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Kara M. DelTufo

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RESISTING “UTMOST RESISTANCE”: USING RAPE TRAUMA SYNDROME TO COMBAT UNDERLYING RAPE MYTHS INFLUENCING ACQUAINTANCE RAPE TRIALS

KARA M. DELTUFO*


Abstract: Susan Ehrlich’s book examines the linguistic practices of acquaintance rape trials. She contends that the proceedings are framed by the ideology of the “utmost resistance standard.” This ideology, as represented in the language of a rape trial, tries to reconstruct strategic acts into consensual sex. Ehrlich suggests that by viewing the events and the participants in a rape trial through an alternate ideology—one informed by the cultural knowledge of women’s social and physical vulnerability to sexual violence—alternative forms of agency and notions of gender can be understood. This Book Review examines the role of rape myths in acquaintance rape trials and explores how Rape Trauma Syndrome can foster alternative ideologies in the courtroom.

In her book, Representing Rape: Language and Sexual Consent, Susan Ehrlich analyzes the language of a rape trial to show how culturally dominant notions about violence against women penetrate and circulate within the rhetoric of sexual assault adjudication processes.1 Ehrlich examines both a Canadian university’s tribunal trial and a Canadian criminal law trial of the same male student accused of two separate instances of sexual assault.2 She asserts that ideologies embedded in the questioning of adjudicators and lawyers serve to shape rape trials in such a way that the outcome of a trial is prescribed by these ideologies.3 Ehrlich further contends that her analysis departs

* Staff Writer, BOSTON COLLEGE THIRD WORLD LAW JOURNAL (2001-2002).
2 See id. at 31–32.
3 See id. at 91–92.
from previous linguistic scholarship on rape trials because she ascribes a largely constitutive role to language.\(^4\)

Ehrlich found that the trials she examined did not allow the complainants’ version of events and points of view to emerge.\(^5\) She found this to be a consequence of the “utmost resistance standard.”\(^6\) Ehrlich examines how this standard, which focuses on the women’s degree of resistance, is the primary ideological frame through which rape is understood.\(^7\) In her conclusion, she proposes to consider “how different questions with different presuppositions might structure acquaintance rape adjudication processes.”\(^8\) Ehrlich proposes a “reasonable woman” standard, suggesting that, if viewed with the cultural knowledge of women’s social and physical vulnerability to sexual violence, complainants’ inaction and deficient signals of consent can be recontextualized as strategic acts of resistance and not as consensual sex.\(^9\)

Ehrlich alludes to the way that this type of cultural knowledge could inform the dominant discourses in the talk of sexual assault adjudication procedures.\(^10\) She notes that male judges who have been educated about women’s distinctive experiences are less likely to assume that they can simply look to how they themselves might be affected by an action to decide whether it is part of a pattern of sexual harassment.\(^11\) However, outside of the education of judges, who comprise only one type of participant in a criminal trial, Ehrlich does not propose any concrete ways to transform the utmost resistance standard ideology that pervades a rape trial’s proceedings and outcomes.

This Book Review expands upon Ehrlich’s analysis of the ideological frame of utmost resistance informing rape trials and explores how the use of Rape Trauma Syndrome testimony can provide an alternative ideological frame through which to understand acquaintance rape. Part I describes the cases Ehrlich studied and provides

\(^4\) See id. at 1. Ehrlich explains that by “constitutive” she means the way in which language can define and delimit the meanings attached to events and subjects. See id.

\(^5\) See EHRICH, supra note 1, at 151–52.

\(^6\) See id. at 65–67.

\(^7\) See id.

\(^8\) See id. at 135.

\(^9\) See id. at 144.

\(^10\) See EHRICH, supra note 1, at 146.

some background into the “utmost resistance standard.” Part II will explore the way that rape myths inform acquaintance rape trials. Part III suggests that the ideological frame of utmost resistance remains so pervasive in part because recent rape law reforms have failed to address the underlying ideologies shaping acquaintance rape trials. Finally, Part IV explores utilizing Rape Trauma Syndrome to combat the ideological frame of utmost resistance. This Book Review argues that the education provided by courtroom testimony on Rape Trauma Syndrome can dispel rape myths to which adjudicators are often predisposed. In this way, Rape Trauma Syndrome testimony can overcome some of the gender bias that currently taints the outcomes of acquaintance rape trials.

I. THE CASE STUDY AND EHRlich’S IDEOLOGICAL FRAME OF UTMOST RESISTANCE

The accused and the complainants (whom Ehrlich has assigned the pseudonyms Matt, Connie, and Marg) were all white undergraduate students at York University in Toronto, Canada. In both cases, the facts were not at issue; what was at issue was whether or not the sexual acts were consensual. Both sexual assault allegations arose out of cases of acquaintance or “simple rape.”

The separate incidents between Matt and Connie and Matt and Marg occurred within three days of one another. Connie had invited Matt back to her dormitory room after he had taken her to dinner.

12 See id. at 32. The race of the complainants and the accused is mentioned to recognize that the legal system’s demonization of men of color in attacks against white women did not enter into these cases. See id. (citing CATHERINE MACKINNON, FEMINISM UNMODIFIED (1987)); Sharon Marcus, Fighting bodies, fighting words: A theory and politics of rape prevention, in FEMINISTS THEORIZING THE POLITICAL 385–403 (Judith Butler & Joan W. Scott eds., 1992); see also Toni M. Massaro, Experts, Psychology, Credibility, and Rape: The Rape Trauma Syndrome Issue and Its Implications for Expert Psychological Testimony, 69 MINN. L. REV. 395, 407–08 (1985). Massaro notes that “[b]lack defendants typically receive harsher treatment than white defendants ... whereas both black and white defendants receive more lenient treatment when the victim is black.”

13 See EHRLICH, supra note 1, at 32, 33.

14 See id. at 32. Ehrlich relies on Susan Estrich’s terms “real rape” and “simple rape” to differentiate between rapes that are perpetrated by armed strangers as opposed to rapes that might meet the statutory definition of rape, but are not considered rape by police, prosecutors, judges, and juries. See id. at 19 (discussing SUSAN ESTRICH, REAL RAPE 4–7 (1987)). Examples of common types of “simple” rape include when a woman is forced to engage in sex with a date, an acquaintance, her boss, or a man she met at a bar; when no weapon is involved; and there is no overt evidence of physical injury. See id.

