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ESSAY

DISMANTLING GENDER AND RACE STEREOTYPES: USING EDUCATION TO PREVENT DATE RAPE

Sarah Gill*

ABSTRACT

The date rape problem persists, despite rape law reforms. One contributing factor to the law's failure to decrease the incidence of, and increase the reporting and prosecution of date rape, is that gender and race stereotypes are embedded in our societal consciousness. These gender and race stereotypes lead to miscommunication, which is a major factor in the occurrence of date rape. In this Essay, Sarah Gill identifies the gender and race stereotypes which contribute to the incidence of date rape and to the judicial system's inability to prevent or prosecute the crime adequately. Then, she reviews various reforms targeted at improving the judicial response to the problem and explains why each has failed in this goal. She proposes that educational programs aimed at dispelling gender and race stereotypes are a more effective solution to combat the problem of date rape. Finally, Gill presents a date rape educational program which she created and implemented at a high school to serve as a starting point for future programs.

TABLE OF CONTENTS

I. INTRODUCTION.....	29
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* J.D. candidate, UCLA School of Law, 1997; B.A., Bioethics and Philosophy, University of Pennsylvania, 1992. I would like to thank Professor Laura Gómez for giving the issues of sexism and racism and the topic of rape thorough treatment in her criminal law course and for her valuable support with this and many other projects. I also would like to thank Michelle Ahnn, Samantha Slipock, Karin Graver, Sue Beveridge, Sandra Bernal, Mindy Kim, and Tom Martin for their excellent editing of this piece. I dedicate this essay to Melissa Gill for working with me to create the date rape prevention program at the Maret School.

II.	THE ROLE OF SOCIALIZATION IN CREATING THE PROBLEM OF DATE RAPE.....	34
A.	<i>Historical Background of Gender and Race Stereotypes</i>	35
B.	<i>Stereotype: Men Are Aggressive and Women Are Submissive</i>	37
C.	<i>Stereotype: Women Are Passive Objects to Be "Had"</i>	39
D.	<i>Stereotype: Black Women Are Not Raped</i>	40
E.	<i>Stereotype: Women Who Are Promiscuous Are also Untrustworthy</i>	44
III.	DATE RAPE MYTHS.....	45
A.	<i>Myth: Aggression and Violence Are Merely the "Art of Seduction"</i>	46
B.	<i>Myth: If a Man Has Had Sex With a Woman Before, Any Future Sexual Act Cannot Be Rape</i>	47
C.	<i>Myth: Men Cannot Control Their Sexual Urges After a Woman Has "Turned Them On"</i>	48
D.	<i>Myth: Normal Men Do Not Rape</i>	49
E.	<i>The Role of Stereotypes and Myths in the Criminal Justice System</i>	51
IV.	DOCTRINAL UNDERSTANDING OF CONSENT IN RAPE CASES AND RAPE LAW REFORM	52
A.	<i>The Utmost Resistance Requirement and the Reasonable Belief Defense</i>	53
B.	<i>Rape Shield Laws</i>	57
C.	<i>Stricter Rape Laws</i>	58
V.	PROPOSAL: DATE RAPE PREVENTION EDUCATION IN SCHOOLS	62
A.	<i>Education as a Solution to the Date Rape Problem</i>	62
B.	<i>Factors to Consider in Creating a Date Rape Education Program</i>	65
C.	<i>Stopping Teen Acquaintance Rape: The Elements of a High School Date Rape Prevention Program</i>	70
D.	<i>Evaluation of the STAR Program</i>	78
VI.	CONCLUSION	79

I. INTRODUCTION

Imagine a world in which women are respected for their personalities and accomplishments and are not judged negatively for their promiscuity or lack thereof. Imagine a world in which men are always very careful to ensure that their sexual advances are welcome rather than merely permitted, in which women feel comfortable saying "no" and saying "yes," and in which men and women communicate with each other to ensure that misunderstandings do not occur in sexual situations. In this world, states would punish husbands who rape their wives, and men would not assume that a woman will consent to sex just because she has done so in the past. In this world, date rape would occur less frequently, if at all. Unfortunately, this imaginary world is exactly that: *imaginary*. In order for such a world to exist, many gender and race stereotypes which aggravate the problem of date rape would have to be dispelled. One of the most effective ways to do this is through education.

Date rape,¹ also known as acquaintance rape, is rape² with the added dimension that the victim knows the attacker.³ In both stranger rape and date rape, consent of the victim is an important element of the crime. However, since the identity of the attacker is not in question in date rape, as it is in stranger rape, the consent of the victim becomes more of a pivotal issue.

1. I define date rape as sexual intercourse that occurs against the will of the victim and without her consent. Without consent can include, but is not limited to, the following situations: (1) when the victim is threatened by violence (she might not verbalize her consent because she fears physical danger), (2) when the victim resists verbally or physically, or (3) when the victim is unconscious or so mentally deficient that she cannot give consent. Other scenarios, such as the use of coercion, may be morally reprehensible though they do not fit a legal definition of rape.

2. Joshua Dressler, in his criminal law treatise, describes the general form of rape laws:

[S]exual intercourse by D [defendant], a male, with V [victim], a female not his wife, constitutes rape if it is committed: (1) forcibly; (2) by means of certain forms of deception; (3) while V is unconscious; or (4) under circumstances in which V is not competent to give consent (e.g., she is drugged, seriously retarded, or too young).

JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 523 (1987) (footnotes omitted).

3. See LINDA A. FAIRSTEIN, SEXUAL VIOLENCE: OUR WAR AGAINST RAPE 130 (1993). Fairstein explains that the victim of date rape knows the rapist, possibly from a prior relationship, a friendship, or a brief meeting at a party, office, or public place.

Date rape occurs with great frequency in the United States.⁴ One out of every four college women⁵ are victims of rape or attempted rape, and almost all of these victims know their attacker.⁶ According to a different study, 15% of female college students had been raped, and 85% of these women were raped by men they knew.⁷ The United States Department of Health Education estimated in 1987 that 84% of rapes involved "acquaintances."⁸

People used to be silent about date rape. In part, this silence existed because people used to, and sometimes still do, view date rape as less serious than "real rape."⁹ In fact, the Model Penal Code, on which a number of states base their criminal laws, classifies rape as a first degree felony unless the victim had previous consensual sexual contact with the defendant, in which case rape is only a second degree felony.¹⁰ Thus, most date rapes would be prosecuted as a second degree felony. However, despite the im-

4. The validity of these statistics about date rape has been criticized by people who feel that the problem has been overstated. Critics such as Katie Roiphe do not believe that one in four women are raped or victims of attempted rape. However, Roiphe offers no evidence to refute these statistics. Roiphe supports her argument anecdotally, "If I was really standing in the middle of an epidemic, a crisis, if 25 percent of my female friends were really being raped, wouldn't I know it?" KATIE ROIPHE, *THE MORNING AFTER: SEX, FEAR AND FEMINISM ON CAMPUS* 51-52 (1993).

5. Men are also victims of date rape. However, as the stereotypes discussed in this essay are more pertinent to the rape of women, and since most rape victims are women, this discussion will focus on female victims.

6. In the mid-1980s, *Ms.* magazine conducted a survey, funded by the National Institute for Mental Health, of 6100 undergraduate women and men at 32 college campuses. The study found that "[o]ne in four female respondents had had an experience that met the legal definition of rape or attempted rape." Eighty-four percent of rape victims knew the attacker, and 57% of the rapes reported in the study occurred on dates. ROBIN WARSHAW, *I NEVER CALLED IT RAPE: THE MS. REPORT ON RECOGNIZING, FIGHTING AND SURVIVING DATE AND ACQUAINTANCE RAPE* 2, 11 (1988).

7. Susan T. Bell et al., *Understanding Attributions of Blame in Stranger Rape and Date Rape Situations: An Examination of Gender, Race, Identification, and Students' Social Perceptions of Rape Victims*, 24 J. APPLIED SOC. PSYCHOL. 1719, 1721 (1994).

8. Cynthia E. Willis, *The Effect of Sex Role Stereotype, Victim and Defendant Race, and Prior Relationship on Rape Culpability Attributions*, 26 SEX ROLES 213, 214 (1992).

9. In his germinal treatise on criminal law, Joshua Dressler states: "[T]he humiliation, shock, and degradation of a rape is greater when it is inflicted by a stranger or other person with whom [the victim] has not chosen in the past to be sexually intimate." DRESSLER, *supra* note 2, at 539.

10. See *id.* at 538. The Model Penal Code defines *rape* as follows:

A male who has sexual intercourse with a female not his wife is guilty of rape if:

pression of some people to the contrary, date rape can be more traumatic than stranger rape. Whereas a victim of stranger rape never trusted the rapist, the victim of date rape may have known and trusted the rapist. Perhaps he was a good friend or boyfriend, and now that trust has been destroyed. Moreover, the victim's friends and family may know and support the rapist. Accordingly, they may blame the victim for placing herself in a vulnerable position or may fault the victim for causing a fuss.¹¹ Date rape is the only type of criminal conduct that people often believe was caused by the victim's behavior, not the assailant's.¹²

There are two main types of date rape. The first involves a man who rapes a woman he knows because he believes he deserves to have intercourse with her even though he is fully conscious of the fact that she does not consent.¹³ Such a rapist is motivated by a need for power and a need to humiliate and de-

a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants, or other means for the purpose of preventing resistance; or

c) the female is unconscious; or

d) the female is less than ten years old.

Rape is a felony of the second degree unless (i) in the course thereof the actor inflicts serious bodily injury upon anyone, or (ii) the victim was not a voluntary social companion of the actor upon the occasion of the crime and had not previously permitted him sexual liberties, in which cases the offense is a felony of the first degree. Sexual intercourse includes intercourse *per os* or *per anum*, with some penetration however slight; emission is not required.

MODEL PENAL CODE § 213.1(1) (1962). The Model Penal Code defines *gross sexual imposition* as follows:

A male who has sexual intercourse with a female not his wife commits a felony of the third degree if:

a) he compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution; or

b) he knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct; or

c) he knows that she is unaware that a sexual act is being committed upon her or that she submits because she mistakenly supposes that he is her husband.

Id. § 213.1(2).

11. See FAIRSTEIN, *supra* note 3, at 132-33. People often tell the rape victim that she is to blame for placing herself in a dangerous situation and ask her if she "led him on" in any way. People never ask victims of muggings what they did to entice the mugger, or suggest that the victim is to blame for the mugging. *Id.*

12. See *id.* at 133.

13. See *id.* at 142.

grade the victim.¹⁴ The second type of date rape may or may not involve similar motivations, but the underlying cause is that the rapist mistakenly believes that the woman is consenting to intercourse.

Significant reform has taken place in rape law over the past decades to protect the victim. However, data shows that rape law reform has not increased the proportion of victims who report rape cases, the probability that rape offenders will go to prison, or the possibility that the legal system will similarly sanction acquaintance rapes and stranger rapes.¹⁵ Gender and race stereotypes that are embedded in our laws and system of justice prevent these rape law reforms from eliminating date rape or from aiding in its prosecution.¹⁶ The law fails not only to address the stereotypes adequately, but also to recognize the extent to which people's opinions of women of different cultures, races, and communities are shaped by different assumptions and biases. While all types of women are raped, not all women are the same or face the same issues.¹⁷ The term "women" encompasses women of many different races and ethnicities,¹⁸ and not all gender stereotypes are pertinent to women of all races.¹⁹ Furthermore,

14. See Paul Schewe & William O'Donohue, *Rape Prevention: Methodological Problems and New Directions*, 13 CLINICAL PSYCHOL. REV. 667, 669 (1993).

15. Ronet Bachman & Raymond Paternoster, *A Contemporary Look At The Effects Of Rape Law Reform: How Far Have We Really Come?*, 84 J. CRIM. L. & CRIMINOLOGY 554, 573 (1993).

16. See *id.*; Fairstein *supra* note 3, at 134. One must ask if the rape law reforms have moved beyond the gender and race stereotypes the older laws embraced. For example, do the laws still focus on White men who try to protect the "value" of White women? See *infra* note 27 regarding my decision to capitalize "White."

17. Angela Harris explains the problem of gender essentialism: the tendency of some feminist legal theorists to describe a unitary women's experience which is independent of race and class. This is problematic because it privileges the voices of White women while silencing the voices of women of color. Harris challenges theorists to examine not only the content of the law, but also the tendency of the law to privilege the unitary (White) voice. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

18. I will use the term "race" when I am discussing race and ethnicity.

19. My argument focuses on both gender and race stereotypes because both are necessary for the discussion about the role of stereotypes and myths in perpetuating the problem of date rape. This endeavor is difficult because while some authors examining stranger or date rape have discussed the role of gender stereotypes, fewer have discussed the role of race stereotypes. Almost no authors have explored in depth the role of both gender and race stereotypes, and the interplay between gender and race, in the context of date rape. Because the effects of gender and race stereotypes are intertwined, I will often address gender and race stereotypes together, rather than separately. Studying rape without looking at the intersection of gender and race, can lead to women, with major issues specific to *both* gender and

not all stereotypes about women of a certain race apply to all women in that group, which is why, of course, stereotypes are stereotypes and not truths.²⁰ Stereotypes about race, in addition to stereotypes about gender, affect how potential rapists perceive potential victims, and how people perceive victims of date rape.

These stereotypes also prevent date rape from being effectively prosecuted because "every case is tried to a jury of twelve human beings, each of whom brings to that forum his or her own biases and beliefs."²¹ Date rape scenarios often trigger fact-finders' beliefs in stereotypes and myths about date rape and how reputable women are supposed to behave. This invocation of jurors' beliefs explains why date rape is even more difficult to prosecute successfully than stranger rape.

In this Essay, I argue that certain race and gender stereotypes and date rape myths contribute to the incidence of date rape and to the judicial system's inability to prevent or prosecute this crime adequately. I propose that the answer lies in education that aims to dispel the societal stereotypes and myths.²² I will describe one such educational program that I founded in 1991 for the Maret School in Washington, D.C.²³ If this pilot program, or other similar programs, could be implemented on a

race, falling through the cracks. I have not focused on the additional intersections of race and sexual orientation, but further exploration of these issues is certainly necessary. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1282 (1991) (explaining the intersection of gender and race and how this applies to women in the contexts of domestic violence and rape).

