LEGAL DISADVANTAGES CREATED BY WOMEN’S SOCIALIZED GENDER ROLES
AND PREVENTION-BASED REMEDIES

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“The moment that I step outside
So many reasons
For me to run and hide
I can’t do the little things
I hold so dear
’Cause it’s all those little things
That I fear”¹

“How are we fallen! fallen by mistaken rules,
And Education’s more than Nature’s fools;
Debarred from all improvements of the mind,
And to be dull, expected and designed;
And if some would soar above the rest,
With warmer fancy, and ambition pressed,
So strong the opposing faction still appears,
The hopes to thrive can ne’er outweigh the fears.”²

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Despite great advances over the last thirty years, women in this country still encounter legal disadvantages as compared to men with similar social standing. These disadvantages can be traced to a number of causes, many of them rooted in the specific gender roles encouraged in women at an early age. This paper will examine factors that contribute to these traditional gender characteristics and the legal problems which may be caused or exacerbated by them. Special attention will be given to the laws and jurisprudence regarding sexual assault because of the close relationship between questions of consent and gender roles. It will then suggest several remedies designed to mitigate, counteract, and prevent the disadvantages caused by these traditional gender roles.

I. INTRODUCTION.

Our cultural heritage encourages the idea that women are inherently weaker than men and that women may glean more of an advantage by playing to this idea than from being competitive. This concept creates a tension between the American promise of unlimited opportunity for all and the limitations of low expectations bred by socialization. These limitations are not necessarily debilitating, as many American women, including Hillary Clinton, Mia Hamm, and Maya Angelou, have overcome them, achieving prominence and power on the national stage. Nevertheless, they create additional obstacles that women must face.

We learn specific sex roles growing up that exacerbate biological differences and encourage men to be aggressive and assertive while teaching women that their proper place is to be submissive and withdrawn. “For centuries girls were taught that they had to commit a kind of psychic suicide. They were required to efface any quality of self that was rebellious or enterprising or merely curious and imaginative.” On the other hand, boys have been encouraged to be aggressive and independent, and to explore the boundaries of their lives by taking chances. This socialization process may create women who are timid and passive at the least; at its worst it may create a sense of “learned helplessness” as seen in a particularly acute form in the Battered Woman Syndrome.

Some of these engrained attitudes are being challenged as our society recognizes that women need to be just as strong and independent as men in the future. Unfortunately, years of socialization are not undone overnight and though we may be in a society that is changing, the myths and misconceptions of the past have left us with women who often view themselves as helpless and dependent upon men. These learned attitudes not
only affect us as social creatures, they also affect our laws and the way that men and women are treated differently in the eyes of the law.

II. STARTING BEHIND THE EIGHT BALL: SOCIALIZED GENDER ROLES

It’s not a pretty picture. Indeed, it’s not meant to be, since “aggression is one way that we culturally tell men and women apart” and in a rape culture, prettiness is part of the problem. Women are not expected to be able to fight back because they are not expected to be able to fight at all. In self defense courses, “women get nurtured into aggressivity.” “Nice girls” become “mean women.”

Nice girls and mean women are the polar opposites in our learned perception of women. Nice girls are seen as those who fulfill the stereotypical roles: they are passive, non-confrontational, withdrawn, and measure success by the relationships they form rather than by their achievements. Mean women are those who step outside of their prescribed roles and take on the more masculine traits, such as assertiveness and aggression, or those who take on more public roles in their lives.

The natural question leading from these perceived sex roles is whether they spring from an inherent weakness in women or are they the products of socialization? Those who claim gender roles are born in nature see them as immutable and the natural position of women. This singular view is often adopted in a self-serving manner by those who wish to maintain the status quo. The binary opposite of this perspective is that we learn such gender traits through socialization processes. Though authorities are split on this question, this comment will proceed on the grounds that gender roles are heavily influenced by socialization and can be modified without attempting to decide the role biology plays in the process.

But what does any of this have to do with legal issues? Assumptions about the differences between men and women are imbedded in both the law itself and in the way that the courts interpret the law. For the last thirty to forty years, feminists, legal scholars, judges, and legislators have been tinkering with the laws regarding rape and sexual assault in an attempt to compensate for differences between men and women. These efforts have resulted in minimal change as shown later in this paper. Perhaps, instead of concentrating all of our
resources on changing the statutory structure under which these offenses are tried, we would be better served by addressing socialized gender roles and creating an equal playing field from the start.23

The Process of Socialization

What is socialization? Simply put, socialization is the process by which the general beliefs and canons of acceptable social behavior of a society are passed on to its individual members.24 Socialization occurs in two different ways: through direct teaching of rules, beliefs and attitudes and also through indirect teaching.25 Indirect teaching occurs by observing the way other groups are treated, verbal and nonverbal approval or disapproval of certain activities, and through observing social intercourse.26 Each individual is both a receptor and also a transmitter of culture so that each person both learns her culture and also may change it.27 The structure of any given society imposes limitations and conditions on individuals and this also contributes to the socialization of these individuals.28 One of the tenets of traditional sociology was that scientists could uncover the social causes of certain beliefs and practices.29 As sociology has developed, sociologists have realized that the “laws” they deal with are more akin to generalizations and that sociology may never have the precision of other sciences.30 Despite this limitation, few aspects of the individual’s social and interior life are not affected by her surrounding culture.31 Understanding socialization is a matter of understanding the factors that help shape who we are as individuals.32

How does the socialization of girls affect whether they grow up with a gender-based disadvantage? And what does that have to do with the law? Socialization helps shape a person’s beliefs, actions, knowledge, social caste, and expectations.33 One of the major parts of our social identity is the roles and expectations projected upon us by our sexual identity.34 Despite changes in the acceptance of women who transcend traditional gender roles, Americans still generally raise their children in the more traditional roles.35 Thus, girls frequently are raised in a socialized role to be more passive and less assertive than boys, putting them at a competitive disadvantage.36

Socializing Girls into Gender-Roles

“Doctor: What are you doing here, honey? You’re not even old enough to know how bad life gets.
Cecilia Lisbon: Obviously, Doctor, you’ve never been a thirteen year old girl.

In *Meeting at the Crossroads*, Carol Gilligan and Lyn Mikel Brown first identified the crucible of girls’ socialization as adolescence, a time when many girls experience a disconnection from their selves. Lyn Mikel Brown followed this book with *Raising Their Voices*, in which she emphasized the tenacity and anger in girls this age as they fight against the process. Mary Pipher continued the examination of female adolescence in her book *Reviving Ophelia*. Pipher describes it this way, “Something dramatic happens to girls in early adolescence. Just as planes and ships disappear mysteriously in to the Bermuda Triangle, so do the selves of girls go down in droves.” As this period appears to be the time when girls go from being unconcerned about gender roles to being shackled by them, much attention should be paid to the cause and effects of this process.

Does this “Bermuda Triangle” effect really exist? Contrasting the attitudes and achievements of girls at the age of eight and nine to girls in their mid-teens supports the theory. Girls in elementary school tend to do better than boys in both courses that require verbal skill as well as in courses in science and math. By the time they reach junior high school they tend to lose that advantage. Preadolescent girls do not necessarily follow any sex roles; they can be creative, assertive, and adventurous and do not often require therapy. However, once they reach adolescence many of these traits tend to disappear.

The American Association of University Women (AAUW) surveyed children in this age range in 1990 and found that preadolescent girls were assertive and confident and that 60% of them were “happy the way I am” (compared to 67% of boys). By the time they reached sixteen, just 29% of the girls were satisfied with themselves (compared to 50% of boys). As Pipher describes it:

In early adolescence, studies show that girls’ IQ scores drop and their math and science scores plummet. They lose their resiliency and optimism and become less curious and inclined to take risks. They lose their assertive, energetic and “tomboyish” personalities and become more deferential, self-critical and depressed.
What causes this effect? Researchers have posited a number of different factors. A confluence of three major changes contributes to the effect:

1. The biological and emotional developments that occur at this time;
2. The strong effect of culture; and
3. The conflicting desires to distance herself from her parents and lean on them for support. Additionally, girls must contend with pressures to shape themselves and conform to the current perception of what the perfect girl is like.

Socializing Factors that Come to Bear on Adolescent Girls

What are the sources of this pressure to conform? The pressures come from multiple directions and can be seen from parents, teachers, and peers (both other girls and boys). The pressures from parents often stem from concern for their daughter’s safety. When confronted with a daughter’s emerging sexuality, parents often become concerned and protective, which may lead to a daughter’s perception that she is responsible for anything bad that happens to her. The role of “woman as homemaker” is also encouraged: a study showed that in households where the woman works, daughters do more than three times as many household chores as do boys.

Schools encourage sex-roles by treating girls and boys differently in the classroom, as can be seen in a 1992 AAUW study. Pipher sums up the study’s finding in this way:

In classes, boys are twice as likely to be seen as role models, five times as likely to receive teachers’ attention and twelve times as likely to speak up in class. In textbooks, one-seventh of all illustrations of children are of girls...[b]oys tend to be portrayed as clever, brave, creative and resourceful, while girls are depicted as kind, dependent and docile. Girls read six times as many biographies of males as of females.

Other studies have found that teachers tend to ask boys questions with a higher degree of difficulty, questions that are more complex and open-ended. Pipher goes on to point out that teachers tend to reinforce boys on substantive school performance, while they are more likely to reinforce girls on
proper classroom comportment; this further reinforces the idea that girls are supposed to be nice and pretty.\textsuperscript{59}

Girls themselves sometimes create tremendous pressure to conform to these cultural ideals.\textsuperscript{60} It is often seen when, to take the attention away from her own failings, one girl makes another girl a scapegoat.\textsuperscript{61} Rachel Simmons examines the complexity of girls’ aggression toward other girls in Odd Girl Out, defining it as an “alternative aggression” expressed through relationship, rather than the direct aggression often seen in boys.\textsuperscript{62} She argues this sort of aggression is terribly damaging because of girls’ socialized tendency to rely on relationships; it becomes a sort of social blackmail where if the girl chooses not to conform she will lose her social network of friends.\textsuperscript{63}

What are the end results of this socialization process? Pipher sums it up by saying, “America today is a girl-destroying place. Everywhere girls are encouraged to sacrifice their true selves.”\textsuperscript{64} Simmons says that girls “[a]re forced into abrupt disconnection with themselves. Their truthful voices, their fearless capacity to speak their minds, their fierce appetite for food and play and truth, will no longer be tolerated.”\textsuperscript{65} The process tends to create women who are passive, dependent, timid and withdrawn.\textsuperscript{66}

The socialization process also tends to create women with a poor self-image and low self-esteem, which leaves women vulnerable to a host of problems.\textsuperscript{67} These problems include many that have a direct bearing on legal issues, as women may be: more likely to enter abusive relationships, less likely to report or press charges for abuse in these relationships or in the workplace, and more likely to become a victim of domestic violence, date rape or sexual harassment.\textsuperscript{68} Pipher puts it well when she says, “Many girls lose contact with their true selves, and when they do, they become extraordinarily vulnerable to a culture that is all too happy to use them for its purposes.”\textsuperscript{69}

The socialization of girls at the present time comes on the heels of a long history of men discriminating against women. It is important to understand this history of excluding women from positions of power in considering the problems of the present.

