

BUILDING A CASE: AMENDING UNITED
STATES DEFAMATION LAWS AS
APPROPRIATE REMEDIES TO PROTECT
REAL RAPE VICTIMS AND MEN WHO ARE
FALSELY ACCUSED OF RAPE

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INTRODUCTION

The crime of rape and sexual assault is an on-going global issue where women have suffered through sexual violence committed by men. Rape victims suffer physical and psychological damage than victims to other crimes committed.¹ As a personal and distressing experience, it is difficult for real rape victims to reside in societies where misperceptions of rape are often accepted. While violence against women has been on the rise, there is very little focus on innocent men who have been falsely accused of rape.

According to the Federal Bureau of Investigation (FBI) crime statistics, only 2% of rape reports are given falsely, which is the same percentage as other felonies.² However, there have been disputes that the rate is more substantial, beginning at 8% and then proceeding to higher numbers.³ For example, a police agency of a small metropolitan community in the Midwestern United States cooperated in a study concerning false rape allegations.⁴ In the findings, 41% of the total disposed rape cases were officially declared false during the 9-year period (1978-1987).⁵ This meant that the complainant's admission of a rape was false.⁶ These false allegations served a few major functions for the complainant: providing an alibi, seeking revenge, and obtaining sympathy and attention.⁷

What happens when a woman falsely accuses a man of rape? Where does that leave the falsely accused? A number of feminists are reluctant to admit that women do sometimes make false accusations of rape against men.⁸ Consequently, we should acknowledge that this is sometimes true.

¹ Marietta Sze-chie Fa, *Rape Myths in American and Chinese Laws and Legal Systems: Do Tradition and Culture Make the Difference?* 2007, MD. SER. CONTEMP. ASIAN STUD., no. 4, 2007, at 1, 4, available at <http://digitalcommons.law.umaryland.edu/mscas/vol2007/iss4/1>.

² John Hamlin, *List of Rape Myths*, U. MINN. DILUTH, (Mar. 3, 2005, 2:12 PM), <http://www.d.umn.edu/cla/faculty/jhamlin/3925/myths.html>

³ Jules Epstein, *True Lies: The Constitutional and Evidentiary Bases for Admitting Prior False Accusation Evidence in Sexual Assault Prosecutions*, 24 QUINNIPAC L. REV. 609, 615 (2006).

⁴ Eugene J. Kanin, *False Rape Allegations*, 23 ARCHIVES SEXUAL BEHAV. 81 (1994), available at <http://sf-criminaldefense.com/wp-content/uploads/2013/03/KaninFalseRapeAllegations.pdf>.

⁵ *Id.* at 84.

⁶ *Id.*

⁷ *Id.* at 81.

⁸ Linda Piggott & Keith Soothill, *False Accusations of Rape in the News* 72 POLICE J. 151 (1999).

Falsely accused men may be victims when faced with possible criminal convictions. Efforts have been made to decrease the escalation of false allegations since both parties are at risk. However, men still deal with the repercussions after facing the accusations and dealings with the aftermath that leaves them without dignity.

Once found innocent, falsely accused men are given the option to file defamation lawsuits against their accusers.⁹ But certain issues arise: the time and money spent, not being able to meet the required elements in the current United States defamation laws, and the prevention of real rape victims from coming forward.¹⁰ As a result, the problems of bringing defamation suits against alleged victims in the United States have resulted in conflict involving men who are falsely accused. It is less likely that a defamation suit against women who claim rape would succeed due to the strict standards of the United States defamation laws unlike the United Kingdom and Chinese defamation laws.¹¹

This Note will address the rarities of men who are falsely accused of rape by women as well as providing a new legislation of defamation laws that will lessen the strict standards of the United States where the falsely accused and real rape victims will be protected.

Part I discusses the stereotypical societal views and laws of rape in the United States, United Kingdom and China, and the motivations of sexual activity of women through the levels of consent and early signs of sexual behavior. Part II discusses the aftermath of men who are falsely accused. Once they are found innocent of rape, their reputations in society are often, if not always, damaged; accordingly, they sometimes exercise legal options, which may include filing defamation claims for false allegations a variety of options that are available for men, but are not solutions in resolving the fueled rumors of rape or restoring the men's reputation in society. In addition, a hypothetical case study is included to determine whether the current defamation laws are effective and what the issues are in the current laws that prevent falsely accused men in prevailing in defamation lawsuits against their accusers in the United States. Part III introduces a new law that is effective in the United States

⁹ Roxanne Jones, *Should False Rape Accusers Be Sued?*, CNN.com, Dec. 17, 2013, 7:52 AM), <http://www.cnn.com/2013/12/17/opinion/jones-rape-claim-lawsuits/>.

¹⁰ *Id.*

¹¹ Claire Steinmar, *Defamation and False Rape Claims: Policies, Attitudes, and Suggested Reform in the United States and the United Kingdom*. 19, CARDOZO J. L. & GENDER, at 907, 909-10. (2013).

for falsely accused men and why it should be followed. Part IV concludes on the fact that false allegations of rape and sexual assault are, like the crime of rape, a global issue that can be prevented through a series of solutions and a recommended law to decrease the rise of false allegations and not prevent real rape victims from coming forward.

I. THE IDENTIFICATION OF THE VICTIM AND THE ACCUSED: STEREOTYPICAL VIEWS IN SOCIETIES, RAPE LAWS, AND CONSENT

The focus on sex in our society has captured many American and foreign citizens' attention for centuries. To many, sex is considered an "attractive" significant feature occurring during the stages of development from adolescence to adulthood and even in the entertainment industry where movie and television producers excite youthful sexual expression and glamorize sexuality.¹² However, common sexual practices have transformed into one of the most violent, life-altering incidents affecting both women and men: the crime of rape.¹³

A. Stereotypical Views in Societies

Rape is an international problem around the world.¹⁴ There are a number of widely held beliefs and attitudes concerning the traditional sex roles of men and women.¹⁵ These beliefs and attitudes influence societies' stereotypical views and myths about rape.¹⁶ As it is widespread in society and accepted by many people, these beliefs and attitudes about rape create a hostile environment to rape victims.¹⁷ Constructed in a male-dominated society, rape myths include sex-role stereotypes and attempts to transfer blame from the rapist to the victim.¹⁸

The occurrence of rape myths in American culture might be a reason why the society itself is rape prone.¹⁹ Most myths are based on a common traditional gender norm: women are expected to behave in particular ways that confirm and reinforce their femininity in order to

¹² MAKING SENSE OF SEXUAL CONSENT 2 (Mark Cowling & Paul Reynolds, ed., Ashgate 2004).

¹³ *Id.* at 4.