15 See EHRLICH, supra note 1, at 32.

16 See EHRLICH, supra note 1, at 32.
After Matt briefly massaged Connie and some consensual kissing occurred, Connie objected to his further advances.\footnote{See id.} However, despite her objections, Connie testified that Matt persisted in sexually assaulting her.\footnote{See id.}

Similarly, Marg invited Matt back to her dormitory room, along with her friend Melinda and Melinda’s boyfriend Bob.\footnote{See id.} Matt had helped Marg locate her towed car, and the four of them had decided to pick up the car in the morning.\footnote{See id.} Matt also gave Marg a massage, and she allowed him to sleep in her bed after warning him not to cross the line.\footnote{See id.} Marg testified that once in her bed, Matt initiated a number of unwanted sexual advances.\footnote{See id.} Despite Marg’s attempts to alert Melinda and Bob to obtain their help, Matt persisted.\footnote{See id.}

Estrich’s work argues that cases of simple rape, such as Connie’s and Marg’s, are not often considered rape by police, prosecutors, judges, and juries while cases of real rape, which are much less common, are treated more aggressively.\footnote{See \textit{Ehrlich}, supra note 1, at 19.} Applying this argument to a critical discourse analysis, Ehrlich asserts that the discourses surrounding the prosecution of real rape versus simple rape cases in the criminal justice system “bring into being definitions and categories of what constitutes a legitimate or believable victim and a legitimate victim.”

\begin{itemize}
\item \footnote{See \textit{id.} In accordance with the Criminal Code of Canada, the term sexual assault is used to refer to the type of acts allegedly committed by Matt. \textit{See id.} at 22, 32. Connie alleged that Matt removed her clothes, penetrated her vagina with his finger, put his penis between her legs and rubbed it against her, and forced her to perform fellatio on him until orgasm. \textit{See id.} at 34. In Canada, criminal laws governing acts of sexual aggression were revised in 1983, 1985, 1992, and 1995. \textit{See id.} at 22. One crucial change involved replacing offenses of rape and indecent assault with the more general offense of sexual assault. \textit{See id.} at 22. Ehrlich notes that this change attempted “to include under its rubric acts of sexual aggression that did not involve penetration.” \textit{Id.} at 25. While the case \textit{Ehrlich} studies does not involve traditional common-law rape (“carnal knowledge of a woman, not one’s wife, by force and against her will [which] included only penile-vaginal penetration”), most states in the United States have redefined penetration to include "sexual intercourse, cunnilingus, fellatio, and intercourse, or any intrusion, however slight, of any part of a person’s body or of any object into the genital or anal opening of another person’s body.” \textit{See Cassia Spohn \\& Julie Horney, Rape Law Reform: A Grassroots Revolution and Its Impact} 21–22 (1992).
\item \footnote{See \textit{Ehrlich}, supra note 1, at 34.}
\item \footnote{See id. at 33.}
\item \footnote{See \textit{id.}}
\item \footnote{See \textit{id.} at 34.}
\end{itemize}
perpetrator."  "Legitimate" perpetrators are strangers to their victim, carry a weapon, and inflict physical injury on their victim beyond the sexual violence; "legitimate" or believable victims are simply women raped by these "legitimate" perpetrators.

Ehrlich contends that the ideological frame of the utmost resistance standard dominates courtroom talk in a way that imposes trial participants' ideas of legitimacy on rape victims. This ideological frame renders non-consent tantamount to consent, when non-consent does not take common and recognizable forms. Common law required women to resist a sexual attack to the utmost to prove rape. In the United States, prior to the 1950s and 1960s, most statutes mirrored this common law requirement, focusing on the conduct of the victim rather than the perpetrator; whether a rape had occurred was dependent upon the victim's conduct. Informing the reasoning be-

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25 See EHRlich, supra note 1, at 20. Ehrlich describes her approach as a critical discourse analysis which is similar to feminist linguistic studies, particularly the type that unpacks and deconstructs the sexist and androcentric assumptions encoded in linguistic representations, work in critical discourse analysis does not merely describe language in a dispassionate and disinterested way ... proponents of critical discourse analysis assume that dominant social structures and processes are partly discursive in their nature and aim to expose how such discursive practices contribute to the production and reproduction of unequal social relations.

Id. at 35.

26 See id. at 20.

27 See id. at 67, 91–93.

28 See EHRlich, supra note 1, at 121.

29 See Michelle J. Anderson, Reviving Resistance in Rape Law, 1998 U. Ill. L. Rev. 953, 957 (1998). Anderson describes the utmost resistance requirement as having two elements: (1) a woman must have struggled to the utmost of her physical capacity and (2) her resistance must not have subsided until after penetration ... if a woman did not resist the rape to the utmost of her physical capacity, she was not raped. If a woman struggled to the utmost of her physical capacity until doing so appeared futile to her, and only then acquiesced to the rapist's advances, she also was not raped.

Id. at 963.

30 See EHRlich, supra note 1, at 65. Estrich also discusses this focus on the role of the victim, stating that:

[In defining the crime, courts] have focused almost incidentally on the defendant—and almost entirely on the victim ... [m]ens rea, where it might matter, is all but eliminated; prohibited force tends to be defined according to the response of the victim; and nonconsent—the sine qua non of the offense—turns entirely on the victim's response.

Estrich, supra note 24, at 1094.
hind the utmost resistance standard was the myth that women fabricate accusations of rape. By requiring a woman prove she resisted to the utmost, courts were able to make sure that a woman alleging rape was truly an unwilling party.

The utmost resistance standard was generally replaced by a "reasonable resistance" standard in the 1950s and 1960s. However, Ehrlich contends that the utmost resistance standard nevertheless remains the primary ideological frame through which the events in question and the complainants' actions are understood and evaluated. The ideological frame of utmost resistance discounts the paralyzing nature of women's fear and therefore reconstructs the events in question as consensual sex. It presupposes that women have choice and options when confronted with the threat of sexual aggression and that women are unconstrained in their choice of appropriate avenues of resistance. Therefore women who do not pursue these (presupposed) readily available and numerous options by definition are not resisting to the utmost.

Ehrlich examines the language of participants in Matt's tribunal hearing and his criminal trial to show exactly how this ideological frame functions in adjudicatory processes. For example, through the question-answer sequence of trial discourse, the defense is able to present complainants as ineffectual agents who consented to sex by failing to resist. Ehrlich explains that questions in a question-answer sequence shape and constrain the following answer. Thus, questions in acquaintance rape trials that put forth the defense's understanding of the events in question as consensual sex, shape the complainant's answer. Ehrlich demonstrates this in an excerpt from the trial in which the defense asks (in response to Connie's attempts to get Matt to leave her room), "And the best you could come up with I suggest is, 'I've got a class in the morning, you better leave'?” To which Connie

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31 See EHRICH, supra note 1, at 65.
32 See id. at 66.
33 See id. (citing ESTRICH, supra note 14, at 37).
34 See id. at 66–67.
35 See id. at 91.
36 See EHRICH, supra note 1, at 91.
37 See id. at 91–92.
38 See id. at 31, 62–93.
39 See id. at 75–76.
40 See id. at 31.
41 See EHRICH, supra note 1, at 31, 75–76.
42 See id. at 107.
replies, “At the time it was the best I could come up with.”

This line of questioning serves to transform Connie’s strategic act of resistance (trying to get Matt to leave the room without angering him) into an ineffectual act of resistance that, under the dominant discourse of utmost resistance, is reframed as consent.