The Historical Role of Women

History is part of the cultural matrix that informs our gender roles so a brief look at the history of women’s rights is in order.\textsuperscript{70} As the law of most American jurisdictions is directly derived from the English common law, it is informative to start by looking at married women under common law.\textsuperscript{71}
The concept of marital unity was central to the English common law’s treatment of married women. William Blackstone laid out the idea in stark terms in his commentaries. He wrote that husband and wife become one person when they are married and that the wife’s legal being is forfeited during the marriage. In Blackstone’s understanding, women could not sue under their own name, and their only legal recourses were through their husband as their legal identity was subsumed under his person. The concept of marital unity was largely imported into American jurisdictions as a piece, imposing the limitations of the English common law on American women. As imported into Colonial America, this meant that married women (who at that time worked in many different businesses) found that any money they made became their husband’s property and they could not contract in their own names.

In the mid 19th-century, many states passed marital property statutes that allowed women to separately own property that they brought into the marriage or that was given to them by their husbands. However, whether these reforms actually improved women’s lot is very much open to question. This was at least partly because of the limited interpretation of the acts by the courts. In her book, *In the Eyes of the Law*, Laura Basch argues that these judicial interpretations stripped much of the power from the statutes and actually reduced women’s legal status for decades.

Another informative historical vantage point is the view offered in the two documents often seen as the philosophical and structural underpinnings of the United States, the Declaration of Independence and the U.S. Constitution.

As many as half the people were not even considered by the Founding Fathers as among Bailyn’s “contending powers” in society. They were not mentioned in the Declaration of Independence, they were absent in the Constitution, they were invisible in the new political democracy. They were the women of early America.

The second paragraph of the Declaration of Independence begins, “We hold these truths to be self-evident, that all men are created equal....” Whether the word “men” included women in the minds of the men who wrote that document is not in question; they would not have considered the possibility relevant. Likewise, women were not included in the signers of the Declaration of Independence, adding their
symbolic silence to their lack of voice in forming the document. Interestingly, almost a decade later Elizabeth Cady Stanton made her case for a parallel revolution in women’s rights by echoing the form of the Declaration of Independence in The Declaration of Sentiments.

Similarly, the U.S. Constitution did not include women as drafted and there were no women included among the Framers who signed the Constitution. As Robert A Goldwin puts it, “Not only are women not mentioned in the original Constitution, there is no provision anywhere that applies to women as a distinct group. To the best of my knowledge, there is no evidence that the subject of women was ever mentioned in the Constitutional Convention.” At that time, women could not vote so they also played no part in the ratification of the document. When Abigail Adams entreated John Adams to “remember the ladies” during the Second Continental Congress, he apparently replied, “I cannot but laugh.” As the new nation moved into the 19th century, women remained politically voiceless.

Women’s lack of political voice is most starkly seen in the fact that they did not have the right to vote. The first state to grant women the right to vote for Congress and the President was Wyoming in 1890. Nine other states had extended women the right to vote by 1914, but it was not until 1920 that the 19th Amendment passed nationalizing women’s suffrage. It would also seem that the education of women was not a high priority: when measured in 1750, around 90% of white men were literate, whereas only 40% of the women were literate.

Similarly, women’s rights to engage in professions such as medicine and law were severely limited in the 19th-century. In writing for the Court in U.S. v. Virginia, Justice Ginsburg listed the self-fulfilling prophecies which were routinely used to bar women’s access to medical school, law school and military academies during this time. Even as late as 1872, the Supreme Court of the United States affirmed the state of Illinois’ right to bar a woman from joining the Illinois bar. Only slightly more than a century separates us from the systematic exclusion of women from the professions.

Great progress has been made in women’s rights, particularly in the past 100 years, though this does not mean that anything approaching equality of the sexes has been achieved. Married women’s rights to property have greatly increased in the last 100 years and the pace of reform was especially great in the 1960’s and 1970’s. Powerful examples of changes in women’s role and power from the past to the present can be seen in their position in marriage, their ability
to own property, and their capacity to contract. Nevertheless, history is part of the cultural milieu that affects the socialization process and the history of the United States shows that women were largely excluded during the colonial period and the first one hundred-plus years of nationhood. These facts are not lost on girls as they read history and as they form their self-identity.

Women’s lack of power relative to men is not only the stuff of history but it may also be seen in the present. The next section will address some of the continuing inequalities faced by women under the law, many of which are affected by their socialization.

III. THE INTERACTION OF SOCIALIZATION WITH THE LEGAL SYSTEM

The gender role created for girls by our culture and in our classrooms directly creates specific disadvantages and conflicting standards for women before the law. These effects may be seen in cases involving sexual assault, sexual harassment, domestic violence and in the treatment of women in the military. Perhaps the most direct evidence of the effect of gender roles in legal actions can be seen in the treatment of sexual assault in the statutes and in the courts.

Sexual Assault and Gender Roles

According to 2002 statistics compiled by the FBI, the numbers of forcible rapes in this country has increased for the third year in a row, compared to the decreasing overall rate of violent crime for the same period. This recent upward trend in the numbers of rapes indicates that sexual assault continues to be a problem in this country, despite years of reforms in the laws regarding rape and sexual assault.

The common law required women to actively and aggressively resist rape in order to recognize their lack of consent, defining rape as “unlawful carnal knowledge of a woman by force and against her will.” Lack of consent was the cornerstone element of common law rape prosecutions; if the state could not prove that the woman had not consented to the carnal knowledge they could not prove their case for rape. Often the prosecution had to go so far as to prove that the woman had exercised the “utmost resistance” against the rapist in order to protect her virtue. The case law that relies upon the common law definition of rape is often dramatic in articulating the extent the requirement for resistance is relied upon.
Susan Estrich references the case of Brown v. State, a Wisconsin Supreme Court wherein a conviction for rape was overturned. The court stated that the victim must use every physical means at her disposal to resist penetration and this resistance must continue until consummation of the offense. The Wisconsin court’s statement of the law was consistent with the law of that time and the commentary on the subject by Lord Hale, which urged wariness in such cases because of the ease of false accusations.

Another case referenced by Estrich as an example of the common law approach to rape is, People v. Dohring. In this case, the Court of Appeals of New York held that in order to find a man guilty of rape the prosecution had to show that if the woman was competent and not overwhelmed by numbers or in reasonable fear of death, she resisted “until exhausted or overpowered.” The Court of Appeals upheld the lower court’s decision in this case, holding that the question of whether the woman had adequately resisted was one for the jury. Estrich points out that at this time men created the standard calling for resistance, oversaw its application in the appellate courts and most likely prosecuted and defended the cases as well. She also points out that at a time when chastity was the ideal it might have been more logical to presume a lack of consent by the victim rather than presuming consent.

It is clear that the requirement for such a level of resistance is inconsistent with gender roles that encourage subordination, passiveness and lack of assertion. Not only that, but as these traditional gender roles extend into the arena of sexual relations, further confusion and ambiguity is created. According to Susan Brownmiller in her classic book on the subject of rape, some of the lack of clarity in rape laws is rooted in the traditional sexual roles of man as aggressor and woman as passive recipient. MacKinnon takes this analysis a step further and argues that the constructs of gender roles and power inequities allow men to define as normal sex what women may view as, at the least unwanted and at the worst coercive and forced sex. Susan Estrich lays out the dichotomy well when she writes, “A system of law which at that time treated women, in matters ranging from ownership of property to the pursuit of the professions to participation in society, as passive and powerless, nonetheless demanded that in matters of sex they be strong and aggressive and powerful.” But that was the old common law, before the reform of the rape laws that occurred in every state by the middle of the 1980’s. Surely such a direct
conflict between gender roles and the expectations of resistance under the law do not still exist?

The rape law reformers sought to change rape law in two distinct ways: they wanted to symbolically reinforce women’s autonomy and they wanted to increase the reporting, prosecution and conviction of rapes. The main approach of the reformers was to focus on the definition and application of the elements of “lack of consent” and “force.” The drafters of the Model Penal Code set out to remedy the flaws they saw in the common law and create a definition of rape that did not include lack of female consent as an element, but would focus on the force employed by the perpetrator. However, even in those jurisdictions following the Model Penal Code, the question of consent may still be raised in the process of showing that the sexual intercourse was not forced on the woman, so is the Model Penal Code much of an improvement?

The Notes to the Model Penal Code section on sexual offenses cites to Commonwealth v. Karkaria in reference to lack of consent to rape. The Pennsylvania rape statute itself refers to the Model Penal Code and the notes to that statute refer to the similarity between it and the Model Penal Code version. Like the Model Penal Code, there is no mention of a lack of consent element in the statute. In Commonwealth v. Karkaria, the defendant engaged in sexual encounters with the alleged victim when he was left to baby-sit her, her brother and step-brothers. The court stated that “The essence of the criminal act of rape is involuntary submission to sexual intercourse.” Thus it would appear that the question of consent or voluntary submission is still a part of the Model Penal Code understanding of rape.

As a further example, California is also a state that has ostensibly adopted a definition of rape based on the actions of the perpetrator rather than the consent or lack of consent of the victim. However, when the courts apply the statute they continue to use consent as an issue to address. In People v. John Z. the California Supreme Court accepted the case in order to resolve a conflict between the California Courts of Appeal. The Fifth District Court of Appeals of California held that if the female consents to intercourse at the time of penetration, that act of intercourse cannot be construed as rape no matter if the female withdraws consent during the act. By contrast, the First District Court of Appeals of California held that regardless of initial consent, the act of rape occurs if the victim withdraws consent in the middle of the act and the perpetrator forces the victim to continue. The California
Supreme Court resolved the question according to the reasoning in People v. Roundtree, holding that continued intercourse in the face of withdrawn consent was still rape. Regardless of the wisdom of that particular holding, the cases cited show that even when consent is not a part of the statutory definition of rape, the courts continue to reference it in their decisions.