¹⁴ *Id.* at 12.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 13.

avoid blame for rape.²⁰ Women are taught to resist sexual advances while men are taught to initiate sexual activity, which in turn creates the context of rape.²¹ The idea men are to be sexually aggressive and women should be sexually passive is the foundation that shapes the concept of rape myths.²²

Similar to the American stereotypes, the value of female chastity in China plays an important role in rape myths because it is believed that good women do not get raped; only fallen women who provoke their attacker do.²³ Chastity was a woman's preeminent virtue that was essential in the traditional Chinese ethical system.²⁴ It was therefore deemed crucial for women to lead a blameless life.²⁵ For the crime of rape to be established, the burden of proof is placed upon the victim.²⁶ However, the requirements were difficult for rape victims to prove they were raped, and reflected the assumption women often lie about sexual assaults.²⁷ For example, a woman's lack of struggle is seen as a sign that she actually enjoyed the sexual encounter, and the whole incident acquired a different complexion. In other words, an unchaste woman could not be raped.²⁸ Both the American and Chinese societies emphasize female chastity as the main component that motivates rape myths because when a woman loses her chastity, she feels shame and guilt.²⁹

Likewise in the United Kingdom, there are many myths surrounding rape and other forms of sexual violence.³⁰ However, unlike the American and Chinese culture, it is believed that rape only happens to young, good attractive women instead of fallen women who dress and act inappropriately towards men.³¹ In reality, attractiveness has very little

²⁰ Shana L. Maier, *The Complexity of Victim-Questioning Attitudes by Rape Victim Advocates: Exploring Some Gray Areas*, 18 VIOLENCE AGAINST WOMEN 1413, 1415 (2013).

²¹ Fa, *supra* note 1, at 14.

²² *Id.*

²³ *Id.* at 64-65.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 72.

²⁷ *Id.* at 72-3.

²⁸ A chaste woman refers to good women who do not get raped and have a guard against sexual assault. However, an unchaste woman has prior sexual history and has provoked their attacker. *See, Id.* at 64-65, 73.

²⁹ *Id.* at 105-06.

³⁰ *common myths about rape*, RAPE CRISIS ENG. & WALES, <http://www.rapecrisis.org.uk/commonmyths2.php> (last visited Nov. 14, 2014, 11:20 PM).

³¹ *Id.*

to do with sexual assault. In comparison to the American society, women and girls of all ages, classes, race, and faith are raped.³²

As a common crime in the United States and international countries, rape is a terrifying and humiliating experience that no woman wants or asks for.³³ Female chastity and attractiveness continues to mislead these societies that view rape as a sexual incident rather than a violent crime.³⁴ However, the belief that women have an incentive to lie about rape for revenge, blackmail, jealousy, guilt, or embarrassment is rooted in these societal attitudes toward women and rape³⁵ and continues to concern women's accounts of rape.³⁶

B. Rape Laws

1. United States Rape Laws

Under the traditional offense of rape, the victim must prove all elements of rape against the accused: penetration, force and resistance, non-consent, absence of a spousal relationship, and a culpable state of mind (*mens rea*).³⁷ However, in later years, the modern views of United States rape laws led to the change in the requirements of the elements provided. Modern statutes punish the perpetrators for rape if there is forcible penetration – by any object – of a woman's mouth, anus, or vagina.³⁸ Under the modern views, most states require reasonable, physical resistance of the perpetrator's advances because evidence of resistance is important for jurors to believe the protesting woman.³⁹

The United States Rape Shield Rule protects complainant(s) from having their past sexual behavior exposed in the courtroom unless the defense counsel can point toward a convincing theory of admissibility.⁴⁰ Rule 412(b)(1) provides certain criminal exceptions. (1) In a criminal case,

³² *Id.*

³³ *Id.*

³⁴ *Fa, supra* note 1, at 106.

³⁵ *Id.* at 11.

³⁶ Clare Gunby et al., *Regretting it After? Focus Group Perspectives on Alcohol Consumption, Nonconsensual Sex and False Allegations of Rape*, 22 *SOC. & LEGAL STUD.* 87, 90 (2012).

³⁷ *Rape: Legal Aspects – Forcible Rape: Elements of the Offense*, <http://law.jrank.org/pages/1927/Rape-Legal-Aspects-Forcible-rape-elements-offense.html>, (last visited Nov. 16, 2014, 4:12 pm).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Colin Miller, *Evidence: Rape Shield Rule*, CALI ELANGDELL PRESS 2 (Mar. 21, 2012), http://www.cali.org/sites/default/files/EvidenceRapeShield_Miller_Dec2014.pdf.

the following evidence is admissible, if otherwise admissible under these rules: (A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;⁴¹ (B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution;⁴² and (C) evidence the exclusion of which would violate the constitutional rights of the defendant.⁴³

2. United Kingdom Rape Laws

Under the United Kingdom rape laws, sexual assault is an act of physical, psychological, and emotional violation, in the form of a sexual act, which is inflicted on someone without consent.⁴⁴ It can involve forcing or manipulating someone to witness or participate in any sexual acts, apart from penetration of the mouth with the penis, the penetration of the anus or vagina (however slight) with any object or the penis, which is rape.⁴⁵ Under the Sexual Offences Act of 2003,⁴⁶ a person is guilty of an offence if she/he acted intentionally, the victim did not consent to the act, and the assailant did not reasonably believe the victim consented.⁴⁷

3. Chinese Rape Laws

For the crime of rape to be established in the Qing dynasty, the rape victim must prove she had struggled against her assailant.⁴⁸ Such evidence included: 1) a witness, either an eyewitness or people who had heard the victim's cry for help; 2) bruises and lacerations on her body; and 3) torn clothing.⁴⁹ It was important the victim was known to be an "innocent and chaste person," because her assailant would not otherwise be subject to the death penalty.⁵⁰

⁴¹ *Id.* at 4.

⁴² *Id.* at 4-5.

⁴³ *Id.* at 5.

⁴⁴ *Rape and Sexual Violence*, RAPE CRISIS ENGLAND & WALES, <http://www.rapecrisis.org.uk/rapeampsexualviolence2.php>. (last visited Nov. 16, 2014).

⁴⁵ *Id.*

⁴⁶ *Rape and Sexual Offences: Chapter 3: Consent*, THE CROWN PROSECUTION SERVICE http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/consent/. (last visited Nov. 14, 2014).

⁴⁷ *Id.*

⁴⁸ *Fa*, *supra* note 1, at 72.

⁴⁹ *Id.*

⁵⁰ Vivien W. Ng, *Ideology and Sexuality: Rape Laws in Qing China*, 46 J. ASIAN STUD. 57, 65 (1987).

C. Levels of Consent & Development

1. General Consent

The essential factor in determining rape is the absence of consent. To be found guilty, the assailant must know the person does not consent.⁵¹

a. Non-consent & Corroboration

These two requirements – the rape victim proves she adequately resisted her assailant, and she presents tangible proof she was raped – led courts to consider the psychology of the female.⁵² The focus is then placed on the woman's behavior. In defense of the allegations of rape, the defendant must show he believed the victim had consented.⁵³ She, on the other hand, is required to prove she did not consent to sex, and somehow to prove she is 'truthful.'⁵⁴

2. Signs of Sexual Awareness & Behavior

Researchers have demonstrated that young people become curious about their sexual identity before the age of 13.⁵⁵ However, if experimentation elevates to risky sexual behavior, young people may be exposed to potentially negative outcomes (unwanted pregnancy, sexual diseases, or rape).⁵⁶ Adolescence is a time of increasing self-discovery.⁵⁷

The increasing sexual awareness and promiscuity currently evident at lower ages enhances the probability girls may indulge in sexual experimentation as liberally as boys.⁵⁸ In modern times, the use of cosmetics⁵⁹ and consumption of alcohol enables young girls to feel more

⁵¹ JULIE A. ALLISON & LAWRENCE S. WRIGHTSMAN, RAPE: THE MISUNDERSTOOD CRIME 116 (1993).

⁵² *Id.* at 201.

⁵³ *Id.* at 121.

