

# "Anything You Can Do, I Can Do Shorter": An Analysis of Lenient Sentencing for Female Sex Offenders in the United States

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“ANYTHING YOU CAN DO, I CAN DO SHORTER”:  
AN ANALYSIS OF LENIENT SENTENCING FOR FEMALE  
SEX OFFENDERS IN THE UNITED STATES

*In the criminal justice system, sexually based of-  
fenses are considered especially heinous.*

—Law & Order: SVU<sup>†</sup>

FOREWORD

When you hear the term “sex offender,” what type of person do you picture? Some may picture a single person, while others may picture a person with a history of abusive or inappropriate relationships. Some may picture a person with unhealthy obsessions. Some may even picture a person in a stereotypically underprivileged job field (like a janitor or a fast food worker), or someone who still lives with their parents. Although many people have varying views on the relationship status, wealth, family history, hobbies, and housing status of a potential sex offender, there is often one view that most people will agree on: sex offenders are male. So, what happens when American society is confronted with the existence of a female sex offender? The answer: Not enough.

INTRODUCTION

- I. GENDER DISPARITY IN SENTENCING FOR SEX OFFENSES IN THE UNITED STATES
  - II. CULTURAL INFLUENCES THAT HAVE PERPETUATED THE PROBLEM
    - A. *Gendered History of Social Norms in America*
    - B. *Media’s Developing Influence on Gender Stereotyping*
  - III. IMPACT OF GENDERED CULTURE ON U.S. CRIMINAL PRACTICE
    - A. *Regulatory Pitfalls*
    - B. *Statutory Pitfalls*
  - IV. EUROPE’S APPROACH TO TACKLING GENDER INEQUALITY
    - A. *Similar History of Gendered Norms & Media Influence*
    - B. *Establishment of Regulatory Systems to Attack Gender Stereotyping in the Media*
    - C. *Greater Sentencing Equality for Sex Offenses*
  - V. ADOPTING EUROPE’S APPROACH TO REGULATING THE MEDIA
- CONCLUSION

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<sup>†</sup> *Law and Order: Terrorism* (NBC television broadcast Sept. 21, 2016).

## INTRODUCTION

Sexual offenses, although not as common as other offenses like drug possession or property destruction, are no less impactful.<sup>1</sup> Rape, assault, and other sexual crimes take a toll on the victim, not only physically, but emotionally and psychologically as well.<sup>2</sup> Given the gruesome effects of these crimes, it is understandable for society to hold its offenders to higher standards of morality. The problem arises, however, when that higher standard gets lowered for certain people over others. Debatably, America's criminal justice system measures sexually based offenses differently based on one prominent factor: gender. This difference is arguably not based on the varying existence of offending between the genders, but on the ideals and biases associated with those genders.

Part I of this Note addresses the various factors that have contributed to the discrepancy in sentencing for female as opposed to male sex offenders. It uncovers the cultural influences that have shaped gender norms and stereotypes in American society. It also explores the impact of media and advertisements on perpetuating gender stereotypes, and ultimately draws a connection between the development of gendered ideals and the gender disparity in sentencing. Part II argues that cultural ideals portraying women as passive and sexually receptive have influenced criminal practices in the American legal system concerning female sex offenders. Part III discusses how this, as a result, encourages less restrictive regulatory systems for media and gendered statutory provisions, creating the problem of more lenient sentences for female compared to male sex offenders.

Part IV of this Note explores how Europe, in contrast, has taken a stricter regulatory approach to combating gender inequality in its society. It uncovers the steps taken by European governing bodies and the positive effects spread throughout its Member States. Part V suggests adopting the European regulatory approach to gendered media, as the European member states appear to have more equality in sentencing between female and male offenders.

I. GENDER DISPARITY IN SENTENCING FOR SEX OFFENSES  
IN THE UNITED STATES

We often attribute sexual victimization to the fairer sex within American society, however statistics show that females also comprise

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1. See Fed. Bureau of Investigation, *Crime in the United States 2015 Table 42*, FBI (2015), <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-42> [<https://perma.cc/WRA6-HPKU>] [hereinafter *Crime in the United States 2015*].

2. *Effects of Sexual Violence*, RAINN, <https://www.rainn.org/effects-sexual-violence> [<https://perma.cc/6QHV-FM7X>].

a rising portion of sexual offenders.<sup>3</sup> At the turn of the century, women accounted for around fourteen percent of all violent offenders, which is an average of two million females.<sup>4</sup> The U.S. Department of Justice reported in its annual Bureau of Justice Statistics Report that women accounted for one in fifty violent sex offenders, including rape and sexual assault at the end of the twentieth century.<sup>5</sup> This rise occurred frequently amongst the juvenile females, “[m]ore specifically, between 1997 and 2002, juvenile cases involving female-perpetrated forcible rapes, other violent sex offenses, and non-violent sex offenses rose by [six percent, sixty-two percent, and forty-two percent], respectively.”<sup>6</sup> In more recent years, female involvement in sexual offenses continues to increase. While one percent of rape arrests included women in 2010, almost three percent of rape arrests included women in 2015.<sup>7</sup>

Additionally, the percentage of female arrests for non-violent sexual assaults remained steady over the past few years, accounting for almost eight percent of total arrests.<sup>8</sup> A recent 2017 study by Stemple, Flores, and Meyer evaluated shockingly high statistics of female sexual predators in the United States.<sup>9</sup> The study revealed that male victims of sexual assault reported female perpetrators almost sixty-nine percent of the time, and male victims of forcible rape reported female perpetrators around seventy-nine percent of the time.<sup>10</sup>

Clearly, females are capable of and commit deviant and violent crimes, however the concern falls in the reflection of the female-perpetrated crimes in the system. Even given the presence of female perpetrators in American society, females still comprise a disproportionately small portion of individuals flowing through the criminal justice system, suggesting that many female sexual offenders rarely

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3. See *Crime in the United States 2015*, *supra* note 1; see also Fed. Bureau of Investigation, *Crime in the United States 2010 Table 42*, FBI (2010), <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl42.xls> [<https://perma.cc/T34N-JQE6>] [hereinafter *Crime in the United States 2010*].

4. *Bureau of Justice Statistics Special Report: Women Offenders*, U.S. DEPT JUST. 1, 1–2 (1999).

5. *Id.* at 2.

6. CTR. FOR SEX OFFENDER MGMT., A PROJECT OF THE OFFICE OF JUST. PROGRAMS, U.S. DEPT OF JUST., *FEMALE SEX OFFENDERS 1, 2* (2007) [hereinafter *FEMALE SEX OFFENDERS*].

7. Compare *Crime in the United States 2010*, *supra* note 3, with *Crime in the United States 2015*, *supra* note 1.

8. See *Crime in the United States 2015*, *supra* note 1; *Crime in the United States 2010*, *supra* note 3.

9. Lara Stemple, Andrew Flores & Ilan H. Meyer, *Sexual Victimization Perpetrated by Women: Federal Data Reveal Surprising Prevalence*, 34 *AGGRESSION & VIOLENT BEHAV.*, 302, 305 (2017).

10. *Id.* (showing this data was drawn from the National Intimate Partner Survey, which also revealed that “men who experienced sexual coercion and unwanted sexual contact were more likely to report female rather than male perpetrators.”). Additionally, single female perpetrators were reported in twenty-eight percent of rape and sexual assault cases involving male victims under the National Crime Victimization Survey. *Id.*

encounter law enforcement at all.<sup>11</sup> This realization raises a concern about the focus of the system in cracking down on sex crimes. The U.S. Department of Justice reported that by the end of the twentieth century, only 1,500 women were estimated to be imprisoned for sexual offenses compared to 140,000 men.<sup>12</sup> Even now, “training for law enforcement officers tends to be geared exclusively around men as sex offenders and women as victims. In combination with the sex role stereotypes that exist within society, this impacts the responses of law enforcement to female-perpetrated sex crimes.”<sup>13</sup>

The issue does not end with law enforcement; national victimization studies and arrest reports show that reports of female offending are less likely to be prosecuted than reports of male offending.<sup>14</sup> This raises the question: are we trying to punish sex offending in general, or are we only trying to punish specific people who commit sexual offenses? Sadly, the latter seems to warrant the strongest response. This realization does not occur by chance—stereotypes of women as nurturing and submissive to men strongly influence this outcome.<sup>15</sup> Although many may view stereotypes as unfortunate exaggerations in most cases, stereotypes of women particularly damage perceptions towards criminal behavior, because “[v]iewing women only as passive or harmless problematically constructs women as one-dimensional, thereby lacking in the negative traits that complex human beings embody. It can also deny women agency and the responsibility for their actions that empowered persons ought to have.”<sup>16</sup> Lack of offending by females is not the cause of discrepancy in reporting. In the wake of the new century, cases of female predators have risen, with over twenty-five cases concerning female teachers molesting students reaching the public between the years 2004 and 2005.<sup>17</sup> Still,

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11. This idea seems absurd, given that recent federal data on victimization has shown that females make up a significant portion of sexual perpetrators of men. *See id.* at 305–06.