Further, Ehrlich contends that the ideological frame of utmost resistance functions as a discursive constraint, restricting the complainants’ talk about their experiences so that the complainants present themselves as ineffectual agents. Ehrlich explains that the defense’s questioning transforms Connie’s initial rebuttal of the defense’s assertion into an utterance where Connie echoes the defense’s characterization of her verbal behavior.

These types of exchanges in acquaintance rape trials serve to reinforce myths about rape. Because a questioner can control and characterize the flow of testimony, a questioner’s implicit suggestions that a complainant did not sufficiently resist the rape, and therefore consented, structure and constrain the complainant’s answer. Thus, these exchanges transform a complainant’s strategic response to a sexual assault into a passive response, or worse, a consensual response. In this way, trial discourse generates ideologies or rape myths, which jurors use to interpret the rape incident. Particularly, jurors rely on these ideologies to interpret the interaction between the victim and defendant (as rape or consensual act) and attribute blame.

II. GENDER STEREOTYPES IN THE JUDICIAL SYSTEM: RAPE MYTHS INFORMING RAPE TRIALS

Sexism, in the form of rape myths, impedes the successful prosecution of rape. It affects all participants in rape trials and has yet to

43 See id.
44 See id. at 107, 119.
45 See id. at 95.
46 See EHRICH, supra note 1, at 107.
47 See id. at 63.
48 See id. at 62-63, 67.
49 See id.
51 See id.
be truly remedied. In fact, in 2001 the American Bar Association’s Commission on Women in the Profession found that one of the most commonly cited problems in the justice system was the devaluation of credibility and injuries as well as stereotypical assumptions about gender. In particular, the Commission found these problems to affect the perceptions of participants in trials.

A. Rape Myths and the Ideological Frame of Utmost Resistance

In cases of acquaintance rape, it is precisely these problems of devaluation of credibility and stereotypes about gender that shape the outcome of trials. As one scholar of rape trials has stated, “jurors possess a stultifying penchant for entertaining traditional stereotypes about the nature of male/female sexual relations and for incorporating this inaccurate extra legal evidence in their deliberations.” These traditional stereotypes about gender are commonly referred to in rape scholarship as myths. One of the problems impeding fair
outcomes in acquaintance rape trials is the prevalence of myths about rape that thrive in society.\textsuperscript{59} Rape myths encompass stereotypes of who is a rapist and who is a victim.\textsuperscript{60} Particularly in acquaintance rape trials, rape myths often include beliefs about the way victims should act before, during, and after a rape.\textsuperscript{61} Included among familiar acquaintance rape myths:

[W]omen mean “yes” when they say “no”; women are “asking for it” when they wear provocative clothes, go to bars alone or simply walk down the street at night; only virgins can be raped; women are vengeful, bitter creatures “out to get men”; if a woman says “yes” once, there is no reason to believe her “no” the next time; women who “tease” men deserve to be raped; the majority of women who are raped are promiscuous or have bad reputations; a woman who goes to the home of a man on the first date implies she is willing to have sex; women cry rape to cover up an illegitimate pregnancy; a man is justified in forcing sex on a woman who makes him sexually excited; a man is entitled to sex if he buys a woman dinner; women derive pleasure from victimization.\textsuperscript{62}

The belief that women, motivated by revenge, blackmail, jealousy, guilt, or embarrassment, falsely claim rape after consenting to sexual relations is one of the most adhered to and consequently potent rape myths.\textsuperscript{63}

The ideological frame of utmost resistance is based upon the rape myth that women fabricate accusations of rape.\textsuperscript{64} Research shows that the false rape charge myth supports the belief that a woman’s degree of resistance should be a major factor in determining if a rape has occurred. In accordance with this focus on a woman’s resistance is the notion that it should be difficult for a woman to prove that a rape

\textsuperscript{59} See Torrey, \textit{supra} note 52, at 1014–15.
\textsuperscript{60} See id.
\textsuperscript{61} See id. at 1015.
\textsuperscript{62} See id.
\textsuperscript{63} See id. at 1025.
\textsuperscript{64} See Ehrlich, \textit{supra} note 1, at 65–66.
has taken place because they frequently allege false rapes. This basic premise, that a woman's degree of resistance should determine if a rape has occurred, informs Ehrlich's ideological frame of utmost resistance. It is also one that the common law traditionally relied upon, as evidenced by many courts' requirements that the prosecution prove the victim resisted, made a prompt complaint, and did not consent.

B. How Rape Myths Influence Judges and Juries

Although overwhelmingly proven false by data, rape myths are primarily effective because they rely upon conventional and patriarchal notions of gender to shape the way judges and juries perceive testimony in rape trials. Because jurors tend to bring with them fundamental premises with which to interpret facts and attribute blame, rape myths have an extremely powerful influence over jurors.

Because an instance of acquaintance rape rarely involves more than one defendant and one rape survivor, and little corroborative evidence, criminal proceedings often come down to the believability of either party's story. Jurors view the events in question, and therefore determine the outcome of the trial, through the framework of their own beliefs, values, prejudices, and bias. Because jurors unconsciously need to maintain coherency, when confronted with gaps in the evidence (such as the he-said/she-said or consent/rape dispute), they fill in these gaps with familiar rape myths. When jurors evaluate

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65 See Torrey, supra note 52, at 1039. Torrey cites a 1977 study conducted by Nona J. Barnett and Hubert S. Feild which used an Attitudes Toward Rape Questionnaire that asked respondents to rate their degree of agreement or disagreement with statements respecting rape myths. See id. at 1039 n.119.

66 EHRlich, supra note 1, at 67.

67 See Torrey, supra note 52, at 1041.

68 See id. at 1015, 1017-18. Torrey cites a 1980 study by Martha Burt that found many Americans believe rape myths and that American rape attitudes are strongly connected to other deeply held and pervasive attitudes such as sex-role stereotyping, distrust of the opposite sex (adversarial sex beliefs), and acceptance of interpersonal violence. See id. at 1017-18. Torrey also cites a 1985 study by James Check and Neil Malamuth that confirmed the connection between acceptance of rape myths, rape, and callous, unbelieving attitudes towards rape victims. See id. at 1019.

69 See id. at 1050. Torrey relies on Donald E. Vinson's (a psychologist with Litigation Sciences) application of social science theories and techniques to more than 700 cases. See Torrey, supra note 52, at 1050 n.179.