⁵⁴ *Id.* Women are assumed to lie about consent and make false allegations against men with the intent to get men in trouble or get themselves out of trouble.

⁵⁵ Ian W. Holloway et al., *The Effects of Sexual Expectancies on Early Sexualized Behavior Among Urban Minority Youth*, 3 J. SOC'Y SOC. WORK & RES. 2 (2012). See also Kent Chrisman & Donna Couchenour, *Healthy Sexuality Development: A Guide for Early Childhood Educators and Families*, available at <http://www.naeyc.org/store/files/store/TOC/221.pdf>.

⁵⁶ *Id.* at 2.

⁵⁷ *Id.*

⁵⁸ Larry W. Myers, *Reasonable Mistake of Age: A Needed Defense to Statutory Rape*, 64 MICH. L. REV. 105, 122 (1965).

⁵⁹ *Id.* at 123.

sophisticated to engage in sexual behavior with boys. They may even be as sexually active or aggressive as boys. If a young girl behaves in this way, they become the focus of attention, redirecting the focus from male abuses of power and trust.⁶⁰

Sexual experience has largely been characterized in the Christian theological tradition as a sacred marital bond blessed under the eyes of God.⁶¹ However, sex outside of marriage is a place of demonic impulses and forces, pulling us against our will.⁶² This is true when sex as a sin can lead to wickedness. If the woman happens to display sexual behavior, it is up to the man to be watchful for the behaviors and temptations from the woman. Unfortunately, a man who, by the Grace of God, resists these temptations from the woman may find himself to be accused of the worst crime possible: rape. Even the best men who obey the teachings of God and do good are falsely accused of rape by women whose hearts are filled with evil.

For instance in Genesis 39:7, the wife of Joseph's master's pursued Joseph relentlessly, requesting he lie with her.⁶³ Joseph declined her propositions, indicating it would be a sin against God.⁶⁴ Unfortunately, the wife made Joseph her enemy and falsely accused him of lying with her.⁶⁵ His master believed the accusation and Joseph was placed in prison.⁶⁶ This just shows that the master's wife was fully set to do evil upon Joseph. It is clear certain women who are out of control are a danger and present a risk to virtuous men who may face such accusations if they refuse to give in to a sexually aggressive woman's advances.⁶⁷

⁶⁰ MAKING SENSE OF SEXUAL CONSENT, *supra* note 12, at 122.

⁶¹ CHARLES E. CURRAN, AND RICHARD A. MCCORMICK, READINGS IN MORAL THEOLOGY NO. 8: DIALOGUE ABOUT CATHOLIC SEXUAL TEACHING 48-49 (1993)

⁶² *Id.*

⁶³ Genesis 39:7 (King James).

⁶⁴ *Id.* at 39:9.

⁶⁵ *Id.* at 39:14-15.

⁶⁶ *Id.* at 39:21.

⁶⁷ MAKING SENSE OF SEXUAL CONTENT, *supra* note 12, at 120.

II. THE AFTERMATH OF A MAN'S LIFE WHEN A WOMAN CRIES WOLF

A. *An Unsettling Occurrence: Defining False Allegations and Reports of Rape in Known Cases*

1. False Allegations and Reports

There is no more thorny issue arising from the crime of rape than dealing with the false allegations of rape against men who end up as suspects and endure psychological and social trauma.⁶⁸ Although feminists are reluctant to acknowledge the belief women sometimes make false accusations,⁶⁹ the likelihood of falsely accusing men of a heinous crime has steadily increased. For instance, law enforcement agencies estimated that the number of false rape accusations ranges from 2% to 8% annually, or between 2,000 and 7,000 cases each year.⁷⁰ A false complaint arises for a variety of reasons: conceal or deny discovered infidelity; minors concealing consensual under-age sexual activity; consensual sexual activity that is subsequently regretted; and historic complaints following the breakdown of a relationship.⁷¹

A report is false if the victim deliberately fabricates an account of being raped.⁷² False reports of rape do occur, but it is often difficult to assess how often it occurs.⁷³ Although rare, there are a few known cases that have occurred involving false complaints of rape.

2. Known Cases Involving False Rape Allegations

a. Duke Lacrosse case⁷⁴

On March 13, 2006⁷⁵ there was a lacrosse party held at Duke University. Three members of the university's lacrosse team hired two

⁶⁸ Kanin, *supra* note 4, at 88.

⁶⁹ Piggott & Soothill, *supra* note 8, at 151.

⁷⁰ Jones, *supra* note 9.

⁷¹ Candida L. Saunders, *The Truth, The Half-Truth, and Nothing Like the Truth: Reconceptualizing False Allegations of Rape*, 52 BRIT. J. CRIM. 1152, 1159 (2012).

⁷² Cassia Spohn, Clair White, & Katherine Tellis, *Unfounding Sexual Assault: Examining the Decision to Unfound and Identifying False Reports*, 48 LAW & SOC'Y REV. 161, 163 (2014).

⁷³ ALLISON & WRIGHTSMAN, *supra* note 51, at 11.

⁷⁴ Susan Hanley Kosse, *Race, Riches & Reporters – Do Race and Class Impact Media Rape Narratives? An Analysis of the Duke Lacrosse Case*, 31 S. ILL. U. L.J. 243, 258 (2007).

⁷⁵ *Id.*

strippers to perform for them at the home of several players.⁷⁶ One of the women alleged she was raped, sodomized, strangled, and beaten by three of the partygoers.⁷⁷ However, the accuser had provided conflicting stories about the number of individuals involved, the timing, and the circumstances, causing her credibility to suffer.⁷⁸ For instance, the accuser had filed a police statement, claiming that her colleague, Kim Roberts another stripper who was present at the party, had assisted the players in the alleged rape.⁷⁹ During an interview on *60 Minutes* with Ed Bradley, Roberts denied the claim of assisting the players.⁸⁰ The accuser gave different accounts about the number of men who raped her, stating at one point that night it was “five guys,” “three men,” and at one point, she said, “no one had forced her to have sex.”⁸¹

Mike Nifong, the district attorney, expressed with total certainty that the lacrosse players had committed a heinous crime.⁸² The image of the players went from athletes to accused criminals.⁸³ As an overzealous attorney, Nifong committed prosecutorial misconduct after withholding results showing that none of the lacrosse players’ DNA had been found on or in the accuser’s body, showing the accuser a suspect-only photo identification, and pursuing a case filled with discrepancies.⁸⁴ His actions stimulated out of self-interest and self-deception.⁸⁵ After the case was transferred over to the attorney general, the charges were dropped against the three men.⁸⁶

Despite being exonerated, one of the players, David Evans, spoke to Ed Bradley in an interview on *60 Minutes*.⁸⁷ He stated, “this woman has destroyed everything I worked for in my life. She’s put it on hold. She’s destroyed two other families and she’s brought shame on a great

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 266.

⁷⁹ Daniel Schorn, *Duke Rape Suspects Speak Out: 60 Minutes’ Ed Bradley Talks to the Accused Lacrosse Players, Who Have Never Before Been Interviewed*, CBS News, Oct. 11, 2006, <http://www.cbsnews.com/news/duke-rape-suspects-speak-out/>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Duff Wilson & David Barstow, *Rape Charges Dropped in Duke Case*, N.Y. TIMES, Dec. 22, 2006, http://www.nytimes.com/2006/12/22/sports/22cnd-duke.html?_r=0.

