profile international clients to the law firm she founded and now runs with her husband, she was claiming that, though she hadn't been harassed, she'd sunk time and effort into collecting complaints for which Yale provided no recourse. Her attempt to fill these procedural holes, she asserted, had detracted from her educational experience. To bring a suit of this sort required that the plaintiffs demonstrate they had exhausted Yale's administrative channels first, and Olivarius' records of her many meetings with Chauncey filled that requirement.

The two were soon joined by Pamela Price, an African-American woman one year behind Olivarius. At the end of Price's sophomore year, right before she left to study abroad in Tanzania, she asked her international relations professor, Raymond Duvall, for an extension on a paper. He granted it, telling her to drop it at his office when she finished. So, as students began to trickle out of New Haven for the summer, Price typed up her paper and knocked on Duvall's door. He let her in, closing the door behind her, Price remembers, and asked her how badly she wanted an A. "Did I really, really, really want the A?" she says in her raspy twang. "Did I really, really, really want the A? And then, 'Will you make love to me?'" When she refused, she later testified, he told her, "God, you really have a turn-on body."¹⁰ Price received a C- on the paper and a C in the course. She told her college dean about the incident before she left for Africa but as there was no established grievance procedure for complaints like hers, nothing happened.¹¹

Lisa Stone, who was in Price's year, was deeply affected by what she'd heard of experiences like Price's and Alexander's. Sometime during her freshman year, Stone's roommate, who Stone remembers had come to Yale to train as a musician, had been taking flute lessons with Keith Brion. She returned to their suite in a daze one day and told Stone how she'd walked into Brion's office to find him undressing for their lesson. Stone's roommate stopped playing the flute after this and Stone started keeping her distance from male professors. She stopped going to their office hours or asking them about anything that was not directly related to her coursework.¹²

Two years after her roommate's experience with Brion, Stone visited a male professor's office for the first time. She was taking a poetry class with Michael Cooke, an eminent English professor and master of one of Yale's residential colleges. She'd either received a low grade or was confused by something he'd said in class—"I'm pretty sure there was a grade issue," she says, after decades of having not spoken about it, "but I'm also pretty sure I just decided to be

⁸ Letter from Nancy Ross to Henry "Sam" Chauncey. May 11, 1977. Included in brief on behalf of plaintiffs-appellants, *Alexander v. Yale University*. 79-7547.

⁹ Letter from Sarah Kent Krakauer to Henry "Sam" Chauncey. May 2, 1977. Included in brief on behalf of plaintiffs-appellants, *Alexander v. Yale University*. 79-7547.

¹⁰ Brief on Behalf of Plaintiffs-Appellants. *Alexander v. Yale University*. 79-7547. 9.

¹¹ Interview with Pamela Price, 3.17.09.

¹² Interview with Lisa Stone, 2.27.09.

assertive and have a conversation with a professor, which I hadn't done since freshman year." In Cooke's office, Stone says, the conversation took a troubling turn when he placed his hand on her knee and posed a non sequitur of a hypothetical: "How would you feel," she remembers him asking, "if we were making love and I walked out?" Stone walked out.

When she told Jack Winkler, her thesis adviser, about her experience, she remembers, he told her that Cooke was notorious for this type of behavior. Stone knew Winkler well—he was the one male professor with whom she'd been able to establish any sort of rapport—and did not feel uncomfortable talking to him about Cooke. Before long, Winkler approached her about the lawsuit Ann Olivarius was putting together. He had signed on as a plaintiff, asserting that Yale's refusal to prevent or resolve sexual harassment of students by faculty created an atmosphere of mistrust that made it difficult for him to do his job. Stone, who later received a master's from Yale's School of Public Health, agreed to talk to the lawyers and eventually filed a claim similar to Winkler's— that unresolved harassment left her perpetually wary of male professors and thus prevented her from making the most of her college education. She no longer remembers why she didn't include her experience with Cooke in her claim, but she guesses Simon and the other lawyers deemed it a relatively mundane incident that would be difficult to prove in court.

The final plaintiff was a freshman named Margery Reifler, now a script supervisor in Los Angeles, who'd become manager of Yale's field hockey team despite a self-avowed "non-sportiness." Her freshman counselor was a senior on the team and encouraged her to join, and Reifler liked the idea of receiving a varsity letter. "I thought it would be cool and my mom would be proud," she remembers.¹³

Not long after she'd started managing the team, Reifler was standing next to Coach Richard Kentwell's desk, writing in a record book. He was sitting in his desk chair. When she handed him the book, he grabbed her by the waist, fondling and kissing her until she detangled herself and fled his office. "It was upsetting and icky," Reifler remembers. She showered immediately and told her roommates what had happened. Kentwell began remarking on her breasts and fondled her once or twice more before Reifler quit.