The Model Penal Code changes were followed in many jurisdictions and only a minority followed an approach that still required strong resistance from the victim. Subsequently, though consent still remained an element of rape or sexual assault, many of these states redefined consent as referring to words or actions that express agreement to sexual contact and physical resistance was not necessarily required.

Does this shift in focus to the perpetrator’s actions rather than the victim’s resistance alleviate the problems related to gender roles? The unique nature of sex-related crimes makes the use of the force requirement problematic as a focus point for enforcement. Non-criminal sex involves physical contact, unlike other offenses where simple contact is part of the differentiation between legal and illegal activity; this creates a difficult issue for the fact-finder to decide. When is sexual contact legal and when does it cross the line, become force and therefore satisfy an element of sexual assault? This question is made more difficult by considerations of gender roles and how they relate to roles in sex-play. Prof. Lynne Henderson writes:

A second influential cultural belief is that female submission to male sexual dominance or aggression is natural, romantic, and erotic. Related to this is the eroticization of passivity, power, and violence presented in cultural images ranging from advertisements, to television, to soft-core pornography, to snuff films....Because these stories of morality and sexuality provide the interpretive lens through which rape is viewed by men, women, prosecutors, judges, and juries, most men who rape women are never held legally responsible for their conduct, and most women who are raped have no chance at successful legal recourse.

A final aspect of rape cases that can tend to create disadvantages for women has been the coverage of rape cases in the press. Some members of the media at the time of former heavyweight champion Mike Tyson’s trial presented his accuser as
"...lying, vengeful, and greedy."  As part of his analysis of the case, Andrew E. Taslitz catalogs the list of items presented to reinforce Tyson’s accuser’s consent: she went to a stranger’s room late at night, she had a financial incentive to lie, Tyson stated she was not upset until he “brushed her off” after the fact, she continued to compete in the pageant after the assault, etc. Even after the jury convicted Tyson of rape, some commentators continued to claim Tyson’s innocence, proclaim the jury was wrong in its decision, and claim that the victim of the crime was really the guilty party.

The same drama can be seen in the current action against NBA standout Kobe Bryant, even in the pretrial stages. Bryant’s defense went through a list of items similar to those quoted above from the Tyson prosecution, including allegations that the victim did not seem to be upset after the alleged attack, evidence of previous sexual encounters in the days leading up to the alleged attack, and an allegation that the underpants she wore to her physical examination contained semen and pubic hair from a man other than Bryant. Regardless of the outcome of the Bryant trial, public release of such details of attacks on the alleged victim’s credibility does several things:

1. It creates a public referendum that focuses on the guilt of the victim rather than the alleged guilt of the defendant;
2. It focuses attention on the victim’s chastity or lack thereof, rather than on the actions of the defendant; and
3. It feeds into the perception that many women have that accusing a man of rape can be as humiliating as the rape itself, that she carries guilt because of what happened to her, and that any accusations she may make against a man are destined to be met with skepticism and doubt.

The socialization of women in their early years to be passive and subordinate ill-prepares them for resisting and saying “no” to rape. Despite this fact, the statutes and the judicial applications of those statutes in court demand clear lack of consent for successful prosecution. Additionally, the media and our society create barriers to bringing charges in the first place because of the humiliation and character assassination that often occurs in a contested sexual assault trial. It is entirely possible that this confluence of factors plays into the apparent low levels of reporting of rapes and sexual assaults compared to the actual numbers of these offenses.
What does Rape Really Look Like?

After speaking of rape in fairly generalized terms up to this point, it might be valuable to address what constitutes a typical rape scenario. What picture comes into your head when you think of rape? Peg Strain describes the myth of the stereotypical rape scenario in this manner:

Our misunderstanding of sexual violence includes an inaccurate image of a rape situation. We internalize a scenario that takes place outside somewhere “dangerous,” in a secluded park or walking along a deserted street (in a “bad” neighborhood), most often at night, and probably in a poor section of a big city. We may picture a woman alone in her home, assaulted by a dangerous stranger. We assume the presence of a weapon, a brutal physical attack, the threat of death. The onset of the situation is “blitz;” it appears to come out of nowhere. The level of brutality is extreme. The possibility of homicide is inherent to the situation.\textsuperscript{157}

This mythical rape scenario is categorically belied by the statistics. Different studies show this in different ways, including:

1. Two-thirds of sexual assault and rape victims in the 18-29 age range were committed by perpetrators who had prior relationships with the victim;\textsuperscript{158}
2. In sexual victimization of college women, nine out of ten victims knew their assailant;\textsuperscript{159}
3. A study of 2002 showed that better than six out of ten sexual assaults were by perpetrators known to the victim.\textsuperscript{160}

Only around 7% of reported sexual assaults and rapes involved a weapon in 2002.\textsuperscript{161} According to Department of Justice statistics, 5% of victims of a completed rape reported serious injury (other than the rape itself), 3% of victims of attempted rape reported serious injury, and only 1% of victims of sexual assault reported serious injury.\textsuperscript{162} These statistics indicate that the far more likely rape scenario is one where the victim knows the perpetrator; the assault will probably occur in familiar surroundings, there probably will not be an element of brutality, it most likely will not involve a weapon, and the chances of serious injury are relatively low. “The reality of sexual violence is that as children, as adolescents, and as
adults, women are most likely to be victimized by their protectors, families, and intimate partners.”

These differences between the rape myths and the reality of what a rape is more likely to look like are important to keep in mind while examining the role of consent in defining a rape. In the myth scenario, lack of consent is relatively easy to establish as the woman is obviously in a situation not of her choosing and she is being violently forced in an ambush-type attack. However, in the more common scenario the question of consent becomes cloudier as the perpetrator is a friend or a family member or perhaps someone she has had former sexual relations with (a boyfriend, a husband, or an ex-husband). In the myth-busting scenario, the expectation of assertive behavior indicating a lack of consent by the victim runs into direct conflict with the traditional gender roles which encourage submission and acquiescence in relationships. To better understand the relationship between sexual assault crimes and socialized gender roles, it is imperative to understand what a sexual assault usually looks like and the dynamics that hold sway in the more typical assault. It is also important to keep in mind that consent or lack of consent may not be easy to establish and that may be more difficult to do so the closer the relationship is between the perpetrator and the victim.

Acquaintance Rape

Acquaintance rape is not a separate category of rape; it is simply rape or sexual assault that is committed by someone the victim already knows. As noted above, most instances where women are victimized occur within the context of a relationship at the hands of people who are known by the victim. The prevalence of acquaintance rape in comparison to stranger rape is so pointed that it would appear that more than the acts of individuals are the cause; the cultural construct must play a part in the phenomenon as well. Thus, in the more specialized cases of acquaintance rape social factors are again a part of the problem. “Many of our society’s rape-supportive attitudes and myths about rape are rooted in beliefs about appropriate behavior for women.” Warshaw and Parrot’s argument runs along this line:

- Women are socialized to be passive and nice, to sacrifice their needs for the needs of others;
- Men are socialized to be more assertive and goal-oriented;
- The conflict of these two socialized “tracks” occurs when men want sex and women don’t want it; the men have a built-
in sense of sexual entitlement as well as a belief in their superior place over women;

• This sense of entitlement and superiority feeds into a continuum of sexual aggression against women they know, the higher end of the continuum being date and acquaintance rapes.\textsuperscript{167}

They go further to relate this to the “battle of the sexes,”\textsuperscript{168} the adversarial process of dates and social interactions where men single-mindedly pursue sex and women either passively agree or use strategies to avoid sex.\textsuperscript{169}

This should not be taken to mean that men always want sex and that women never want it; reality is never so polarized and people do not tend to conform to such neat stereotypes. However, the point is well taken that there is often an undercurrent of sexual tension in male/female relationships and too often relationships are dysfunctional in this manner, playing out the “stereotypic sexual scripts.”\textsuperscript{170} This dichotomy between the respective gender roles plays directly into the typical dynamic of an acquaintance rape.

Acquaintance rape can be broken down into a three-step process, intrusion, desensitization, and isolation.\textsuperscript{171} The first step, intrusion, is similar to an army probing the weaknesses of an enemy’s front-lines as the aggressor, through language and non-sexual touching, intrudes on the personal space of the target.\textsuperscript{172} The second step, desensitization, is a continuation of intrusion that makes the target comfortable with the aggressor being in her personal space and thereby quiets the danger signals that such intrusions often cause.\textsuperscript{173} These first two steps are the precursors to the eventual rape and simply soften up the target’s defenses; the rape itself cannot occur without isolation.\textsuperscript{174} Isolation is the third step, whereby the aggressor gains the time and space necessary to complete the process.\textsuperscript{175} “Once he gets her into an isolated place that is his turf and where he is in control, defending herself will be much more difficult for her.”\textsuperscript{176}

It is very important to note, at this point, the similarities between the above scenario and a garden variety seduction. The difference is that one is a progression toward a consensual sexual encounter and the other is a progression toward rape. This dramatically crystallizes the difficulty with prosecuting rape, because depending on the narrative you create you can either be telling the story of a Don Juan or the story of a rapist. This is also why acquaintance rape is so problematic because the courts must balance the nuances that occur in human relationships. Some of the problems associated
with bringing acquaintance rapes to court may be seen in the following two cases, State v. Thompson,¹⁷⁷ and State v. Schaim.¹⁷⁸

State v. Thompson is a case where the principal and basketball coach of a Montana high school was charged with sexual intercourse without consent (he was also charged with sexual assault, but this is not addressed in this case).¹⁷⁹ The state argued the principal was guilty because he used his position and threatened the victim would not graduate unless she performed oral sexual intercourse on him.¹⁸⁰ The Montana Supreme Court held that the statutory definition of “without consent” was not broad enough to include such psychological coercion and therefore affirmed the lower court’s dismissal of the charges.¹⁸¹ A year later, the Montana legislature amended the statutes to include such coercion in its definition of “without consent.”¹⁸²

State v. Thompson highlights several problems the courts run into in dealing with acquaintance rape. First of all, the common law and statutes do not always provide the framework for conviction, even of lesser offenses than rape, when relationships and authority are used to perpetrate a crime.¹⁸³ Secondly, acquaintance rape can occur within many types of relationships, not just dating ones. In this case, it was a high school principal, but it could just as easily have been a pastor or priest, an adviser, a parent, a relative or other person “who occupied a position of authority over the young person.”¹⁸⁴

Some of the same problems can be seen in the Ohio Supreme Court decision, State v. Schaim.¹⁸⁵ In this case, the defendant (the victim’s adoptive father) was convicted in the lower courts of two counts of forcible rape, but the Supreme Court affirmed the appeals court ruling that the state had not shown the force needed to uphold forcible rape.¹⁸⁶ The victim alleged that the defendant had subjected her to sexual abuse from the time she was eleven and that even though he didn’t force her on the occasions in question, she felt like she would be punished if she didn’t comply.¹⁸⁷ The Ohio Supreme Court specifically held that the coercion inherent in the parent-child relationship no longer holds for a 20-year old and that the pattern of incest did not substitute for the force requirement in the statute.¹⁸⁸ This appears to still be the state of the law in Ohio.¹⁸⁹

State v. Schaim confirms the points made above in reference to State v. Thompson, and further shows that not all states have moved to recognize psychological coercion within relationships as probative of the use of force. Further, the facts of the case conform to the three-step model of acquaintance rape—the adopted father began his advances by massaging his adopted
daughter (intrusion), he desensitized her by continuing this activity (desensitization), and when the opportunity arose, he completed the rape on many occasions, although he was on trial for only two of the occurrences (isolation). Another similarity in all of these cases is that all three indicate a necessity to charge lesser offenses than sexual assault. One can posit that the problematic nature of acquaintance rape leads to prosecutors having to charge lesser crimes rather than pressing for conviction on sexual assault.