⁸⁵ Lara Setrakian & Chris Francescani, *Former Duke Prosecutor Nifong Disbarred*, ABCNEWS.COM, June 16, 2007, <http://abcnews.go.com/TheLaw/story?id=3285862&page=1>.

⁸⁶ *Id.*

⁸⁷ Schorn, *supra* note 79.

university. And, worst of all, she's split apart a community and a nation on facts that just didn't happen and a lie that should have never been told."⁸⁸

b. Tawana Brawley case⁸⁹

In this case, an African American teenager, who had gone missing for four days, was found discovered wrapped in a garbage bag.⁹⁰ She claimed six white men (including an assistant district attorney) had raped and sodomized her.⁹¹ The accusations caused public outrage because an upstanding officer of the court was allegedly involved.⁹² However, a grand jury found that Brawley had fabricated the entire story and had falsely reported the alleged accusations in an attempt to evade punishment for staying out late one night and found no physical evidence of an attack on Brawley's person.⁹³ The grand jury concluded that Brawley's appearance when she was found—and her visible injuries—could easily have been self-inflicted.⁹⁴

c. Cathleen Crowell Webb case⁹⁵

In this case, Cathleen, a then sixteen year old, had engaged in sexual intercourse with her boyfriend, but feared her foster parents would expel her from her new home if she were pregnant.⁹⁶ To cover up a potential pregnancy, she concocted a tale she was raped so she would not take any blame.⁹⁷ She performed self-inflicted wounds on herself before approaching her parents about the alleged rape, but did not want to report it to the police.⁹⁸ Although the police were involved, she had invented a description of her assailant, which led to the arrest of a high school dropout who claimed he did not rape Cathleen.⁹⁹ However, he was

⁸⁸ *Id.*

⁸⁹ Steinman, *supra* note 11, at 908-09.

⁹⁰ ALLISON & WRIGHTSMAN, *supra* note 51, at 10.

⁹¹ *Id.*

⁹² Steinman, *supra* note 11, at 92.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Denise Noe, *Cathleen Crowell Webb, Gary Dotson and the Rape That Never Was*, CRIMELIBR. (June 17, 2013, 3:52 PM), <http://www.crimelibrary.com/blog/article/cathleen-crowell-webb-gary-dotson-and-the-rape-that-never-was/index.html>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

found guilty of rape after she testified against him.¹⁰⁰ He was sentenced to 25-50 years imprisonment.¹⁰¹ After Cathleen had graduated from high school, attended college, and married, she later recanted her statement and admitted she made the rape up to avoid getting in trouble with her foster parents.¹⁰² The defendant was released from prison, but had a difficult time transitioning back into the community.¹⁰³

B. *Dynamics of False Rape Allegations*

A false rape allegation seems to be a gesture to satisfy an alibi, revenge, or attention needs.¹⁰⁴ These factors result from a complainants' own verbalizations during recantations¹⁰⁵ if the allegations are found false in an investigation. In a metropolitan police agency in the Midwestern United States, there was a long-term study of all false rape allegations from 1978 to 1987.¹⁰⁶ 41% of rape claims were declared false and these allegations served three major functions for the complainants: providing an alibi, seeking revenge, and obtaining sympathy and attention.¹⁰⁷

A woman would be in need to provide a plausible explanation for an unforeseen, unfortunate consequence of a consensual encounter, usually sexual, with a male acquaintance.¹⁰⁸ An example supporting this theme appears in Harper Lee's novel, *To Kill A Mockingbird*.¹⁰⁹ In court, the defendant's lawyer questioned the alleged female victim as to whether her father physically abused her and to cover up his crime, accused an innocent black man of raping his daughter.¹¹⁰ The female victim's father who is the town drunk had beaten his daughter and accused a black man to cover up his crime of abuse after catching both parties, the daughter and the defendant, together. Atticus Finch, the defendant's attorney, cross-examined the alleged victim: "What did your

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Kanin, *supra* note 4, at 88.

¹⁰⁵ *Id.* at 85.

¹⁰⁶ *Id.* at 84.

¹⁰⁷ *Id.* at 81, 84.

¹⁰⁸ *Id.* at 908-09.

¹⁰⁹ See HARPER LEE, *TO KILL A MOCKINGBIRD* 187 (Warner Books ed. 1982) (1960).

¹¹⁰ *Id.*

father see in the window, the crime of rape or the best defense to it? Why don't you tell the truth, child, didn't Bob Ewell beat you up?"¹¹¹

Revenge involves a woman retaliating against a rejecting male.¹¹² A woman who was sexually and emotionally involved with a responding male becomes a woman scorned when the man no longer wants to resume sexual associations.¹¹³ Sometimes, a woman reacts with a false rape charge against the man who rejected her. For instance, when the master's wife in Genesis 39:13-14 was rejected by Joseph, she took the garment he left behind and concocted a story: he lied with her.¹¹⁴ In the end, Joseph's master arrested him and placed him into the prison where he was bound.¹¹⁵

C. Defamation Claims in the United States, United Kingdom and China: Does the Innocent Man Have a Case?

Where an allegation of rape has contained false statements of facts,¹¹⁶ innocent men have the right to file defamation suit against their accuser(s). Defamation claims for false rape allegations have become more common in the United Kingdom.¹¹⁷ London is known as the libel capital of the world.¹¹⁸ Groups advocating for men's rights in both the United States and the United Kingdom have asserted that false rape claims are common.¹¹⁹ Like the United States and the United Kingdom, defamation litigation—treated as both a civil and criminal matter—in China is also on the rise.¹²⁰

1. In the United States

Under common law, a plaintiff could make a prima facie case by proving an allegedly false statement was published, it was defamatory, and it was about the plaintiff.¹²¹ Injuries to the plaintiff's reputation were

¹¹¹ *Id.*

¹¹² Kanin, *supra* note 4, at 86.

¹¹³ *Id.*

¹¹⁴ See Genesis 39:13-14 (King James).

¹¹⁵ *Id.* at 39:20.

¹¹⁶ Saunders, *supra* note 71, at 1160.

¹¹⁷ Steinman, *supra* note 11, at 909.

¹¹⁸ *Id.* at 908-909.

¹¹⁹ *Id.* at 917.

¹²⁰ Woon-Wah Siu et al., *Chinese Defamation Law*, ADVISORY, Oct. 23, 2013, at 1, available at www.pillsburylaw.com.

¹²¹ Steinman, *supra* note 11, at 911.

not required.¹²² In later years, the actual malice rule was developed in *New York Times v. Sullivan*¹²³ and was expanded in *Curtis Publishing Co. v. Butts*.¹²⁴ Any public figure well known to the community were required to prove the supposedly defamatory statement was made with knowledge that the statement was false, or made with reckless disregard for its falsity.¹²⁵ If, on the other hand, the plaintiff was a private person, the negligence standard was used.¹²⁶ To meet the negligence standard, the private figure must establish the allegation was false and the media was at fault for publishing the statement and fault must at least meet the standard of negligence, if not gross negligence.¹²⁷ The most importance concept in United States defamation law is the distinction between opinion and statements based on fact.¹²⁸ An opinion is merely a person's perspective and is not defamatory.¹²⁹ Defamation can only be found when the statement at issue is based on fact – not opinion.¹³⁰ The plaintiff must demonstrate it was (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence...and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.¹³¹

Although rarely prosecuted, criminal defamation does exist in the United States can lead to prison sentence and harsh fines.¹³² For example, courts require that actual malice must be proven to sustain a criminal conviction, regardless of the victim.¹³³ In *State v. Powell*, the Court ruled that defamation involving public concerns can be subject to criminal penalty if the statements were made with actual malice. 114

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 911-912.