71 See Torrey, supra note 52, at 1050.

72 See TASLITZ, supra note 56, at 7-8.
the evidence in order to attribute blame and assign responsibility, they rely upon familiar rape myths as interpretative resources for assessing and understanding action.\textsuperscript{73}

In addition to jurors' natural tendencies to utilize rape myths, these myths are reinforced into the minds of jurors and adjudicators by defense attorneys' questions.\textsuperscript{74} Defense attorneys capitalize on jurors' reliance on false rape myths.\textsuperscript{75} By using language to highlight ways the complainant's testimony is inconsistent with myths prescribing how a rape victim should act, the defense creates doubt as to the veracity of the victim's story.\textsuperscript{76} The William Kennedy Smith trial provides a well-known example of defense counsel relying upon familiar rape myths to discredit the complainant's testimony.\textsuperscript{77} In that trial, the defense devoted a substantial amount of time cross-examining a witness about the search for the complainant's shoe following the rape.\textsuperscript{78} By asking about the details surrounding the search for the shoe, the defense contrasted the triviality of an article of dress like a shoe, with the seriousness of an alleged rape; thus creating doubt as to the veracity of the victim's claim of rape.\textsuperscript{79} The complainant's story seemed false when informed by the myth that real victims of rape immediately report the crime to the police.\textsuperscript{80}

III. THE WEAKNESS OF RAPE LAW REFORM

The roles that rape myths played in the William Kennedy Smith trial demonstrate a crucial weakness of rape law reform.\textsuperscript{81} Despite substantial reforms in rape law prior to the trial, defense counsel was still able to exploit jurors' reliance on familiar rape myths.\textsuperscript{82} Rape law reform first gained momentum in the early 1970s, when the problem of rape prompted a powerful social movement focused on making

\textsuperscript{73} See Matoesian, supra note 50, at 102.

\textsuperscript{74} See Ehrlich, supra note 1, at 91; Matoesian, supra note 50, at 125; Taslitz, supra note 56, at 23–25.

\textsuperscript{75} See Ehrlich, supra note 1, at 91; Matoesian, supra note 57, at 681, 682–83.

\textsuperscript{76} See Ehrlich, supra note 1, at 91; Matoesian, supra note 57, at 681, 687.

\textsuperscript{77} See Taslitz, supra note 56, at 84, 90; Matoesian, supra note 57 at 678–79. At about 4 a.m. on March 30, 1991, William Kennedy Smith allegedly raped Patty Bowman at the Kennedy estate after the two met at a night club in Palm Beach, Florida. See Matoesian, supra note 57, at 670 n.1. The trial took place from late November to early December in 1991. See id. On December 11, 1991, the jury found Smith not guilty of rape. See id.

\textsuperscript{78} See Taslitz, supra note 56, at 90; Matoesian, supra note 57, at 679.

\textsuperscript{79} See sources cited supra note 78.

\textsuperscript{80} See Torrey, supra note 52, at 1041; sources cited supra note 78.

\textsuperscript{81} See Matoesian, supra note 57, at 670.

\textsuperscript{82} See Taslitz, supra note 56, at 82–88; Matoesian, supra note 57, at 671–73.
changes throughout the legal system.\textsuperscript{83} Urging courts to treat rape the same as other crimes, rape law reforms repealed or modified traditional rape laws and enacted evidentiary reforms in every state in the United States.\textsuperscript{84}

The most common and widespread changes occurred in four areas.\textsuperscript{85} First, rape was redefined so that there was no longer a single crime of rape.\textsuperscript{86} Rather, most states now define rape as "a series of graded offenses defined by the presence or absence of aggravating conditions."\textsuperscript{87} Second, the consent standards were altered to shift the focus from the victim's resistance and consent to the amount of force and coercion used by the perpetrator.\textsuperscript{88} Third, the victim was no longer required to corroborate her testimony.\textsuperscript{89} The fourth and perhaps most important area of change, known as rape shield statutes, prevented defense counsel from introducing information about a victim's prior sexual behavior.\textsuperscript{90} These statutes were intended to address the problem that jurors perceive a victim's prior sexual history to be probative of a victim's credibility, moral character, and consent.\textsuperscript{91} Proponents of the statutes argued that these perceptions have a prejudicial impact on the jury decision-making process.\textsuperscript{92}

However, rape reforms have been largely unsuccessful because they have not affected the primary mechanisms by which jurors in rape trials determine credibility—reliance on rape myths.\textsuperscript{93} Research measuring the before and after implementation effects of statutory reform have found that rape reform has not had a powerful impact

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\item[83] See Matoesian, \textit{supra} note 57, at 669.
\item[84] See \textit{SPOHN & Horney, supra} note 18, at 17; \textit{Taslitz, supra} note 56, at 153; Matoesian, \textit{supra} note 57, at 670.
\item[85] See \textit{SPOHN & Horney, supra} note 18, at 21; \textit{Taslitz, supra} note 56, at 153; Matoesian, \textit{supra} note 57, at 670.
\item[86] See \textit{SPOHN & Horney, supra} note 18, at 21.
\item[87] See id.
\item[88] See \textit{id.}; \textit{Taslitz, supra} note 56, at 153; Matoesian, \textit{supra} note 57, at 670.
\item[89] See \textit{SPOHN & Horney, supra} note 18, at 21.
\item[90] See Matoesian, \textit{supra} note 57, at 670; Torrey, \textit{supra} note 52, at 1062.
\item[91] See Torrey, \textit{supra} note 52, at 1062–63.
\item[92] See \textit{id.}
\item[93] See \textit{SPOHN & Horney, supra} note 18, at 173 (stating that rape law reforms have placed few constraints on the discretion exercised by adjudicators); \textit{Taslitz, supra} note 56, at 154–55 (stating that rape law reform has failed largely because it does not address rape myths); Matoesian, \textit{supra} note 57, at 672–73 (stating that the failure of rape law reform can be attributed in part to juror reliance on rape myths in their deliberations); Torrey, \textit{supra} note 52, at 1014 (stating that despite rape law reforms, rape myths impede the successful prosecution of rape).
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on the legal system. In the first comprehensive study of the effects of rape reform, Cassia Spohn and Julie Horney concluded "the ability of rape reform legislation to produce instrumental change is limited." Further, rape law reforms do little to check the discretion of adjudicators. This is largely because adjudicators are prone to hold and up­hold misconceptions about rape, rapists, and victims, rendering attempts to transform the law largely ineffective. In particular, despite elimination of resistance requirements from rape law, most prosecutors believe juries will be unlikely to find a rape occurred without victim resistance or an explanation as to why there was not resistance. In other words, the utmost resistance standard is so embedded in the minds of adjudicators that rape convictions are largely dependent on precisely the factors rape reform attempted to eliminate from deliberations. As one prosecutor stated, "Old habits and old attitudes die hard; we can change the law but we can’t necessarily change attitudes."