When she told her freshman counselor, who was still on the team, why she had quit, "she was not unsupportive," Reifler says. "But she also didn't think it was a big deal. She was a senior and I suspect it was not the first time she had seen it happen, and I suspect that other people had not made a big deal of it." Reifler joined the case at the end of her freshman year, claiming that her harassment had denied her recognition as the team manager—she never was able to give that varsity letter to her mom—and that she had wanted to complain to Yale but had been intimidated by a lack of official procedures.

Olivarius, Alexander, Price, Stone, Winkler, and Reifler sued Yale in July, 1977,¹⁴ initiating the lawsuit that became known as *Alexander v. Yale*. The case attracted a flurry of attention from media outlets like the New York Times, The Nation, and various TV stations, as well as from legal and activist groups. Much of this attention was supportive, such as the NOW Legal Defense

¹³ Interview with Margery Reifler, 4.15.09.

¹⁴ Brief on Behalf of Defendant-Appellee Yale University, *Alexander v. Yale University*. 79-7547. 12.

Fund's offer for counsel and an amicus brief,¹⁵ but much was not. In a New York Times opinion piece a few weeks after the case was filed, Russell Baker questioned the plaintiffs' need to take such commonplace "nuisances" to court. In the olden days, he wrote, "a robust father might have appeared carrying a shotgun at the office of one of the more obnoxious offenders. A large brother or boyfriend might have blackened his eye. A small woman might have cooled his passion with a hat pin, and an only slightly clever small woman might have crushed his ego with a few simple words thrust neatly into his vulnerable asininity."¹⁶ Ann Olivarius and her co-plaintiffs, being only slightly clever, had a few simple words for Yale University: "Title IX."

The *Alexander* women expected hostility and condescension from the musty male news columnists of the world, but they did not expect widespread criticism from other women. After appearing on television discussing the lawsuit soon after it was filed, Ronni Alexander went to a bar she often frequented, one that catered primarily to working women. She expected sympathy or at least commiseration but encountered cold, hostile faces. "It turned out that everybody has the same sort of experience. All of these working women had been harassed at work or at school or somewhere and no one had talked about it," she remembers. Alexander was sure the women in the bar thought she was a spoiled naïf whining about a fact of life: "Here I am, getting up and talking about it like I invented it, getting all this attention."

Betsy Scarf, who would later marry plaintiff Lisa Stone's brother, was not involved in the lawsuit and recalls a similar annoyance at these attention-grabbing women. "Many students couldn't understand what the big deal was," she explains. "Most of us—women—had similar experiences, and we had all survived them." Scarf, now Stone, remembers "being told we were too pretty to be smart, getting hit on by men who had power over us, being discouraged from science/math classes" as routine occurrences, so "there was some sense that the women in the lawsuit were whining about issues they should have expected to face: We all faced them. Before Yale, at Yale, after Yale."¹⁷

This popular conception that sexual harassment was something to swallow in silence was soon reinforced by the original magistrate's decision to dismiss all but one of the *Alexander v. Yale* plaintiffs' claims. Ronni Alexander was told that, since she'd already graduated, her claim was moot—that there was nothing much to be done "absent sheer conjecture that the latter may in the future wish to resume study in a field allegedly abandoned at Yale because of 'sexual demands' by her tutor."¹⁸ The magistrate did not take into account the fact that, until encountering these "sexual demands," Alexander had been planning on pursuing a career in music. Though she'd graduated and was no longer being harassed by Brion, she would suffer the psychological and professional damages of her experience for the rest of her life. She moved to Japan immediately after graduation; she didn't have any connections there but she needed to get away. She has stayed there ever since and is now a professor of transnational relations at the University of Kobe. "There are lots of good reasons now why I live here, but you have to have pretty good motivation to pick up your life and relocate to someplace you know nothing about and don't know the language," Alexander says. "Maybe I have Keith Brion to thank for my life as it is."

¹⁵ Latimer, Arthur H. 459 F.Supp. 1. 5.

¹⁶ Baker, Russell. "The Courts of First Resort." *New York Times*. July 26, 1977.

¹⁷ Emails from Betsy Stone, 3.3.09 and 4.2.09.

¹⁸ Latimer, Arthur H. 459 F.Supp. 1. 5.