¹²⁶ *Id.* at 912.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 919.

¹³² ARTICLE 19: *Criminal Defamation*, <http://www.article19.org/pages/en/criminal-defamation.html> (last visited April 18, 2015).

¹³³ *Criminal Defamation*, <http://www.unc.edu/courses/2010spring/law/357c/001/Cyberbully/criminal-defamation.html> (last visited April 18, 2015).

N.M. 395, 399 (1992). However, the requirement of actual malice is satisfied in many civil defamation cases than criminal cases.¹³⁴

a. Strict Prerequisites

A defamation suit over a rape allegation will not be successful in the United States if the plaintiff does not demonstrate the showing of damages to his reputation/character.¹³⁵ In *Arledge v. Hendricks*,¹³⁶ the plaintiff's ex-wife and her new husband, the defendants, filed for custody and child support for the plaintiff's daughter, with his ex-wife claiming that the plaintiff had repeatedly raped the child. The plaintiff had denied the charge and attempted to sue the lawyer who made this claim on behalf of his ex-wife and her new husband, but the court held there was no cause of action.¹³⁷ The plaintiff sued his attorney, claiming his attorney had intentionally defamed him.¹³⁸ However, the plaintiff could not prove any intentional defamation and the Court of Appeal upheld the lower court's determination of no cause of action because there was not showing of damages.¹³⁹ Therefore, the defamation suit was not successful in the United States. This case demonstrates how strict and difficult the requirements for United States defamation cases are.

In comparison to *Arledge*, *Norris v. Hathaway*¹⁴⁰ had also failed in establishing the strict prerequisites for a defamation case.¹⁴¹ In *Norris*, both parties were employed at the same workplace.¹⁴² After the plaintiff reported the defendant for making a mistake in her work as well as the defendant's boyfriend, who was also an employee and had threatened another worker, the defendant claimed the plaintiff sexually abused her.¹⁴³ The plaintiff filed a complaint for defamation, but his complaint was dismissed because he failed to show damages.¹⁴⁴ If he was able to, the

¹³⁴ *Id.*

¹³⁵ Steinman, *supra* note 11, at 918-19.

¹³⁶ *Arledge v. Hendricks*, 715 So.2d 135 (La. Ct. App. 1998).

¹³⁷ *Id.* at 141.

¹³⁸ *Id.* at 139.

¹³⁹ *Id.* at 141.

¹⁴⁰ See *Norris v. Hathaway*, 156 N.W. 2d 583 at 584 (Neb. Ct. App. 1997).

¹⁴¹ Steinman, *supra* note 11, at 919.

¹⁴² *Norris* 156 N.W., *supra* note 146, at 584.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

plaintiff might have been able to show the defendant was motivated by vengeance due to the plaintiff's treatment of her boyfriend.¹⁴⁵

b. Sexual Harassment

A defamation suit over a rape allegation (or particularly sexual harassment allegation) will be successful in the United States if the plaintiff can show his reputation was damaged.¹⁴⁶ However, it has been proven difficult to prevail in defamation cases for various reasons: expense, failing to show damages, redress rape in society, and preventing real rape victims from coming forward with fear of not being believed by society. Very few cases have prevailed in defamation suits. Cases involving sexual harassment are unproblematic to win versus allegations of rape where the circumstances are complex to establish the requirements in a defamation suit.

For example, in *Steed v. St. Paul's United Methodist Church*,¹⁴⁷ this case involved sexual harassment and not an accusation of rape. The plaintiff was the choir director at the St. Paul's United Methodist Church. While working, the plaintiff claimed that Reverend Simmons started to hug, kiss, and grab her.¹⁴⁸ The plaintiff reported the incidents to the Pastor-Parish Relations Committee, but after an investigation by the Committee, there was no basis for the allegations and the plaintiff was fired.¹⁴⁹ In response, the plaintiff filed a lawsuit against Simmons and the church for wrongful termination and sex discrimination.¹⁵⁰ Furthermore, she discussed the nature of the suit on nationwide television.¹⁵¹

Reverend Simmons brought a defamation suit against the plaintiff based on the comments she had made to the media.¹⁵² To avoid the scandal, Reverend Simmons transferred to another parish, which allowed the court to find his reputation damaged.¹⁵³ The court had awarded Reverend Simmons damages because his reputation was demolished and all of the requirements for a defamation suit had been met.¹⁵⁴ In cases

¹⁴⁵ *Id.*

¹⁴⁶ Steinman, *supra* note 11, at 920.

¹⁴⁷ *Steed v. St. Paul's United Methodist Church*, 728 So.2d 931 (La. Ct. App. 1999).

¹⁴⁸ *Id.* at 936.

¹⁴⁹ *Id.* at 936-37.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 937.

¹⁵² *Id.*

¹⁵³ *Id.* at 940.

¹⁵⁴ *Id.* at 931, 935, 942.

where sexual harassment is involved, proving the elements for defamation is undemanding than in a false accusation of rape where it is a much more serious crime and the perquisites in proving defamation against the accuser is much more rigorous and tougher to prevail in civil suits.

2. In the United Kingdom

While defamation law in the United Kingdom has provided greater ease for bringing defamation claims over rape accusations, British courts have taken a much stricter approach to these cases than their American counterparts.¹⁵⁵ Under the criminal defamation laws, women found liable face harsh fines and even jail sentences.¹⁵⁶ In an interview held by Claire Willoughby, a male individual was arrested for raping a female complainant he was seeing for three months.¹⁵⁷ He was questioned for 3 hours and held in custody for another 18 hours.¹⁵⁸ While discussing the background of the rape allegation with the police, he had received a text message from the complainant's friend accusing him of rape a few days prior to the arrest.¹⁵⁹ When he contacted the complainant about the content of the message, she stated that "it may have slipped out about you raping me, but I wasn't being serious."¹⁶⁰ He was able to prove that the complainant was lying by showing the police officers her response before being released.¹⁶¹ The complainant was charged with perverting the course of justice and sentenced to two years imprisonment.¹⁶²

To establish a prima facie case for defamation in the United Kingdom, at common law, the plaintiff merely must show the defendant voluntarily communicated to a third party ('published') a defamatory statement referring directly or indirectly to the plaintiff.¹⁶³ It is not difficult for a plaintiff to bring a claim for defamation after he has been

¹⁵⁵ Steinman, *supra* note 11, at 910.

