She Asked For It!
Jury Selection and Decision Making in Sexual Assault Cases

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What the Research Shows


Jurors define rape in terms of the victim’s “assumption of risk.”

Gary LaFree, Ph.D., Rape and Criminal Justice: The Social Construction of Sexual Assault (1989)

Jurors disregard evidence and decide rape cases based on their personal perceptions of the victims’ character and lifestyle.

LaFree, Rape and Criminal Justice

- 32% of jurors believed a woman’s resistance was a critical factor in determining a rapist’s culpability.
- 59% of jurors believed a woman should do everything she can to repel her attacker.

Jurors’ Beliefs in Rape Myths

- "The more participants endorsed rape myths, the less credible...and more blameworthy...they found the [victim].” (Schuller, 2002).
- Jurors beliefs in rape myths “significantly predict [their] evaluation of others who are involved in coercive sexual encounters.” (Wenger, 2006)
Jurors’ Beliefs in Rape Myths

- Less favorable attitudes toward rape victims in general were significantly associated with:
  - Being male;
  - Lower income; and
  - Political conservatism.

(Australian Institute, 2009)

Stronger personal beliefs in guilt were significantly associated with:

- Higher levels of education;
- Personal knowledge of sexual assault victims;
- Positive attitudes toward rape victims in general;
- Higher perceptions of [victim] credibility; and
- Low empathy with the defendant.

(Australian Institute, 2009)

Gender Role Stereotypes

- “Acceptance of traditional gender role norms for men and women influences tolerance of rape, and it is a significant predictor of acceptance of rape myths.”

(Ben-David, 2005)

- The more participants accept “benevolent sexism” the less they blamed the acquaintance rape perpetrator.

(Viki, 2004)

Times/CNN Poll
(1991)

38% of the men and 37% of the women said that a raped woman is partly to blame if she dresses provocatively.

Georgia Opinion Poll
(1998)
(Random sample: ages 18 to 49)

49% of the men and 42% of the women believe women cry rape when it hasn’t really happened.

Georgia Opinion Poll
(1998)
(Random sample: ages 18 to 49)

48% of the men and 48% of the women believe sexual assault necessarily includes the use of a gun or other weapon.
Georgia Opinion Poll (1998)
(Random sample: ages 18 to 49)

20% of the men and 9% of the women believe a woman has no right to say “no” to having sex with her husband.

Rhode Island Dating Attitude Surveys (7th to 9th Grade Students)

A person on a date has a right to sexual intercourse against the date’s consent if they had had intercourse before:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>% OF BOYS WHO SAID YES</th>
<th>% OF GIRLS WHO SAID YES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>70</td>
<td>54</td>
</tr>
<tr>
<td>1998</td>
<td>70</td>
<td>53</td>
</tr>
</tbody>
</table>

Rhode Island Dating Attitude Surveys (7th to 9th Grade Students)

A person on a date has a right to sexual intercourse against the date’s consent if they dated a long time:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>% OF BOYS WHO SAID YES</th>
<th>% OF GIRLS WHO SAID YES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>87</td>
<td>79</td>
</tr>
<tr>
<td>1998</td>
<td>73</td>
<td>78</td>
</tr>
</tbody>
</table>

Rhode Island Dating Attitude Surveys (7th to 9th Grade Students)

A man has the right to sexual intercourse against the woman’s consent if they are married:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>% OF BOYS WHO SAID YES</th>
<th>% OF GIRLS WHO SAID YES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>87</td>
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</tr>
</tbody>
</table>

New Mexico Juror

“All men have tried to force a woman to do something she didn’t want to do. I just hope I haven’t crossed the line. The defendant was simply a man trying to do the best he could. I think the victim and defendant had sex and it was bad for the victim.”
Colorado Juror – Comment 1

"She did not show the emotion a victim should show."

Colorado Juror – Comment 2

“The fact that she testified that she was a lesbian who did not have sex with men was not relevant. She willingly consented to go to their apartment. Having placed herself in this situation, she [sic] was guilty of something.”