20. In discussing stereotypes, a danger is always present of overgeneralizing about a group in order to make an argument. In this Essay, I draw generalizations about people in explaining public perceptions and historical experiences for practical reasons. However, I recognize that generalizations do not adequately portray the experiences of all people. Racial groups are often representative of many subgroups. For example, the term "Asian" is used to represent people with numerous backgrounds, including Chinese, Vietnamese, Korean, Filipino, Japanese, etc. I also would like to clarify that in explaining that certain stereotypes exist, I certainly am not stating that all people, or all people in a specific group, adhere to those stereotypes.

21. FAIRSTEIN, *supra* note 3, at 134.

22. Date rape prevention programs have, according to pre- and post-test studies, been shown to change behavior related to proclivity to rape. See *infra* Part V.A.

23. In 1991, with the help of Susan Villari, a health educator at the University of Pennsylvania, and Melissa Gill, my sister and a student at the targeted high school, I created a peer education workshop. I used this workshop to train peer educators who then gave a one-hour workshop to high school students at the Maret School. The training was based on the workshop created by Students Together Against Acquaintance Rape, the University of Pennsylvania date rape prevention peer education group, coordinated by Susan Villari.

nation-wide basis, it could effectively help prevent date rape. Once the high school students who have learned about date rape prevention grow up and become police officers, attorneys, judges, and jurors, this type of education might also aid in the prosecution of date rape cases.

Part II of this Essay explores gender and race stereotypes, and Part III demonstrates how these stereotypes lead to the creation of date rape myths. Part IV presents the failure in rape law reforms to solve the problem of date rape. In Part V, I present and evaluate date rape prevention education, using the Maret School program as an example of such a program. Though the date rape problem probably will never be alleviated entirely, educational programs can raise awareness, decrease the incidence of date rape, lead to more date rape convictions, and help victims to understand that they should neither blame themselves nor should others blame them for being raped.

II. THE ROLE OF SOCIALIZATION IN CREATING THE PROBLEM OF RAPE

Researchers have found that subjects who adhere to traditional stereotypes about women's sex-roles are more likely to accept rape myths.²⁴ Further, researchers also have found a direct correlation between acceptance of rape myths and both the assignment of blame and tolerance of sexual violence towards women.²⁵ These sex-role stereotypes, which I refer to as gender and race stereotypes, reflect women's unequal position in society. These stereotypes include traditional attitudes that women should be passive during sex and should not engage in casual sex, that women who do engage in casual sex are promiscuous and untrustworthy, that Black women are not raped, and that women

24. Paul Pollard, *Judgments About Victims and Attackers in Depicted Rapes: A Review*, 31 BRIT. J. SOC. PSYCHOL. 307, 319 (1992) (reviewing numerous studies which reached this result). In order to determine what people consider to be the definition of "sex roles," researchers have rated people's agreement with statements such as: "A man should fight when the woman he's with is insulted by another man," "It is acceptable for the woman to pay for the date," "A woman should be a virgin when she marries," "There is something wrong with a woman who doesn't want to marry and raise a family," "A wife should never contradict her husband in public," etc. Martha R. Burt, *Cultural Myths and Supports for Rape*, 38 J. PERSONALITY & SOC. PSYCHOL. 217, 222 (1980).

25. See J. Boxley et al., *A Preliminary Study of 8th Grade Attitudes Toward Rape Myths and Women's Roles*, 65 J. Sch. Health 96, 96 (1995) (documenting a study of 211 eighth grade boys and girls about the relationship between sex-role stereotypes of women and acceptance of rape myths); Pollard, *supra* note 24.

are objects men should use sexually.²⁶ People often accept these stereotypes because they have been socialized to do so; they have grown up learning about them, explicitly or implicitly, and have not challenged them.

A. *Historical Background of Gender and Race Stereotypes*

Gender stereotypes pertaining mainly to White²⁷ women originated in historical notions that White women were the property of men. While many communities valued the chastity and virginity of single women,²⁸ rape laws were created as institutional mechanisms for protecting the chastity of White women²⁹ since their value would decrease if they lost their sexual purity.³⁰ In British law, rapists were punished according to how much purity they defiled; raping a virgin was considered a much more serious crime than raping a married woman, a divorced woman,

26. See WARSHAW, *supra* note 6, at 38-40; Schewe & O'Donohue, *supra* note 14, at 670.

27. Throughout this essay I will capitalize White, Black, Latina/o, and Asian. The latter three are often capitalized because they are viewed as proper nouns when used to refer to a specific cultural group. White is not always capitalized because authors believe that the term White does not denote a cultural group. See, e.g., Crenshaw, *supra* note 19, at 1244 n.6. Regardless of whether or not White denotes a cultural group, I will capitalize the term as a way of promoting White race-consciousness. Treating the word "White" as different from other words denoting cultural groups may perpetuate the problematic notions that Whites are the norm, non-White groups are different and racially distinctive, and non-White groups should assimilate to the "neutral" White norms. This line of thinking is not conducive to racial equality. See Barbara J. Flagg, *Fashioning a Title VII Remedy for Transparently White Subjective Decisionmaking*, 104 YALE L.J. 2009, 2013 (1995); Barbara J. Flagg, "Was Blind, But Now I See": *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 971 (1993). See generally IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* xiii-xiv, 19-33, 155-195 (1996) (discussing the legal construction of White racial identity and White race-consciousness).

28. See C. Destito & Toni Darder, *The Latina Survivor*, in L.A. COUNTY PROTOCOL, July 1993 (prepared by the Los Angeles Commission on Assaults Against Women) (on file with *UCLA Women's Law Journal*); Oliva M. Espin, *Cultural and Historical Influences on Sexuality in Hispanic/Latin Women*, in ALL AMERICAN WOMEN 272, 277-78 (Johnnetta B. Cole ed., 1986); *The Pacific-Asian Survivor*, in L.A. COUNTY PROTOCOL, *supra*. The honor of Asian and Latino families was and still is often closely connected with the sexual purity of their women. See Destito & Darder, *supra*; *The Pacific-Asian Survivor*, *supra*.

29. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 157 (1989); see Barbara Welter, *The Cult of True Womanhood: 1820-1860*, 18 AM. Q. 151, 153-54 (1965) (explaining that "true women" were supposed to remain pure virgins until marriage and were to remain in their "proper sphere," the home).

30. See DEBORAH L. RHODE, *JUSTICE AND GENDER* 245, 247 (1989).

or a widow.³¹ Rapists were also punished according to the "value" of the woman, measured by the socioeconomic status of the men for whom she worked or to whom she was married.³²

Black women, under American law, were not only viewed as property, but they actually were property of slave owners. Owners commonly raped slaves, but the practice was not considered rape — it was not even a crime.³³ This behavior flourished unpunished because slaves were not viewed as fully human.³⁴ Thus, rape laws did not represent an institutional mechanism for protecting the chastity of Black women as they did for White women.³⁵ In some versions of history, Black women, along with Latina, Asian, and Native American women, have been portrayed as promiscuous and immoral.³⁶ This perception of immorality was applied to Black women to justify the institutionally accepted and unpunished sexual abuse of female slaves. The abolition of slavery did not bring an advance for Black women since their rape continued to go unpunished.³⁷ Some courts even instructed juries to presume that Black women were *not* chaste.³⁸ Since Black women were considered promiscuous, and promiscuous women were considered untruthful, Black women were unlikely to be believed in their testimony regarding their rape.³⁹

31. *See id.* at 245.

32. *See id.* at 153-70.

33. *See* Susan BROWNMILLER, *AGAINST OUR WILL, MEN, WOMEN, AND RAPE* 176-77 (1975).

34. *See id.*

35. *See* Crenshaw, *supra* note 29, at 157.

36. *See* Madelyn C. Squire, *Discovering Our Connections: Reflections on Race, Gender and the Other Tales of Difference*, 23 *GOLDEN GATE U. L. REV.* 795, 799 (1993); Beverly Balos & Mary Louise Fellows, *Guilty of the Crime of Trust: Non-stranger Rape*, 75 *MINN. L. REV.* 599, 600 n.3 (1991); Bonnie Patton, *The Black Survivor*, in *L.A. COUNTY PROTOCOL*, *supra* note 28.

While the legal and sociological literature does discuss the portrayal of Latina, Asian, and Native American women, most of the legal and social science literature (available through databases) pertaining to stereotypes and rape law's treatment of women focuses on Black women and White women. In order to find more discussion of the circumstances faced by other women of color in the context of rape, I have used sources from grass-roots organizations. I hope that this type of information will become more available through traditional databases and other research sources as scholars often do not go beyond these traditional means. Despite my efforts, I am still not able to reflect the enormous diversity of voices within each race, and other races which I have not addressed.

37. *See* Darci E. Burrell, *Myth, Stereotype, and the Rape of Black Women*, 4 *UCLA WOMEN'S L.J.* 87, 92, 94 (1993).

38. *See id.* at 93 (citing *Dallas v. State*, 79 So. 690 (Fla. 1918)).

39. *See id.*

The stereotype that Black, Latina, Asian, and Native American women are promiscuous is based on the historical notion that a true woman belongs at home caring for her children and is also based on the historical fact that many women of color worked outside of the home.⁴⁰ Women who worked outside of their homes were viewed as unchaste because their presence in the commercial world led people to view them as accessible, and thus inviting sexual advances.⁴¹ "[T]he women who earned their living as domestics, nursemaids, and the like, suffered not only the unearned label of 'whore,' but the reality of sexual violation."⁴²

As a result of these stereotypes, rapists were treated differently depending on their race and on the race of their victim. Historically, society would discretely overlook rapes of Black women by White men.⁴³ Simultaneously, Black men who raped White women were disproportionately sanctioned and lynched — often even if the charges were unfounded.⁴⁴ The White men who supported these lynchings used them as another means of regulating White women's sexuality and oppressing Black men.⁴⁵ Unfortunately, the historical origins of the stereotypes that affect people's perceptions about rape are still evident today.⁴⁶

B. *Stereotype: Men Are Aggressive and Women Are Submissive*

This history of male dominance over women has led to a stereotype about men — that they are and should be aggressors and have power over women.⁴⁷ The "complement" to the "man

40. See Balos & Fellows, *supra* note 36, at 600 n.3.

41. See *id.*

42. *Id.*

43. See RHODE, *supra* note 30, at 245.

44. In fact, between 1930 and 1967, of the 455 men executed for rape, 405 were Black. ANGELA Y. DAVIS WOMEN, RACE & CLASS 172 (1981) (citing MICHAEL MELTSNER, CRUEL AND UNUSUAL THE SUPREME COURT AND CAPITAL PUNISHMENT 75 (1973)).

45. See *id.*; Crenshaw, *supra* note 29, at 159; Jennifer Wiggins, *Rape, Racism, and the Law*, 6 HARV. WOMEN'S L.J. 103, 116 (1983).

46. See *infra* Part II.B.

47. See, e.g., Destito & Darder, *supra* note 28 (explaining that Latino men are supposed to be powerful in relation to Latina women and dominate sexual relationships); Espin, *supra* note 28, at 279-80 (arguing that "machismo" is the Latino version of the myth of male superiority and men as aggressors — however, many Latino men do not adhere to this myth); John Dwight Ingram, *Date Rape: It's Time For "No" To Really Mean "No,"* 21 AM. J. CRIM. L. 3, 25 (1993); Nilda Rimonte, *Domestic Violence Among Pacific Asians*, in MAKING WAVES AN ANTHOLOGY OF WRITINGS BY AND ABOUT ASIAN AMERICAN WOMEN 327-28 (Asian Women United of

as aggressor" stereotype is the stereotype that women are and should be submissive.⁴⁸ Men's dominance in American society is illustrated by the following facts: White men have many more upper management positions in corporate America,⁴⁹ men are still paid more than women for similar jobs,⁵⁰ and more women than men stay home to raise children.⁵¹ Although advances in these areas have been made, a gap between the position of men and women in society continues to exist.

The widespread endorsement of the aggressive male and passive female stereotypes can lead to conscious or subconscious acceptance of certain types of behavior. As aggressors, men are often expected to initiate and to some degree dominate sexual relationships between men and women.⁵² In their passive role, women are expected to accept or refuse men's sexual advances.⁵³ However, women who are uncertain or fear being labeled a prude if they refuse sexual advances may remain silent, hoping that the man will not assume her silence means approval. A woman also might remain silent when she does not wish to consent because she is not assertive enough to say "no," has been taught not to make a scene, is undecided, or fears escalated risk of injury.⁵⁴ Because of social pressures, some women might not feel

California eds., 1989) (explaining the Pacific Asian belief in male supremacy). Historically, submission was viewed as a virtue for White women: "[m]en were the movers, the doers, the actors. Women were the passive, submissive responders." Welter, *supra* note 29, at 158-59.

48. See CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 177 (1989); Elba I. Crespo & Maria Del Carmen Resto, *Working with Latin Women: "He Can Touch My Body, But Not My Spirit" The Latina Survivor of Sexual Assault* (explaining that Puerto Rican women have often been stereotyped as submissive) (on file with *UCLA Women's Law Journal*); Espin, *supra* note 28, at 278 (stating that Latina women receive cultural messages that "good women" are submissive to men).

49. See *CASES AND MATERIALS ON CORPORATIONS* 6 (Jesse H. Choper et al. eds., 4th ed. 1995).

50. See Edward J. McCaffery, *Equality, of the Right Sort*, 6 *UCLA WOMEN'S L.J.* 289, 294 (1996) (documenting that by 1993, White women who worked full-time were earning approximately 75% of what men were earning).

51. See *id.* at 297 (discussing that while almost all married fathers work full-time, more than 40% of women who are married and have young children stay home full-time).

52. See Ingram, *supra* note 47, at 25.

53. See *id.* In arguing that acceptance of aggressive/passive stereotypes can lead to these types of behavior, I am not stating that all men/women necessarily act aggressively/passively in all dimensions of their relationships.