¹⁵⁶ *Id.*

¹⁵⁷ Claire Willoughby, *Do False Allegations of Rape Made by Women Affect the Workings of the Criminal Justice System?* (May 19, 2011) (unpublished B.A. dissertation, Nottingham Trent University) (on file with Division of Criminology, Nottingham Trent University).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Steinman, *supra* note 11, at 914.

falsely accused of rape in the United Kingdom.¹⁶⁴ However, defendants in British defamation lawsuits must pay their attorneys regardless of the outcome, while plaintiffs usually have “no win, no fee” agreements.¹⁶⁵

Plaintiffs who bring defamation suits in the United Kingdom are at an advantage: the statements made against them are assumed false unless proven true.¹⁶⁶ The Neil Hamilton case was the most publicized false rape-defamation case in Britain.¹⁶⁷ In *Hamilton v. Milroy-Sloan*,¹⁶⁸ the plaintiff, Neil Hamilton, was a well-known public figure. The defendant had claimed Barry Lehaney raped her and the former Tory minister, Neil Hamilton and his wife sexually and indecently assaulted her.¹⁶⁹ The defendant gave a publicized interview for money.¹⁷⁰ The Hamiltons denied their involvement, had provided an alibi, and filed a defamation suit against the defendant and her publicist.¹⁷¹ Before the Queen’s Bench, the statements made in the televised interview were found to be defamatory and the defendant was convicted and sentenced to three years imprisonment.¹⁷²

In another defamation case in 2000, Lynn Walker falsely claimed her colleague, Martin Garfoot, had raped her in their office.¹⁷³ The claim was not brought against Garfoot until ten months after the alleged attack took place.¹⁷⁴ Garfoot admitted he had an argument with Walker before she brought the claim.¹⁷⁵ He further claimed the allegations had ruined his reputation, and the jury agreed with him.¹⁷⁶ As a result, Walker was ordered to pay Garfoot £400,000 in damages for a false rape allegation, as

¹⁶⁴ *Id.* at 917.

¹⁶⁵ *Id.* at 910.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 923-24.

¹⁶⁸ *Id.* at 923.

¹⁶⁹ *An Unshakeable Delusion*, THE GUARDIAN, http://www.deabirkett.com/pages/journalism_film/journalism/an_unshakeable_delusion.htm (last visited Nov. 14, 2014).

¹⁷⁰ Steinman, *supra* note 11, at 924.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 925. See also Ian Herbert, *False Rape Claim Costs Woman Half a Million Pounds*, THE INDEPENDENT (Feb. 8 2000), <http://www.independent.co.uk/news/uk/crime/false-rape-claim-costs-woman-half-a-million-pounds-706423.html>.

¹⁷⁴ Steinman, *supra* note 11, at 925.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

well as £150,000 for the cost of the defamation suit he brought against her.¹⁷⁷ Garfoot did not have to prove he had been damaged.¹⁷⁸

3. In China

Articles 101 and 102¹⁷⁹ of the General Principles of the Civil Law of the People's Republic of China are the basis for Chinese civil defamation law. Under Article 101, citizens and legal persons are entitled to enjoy the right of reputation.¹⁸⁰ The law protects the human dignity of many citizens and it is prohibited to harm the reputation of a citizen or legal person by such means as insult or libel.¹⁸¹ The Supreme People's Court stated defamation can be found if (1) there is an illegal act on the part of the defendant, (2) there has been harm to the reputation of the plaintiff, and (3) there is a causal relation between the illegal act and the harm to reputation.¹⁸² Under Tort Liability Law of the People's Republic of China, the right to reputation, the right to honor and the right to privacy fall within the definition of "civil rights and interests" and anyone who infringes on the civil rights and interests of another person must bear tort liability.¹⁸³ Under Article 246 of the Criminal Law of the People's Republic of China,¹⁸⁴ whoever, by violence or other methods, publicly humiliates another person or invents stories to defame him, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance, or deprivation of political rights.

There are rarely any unsuccessful defamation suits filed against accusers regarding rape allegations in China. In addition, plaintiffs do not have to prove damages in order to prevail in defamation suits. For example, a Chinese family of a twelve-year-old victim who just gave birth to a baby is currently facing a defamation trial filed by two teachers whose reputation had been damaged after the victim falsely accused of

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Woon-Wah Siu et al., *supra* note 120, at 1.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 2-3.

raping her repeatedly during the summer holidays.¹⁸⁵ However, the two teachers denied the allegations, arguing that the rape never occurred during the summer holidays because the girl was not in school.¹⁸⁶ Although the case is still pending as to whether the defamation suit filed by the teachers will prevail, the victim's family is struggling to produce the funds to hire a lawyer in the civil suit.¹⁸⁷

D. *Alternatives for Falsely Accused Men*

What recourse does a falsely accused man have against a wrongful rape charge? Although there are a few available options for men to choose in potential false claims, these options are not stable remedies to restore their damaged reputation in society.

1. Prevention

To avoid an upcoming false allegation of rape, men should not engage in sexual relations with intoxicated women who are viewed as "easy" targets.¹⁸⁸ Women choose to drink for various reasons, including engaging in sexual relations where she can blame it on the alcohol.¹⁸⁹ Large consumptions of alcohol by women combined with continuous seducing may negatively influence innocent men to engage in sexual relations.¹⁹⁰ If men exercise good judgment and evade these situations, they are less likely to be labeled rapists. However, this option is not a permanent solution for falsely accused men because they may potentially face a rape allegation.

To deal with a false rape allegation, a man should simply communicate with the woman to resolve the complex occurrence instead of remaining silent where it is easier for the woman to believe under the influence of peer pressure from female companions a rape really did happen.¹⁹¹ When a man does not exchange a normal conversation with a

¹⁸⁵ Mimi Lau, *Father of Rape Victim, 12, Accused of Defaming Alleged Attackers*, SOUTH CHINA MORNING POST, available at <http://www.scmp.com/news/china/article/1294877/mainland-father-rape-victim-12-sued-defamation-alleged-attackers> (last visited Nov. 21, 2014).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Chase Amante, *How to Avoid and Deal with False Rape Accusations*, GIRLS CHASE (Aug. 20, 2014), <http://www.girlschase.com/content/how-avoid-and-deal-false-rape-accusations>.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

woman regarding the alleged rape, both parties would be “demonizing” each other for not resolving the situation.¹⁹² He can remain civil in attempting to talk to his alleged accuser and record the conversation in case his accuser falsely accuses him.¹⁹³ However, if a woman is bent on revenge and intentionally condemns her alleged assailant, a man should not consider communication.¹⁹⁴

Men who are dealing with a false allegation of rape or recovering from being falsely accused should at least consider having an “exit plan” to relocate in a different environment.¹⁹⁵ Continuing to live in the same area where the accusation took place is viewed as a difficult aftermath for men who have lost their good reputation, career, and loved ones. Transferring to a different area is highly recommended to avoid a “rape hysteria” environment or scandal and have a fresh start elsewhere.¹⁹⁶ Then again, fleeing to another area to avoid a scandal does not necessarily mean a falsely accused man has a restored reputation; he would still suffer emotional and physical harms from the allegations made and endure severe financial expenses of relocating in a new area.

2. The Appropriate Remedy: Defamation

There are no secure solutions to end the damages suffered by men. However, defamation is a civil remedy that men should pursue in order to restore their reputations. A man involved in a false rape allegation can file a civil suit for defamation against their accuser by showing damages.¹⁹⁷ The plaintiff must demonstrate (1) a false and defamatory statement was concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence...and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.¹⁹⁸

This is an appropriate and likely permanent option for accused assailants in order to bring a defamation civil suit against their accuser. However, it is very difficult to prove all of the elements in a defamation

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Steinman, *supra* note 11, at 919.

¹⁹⁸ *Id.*

suit filed in the United States because plaintiffs are unable to show special damages caused by the false statement.