12. FEMALE SEX OFFENDERS, *supra* note 6, at 2.

13. *Id.* at 3 (citation omitted).

14. Stemple, Flores & Meyer, *supra* note 9, at 309 (“Among those prosecuted, even fewer are convicted. One five-state study of sex offender registries found that between 0.8% and 3% of those on registries are female; others have found fewer than 2% on registries are female.”) (citations omitted).

15. *Id.* at 303.

16. *Id.* at 304. Stemple, Flores, and Meyer do not attribute societal views towards women as the sole factor in disparate treatment of male and female sexual predators. They further state: “[p]erhaps even more troubling than misperceptions concerning female perpetration among the general population are misperceptions held by professionals responsible for addressing the problem. Female perpetration is downplayed by those in fields such as mental health, social work, public health, and law, as a range of scholars have demonstrated.” *Id.* at 309 (citation omitted).

17. Wendy Koch, *More Women Charged in Sex Cases*, USA TODAY (Nov. 30, 2005, 12:03 AM), [https://usatoday30.usatoday.com/news/nation/2005-11-29-women-sex-crimes\\_x.htm](https://usatoday30.usatoday.com/news/nation/2005-11-29-women-sex-crimes_x.htm) [<https://perma.cc/H65P-BZH3>].

with the rise of female sexual predators, the length of sentencing falls short compared to sentencing of male offenders.<sup>18</sup>

More recent sentencing for females who have committed sexual crimes against minors demonstrates just how low of a threshold exists in the criminal justice systems of many states throughout the United States.<sup>19</sup> In Florida, a former teacher by the name of Debra Lafave performed sexual acts with one of her students; the jury convicted her of lewd and lascivious battery.<sup>20</sup> Despite the conviction, Lafave received no jail time for acts in which the punishment amounted to thirty years in prison.<sup>21</sup> Instead, she received ten years of probation, and was allowed to even halt her probation to raise her twin sons and take care of her sick mother.<sup>22</sup> Similarly in North Carolina, forty-six-year-old Teika Helton engaged in sexual intercourse with one of her senior students.<sup>23</sup> Although the student was eighteen, this teacher-student interaction directly violated North Carolina law, which stated that teachers could not have “sexual contact” with students.<sup>24</sup> Helton still managed to escape with two years of probation and two hundred hours of community service.<sup>25</sup> Texas produced similar results with its sentencing of a twenty-two-year-old teacher accused of having sex with one of her students.<sup>26</sup> Emily Rogers, the teacher, received ten years of probation, although each of the felony charges she faced carried a maximum penalty of twenty years as punishment.<sup>27</sup> More recently, a California court accepted a plea deal for Corine Audiat, a gym teacher accused of having

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18. *Id.*

19. See Matt Blake, *Disgraced Teacher Debra Lafave BACK on Probation for Having Sex with 14-year-old Student*, DAILYMAIL.COM (Jan. 25, 2013, 2:02 AM), <https://www.dailymail.co.uk/news/article-2268050/Disgraced-teacher-Debra-Lafave-BACK-probation-having-sex-14-year-old-student.html> [https://perma.cc/QXX3-BTDT]; see also Minyvonne Burke, *Married Gym Teacher, 32, Could AVOID Jail for Having Sex with Her Student, 16, and Sending Him Flirty Text Messages as Part of a Controversial Plea Deal*, DAILYMAIL.COM (Jan. 4, 2018, 5:37 PM), <https://www.dailymail.co.uk/news/article-5236887/Teacher-arrested-sex-student-avoid-jail.html> [https://perma.cc/FC4W-JXGD]; Zeke MacCormack, *Ex-teacher, Then 22, Gets 10 Years' Probation for Sex Relationship with San Antonio Student, 18*, MYSA (Nov. 2, 2017, 12:24 PM), <https://www.mysanantonio.com/news/local/article/Former-teacher-then-22-gets-10-years-12326495.php> [https://perma.cc/8GL7-YR3X]; WCNC Staff, *Teacher Who Slept with Student Gets No Jail Time*, WCNC (Mar. 8, 2016, 7:46 PM), <https://www.wcnc.com/article/news/local/teacher-who-slept-with-student-gets-no-jail-time/74144996> [https://perma.cc/AYB6-HA3C].

20. Blake, *supra* note 19.

21. *Id.*

22. *Id.*

23. WCNC Staff, *supra* note 19.

24. *Id.*

25. *Id.* In addition to the light sentence, per Helton’s plea agreement, her record was to be expunged if she completed all of the requirements of the court. *Id.*

26. MacCormack, *supra* note 19.

27. *Id.*

sex with one of her students.<sup>28</sup> Audiat pled to two felony charges, but as a part of her deal, the court dismissed four other felony charges against her and one misdemeanor charge.<sup>29</sup> The above are only a few examples of the blatantly soft punishments given for the commission of sexually deviant acts by adult females.

Recently, some judges have addressed the issue of female sexual offending in a more serious manner, but still find themselves in the minority when it comes to sentencing.<sup>30</sup> In Texas, a judge sentenced a former middle school teacher to ten years in prison after she became pregnant by one of her students.<sup>31</sup> During the trial, witness statements revealed that the teacher, Alexandria Vera, carried pornographic pictures of the victim on her cell phone.<sup>32</sup> More disturbingly, the victim's father fabricated a relationship with Vera in order to hide her true relationship with the victim.<sup>33</sup> The judge stated to the court: "this case will serve as an example to deter other teachers from crossing inappropriate boundaries."<sup>34</sup> Similarly, a Michigan judge sentenced Kathryn Ronk to six to fifteen years in prison for sleeping with her fifteen-year-old student.<sup>35</sup> Judge Grant showed disdain for the amount of support Ronk seemed to be receiving from family and friends during her trial.<sup>36</sup> Ronk received the punishment with shock, expecting a lower sentence (the range of punishment was zero to fifteen years), to which Judge Grant replied: "[i]f this was a male teacher who had been involved with a 15-year-old female, there would be

28. Burke, *supra* note 19.

29. *Id.* (discussing further that under her agreement, Audiat may serve 180 days in a county jail or the judge could choose to allow her to serve her time at home while being electronically monitored).

30. See Betty Adams, *Former Oakland Woman Imprisoned for 8 Years for Sexual Assault on 3-Year-Old Boy*, CENTRALMAINE.COM (Sept. 27, 2017), <https://www.centralmaine.com/2017/09/27/former-oakland-woman-imprisoned-for-8-years-for-sexual-assault-on-a-3-year-old-boy> [<https://perma.cc/Q3H9-NPCE>]; see also Mike Martindale, *Teacher Gets Prison for Sex with Student*, DETROIT NEWS (Mar. 17, 2015, 12:41 PM), <https://www.detroitnews.com/story/news/local/oakland-county/2015/03/17/female-teacher-gets-prison-sex-student/24902401> [<https://perma.cc/YB7Z-D6F2>]; Lauren Talacrico, Jason Miles & Grace White, *Ex-Teacher Who Got Pregnant by Student Sentenced to 10 Years*, KHOU.COM (Jan. 13, 2017, 11:49 PM), <https://www.khou.com/news/crime/former-teacher-accused-of-getting-pregnant-by-student-to-be-sentenced/385744444> [<https://perma.cc/4G3N-EZFQ>].

31. Talacrico, Miles & White, *supra* note 30.

32. *Id.*

33. *Id.* Vera seemed to have not only the support of the victim's own father, but also of the victim's mother, who came to court to support Vera in her trial. *Id.*

34. *Id.* (addressing the lack of consistency in Texas's sentencing law, pointing out the fact that Texas has no minimum sentence for this crime).

35. Martindale, *supra* note 30.

36. *Id.* (stating: "I have never seen letters of support for a defendant with nothing about the victim . . . They were all about you and what you were going through. Poor you. To ignore a crime and a victim and an ongoing involvement in school, outside school, in a car. You did something you shouldn't have done.").

people here hanging from the ceiling trying to get every drop of blood . . . [b]ut because it is a woman, there seems to be a winking about what happened.”<sup>37</sup> While a few judges have imposed harsher sentences, it is important to note that some of the judges in the above cases were females themselves,<sup>38</sup> which may have had an impact on their views of members of the same sex under the eyes of the law.

The harsher sentences placed upon females in certain jurisdictions still fail to remedy the issue of harsher results in sentencing for men compared to women.<sup>39</sup> For example, a woman in Maine was sentenced to eight years in prison, followed by eighteen months of supervised release for sexually assaulting her three-year-old son (reports also showed abuse of her older daughter).<sup>40</sup> Although receipt of prison time may be considered a step forward towards equality in sentencing, the circumstances of this case show otherwise. Sarah Conway received an eight-year sentence for years of abuse, however her boyfriend Stephen Smith, whom Conway claimed compelled her to commit the sexual acts, received eighteen years in prison.<sup>41</sup> Unfortunately, this large gap in sentencing still functions as the norm in criminal justice systems throughout this country.<sup>42</sup> In order to lessen the gap, it is important to understand what factors have contributed to the creation of the gap over time. One of the most impactful factors in the sentencing gap in America is the rise of gender norms as a functioning part of society.