54. See *id.* at 25; MacKinnon, *supra* note 48, at 177 (explaining why women socialized to be passive often do not resist even in situations where people perceive resistance as a logical reaction).

comfortable verbalizing their desire to have sex, and for them, silence sometimes does mean consent.⁵⁵

Some men might assume this to be the case in every potential sexual encounter, and they might not realize when it is not. Thus, to a woman, silence may mean many different things, but to a man who believes this stereotype it might mean only one thing — consent. Some of the men who have been socialized to believe the aggressive male/passive female stereotype might not be inclined to consider whether women enjoy or welcome their sexual advances. Instead, they might be intent on acting out what they perceive to be their role.⁵⁶ When a man with such beliefs interacts with a woman who does not express her unwillingness to have sex, the man might fail to recognize that the woman does not consent, and the sexual act might leave the woman feeling raped. This potential for miscommunication is highlighted by the problem that rape law effectively treats any silence (unless there is force or the threat of force) to mean consent and ignores indications of discomfort.⁵⁷

C. *Stereotype: Women Are Passive Objects to Be "Had"*

Another common stereotype is that women are passive objects to be "had" rather than humans with whom to interact. This stereotype can lead men "to view women as objects from whom sex is taken, not as equal partners with wishes and desires of their own . . . they may meet with reluctance from girls, but if they just persist . . . they will get what they want."⁵⁸ Comments typical of some males about their sexual achievements or lack thereof are illustrative:

"I'd like to make it with her."

"I hope I score tonight."

"She wouldn't give me any."

"She was the best piece of ass I ever had."⁵⁹

In whatever context these statements are made, the speaker is treating sex as an "it" or something to "score," rather than as consensual interaction between two people. A man who believes

55. See WARSHAW, *supra* note 6, at 35.

56. Warshaw quotes a college student who described how dating rituals can lead to date rape, "When she finally says, 'No,' he simply may not listen, or he may convince himself that she is just 'playing hard to get' and that she really means 'Yes.'" *Id.*

57. This discussion of rape law is covered more thoroughly in Part IV.A.

58. WARSHAW, *supra* note 6, at 92.

59. *Id.* at 93-94 (citing TIMOTHY BENEKE, *MEN ON RAPE* (1982)).

this stereotype is less likely to ensure that a woman consents to sex because he is focusing more on achieving his goal of having sex than on whether she consents.

Perhaps this stereotype is what motivates the act of "training" in some communities, especially Native American communities. The act of "training" is the gang rape of a woman by a group of men. The gang rape is intended to teach women to be sexually obedient to men.⁶⁰ These men appear to prioritize achieving their goal of having sex, regardless of whether the woman even consents. These men probably view women as "objects to be had" since they are not concerned with the women's interests or sexual desires.

D. *Stereotype: Black Women Are Not Raped*

Studies and juror verdicts demonstrate that both Black and White communities believe that Black rape victims either are less credible than White victims or are not credible at all.⁶¹ Thus, when Black women claim that they have been raped, people often disbelieve them because of their race. Many people may not believe that they have adopted the notion that Black rape victims are less credible than White rape victims. However, this notion is so deeply embedded within society's consciousness that once one looks at the intersection between racism and sexism, one can understand why these ideas may persist.

Probably due to the historical attempts of White status quo to control and discipline the Black community, the pernicious stereotype of Black men as criminal savages and beasts with animal-like sexual urges developed.⁶² One reason why Black rape victims are often deemed less credible than White rape victims is because Black women often date Black men.⁶³ Thus, Black women are considered to have assumed the risk when they date Black men. In a study using White respondents, both White and Black women were deemed less credible when dating a Black man.⁶⁴ This reaction may be based in the respondents' beliefs that any woman who is dating a Black man must be dating

60. Paula Gunn Allen, Comment, *Violence and the American Indian Woman*, 5 WORKING TOGETHER TO PREVENT SEXUAL AND DOMESTIC VIOLENCE, Apr. 1985 (on file with *UCLA Women's Law Journal*).

61. See Crenshaw, *supra* note 19, at 1271; Willis, *supra* note 8, at 215.

62. See Burell, *supra* note 37; Crenshaw, *supra* note 19 at 1267.

63. See Willis, *supra* note 8, at 215.

64. See *id.*

him for his sexual prowess.⁶⁵ As most rapes are intraracial,⁶⁶ most Black women who are raped are raped by Black men; thus, the stereotype that a woman who claims she was raped by a Black man is not credible translates into a stereotype that Black women are not raped.⁶⁷

An example of the stereotype that a Black woman is not raped because she must have been with the Black man for his sexual prowess occurred in the rape trial of Mike Tyson. Both Tyson's defense attorney and the press attempted to portray Tyson as the stereotypical Black male: a savage beast incapable of controlling his sexual urges.⁶⁸ Because Desiree Washington (the victim) must have known about the stereotypical Black male, she should have known what Tyson expected from her when she went to his room.⁶⁹ Although Tyson was convicted of rape, many people believed he was innocent.⁷⁰

Evidence of this notion that Black rape victims are less credible can be found throughout all sectors of society. White respondents in a recent study found the defendant more culpable when he was Black and the victim was White. The participants in the study were less convinced that a rape had occurred when the defendant was White and the victim was Black.⁷¹ Jurors' attitudes support the existence of these stereotypes. While it is extremely difficult for a White rape victim to prosecute her rapist successfully, this is nearly impossible for a Black woman, especially a Black woman raped by a White man.⁷² Furthermore, a Dallas study demonstrated that the average prison sentence for a man convicted of raping a White woman is ten years, while it is only five years for raping a Latina woman, and two years for raping a Black woman.⁷³ Another indication of society either plac-

65. See Burrell, *supra* note 37, at 89.

66. See Willis, *supra* note 8, at 215.

67. See RHODE, *supra* note 30, at 245.

68. See Burrell, *supra* note 37, at 89.

69. *Id.* at 89-90.

70. Kevin Brown, *The Social Construction of a Rape Victim: Stories of African-American Males About the Rape of Desiree Washington*, 1992 U. ILL. L. REV. 997, 1000, 1005 (1992).

71. Willis, *supra* note 8, at 215.

72. See *id.* at 213, 215.

73. Crenshaw, *supra* note 19, at 1269 (citing *Race Tilts the Scales of Justice. Study: Dallas Punishes Attacks on Whites More Harshly*, DALLAS TIMES HERALD, Aug. 19, 1990, at A1). The study examined 1988 cases in the Dallas County criminal justice system. Study results showed that for interracial rapes the sentence length almost doubled. *Id.* at 1269 n.87.

ing less value on the rape of Black women, or not believing these victims, is that the rapes of White women are much more publicized than rapes of Black women.⁷⁴ Contrary to these public attitudes, most rape victims are Black.⁷⁵

Kimberlé Crenshaw explains that while rape of White women is an expression of power, humiliation, and domination of women, rape of Black women by White men is an expression of racial as well as sexual domination, and a weapon of racial terror.⁷⁶ This notion of racial domination is furthered by the fact that Black rape defendants (of interracial rape) are abused by this system.⁷⁷ "[T]he White man has used the rape of 'his' women as an excuse to act against Black men,"⁷⁸ thereby perpetuating the myth that Black men rape White women. Even though interracial rape is rare, White status quo used the alleged rape of White women by Black men as a way to control and discipline the Black community.⁷⁹

The intersection of racism and sexism has made rape an even more complicated issue and has strengthened the stereotype that Black women are not raped, or often should not be recognized as rape victims. This intersection leaves many in Black communities unwilling to support rape prosecutions of Black men.⁸⁰ Throughout American history, Black men have suffered disproportionately when prosecuted for rape.⁸¹ This racism continues in the sentencing phase: researchers studying 3,000 rape convictions that were ruled on between 1945 and 1965 in eleven Southern states found that a Black man was seven times more likely to receive the death penalty than a White man.⁸² The Black community has historically focused on the lynching of Black males and often strategically avoided the issues

74. During the week of the rape of the Central Park Jogger, a White woman, there were about 28 other first-degree rapes or attempted rapes reported in New York City: 17 Black women, 7 Latina women, 3 White women, and 2 Asian women. *Id.* at 1268 n.81 (citing Don Terry, *In Week of an Infamous Rape 28 Other Victims Suffer*, N.Y. TIMES, May 29, 1989, at B25). Many of the rapes of women of color were equally or more horrific than the Central Park case. However, the latter dominated the media coverage and the others were barely reported. *Id.* at 1268.

75. See RHODE, *supra* note 30, at 246.

76. Crenshaw, *supra* note 29, at 158.

77. See *id.* at 157-59.

78. BROWNMILLER, *supra* note 33, at 255.

79. See Crenshaw, *supra* note 19, at 1266.

80. See Brown, *supra* note 70, at 1005-06.

81. See Donald Dripps et al., Panel Discussion: *Men, Women and Rape*, 63 FORDHAM L. REV. 125, 130 (1994).

82. *Id.* at 130 n.21.

of sexual violence that lead to the terror of Black, as well as White, women.⁸³ The result of this racism-sexism dichotomy is that the Black community does not adequately address the problem of rape because it views the Black defendant, and not the Black victim, as the victim.⁸⁴ Women who do file a rape claim may be viewed as helping the (White) status quo disproportionately punish Black men and perpetuate the notion that Black men are rapists.⁸⁵ These women lose their place in the Black "family" because of the conflict in the Black community caused by the intersection between gender and race.⁸⁶ Kevin Brown illustrates the problem with this dichotomy: "Despite the fact that Brothers certainly want to support Sisters, concerns about the Sisters must wait until after we have dealt with the Man (resolved the racial issue). Let us not forget, we have been trying to resolve the racial issue for over 370 years."⁸⁷ A Black woman who is raped faces not only the horror of being a woman who is raped, but also the racism expressed against her because she is a Black woman. Not surprisingly, the fear of not being believed, of racism against her, and of exposing a Black man to a racist criminal justice system may cause a Black rape victim not to report an incident of rape by a Black man.⁸⁸

83. See Crenshaw, *supra* note 29, at 159-60; see also BROWNMILLER, *supra* note 33, at 212-13.

84. See Brown, *supra* note 70, at 1005-06.

85. See Burrell, *supra* note 37, at 88; Squire, *supra* note 36, at 800.

86. See Kristin Bumiller, *Rape as a Legal Symbol: An Essay on Sexual Violence and Racism*, 42 U. MIAMI L. REV. 75, 88 (1987).

87. Brown, *supra* note 70, at 1002; see also Jenny Rivera, *The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements*, 4 J.L. & POL'Y 463, 471 (1996) (explaining how Latina and Black women have been marginalized by race-based civil rights agendas). A consequence of valuing the fight against racism above the fight against rape is that Black rape survivors might not receive support needed to help them overcome the trauma of being raped. See Patton, *supra* note 36.

88. See Patton, *supra* note 36. A Latina woman may choose not to report a rape because the incident might result in shame and dishonor for her and her family or because her religious upbringing teaches her that she is at fault for the rape, or because if she is sexually active she may be viewed as responsible for the rape. See Patricia Marroquin, *Latinas and Rape: Another "Cross They Have To Bear?"*, PERSPECTIVA (on file with UCLA Women's Law Journal); Destito & Darder, *supra* note 28. In traditional Asian communities, a woman might not report a rape because she would be viewed as responsible for the rape and that it would bring shame to her and her family. Undocumented immigrant women might not report rapes for fear of deportation, especially if the rapist is an employer or co-worker. *The Pacific-Asian Survivor*, *supra* note 28; see Mark Arax, *Taboo: Asians Face the Issue of Sexual Abuse*, L.A. TIMES, Sept. 23, 1984, at IX1 (citing statistics showing that whereas 30%

E. *Stereotype: Women Who Are Promiscuous Are also Untruthful*

Society perceives certain victims of rape such as women of color,⁸⁹ prostitutes,⁹⁰ promiscuous women, and women who date Black men⁹¹ as being promiscuous and therefore less truthful because they do not fit the stereotype of the passive and chaste rape victim.⁹² As a result, when a woman assumed to be promiscuous is raped, people do not believe her: prosecutors are less likely to prosecute, jurors are less likely to convict, and judges are less likely to impose severe sentences.⁹³ The more sexually autonomous a woman rape victim is, the less likely she is to be vindicated by the criminal justice system.⁹⁴

The story of Tawana Brawley illustrates the stereotype that certain women — in this case a Black woman — are promiscuous and thus not credible. In November 1987, Tawana, a fifteen year old from Wappinger Falls, New York who had been missing for four days, was found barely alive in a vacant lot. Her hair had been chopped, her nose and ears were stuffed with urine-soaked cotton, and cigarette burns covered a third of her body.⁹⁵ Someone had etched "KKK" and "Nigger" onto her torso and

of the sexual assaults in the general population are reported, only 3% of the sexual assaults in the Asian community are reported).

89. Because many Asian communities place a high value on women's honor and chastity, sexually active Asian women are likely to be viewed by their communities as promiscuous, dishonorable, and untrustworthy. Furthermore, some researchers argue that Western stereotypes of Asian women as "geisha dolls" promote the notion that they are sexually available. Arax, *supra* note 88; *The Pacific-Asian Survivor*, *supra* note 28. Traditional Latino communities may view a sexually active Latina as promiscuous and not respectable because she violates the Catholic Church's emphasis on women's purity. See Destito & Darder, *supra* note 28.

90. Prostitutes are viewed as promiscuous due to the nature of their work. They face incredible difficulty if they are raped and attempt to prosecute the rapist. Officials in the criminal justice system often believe that men are entitled to rape prostitutes, since the women are willing to sell their bodies for money. See MACKINNON, *supra* note 48, at 175. What people fail to understand is that prostitutes only have sex for money when they so choose which is far different from being forced to have sex against one's will.

91. See *supra* Part II.D.

92. See Burell, *supra* note 37, at 92; Willis, *supra* note 8, at 215, 224 (stating that respondents viewed Black victims of date rape as less truthful and more responsible for protecting themselves than White women); see also Pollard, *supra* note 24, at 309-10 (reviewing a study which concludes that respondents' attribution of responsibility to a date rape victim increased with increasing levels of a victim's previous sexual activity).