Additionally, despite rape shield laws, evidence of a prior sexual relationship between the victim and the defendant will most likely be admitted, even when evidence concerns a single encounter months before the rape. This is particularly discouraging for acquaintance rape cases, where consent is typically a defense. Moreover, situations where evidence is restricted by rape shield laws often serve to motivate defense counsel to make inferences in trial talk that increase juror

94 See Spohn & Horney, supra note 18, at 173; Matoesian, supra note 57, at 688–89; Torrey, supra note 52, at 1014.
95 See Spohn & Horney, supra note 18, at 5, 173. Spohn and Horney were the first social scientists to study the impact of rape reform in more than one jurisdiction and among the first to examine the impact of rape reform. See id. at 5. They collected data on the outcome of rape cases, before and after reforms were implemented, and the attitudes of criminal justice officials toward reform. See id. Their data consisted of every rape case processed over a fifteen year period in six jurisdictions—Detroit, Michigan; Cook County (Chicago), Illinois; Philadelphia County (Philadelphia), Pennsylvania; Harris County (Houston) Texas; Fulton County (Atlanta), Georgia; and Washington, D.C. See id. at 5, 35. Because the extent of reforms varied across the United States, Spohn and Horney chose three cities known for stronger reforms (Detroit, Chicago, and Philadelphia) and three cities with weaker reforms (Houston, Atlanta, and Washington, D.C.). See id. at 35–36.
96 See Spohn & Horney, supra note 18, at 173.
97 See Matoesian, supra note 57, at 672–73.
99 See Spohn & Horney, supra note 14, at 18–19; Gaines, supra note 53, at 231.
100 Spohn & Horney, supra note 18, at 129.
101 See id. at 155.
102 See id.
reliance upon rape myths. Consequently, because rape reform efforts do not effectively counter the pervasive and underlying myths about rape that inform the ideological framework of utmost resistance they are, in many ways, fruitless.

IV. USING RAPE TRAUMA SYNDROME TESTIMONY TO COMBAT RAPE MYTHS

The ABA's Commission on Women in the Profession has identified and called for effective education as a means of fighting widespread problems of devaluation of victim credibility and stereotypical assumptions about gender in the justice system. Joined by many state commissions, as well as the National Judicial Education Program, the Commission called for courts and bar organizations to work with gender bias specialists to ensure that every justice system has strategies for effective education. This education should include training not just in "bias sensitivity" but also in social, economic, and psychological research that should inform decision making on gender-related issues. The Commission also called for collaboration with other groups, both within and outside the courts, concerned with eliminating gender bias. In this call for a solution, these organizations implicitly recognize the failure of rape reform to remedy the pervasiveness of rape myths in the minds of trial participants and prescribe education as the best weapon to combat these problems.

Application of Rape Trauma Syndrome testimony can remedy these problems. Expert testimony on Rape Trauma Syndrome can educate participants in criminal rape trials and provide them with a new framework to understand rape, rape victims, and rapists. In this way, not only can Rape Trauma Syndrome testimony counter the influence of rape myths on jurors, it can also educate attorneys and judges. Rape Trauma Syndrome, an alternative to the ideological

103 See Matoesian, supra note 57, at 676–77.
104 See TASLITZ, supra note 56, at 154–55; Matoesian, supra note 57, at 672–73.
105 See RHODE, supra note 53, at 11, 36.
106 See id.
107 See id.
108 See id.
109 See id.
111 See id.
112 See TASLITZ, supra note 56, at 132–33; Gaines, supra note 53, at 227; Garrison, supra note 110, at 646; Torrey, supra note 52, at 1065.
framework of utmost resistance, educates jurors and effectively challenges rape myths.\textsuperscript{113}

A. A Brief History of Rape Trauma Syndrome

Rape Trauma Syndrome is considered a post-traumatic stress disorder consisting of four elements.\textsuperscript{114} The term Rape Trauma Syndrome originates from a 1974 study conducted by Drs. Ann Burgess and Lynda Holmstrom.\textsuperscript{115} For one year the study followed ninety-two women, who initially came to the Boston City Hospital Emergency Ward because they were raped.\textsuperscript{116} Burgess and Holmstrom interviewed the women at the hospital and then later counseled them by phone and through home visits, keeping detailed notes of symptoms reported and changes in thoughts, feelings, and behavior.\textsuperscript{117} Upon analysis of their findings, Burgess and Holmstrom applied the term “Rape Trauma Syndrome” to the reactions and coping mechanisms that rape victims may use to deal with the aftermath of rape.\textsuperscript{118} Rape Trauma Syndrome is the “acute phase and long-term reorganization process that occurs as a result of . . . rape or attempted . . . rape. This syndrome of behavioral, somatic, and psychological reactions is an acute stress reaction to a life-threatening situation.”\textsuperscript{119}

\textsuperscript{113} See sources cited supra note 112.

\textsuperscript{114} See Gaines, supra note 53, at 228. Rape Trauma Syndrome has four stages:

First, the patient experiences a type of stressor, which causes distress symptoms in most people. Second, the patient re-lives the underlying trauma by one of several means, including recurrent nightmares and vivid memories of the event. Third, the patient avoids stimuli associated with the trauma or demonstrates reduced responsiveness. This lessened responsiveness can be “indicated by at least three characteristics including feelings of detachment from others, the sense of a foreshortened future, and a restricted range of (feeling or emotional response).” Last, the patient exhibits “two or more [particular] symptoms not present (prior to) the trauma, including sleep disturbance, exaggerated startle response, and hypervigilance.” When the first element, the stressor, is rape, therapists and counselors diagnose the patient with rape trauma syndrome.

\textit{Id.}

\textsuperscript{115} See Ann Wolbert Burgess & Lynda Lytle Holmstrom, Rape Trauma Syndrome, 131 AM. J. PSYCHIATRY 981, 982–84.

\textsuperscript{116} See id.

\textsuperscript{117} See id. at 982.

\textsuperscript{118} See id. at 981.

\textsuperscript{119} See id. at 982.
According to Burgess and Holmstrom, the rape victim will go through the acute phase immediately following the attack.\textsuperscript{120} The behavior exhibited by a rape victim after the attack can vary.\textsuperscript{121} Some women will react in an expressed style, openly showing fear, anger, and anxiety, while others will react in a controlled style, appearing calm, numb, and subdued.\textsuperscript{122} Women in the acute phase will also experience physical reactions, including the actual physical trauma that resulted from the attack, muscle tension that could manifest itself in tension headaches, fatigue, disturbed sleep patterns, gastrointestinal irritability, and genitourinary disturbance.\textsuperscript{123} Emotional reactions in the acute phase generally take the form of shock, fear, humiliation, denial, withdrawal, fear of violence and death, and self-blame.\textsuperscript{124}

Rape Trauma Syndrome has been frequently reviewed and discussed in both behavioral science and legal literature.\textsuperscript{125} Behavioral science studies have corroborated Burgess and Holmstrom's Rape Trauma Syndrome theory.\textsuperscript{126} Legal studies on the introduction of Rape Trauma Syndrome in criminal trials focus on both its utility in proving rape, as well as its ability to rehabilitate a victim's credibility once it has been attacked by defense counsel.\textsuperscript{127} An extensive body of case law has developed concerning the admissibility of Rape Trauma Syndrome.\textsuperscript{128} Courts have generally held that the therapeutic origin of Rape Trauma Syndrome does not render it unreliable for trial purposes.\textsuperscript{129} In \textit{People v. Taylor}, the New York Court of Appeals stated that the relevant scientific community has generally accepted that rape is a highly traumatic event that triggers the onset of certain identifiable symptoms in many women.\textsuperscript{130}