## II. CULTURAL INFLUENCES THAT HAVE PERPETUATED THE PROBLEM

### A. Gendered History of Social Norms in America

Traditional roles of males and females have grown and developed throughout American history, from a focus on more familial stability to a more divisive view of women and men’s roles. As society

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37. *Id.*

38. Blake, *supra* note 19; Martindale, *supra* note 30.

39. See Adams, *supra* note 30; The Associated Press, *Wichita Man Sentenced in 2015 Sexual Assault of Runaways*, SEATTLE TIMES (Dec. 29, 2017, 9:36 AM), <https://www.seattletimes.com/nation-world/wichita-man-sentenced-in-2015-sexual-assault-of-runaways> [<https://perma.cc/2FK6-W34A>]; *Man Sentenced for Sexual Assault of Child*, J. COURIER (Jan. 20, 2018, 4:32 AM), <https://www.myjournalcourier.com/news/118385/man-sentenced-for-sexual-assault-of-child> [<https://perma.cc/5BVP-S6YD>] [hereinafter *Man Sentenced*].

40. See Adams, *supra* note 30.

41. *Id.*

42. See The Associated Press, *supra* note 39 (describing the twenty-seven-year sentence imposed upon a Kansas man found guilty of sexual assault of two teenage girls); see also *Man Sentenced*, *supra* note 39 (describing the thirty-five-year sentence given to a man in Florida found guilty of sexual assault of a child).



moved into the twentieth century, gender roles centered around family values, with marriage seen as a vital part of a woman's role within American society.<sup>43</sup> Men and women had specific familial roles that in turn extended to life outside of the home:

Marriage and family life in these societies were for centuries deeply gendered, with those gendered relationships buttressed religiously, socially, and legally. The husband was generally considered the head of the family, with the wife a junior partner in the family enterprise and with the husband having the authority to represent the family in the larger community.<sup>44</sup>

Although Americans expressed and shared these values for centuries, the rise of the mid-twentieth century brought fresh ideas concerning women's roles compared to men.<sup>45</sup> In their sociology study, Arland Thornton and Linda Young-DeMarco analyzed the shift in opinions Americans developed towards gendered familial roles over the last half of the twentieth century.<sup>46</sup> In their analysis, they concluded that as time progressed, American citizens began to express more positive beliefs concerning equality in family relations.<sup>47</sup> Traditionally, the institution of marriage defined the societal expectations of women, however, negative feelings towards being single began to decline throughout the mid-twentieth century.<sup>48</sup> This shift in attitude suggested that women were free to make their own domestic choices, and were less restricted by marriage as a societal label.<sup>49</sup> According to Thornton and Young-DeMarco, "[m]arriage has become not only more voluntary but also less powerful as an institution legitimizing and controlling individual behavior, particularly sexual expression, living arrangements, and childbearing—leading to a more individual freedom in these areas."<sup>50</sup>

Given the new attitudes towards family roles, one would assume that opinions on how women fit into the grand societal scheme changed for the positive at the turn of the century, but this was not the case. Expectations of women evolved from merely showing active participation in the household to including passive submission to a

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43. See Arland Thornton & Linda Young-DeMarco, *Four Decades of Trends in Attitudes Toward Family Issues in the United States: The 1960s Through the 1990s*, 63 J. MARRIAGE & FAM. 1009, 1010 (2001).

44. *Id.*

45. See *id.* at 1014.

46. See *id.* at 1009.

47. *Id.*

48. *Id.* at 1017.

49. See Thornton & Young-DeMarco, *supra* note 43, at 1017.

50. *Id.* at 1031.

male-dominated society.<sup>51</sup> As women broke free of the stereotypes of home-keeping and child-rearing, they began to find jobs outside of the home.<sup>52</sup> The increase of women in the workforce operated as a challenge, and even a threat to the traditional norms for males and females in American society.<sup>53</sup> Because males were no longer viewed as the sole providers, they strove to find other ways to exert their status as male within society.<sup>54</sup> This means that the idea of gender equality in familial and economic settings did not fit into the desired American scheme. In *Psychology and Gender at the Turn of the Century*, Henry L. Minton explains the tension between the traditional gender roles and the then present changing roles, stating that “[a]s a consequence of this destabilization, the ideal of manliness shifted from the Victorian veneration of character and emotional restraint to the expression of a ‘passionate manhood’ through unrestrained primitive instincts (e.g., lust, greed, assertiveness), competitive sports, and militarism.”<sup>55</sup> As these new views of men and women developed, rise of media influence served as an important tool in solidifying these more primal views of men and subjugating views of women through use of advertisements, television programs, and film.

### *B. Media’s Developing Influence on Gender Stereotyping*

Throughout the past century of evolving gender roles, the media has captured, maintained, and even generated negative and derogatory ideals regarding pertinent character and personality traits of females.<sup>56</sup> The portrayal of women in commercial advertisements and film was, and still is, specifically problematic. In a shared analysis of media portrayals in the late twentieth century, Julia T. Wood expressed the general concern with the prevalence of negative representation given to women in film and advertisements.<sup>57</sup> She stated: “[t]ypically men [were] portrayed as active, adventurous, powerful, sexually aggressive and largely uninvolved in human relationships. Just as’ [sic] consistent with cultural views of gender [were] depictions

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51. JULIA T. WOOD, *Gendered Media: The Influence Of Media On Views of Gender*, in *GENDERED LIVES: COMMUNICATION, GENDER, & CULTURE* 231, 236–37 (Wadsworth Pub. Co., 1994).

52. See Henry L. Minton, *Psychology and Gender at the Turn of the Century*, 55 AM. PSYCHOLOGIST, 613, 613 (2000).

53. *Id.*

54. *Id.*

55. *Id.* With the increase in liberation from traditional marriage roles for women, men became more physically dominant. These changes can be seen in clothing trends, career fields aimed at the different sexes, etc. as we enter the twenty-first century.

56. See WOOD, *supra* note 51, at 32–33.

57. See *id.* at 33.

of women as sex objects who are usually young, thin beautiful, passive, dependent, and often incompetent and dumb.”<sup>58</sup> These portrayals of women were spread across different forums, mainly in news programs and advertisements. News programs with female co-anchors often required the female host to defer to her male counterpart for direction, suggesting her lack of ability to form her own opinions.<sup>59</sup> Although subtle, these ideals planted a seed of gender separation that only continued to grow as it was watered by continuous impressions of gender stereotypes in the media.

As a prime example of watering the seed of gender separation, video advertisements often used nonverbal cues between males and females to show the submissive nature of the female character.<sup>60</sup> Commercial advertisements were the driving force of influence during this time, and often targeted home maintenance products for females.<sup>61</sup> As an example, a popular Mr. Clean commercial depicted a woman in distress over a dirty home, until a strong male voice explained what she needed to do to keep her home spotless.<sup>62</sup> Although this seems innocent, the male voice represented authority in the woman’s life and generally suggested that women need men to direct and guide them.<sup>63</sup> Advertisements not only targeted home maintenance but cooking as well, and emphasized the role that women played as caregivers in their households—the commercials directed women to take care of and pamper their men.<sup>64</sup> This archaic portrayal suggests that women were best placed in the roles of servants to men, which lays a problematic foundation from which to build more discordant gender stereotypes.

Advertisements not only played up the idea of women as dependent, but also introduced the idea of women as sexually submissive.<sup>65</sup> Women were often depicted in magazines as partially nude or partially unclothed, while men rarely were.<sup>66</sup> Beauty advertisements for makeup, clothing, and hair products attempted to sell their products

58. *Id.* at 32.

59. *Id.* at 34.

60. *Id.* (discussing that the most prominent type of conduct included females being placed in a position that was physically lower than that of her male partner on the television screen, as a symbol of inferiority or servanthood).

61. WOOD, *supra* note 51, at 35.

62. *Id.* This action is commonly referred to as “mansplaining,” which Dictionary.com defines as: “to comment on or explain something to woman in a condescending, overconfident, and often inaccurate or oversimplified manner.” *Mansplain*, DICTIONARY.COM, <https://www.dictionary.com/browse/mansplain?s=t> [<https://perma.cc/AA55-RX3W>].

63. WOOD, *supra* note 51, at 35.

64. *See id.* at 34.

65. The fashion industry was geared towards selling women to men. Women worked hard to look good, not for themselves, but for their male counterparts. *Id.* at 35–36.