93. See Balos & Fellows, *supra* note 36, at 600.

94. See Crenshaw, *supra* note 19, at 1266.

95. See PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 169 (1991).

smeared her body with dog feces.⁹⁶ Tawana told her family and the authorities that the three White men who raped her were the local district attorney, a highway patrolman, and a local police officer.⁹⁷ Seven months later, New York State Attorney General Robert Adams stated that a crime might not even have been committed.⁹⁸ The New York grand jury concluded that Tawana had fabricated the story.⁹⁹ The public believed that either Tawana had been a willing participant to this brutal beating and repeated sex and sodomy, or that she had inflicted the injuries upon herself!¹⁰⁰ The media's attention to the debate about Tawana's credibility soon overshadowed the atrocities she had suffered.¹⁰¹ Tawana became the "wild black girl who loves to lie, who [wa]s not innocent[,] . . . and whose wiles [we]re the downfall of innocent, jaded, desperate white men."¹⁰²

The outcome of this case extends beyond Tawana to the effects it might have on future victims who might be reluctant to file their cases because society may also perceive them as promiscuous and therefore untrustworthy. Even if such victims did file their cases, they could not receive a fair trial in the face of these stereotypes. No reform in rape law can change this mentality until people become educated and change their attitudes about gender and race.

III. DATE RAPE MYTHS

The gender and race stereotypes discussed above have led to stereotypes pertaining specifically to date rape. I will refer to these more narrowly focused stereotypes as date rape myths. Date rape myths have been defined as "prejudicial, stereotyped, or false beliefs about [date] rape, [date] rape victims, and rapists."¹⁰³ These myths hinder the successful prosecution of date rape.¹⁰⁴

96. *See id.* at 171.

97. *See id.*

98. *See id.* at 170.

99. *See id.*

100. *See id.*

101. *See id.* at 171. The media attention became so great that Reverend Al Sharpton, her spiritual advisor, urged her into hiding soon after the police officer she had accused of raping her committed suicide. *See id.* at 172.

102. *Id.* at 174.

103. Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV. 1013, 1017-18 (1991).

104. *See id.* at 1016.

The following are some of the more common myths about date rape that continue to increase the tendency of some men to commit date rape:

- (1) Aggressive or violent tactics are part of the ordinary seduction of an uncertain female.
- (2) If a man has had sex with a woman before, any future sexual act cannot be rape.
- (3) Men cannot control their sexual urges after a woman has "turned them on."
- (4) Normal men do not rape.
- (5) Men only rape women with "bad" reputations.
- (6) Women fantasize about being raped.
- (7) Women cause men to rape them by their appearance and behavior.
- (8) Women falsely claim rape after having had sex because they want revenge, or feel jealous, guilty, or embarrassed.¹⁰⁵
- (9) Consent can be inferred from provocative behavior.
- (10) It is okay for a man to rape a woman if he has spent money on her.
- (11) Women who do not fight back have not actually been raped.
- (12) If the man does not have a gun or knife, the woman has not been raped.¹⁰⁶

Although all twelve myths are prevalent, I will only elaborate on the first four myths because these are the more commonly believed myths.

A. *Myth: Aggression and Violence Are Merely the "Art of Seduction"*

The date rape myth that a woman who says "no" may want aggressive or even violent convincing arises out of the rape stereotype of the aggressive male and passive female discussed earlier. This rape stereotype allows the male to interpret the female's silence as implying consent and "no" as implying "yes" or "maybe."¹⁰⁷ Judge Cole's dissent in *State v. Rusk*¹⁰⁸ exemplifies

105. Only approximately 2.5% of sexual assault and rape charges are determined to be false. This is the same percentage as false reporting of other felonies. AVANCE HUMAN SERVICES, INC., THE EAST LOS ANGELES SEXUAL ASSAULT PROGRAM OF AVANCE Human Services, Inc. (available at AVANCE Human Services, Inc., 1255 So. Atlantic Blvd., Los Angeles, CA 90022).

106. See WARSHAW, *supra* note 6, at 19-20; Ingram, *supra* note 47, at 20 (discussing "widely-held beliefs concerning victim provocation . . . in Judicial reasonings and decisions"); Torrey, *supra* note 103, at 1021-23, 1057.

107. See RHODE, *supra* note 30, at 47; Ingram, *supra* note 47, at 20.

this myth. He interpreted the victim's actions as insufficient to demonstrate lack of consent, even though she had said "no" several times, begged the defendant to let her leave, and cried.¹⁰⁹ Judge Cole stated: "There is no evidence whatsoever to suggest that this was anything other than a pattern of conduct consistent with the ordinary seduction of a female acquaintance who at first suggests her disinclination."¹¹⁰ This statement indicates that Judge Cole believed that the defendant's conduct in placing his hands around the victim's neck and lightly choking her was his way of arousing the victim and not a use of force.¹¹¹ The defendant raped the victim after she asked, "If I do what you want, will you let me go without killing me?"¹¹² This plea demonstrates that the victim feared for her life. However, Judge Cole seemed to believe that the defendant's behavior was merely the "art of seduction."¹¹³

B. Myth: If a Man Has Had Sex With a Woman Before, Any Future Sexual Act Cannot Be Rape

People attribute more blame to victims raped by acquaintances than to victims raped by strangers.¹¹⁴ The general public, from whom judges and jurors are selected, often believes that if a couple has been dating or has had sex once, then any future sex has been consented to already. Illustrating this myth is a study of teenagers by UCLA researchers ("UCLA Study") which found

108. 424 A.2d 720 (Md. 1981).

109. *See id.* at 733.

110. *Id.*

111. *See id.*

112. *Id.* at 734. This is quite ironic as a rape victim's silence is often construed as meaning "yes."

113. *Id.* Endorsing this type of violent sex supports the idea that rape is often connected to power and male domination of women. *See* CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* 218 (1979) (arguing that rape is a violent act which is about power and dominance).

114. *See* Pollard, *supra* note 24, at 311. Pollard explains that this result may be caused by the historical view of women as the sexual property of males:

[T]he findings . . . suggest that this traditional view of wives as having no rights to refuse their husbands' sexual advances extends to other forms of relationships, and that a woman's right to refuse sexual advances is perceived as increasingly diminished as a function of the extent of her prior relationship with the male.

Id. at 313; *see* FAIRSTEIN, *supra* note 11 and accompanying text. This result may also stem from the historical notion that women are of less value once they have lost their virginity, and thus raping non-virgins is not as severe of a crime. *See supra* Part II.A.

that 43% of the teenage boys surveyed believed that forced intercourse was okay if they had dated a girl for a long time.¹¹⁵ In other studies, undergraduate students asked to comment on stories depicting sexual scenarios assigned more blame to the rape victim if she was dating and had previously had intercourse with the attacker than if she did not know her attacker.¹¹⁶

In *State v. Alston*,¹¹⁷ the court ruled that the sexual encounter at issue must have been consensual based on the fact that the parties had been in a consensual sexual relationship for six months.¹¹⁸ In *Alston*, the defendant removed the victim from school, told her he deserved sex from her and that he would "fix her face," pulled down the victim's pants, and when she responded by pulling them back up, he pulled them down again.¹¹⁹ The victim cried during intercourse.¹²⁰ The court explained its reasoning: "During that relationship she frequently remained entirely passive while the defendant at times engaged in some violence at the time of sexual intercourse. Brown's conduct on June 15 . . . was entirely consistent with her prior consensual sexual conduct."¹²¹ The court decided that any fear the defendant induced in the victim was irrelevant.¹²² Even though the court explained that an explicit threat is not necessary to show force if the totality of the circumstances indicate that the defendant would use force if necessary, the court found no such indication in the present case.¹²³ Judicial endorsement of this type of behavior both arises out of and reinforces the myth that consent, once given, does not need to be renewed for future sexual relations.

C. *Myth: Men Cannot Control Their Sexual Urges After a Woman Has "Turned Them On"*

Another myth which stems from the stereotype that men should dominate women¹²⁴ is the myth that a male cannot con-

115. WARSHAW, *supra* note 6, at 120.

116. Pollard, *supra* note 24, at 311 (discussing numerous studies of North American undergraduate students).

117. 312 S.E.2d 470 (N.C. 1984).

118. *Id.* at 471, 474-75.

119. *Id.* at 472.

120. *Id.* at 473.

121. *Id.* at 474.

122. *See id.* at 472, 476.

123. *See id.* at 476.

124. *See supra* Part II.A. and Part II.B.

trol his sexual urges once a woman has aroused him. Supporting the existence of this myth, the UCLA Study found that 54% of the teenage boys surveyed believed it was acceptable to force sex if the woman changed her mind after somehow indicating that she would have sex with him.¹²⁵ Another study of high school males found that 50% of respondents believed that if a female "gets him physically excited" or "says she's going to have sex with him and then changes her mind," then physically forcing the female to have intercourse with him is acceptable.¹²⁶ A male who believes this myth might also believe that if a provocatively dressed woman is flirting or dancing with him, then he "deserves" to have sex with her because she has aroused him.

An example of the perpetuation of this myth is the statement made by an Indianapolis judge in an interview:

I believe biologically it is wrong [for a woman] to entice a man knowing the situation [she's] creating and then saying "no." There is a button a man has that cannot be turned off and on like a light switch. And a man can go to prison for a very long time because of it.¹²⁷

This judge blames a woman for placing a man into a situation where he cannot control himself rather than blaming the man for not being able to control himself. However, the notion that a man cannot control himself once "turned on" is wrong.¹²⁸ Nevertheless, if a man is taught that his biology is an excuse, he might not try to control himself because he somehow feels entitled to have sex with whoever arouses him.

D. *Myth: Normal Men Do Not Rape*

Many people believe that normal men do not rape, so they think that stranger and date rapists must be emotionally disturbed, unattractive, poor and uneducated.¹²⁹ Otherwise, the

125. WARSHAW, *supra* note 6, at 120.

126. Torrey, *supra* note 103, at 1024 n.52 (citing Neil M. Malamuth, *Rape Proclivity Among Males*, 37 J. SOC. ISSUES 138, 152 (1981)).

127. This quote came from an interview for Gary LaFree's study of 881 rape cases reported to police in Indianapolis in 1970, 1973, and 1975. This judge had presided over several of the rape cases in LaFree's study. Torrey, *supra* note 103, at 1057 (citing GARY LAFREE, *RAPE AND CRIMINAL JUSTICE: THE SOCIAL CONSTRUCTION OF SEXUAL ASSAULT* 95-96 (1989)).

128. During the Maret School peer education workshops described later in Part V.C., boys explained that they know that this myth is false but people sometimes use it as an excuse.

129. See FAIRSTEIN, *supra* note 3, at 155. The first cross-cultural study of public attitudes regarding rape asked people if they believed that rapists are, "sick, emotionally disturbed men." A high percentage of participants answered yes: 87% of

"rapists" would be able to easily attract women interested in having sex with them and thus, would not have to rape to have sex. However, this impression belies the fact that rape is not only about sex, but is also about power.¹³⁰ Furthermore, despite numerous efforts, no differences between rapists and nonrapists have been identified that would justify the conclusion that "rapists are grossly abnormal."¹³¹

The true profile of a date rapist is one who has certain socially acquired beliefs about rape myths, sexual aggressiveness, and gender and race stereotypes.¹³² In one study, 172 male students at a junior college responded to a survey question asking whether they would rape "if they could be certain they would not be caught."¹³³ Sixty-four participants gave responses which indicated some likelihood of raping, and thirty-five members of that group indicated a high likelihood of raping (HLR).¹³⁴ The men in the HLR group exhibited attitudes which minimized the violent and negative impact of rape on a victim. They also blamed the victim of a stranger rape scenario more than non-HLR men and believed gender stereotypes more than non-HLR men.¹³⁵ For example, the HLR men believed that women would welcome their sexually aggressive behavior and view it as a normal response to the (perceived) seductive behavior of the victim.¹³⁶ In another study in which UCLA undergraduate students participated, 51% of the fifty-three males studied said they would act as the rapist did in a rape scenario if they knew they would not be

Mexican American men, 63% of Mexican American women, 83% of Black men, 98% of Black women, 91% of Anglo men, and 92% of Anglo women all believed that rapists are abnormal men. Researchers conducted interviews with 340 Mexican Americans, 336 Blacks, and 335 Whites. JOYCE E. WILLIAMS & KAREN A. HOLMES, *THE SECOND ASSAULT: RAPE AND PUBLIC ATTITUDES* 136 tbl. 18, 195 app. A.3 (1981) (citing Torrey, *supra* note 103, at 1023 n.46).

130. See Julie A Wright, *Using the Female Perspective in Prosecuting Rape Cases*, *THE PROSECUTOR*, Jan.-Feb. 1995, at 19.

131. Torrey, *supra* note 103, at 1022 (citing James V.P. Check & Neil M. Malamuth, *An Empirical Assessment of Some Feminist Hypotheses About Rape*, 8 *INT'L. J. WOMEN'S STUD.* 414, 415 (1985)).

132. *Id.* at 1021-23. While some date rapes might be caused more by miscommunication than any other factor, miscommunication is often precipitated by these myths and stereotypes.

133. Todd Tieger, *Self-Rated Likelihood of Raping and the Social Perception of Rape*, 15 *J. RES. PERSONALITY* 147, 154 (1981).

134. *Id.*

135. *Id.* at 156.

136. *Id.*

punished.¹³⁷ It is very unlikely that half of the men studied were "abnormal" men.

Jurors, too, are influenced by date rape myths and can be swayed by the appearance of the defendant.¹³⁸ If he is attractive, they may think he is innocent because plenty of women are willing to have sex with attractive men, and therefore there is no need to force the women to have sex with attractive men.¹³⁹ An example of this thinking is a statement actually made by a juror in the William Kennedy Smith date rape trial.¹⁴⁰ A juror in that case said, "I think he's too charming and too good looking to have to resort to violence for a night out."¹⁴¹ Smith's acquittal demonstrates the persisting influence of this myth.¹⁴²

E. *The Role of Stereotypes and Myths in the Criminal Justice System*

Unfortunately, not only are uninformed members of society affected by stereotypes and myths, but so are officials in the criminal justice system.¹⁴³ In date rape situations, police are often reluctant to investigate, prosecutors are reluctant to prosecute, jurors are less likely to find the defendant guilty, and judges are less likely to give severe sentences.¹⁴⁴ These myths affect the verdict of a particular case and often determine whether a case is brought at all. Even if police and prosecutors — who have not themselves adopted date rape myths — are willing to file a case, they may nevertheless be dissuaded because they fear acquittal

137. The students were given a rape scenario where a male student approaches a female student (the passage does not describe their relationship) and offers to escort her to her car. She politely refuses the offer. He then puts a knife to her throat and rapes her despite her efforts to resist. Neil M. Malamuth et al., *Testing Hypotheses Regarding Rape: Exposure to Sexual Violence, Sex Differences, and the "Normality" of Rapists*, 14 J. RES. PERSONALITY 121, 123-24, 130 (1980), discussed in Torrey, *supra* note 103, at 1023-24.