\textsuperscript{120} See Burgess & Holmstrom, supra note 115, at 982.
\textsuperscript{121} See id.
\textsuperscript{122} See id. at 982–83.
\textsuperscript{123} See id.
\textsuperscript{124} See id. at 983.
\textsuperscript{125} See Garrison, supra note 110, at 591.
\textsuperscript{126} See id.; Massaro, supra note 12, at 427, 431.
\textsuperscript{127} See Garrison, supra note 110, at 591.
\textsuperscript{129} See cases cited supra note 128.
\textsuperscript{130} See 552 N.E.2d at 134.
B. Using Rape Trauma Syndrome to Provide an Alternative to the Ideological Frame of Utmost Resistance

In her book, Ehrlich contends that the outcomes of rape trials are influenced by the ideological frame of utmost resistance because there are no alternative ideologies challenging adjudicators’ reliance on rape myths.\(^1\) However, Ehrlich contemplates a solution only when she suggests that different questions with different presuppositions could challenge the structure of acquaintance rape adjudication processes.\(^2\) She puts forth a “reasonable woman” standard and suggests that, if viewed with the cultural knowledge of women’s social and physical vulnerability to sexual violence, complainants’ inaction and deficient signals of consent can be recontextualized as strategic acts of resistance and not consensual sex.\(^3\)

While this standard certainly would be helpful in eliminating gender bias in the judicial system, Ehrlich misses a crucial step that could transform the ideological frame of the utmost resistance standard to the ideological frame of the reasonable woman standard.\(^4\) Expert testimony on Rape Trauma Syndrome can bridge this gap by giving adjudicators the tools to apply the “reasonable woman” standard.\(^5\)

Rape Trauma Syndrome educates jurors by providing them with a set of behaviors that are exhibited by rape victims.\(^6\) It explains how the rape is manifested in the victim based on a range of factors such as the nature of the rape, as well as the victim’s personality, life experience, support system, and relationship to the attacker.\(^7\) Thus, it gives the jury a context in which to place and understand the persons and dynamics involved in a rape.\(^8\) Rape Trauma Syndrome evidence can include descriptions of how victims can react within hours after a rape, why a victim may not report a rape, why a victim may have faulty memories before the rape, as well as why a victim might return to the same place as the rape incident.\(^9\) These descriptions supply adjudicators with an alternative framework to understand rape when con-

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\(^1\) See Ehrlich, supra note 1, at 67, 152.
\(^2\) See id. at 135.
\(^3\) See id. at 144.
\(^4\) See Rhode, supra note 53, at 8.
\(^5\) See Ehrlich, supra note 1, at 135, 144; Garrison, supra note 110, at 649.
\(^6\) See Garrison, supra note 110, at 646.
\(^7\) See id. at 632.
\(^8\) See id. at 649.
\(^9\) See id. at 639.
fronted with victims and situations which do not fit into familiar myths about rape.\textsuperscript{140}

Moreover, without the behavioral descriptions that Rape Trauma Syndrome provides, the average lay person is unable to accurately gauge victim credibility.\textsuperscript{141} One study, reporting that a victim’s emotional response immediately after the rape significantly affected her perceived credibility, relied on both the expressed and controlled type of victim reaction to rape described in the acute phase of Rape Trauma Syndrome.\textsuperscript{142} The study asked participants to evaluate rape victims’ credibility by reading written descriptions and viewing videotapes of the rape victim’s emotional state.\textsuperscript{143} The study participants found the credible rape victim to be the one who reacted in the emotional, expressed manner rather than the one who reacted in the calm, controlled manner.\textsuperscript{144} Studies on Rape Trauma Syndrome have found that lack of emotional reaction is common behavior during the acute phase of Rape Trauma Syndrome.\textsuperscript{145} In this study though, when participants were presented with two equally accurate styles of victim reaction to rape, they found the style that most fit to the familiar rape myth, that is, the expressed style, to be the credible one.\textsuperscript{146}

Nevertheless, studies have also shown that acceptance of these rape myths can be effectively challenged through education about rape.\textsuperscript{147} In an effort to prove that pornography promotes the acceptance of rape myths, one study exposed subjects to pornographic rape portrayals.\textsuperscript{148} Researchers, concerned that these beliefs would extend beyond the research setting, followed the experiment with a “debriefing” communication.\textsuperscript{149} Subjects were given a strong statement about the absolute falsehood of rape myths and affirming the true

\textsuperscript{140} See Torrey, supra note 52, at 1069.

\textsuperscript{141} See David McCord, The Admissibility of Expert Testimony Regarding Rape Trauma Syndrome in Rape Prosecutions, 26 B.C. L. REV. 1143, 1155 (1985). Studies involving the average lay person are highly relevant to juror sentiment because, as Torrey notes, “[t]here is no reason to believe that jurors, who are intended to represent a cross-section of the community, will have attitudes about women, rape, and rapists different from those held by members of society as a whole.” Torrey, supra note 52, at 1046–47.

\textsuperscript{142} See McCord, supra note 141, at 1155.

\textsuperscript{143} See id.

\textsuperscript{144} See id.

\textsuperscript{145} See id.

\textsuperscript{146} See id.

\textsuperscript{147} See Torrey, supra note 52, at 1067–69. Torrey cites numerous studies conducted by Neil Malamuth and James Check. See id. at 1067 n.258

\textsuperscript{148} See id.

\textsuperscript{149} See id.
horror of rape. When assessed during the follow up period, the de-briefed subjects exhibited a lower acceptance of rape myths. These studies, demonstrating that appropriate debriefing can reduce the acceptance of rape myths, open the door for Ehrlich’s “reasonable woman” standard. By providing the study participants with information about rape, the researchers were able to challenge their acceptance and reliance on rape myths with the cultural knowledge of women’s social and physical vulnerability to sexual violence.

Expert testimony on Rape Trauma Syndrome to explain behavioral patterns of rape victims functions in the same way as the debriefings that researchers have used. Indeed, a growing number of courts have allowed introduction of expert testimony about Rape Trauma Syndrome when it is used to educate the jury. One of the most broadly accepted uses of Rape Trauma Syndrome evidence is to explain behavioral patterns of rape victims that might be viewed as inconsistent with a claim of rape. Expert testimony has been used to explain the behavior of rape victims as a class, as well as individual victims. Use of testimony describing a victim’s behavior during and following a rape is typically admitted and utilized in courts. Offering Rape Trauma Syndrome evidence for this purpose legitimizes the victim’s inconsistent or unusual behavior. Further, using Rape Trauma Syndrome testimony in this way is not offering it as evidence