It should also be clear from this case that courts have continual difficulty dealing with the subtleties of consent and lack of consent, especially in cases dealing with perpetrators who have a relationship (particularly in an authoritative capacity) with the victim. Likewise, the constraints placed on women by their gender roles make it more difficult for them to resist or clearly indicate lack of consent in such situations. When you are taught to be submissive and obedient to authority figures and those you have relationships, it becomes more difficult to say no when they force you to do something you do not want to do. Saying “no” may be even more difficult when it is within a marriage.

Marital Rape

Perhaps the most problematic example of women’s legal position regarding sexual assault is when the assault occurs within the bounds of marriage. Continuing through the 1970’s, the traditional view held that a wife had no legal recourse when she was raped by her husband. For instance, the Texas laws on rape used to refer to “sexual intercourse with a female not his wife without the female’s consent.” The Texas law was not fully changed until 1997 when all language referring to a spousal exception for rape was removed. In fact, nationally the marital rape exception has remained on the books in all 50 states until the last twenty years. It is a significant problem, as polling data indicates that up to fourteen percent of the women interviewed had been raped by their spouse with 85% of the respondents raped more than once.

The exemption was justified in the past by three major concepts: the implied consent of the spouse by virtue of the marriage, the unity of person in the marriage, and by claiming that since the marriage sanctions sexual relations, sexual relations within the marriage are thereby legal. The more modern arguments for some continued marital exemption are: maintaining the privacy of the marriage, preserving the hope of
reconciliation in the marriage, and concerns over the reliability of the evidence given against the spouse.\textsuperscript{198}

Marital rape is particularly troublesome when considered in the light of our discussion of traditional gender roles. The nature of traditional marriage, as discussed supra, has been a source and a solidifier of these gender roles wherein the man is viewed as the head of the family and the wife his subordinate. Because of this, the issue of determining the wife’s consent becomes even more difficult because of this traditional marital sanction. Many states still retain some form of the exemption, which exists in two major forms: a limited exemption for marriages where sexual assault between cohabiting spouses is treated differently than other sexual assaults and full exemption unless the spouses are separated and living apart.\textsuperscript{199}

Even as the law continues to develop in this area, the problems created by traditional gender roles in conflict with the required showing of lack of consent in a challenged sexual assault prosecution will keep this an area of the law where women are at a disadvantage.

However, not only do women experience bias and legal difficulties because of the dynamics of the sexual assault itself, there are indications of continuing bias against women in the courts on the basis of their gender.

\textit{Gender Bias in the Texas Courts}

A final example of how women are at a disadvantage before the law in sexual assault cases can be seen in \textit{The Gender Bias Task Force of Texas Final Report}.\textsuperscript{200} The information in this report on sexual assault was compiled from testimony at public hearings, surveys on judicial and attorney attitudes, and surveys of rape crisis centers throughout Texas.\textsuperscript{201}

The report documents perceived biases in the Texas legal system. For instance, 31% of male attorneys and 58% of female attorneys believe that law-enforcement officers give alleged sexual assault victims less credibility than alleged victims of other kinds of assault.\textsuperscript{202} 10% of male judges and 31% of female judges held the same opinion.\textsuperscript{203} On the issue of credibility, the report found that 81% of respondents to the rape crisis center surveys believed that a primary reason that victims do not report sexual assaults is a fear that the police will not believe them; 73% of the respondents believed that fear the police would blame the victim was a primary reason for not reporting sexual assaults.\textsuperscript{204} The same survey found that 80% of the respondents reported that police in the jurisdictions served by their center sometimes required polygraph tests of rape or
sexual assault victims.\textsuperscript{205} Research cited in the report found that sexual assault victims are required to take polygraph tests more than victims of any other type of crime victim.\textsuperscript{206}

The report continues in this vein regarding sexual assault and also covers other areas of gender bias including: courtroom interactions, conservatorship decisions, divorce, division of property, child support, domestic violence, sexual discrimination and harassment, and so on.\textsuperscript{207} It should be noted that such reports have been created in thirty-three states and for every federal circuit.\textsuperscript{208}

It is difficult to draw conclusions on causation from this study as it did not specifically address the sources of the continued gender bias in the Texas courts. One can speculate that a possible source is a perceived lack of credibility of women based on stereotypical ideas. More importantly, if there is an institutionalized bias against the claims and veracity of women, that creates another obstacle to keep women from presenting their claims to the court. This is especially problematic when considering that women are socialized to be less assertive, yet they often have to overcome more barriers to achieve justice.

Outside of the realm of sexual assault, there are other areas where women must overcome distinct disadvantages. Often these areas are also affected by the traditional gender roles that women are socialized into.

\textit{Sexual Harassment}

Some of the same problems observed above may be found in the way the courts address the problem of sexual harassment in the workplace. Catharine MacKinnon defines sexual harassment as "the unwanted imposition of sexual requirements in the context of a relationship of unequal power. Central to the concept is the use of power derived from one social sphere to level benefits or impose deprivations in another."\textsuperscript{209} In other words, sexual harassment is a problem because coworkers use power they have because of their position at work or the perceived inequity of power between men and women and use that power to their benefit. This inequitable use of power may create one of two responses in women: it may create a fear of sexual coercion or it may create or reinforce a perception in the woman that she is not an equal coworker but merely employed because of her sexual characteristics.\textsuperscript{210}

One of the major Supreme Court cases in which the Court defined its approach to dealing with sexual harassment issues was Meritor Savings Bank v. Vinson,\textsuperscript{211} a Title VII sexual
harassment suit brought against a bank. Justice Rehnquist wrote, “The correct inquiry is whether respondent by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary.” This single sentence encapsulates some of the good and the bad of sexual harassment litigation. On the positive side, the Court is not saying that participation in sexual intercourse with the harasser is dispositive of the matter. However, the Court is saying that the victim must make a clear indication that the advances were not welcome, which leads back to problems created by socialization. As in the question of consent in sexual assault cases, for sexual harassment to be actionable a woman must be clear and confrontational in declining the advances. This requirement goes against the grain of the socialization of women to be passive and subordinate.

The facts surrounding Anita Hill’s alleged experience of sexual harassment may be informative to show how traditional gender roles inhibit a woman from bringing a sexual harassment claim. Ms. Hill was described by one of her high school teachers as being, “[O]ne of the two smartest kids I’ve taught in the last thirty years.” She was the valedictorian of her high school, attended Oklahoma State University on a full scholarship, and took her law degree at Yale Law School under a full Earl Warren Scholarship. By these accounts it would appear that Ms. Hill could be considered a banner example of an intelligent and well-educated woman. The other side of her character was a woman who preferred silence to confrontation, was reluctant to offend others, and “her ambivalent response[s] to difficult situations meant that she often sent mixed signals, making misunderstandings likely.” In other words, when it came to confrontations or difficult situations, she was well-schooled in the expected gender roles of women and tended to acquiesce rather than stir up trouble.

Without judging the veracity of her later claims, consider how she allegedly reacted to interactions with her direct supervisor’s unwanted attention. When he consistently asked her out socially while at work, she demurred, blaming it on work rather than on not being attracted to him. When he later discussed pornography, oral sex, and other topics that made her uncomfortable, rather than expressing her disgust she would say she didn’t want to talk about such things or that “everyone is interested in different things.”

If we apply Justice Rehnquist’s requirement that the respondent should clearly indicate the unwelcome nature of the
advances, Ms. Hill’s case would be shaky at best. The shy
demurrers and polite evasions of a proper young lady are simply
not direct enough to pass the Rehnquist test. It would appear
that a sterner response is called for, something more direct and
forceful. And it is because of this that even the laws that are
meant to protect women from harassment in the workplace are
insufficient when a woman conforms to her expected gender role.
Ironically Angela Wright, a coworker of Hill’s who allegedly
received similar attention from Clarence Thomas, viewed his
advances differently. She was an outspoken woman who had been
deflecting unwanted advances from men for years and did not
even view Thomas’s advances as harassment because she did not
feel intimidated by him. So, perhaps those women who break
out of the stereotypical molding of gender roles may be
paradoxically less affected by harassment when it occurs.

Another problem facing women in the United States is the
general problem of domestic violence.

Domestic Violence

Domestic violence in the United States is a huge problem. The Surgeon General has found domestic violence causes more
injuries than any other single cause to women in the U.S. Every fifteen seconds, somewhere in the United States, a woman is beaten by her husband, ex-husband
or boyfriend. Half of all married women will be
beaten at least once by their spouses. Women are in
nine times more danger of a violent attack in their
own home than on the streets. Between 2,000 and 4,000
women die each year of abuse.

The statistics are staggering. Though it is beyond the scope of
this paper to deal with its causes and manifestations,
nevertheless, by painting with somewhat broader strokes than the
above sections we can address some of the systemic problems and
attitudes that contribute to domestic violence and see how they
fit into a discussion on gender roles.

The epidemic of domestic violence is built upon, at least
in part, the social and economic advantages that men have
relative to women in their relationships. This broad statement
is supported by social trends that predict wife beating, including factors such as men having control over more economic
resources and men having greater control over family decision-

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characteristics of passivity and subordination by women can be seen as part of a large societal problem. According to Linda Gordon, not only are such attitudes predictive in a society, but the violence itself “…encourages timidity, fatalism, [and] manipulativeness in women…[it] reinforces all women’s subordination and all men’s dominance.”