66. *Id.* at 36.

by showing an “irresistible” factor of women to men while using the products.<sup>67</sup> This portrayal of women as the gentler, more passive sex comes at a high societal cost:

The irony of this representation is that the very qualities women are encouraged to develop (beauty, sexiness, passivity, and powerlessness) in order to meet cultural ideals of femininity contribute to their victimization. Also, the qualities that men are urged to exemplify (aggressiveness, dominance, sexuality, and strength) are identical to those linked to abuse of women.<sup>68</sup>

Movies and films began to contribute to the problem, as R-rated and X-rated films that supported ideals of male supremacy and complete female suppression strongly showcased domestic abuse and sexual assault most frequently.<sup>69</sup> They operated under the idea of promoting violent and aggressive behavior by men as sexy and desirable, something that was wanted by women.<sup>70</sup> Although this form of entertainment was popular at the end of the twentieth century, sexual crimes like rape appeared the most (and still do appear) in countries that promoted male supremacy and female passivity, and the United States maintains its spot on the list.<sup>71</sup> This connection illustrates the danger that media portrayals have on individual beliefs and behavior. Outside sources on influence work just as effectively as more personal sources, and “[c]ultural values communicated to us by family[,] schools, media, and other sources constantly encourage us to believe men are superior, men should dominate women, male aggression is acceptable as a means of attaining what is wanted, women are passive and should defer to men, and women are sex objects.”<sup>72</sup>

In the twenty-first century, movies and films dominate the cultural influence on depictions of women. Films often portray women in one of two ways: as sex kittens, or as the source of male frustration.<sup>73</sup> Films are less likely to show innovative changes in gender norms, and are more likely to retreat to the stereotypes for each sex, meaning that “[n]arrow, monotonic, sexualized portrayals of women, of all ages, lowers expectations of and for women showing talent and aptitude in other arenas of accomplishment.”<sup>74</sup> A few recent films

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67. *Id.*

68. *Id.*

69. WOOD, *supra* note 51, at 36.

70. *Id.*

71. *See id.* at 39.

72. *Id.*

73. Stuart Fischhoff, *The Sexualized Position of American Women in Movies*, PSYCHOL. TODAY (Apr. 29, 2011), <https://www.psychologytoday.com/blog/the-media-zone/201104/the-sexualized-position-american-women-in-movies> [<https://perma.cc/5LAW-SJ65>].

74. *Id.*

give relevant examples of the problematic oversexualization of women. For example, in *Bad Teacher*, the lead character wants to get breast implants to catch a male teacher's eye, which serves as the central plot of the movie.<sup>75</sup> Additionally, in *Skyfall*, James Bond's love interest admitted her history as a former sex slave and victim of sexual assault, yet Bond pursues her sexually in the next scene of the film.<sup>76</sup> Finally, *American Hustle* portrays females in the 1970s in low cutting and tight-fitting outfits contrary to the fashion of that era.<sup>77</sup> The commonality among each of these films lies in the directing: males dominate the entertainment industry in directing and producing roles, so "[t]he problem might lie in the fact that women are underrepresented not only on-screen but behind the scenes as well. According to the report, movies with female directors, producers and screenwriters are more likely to showcase female characters in greater numbers and in ways that don't objectify them."<sup>78</sup> A study of 100 popular twenty-first century films revealed that women were far more likely to be shown in revealing clothing, and were more likely to be shown partially or fully nude than their male co-stars.<sup>79</sup> This creates a specific view of women, not only in the media, but in the general public:

though they are less likely to appear on screen, females are still more likely to be sexualized than males in cinematic content. The stability of this trend across six years reveals another ongoing discrepancy in how women and girls are depicted. Females fill fewer roles and wear fewer clothes than males—communicating important information to viewers about their value to the story.<sup>80</sup>

Society's declining opinions towards females are a troubling issue in American society. These issues become even more troubling when they start to affect the processes of criminal proceedings, as they have in the United States.<sup>81</sup> As previously explained, "[t]raditional

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75. See Tess Brock, *Gender Inequality: Female Objectification in Film*, TUMBLR (Feb. 25, 2015), <http://geninequalityfilm.tumblr.com> [<https://perma.cc/8Q8R-XZMH>] (last visited Jan. 18, 2019).

76. *Id.*

77. *Id.*

78. Emma Gray, *Women in Film Are Underrepresented, Hypersexualized Despite "Year of The Woman" Claims*, HUFFINGTON POST (May 14, 2013, 5:25 PM), [https://www.huffingtonpost.com/2013/05/14/women-in-film-underrepresented-hypersexualized-report\\_n\\_3273398.html](https://www.huffingtonpost.com/2013/05/14/women-in-film-underrepresented-hypersexualized-report_n_3273398.html) [<https://perma.cc/5DZZ-7PWD>].

79. Stacy L. Smith, Marc Choueiti & Katherine Pieper, *Gender Inequality in Popular Films: Examining On Screen Portrayals and Behind-the-Scenes Employment Patterns in Motion Pictures Released Between 2007–2013*, USC ANNENBERG SCH. FOR COMM. & JOURNALISM 1, 2 (2014).

80. *Id.* at 12.

81. See Calli M. Cain & Amy L. Anderson, *Female Sex Offenders: Public Awareness and Attributions*, 31 VIOLENCE & VICTIMS, 1044, 1046 (2016).

sex scripts depict males as controlling all sexual encounters and females as passive and submissive participants.”<sup>82</sup> The acceptance of these ideals affect how law enforcement responds to claims of assault, specifically assault by women, as police often fail to investigate claims of assault by a woman based on common stereotypes of women within our society.<sup>83</sup> Since American culture paints women as victims of crime and gentler human beings as a whole, people often look for possible reasons behind female sex offending, such as childhood trauma, which they fail to do for male sex offenders.<sup>84</sup> In a recent study on public views of female sex offenders, Calli Cain and Amy Anderson found that the majority of participants agreed that females were capable of sex offenses, however, younger adults were less likely to believe this when compared to older adults.<sup>85</sup> Additionally, males were more likely to attribute female sex crimes to emotional reasons or stereotypical reasons of neediness, insecurity, or impulsivity (things that are traditionally associated with women).<sup>86</sup> If the general depiction were not troublesome enough, these biases have become so strong that they have become apparent in various processes of the American legal system.

### III. IMPACT OF GENDERED CULTURE ON U.S. CRIMINAL PRACTICE

#### A. *Regulatory Pitfalls*

Although living in a country with a democratic form of government gives certain advantages to its citizens, problems may arise when the net of protection is too widely cast. For example, in the United States the First Amendment provides many protections to individuals, as well as corporations, including the media industry.<sup>87</sup> This may imply that freedom of speech extends further than political or moral speech, and casts protections into areas of speech that can be offensive, hateful, or extremely vulgar, which is problematic. Currently, the Federal Communications Commission (FCC) regulates

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82. *Id.* at 1047 (citation omitted).

83. *Id.*

84. *Id.*

85. *Id.* at 1053. Although no official study has been done on the generational disparity in beliefs about sex offending, the general disbelief of the younger generation supports the argument that modern media and advertising influences views towards women in society. While older generations digested ideas of female dependence, younger generations digest more ideas of female sexual submission and victimization, which may create a dissonance in viewing women as initiators of sexual violence.

86. *Id.* at 1054.

87. *Women and Girls as Subjects of Media's Attention and Advertisement Campaigns: The Situation in Europe*, Eur. Parl. PE 474.442 1, 38 (2013) [hereinafter *The Situation in Europe*].

media content regarding obscenity, use of profane language, and indecency.<sup>88</sup> According to the European Parliament's research comparisons, "the United States has also a body for self-regulation called the Advertising Self-Regulatory Council, part of the National Advertising Division [NAD], which has a main objective fostering 'truth and accuracy in national advertising and adherence to industry standards.'"<sup>89</sup> However, the NAD fails to focus on sex or decency in the media, which may impact individuals' views towards sexuality and gender norms.<sup>90</sup>

In regards to the FCC, Congress established this governing body to help regulate commerce both internationally and domestically in communications through wire, radio, etc.<sup>91</sup> The FCC serves as the United States' primary governing body of authority for communications law, technological innovations, and regulation of those areas.<sup>92</sup> Regulation often occurs as a result of the rulemaking process, which the FCC may initiate for various reasons: statutory mandate, agency identification of a problem, or petition for rulemaking.<sup>93</sup> Under the statutory mandate category, Congress may require a rule to "flesh out" a statutory provision; under the agency category, an independent agency may identify a problem that may adversely affect its consumers; under the petition category, any member of the public may petition the FCC to create, modify, or rescind a rule.<sup>94</sup> One rule enforced by the FCC states: "[n]o licensee of a radio or television broadcast station shall broadcast any material which is obscene."<sup>95</sup> The rule also states that radio and television broadcast systems are prevented from broadcasting indecent material between the hours of 6:00 a.m. and 10:00 p.m.<sup>96</sup> This statute is based upon the government's views concerning certain types of materials, which have been

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88. *Id.*

89. *Id.*

90. *See id.*

91. 47 U.S.C.S. § 151 (2017) (describing the statute's goal further: "for the purpose of national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication . . .").