Some lawyers who represent the alleged assailants would advise their clients to not pursue a defamation claim due to public backlash and prevent real rape victims from filing police reports or coming forward due to the fact they may not be believed by the public or to law enforcement.¹⁹⁹ To file defamation suit against a female accuser in the United States is viewed to be very difficult for the accused/plaintiff to prove he has been defamed in society because damages must be showed. As a result, men's voices are not heard in society and are forced to endure community recoil, even after the allegations of rape are proven to false.

E. *The Divergence of the Current Laws*

Falsely accused men who bring defamation suits in the United States do not immediately have an advantage to prevail against their accuser because they are unable to show the damages as required under defamation law. Only a limited handful of cases are successful out of the many unsuccessful cases. To prove the current United Kingdom and Chinese laws are effective, but not the United States laws, the elements have been tested in a fictional hypothetical case study provided. The objective of this case study is to determine that a man falsely accused of rape will not be able to succeed in the current United States defamation laws because the elements are not effective.

1. Hypothetical – *Costa v. Mendoza*²⁰⁰

This present scenario involves an alleged male assailant, Costa ("Costa") and one female victim, Mendoza ("Mendoza") the accuser. Costa is a new transferred student while Mendoza has a respectable reputation in the campus community. Both parties are college students who have entered a bedroom together. Costa departs the bedroom first before Mendoza who is visibly upset. The next day on campus, Mendoza tells her parents:

¹⁹⁹ Jones, *supra* note 9.

²⁰⁰ The author, Mercedes Charles, created this fictional hypothetical with an attempt to give the reader the ability to apply the case facts to the current UK, Chinese, and US laws. Furthermore, this case study will later be applied under Part III, which offers the solution of resolving the conflict falsely accused men face. [hereinafter Charles, *Costa v. Mendoza*].

“Costa is not a good man. Behind that façade is a man who has something against women. I hope he doesn’t plan on taking advantage of another girl like he did to me at the party.” When her parents pressure her about what had occurred at the party, Mendoza replies: “We were both drunk, and it’s all fuzzy. But I remember him pushing me down on the bed. I don’t recall consenting. It was all blurry. But I think he hates women. He did bad things to me.”

Mendoza files a complaint and her parents contact the police. She tells one of her friends on campus about the incident, claiming that Costa raped her. Later, a rumor has circulated on campus about Costa. He discovers his peers are avoiding and labeling him a rapist. Some of his professors express disdain towards him. Costa is worried that these allegations will continue to circulate and contemplates on transferring to a new school to avoid the scandal. Costa is arrested and the matter is taken to court. When examined, Costa denies any sexual relations.

Later, Mendoza admits in court, “I just wanted to relieve some stress. When he said no, I hooked up with someone else. He made me so upset when he rejected me and called me a slut. I told my parents what happened. They pressured me into believing it was rape even though I couldn’t remember what happened. I had no intent to turn this into a huge scandal. I wanted some support from my friends.” Because of her testimony and lack of evidence to prove rape, the charges are dropped against Costa. However, Costa is facing public backlash from the campus community; his reputation is damaged and he is having a hard time focusing in school. Costa then files a civil suit against Mendoza for defamation.

The issue in this scenario is whether Costa will prevail in the civil suit. If the current United Kingdom defamation laws²⁰¹ are applied to the current set of facts, Costa must show:

1. a defamatory statement was communicated to a third party and,
2. that this statement referred to the plaintiff.

By applying the fact pattern to the current United Kingdom defamation laws, Costa would not find difficulty in prevailing in a civil suit against Mendoza. In the first element, Mendoza had willingly communicated to third parties, which were her friends from school. Her statements had then circulated to other students on campus as a result. Therefore, the first element is satisfied. In the second element, Mendoza's false statement referred directly to Costa and no one else. As there are only two elements provided under the United Kingdom defamation law, Costa's civil suit against Mendoza would succeed because he does not have to show damages or special harm caused by the statements.

If the current Chinese defamation laws²⁰² are applied, Costa must show:

1. there is an illegal act on the part of the defendant,
2. there has been harm to the reputation of the plaintiff, and
3. there is a causal relation between the illegal act and the harm to the reputation of the plaintiff

By applying the fact pattern to the current Chinese defamation laws, Costa, again, would not find difficulty in prevailing in a civil suit against Mendoza. In the first element, Mendoza had committed an illegal act by defaming Costa through publishing false statements in reference to him to other third parties (her friends from school). In the second element, Mendoza's statements have harmed Costa's reputation in the campus community. As a result of Mendoza's defamatory statement, he was labeled a 'rapist' and other students avoided him. In the third element, there is a causal relationship between Mendoza's unlawful acts of defaming Costa and the resulting harm to his reputation. Mendoza's

²⁰¹ Steinman, *supra* note 11, at 916.

²⁰² Woon-Wah Siu, et al., *supra* note 120, at 1.

false statements damaged Costa's reputation on campus. Costa is having trouble focusing in school. Mendoza communicated her defamatory statements to a third party, which the statements later escalated among the public body. There is no other evidence of any intervening act to break the causal connection. Due to this illegal act committed by Mendoza, Costa's would prevail in a civil suit against his accuser.

Both the United Kingdom and Chinese defamation laws are similar because there are no requirements for the plaintiff to show damages in order to win a defamation case. The burden of proof is put on the defendant instead of the plaintiff and there is a stricter approach to punish plaintiffs for making faulty accusations. To avoid the strict requirements in the United States, the United Kingdom and China are places to bring defamation claims.²⁰³ The elements in the United Kingdom and Chinese laws are applicable, which gives the plaintiff an advantage to successfully prevail in his defamation suit. Although the European defamation laws are not as strict and complex to establish and prevail in a civil suit, the United States defamation laws, on the other hand, provide a narrow standard in which it will become problematic for the plaintiff in a defamation suit.

In order to prevail, Costa must show under the United States defamation laws²⁰⁴ the statement(s) made by Mendoza:

1. was a false and defamatory statement concerning the plaintiff
2. was an unprivileged publication to a third party
3. the fault amounted to at least negligence, and
4. either actionability of the statement irrespective of special harm or the existence of special harm was caused by the publication

By applying the fact pattern to the current United States defamation laws, Costa would find difficulty in prevailing in a civil suit against Mendoza. First, it is established that Mendoza's opinions contained assertions of facts concerning Costa. It was proven false when she later admitted she had sexual relations with someone else. This means that Costa did not rape her and she was pressured in believing a rape had occurred. Furthermore, her statement had defamed Costa

²⁰³ Steinman, *supra* note 11, at 916.

²⁰⁴ *Id.* at 919.

because his reputation on campus was devalued by other students and was referred as a rapist.

Second, Mendoza's statements were communicated to a third party (her parents) regarding the alleged incident. Her statements are not protected under the doctrine of privilege because there is no parent-child privilege. Also, Mendoza had communicated her statements to another individual on campus, which instigated a rumor.

Third, Mendoza's actions of publicizing statements of the alleged rape amounts to the level of negligence. Even if she had lacked the malicious intent to defame Costa or reasonably believed that her statements were not meant to be defamatory, Mendoza should have known that it would cause some damage to Costa's reputation at a public setting once communicated to a third party.

Fourth, Costa may have difficulty showing that the statements made by Mendoza caused him to suffer special harm. His mere fears of having a bad reputation, trouble focusing in school, and considerations of transferring to another school does not amount to special harm that would include: intentional infliction of emotional distress, getting expelled, harassment from fellow peers, receiving threatening letters, suffering with an illness, etc. Costa did not experience any of these situations. His only argument is what potential harms he will suffer and not the actual harms he is currently experiencing. Thus, his arguments would not prevail; the fourth element is not satisfied. If one element is not satisfied, the claim is not met and defamation suit would not go forward.