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150 See id.
151 See Torrey, supra note 52, at 1067–69. A follow-up study by the same researchers, devised specifically to gauge the success of these types of debriefings, yielded similar results. See id. at 1068–69.
152 See EHRICH, supra note 1, at 144; Torrey, supra note 52, at 1067–69.
153 See sources cited supra note 152.
154 See Torrey, supra note 52, at 1067–69.
155 See, e.g., Mamay, 553 N.E.2d at 951 (allowing expert testimony on rape trauma syndrome to explain that not all victims of rape and sexual assault report the event immediately and to explain that, in the context of a trust relationship, such as a doctor-patient relationship, some victims may return to the trusted relationship for further contact with the perpetrator of the assault); Taylor, 552 N.E.2d at 136 (allowing expert testimony on rape trauma syndrome to explain reaction of complainant in the hours following her attack, and to explain why complainant may have been initially unwilling to report that defendant had been man who attacked her); Kinney, 762 A.2d at 842–43 (allowing expert testimony on rape trauma syndrome and characteristics of rape victims to explain why a rape victim might not struggle physically or loudly, might fall asleep in her attacker’s bed after the rape occurred, and might not immediately report the rape).
156 See Kinney, 762 A.2d at 842–43.
157 See Garrison, supra note 110, at 639.
158 See cases cited supra note 155.
159 See Gaines, supra note 53, at 251–52.
of the crime, rather, it is educating the jury that victims often behave in ways contradictory to the myth of a traditional rape victim.\textsuperscript{160}

Rape Trauma Syndrome testimony has proven particularly effective in rehabilitating the victim when the defense asserts that the complainant consented to the rape.\textsuperscript{161} Despite some limitations, a number of states have allowed testimony of Rape Trauma Syndrome to be admitted where the defendant concedes that sexual intercourse occurred, but contends it was consensual.\textsuperscript{162} These states have held that the presence of Rape Trauma Syndrome in a victim can be relevant to whether a rape did take place.\textsuperscript{163}

Courts have stated that because false rape myths affect common understanding, the various patterns of response among rape victims are not within the ordinary understanding of the average juror.\textsuperscript{164} \textit{People v. Taylor}, one of the leading cases on the use of expert testimony on Rape Trauma Syndrome, provides an example of just how foreign the behavior of rape victims can be to jurors.\textsuperscript{165} In that case, the defendant’s first trial ended with the jury being unable to reach a verdict.\textsuperscript{166} At trial, evidence was presented that the complainant, though she knew her attacker, initially told police that she could not identify her attacker and then later identified him to her mother while at the police station.\textsuperscript{167} Additionally, defense counsel presented evidence that the victim appeared calm after the attack.\textsuperscript{168} The jury was unable to reach a verdict because the complainant’s behavior was not within the ordinary understanding of the jury.\textsuperscript{169} The jury’s difficulty in deciding the case demonstrates the problem a jury has in associating rape with behavior not conforming to common rape myths.\textsuperscript{170}

\textsuperscript{160} See id.
\textsuperscript{161} See \textit{Taylor}, 552 N.E.2d at 137.
\textsuperscript{162} See, e.g., \textit{State v. Marks}, 647 P.2d 1292, 1299 (Kan. 1982) (finding Rape Trauma Syndrome evidence relevant when a defendant argues the victim consented to sexual intercourse); \textit{Kinney}, 762 A.2d at 842 (allowing Rape Trauma Syndrome evidence offered to respond to defense claims that the victim’s behavior was consensual sex because it was inconsistent with rape); \textit{State v. McCoy}, 366 S.E.2d 731, 737 (W. Va. 1988) (finding that where consent is a defense to a rape charge, qualified expert testimony on rape trauma syndrome is relevant and admissible).
\textsuperscript{163} See cases cited \textit{supra} note 162.
\textsuperscript{164} See \textit{Taylor}, 552 N.E.2d at 136; \textit{Kinney}, 762 A.2d at 842.
\textsuperscript{165} See 552 N.E.2d at 136; \textit{Garrison, supra} note 110, at 644.
\textsuperscript{166} See \textit{Taylor}, 552 N.E.2d at 132.
\textsuperscript{167} See \textit{id}.
\textsuperscript{168} See \textit{id}.
\textsuperscript{169} See \textit{id. at} 132, 136.
\textsuperscript{170} See \textit{id}.
However, on retrial, the testimony on Rape Trauma Syndrome provided the jury with an alternative ideological frame with which to view the facts of the case. As a result, the jury returned a verdict of one count of attempted rape in the first degree and two counts of sodomy. In the second trial, expert testimony on Rape Trauma Syndrome was presented for two purposes: to explain why the complainant might have been unwilling to name the defendant as her attacker and to rebut the inference that because the complainant was quiet and controlled following the alleged attack, it could not have been rape. Here, Rape Trauma Syndrome countered two manifestations of the prevalent rape myth that women falsely claim rape after consenting to sexual relations: that rape victims immediately report rape and that rape victims are extremely agitated after a rape.

By providing jurors with another way in which to view the victim’s behavior, testimony on Rape Trauma Syndrome challenged jurors’ natural tendency to utilize familiar rape myths. No longer constrained to evaluate the victim’s behavior under the utmost resistance standard, the jury was able to understand why a victim might not behave in the manner familiar rape myths prescribe.

C. Limitations on the Use of Rape Trauma Syndrome Testimony in Criminal Trials

However, testimony on Rape Trauma Syndrome is controversial. Rape Trauma Syndrome lacks the scientific precision to prove causation because studies have not been able to demonstrate a specific link between particular symptoms and rape: not all victims of rape react the same way; some victims of rape do not show signs of Rape Trauma Syndrome behavior; and other factors unrelated to the rape can also affect psychological and emotional trauma after a rape. Furthermore, Burgess and Holmstrom intended their Rape Trauma Syndrome theory not to provide prosecutors with a legal

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171 See Taylor, 552 N.E.2d at 132–33.
172 See id.
173 See id. at 132.
174 See id.; Torrey, supra note 52, at 1025, 1064–65.
175 See Taylor, 552 N.E. 2d at 136.
176 See id.; EHRLICH, supra note 1, at 135, 144.
177 See, e.g., State v. Saldana, 324 N.W.2d 227, 230 (Minn. 1982); Taylor, 552 N.E.2d at 138–39.
178 See Gaines, supra note 53, at 230; Garrison, supra note 110, at 639.
analysis to prove rape, but rather to provide a therapeutic tool to aid in the diagnosis and treatment of psychiatric patients. 179

Noting these factors, courts have specifically held that when Rape Trauma Syndrome is introduced to prove that a rape occurred, it is unduly prejudicial. 180 In People v. Taylor, the New York Court of Appeals also found expert testimony on Rape Trauma Syndrome to be prejudicial. 181 The trial court had allowed expert testimony on Rape Trauma Syndrome to show that the behavior complainant and her grandmother had testified to was consistent with a set of symptoms commonly associated with women who had been raped. 182 The court held this evidence to be prejudicial and admitted in error because it clearly implied that, because the complainant exhibited these symptoms, a rape occurred. 183