138. See FAIRSTEIN, *supra* note 3, at 135.

139. *Id.*

140. *State v. Smith* No. 91-5482 (Fla. Cir. Ct., Dec. 11, 1991). In this case, William Kennedy Smith, the defendant, met a woman at a Palm Beach bar. The alleged rape occurred at the Kennedy family compound in Palm Beach, where they went after leaving the bar.

141. Wright, *supra* note 130, at 19.

142. See *id.*

143. This problem is exacerbated by the fact that Latinos, Asians and Blacks are underrepresented in the criminal justice system. See Rivera, *supra* note 87 at 498 (explaining that the lack of people of color and bilingual/bicultural services in the legal system makes access to the legal system a major obstacle for women of color).

144. See Willis, *supra* note 8, at 214-15.

by myth-adopting jurors, thus precluding successful prosecution of many date rape cases.¹⁴⁵ Consequently, only especially strong cases with a credible victim will be brought, while cases where rape has occurred but where the evidence is conflicting will rarely, if ever, be brought.¹⁴⁶ Date rape cannot be successfully prosecuted and prevented until these myths about acceptable behavior are dispelled.

IV. DOCTRINAL UNDERSTANDING OF CONSENT IN RAPE CASES AND RAPE LAW REFORM

In a rape case, the defendant sometimes claims that the victim wanted to have sex. This complication demonstrates one way in which rape differs from other crimes such as theft, assault, or murder, where a defendant cannot claim that the victim wanted to be robbed, beaten, or killed. In contrast to behaviors regulated by other criminal laws, rape law must criminalize only sexual intercourse that is against a woman's will, not all sexual intercourse.

As women assert their equality and sexual freedom, the myths about date rape have slowly been challenged. This change is demonstrated by statutes that require words or behavior indicating positive cooperation for consent — not mere passivity.¹⁴⁷ Additionally, victim resistance is no longer required by statutes (though it is required for refuting the reasonable belief defense) because lawmakers have realized that resistance can cause the woman physical injury.¹⁴⁸ Further, rape shield laws attempt to prohibit discussion of a victim's sexual "morality" to show consent or lack thereof.¹⁴⁹ Unfortunately, the doctrine of consent in rape laws does not yet function to give women control over their sexuality and their bodies. "No" sometimes means "yes," marital

145. See FAIRSTEIN, *supra* note 3, at 135.

146. See *id.* at 152. The Manhattan District Attorney's Office Sex Crimes Unit takes to trial "every case in which a credible victim is willing to participate." However, who defines credible — a prosecutor who does not believe gender and race stereotypes, or a society which generally does? Unfortunately, many district attorney's offices do not allot their resources such that they can prosecute the large number of viable rape cases. *Id.*

147. See Ingram, *supra* note 47, at 21 (citing CAL. PENAL CODE § 261.6 (West 1988 & Supp. 1993), ILL. COMP. STAT. ANN. 12-17(a) (West 1990), WIS. STAT. ANN. § 940.225(4) (West 1982)).

148. See Dressler, *supra* note 2, at 524.

149. See *id.* at 534. However, sexual morality has never been an issue in other crimes. Ingram, *supra* note 47, at 14-15.

rape is legal in some states, and few men are convicted for raping a prostitute.¹⁵⁰

In the 1970s, very few legal resources were allotted to addressing the issue of sex crimes, and rape laws were drastically different from what they are today.¹⁵¹ Over the past twenty years, feminists have helped to revolutionize rape law by spurring major rape law reforms in an attempt to remove stereotypes and myths from the law.¹⁵² As discussed in Part II, rape law has always incorporated stereotypes about women's role in society and women's sexuality. In this section, I explain the major rape law reforms which have attempted to remove these stereotypes from the law. These reforms have aimed to remove the resistance requirement, prohibit the use of evidence pertaining to a woman's "morality," and require general rather than specific intent.¹⁵³ Unfortunately, studies have shown that these reforms have not achieved much success either in increasing the rate of victims who come forward to charge the perpetrator or in successful prosecutions of rape cases.¹⁵⁴

A. *The Utmost Resistance Requirement and the Reasonable Belief Defense*

Rape law used to require that a woman resist to the utmost.¹⁵⁵ The former California rape law is an example of a rape statute requiring "utmost resistance."¹⁵⁶ This law required that a victim prove that she resisted the defendant's attempts to have

150. See MACKINNON, *supra* note 48, at 175.

151. In 1974, the first unit devoted to prosecuting sex crimes was created in the Manhattan District Attorney's Office. In 1969, New York City police made 1,000 arrests for rape, and 18 of these suspects were convicted. By 1975, the number of convictions in New York County had more than tripled. FAIRSTEIN, *supra* note 3, at 14, 80.

152. See *id.* at 14 (detailing the changes in the treatment of sexual violence crimes).

153. See *infra* Parts IV.A., IV.B., and IV.C.

154. Bachman & Paternoster, *supra* note 15, at 573-74.

155. Courts have required women to:

"follow the natural instinct of every proud female" to resist the sexual attacker unless she is prevented from doing so by serious threats to her safety. She must resist the rapist "to the utmost," or resist "until exhausted or overpowered," or resist "the attack in every way possible and [continue] such resistance until she [is] overcome by force, [is] insensible through fright or cease[s] resistance from exhaustion, fear of death or great bodily harm."

DRESSLER, *supra* note 2, at 524 (footnotes omitted).

156. CAL. PENAL CODE § 261, amended by CAL. PENAL CODE § 261 Stats. 1980 (West 1988 & Supp. 1993).

intercourse unless she feared great bodily harm.¹⁵⁷ The exact meaning of great bodily harm is unclear, especially since the court did not think that imprisoning the victim and threatening that she would see the "bad side" of him, qualified as such.¹⁵⁸

The resistance requirement of past rape laws was problematic because it forced the jury to consider the "morality" of the victim and required the victim to respond in a certain way. In consequence, the jury applied socially constructed beliefs about women's sexuality and behavior to its judgment.¹⁵⁹ Although many states no longer require physical resistance for nonconsent,¹⁶⁰ this legal reform is somewhat artificial since a defendant can still use lack of resistance to demonstrate the reasonableness of his mistaken belief.¹⁶¹ In *People v. Mayberry*,¹⁶² the jury instruction stated that the defendant had a defense if, in good faith, the defendant reasonably and mistakenly believed that the victim

157. According to the majority opinion by the California Supreme Court in *People v. Barnes*, 721 P.2d 110 (Cal. 1986), former § 261, subdivisions 2 and 3 of the California Penal Code required that the victim resist to the utmost unless at risk of great bodily harm. The court quoted former § 261:

Rape is an act of sexual intercourse, accomplished with a person not the spouse of the perpetrator, under any of the following circumstances: 1. Where a person is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent; 2. Where a person *resists*, but the person's resistance is overcome by force or violence; 3. Where a person is prevented from *resisting* by threats of great and immediate bodily harm, accompanied by apparent power of execution, or by any intoxicating, narcotic, or anesthetic substance, administered by or with the privity of the accused; 4. Where a person is at the time unconscious of the nature of the act, and this is known to the accused; 5. Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

Id. at 113 n.6 (emphasis added).

158. The majority opinion in *Barnes* described the erroneous decision of the same case by the California Court of Appeals. *Id.* at 115.

159. See FAIRSTEIN, *supra* note 3, at 135-36. These socially constructed beliefs are generated by acceptance of stereotypes about gender, race, and date rape.

160. In 1980, California amended its rape law to remove most references to resistance. CAL. PENAL CODE § 261, *amended by* CAL. PENAL CODE § 261 (West 1988 & Supp. 1993).

161. Also, many police officers will only believe date rape victims when force was used. This means that if no force was used, the police might not believe the victim, might not investigate the crime, and the case might not be prosecuted. See Martha Chamallas, *Consent, Equality, and the Legal Control of Sexual Conduct*, 61 S. CAL. L. REV. 777, 818-20 (1988).

162. 542 P.2d 1337, 1345 (Cal. 1975).

consented to sex.¹⁶³ A court may give a *Mayberry* instruction when the defendant has proven that he believed he was engaging in consensual sex or that his mistaken belief was reasonable.¹⁶⁴ The belief would be judged to be reasonable in cases where, for example, the victim did not scream, fight back, or resist. Thus, this defense, in effect, reinstates the resistance requirement by keeping the focus on the victim's behavior.

Police officers, judges, prosecutors, and jurors have a great deal of discretion in deciding which cases to investigate and to prosecute, and which defendants to find guilty. This discretion allows room for bias. Since many people still believe that women have an obligation to protect their reputations, they may conclude that the defendant reasonably believed the woman consented to sex if she did not resist, despite any threat she perceived.¹⁶⁵ Although a victim's fear of force can demonstrate that she did not consent, judges and jurors make very subjective decisions concerning whether the victim's fear that any resistance would place her in grave physical danger was justified.¹⁶⁶

The reasonable belief defense has been taken to its extreme in some cases. In *Mayberry*, the defendant suggested to the victim that they have sex.¹⁶⁷ The victim initially conversed with the defendant, in an attempt to stall him and to figure out a means of escape. She dug her nails into the defendant in order to escape and stated that she did not want to go to his apartment with him. Once she realized that escape was impossible, she did not attempt to jump out of the defendant's car at a stop light, and she went into his apartment with him. Despite her initial rejection of the defendant's advances, the court held that she did not sufficiently resist.¹⁶⁸ According to the court, her lack of action could be interpreted by the defendant as compliance, which misled him. Clearly, what the court deemed to be a "reasonable belief" that the victim consented was not reasonable, especially in light

163. *Id.*; see also Michael Emmet Murphy, *California Supreme Court Survey: June 1992 - December 1992*, 20 PEPP. L. REV. 1635, 1635 (1993).

164. Murphy, *supra* note 163, at 1635.

165. Dana Berliner, Note, *Rethinking the Reasonable Belief Defense to Rape*, 100 YALE L.J. 2687, 2692 (1991).

166. Juries tend to believe reasonable belief defenses in date rape cases because, as studies have found, men and women who adhere to traditional stereotypes about women's sex roles tend to blame the victim more than the defendant, often will not agree that a rape occurred, and consider a defendant less culpable if he was dating the victim. See Willis, *supra* note 8, at 214-15 (discussing several such studies).

167. Berliner, *supra* note 165, at 2698 (citing *Mayberry*, 542 P.2d 1337, 1346).

168. *Id.*

of the victim's behavior. If the defendant was actually acting under a good faith belief that the victim consented, then this belief and the court's definition of "reasonable belief" illustrates the widespread adoption of gender and race stereotypes and date rape myths.

One way to ensure that jurors understand what constitutes a "reasonable belief" is to improve the jury instructions. When jurors consider whether the mistaken belief is honest, they should look to the defendant's actions: Did he use force, coercion, or deception? Was his mistake negligent?¹⁶⁹ In considering what constitutes a "reasonable belief," jurors must recognize that their beliefs are shaped by gender and race stereotypes and date rape myths. In order to be able to follow progressive jury instructions, jurors must dispel their stereotype and myth-laden beliefs of what is reasonable and understand the issues of power and miscommunication in rape cases.

Critics of the date rape prevention movement, such as Katie Roiphe and Camille Paglia, do not agree with the argument that since women are socialized to be passive, rape laws should look beyond simply whether a woman said "no" or resisted. Rather than agreeing that women are socialized to be passive, critics claim that the date rape movement is wrongly victimizing and infantilizing women by promoting the ideas that women are passive, that women can be coerced into having sex, and that women do not always feel empowered enough to resist sex.¹⁷⁰ Certainly, I agree that women should not be treated as individuals lacking agency or the ability to make decisions. However, recognizing why some women fail to assert themselves in certain sexual situations does not necessarily lead to such a result. Understanding why men and women behave as they do and why misunderstandings can occur actually can help women become more assertive because they will better understand the implications of their words and behavior.

Roiphe and Paglia suggest that women should be blamed if they do not vigorously resist situations of sexual coercion.¹⁷¹ Roiphe further asserts that people who accept the belief that women can be coerced sexually by men are acknowledging that men

169. *Id.* at 2703.

170. *See, e.g.,* ROIPHE, *supra* note 4, at 65-68.

171. *See* Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304, 330, 332 (1995).

are more powerful than women.¹⁷² Roiphe and Paglia clearly do not realize that women who resist a date rapist's sexual advances are often beaten by their assailants. In fact, many men are physically larger and stronger than many women, placing women at a physical disadvantage and often making their resistance dangerous or futile. Telling women that they should resist until they are beaten too badly to continue resisting, as Roiphe and Paglia seem to suggest, would be Victorian in nature because it suggests that women should preserve their purity at all costs. The tragedy in Roiphe and Paglia's argument is that, rather than demonstrating empowerment, resisting a forceful rapist can place a woman at great risk of physical assault.¹⁷³

B. Rape Shield Laws

Rape shield laws have attempted to prevent socially constructed notions of women's "morality" from playing a role in rape cases. These laws aim to bar the use of a victim's past sexual history in most rape cases.¹⁷⁴ The laws were intended to prevent judges and juries from concluding that because of a victim's past sexual history, she must have consented on the occasion in question.¹⁷⁵ A comment made on television by Ohio Judge John Angelotta illustrates precisely the type of belief that rape shield laws attempt to exclude:

A nice girl who gets raped is different than a bad girl who gets raped, a bad girl being one who carries on this course of conduct with men. To me, she's a lot different than a good girl when you come to the question of rape — while agreeing that you may not rape either kind of girl.¹⁷⁶

Before the rape shield laws were enacted, police officers, prosecutors, judges, and jurors were allowed to assume that if a woman is promiscuous, she must have consented.¹⁷⁷ This type of treatment certainly did not encourage women who had been raped to seek legal assistance and prosecute the rapist. Unfortu-

172. ROIPHE, *supra* note 4, at 68.

173. See DRESSLER, *supra* note 2, at 524.

174. See Chamallas, *supra* note 161, at 800; see also Sakthi Murthy, Comment, *Rejecting Unreasonable Sexual Expectations: Limits On Using A Rape Victim's Sexual History To Show The Defendant's Mistaken Belief In Consent*, 79 CAL. L. REV. 541, 551-52 (1991) (discussing the purpose of rape shield laws).