92. *What We Do*, FED. COMM. COMMISSION, <https://www.fcc.gov/about-fcc/what-we-do> [<https://perma.cc/N9GK-E94B>]. The FCC is responsible for the regulation of radio, television, satellite, cable, and wire in all fifty States, the District of Columbia, and U.S. territories. *Id.*

93. *Rulemaking Process*, FED. COMM. COMMISSION, <https://www.fcc.gov/about-fcc/rule-making-process> [<https://perma.cc/8KPK-K8XN>].

94. *Id.*

95. 47 C.F.R. § 73.3999 (2018).

96. *Id.*

litigated and discussed in order to determine definitions of these terms and how they relate to the First Amendment.<sup>97</sup>

*Roth v. United States* set the legal standard for separating certain types of media speech from First Amendment freedoms, when the Supreme Court held that obscenity was not within the constitutionally protected area of speech or press.<sup>98</sup> The Court stated that “implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance.”<sup>99</sup> Eventually the FCC hashed out a definition of obscenity in communications. In order for content to be ruled obscene, “[i]t must appeal to an average person’s prurient interest; depict or describe sexual conduct in a ‘patently offensive’ way; and, taken as a whole, lack serious literary, artistic, political or scientific value.”<sup>100</sup> Obscene material differs from profane or indecent material, as profane material includes “grossly offensive” language, and indecent material portrays sexual activities in a way that falls short of obscenity.<sup>101</sup> Still, these terms seem very vague and quite subjective in nature.

*United States v. Playboy Entertainment Group* established a new prong to the obscenity regulation analysis, with the Supreme Court ruling that Section 505 of the Telecommunications Act of 1996 failed strict scrutiny analysis and therefore violated the First Amendment.<sup>102</sup> This code section required cable television operators who provided programs that primarily concerned sexually oriented material to fully scramble or block these channels, or to limit their transmission hours to times when children were less likely to be watching.<sup>103</sup> The government argued that the statute was created because many scrambling systems used by networks failed to often completely censor material, which would lead to audio or sound bleed on network channels.<sup>104</sup> The Court, while recognizing the necessity of

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97. See *U.S. v. Playboy Entm’t Grp.*, 529 U.S. 803, 803 (1999); see also *Jacobellis v. Ohio*, 378 U.S. 184, 184 (1963); see generally *Roth v. U.S.*, 354 U.S. 476, 476 (1957).

98. See *Roth*, 354 U.S. at 485. In this case, Roth was convicted under the New York Statute for mailing “obscene” circulars and an obscene book in violation of the federal obscenity statute. *Id.* at 480.

99. *Id.* at 484. Still, the definition of “obscene material” remained fuzzy in the eyes of the Court as time went along. In *Jacobellis v. Ohio*, the Court found the film at issue to not contain obscene content, however it failed to provide a clear rationale for why it was not obscene compared to other material. See 378 U.S. at 196. This case produced Justice Stewart’s famous line: “I know it when I see it,” suggesting a less than clear definition on obscenity. *Id.* at 197 (Stewart, J., concurring).

100. *Obscene, Indecent and Profane Broadcasts*, FED. COMM. COMMISSION, <https://www.fcc.gov/consumers/guides/obscene-indecent-and-profane-broadcasts> [<https://perma.cc/ZF69-8V92>].

101. *Id.*

102. See *Playboy Entm’t Grp.*, 529 U.S. at 827.

103. *Id.* at 806.

104. See *id.* at 807.



regulation for materials parents find unwanted for their children, stated that cable broadcasting was different from general broadcasting because it had the ability to block unwanted channels on a household-by-household basis, and Playboy Entertainment was a cable channel.<sup>105</sup> The FCC formulated its rule concerning broadcasting of obscene material based on this judicial oversight, and does not prohibit obscene content at all times of day, but only prohibits indecent and profane content between the hours of 6:00 a.m. and 10:00 p.m.<sup>106</sup> The First Amendment, therefore, still presents a problem for regulating certain content, since it prevents strict regulation on material that may be psychologically damaging to our sense of gender equality in America.<sup>107</sup> Federal regulations concerning obscenity in media serve as only one concern in the legal framework. State statutes also raise concerns over perceptions of gender, specifically in the context of sexual crimes.

### *B. Statutory Pitfalls*

In thinking about the reasoning behind fewer arrests and charging of female offenders, one must ask: why is this the case? While societal norms and stereotypes play a large role in our views towards men and women respectively, they may become damaging when molded into the legislatures' writing of laws. In fact, many female sex offenders may have found themselves in a more favorable criminal position simply due to the writing of many rape laws across the United States. While several rape laws currently contain gender neutral language, this was not always the case.<sup>108</sup> California's rape

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105. See *id.* at 815. The general idea here was that cable broadcasting networks already had safeguards in place for parents to use to censor channels. There was therefore no need for harsher restrictions.

106. *Obscene, Indecent, and Profane Broadcasts*, *supra* note 100. This rule draws the distinction between general broadcasting and cable broadcasting: “[b]ecause obscenity is not protected by the First Amendment, it is prohibited on cable, satellite and broadcast TV and radio. However, the same rules for indecency and profanity do not apply to cable, satellite TV and satellite radio because they are subscription services.” *Id.*

107. OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, 82 FED. REG. 25568, RESTORING INTERNET FREEDOM; PROTECTING AND PROMOTING THE OPEN INTERNET (2017) (discussing First Amendment issues arising from the previous cases have seemingly discouraged heavy regulation of the internet. In May of 2017, the FCC adopted the “Notice of Proposal Rulemaking (NPRM) that proposes to restore the Internet to a light-touch regulatory framework by classifying broadband Internet access service as an information service and seeks comment on the existing rules governing Internet service providers’ practices.”); see also *FCC Initiatives*, FED. COMM. COMMISSION, <https://www.fcc.gov/about-fcc/fcc-initiatives> [<https://perma.cc/2YDF-MGRY>].

108. See ALA. CODE § 13A-6-61 (LexisNexis 2018); 2000-Pub. Act 726 Ala. Adv. Legis. Serv. 1 (LexisNexis); CAL. CODE REGS. tit. 9, § 261 (2018).

statute, for example, currently defines rape as “an act of sexual intercourse accomplished with a person not the spouse of the perpetrator,” and goes on to list specific acts of rape.<sup>109</sup> The phrase “a person” is present throughout the statute, referring to the victim of the sexual acts.<sup>110</sup> This phrase however did not become a part of the statutory language until 1979, when the legislature amended the statute to remove specific gendered terms.<sup>111</sup> Similarly, Alabama’s rape statute currently reads: “[a] person commits the crime of rape in the first degree if: (1) He or she engages in sexual intercourse with a member of the opposite sex by forcible compulsion.”<sup>112</sup> The legislature did not add the “she” portion of the “he or she” phrase until the year 2000, where it proposed an amendment stating: “AN ACT To [sic] amend Sections 13A-6-61 and 13A-6-62 of the Code of Alabama 1975; relating to the crimes of rape in the first or second degree; to provide that a female may commit the crimes.”<sup>113</sup>

Although California and Alabama’s late changes to the gendered language of their rape statutes prove to be problematic, they stand many steps ahead of some of their fellow states. While states like Alabama only recently changed the language of their rape laws, states like Georgia, Mississippi, and North Carolina still contain gendered language in their rape statutes.<sup>114</sup> As of 2018, Georgia’s rape statute states: “[a] person commits the offense of rape when he has carnal knowledge of: (1) A female forcibly and against her will; or (2) A female who is less than ten years of age.”<sup>115</sup> Mississippi’s language carries more of an aged element, describing the offense as “an assault with intent to forcibly ravish any female of previous chaste character.”<sup>116</sup> North Carolina, while not as blatantly gendered as the former statutes in its language, still gives the impression of gender separation by denoting it first-degree forcible rape “if the person engages in vaginal intercourse with another person by force and against the will of the other person.”<sup>117</sup> This language seemingly

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109. CAL. PENAL CODE § 261(a) (Deering 2018).

110. *Id.* § 261(a)(1)–(5).

111. The amendment “[s]ubstituted (1) ‘person not the spouse’ for ‘female not the wife’ in the introductory clause; (2) ‘any’ for ‘either’ in the introductory clause; (3) ‘a person’ for ‘she’ wherever it appears in subds 1, 3, 4, and 5; (4) ‘a person resists, but the person’s’ for ‘she resists, but her’ in subd 2; and (5) ‘the victim’s spouse’ for ‘her husband’ in subd 5.” *Id.* (amended 1979).

112. ALA. CODE § 13A-6-61(a)(1) (LexisNexis 2018).

113. 2000-Pub. No. 726 Ala. Adv. Legis. Serv. (LexisNexis).