Even the use of the term Rape Trauma Syndrome itself is controversial. 184 Because the term implies that a rape has occurred, many jurisdictions find it unduly prejudicial. 185 For example, Alaska, Iowa and Maryland’s state supreme courts have all allowed expert testimony on Rape Trauma Syndrome conditioned on the fact that the term Rape Trauma Syndrome not be used. 186 However, by restricting

179 See Gaines, supra note 53, at 229–30.
180 See, e.g., Saldana, 324 N.W.2d at 229 (finding expert witness' testimony that described Rape Trauma Syndrome and gave opinion that complainant had been raped was 'no help to the jury and produces an extreme danger of unfair prejudice'); Taylor, 552 N.E.2d at 139 (finding trial court erred in permitting the admission of expert testimony regarding rape trauma syndrome to prove that a rape occurred because of the presence of symptoms of Rape Trauma Syndrome).
181 See 552 N.E.2d at 138-39. People v. Taylor is two cases consolidated on appeal, Taylor and People v. Banks. Id. The court found the use of expert testimony on Rape Trauma Syndrome permissible in Taylor, but prejudicial in Banks. Id.
182 See id. at 133.
183 See id. at 138–39
185 See id.
186 See Hilburn v. State, 765 P.2d 1382, 1386 (Alaska Ct. App. 1988) (holding that testimony tending to establish that complainant's behavior was not inconsistent with a person who had undergone trauma was admissible specifically because the expert did not say complainant's behavior "was consistent with an Eskimo woman who had been raped," that complainant "was suffering from 'rape trauma syndrome,' or that he believed her testimony was truthful"); State v. Gettier, 438 N.W.2d 1, 5–6 (Iowa 1989) (holding that testimony limited to an explanation of the effects of Post Traumatic Stress Disorder and the typical reaction of a rape victim was admissible because "the expert neither used the term 'rape trauma syndrome' nor offers an opinion on whether the victim had been raped"); State v. Allewalt, 517 A.2d 741, 751 (Md. 1986) (holding that psychiatrist's testimony that victim suffered from posttraumatic stress disorder was admissible because "Dr. Spodak never used the term 'rape trauma syndrome,' and avoiding that terminology is more than
Rape Trauma Syndrome testimony in this way, these courts implicitly recognize the value of Rape Trauma Syndrome testimony.\textsuperscript{187} The value of this form of testimony is not its use to prove propensity or that a rape has occurred.\textsuperscript{188} Rather, Rape Trauma Syndrome testimony is valuable because it can open jurors and judges’ minds to alternative understandings of rape.\textsuperscript{189}

\textbf{Conclusion}

In her book, \textit{Representing Rape: Language and Sexual Consent}, Susan Ehrlich argues that events in rape trials are viewed through the ideological frame of the utmost resistance standard.\textsuperscript{190} Her observation of this ideological frame is supported by the many false rape myths prevalent in society.\textsuperscript{191} Rape myths pervade the judicial system and the minds of many of its participants.\textsuperscript{192}

While Ehrlich’s observation is certainly helpful to a better understanding of why rape reform is not working, she proposes no real solutions to the problem.\textsuperscript{193} More is needed to counter effectively the influence of gender bias on adjudicators’ decisions. Ehrlich comes closest to a solution when she envisions a “reasonable woman” standard which would allow different questions with alternative presuppositions to structure acquaintance rape adjudication processes.\textsuperscript{194} This standard, informed by the cultural knowledge of women’s social and physical vulnerability to sexual violence, would reconceptualize complainants’ inaction and deficient signals of consent as strategic acts of resistance rather than consensual sex.\textsuperscript{195}

While the “reasonable woman” standard would be helpful in eliminating gender bias in the judicial system, Ehrlich does not provide a way to attain it.\textsuperscript{196} Expert testimony on Rape Trauma Syndrome could replace the ideological frame of utmost resistance with this cosmetic. The concern with unfair prejudice is largely reduced when the terminology does not equate the syndrome exclusively with rape.”

\textsuperscript{187} See cases cited supra note 186.
\textsuperscript{188} See Taslitz, supra note 56, at 132.
\textsuperscript{189} See id.
\textsuperscript{190} See Ehrlich, supra note 1, at 65.
\textsuperscript{191} See id.
\textsuperscript{192} See Torrey, supra note 52, at 1014.
\textsuperscript{193} See Ehrlich, supra note 1, at 146.
\textsuperscript{194} See id. at 135.
\textsuperscript{195} See id. at 144.
\textsuperscript{196} See id. at 146–48.
ideological frame of the "reasonable woman." In allowing Rape Trauma Syndrome evidence to provide a context for the events and persons involved in rape, participants in rape trials will have the tools to apply the "reasonable woman" standard. The value of Rape Trauma Syndrome testimony resides not in proving that a rape occurred, but in educating adjudicators about rape and challenging their prejudices. Rape Trauma Syndrome testimony could have dispelled dominant rape myths in the case Ehrlich examined. The influence of rape myths on Matt's criminal trial is explicitly represented in the reasoning behind the judge's decision. Matt was convicted on one count of sexual assault against Marg and acquitted on the count involving Connie. In finding Matt guilty of sexual assault against Marg, the judge cited the corroborating evidence from Marg's friend Melinda and her boyfriend Bob as an important factor. By relying upon corroboration of the victim's story to find rape, the judge decided the case upon one of the factors - corroboration - that rape reform intended to eliminate.

The judge acquitted Matt of sexual assault against Connie, and stated that the consensual kissing, that occurred before the unwanted sexual contact, factored into his decision, "[Y]oung women, in turn, must realize that when a young man becomes aroused during sexual activity beyond a moderate degree there is a danger that he will be driven by hormones rather than conscience." The judge's decision reflects the rape myth that once hormones come into play, men are unaccountable for the violence they commit.

Rape reform efforts have been successful in some areas, but adjudicators are still influenced by rape myths. Rape Trauma Syndrome evidence can respond to the ABA's call for "effective education" to combat the ideological frame of utmost resistance. By approaching rape reform through education rather than legislation,

197 See id. at 144; RHODE, supra note 53, at 8.
198 See EHRLICH, supra note 1, at 135.
199 See TASLITZ, supra note 56, at 132.
200 See EHRLICH, supra note 1, at 56–58; TASLITZ, supra note 56, at 132.
201 See EHRLICH, supra note 1, at 56–58.
202 See id.
203 See id.
204 See id.; SPOHN & HORNEY, supra note 18, at 159, 176.
205 See EHRLICH, supra note 1, at 57.
206 See id.
207 See TORREY, supra note 52, at 1014.
208 See EHRLICH, supra note 1, at 135; RHODE, supra note 53, at 11, 36.
Rape Trauma Syndrome testimony provides an opportunity to eliminate sexism in the courtroom.\textsuperscript{209} In this manner, rape reform can transcend trial procedure and enter the minds of the decision-makers to reach fairer results.\textsuperscript{210}

\textsuperscript{209} See Taslitz, \textit{supra} note 56, at 132.

\textsuperscript{210} See Spohn \& Horney, \textit{supra} note 18, at 173.