

Legal Bias Against Rape Victims (The Rape of Mr. Smith)

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Rape is the most underreported crime in part because the legal system works against a survivor's favor. It has been said that survivor is raped twice: first by her assailant and then by the system through which she tries to do something about it. Unlike trials for other crimes, the complainant in a rape case often will find herself on trial to prove her innocence. Imagine how it might sound if a robbery victim were subjected to the kind of treatment that a rape victim usually undergoes in cross-examination:

In the following situation, a holdup victim is asked questions by a lawyer.

"Mr. Smith, you were held up at gunpoint on the corner of First and Main?"

"Yes."

"Did you struggle with the robber?"

"No."

"Why not?"

"He was armed."

"Then you made a conscious decision to comply with his demands rather than resist?"

"Yes."

"Did you scream? Cry out?"

"No, I was afraid."

"I see. Have you ever been held up before?"

"No."

"Have you ever GIVEN money away?"

"Yes, of course."

"And you did so willingly?"

"What are you getting at?"

"Well, let's put it like this, Mr. Smith. You've given money away in the past. In fact, you have quite a reputation for philanthropy. How can we be sure that you weren't CONTRIVING to have your money taken from you by force?"

"Listen, if I wanted —"

"Never mind. What time did this holdup take place, Mr. Smith?"

"About 11:00 P.M."

"You were out on the street at 11:00 P.M.? Doing what?"

"Just walking."

"Just walking? You know that it's dangerous being out on the street that late at night. Weren't you aware that you could have been held up?"

"I hadn't thought about it."

"What were you wearing at the time, Mr. Smith?"

"Let's see ... a suit. Yes, a suit."

"An EXPENSIVE suit?"

"Well — yes. I'm a successful lawyer, you know."

"In other words, Mr. Smith, you were walking around the streets late at night in a suit that practically advertised the fact that you might be good target for some easy money, isn't that so? I mean, if we didn't know better, Mr. Smith, we might even think that you were asking for this to happen, mightn't we?"