175. See Chamallas, *supra* note 161, at 800.

176. Murthy, *supra* note 174, at 550 (quoting *Angelotta v. American Broadcasting Corp.*, 820 F.2d 806, 806-08 (6th Cir. 1987)). Judge Angelotta no longer serves on the bench. *Id.*

177. See *id.* at 552.

nately, statistics have shown that rape law reforms, including rape shield laws, have had little effect on whether a victim will bring forth a charge or how the criminal justice system will treat the charges.¹⁷⁸

In part, the rape shield laws have been ineffective because they only prohibit the use of a victim's sexual history to prove *the issue of consent*. However, such evidence is still admissible to support a mistake of fact defense.¹⁷⁹ For example, such evidence could be used in the following scenario: "The victim was reputed to be sexually experienced; the defendant knew of this reputation; sexually experienced women are widely seen as being more likely to consent in a given situation; thus, the defendant thought the victim was sexually available although she did not explicitly indicate consent."¹⁸⁰ A defense lawyer faced with the above scenario could circumvent the rape shield laws by arguing that evidence about the victim's past sexual history should be admitted for a mistake of fact defense, not to prove the elements of rape.¹⁸¹ Until men can no longer claim that they are misled by societal stereotypes about women's sexualities, and until society becomes less accepting of such mistakes of fact, prosecutors will not adequately be able to prosecute rape cases, and men prone to rape will not be deterred by the threat of punishment.

C. Stricter Rape Laws

Another possible approach to improving rape prosecution is implementing a stricter standard for consent. Strict liability laws that do not require intent would eliminate the reasonable belief defense which allows stereotypes to persist in rape cases. Laws requiring affirmative consent also would eliminate this defense because the defendant could not rely on some indication of consent. Rather, the laws would require that the sexual partner explicitly give consent to sex.¹⁸² These stricter rape laws may be viewed as extreme, but their expressive force may be valuable:

178. After studying national statistics of stranger and date rape reporting and adjudication from the 1970s (before rape law reform) through the 1990s, Bachman and Paternoster found minimal change in the probability that alleged date rapists would be imprisoned and that victims of rape would report the crime. Bachman & Paternoster, *supra* note 15, at 557-58, 573-74.

179. See Murthy, *supra* note 174, at 557.

180. *Id.*

181. See *id.*

182. Although there might be some ways prosecutors could still use the defense, it would be very difficult.

strict rape laws convey the message that rape is a serious problem which will no longer be tolerated.¹⁸³

1. Strict Liability Law for Rape

A law based on strict liability would avoid the reasonable belief defense (which negates the element of intent required by most rape statutes), since the defendant's intent would no longer be an issue. A strict liability law would require a court to consider whether the victim truly consented (an objective standard), not whether the defendant believed she did (a subjective standard). In (objectively) considering whether the victim consented, the court would examine the defendant's behavior to determine whether the victim was threatened by force, or whether she was physically forced to have sex. The court also would determine whether the victim gave any (objectively) reasonable indication that she did not consent.¹⁸⁴ However, the problem with the strict liability approach is that it might make it too easy to falsely convict innocent defendants. Furthermore, some people fear that such a law would destroy a man's ability to try to seduce a woman who is initially unwilling, since once she says "no," any further convincing might be considered rape.¹⁸⁵

Michigan's rape law¹⁸⁶ resembles strict liability in that the courts have interpreted the law as requiring only general intent or recklessness.¹⁸⁷ Rather than requiring an explicit consideration of consent, the law requires the judicial process to define the

183. See the discussion of the expressive value of the law, *infra* Part V.A; see also KENNETH L. KARST, LAW'S PROMISE, LAW'S EXPRESSION: VISIONS OF POWER IN THE POLITICS OF RACE, GENDER, AND RELIGION 187 (1993) (arguing that the law can educate people because it expresses what society deems acceptable behavior).

184. A subjective evaluation of whether the victim consented would consider whether the defendant thought she consented, not whether a reasonable person would have thought she consented.

185. See Ingram, *supra* note 47, at 20 (discussing the fine, complicated line between seduction, coercion, and rape).

186. MICH. COMP. LAWS ANN. § 750.520(a)-(e) (West Supp. 1982).

187. In *People v. Langworthy*, 331 N.W.2d 171 (Mich. 1982), the Michigan court explained the general intent requirement:

The fact that [the Legislature] did not [add specific intent as an element leads to the conclusion] that the Legislature intended to maintain the general rule that no intent is requisite other than that evidenced by the doing of the acts constituting the offense, i.e., general intent. Moreover, one of the purposes of the [statute] was to strengthen the laws against sexual violence by removing evidentiary obstacles to the prosecution of sexual assault, and it is unlikely that a new element of proof would be added without specific mention.

Id. at 176 (quotations and italics omitted).

crime by whether the defendant used force or threat of force and to what degree. A victim can establish rape by showing force or coercion.¹⁸⁸ By focusing on the defendant's behavior, not the victim's behavior or the defendant's interpretation of the victim's behavior, this law almost eliminates the reasonable belief defense. The Michigan law is similar to a strict liability law except that by requiring a minimal level of intent, the law reduces the risk of innocent defendants going to jail.¹⁸⁹ While this law could criminalize some consensual sex — such as sado-masochism — perhaps this type of sex, like battery, theft, and murder, should be illegal regardless of claims of consent. Such a law would be an extreme limitation on sexual liberty. However, given the large number of rape victims, this limitation might be justified if it enables prosecutors to convict rapists, at least until better alternatives can be implemented.¹⁹⁰

2. Affirmative Consent Requirement

Another type of rape law that could avoid the risks of eliminating the reasonable belief defense is a statute that requires affirmative consent.¹⁹¹ Such a law would require consensual sex to be defined as sex that occurs only after both parties have stated that they consent. The advantage of this law is that explicit con-

188. For example, in looking to the defendant's behavior, the Michigan law would construe a defendant who displays a weapon as using force. Chamallas, *supra* note 161, at 799.

189. In order to understand the difference between the Michigan rape law and rape laws which focus more on the intent of the defendant, consider a scenario where Jane and Joe have dinner together and then go to Joe's apartment. Joe suggests they go into his bedroom, Jane says that she is not interested and she should leave. At that point Joe becomes aggressive, throws her onto the floor, pins her down, and says, "You've been teasing me all night, now you have to have sex with me." She tries to escape his grasp, but he pushes her harder against the floor, and proceeds to rape her. A court using a law such as Michigan's may convict Joe for rape solely because his behavior indicated a threat of force. However, most courts might claim that Jane was not raped because she did not rigorously resist, scream, or make other attempts to escape.

190. In other situations, society has been willing to sacrifice individual liberties for the sake of a greater goal. For example, during wars, murder becomes legal, curfews have been implemented, and people have been drafted.

191. See Berliner, *supra* note 165, at 2702. Though no state has an affirmative consent law, such a policy has been implemented at Antioch College. This policy requires that students obtain verbal consent for any and all levels of sexual intimacy. Saying "yes" to sex is not sufficient; students must say "yes" to each step from kissing to sex or risk expulsion. Mary Matalin, *Stop Whining!* NEWSWEEK, Oct. 25, 1993, at 62.

sent is difficult to reasonably misinterpret.¹⁹² Neither party would be allowed to infer consent from behavior, and thus they could not use the reasonable belief defense.¹⁹³ California law currently requires "positive cooperation in act or attitude pursuant to an exercise of free will."¹⁹⁴ Other states require "words or overt actions . . . indicating a freely given agreement to have sexual intercourse."¹⁹⁵ While these states still do allow behavior to be interpreted as consent, they have moved closer to the affirmative consent requirement by requiring more than mere resignation to demonstrate free will.

One significant disadvantage of requiring affirmative consent in rape laws is that it could make sexual interactions artificial and stilted and may infringe upon what most people consider normal consensual sex. Affirmative consent may take the definition of rape too far, thereby minimizing the power of a rape charge. However, current rape laws and determinations of acceptable behavior are male-oriented and fail to consider the preferences of women. Consider the following statement: "The problem is that the injury of rape lies in the meaning of the act to its victim, but the standard for its criminality lies in the meaning of the act to the assailant. . . . [T]he man's perceptions of the woman's desires determine whether she is deemed violated."¹⁹⁶ Although men's mistaken beliefs are important to recognize, perhaps society should find a way to give more weight to the fact that numerous women are being raped. A man who is so ignorant and indifferent about a woman's well-being that he mistakenly believes she is consenting should be deterred from making

192. Katie Roiphe argues that requiring affirmative consent for intercourse infantilizes women because it "proposes that women, like children, have trouble communicating what they want." ROIPHE, *supra* note 4, at 62. She claims that affirmative consent supports the stereotype that women do not want sex and men always do. *Id.* at 62-63, 65. On the contrary, statutes requiring affirmative consent recognize that some women might have trouble communicating their discomfort in a coercive or threatening situation and urge women to communicate. The date rape prevention movement, rather than denying female desire and infantilizing women, attempts to empower women by teaching women how to take control of a situation, and by teaching both women and men how to improve communication and better understand each other.

193. Current law allows men to infer consent from silence and/or behavior and ignore a "no." In focusing on protecting men from false accusations, the law has not focused enough on protecting victims or convicting offenders. See Ingram, *supra* note 47, at 8-9.

194. *Id.* at 21; CAL. PENAL CODE § 261.6 (West 1988 & Supp. 1996).

195. Ingram, *supra* note 47, at 21; WIS. STAT. ANN. § 940.225(4) (West 1996).

196. MACKINNON, *supra* note 48, at 180.

that mistake. Although requiring affirmative consent may be too extreme in actuality, it is worth considering at least in theory because it could prevent rape by encouraging communication, and could also decrease the risk of convicting innocent men¹⁹⁷ by placing them on notice that they must obtain consent before having sex.

V. PROPOSAL: DATE RAPE PREVENTION EDUCATION IN SCHOOLS

In light of the difficulty in preventing and punishing all types of rape through the law, other means must be used to prevent it. While date rape, like stranger rape, can be an act of violence, humiliation and power,¹⁹⁸ date rape also is deeply rooted in stereotypes and myths and often involves miscommunication. Educational programs which foster communication in an attempt to destroy these stereotypes and myths can eventually prevent date rape and improve the prosecution of date rape cases.

A. *Education As a Solution to the Date Rape Problem*

Education can address the issue of date rape in at least two ways. First, Professor Kenneth Karst has argued that the law educates people because it shapes what society perceives as acceptable behavior. He argues that the law's expression of what is socially acceptable can "inflict the direct harms of stigma and stereotype and the consequential harms that flow when official expression is translated into private hostility."¹⁹⁹ New types of laws can educate the public about what types of behavior are appropriate.²⁰⁰ For example, a law that requires affirmative consent may teach people the importance of ascertaining the preferences of the other party involved. Second, educational programs in schools, universities, and places of employment have the potential to teach people about and dispel stereotypes and date rape myths.²⁰¹ Such programs can provide the tools for

197. This is especially problematic for Black men due to racial bias and myths that Black men rape White women. See Willis, *supra* note 8, at 215-16.

198. See FAIRSTEIN, *supra* note 3, at 136.

199. KARST, *supra* note 183, at 187.

200. The obvious problem with this type of education is the difficulty of convincing a legislative body to pass such a law and ensuring that the judicial system implements such laws properly. Also, the laws might not result in education.

201. See Kathryn M. Feltey et al., *Sexual Coercion Attitudes Among High School Students: The Influence of Gender and Rape Education*, 23 YOUTH & SOC'Y 229, 246 (1991); Schewe & O'Donohue, *supra* note 14, at 677; Lynda A. Szymanski et al.,

proper communication that will prevent misunderstandings regarding consent.

Studies testing people before and after participating in date rape prevention programs have shown that these programs change behavior related to propensity to rape.²⁰² A major indicator of whether a prevention program can change behavior is whether it dispels myths about date rape.²⁰³ The fact that many males and females believe in gender and race stereotypes and date rape myths suggests that education is needed to dispel these beliefs. The following results of a study demonstrate the extent to which both males and females believe these stereotypes and myths.

[R]apes by acquaintances were less likely to be viewed as rapes by the victim than were those by strangers. Similarly . . . 73% of the women whose description of their experiences met the legal definition of rape did not recognize themselves as rape victims. One in 12 men surveyed in this study admitted to acting in ways that satisfied the legal definition of rape or attempted rape, with 84% of these men believing that what they had done was definitely not rape.²⁰⁴

Men and women might change their beliefs if the misconceptions and stereotypes that they hold are explained to them through education. In turn, this new understanding might change their behavior.

Researchers have administered questionnaires which tested attitudes about date rape before and after date rape prevention programs in order to examine their effect on the participants' attitudes. A number of these studies indicate that education can change people's attitudes about date rape.²⁰⁵ In the Feltey study, researchers assessed attitudes about the acceptability of sexual coercion by asking 378 subjects:²⁰⁶ "what situation makes it okay for a guy to make a girl do any of the following things [kiss,

Gender Role and Attitudes Toward Rape in Male and Female College Students, 29 *SEX ROLES* 37, 47, 55 (1993).

202. See sources cited *supra* note 201.

203. Szymanski et al., *supra* note 201, at 54-55.

204. *Id.* at 38.

205. See sources cited *supra* note 201. However, some of these studies have unclear results about the effects of education. Schewe & O'Donohue, *supra* note 14, at 677-79 (reviewing five different studies, four of which showed that prevention programs have some effect on attitudes related to date rape); Szymanski et al., *supra* note 201, at 47-48.