Costa would be unable to succeed due to the strict standards provided in the elements. It is problematic for falsely accused men to prevail in defamation suits against their accusers in the United States.

III. INSTITUTING A NEW LAW: A SOLUTION TO EQUALIZE BOTH PARTIES

The United States defamation elements are too difficult and strict to be satisfied. Furthermore, many cases do not prevail in the United States jurisdiction because plaintiffs are unable to show damages or special harm, are often advised against filing suit against their accusers due to the complicated steps required to succeed in a defamation claim. There would be an increase of frivolous lawsuits, and real rape victims are prevented from coming forward.²⁰⁵ While these are valid concerns

²⁰⁵ Steinman, *supra* note 11, at 932.

that must be acknowledged, it is also burdening to the men who must face the consequences of such an allegation: from having a damaged reputation to losing a job or the trust of loved ones.²⁰⁶ By following the current United States defamation standards, falsely accused men have a harder time adapting to society. Some could be suicidal, receive no help to obtain employment, face unfair media coverage, and lose their families and friends.²⁰⁷ Consequently, these men have the right to bring their claims and seek justice.²⁰⁸

Although the current elements are relied upon to determine the validity of false rape cases, the rigorous rule does not seem to provide falsely accused men a sense that the truth prevailed. These men are forced to remain silent due to the disadvantages of the elements that need to be satisfied. Even though the United Kingdom and Chinese defamation laws do not require the plaintiff to show damages, it is harder to succeed in a defamation suit in the United States. If the plaintiff fails to show special damages, he would lose his civil suit and would still face the aftermath of public scrutiny of being known as a rapist in society.

A. Improving the Victims' Benefits: Assembling United States, United Kingdom, and Chinese Defamation Laws

In order to bring a successful defamation suit in the United States, the best policy is to lessen the strict standard and incorporate beneficial European elements together with current American laws. This would make the merged laws fair to both parties. As a result, the new defamation laws would not prevent real rape victims from coming forward, and would lessen frivolous lawsuits. Furthermore, this would urge the prosecution to acknowledge that false allegations of rape undermine real rape cases and do a disservice to women in general.²⁰⁹

The new law that would be effective and applicable should include the following new elements:

1. The accuser knowingly acknowledges that the statements are false,

²⁰⁶ *Id.* at 928.

²⁰⁷ *Id.* at 928-929.

²⁰⁸ *Id.* at 929.

²⁰⁹ Willoughby, *supra* note 157, at 17.

2. a defamatory statement of fact or opinion asserting a statement of fact refers to the plaintiff,²¹⁰
3. the defendant voluntarily communicated defamatory statements to a third party²¹¹
4. the plaintiff suffered a harm or will potentially suffer a harm to his reputation in society and,²¹²
5. it is an abuse of the legal process.

The combination of these elements would efficiently stabilize the needs and consider the proper rights of real rape victims and falsely accused men involved. If an accuser fabricated an alleged rape incident, an innocent man has the right to bring a defamation suit against his alleged accuser who openly admits her statements were false and defamatory due to her personal intentions, such as revenge, gaining sympathy or attention, or having an alibi. If the new defamation laws were applied to the proposed *Costa v. Mendoza* hypothetical,²¹³ Costa would prevail in his defamation suit against Mendoza in each element.

First, Mendoza had admitted in trial her statements were false, and had concocted the accusations against Costa. This satisfies the first element because Mendoza was aware that her comments made against Costa were untrue and she publicly declared that these allegations were false for the very reason to relieve stress and desperately seek support. The second element is satisfied because her opinions had asserted false statement of facts in reference to Costa, and no other party. She implied he had performed nonconsensual sexual relations against her will. The third element is satisfied because Mendoza had willingly communicated her statements to other third parties, such as her friend on campus, and her friend distributed the statements to other students as a result. Furthermore, Mendoza had communicated these statements to her parents. The fourth element is satisfied because Costa had suffered a tarnished reputation when he was falsely labeled a rapist and avoided by his peers. He had considered transferring to another school, fearing he would be involved in a scandal and potentially suffer with intentional infliction of emotional distress on campus. The last element is satisfied

²¹⁰ Steinman, *supra* note 11, at 919.

²¹¹ *Id.*

²¹² Woon-Wah Siu et al., *supra* note 120, at 1.

²¹³ Charles, *Costa v. Mendoza*, *supra* note 200, at 29.

because Mendoza's false allegations of rape had caused an abuse of the legal process. She deliberately fabricated an event that did not occur and it led to the wrongful arrest of Costa. There was a meaningless investigation and a waste of time for both law enforcement officers and legal practitioners to find the underlying cause of a crime that never existed. Mendoza sought sympathy from others without considering the consequences of her actions that negatively affected Costa. Therefore, Costa would be able to prevail in his defamation suit against Mendoza.

While considering the needs of both victims (the falsely accused and the real rape victims) in defamation suits, the new law should be pursued in the United States. While still maintaining a moderate strict standard, this new law incorporates the United Kingdom and Chinese defamation elements into the current United States elements and enables a balance between both parties involved.

IV. CONCLUSION

False allegations of rape have arguably become a controversial issue. These allegations may be as impulsive and desperate gestures of women simply attempting to alleviate understandable conditions of personal and social distress and that labels connoting pathology.²¹⁴ In addition, these false allegations may be extreme gesture to satisfy alibi, revenge, or attention needs.²¹⁵ As a result, the allegations harm both the accused and potential future rape victims from coming forward to report legitimate incidences of rape. The falsely accused defendant, on the other hand, faces a harmed reputation and the embarrassment of being an accused felon, and the credibility of future legitimate rape victims will be harmed if false accusations are prevalent.²¹⁶

Under the laws of the United States, when an innocent man files a defamation suit against his accuser there is significant danger to the man's reputation. After experiencing a damaged reputation in society, a falsely accused man has the right to file a defamation suit against their accuser. Although this option is a known remedy for innocent men who are wrongly accused,²¹⁷ the defamation requirements in the United States

²¹⁴ Kanin, *supra* note 4, at 88.

²¹⁵ *Id.*

²¹⁶ Tiffany Bohn, *Yes, Then No, Means No: Current Issues, Trends, and Problems in Post-Penetration Rape*, 25 N. ILL. U. L. REV. 151, 174 (2004).

²¹⁷ Steinman, *supra* note 11, at 932.

have made it harder for men to bring these claims against their accusers while in the United Kingdom and China, no showing of damages are required and defamatory statements are assumed to be false unless proven true.²¹⁸ Furthermore, real rape victims are faced with the fear of not being believed by the public if defamation suits are rampant. To equalize the interests of both parties, it is recommended the United States defamation laws merge with the United Kingdom and Chinese defamation laws to lessen the strictness of the United States standards. American courts should emulate the standards of the United Kingdom and China to establish protection for both parties involved in a heinous crime such as rape. Even though its important to provide falsely accused men the means of restoring their reputations, real victims of rape are also considered.²¹⁹ This new principle would not only lower the fears of rape victims, but would recognize the rights of innocent men in prevailing in defamation suits against the so-called victims who “cry wolf.”

²¹⁸ *Id.*

²¹⁹ *Id.*