The magistrate decided that since Olivarius, Stone, and Winkler had not been directly harassed, their claims were based upon such “imponderables as atmosphere or vicariously experienced wrong.” Though “atmosphere” would later become a key factor in successful sexual harassment cases claiming a “hostile environment,” these cases were not yet developed enough to factor into *Alexander*.¹⁹ Sweeping aside Reifler’s assertion that she had wanted to report her experience but had been confounded by Yale’s lack of official complaint procedures, the magistrate dismissed her claim on the grounds that she had not reported her harassment to the University.²⁰

Pamela Price was the one plaintiff whose claim went through to trial, and once it did, explains Phyllis Crocker, a Cleveland State law professor and Yale alumna who worked for the New Haven Law Collective during the lawsuit, “They tried the case like a car crash case: Did the incident of sexual harassment occur?”²¹ Yale launched a reinvestigation of Price’s paper, distributing it to other professors in Duvall’s department so that they could give it “a fresh, objective evaluation.”²² These professors concluded that Price’s essay was “essentially an average paper for which a ‘C’ grade could readily be assigned.”²³ Price, now a leading sexual harassment litigator in California, cackles when she remembers the trial. “I was like, ‘What? We’re not talking about my paper! The man hadn’t read my paper when he asked me to sleep with him!’” Judge Ellen Burns decided that the harassment Price claimed had never occurred,²⁴ a decision that still pains Price but did not surprise her. “The judge was very diplomatic in saying I didn’t prove it,” she shrugs, “when basically she was saying I lied. I knew what that was about—as an African-American woman, I could not say that this white man had done this to me and be believed. That felt bad.”

Alexander v. Yale provided zero remedy for Price, Alexander, or the other plaintiffs. But it has provided one for successive female students across the country. Building upon her breakthroughs in workplace harassment law, Catharine MacKinnon and Anne Simon had crafted the revolutionary argument that sexual harassment in education was sex discrimination. The *Alexander* women who had been harassed by male faculty, MacKinnon and Simon argued, had been harassed because they were women. This harassment impeded their right to equal educational opportunity and thus violated Title IX of 1972’s Education Amendments. Whether or not the judges believed that the harassment had taken place or that it had actually obstructed the victims’ educational rights, the decision not to dismiss Price’s claim acknowledged that, in some possible situation, sexual harassment in education could violate Title IX.²⁵ Immediately following this decision, schools across the country—including Yale—began drafting sexual harassment policies and implementing grievance procedures.

¹⁹ Schauer, Frederick. “The Speech-ing of Sexual Harassment.” *Directions in Sexual Harassment Law*. Ed. Catharine A. MacKinnon and Reva Siegel. New Haven: Yale University Press, 2004. 352.

²⁰ Latimer, Arthur H. 459 F.Supp. 1. 5.

²¹ Interview with Phyllis Crocker, 2.16.09.

²² Brief on Behalf of Defendant-Appellee Yale University, *Alexander v. Yale University*. 79-7547. 13.

²³ *Ibid.*, 14.

²⁴ Simon, Anne E. “*Alexander V. Yale University*.” *Directions in Sexual Harassment Law*. Ed. Catharine A. MacKinnon and Reva Siegel. New Haven: Yale University Press, 2004. 54.

²⁵ *Ibid.*, 55.

Thirty years later, if I were to enter a male professor's office to turn in a paper and he were to close his door and say, "Do you really, really, really want the A? Will you make love to me?" the incident would be swiftly classified as sexual harassment and the professor would be fired. Yes, the lines can still blur, and yes, there is work to be done, but no longer do women "expect to face" sexual harassment as a consequence of their attending a coeducational university or entering the workplace.

Even though Price was publicly declared a liar, she can take satisfaction in the fact that now, thanks to her role in the lawsuit, what happened to her and to the other plaintiffs happens to fewer and fewer women. "When Anne and Kitty told me that Ronni Alexander was raped and nobody did anything about it," Price says, "that was it. You don't get to hurt people like that and have me stand by and watch." Pamela Price did not stand by and watch.

And today, if I were harassed by a professor, I would not, as Ronni Alexander did, think that "I had to be the most stupid person in the world to allow all of this to happen" or that "I must have wanted it to happen, otherwise it wouldn't have." Thanks to Pamela Price, Ronni Alexander, Ann Olivarius, Margery Reifler, and Lisa Stone, I would know, without a doubt, that I had been taken advantage of by someone who held power over me, and I would know that this truth would be reinforced by my friends, by my family, and by Yale's administrators.