206. Feltey et al., *supra* note 201, at 233, 235. The subjects were students from rural, suburban, and urban high schools in a mid-sized metropolitan area in the mid-west. The subjects ranged in age from 14 through 19. *Id.* at 233, 242.

makeout, sexual intercourse] *against her will?*"²⁰⁷ (1) The male spent a certain amount of money on the female during a date, (2) the female wore sexy clothes, got the male sexually excited, has had sex with other guys, or says "yes" then changes her mind, (3) the couple goes to a place where they are alone and have an opportunity to have sex, (4) he or she is drunk/stoned/high, (5) they have dated for a while, are engaged, or are married, (6) he is turned on and therefore cannot control himself, and (7) the female says "no" and hits or pushes the male.²⁰⁸ In this study, the pre-test indicated that "males were far more likely [than females] to support coercive behavior" in all potential date rape scenarios examined, even after controlling for other factors such as demographics and sexual experience.²⁰⁹ Gender was the most significant variable in this study, and age was the second (the older the subjects, the less they supported sexually coercive behavior).²¹⁰ Race was not reported as one of the factors that explained the variance in sexual coercion attitudes.²¹¹

A few days later, the study participants attended a 45 minute presentation that focused on gender role socialization both generally and as it related to dating and sexual behavior. This presentation emphasized that date rape is a result of gender role socialization practices.²¹² Six weeks later, 118 of the participants were given the same test. The results of this second test demonstrated that many of the stereotypes that participants previously held had been dispelled.²¹³ However, the results also revealed that men still retained ingrained gender stereotypes (as demonstrated by their "sexual coercion attitudes") with regard to two of the scenarios: (1) when the couple goes to a place where they are alone and have an opportunity to have sex, and (2) when they have dated for a while, are engaged, or are married.²¹⁴ The first scenario indicates that even after education, males interpret a woman's willingness to go to an unchaperoned location as an indication that she will have sex.²¹⁵ The second scenario suggests that men still believe that they have a right to sexual access to

207. *Id.* at 236.

208. *Id.*

209. *Id.* at 242.

210. *Id.*

211. Seventy-one percent of the teens studied were White. *Id.* at 234.

212. *Id.*

213. *Id.* at 241.

214. *Id.*

215. *Id.*

women with whom they are in a sexual relationship — a myth supported by the many state laws that allow men to rape their wives.²¹⁶

B. *Factors to Consider in Creating a Date Rape Education Program*

In addition to demonstrating the positive effect of education, data about social attitudes and acceptance of date rape myths is useful in constructing educational programs aimed at changing problematic attitudes. The researchers for the Feltey study discussed above concluded that sexually coercive attitudes promote date rape by perpetuating:

- (a) a lack of communication between the dating partners,
- (b) a lack of respect for females on the part of males,
- (c) peer pressure among males to be sexually active and among females to be more cautious about engaging in sex,
- (d) aggression among males relative to females' attempts to appear passive in order to be defined as feminine, and
- (e) situations that provide opportunities to engage in sexual behavior, such as private settings and an atmosphere of sexual expectation.²¹⁷

Prevention programs must address these problems and demonstrate that people need not abide by the gender and race stereotypes with which they have grown up. The programs must teach people that women are often blamed for rape, especially when they are not conforming to traditional sex roles.²¹⁸ The programs must also teach people that regardless of what has occurred during a sexual encounter, a female has never relinquished her right to withdraw consent. Such beliefs are merely the result of stereotypes and therefore can be dismantled by attacking the stereotypes themselves.²¹⁹

In exploring sex roles and sexual stereotypes, educators must consider the intersectionality of gender and race.²²⁰ Unfortunately, few of the scientific studies I have found in my review of legal and sociological literature focus on the effects of race stereotypes on date rape and how these can be dispelled. There is clearly a need for more studies to fill these gaps. Researchers

216. *Id.*

217. *Id.* at 234.

218. See Szymanski et al., *supra* note 201, at 51.

219. See Feltey et al., *supra* note 201, at 245.

220. See generally Crenshaw, *supra* note 19 (explaining the intersection of gender and race and how this applies to violence against women).

have found that White study participants view Black victims as less truthful and more at fault than White victims.²²¹ The data also reflected a bias against women in interracial dating relationships.²²² Education must focus on the racial diversity of rape victims and defendants and must explicitly consider interracial date rape.

Another factor to consider is age. Thirty-eight percent of the women in the *Ms.* survey who had been raped were raped when between 14 and 17 years of age.²²³ Teens studied by researchers often show rigid adherence to female passivity and male "hypermasculinity," or the notion that males should be dominant in sexual situations.²²⁴ The problem with delaying date rape prevention education until college is that by that point, most people have already developed their beliefs about sex roles.²²⁵ A number of studies have found that by early adolescence, "many sex offenders have already established a pattern of sexually aggressive behavior."²²⁶ Date rape prevention programs should target high school (or junior high school, depending on the school system) students — ideally ninth and tenth grade students.²²⁷

Adolescents face high risk for sexual aggression and coercion, as perpetrators or as victims.²²⁸ In fact, a study showed age as one of the leading explanatory variables for supporting sexual coercion. Male teens studied often approved of coercion or force, especially if the female was in a situation that provided opportunity for sex.²²⁹ Females studied were much less likely to approve of coercion.²³⁰ In fact, the younger students studied were much more likely to approve of coercion when a male spent

221. Willis, *supra* note 8, at 224.

222. *Id.*

223. WARSHAW, *supra* note 6, at 117.

224. *Id.* at 120.

225. See Marroquin, *supra* note 88; Schewe & O'Donohue, *supra* note 14, at 680.

226. Schewe & O'Donohue, *supra* note 14, at 680.

227. I have selected high school students and some junior high students and excluded elementary school students even though some elementary school students might already be sexually active because the issues regarding stereotypes, socialization, and communication might be too advanced for these young students. Also, establishing this type of program in an elementary school would be very difficult for political reasons.

228. See Feltey et al., *supra* note 201, at 232.

229. *Id.* at 242.

230. *Id.*

money on a female, when there is opportunity to rape, and when there is a dating relationship.²³¹

Males must learn that coercion and force are never appropriate means of "convincing" females to engage in sex.²³² A study of adolescent sex offenders found that the main reason for not completing sexual assaults was that the woman resisted. Males must be taught to recognize female unwillingness before the point of resistance.²³³ Similarly, females must be taught the value of resistance and how to be assertive. Both sexes must learn how to improve communication regarding their willingness to have sex. Educators must target teenagers before they have developed sexually aggressive beliefs or have been victimized by men who hold such beliefs.

Another reason to target teenagers is that alcohol and drugs are often present when a date rape occurs among people in this age group.²³⁴ Intoxication may blur a woman's understanding of the situation, and hinder her ability to resist.²³⁵ An intoxicated male may be less aware of whether the female consents and may be more sexually aggressive than when sober.²³⁶ Teenagers are most prone to drink or use drugs irresponsibly as they are less experienced users and may be less aware of the effects. Education can alert teenagers to the dangers of combining drinking, drugs, and dating.

Another issue in creating date rape prevention programs is whether they should be conducted in coeducational or single sex settings. Some scholars argue that date rape prevention programs should not be conducted with males and females together.²³⁷ This argument is based on the fact that men tend to believe in rape myths to a larger extent than women do, and therefore need a program with different aspects emphasized.²³⁸ However, while men may understand less about the dynamics of date rape than women do,²³⁹ there are reasons why a coeduca-

231. *Id.*

232. *See id.* at 247.

233. *See id.*

234. WARSHAW, *supra* note 6, at 44. About 55% of the college women and 75% of the college men involved in date rapes had been drinking or taking drugs shortly before the rape occurred. *Id.*

235. *See id.*

236. *See id.* at 44-45.

237. *See* Schewe & O'Donohue, *supra* note 14, at 679-80 (arguing that more programs should be created exclusively for men).

238. *See* Szymanski et al., *supra* note 201, at 51-52.

239. *See id.* at 55-56.

tional setting may be more effective than a single sex one: (1) Men are less likely to learn about date rape and attempt to change their behavior if they feel they are being attacked personally and are being blamed by women generally or by the program leaders.²⁴⁰ (2) Both women and men believe gender and race stereotypes and date rape myths to some extent, so both groups need education on these topics. A coeducational setting helps males and females listen to their peers and teaches them that socialization by these stereotypes and myths is reality, not just a product of scholarly writing. (3) Date rape is often caused by miscommunication between the genders which can only be dispelled if they learn how to communicate with each other.²⁴¹ A helpful way to teach people how to communicate is to have them act out different scenarios and practice how to ask for consent and how to say "no." The facilitators should have males and females discuss why communication is difficult so that the attendees can learn from each other, rather than from a person whom they do not consider their peer. Ideally, date rape prevention programs should be facilitated by both a man and a woman so that the males and the females in the group feel more comfortable. Also, if the group is facilitated by a male alone, the females might feel targeted or blamed, just as males might feel targeted by a female facilitator.

An important objective of date rape education should be to promote both societal and interpersonal equality. The program should help teens recognize when their general experiences are being shaped by stereotypes and why these stereotypes prevent gender and racial equality. The program should also help teens recognize how stereotypes may affect the dynamics of their personal relationships, how this might not allow them to treat a person with respect for that person's interests, and how they can improve their behavior.²⁴² Also, both men and women should learn about the power dynamics that often are present in rape.

Prevention programs also must focus on the motivations behind rape: anger toward the victim and a sense of power. Men must be taught that they need not be sexually dominant and controlling in order to be powerful and must find prosocial ways to

240. My experience in leading the STAR training sessions has made this reason clear.

241. See Bell et al., *supra* note 7, at 1730.

242. See Feltey et al., *supra* note 201, at 246.

feel powerful.²⁴³ This lesson should be taught in a way such that male participants will not feel that they are being judged as potential rapists. However, as some men do rape, and we cannot know which men are prone to rape, we must educate all men. Programs must aim to reduce men's anger toward women or to teach them to deal with it more appropriately.²⁴⁴ Men who desire to inflict pain on other people must learn how to eliminate this tendency.²⁴⁵ To improve interpersonal equality, education should heighten male sensitivity to females' feelings and teach women not to deny their feelings and attitudes about sexuality.²⁴⁶

Any educational program would need to appeal to participants' emotions and not just focus on facts. Behavior caused by misconceived ideas about sex roles and a lack of communication can be changed if participants are willing to understand their mistaken beliefs and how to improve communication. College freshmen who were found to be at high risk for committing rape were more likely to change their attitudes and behaviors in a prosocial direction after viewing a rape empathy video than after viewing a video about rape facts.²⁴⁷ Convicted sex offenders have participated in relapse prevention programs designed to make the participant empathize with rape victims.²⁴⁸ By taking on the victim's perspective, offenders experience the victim's thoughts and feelings of pain and violation caused by the abuse. Role-playing is useful, as are videos of actors portraying victims and discussing the victims' feelings. Such techniques could easily be used in education programs in high schools.

To be most effective, all high school students should receive date rape prevention education.²⁴⁹ One difficulty with providing such education to all high school students is the logistical problem of implementing education programs in a significant number of schools. When one looks at the overall picture of implementing a nation-wide program, it might appear daunting. However,

243. See Schewe & O'Donohue, *supra* note 14, at 669.

244. See *id.*

245. See *id.*

246. See Feltey et al., *supra* note 201, at 245, 247.

247. Schewe & O'Donohue, *supra* note 14, at 671.

248. *Id.* (stating that "[t]he cognitive component involves the ability to take on the role or perspective of another person, while the affective component involves an active appreciation or experience of another person's feelings." (citing A.P. GOLDSTEIN & G.Y. MICHAELS, *EMPATHY: DEVELOPMENT, TRAINING, AND CONSEQUENCES* (1985))).

249. The significance of providing this educational program for this age group is discussed earlier in this section.

from the perspective of the individual school district, implementation is manageable. A considerable social benefit can be reaped from only a few hours of each student's time.²⁵⁰ Furthermore, the magnitude of the endeavor can be reduced by training volunteer students to be peer educators.²⁵¹ Some states have legislation which requires that all public elementary, junior high, and senior high schools teaching sex education include information about date rape and how to prevent it.²⁵² If every state enacted such legislation, and every state required sex education in schools with a rape prevention education component, every student would be educated about date rape prevention.

Critics of date rape prevention programs argue that acknowledging that women are socialized to be passive is harmful and suggests that women cannot make their own decisions.²⁵³ Though passivity is not an excuse for saying "yes" when one means "no," it certainly is a reality that must be dealt with in date rape prevention educational programs. Recognition of this myth does not victimize women, as the critics argue. Instead, it merely acknowledges that not all women know how to assert their will. Educational programs that help both men and women understand this can empower women and improve communication.

C. *Stopping Teen Acquaintance Rape: The Elements of a High School Date Rape Prevention Program*

In the fall of 1991, I founded Stopping Teen Acquaintance Rape ("STAR"), a date rape prevention program at my former high school, the Maret School,²⁵⁴ in Washington, D.C. Much of

250. My program was implemented during two, one-hour sessions.

251. Another difficult task is evaluating what types of educational programs are effective. Collecting accurate data about the prevalence of date rape already is difficult. Assessing whether programs cause behavioral change would be even more difficult. However, considering the extent to which date rape is the product of misunderstandings and social attitudes about sexuality, some researchers have argued that the absence of these problems would reduce the incidence of date rape. See Szymanski et al., *supra* note 201, at 54-55.

252. See Carin C. Azarcon, *Education; Course Content of Sex Education*, 25 PAC. L.J. 635, 636 (1994) (legislative review); see, e.g., CAL. EDUC. CODE § 51553(b)(10) (amended by ch. 328) (West 1996); 105 ILL. ANN. STAT. § 27-9.1(c)(8) (West 1993).