114. *See* GA. CODE ANN. § 16-6-1 (2018); MISS. CODE ANN. § 97-3-71 (2018); N.C. GEN. STAT. § 14-27.21 (2018).

115. GA. CODE ANN. § 16-6-1(a)(1)–(2) (2018).

116. MISS. CODE ANN. § 97-3-71 (2018).

117. N.C. GEN. STAT. § 14-27.21 (2018).

implies that females fall into the victim category of forcible rape. The lack of consistency amongst these states in their definitions of rape generates concerns about the treatment of females on the perpetrating end of sex crimes. These issues warrant a search for solutions outside of our nation's borders.

#### IV. EUROPE'S APPROACH TO TACKLING GENDER INEQUALITY

##### A. *Similar History of Gendered Norms & Media Influence*

Europe, in its long history with America, has shared similar problems concerning gender stereotypes within its culture.<sup>118</sup> In response to issues of gender stereotypes in media however, European governments have tried a different approach which may be useful for the United States as a learning point. The European Union, unlike the American government, views media influence as problematic, and has taken on the role of assessing the impact of the media into its own hands, conducting studies and directing committees under the advisement of the European Union to analyze the gender stereotypes that resulted from media influence.<sup>119</sup> In a 2010 study, the Employment, Social Affairs, and Equal Opportunities division of the European Commission determined that women were often shown as victims, mothers, or sexual objects.<sup>120</sup> In reference to the sexual objectification of women, the Commission also drew a disturbing parallel between media depictions of women and criminal enterprise, stating:

highly sexualized images of young women and girls exist across all of the media, including mainstream television and public advertising. They are routinely presented as expressions of sexual liberation, rather than exploitation. It is argued that the commodification of women and girls, which is central to the majority of pornographic material, fuels demand for commercial sex acts, and in turn may increase sex trafficking.<sup>121</sup>

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118. See generally Advisory Committee on Equal Opportunities for Women and Men: Opinion on "Breaking Gender Stereotypes in the Media" European Commission (2010) [hereinafter *Breaking Gender Stereotypes in the Media*]; see also M.V. Lee Badgett & Nancy Folbre, *Assigning Care: Gender Norms and Economic Outcomes*, 138 INT'L LAB. REV. 311, 311 (1999) (discussing the notion of care-taking being associated with females in Europe, stating: "[w]omen are generally held to higher standards of family responsibility than men. A daughter who neglects her parents, a wife who leaves a husband, a mother who abandons a child—all are considered more culpable than a son, husband or father who does the same.").

119. See generally *The Situation in Europe*, *supra* note 87, at 1.

120. *Breaking Gender Stereotypes in the Media*, *supra* note 118, at 9.

121. *Id.*

In a more recent study by European Parliament, researchers confirmed the initial concerns in the 2010 study, determining that the general message European media communicates to the public is that of sexually available young women who seek domination by aggressive men and constantly present themselves as sexual objects.<sup>122</sup> This discovery led to the formation of Accumulation Theory, which predicts that messages that are consistently and constantly presented to the public in various forms, whether through literature, news, film, or advertisements, will have a lasting impact on an audience.<sup>123</sup> In this case, the practice of viewing images of young women as sexual objects has accumulated over time and is now normalized in European culture.<sup>124</sup>

While the main concerns over gender stereotypes in the United States stem from psychologists and social researchers, the European Union expresses concern as a governing body over this issue, and has taken steps as a governing body to remedy the issue.<sup>125</sup> According to the European Commission, “[m]edia should reflect a realistic picture of women and men and the notion of quality media should include the protection of democratic values, including equality between women and men.”<sup>126</sup> The Commission proposed an economical solution for media companies to work in “positive action programmes” to promote gender equality in its advertising.<sup>127</sup>

### *B. Establishment of Regulatory Systems to Attack Gender Stereotyping in the Media*

Europe has taken the initiative to attack the problem of gender stereotyping in the media through various means. The Council of Europe, Council of the European Union, and European Parliament

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122. *The Situation in Europe*, *supra* note 87, at 26.

123. *Id.*

124. *Id.*

125. *Id.* (expressing disdain over the status of women in European culture: “[s]uch a widespread ‘resistance’ to recognise sexism in media content is to be interpreted as an alarming signal, rather than as the evidence of the individuals’ ability to actively negotiate the meanings of media representations. Studies carried on within different disciplines have shown that the sexual objectification of female body in media contents does have a negative influence on the audience, and that this influence finds in young women and teenagers a particularly vulnerable target.”).

126. Breaking Gender Stereotypes in the Media, *supra* note 118, at 9.

127. *Id.* at 12. The European Parliament also commented on the power and influence of media over formulating gender roles, stating that “[a]lthough the audiences are free to accept or refuse media contents and meanings, the media system has the power to decide which gender role models will be visible and which not: all media contents are powerful sources of gender information that might reinforce or challenge our ideas about gender.” *The Situation in Europe*, *supra* note 87, at 88.

drafted many reports, recommendations, and resolutions concerning sexist stereotypes towards women in the media.<sup>128</sup> They also conducted research and studies on the effects of media and advertising on sexism, and formed suggestions for the European Commission and the Member States for reinforcing and promoting gender equality and encouraging and monitoring media companies in the types of sexualized and stereotypical content they produce.<sup>129</sup> For example, in September of 2008, the European Parliament passed a resolution that urged the Commission to “intensify its efforts against discrimination in the media and for further research on this topic.”<sup>130</sup> The European Parliament also suggested incorporating the services of non-governmental organizations in Europe to help achieve the goal of gender normalization in the media, including working with media industry associations and gender equality bodies.<sup>131</sup> The suggestions influenced many Member States in a positive way, as policy responses in the Member States ranged from legislation creating prohibitions of certain portrayals of women, to codes set for regulating broadcasting media and the rising of self-regulating bodies who monitor gender stereotypes in the media.<sup>132</sup> Specifically, in regards to self-police measures, the European Parliament stated: “[t]he advertising industry is the most relevant sector in which self-regulation is established, with the presence of a self-regulation body in the majority of the EU countries. Some of them have issued rules and codes of conduct that have been reported for the purposes of this research.”<sup>133</sup>

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128. See *The Situation in Europe*, *supra* note 87, at 42–44. Europe has taken different steps to fix the problem of sex role stereotyping in the media, starting with a 1979 convention that sought to modify the pattern of conduct of the sexes in the media, “with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” *Breaking Gender Stereotypes in the Media*, *supra* note 118, at 3. In 1995, the Council Resolution invited the Member States and the Commission to try and promote a more diverse picture of men and women in advertising and the media. *Id.* In 2008, the Council of the European Union adopted Council Conclusions, which encouraged Member States to “promote awareness-raising campaigns and the exchange of good practices on combating gender stereotypes and the advancement of the realistic and non-discriminatory images of girls/women and boys/men in the media.” *Id.* at 4.

129. See *Breaking Gender Stereotypes in the Media*, *supra* note 118, at 4.

130. *Id.* at 5.

131. *The Situation in Europe*, *supra* note 87, at 47.

132. *Id.* at 51. The European Parliament conducted an analysis on the various regulatory acts and laws implemented by the Member States. The results revealed that fifteen of the regulatory acts addressed all media and communication forms; seventeen regulated the broadcasting sector; four regulated audiovisual media; and twenty-three addressed advertising. See *id.* at 53–57. Results for the laws governing media portrayals of women revealed that of the fifteen laws addressing the media, eight focused on radio and television; all of the laws contained provisions including prohibitions on gender discrimination; and twenty-three out of twenty-six laws were binding, meaning that they included punishment in the form of a fine or pecuniary penalty. See *id.* at 56–57.

133. *Id.* at 59.

In addition to the research and suggestive reports, European Parliament passed a directive that serves as the only legally binding act at the European Union level on issues of gender in the media, called the Audiovisual Media Services Directive.<sup>134</sup> Specifically, Article 6 of the directive declares that media service providers may not produce material that would incite hatred towards people based on sex, race, religion, or nationality.<sup>135</sup> The specific section states:

Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply . . . with the following requirement ‘(c) audiovisual commercial communications shall not:

- (i) Prejudice respect for human dignity;
- (ii) Include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.<sup>136</sup>

Within the European Union, many Member States adopted these provisions, which produced successful results; specifically, twenty-five Member States have incorporated this directive into their national legislations, and only two Member States—Poland and Belgium—still need to adopt it into their legislations.<sup>137</sup> Since adopting this directive into legislation, a few Member States have taken the initiative to implement new ideas towards media and gender stereotypes.<sup>138</sup> For example, Ireland amended its code to include a deeper description of prohibition of gender discrimination in relation to marketing communications in the interest of consumers.<sup>139</sup> Spain also created laws designed to contrast gender imbalances that have a media relevance, based on their paying close attention to the relations between media and gender at the institutional level.<sup>140</sup> These initiatives show a

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134. *The Situation in Europe*, *supra* note 87, at 44.