In response to the women’s movement in the nineteenth and twentieth centuries, women have tried to gain greater equality with their husbands in marriages. The legal changes instituted in response to these movements have had positive effects, though equality has not been achieved. More than just addressing the status inequities reflected in measured income and relative wealth, the government should also address the social conditions that help to perpetuate these inequities.

In the past thirty years, the recognition of domestic violence has increased dramatically, as have legislative and private efforts to address the problem. For instance, in the United States there were no battered women shelters in 1970 but by 1987 there were over 700. Part of this explosion has been underwritten by private women’s groups. But the government has also been active in addressing the problem at both the national and local level. One example is the Violence Against Women Acts, which have funded such diverse efforts as women’s legal assistance, women’s shelters, transitional housing, counselors and hotlines, and various studies on the problem. Likewise, individual states have supported similar remedies. Unfortunately, the majority of efforts, whether public or private, have been focused on dealing with the effects of domestic violence rather than addressing the causes of the problem. In order to fully address this problem, the government and individuals must address the causes and not just the results of domestic violence; one manner they can do so is by addressing the problems created by socializing girls in traditional gender roles in their early years.

The Glass Ceiling and Women in the Military

Two final topics to touch on are the related issues of the ongoing glass ceiling limiting women in the business world and the limitations placed on women in the military. In both of these areas women experience limitations placed on them by their early socialization and expectations related to traditional gender roles. In the case of the military, there are specific rules in place that affect women’s ability to gain experience and advancement in addition to these cultural limitations.
The ongoing “glass ceiling” effect limiting women’s advancement in business has been described as emanating from a Catch-22 uniquely experienced by women. On the one hand, women who jettison their traditional gender roles and act in a more “masculine” manner are often derided. On the other hand, women who remain more feminine are also criticized as being ineffective because of their being more concerned about others and speaking indirectly instead of forcefully. Thus, whether women play the game and try to behave as men do in the business world or whether they remain within the culturally defined parameters of the feminine, they may be kept from advancing on the basis of their behavior.

Similarly, women in the military may be limited in their ability to advance because of the Catch-22 of needing to be more assertive and dominant to advance and yet not advancing because they are not feminine enough. The continuing enforcement of regulations banning women from certain job categories (combat related) on the basis of their gender has the effect of limiting women’s experience and their ability to advance in rank. In addition, the continuing use of the “Don’t Ask, Don’t Tell” policy creates a further difficulty, possibly reinforcing traditional ideas of what jobs are proper for a woman to hold, while treating women that pursue nontraditional jobs as lesbians. There are also indications that “Don’t Ask, Don’t Tell” is disproportionately invoked against women, that sexual harassment of those women who do not conform to traditional stereotypes may result in investigations of the women rather than the harassers, and that the policy may be used offensively by harassers to give their victims bad evaluations. Finally, women in the military do not have recourse to Title VII remedies that could give them some legal relief to the disparities they face.

Women in business face a Catch-22, which may keep them from advancing because of the dissonance between “femininity” and the behavior required to succeed in business. Women in the military face a similar Catch-22 with further issues that make their situation more difficult. It should be clear that women in the military and women in business face disadvantages, some with legal components, which are at least in part based upon traditional notions of gender roles.

Despite legislative and judicial changes improving women’s position in the past thirty-plus years, women still remain at a disadvantage as compared to men, legally, economically and socially. Many of these disadvantages can be tied directly to early socialization and the traditional gender roles that women

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are still encouraged to embody. How can these disadvantages be eliminated or reduced? The next section will look at some possible remedies.

IV. Remedies: An Ounce of Prevention is Worth a Pound of Cure

The majority of steps taken thus far to address gender inequities have been reactionary, dealing with effects rather than attacking causes. Some feminists writing on the subject claim that nothing short of dismantling the status quo with its inherent bias in favor of men will suffice in order to destroy the conditions that allow for the continued subordination of women. Without deciding the necessity of such an overthrow of the present system, there are steps that can be taken to change attitudes on gender roles and help reduce their negative effects.

Self-defense and Assertiveness Training

Two young girls were being followed by two men in a car. When one of the men got out of the car to lure them in, they began to beat him up. The other attacker jumped out of the car to help his buddy escape. The girls’ parents, both karate teachers, had taught them some good blows and kicks.

The traditional advice to women has been that when attacked by a rapist, do not resist or you will anger the attacker and he will hurt you worse than he would have. This caution is belied by studies that indicate that forceful physical and verbal resistance to an attack increases the possibility of avoidance of the rape without increasing the chances of physical injury. These statistics hold true despite the type of attacker involved, even those involving the sadistic rapist.

The conclusion that can be drawn from such studies is that teaching self-defense skills to women and enabling them to resist effectively would be an effective and straightforward means to decrease the number of successful rapes. There is some concern that emphasizing the possibility of avoiding rape and teaching of such skills could return the burden to women to show that they forcefully resisted the rapist. Such concerns may be well-placed, but it would seem that the benefits of such education would outweigh these concerns and that continued vigilance on the legal front to head off any such trends would lessen such dangers.
What should such a self-defense program look like that could be integrated into the public schools? “Self-defense” refers to a number of different programs, some more and some less suited to the purposes discussed here. Programs range from fitness-oriented programs like Tae Bo to specialized courses designed to teach physical skills to be used against an attacker. The best sort of program that could be added to secondary education is more holistic, combining elements of physical defense with assertiveness training. “The skill set for effective Self-defense is the skill set for self-determination. Students participate to learn to recognize, create, and become more skillful with enforcing personal choice, regardless of obstacles.” Such a holistic approach has the added advantage of being a curriculum that crosses over between physical education, sex education and other areas of high school education.

The program developed by Mona Lisa’s Sword is a good example of what such a holistic approach looks like. This program provides accurate information to participants about violence against women, dispels the myths surrounding rape, teaches participants to be aware of danger signals and to trust their instincts when facing abusive situations, and teaches participants ways to manage risks that are both long-term and short-term in nature. Central to the program’s effectiveness is the concept that violence occurs on a continuum and that specific strategies are effective in dealing with violence at different levels of inappropriate behavior. The program teaches “Non-aggressive Techniques to establish and enforce personal space,” skills for de-escalating confrontations, as well as teaching the physical self-defense skills needed for confrontations on the high end of the violence continuum.

Such a program could serve as an effective remedy on two fronts: specifically providing girls and women the tools with which to protect themselves from violence and aggression and more generally helping to counteract socializing influences that teach girls to be passive, subordinate and non-assertive. For instance, as applied to the three stages of acquaintance rape discussed supra, such training helps girls identify when their personal boundaries are being violated. This helps to defuse a potential acquaintance rape or other abusive aggression at the first stage. Self-defense is not simply a set of physical skills one learns, but also a mental set that includes the refusal to accept dominance and violence at the hands of others and to prevent physical conflict in its infancy. “[T]he problem is that so few of us understand the concept of assertion
as a middle-ground of appropriate, effective, self-determined expression...that reinforces the rights of the individual, without infringing on the rights of others."279

Implementation of such a program could begin on a limited basis in order to find the most effective manner of including it in school curriculums. And, as such holistic programs are not universally available, combinations of programs could be used with separate components focused on physical training and assertiveness training. It cannot be stressed enough that using such a program does not imply that the victims are to blame in a violent encounter. Instead, the programs acknowledge that violence against women exists and supply the tools to would-be victims to either prevent violent encounters or to be able to walk away from violent encounters when they occur. Teaching self-defense with an assertiveness component in secondary schools may help to counteract socialization of girls in harmful gender roles, negate some of the effects of this socialization and also help equip girls to fight against assaults when they do occur.

But socialization does not only affect girls as they grow up; it’s also an influence on boys’ beliefs and behaviors. Addressing the process of socializing boys into masculinity is at the heart of the next remedy.

**Changing Boys’ Attitudes**

Perhaps the most important facet of changing the disadvantages experienced by women is to change the way men and boys view women.280 The National Violence Prevention Fund, in their report “Making Prevention the Priority”281 made a call for an emphasis on preventing violence and cited education of young people, particularly boys, as a key to prevention.282 The report decries the lack of such education programs, encourages legislators to support prevention programs, and points out that “....School- and community-based programs and teacher training have proved effective in teaching young people to avoid relationship violence.”283

Just as girls are socialized at an early age into negative gender roles, boys are presented with “....numerous conflicting and some harmful messages....about what constitutes “being a man” in a relationship.284 Boys need to be taught that abuse and violence against women is wrong,285 and “....educational programs [should] focus on attitude change....to communicate that violence should not be an accepted element of interpersonal relationships.”286 Boys should be taught to reject tolerance for sexual assault and violence against women and to reject rape
myths in order to decrease victim-blaming in sexual assaults.\textsuperscript{287} The overarching goal of such a prevention program should be “....[to] introduce new values, thinking processes, and relationship skills to particular population groups that are incompatible with violence and that promote healthy, non-violent relationships.”\textsuperscript{288}

What should such a program look like? One approach would be single-sex classes of boys which examine the norms of what constitutes masculinity and gives boys the opportunity to discuss and challenge such norms.\textsuperscript{289} One such program implemented such a model with the following features:

1. Focused on human rights values, including children’s and women’s rights;
2. Drew on more neutral discourse from anti-bullying and relationships education;
3. Expanded the neutral discourse to include discussions on gender violence and abuses of power;
4. Directly confronted topics such as “sexual abuse, forced sex, rape and pornography in the context of gendered stereotypes”;
5. Encouraged consideration of alternatives to violence in relationships, specifically relationships built around equality;
6. Gave teachers guidance on how to lead such discussions.\textsuperscript{290}

Another program, implemented and studied in Canada, featured a one-half day workshop “featuring 22 topics such as date rape, male issues in relationships, and anger control.”\textsuperscript{291} The study showed the participants increased in knowledge of issues and showed positive changes in attitudes.\textsuperscript{292}

These and similar programs should be further studied and implemented in order to glean data on their effectiveness. This will help advocates and educators find better ways of targeting such efforts and begin the process of making violence prevention an important component of the response to violence against women. By changing boys’ attitudes towards gender roles and violence against women we can help prevent such violence in the future.

Addressing the substance of educational curriculums may not be the only way to correct the problems posed by socializing children into specific gender roles. Another remedy involves looking at the structure of our schools.
In a single-sex school, girls are free to be themselves. They are not being squeezed. They grow in confidence as people and the world become[sic] open to them.”