253. See Roiphe, *supra* note 4, at 68, 101; Abrams, *supra* note 171, at 332.

254. The Maret School is a private school with about 500 students, kindergarten through 12th grade, and about 260 students in the high school, grades 9 through 12. Implementing a similar program in a public school system might be more complicated and might require approval from local government officials.

the content of my program was adopted from a date rape prevention program at the University of Pennsylvania run by Susan Villari, a health educator. In this section, I describe the program in order to give readers a concrete example of the ideas in this Essay and to provide a starting point for people interested in creating their own educational programs.²⁵⁵

Sally Collier, an administrator at the Maret school, agreed to let me conduct this program at Maret, and excused all of the high school students from class for two, one-hour education sessions. The administration also agreed to discuss the program with the teachers and to have resources available for rape victims who requested help or guidance. My sister, Melissa Gill, who was at that time a senior at Maret, helped found this program by coordinating the students interested in being peer educators and working with another student, Gordon Lewis, the faculty sponsor, Mark Cave, and the school administration. Melissa and the faculty sponsor selected twenty-four students as peer educators ("PEs"), twelve females and twelve males. The educators were juniors and seniors at Maret. I decided to have peers educate the rest of the Maret students because the message is more powerful when it is conveyed by a peer who faces similar issues and complications as the participants. Also, using twenty-four peer educators, one male and one female for each group, allowed the workshop to be conducted in small groups of about twenty students. This small size allowed for more interaction and discussion.

Before training the PEs, I sent them several chapters from Robin Warshaw's book, *I Never Called it Rape*,²⁵⁶ as background reading. These readings familiarized the PEs with the definition of date rape,²⁵⁷ the statistics of date rape among teen-agers,²⁵⁸ why men and women are silent victims and rarely report rape, rape trauma syndrome, the role of socialization, steps to use to prevent rape, and how to help a rape survivor. I also gave the PEs a list of statistics that they could refer to when conducting workshops.

255. I recognize that this program is not an ideal program, especially considering the fact that at the time, I had not done the research which I subsequently have compiled for this paper.

256. WARSHAW, *supra* note 6.

257. See definition *supra* Part I.

258. Thirty-eight percent of the college females in a *Ms.* magazine study who had been raped were raped between the ages of 14 and 17. WARSHAW, *supra* note 6, at 117.

Susan Villari and I designed the one-hour workshop that the STAR PEs would then give to the entire student body. We based the workshop on a format the University of Pennsylvania program used for college students. We used the same workshop to train the PEs that eventually would be presented to the entire student body, but we allotted twice as much time for the workshop given at the PEs' training.

Below, I detail the training of the PEs, which consisted of an extended version of the STAR workshop and a supplemental session which allowed us to elaborate on ideas discussed in the workshop. The extended workshop covered the same material that the PEs covered in their workshops with the Maret students. The only difference was that I allowed more time for the PEs' workshop so that the PEs could ask questions.

Then, after the PEs' training and several weeks before the STAR program sessions for the entire student body, students posted flyers around the school with information about date rape to raise interest in the STAR program. For the first STAR program session, a male police officer addressed the entire student body. He discussed date rape, the definition of date rape, and the legal consequences. The students seemed to react positively to his presentation. Also, having a police officer make a presentation a week before the workshops introduced the students to the subject of date rape and gave the subject more legitimacy. For the second STAR session, the student body separated into smaller groups and the PEs conducted the workshop for each group.

1. STAR Workshop

The first half of the PE training was the same as the student body STAR workshop that would later be led by the PEs. When I conducted the PE training, I took them through the entire student body STAR workshop but allotted twice as much time (two hours) in order to allow for a more thorough discussion of the issues raised by the workshop.

a) STAR introductions and ground rules

I introduced myself and Susan Villari and then discussed the form of the program. I laid out the ground rules: one person may talk at a time, everything discussed will be kept confidential, and people should talk in the first person rather than generalize. I stressed that if anyone becomes upset, they should feel comforta-

ble leaving the room for a while. I also emphasized that the goal of the program is to prevent date rape, not to label or embarrass anyone. I explained that communication is the key to prevention. I reminded the students that men also get raped, though much less frequently than women, and that rapes occur in both homosexual and heterosexual relationships. I then passed out index cards and asked the PEs to write down any questions they had about date rape on the cards. After a few minutes, I collected the cards.

b) Role playing

I asked for a male and a female to volunteer. They read a role play that demonstrated the misunderstandings often involved in date rape. The female played a role that gave a victim's perspective of a date that led to date rape, and the male read the part of a perpetrator who did not understand why the victim was upset. During this time, I read the index cards and selected some questions to address.

c) Role play discussion

I asked the students to give their impressions of what had happened in the role play and what had gone wrong in the scenario. I asked them if they viewed this incident as date rape, and why or why not. I attempted to steer the conversation to ensure that the following topics were addressed:

- (1) the frequency of date rape,
- (2) the reasons why rape and sexual assault occur,
- (3) the reasons why teenagers are at very high risk,
- (4) dating rituals,
- (5) the role of drugs and alcohol,
- (6) the role of communication,
- (7) the definition of rape,
- (8) the fact that a rape victim is never at fault,
- (9) the statistic that 10% of rape victims are male and 98% of these men were raped by heterosexual men, and
- (10) the idea that rape is an act of violence.²⁵⁹

259. In consideration of the statistics I have subsequently uncovered in my research, I would have added the discussion of the facts that most rapes are intraracial and that Black men are more frequently punished for rape than White men.

d) Tie-in discussion and discussion of date rape myths

In this section of the program, I continued the discussion of the scenario, attempting to show how rape fits into a larger social picture (i.e., the role of stereotypes and myths). At this point, we discussed the index card questions that had not yet been addressed. In order to dispel some of the date rape myths, I mentioned four of the most prevalent myths:

- (1) Women should make a conscious effort not to wear provocative clothing or act in ways to turn men on in order to prevent rape.
- (2) It is unfair for a woman to change her mind right before and/or during sex.
- (3) The male is not at fault if he is drunk when he forces the female to have sex.
- (4) Forced sex is not rape if you have had sex before.

I then asked the group to focus on the first two myths and to form two groups according to whether they agreed or disagreed with the myth.²⁶⁰ I facilitated one group, and Susan Villari facilitated the other. For about twenty minutes we asked the students to explain their opinions and attempted to help the PEs understand how their opinions are affected by socialization and stereotypes. At the end of the twenty minutes, a PE from each group summarized that group's discussion.

In this discussion session, the facilitator should steer the conversation so that it covers the gender and race stereotypes explained in Part II. The facilitator should explain that people who are socialized to believe these stereotypes may be more likely to believe date rape myths. The facilitator should point out when a participant's impressions reflect their adherence to stereotypes.

e) Prevention/empowering tips

For this section of the workshop, Susan Villari and I asked the group to suggest ways to prevent rape. We also discussed how to empower women to say either "yes" or "no" to sex. We steered the discussion to cover issues such as improving communication in sexual situations, the need to keep an eye on friends when at a bar or party, and the importance of both men and women considering their actions before entering a sexual relation-

260. I picked these two myths because they seem to be the most prevalent and because there was not time to discuss all of the myths listed. Even if one cannot discuss more than two myths, it is helpful to list the others so that people are aware of them.

ship. We also focused on the facts that rape is not always preventable and that a victim is never at fault, emphasizing that the victim must not be held responsible for the perpetrator's behavior.

During this session, we handed out a sheet with the following tips, which we then discussed.

For Women:

- Set limits and be assertive about those limits. It is your body and no one has the right to force you to do anything you don't want to do. If someone tries to, you don't have to be polite. Stand up for yourself and your rights. Communicate about where you want to go and what you want to do.
- Be aware that the way you dress and act can be misinterpreted. Obviously, you can wear whatever you want to . . . but be aware how people may interpret (or misinterpret) your nonverbal communication.
- Trust your gut feeling. If you feel like you are in a dangerous situation, or that you are being pressured to do something you don't want to do — listen to this feeling! Respond by speaking up and removing yourself from the dangerous situation.
- Be aware that alcohol and drugs are often related to date rape. They compromise your ability to make responsible decisions and make your decisions heard.
- It's not your fault! No one deserves to be raped. No matter how a person behaves, s/he do not deserve to have their body violated. "No" means "no!"

For Men:

- It is never okay to force sex on a person . . . even if the person says "no" and you think they mean "yes," even if the person "teases" you, dresses provocatively, or "leads you on."
- If you are getting a double message from someone, speak up and clarify the message.
- Do not make assumptions. Do not assume that the way a person is dressed or acts is an invitation for sexual advances. Do not assume that if a person wants some sexual contact s/he want to have sexual intercourse.
- Consent means the ability to make a decision. Having sex with someone who is mentally or physically incapable of giving consent is rape. If the person has passed out, or is not in control of themselves, having sex with s/he is a crime.
- No one ever deserves to be raped . . . no matter what, "no" means "no!"

f) How to help a friend who has been raped or assaulted

I explained to the PEs that it is crucial that they be supportive of anyone who confides in them because it is difficult for rape victims to share their experiences. PEs should listen and acknowledge how difficult it must be for the victim to share the experience. They should tell the victim that he or she is not alone, that many other people have had similar experiences, and that many people are available to counsel him or her such as teachers, counselors, and rape crisis centers. The PEs should also stress that the victim is not at fault in any way — he or she cannot be held responsible for someone else's actions. I also explained to the PEs that they, or the person they are training in their workshops, may also need to consult with a teacher or counselor after helping the victim.

g) Workshop wrap-up

I told the PEs that this is where the regular STAR session would end. I explained to the PEs that at this point, they should thank the students for their attention, explain that they will remain for a few minutes for questions, and hand out a list of teachers and counselors that students can also speak with about date rape.

2. Supplemental Session for Peer Educators

We then continued with the supplemental session of the PE training. The goal of this supplemental session was to ensure that the PEs had a more complete understanding of the issues surrounding date rape.

a) Continued discussion of date rape myths

At this point we addressed the two remaining myths. I again stressed the importance that the PEs understand the roles of socialization and myths. Next, I divided the group by gender and they discussed what each gender expects from a date.²⁶¹ We then reconvened and each group summarized its discussion. We discussed how the males' expectations differed from those of the females and how this difference could lead to misunderstandings.

261. Beginning this discussion in gender-divided groups facilitates devising a list of gender-specific opinions, which emphasizes the gender differences.

b) The definition of date rape

We then discussed the definition of date rape which I had given in the beginning of the workshop. We addressed why it is more broad or narrow than people might expect. This discussion is necessary to ensure that the PEs thoroughly understand what constitutes date rape and why it is defined that way.

c) Assimilation of stereotypes

Again, I split the group according to gender, and they discussed behaviors of the opposite sex which make them uncomfortable.²⁶² We then listed terms used to describe sexually active males and females. We discussed whether it is acceptable for a woman to say "yes" to sex. We also discussed some terminology used to objectify sex, such as, "I scored tonight," and "I had her."

I reconvened the group and compared the lists. The PEs were amazed at the results: all of the terms for sexually active females were negative and all of the terms for sexually active males were positive. I then explained how these issues tie into socialization: that women are often taught to be polite and passive while men are taught to be aggressive. I further explained that certain phrases, such as "I'd like to make it with her," embrace the stereotype that women are passive objects to be "had." Once I explained that such phrases can lead to stereotypes about women and sex, the students seemed to recognize the implications of seemingly innocuous phrases and how such terminology could perpetuate a propensity to rape. I also discussed how drugs and alcohol can make people more prone to act according to their stereotypical gender roles.

d) Improving communication

Susan Villari led role-playing exercises in which we gave the PEs roles described on cards so that no one knew in advance who was playing what role. Using the cards, the students practiced saying "no" in potentially coercive or uncomfortable sexual situations. Susan Villari explained why some people do not say "no" even if they want to. She also discussed the importance of, and the confusion caused by, non-verbal communication. The exercises were designed to teach teens how to say "no" explicitly.

262. This is another point where splitting the group by gender can make discussions more frank and also clarify the point that gender differences exist.

e) Helping date rape survivors

We divided the group into pairs in order to discuss how they handle crisis situations. This discussion illustrated to the PEs how difficult handling a crisis can be. It also helped them understand why teens are often silent victims. We explained to the PEs that in order to seem more approachable, they should not stand together at the end of the workshop. We also discussed the appropriate assurances and information about additional resources which should be given to a survivor.

f) Workshop dynamics

Lastly, we discussed the mechanics of the actual STAR program session, giving the PEs an opportunity to ask questions about how to actually conduct the workshop. During this part of the training session, the PEs worked with a partner. Each pair was comprised of a male and a female student.

g) Conclusion of PEs' training

At this point, we concluded the PE training. A few weeks later, the PEs conducted STAR workshops with the Maret students.

D. Evaluation of the STAR Program

The PE training appeared to be effective because after its conclusion, all of the STAR peer educators seemed to understand why stereotypes and myths perpetuate the problem of date rape. By targeting all of the students at the high school, the STAR sessions raised awareness of the date rape problem. Many of the girls appreciated this program and recognized that they were not at fault for being raped or assaulted. Several girls came forward and reported incidences of date rape. Some of the boys, however, felt threatened by the program and teased some of the PEs for participating. Some of the Maret students, both male and female, felt that the program exaggerated the problem of date rape.

Unfortunately, due to a lack of financial resources, I was unable to conduct statistical research evaluating whether the STAR program succeeded in changing behavior. My goal in creating the program was not to conduct research, but to address the fact that female students at Maret had been date raped. A way to

build on this project would be to conduct scientific statistical evaluations of any programs implemented in the future.

VI. CONCLUSION

The world I asked you to imagine, in which gender and race stereotypes have been dispelled, can be achieved through educational programs such as the STAR program. Previous attempts to prevent rape and improve the reporting and prosecution of this crime have failed to achieve their desired effects. This lack of success results from the fact that date rape is often caused by the adoption of gender and race stereotypes and date rape myths by the perpetrator of the crime, officials in the criminal justice system, and jurors. However, educational programs in which teenagers are educated about date rape prevention and sex role stereotypes can help to decrease the number of date rapes by improving communication between the genders. An additional benefit of shattering stereotypes is that sexism also may decrease. Once society reaches this point, lawmakers will be better able to create laws that are free from myths, prosecutors will be better equipped to prosecute rapists, and juries will be more disposed to convict rapists.

Providing educational programs such as STAR on a nationwide basis can achieve the goal of preventing date rape. Continued research aimed at refining date rape educational programs, however, is needed. This research should focus on determining which techniques are most effective in dispelling both gender and race stereotypes and date rape myths. As conclusions from the research become available, the structure and content of date rape educational programs should be redesigned accordingly.