135. *Id.*

136. *Id.* (citation omitted).

137. *Id.* at 64.

138. *See generally id.* at 73–88.

139. *Id.* at 73 (“Marketing communications should respect the principle of the equality of men and women. They should avoid sex stereotyping and any exploitation or demeaning of men and women. Where appropriate, marketing communications should use generic terms that include both the masculine and feminine gender; for example, the term ‘business executive’ covers both men and women.”).

140. *See generally The Situation in Europe*, *supra* note 87, at 80. Spain’s General Audiovisual Communication Law incorporated the Audiovisual Media Services Directive, and contains both provisions on prohibitions and on active measures. *Id.* at 81. The statute may be summarized as follows: “[a]dvertising using the image of women with degrading or discriminatory nature is unlawful. The Public Administration will pay particular attention to the eradication of behaviour and situations favouring inequality of women in all media, in accordance with current legislation, and promote self-regulatory arrangements, with preventive control mechanisms and effective court settlement of disputes.” *Id.*

genuine effort on behalf of Europe to remedy past wrongs created by gender stereotyping culture in the media, in order to prevent collateral damage in the future.

### *C. Greater Sentencing Equality for Sex Offenses*

Twenty-first century Europe has already surpassed the United States in its treatment of female offenders. Statistically, males still comprise the majority of offenders for sexual offenses.<sup>141</sup> Although the number of female offenders, like in the United States, pales in comparison to the number of male offenders, the sentencing of female offenders showcases less leniency than the American system, and more fairness overall.<sup>142</sup>

The United Kingdom has handled quite a few cases concerning sexual assault and rape, and seems to take an overall stricter stance on sentencing female offenders.<sup>143</sup> For example, a forty-four-year-old woman, Marie Dent, posed as a teenage girl online to lure an underage boy into having sex with her.<sup>144</sup> She pled guilty to the charges and was sentenced to three years in prison and forced to enter the sex offender registry for life.<sup>145</sup> Similarly, a thirty-three-year-old woman, Nicola Fox, pled guilty to sexual assault after luring a thirteen-year-old boy to her home and forcing him to have sex with her.<sup>146</sup> Fox was sentenced to four years in prison, required to register as a sex offender, and became subject to a sexual harm prevention order.<sup>147</sup> On a stricter level, a Leeds woman, Michalea Sheldrake, was sentenced

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141. *Crime and Criminal Justice Statistics Data 2008–2013*, EUROSTAT, [https://ec.europa.eu/eurostat/statistics-explained/index.php/Crime\\_and\\_criminal\\_justice\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Crime_and_criminal_justice_statistics) [<https://perma.cc/3SRY-PU7R>] (explaining Eurostat statistics). Statistics show that eighty-seven percent of victims of sexual violence are female, and ninety-four percent of suspects for sexual violence are typically male. *Id.*

142. See Alan Erwin, *NI Woman (57) Faces Claims of Assisting Husband's Rape of Young Girl*, IRISH TIMES (Feb. 2, 2018, 4:53 PM), <https://www.irishtimes.com/news/crime-and-law/ni-woman-57-faces-claims-of-assisting-husband-s-rape-of-young-girl-1.3377961> [<https://perma.cc/Z7T7-D2RL>]; see also *Leeds Woman Jailed for Seven Years*, UK & IRELAND DATABASE (Nov. 14, 2017), <https://theukdatabase.com/2017/11/14/michaela-sheldrake-leeds> [<https://perma.cc/UP8Y-K3W3>] [hereinafter *Leeds Woman*]; *Woman, 33, Who Lured 13-Yr-Old Boy to Her Home and Forced Him to Have Sex with Her Jailed*, UK & IR. DATABASE (Sept. 11, 2017), <https://theukdatabase.com/2017/09/11/nicola-fox-hull> [<http://perma.cc/SN9N-7C6Q>] [hereinafter *Woman, 33*]; *Woman, 44, Had Sex with 15-Year-Old Schoolboy*, UK & IR. DATABASE (Aug. 3, 2017), <https://theukdatabase.com/2017/08/03/marie-dent-clacton-on-sea> [<https://perma.cc/DB5C-PX8Z>] [hereinafter *Woman, 44*].

143. See Erwin, *supra* note 142; see also *Leeds Woman, supra* note 142; *Woman, 33, supra* note 142; *Woman, 44, supra* note 142.

144. *Woman, 44, supra* note 142.

145. *Id.*

146. *Woman, 33, supra* note 142.

147. *Id.* This type of order is similar to what we call protection orders in the United States.

to seven years in prison after admitting to taking pornographic photographs of numerous underage boys and girls.<sup>148</sup> Unlike the United States, courts in the United Kingdom seem to favor prison time as a sentence for female offenders. These sentencing for both males and females also seem to show a more fair and uniform approach overall.<sup>149</sup> For example, a twenty-two-year-old male, Conrad Pritchard, sexually assaulted a four-year-old female while intoxicated.<sup>150</sup> After a failed attempt to convince the court he believed the girl was eighteen, the judge sentenced him to thirty-two months (almost three years) in prison.<sup>151</sup> Similarly, a judge convicted a forty-four-year-old male, Nicholas Henshall, for the sexual assault of a young boy.<sup>152</sup> Mr. Henshall originally received a suspended twenty-month (almost two-year) sentence; however, the judge set aside the sentence and ordered immediate service of twenty months imprisonment.<sup>153</sup>

Other countries have also shown a preference for equality in dealing with male and female co-defendants in sexual assault and rape cases.<sup>154</sup> In *SGJ v. R*, a New Zealand married couple committed multiple counts of sexual abuse of minors in the form of intercourse, generated child pornographic images, and committed aggravated assault.<sup>155</sup> In the initial trial, the judge sentenced both parties to twenty-two years in prison with no possibility of parole.<sup>156</sup> On appeal, the couple claimed the sentence as too harsh, but the court found the sentence appropriate.<sup>157</sup> Only after receiving the mitigating evidence of physical and sexual abuse of the female defendant by the male defendant did the court reduce the female’s sentence to twenty years, which was still substantial and a minor difference to her husband’s sentence.<sup>158</sup> In a recent Ireland case, a judge denied

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148. *Leeds Woman*, *supra* note 142.

149. See Chloe Farand, *Man Jailed for Sexually Assaulting Four-Year-Old Girl Said He ‘Thought She Was 18,’* INDEP. (Jan. 28, 2018, 3:51 PM), <http://www.independent.co.uk/news/uk/crime/conrad-pritchard-jailed-manchester-crown-court-salford-sexual-assault-four-year-old-thought-18-a8182011.html> [<https://perma.cc/L66C-7CXA>]; see also *Man Jailed for Sexual Assault on Young Boy*, GOV.UK (Nov. 29, 2017), <https://www.gov.uk/government/news/man-jailed-for-sexual-assault-on-young-boy> [<https://perma.cc/7HZU-CXTV>] [hereinafter *Man Jailed for Sexual Assault*].

150. See Farand, *supra* note 149.

151. See *id.*

152. *Man Jailed for Sexual Assault*, *supra* note 149.

153. *Id.* The judge also ordered a ten-year sexual harm prevention order for Mr. Henshall. *Id.*

154. See generally *SGJ v. R*; *Ku v. R* [2008] NSWCCA 1 (N.Z.); Erwin, *supra* note 142.

155. *SGJ v. R*; *Ku v. R* [2008] NSWCCA 1 (N.Z.).

156. *Id.*

157. *Id.*

158. *Id.* It seems that the court here weighed the gravity of the offenses and determined that a harsh sentence was still necessary for both parties, even given the mitigating circumstances of the abuse.



bail for a fifty-seven-year-old woman based on her involvement in her husband's rape of a two-year-old girl.<sup>159</sup> The woman, Heather Talbot, purchased lingerie for the girl and dressed the girl up before her husband raped her; she also reportedly took numerous explicit photos of the girl individually, of herself with the girl, and of her husband with the girl.<sup>160</sup> The prosecutor charged Talbot with eight sexual offenses, the same offenses that her husband was charged with.<sup>161</sup> These results indicate a more impartial approach to sexual offending by male and female individuals.

European courts as a whole generally tend to consider mitigating or lenient circumstances equally when imposing a sentence for a male and female offender.<sup>162</sup> For example in *Regina v. Kinnear*, the defendant male was found guilty for assaulting girls under the age of thirteen.<sup>163</sup> He denied all allegations and held no prior criminal record; the appellate court reduced his nine-year sentence to seven years, finding it excessive.<sup>164</sup> On the other end, an appellate court reviewed the eight-year sentence of a female defendant convicted of assault by penetration of another female.<sup>165</sup> The appellate court presented no issue with the length of the sentence but chose to remand the case for retrial after discovering unfair and unbalanced instructions to the jury by the lower court judge.<sup>166</sup> In regards to leniency, the appellate court in *Regina v. Edwards* overturned the suspension of a one-year sentence for a female defendant who began a sexual relationship with a minor.<sup>167</sup> The court found the suspension "unduly lenient" and determined that an immediate sentence of imprisonment was most appropriate.<sup>168</sup> In an aggravated sexual assault case, an appellate court raised the sentence of a male defendant from three years to six years based on the gravity of his vicious attack on a female victim.<sup>169</sup> These courts have a stronger concept of impartiality and fairness in sentencing its male and female offenders, more so than the United States.