A final remedy to be explored is the possibility of single sex education. Though coeducation is the dominant model in the United States, single sex schools still exist both in the United States and elsewhere. One study in particular found that not only was coeducation harmful for academics and social adjustment, but also found that the benefits of single-sex education were more pronounced in girls than in boys. According to this study, "There were no achievement areas in which coeducational-school students surpassed their single-sex-school counterparts at either sophomore or senior year." This same study found positive gains on girls' educational aspirations, they were “considerably less likely to evidence stereotyped sex role attitudes” and this effect continued to increase from their sophomore to senior years. It would appear that such schools could prove beneficial in helping to change traditional thinking about girls and gender roles.

But there is opposition to such schools, largely coming from more liberal organizations. The ACLU has filed suits claiming such schools are discriminatory, the National Organization for Women argues it is bad for boys' and girls' social development by not allowing them to learn to work together, and the American Association of University Women argues such education is never equal.

Not only is there opposition by such organizations, the Supreme Court decision in U.S. v. Virginia may have placed limitations on public funding of single-sex institutions. However, that decision was largely based on the finding that justifications for the single-sex environment at VMI were largely ad hoc and the institution was not specifically designed to create diversity in the state's educational offerings. It should also be noted that the Court's holdings in Grutter v. Bollinger showed that even strict scrutiny is not necessarily lethal to a classification if the state can show it is "narrowly tailored to further compelling governmental interests." Single-sex schools that are specifically maintained in order to garner the benefits of single-sex education and create diverse educational offerings, while maintaining coeducational options, would not appear to run afoul of these cases.
setting. In a single-sex girls’ school the girls would be leaders at the school and would not feel compelled to let the boys take leadership positions. The benefits of single-sex education tend to be focused on those traditionally disadvantaged, including females. It also removes any pressure for girls to under-perform in front of the boys. A less drastic and possibly easier way to achieve these benefits would be single-sex classrooms, which has also proven to be beneficial to girls. Further study on the possibilities of single-sex schools and classrooms would be appropriate before large scale implementation, but the possible beneficial effect for girls is promising.

V. CONCLUSION

Are women’s roles defined by their nature? Are their gender roles set in stone from birth untouched by their environment or their upbringing? Of course not; no one’s life is set in stone from the moment they enter the world. Are women completely defined by their environment? Are they just as thoroughly defined by circumstances surrounding their lives untouched by the realities of their birth? Of course not; women are different from men and they are more than just the sum total of the effects of their environment. The answer is that women, as all human beings, are partly defined by their birth, partly defined by their environment and partly defined by the choices that they make.

To ensure that every woman has the utmost chance to reach her highest potential, we have to ensure that their environment frees them rather than constrains them and gives them the power to choose and to be. They must be unfettered by negative stereotypes and freed from the straightjacket of gender roles that encourage them to be subordinate, passive and less than men. To allow them to be truly equal in the eyes of the law and in the eyes of their culture, we have to ensure them every opportunity, every encouragement to develop those talents they have been endowed with by their birth. The remedies suggested in this paper are just some simple examples of steps that can be taken toward achieving these goals.

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1 No Doubt, Just a Girl (Interscope Records 1995).
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3 See, Joanne Entwistle, Sex/Gender, in CORE SOCIOLOGICAL DICHOTOMIES 151 (Chris Jenks ed., 1998). Some feminists have maintained a strict separation between sex and gender, sex referring to strictly biological differences and gender referring to culture-influenced differences. This paper deals exclusively with gender role differentiation.

4 See Anna Quindlan, Still Needing the F Word, Newsweek, Oct. 20, 2003, at 74. Citing similar reports from Duke and Princeton, Ms. Quindlan writes that, “...the world hasn’t changed as much as we like to tell ourselves,” and that, “Being ‘cute trumps being smart for women in the social environment.”

5 See Anna Quindlan, Still Needing the F Word, Newsweek, Oct. 20, 2003, at 74. Again, Ms. Quindlan writes, “While young women are given the impression that all doors are open, all boundaries down, empirical evidence is to the contrary.”

6 See OLA W. BARNETT & ALYCE D. LAVIOLETTE, IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY 3 (Sage Publications 1993).


8 See OLA W. BARNETT & ALYCE D. LAVIOLETTE, IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY 3 (Sage Publications 1993).

9 See OLA W. BARNETT & ALYCE D. LAVIOLETTE, IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY 91 (Sage Publications 1993).


13 See OLA W. BARNETT & ALYCE D. LAVIOLETTE, IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY 3 (Sage Publications 1993). Barnett includes a quote from the actress Marlo Thomas, “A man has to be Joe McCarthy to be called ruthless. All a woman has to do is put you on hold.”

14 See OLA W. BARNETT & ALYCE D. LAVIOLETTE, IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY 3 (Sage Publications 1993).

15 See SHERYL J. GRANA, WOMEN AND (IN)JUSTICE 8 (2002).

16 See, SHERYL J. GRANA, WOMEN AND (IN)JUSTICE 8 (2002).

For instance, between the end of the 19th century and 1985, the percent of all college degrees held by women had increased from 19% to 49%. Similar increases occurred in graduate degrees and the total percentage of women in collegiate populations. This could not have occurred outside of a change in perception of women from incapable of the rigors of study to able scholars. It’s highly unlikely that the biology of women changed in this period; the simplest explanation is that changes in attitudes made this increase possible.

One example of this is in the way the legal system deals with rape. “Indeed, several studies of how rape is treated in the legal system strongly suggest that larger cultural beliefs in male innocence and female responsibility always and already affect the interpretation of an event as rape or not.” Lynne Henderson, Getting to Know: Honoring Women in Law and in Fact, “Just What Part of No Don’t you Understand?” 2 Tex. J. Women & L. 41, 48 (Winter 1993).

Stacy Futter & Walter R. Mebane, Jr., The Effects of Rape Law Reform on Rape Case Proceedings, 16 Berkeley Women’s L.J. 72, 72-3 (2000).

See Stacy Futter & Walter R. Mebane, Jr., The Effects of Rape Law Reform on Rape Case Proceedings, 16 Berkeley Women’s L.J. 72, 83 (2000). “Studying and dismantling [the]....cultural beliefs, stereotypes, and images, in addition to changing the rape laws themselves, could have a fundamental impact on the incidences of rape and the manner of rape processing in the future.”


James M. Henslin, *Down to Earth Sociology: Introductory Readings*, 51 (1981). Henslin refers to sex roles as “master traits” because they affect so many facets of our lives.


The Virgin Suicides (American Zoetrope 2000).


Dr. Carol J. Eagle & Carol Colman, *All That She Can Be: Helping Your Daughter Achieve Her Full Potential and Maintain Her Self-Esteem During the Critical Years of Adolescence* 28 (1993).

Dr. Carol J. Eagle & Carol Colman, *All That She Can Be: Helping Your Daughter Achieve Her Full Potential and Maintain Her Self-Esteem During the Critical Years of Adolescence* 28 (1993).


LEGAL DISADVANTAGES CREATED BY WOMEN’S SOCIALIZED GENDER ROLES


50 DR. CAROL J. EAGLE & CAROL COLMAN, ALL THAT SHE CAN BE: HELPING YOUR DAUGHTER ACHIEVE HER FULL POTENTIAL AND MAINTAIN HER SELF-ESTEEM DURING THE CRITICAL YEARS OF ADOLESCENCE 19 (1993). See Peggy Orenstein, SCHOOLGIRLS: YOUNG WOMEN, SELF-ESTEEM, AND THE CONFIDENCE GAP xvii (1994) (explaining that a further finding in the above-mentioned AAUW study (supra n.48) was that girls who fought against gender roles in school were better able to fight them elsewhere).


52 RACHEL SIMMONS, ODD GIRL OUT: THE HIDDEN CULTURE OF AGGRESSION IN GIRLS 17 (2002).


58 JOAN SKOLNICK ET AL., HOW TO ENCOURAGE GIRLS IN MATH & SCIENCE: STRATEGIES FOR PARENTS AND EDUCATORS 18 (1982).

59 JOAN SKOLNICK ET AL., HOW TO ENCOURAGE GIRLS IN MATH & SCIENCE: STRATEGIES FOR PARENTS AND EDUCATORS 62-3 (1982). “The message to boys tends to be: ‘You’re smart, if you would just settle down and get to work.’ The message to girls is often: ‘Perhaps you’re just not good at this. You’ve followed the rules and haven’t succeeded.’”

60 JOAN SKOLNICK ET AL., HOW TO ENCOURAGE GIRLS IN MATH & SCIENCE: STRATEGIES FOR PARENTS AND EDUCATORS 68 (1982). “While peers can be satisfying and growth-producing, they can also be growth-destroying, especially in early adolescence...Many girls become good haters of those who do not conform sufficiently to our culture’s ideas about femininity.”
Joan Skolnick et al., How to Encourage Girls in Math & Science: Strategies for Parents and Educators 62-3 (1982). The idea of a “scapegoat” comes from the Old Testament, where once a year the Israelites would place the sins of the people on a goat and send it out into the wilderness, carrying their sins with it. Leviticus 16: 20-22 (King James).

Rachel Simmons, Odd Girl Out: The Hidden Culture of Aggression in Girls 3 (2002). This type of indirect conflict (more commonly referred to as passive aggressiveness) is very different from the type of open conflict boys use to express themselves. Simmons asserts that girls resort to these indirect forms of confrontation because they are not allowed the more direct forms. Perhaps encouraging more direct confrontation in girls of this age range will encourage more directness and assertion later in life as well.


Dr. Carol J. Eagle & Carol Colman, All That She Can Be: Helping Your Daughter Achieve Her Full Potential and Maintain Her Self-Esteem During the Critical Years of Adolescence 14 (1993).

Dr. Carol J. Eagle & Carol Colman, All That She Can Be: Helping Your Daughter Achieve Her Full Potential and Maintain Her Self-Esteem During the Critical Years of Adolescence 14-15 (1993).


1 William Blackstone, Commentaries *443 (Oxford 1765).
2 William Blackstone, Commentaries *442 (Oxford 1765). But see, Norma Basch, In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York 21 (1982) (developing the idea that women did have recourse under equity, though this was practically limited to women of wealth, means, and savvy who understood the process. This largely left the lower class and any extant middle class out of luck.).

77 See Norma Basch, In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York 16 (1982). Further, it would seem that some of the protections available under English common law eroded after crossing the Atlantic, particularly some of the equitable remedies and some of the procedural protections of women; See Norma Basch, In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York 24 (1982); See also, Potts v. Merrit, 14 B. Mon. 406 (Ky. Ct. App. 1854) (holding that as a feme covert, Mrs. Potts had no right to bring an action against her husband and her property rights in her slaves had vested in her husband); Graham v. Graham, 33 F.Supp. 936, 937-38 (D.C. Mich. 1940) (holding that women’s rights to contract in Michigan are limited and that married women do not have a general right to contract.); State v. Rhodes, 61 N.C. 453, 456-57 (1868) (holding that the court would not convict a husband for assault for minor correction of his wife. Central to the holding was the court’s unwillingness to examine the government within a marriage).

78 Linda Grant De Pauw, Women and the Law, A Retrospective View, in Women, the Law, and the Constitution 259, 262 (Kermit L. Hall ed. 1987) (stating that women in colonial times often received equal pay for work, though it became the property of their husbands).


SHERYL J. GRANA, WOMEN AND (IN)JUSTICE 43-44 (2002) (stating that a male slant to the Constitution is inevitable since men created the doctrine behind the text, wrote the text, and then interpreted the text through precedent).


THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (emphasis added).

HOWARD ZINN, A PEOPLE’S HISTORY OF THE UNITED STATES: 1942-PRESENT 73 (2003). Dr. Zinn says, “It was just women were beyond consideration as worthy of inclusion. They were politically invisible.”

THE DECLARATION OF INDEPENDENCE. Two infamous quotes from Thomas Jefferson give some perspective on his view of a woman’s place. At one point he said that women in America are “too wise to wrinkle their foreheads with politics.” HOWARD ZINN, A PEOPLE’S HISTORY OF THE UNITED STATES: 1942-PRESENT 110 (2003). In a letter of 1818, Jefferson said that women’s education should be focused on “ornaments too, and the amusements of life…These, for a female, are dancing drawing, and music.” HOWARD ZINN, A PEOPLE’S HISTORY OF THE UNITED STATES: 1942-PRESENT 118 (2003).


U.S. CONST., art. VII.

ROBERT A. GOLDWIN, WHY BLACKS, WOMEN, AND JEWS ARE NOT MENTIONED IN THE CONSTITUTION, AND OTHER UNORTHODOX VIEWS 15-16 (1990). It’s only fair to point out that Mr. Goldwin makes this statement on the way to arguing that the Constitution is neutral in its terms and did not need to address minority groups because it de facto included them. But the words of his statement may contain more truth than the use he puts it to—the fact that women’s position was never even discussed during the drafting of the Constitution is a telling fact. See JUDITH A. BAER, WOMEN IN AMERICAN LAW 20 (1996) (stating that giving women the right to vote was never considered in the Constitutional Convention); SHERYL J. GRANA, WOMEN
AND (IN)JUSTICE, 41 (2002) (stating that white men with property wrote the Constitution).

91 J.M. ROBERTS, A CONCISE HISTORY OF THE WORLD 477 (1993). Wyoming was the first state to offer women the vote in national elections in 1890.

92 JUDITH A. BAER, WOMEN IN AMERICAN LAW 21 (1996).


95 U.S. Const. amend. XIX


100 Bradwell v. State, 83 U.S. 130 (1872) (holding that the Illinois decision to bar a woman from practicing law did not violate any provisions of the Constitution.). See also, In Re Goodell, 39 Wis. 232 (1875) (holding that the state of Wisconsin could bar a woman from practicing law.).


102 JOHN E. CRIBBET, ET AL., PROPERTY CASES AND MATERIALS 322 (8th ed. 2002). But see, Melanie Frager Griffith, Note: Battered Woman Syndrome: A Tool for Batterers?, 64 FORDHAM L. REV. 141, 152 n.60 (1995) (pointing out that the disadvantages imposed upon married women have continued into the late 20th Century. In fact, it has only been in the past 25 years that the exemption keeping men from being charged with the rape of their wives was removed in all 50 states.).


should be noted that the number of reported rapes has actually decreased since 1993, though the five-year trend is rising).  


Brown v. State, 106 N.W. 536 (1906) (holding that there must be corroboration of a woman’s claim of resistance in order to uphold a conviction for rape).  


“...but it must be remembered, that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent.” Matthew Hale, *Historia Placitorum Coronae* [History of the Pleas of the Crown] 635 (1st Amer. Ed. 1847). Sir Hale later writes,

I only mention these instances, that we may be the more cautious upon trials of offenses of this nature, wherein the court and jury may with so much ease be imposed upon without great care and vigilance; the heinousness of the offense many times transporting the judge and jury with so much indignation, that they are over hastily carried to the conviction of the person accused thereof, by the confident testimony sometimes of malicious and false witnesses.”

People v. Dohring, 59 N.Y. 374, 386 (1874).

People v. Dohring, 59 N.Y. 374, 386 (1874).

See, Susan Estrich, Real Rape 31 (1987).

Susan Estrich, Real Rape 31 (1987).

See Catharine A. MacKinnon, Toward a Feminist Theory of the State 177 (1989) (stating that women are socialized to be passive and that women may see no choice but to submit rather than risk injury).

Susan Brownmiller, Against Our Will: Men, Women and Rape 385 (1975).


Susan Estrich, Real Rape 31 (1987).

Stacy Futter & Walter R. Mebane, Jr., The Effects of Rape Law Reform on Rape Case Proceedings, 16 BERKELEY WOMEN’S L.J. 72, 72-3 (2000).

Stacy Futter & Walter R. Mebane, Jr., The Effects of Rape Law Reform on Rape Case Proceedings, 16 BERKELEY WOMEN’S L.J. 72, 73 (2001).


Susan Estrich, Real Rape 58-59 (1987). It should be noted that the requirement of force by the perpetrator was not new to the law, but removing the emphasis on the victim’s resistance brought this element to the forefront.


Commonwealth v. Karkaria, 625 A.2d 1167 (1993) (holding that evidence was so unreliable and contradictory that a conviction of rape could not be affirmed).


CAL. PENAL CODE § 261 (West 2003).


People v. John Z., 60 P.3d 183 (2003) (holding a rape exists in the case of withdrawal of female’s consent after penetration by the male if the male continues intercourse against her will).


Susan Estrich, Real Rape 59 (1987).


See, Susan Estrich, Real Rape 59 (1987).

Susan Estrich, Real Rape 59 (1987).


Andrew E. Taslitz, Rape and the Culture of the Courtroom 51 (1999).


Susan Brownmiller, AGAINST OUR WILL: MEN, WOMEN AND RAPE 386 (1975).

Callie Marie Rennison, Bureau of Justice Statistics, US. Dept. of Justice, Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000, 2 (August 2002), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/rsarp00.pdf. According to this report, “Sixty-three percent of completed rapes, 65% of attempted rapes, and 74% of completed and attempted sexual assaults against females were not reported to the police.”


Catalina A. Mandoki & Barry R. Burkhart, Women as Victims: Antecedents and Consequences of Acquaintance Rape, in ACQUAINTANCE


177 State v. Thompson, 792 P.2d 1103 (Mont. 1990) (holding a high school coach who allegedly used his position to coerce a student into having sexual intercourse could not be convicted of sexual intercourse without consent).

178 State v. Schaim, 600 N.E.2d 661 (Ohio 1992) (holding that the state had not proven the elements of forcible rape by defendant’s intercourse with his 20-year old adopted daughter).

179 State v. Thompson, 792 P.2d 1103, 1104 (Mont. 1990).

180 State v. Thompson, 792 P.2d 1103, 1104 (Mont. 1990).

181 State v. Thompson, 792 P.2d 1103, 1105 (Mont. 1990).

182 MONT. CODE ANN. § 45-5-501(2)(b)(2003). “The threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.”

183 State v. Thompson, 792 P.2d 1107, 1104 (Mont. 1990). The Montana Supreme Court wrote:

> This case is one of considerable difficulty for us, as indeed it must have been for the District Court judge. The alleged facts, if true, show disgusting acts of taking advantage of a young person by an adult who occupied a position of authority over the young person. If we could rewrite the statutes to define the alleged acts here as sexual intercourse without consent, we would willingly do so....With a good deal of reluctance and with strong condemnation of the alleged acts, we affirm the District Court.

184 See State v. Thompson, 792 P.2d 1103, 1107 (Mont. 1990). See also, State v. Kellon, 2001 WL 1134865 (Ohio App. 8 Dist.) (affirming the lower court conviction of a man who was the victim’s track coach of corruption of a minor).


189 OHIO REV. CODE ANN. § 2907.02 (Anderson, 2003).

State v. Thompson, 792 P.2d 1103 (Mont. 1990); State v. Schaim, 600 N.E.2d 661 (Ohio 1992); State v. Kellon, 2001 WL 1134865 (Ohio App. 8 Dist.).

Linda Jackson, Note: Marital Rape: A Higher Standard is in Order, 1 WM. & MARY J. OF WOMEN & L. 183, 183 (Fall 1994).


Melanie Frager Griffith, Note: Battered Woman Syndrome, A Tool for Batters? 64 FORDHAM L. REV. 141, 198 n.60 (Oct. 1995); Kelly C. Connerton, Comment: The Resurgence of the Marital Rape Exemption: the Victimization of Teens by their Statutory Rapists, 61 ALBANY L. REV. 237, 283 app.a (1997). The appendix cites the date and statutes in each state overturning the marital rape exemption.

Linda Jackson, Note: Marital Rape: A Higher Standard is in Order, 1 WM. & MARY J. OF WOMEN & L. 183, 183 (Fall 1994).

Linda Jackson, Note: Marital Rape: A Higher Standard is in Order, 1 WM. & MARY J. OF WOMEN & L. 183, 185-89 (Fall 1994).

Linda Jackson, Note: Marital Rape: A Higher Standard is in Order, 1 WM. & MARY J. OF WOMEN & L. 183, 189-91 (Fall 1994).

Linda Jackson, Note: Marital Rape: A Higher Standard is in Order, 1 WM. & MARY J. OF WOMEN & L. 183, 195-97 (Fall 1994).


STATE BAR OF TEXAS DEPARTMENT OF RESEARCH AND ANALYSIS, THE GENDER BIAS TASK FORCE OF TEXAS FINAL REPORT 82 (1994). The report found the same belief, but to a lesser extent, regarding prosecutors and judges as well.