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159. See Erwin, *supra* note 142.

160. *Id.*

161. *Id.*

162. See *Regina v. Newland* [2016] 85 All ER (Eng.); *Regina v. Rivera* [2010] 36 EWCA (Crim) 452 (Eng.); *Regina v. Edwards* [2009] 36 EWCA (Crim) 132 (Eng.); *Regina v. Kinnear* [2007] 36 EWCA (Crim) 2077 (Eng.).

163. *Regina v. Kinnear* [2007] 36 EWCA (Crim) 2077 (Eng.).

164. See *id.*

165. See *Regina v. Newland* [2016] 85 All ER (Eng.).

166. *Id.*

167. *Regina v. Edwards* [2009] EWCA (Crim) 132 (Eng.).

168. *Id.*

169. *Regina v. Rivera* [2010] EWCA (Crim) 452 (Eng.).

## V. ADOPTING EUROPE’S APPROACH TO REGULATING THE MEDIA

Although Europe does not serve as the picture-perfect example of gender equality in societal norms, media, and criminal proceedings, it has taken a step in the right direction towards getting a handle on the issue. By passing the Audiovisual Media Services Directive, the European Parliament communicated its dedication to stopping the issue of obscenity in the media.<sup>170</sup> The Member States have taken this initiative seriously, and as an example, seven countries created national plans that promote gender equality and regulate portrayals of the sexes in media (Belgium, Bulgaria, Greece, Hungary, Portugal, Slovenia, and Spain).<sup>171</sup> Europe recognizes the potential impact that skewed depictions of the sexes may have on greater social life, and states that “[m]edia should reflect a realistic picture of women and men and the notion of quality media should include the protection of democratic values, including equality between women and men.”<sup>172</sup> This approach not only aims to restructure the social climate but also aims to then affect tangential areas of society that may be influenced by the social climate (i.e., legal practice).

The United States could benefit greatly from this approach. By targeting existing cultural gender biases, the United States may be able to subsequently affect the usefulness of those biases in official capacities, like the criminal justice system. The media operates as the most effective and widespread means of conveying information, which explains why it is able to perpetuate notions of stereotyping and inequality between the sexes. Although the government will not be able to specifically impose greater restrictions on media portrayal without infringing on First Amendment rights, it may attack gender biases in more creative ways, similar to Europe.<sup>173</sup> If the U.S. government creates and funds initiatives geared towards generating positive views of women in the media, the effects may spread to areas that receive influence from media and cultural norms.<sup>174</sup> As it

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170. See *The Situation in Europe*, *supra* note 87, at 44.

171. *Id.* at 60–62.

172. Breaking Gender Stereotypes in the Media, *supra* note 118, at 9.

173. See *U.S. v. Playboy Entm’t Grp.*, 529 U.S. 803, 813 (1999); *Jacobellis v. Ohio*, 378 U.S. 184, 184 (1963); *Roth v. U.S.*, 354 U.S. 476, 492 (1957). The First Amendment grants broad protections to speech and expression in this context, therefore, imposing stricter regulations on media content may raise many First Amendment claims that courts do not want to deal with.

174. This may include funding organizations that may generate campaigns towards promoting gender equality. Having representatives who can penetrate the media in interviews, programs, and even marches, may gain widespread attention and begin to break down cultural barriers. The #MeToo movement serves as a prime example of the impact groups can have on the way we view societal norms and processes. See generally

stands, males commit sexual crimes against females in American society—this is the norm.<sup>175</sup> By cracking down on gendered notions of criminal behavior, the justice system may develop a more neutral and impartial view towards sex offending in general.

In addition to supporting greater gender equality initiatives, the government should take steps to target these issues within the criminal justice system more directly by going to the source: prosecutors and judges. As humans, judges and prosecutors must also carry their own biases towards other groups of people, but unlike others, their biases may affect the outcome of criminal proceedings. Offering bias training to these members of the court may allow them to view their own biases and reduce the importance those biases serve in the courtroom.<sup>176</sup> The European Union funds an organization, GenPORT, that offers many resources on combating various forms of biases in businesses and organizations, including gender biases.<sup>177</sup> The United States may take the same approach with its officers of the court and expose the method of decision-making often used by judges specifically.<sup>178</sup>

Emotions influence our decision-making processes in two ways: intuitive thinking and deliberate thinking.<sup>179</sup> While deliberate thinking requires consciousness, a time-consuming effort, intuitive thinking falls on the instinctive side, making it more likely to follow emotional interactions.<sup>180</sup> Female sex offenders may elicit more of an emotional response from prosecutors and judges which conflicts with their understanding of sexual criminals in general, causing them to

Christen A. Johnson & KT Hawbaker, *#MeToo: A Timeline of Events*, CHI. TRIB. (Sept. 19, 2018, 4:15 PM), <http://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htmlstory.html> [<https://perma.cc/TYN3-4RA7>].

175. See FEMALE SEX OFFENDERS, *supra* note 6, at 3 (citation omitted) (“At the macro level, sex offending long has been viewed within society as a male-only crime. This is, in part, because of pervasive gender role stereotypes about women as nurturing, caretaking individuals who are, by their very nature, unlikely to engage in aggressive or harmful behaviors toward others. Also potentially operating are sexist beliefs that depict males as controlling all sexual encounters and females as passive and submissive recipients.”).

176. See *Judges: 6 Strategies to Combat Implicit Bias on the Bench*, AMERICANBAR.ORG, <https://www.americanbar.org/publications/youraba/2016/september-2016/strategies-on-implicit-bias-and-de-biasing-for-judges-and-lawyer.html> [<https://perma.cc/4NSJ-VNUU>] [hereinafter *6 Strategies to Combat Implicit Bias*]; Suja A. Thomas, *What Judges Can Do About Implicit Bias*, JOTWELL (May 22, 2017), <https://courtslaw.jotwell.com/what-judges-can-do-about-implicit-bias> [<https://perma.cc/E4CK-GVGZ>].

177. See *11 Recommended Resources on Anti-Gender Bias Training*, GENPORT, <http://www.genderportal.eu/blog/11-recommended-resources-anti-gender-bias-training> [<https://perma.cc/N66E-9QG7>] (last visited Jan. 18, 2019). Some sources include video training on the prevalence of gender bias, written reports on the effects of gender roles within European society, and testing for uncovering implicit biases. See *id.*

178. See Thomas, *supra* note 176.

179. *Id.*

180. *Id.*

rely on instinctual thinking more so than deliberate thinking.<sup>181</sup> By requiring the use of specific resources to shed light on potential biases, the government may strongly impact the way in which female sex offenders are treated compared to their male counterparts in the eyes of the law.<sup>182</sup>

## CONCLUSION

The criminal justice system represents the concepts of fairness and equality in American Society. Although people in this society may not always treat each other with the utmost respect, many take comfort in the following realization: everyone is viewed equally in the eyes of the law. When the system in which many Americans have placed their faith begins to treat people differently based on sex, it sends a message to the public. It sends the message that the law favors one sex over the other, that one sex deserves lesser punishment than the other, and ultimately that the law does not view everyone equally. When we allow cultural and media perceptions of gender to penetrate the walls of our courts, the results frustrate the very purpose of our criminal justice system. However, the government has the power to use the very tools that have assisted in generating this disparity to promote change. By attacking existing societal stereotypes through funding initiatives geared towards closing the gender gap, the U.S. government may effectively work towards change in the use of cultural stereotypes in the legal system. Although change of this magnitude will not happen overnight, the fight for gender equality must continue. Only then may we have liberty, and most importantly, justice . . . for all.

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181. *See id.*

182. *See 6 Strategies to Combat Implicit Bias, supra* note 176. The American Bar Association offers different strategies for lawyers and judges to combat biases, including offering the Implicit Association Test, recommending the practice of individuation when dealing with different individuals, and practicing placing oneself in the defendant's shoes. *Id.*

\* Deborah Goodwin is a 2019 JD Candidate at William & Mary Law School. She has a BS in Psychology from the College of William & Mary. I first want to thank God, without whom I could not have completed this truly incredible journey. I want to thank my amazing husband Jay, who supported me through this entire process. I am so grateful to have someone so loving, who believes in who I am and who I want to become. Finally, I would love to thank this *Journal* for pushing me, and for granting me this amazing opportunity to write about something I am passionate about. I am so blessed to be a part of such a wonderful organization. I hope this Note will inspire you and encourage you to widen your perspective on the workings of our legal system.