STATE BAR OF TEXAS DEPARTMENT OF RESEARCH AND ANALYSIS, THE GENDER BIAS TASK FORCE OF TEXAS FINAL REPORT 82 (1994). 39% of female judges thought that prosecutors accorded sexual assault victims less credibility, compared to 7% of male judges.
...But we can say that whether an environment is “hostile” or “abusive” can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance. The effect on the employee’s
psychological well-being is, of course, relevant...[but] no single factor is required.”

214 This is not to say that harassment occurred in this specific case but is merely a scenario that is no doubt familiar to the reader that may shed some light on the interrelationship between gender roles and reluctance to bring such a suit.
217 JANE MAYER & JILL ABRAMSON, STRANGE JUSTICE: THE SELLING OF CLARENCE THOMAS 87 (1994). She got straight A’s while at the university.
218 JANE MAYER & JILL ABRAMSON, STRANGE JUSTICE: THE SELLING OF CLARENCE THOMAS 87–88 (1994). She was described by professors as doing well, though not outstanding.


This type of Catch-22 is also referred to as a “double-bind,” though I prefer using the term “Catch-22,” as it carries with it the connotation of not only a no-win situation but also the absurdity described by the novel of the same name. Joseph Heller, Catch-22 (1955).

There are a host of possibilities that would cause prevailing arrangements to systematically disadvantage women....They include the laws governing the family; the nature of the process through which
husband and wife decide who does what; and government policies for mandatory parental leave, subsidized child care, the taxation of the value of services performed in the home, and the deductibility of expenses for child care and other household work. Perhaps most difficult to understand is how men and women form their attitudes as to how they should spend their lives.


244 Larry Lovoy, Student Article: A Historical Survey of the Glass Ceiling and the Double Bind Faced by Women in the Workplace: Options for Avoidance, 25 LAW AND PSYCHOL. REV. 179, 186-7 (Spring 2001)

245 See Michelle M. Benecke & Kirstin S. Dodge, Recent Development: Military Women in Nontraditional Fields: Casualties of the Armed Forces’ War on Homosexuals, 13 HARV. WOMEN’S L.J. 215, 241 (1990) (stating that “....[women] must be feminine enough to reduce harassment, but must avoid the danger of being considered inferior or incompetent by virtue of this femininity.”).

248 Montrece McNeill Ransom, Student Article: The Boy’s Club: How “Don’t Ask, Don’t Tell” Creates a Double-Bind for Military Women, 25 LAW & PSYCHOL. REV. 161, 168 (Spring 2001) (stating that women make up 13% of the armed forces but that 29% of those discharged under the policy have been women in 1996).
252 See Katherine T. Bartlett & Angela P. Harris, Gender in Law: Theory, Doctrine, Commentary 565 (1998) (noting in respect to battered women that most efforts have focused on helping the victim after the fact rather than preventing the battering by changing the cultural conditions that allow such violence). Likewise, the approach in the Violence Against Women Act is to fund programs designed to assist victims and rehabilitate perpetrators. Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1464-5 (see table of contents).
253 Mooney, Jayne, Gender, Violence and the Social Order 222 (2000) (stating that the answer to domestic violence lies in structural changes); Catharine A. MacKinnon, Feminism Unmodified 22 (1987). “Feminism seeks to empower women on our own terms...our demand for access becomes also a demand for change.” Laura Kamineski, For Us: Feminism in Defense of Women-only Spaces, at

Mooney, Jayne, Gender, Violence and the Social Order 222 (2000). “....the long term [goal] must be changing the behaviour and attitudes of offenders, the short-term that of ameliorating the plight of victims.”

Sarah E. Ullman, Review and Critique of Empirical Studies of Rape Avoidance, 24(2) Crim. Just. & Behavior 177, 181-2 (June 1997). Sarah E. Ullman, Review and Critique of Empirical Studies of Rape Avoidance, 24(2) Crim. Just. & Behavior 177, 194-5 (June 1997)(examining the results of twenty-eight different studies and finding similar results across the board, despite some variation depending on methodology employed); Janice M. Zoucha-Jensen & Ann Coyne, The Effects of Resistance Strategies on Rape, 83 Am. J. of Pub. Health 1633 (Nov. 1993)(finding that forceful verbal and physical resistance and flight were effective and that non-forceful verbal resistance and acquiescence were not); Joyce Levine-MacCombie & Mary P. Moss, Acquaintance rape: Effective Avoidance Strategies, 10 Psychol. of Women Q. 311 (1986)(finding that results on avoiding stranger rape apply as well to acquaintance rape); but Ronet Bachman & Dianne Cyr Carmody, Fighting Fire with Fire: The Effects of Victim Resistance in Intimate Versus Stranger Perpetrated Assaults Against Females, 9(4) J. of Fam. Viol. 317 (1994)(finding resistance in an assault by an intimate led to a doubled chance of physical injury).

Sarah E. Ullman, Review and Critique of Empirical Studies of Rape Avoidance, 24(2) CRIM. JUST. & BEHAVIOR 177, 182 (June 1997).

Kimberly A. Hanson & Christine A. Gidycz, Evaluation of a Sexual Assault Prevention Program, 61 J. OF CONSULTING AND CLINICAL PSYCHOL. 1046 (No. 6 1993) (stating that an assault prevention program helped decrease the numbers of assaults among women who had no history of sexual assault but did not decrease assault among women with such a history). This could be an indication that early education in schools before an assault history develops could be effective.

Penelope Green, Mirror, Mirror; Punching and Kicking all the Way to the Bank, N.Y. TIMES, March 21, 1999, § 9, at 6. “....Tae Bo is the Macarena of exercise: irresistible moves with a beat that anyone can do and look sort of O.K.”

Deborah Blumenthal, To Learn Self-defense, Choose the Right Class, N.Y. TIMES, Nov. 26, 1992, at C2. “Learning to fight off an attacker by practicing against well-padded male “assailants” in simulated muggings is the approach taken by the Model Mugging classes....”

Peg Strain, Class Prep: Teaching Core Skills, Self-Defense Teacher’s Text for SD Educators, Facilitators & Instructors, 3 (2001) (copy on file with author). See also Pamela E. Butler, Self-Assertion for Women 10 (1992). “In reviewing the four areas of self-assertion [(expressing positive feelings, expressing negative feelings, setting limits and self-initiation)], we can see that the woman who is nonassertive in any area is not fully in touch with her potential or her power...”; see also Julie C. Weitlauf & Ronald E. Smith, Generalization Effects of Coping-Skills Training: Influence of Self-Defense Training on Women’s Efficacy Beliefs, Assertiveness, and Aggression, 85 J. OF APP. PSYCHOL. 625 (No. 4 2000) (stating that self-defense training increased beliefs in self-defense efficacy “as well as physical and global efficacy beliefs.”).

See Peg Strain, Class Prep: Teaching Core Skills, Self-Defense Teacher’s Text for SD Educators, Facilitators & Instructors (2001) (copy on file with author). Similar programs have been developed by Everywoman’s Self Defense in Austin, TX and taught to school-aged girls; information on their program is available at their website, http://www.everywomans-selfdefense.org/girls-sd.html. More information is also available through the American Women’s Self Defense Association at http://www.awsda.org/.
See Peg Strain, Class Prep: Teaching Core Skills, Self-Defense Teacher’s Text for SD Educators, Facilitators & Instructors 23 (2001) (copy on file with author).

See Peg Strain, Class Prep: Teaching Core Skills, Self-Defense Teacher’s Text for SD Educators, Facilitators & Instructors 8-17 (2001) (copy on file with author).


See Peg Strain, Class Prep: Teaching Core Skills, Self-Defense Teacher’s Text for SD Educators, Facilitators & Instructors 2 (2001) (copy on file with author); see also Denise Caignon & Gail Groves, Her Wits About Her: Self-Defense Success Stories by Women 256 (1987). “Most attacks begin on a verbal level and can be stopped there, by knowing what you want and saying it.”


See Peg Strain, Class Prep: Teaching Core Skills, Self-Defense Teacher’s Text for SD Educators, Facilitators & Instructors 7 (2001) (copy on file with author).


Patricia Rozée, et al., The Personal Perspective of Acquaintance Rape Prevention: A Three-Tier Approach, in


279 PEG STRAIN, CLASS PREP: TEACHING CORE SKILLS, SELF-DEFENSE TEACHER’S TEXT FOR SD EDUCATORS, FACILITATORS & INSTRUCTORS 7 (2001)(copy on file with author).


293 Elaine Williams, Directing a Female Powerhouse, TIMES EDUC. SUPP., November 10, 2000, at 27.
294 John W. Donahue, Separate is Sometimes Better: a Case Study of a Single-sex Catholic High School, 188 AMERICA 12 (Feb. 10, 2003). Though there are only 11 public single-sex schools out of 86,000 public schools nationally, in New York City alone there are some 40 single-sex Catholic high schools.
295 Valerie E. Lee & Anthony S. Bryk, Effects of Single-sex Secondary Schools on Student Achievement and Attitudes, 78 J. OF EDUC. PSYCHOL. 381, 381 (No. 5 1986).
296 Valerie E. Lee & Anthony S. Bryk, Effects of Single-sex Secondary Schools on Student Achievement and Attitudes, 78 J. OF EDUC. PSYCHOL. 381, 381 (No. 5 1986).
297 Valerie E. Lee & Anthony S. Bryk, Effects of Single-sex Secondary Schools on Student Achievement and Attitudes, 78 J. OF EDUC. PSYCHOL. 381, 381 (No. 5 1986).
298 Valerie E. Lee & Anthony S. Bryk, Effects of Single-sex Secondary Schools on Student Achievement and Attitudes, 78 J. OF EDUC. PSYCHOL. 381, 389 (No. 5 1986).
300 U.S. v. Virginia, 518 U.S. 515, 546 (1996)(holding that Virginia had failed to establish the exceedingly persuasive justification necessary to uphold a classification based on gender).

Graham M. Smith 55
302 Grutter v. Bullinger, 123 S. Ct. 2325, 2347 (2003) (holding that the University of Michigan’s admissions standards use of race as a factor designed to maintain a diverse student body survives strict scrutiny).
304 The University of Michigan Law School admissions policy had to survive strict scrutiny because its distinctions were based on race. A single-sex school or single-sex classes would only have to survive the more forgiving intermediate scrutiny the Court has enunciated in considering distinctions based on gender. Miss. Univ. for Women v. Hogan, 458 U.S. 718, 724 (1982) (holding that the university nursing program discriminated against Hogan on the basis of his gender).
308 Sarah Stokes, Sex and the Joys of Single Life, TIMES EDUC. SUPP., June 20, 2003, at 18.