Attribution of Blame: Key Variables

- Perceiver variables
- Victim variables
- Perpetrator variables
- Contextual variables

(Temkin & Krahé, 2008)

Perceiver Characteristics

- Positive: high empathy for victims
- Negative: adheres to traditional gender roles
- Negative: male
- Negative: “benevolent” sexists

Victim Characteristics

- Negative: Victim “not respectable”
- Occupation
- Marital status
- Negative: Prior consensual sex with defendant
- Negative: Non-White
- Negative: Victim behavior does not conform to gender roles

Perpetrator Characteristics

- Race
- Social Status
- Physical Appearance
Contextual Variables

- Relationship between victim and perpetrator

Dallas Times Herald, 
*Race Tilts the Scales of Justice* (1991)

Rape Jurors’ Sentences
Devalue Women of Color

Dallas Times Herald (1991)

<table>
<thead>
<tr>
<th>Offender’s Race</th>
<th>Victim’s Race</th>
<th>Median Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>White</td>
<td>19 Years</td>
</tr>
<tr>
<td>White</td>
<td>Black</td>
<td>10 Years</td>
</tr>
<tr>
<td>White</td>
<td>White</td>
<td>5 Years</td>
</tr>
<tr>
<td>Hispanic</td>
<td>Hispanic</td>
<td>2.5 Years</td>
</tr>
<tr>
<td>Black</td>
<td>Black</td>
<td>1 Year</td>
</tr>
</tbody>
</table>

Other Key Issues

- Closer the acquaintance, the greater the minimization of the severity of the rape and the more responsibility attributed to the victim
  (Ben-David, 2005)
- Prior sexual relationship: victim perceived as less credible, more blameworthy and more likely to have consented
  (Schuller, 2002)
- “[T]he proposed safeguard of providing jurors with limiting instructions may be ineffective in curbing the pernicious impact of prior history evidence.”
  (Schuller, 2002)

The “CSI” Effect

- Texas example
- The “Sorry Man”

(TDOA, 2007)

Key Questions

- How do you get potential jurors to disclose these beliefs?
- Can potential jurors set aside these beliefs?
Women Jurors in Sexual Assault Cases

- What the research shows
  - Gender is one of the strongest predictors in mock juries; women tend to be more sympathetic to victims and harsher toward defendants
    (Wenger, 2006), (Schuller, 2002), (Ben-David, 2005), (Shepherd, 2002)
  - What every prosecutor believes:
    - Women are terrible jurors in sexual assault cases

Women Jurors in Sexual Assault Cases: Possible Explanation

“[A]lthough individual female mock jurors consistently reached guilty verdicts in rape trials more often than individual male mock jurors did, this difference did not appear in deliberating juries until women comprised an overwhelming majority (i.e., 10-2) of the jury.”
(Wenger, 2006)

Where Did We Go Wrong?

- Marital Rape not a crime until 1970s; some states not until 1990s
- What is “Real Rape?”

But what about today?

- England:
  - This is a sex case. Experience has shown that women can and do tell lies for some reason, sometimes for no reason at all.
  - It is well known that in sex cases women sometimes imagine things which various ingredients in their make up tend to make them imagine.
  - Requirement to deliver this warning was abolished in 1994. Discretionary now.

What's the Point?

“Jurors’ decisions are not only influenced by stereotypic beliefs about rape, they also serve to reinforce these very beliefs. What comes from a jury in a rape case is more than just a conviction or acquittal: the jury decision also contributes to a definition of what constitutes “real rape.””
(Sinclair and Bourne, 1998)

Protecting Jurors’ Privacy
**Jury Questionnaires**

- How do you handle questions about jurors' past victimization?
- How can you avoid re-traumatizing the potential jurors?

**Recommendations**

- Social science research on how to get to the beliefs
- Give greater leeway to attorneys in sexual assault cases
- Use questionnaires whenever possible
- Use private *voir dire* when asking about previous victimization
- Provide support when potential jurors disclose

**The Prosecutor's Perspective**

**OK Houston, we have a problem. Now what?**

What issues are you seeing in your jury pools?

**Voir Dire Topics That Can't Be Missed**

- Rape myths
- Assumption of risk
- Victims and perpetrators in venire
- Expectations of demeanor, injury
- Rape-able offenses
- Misunderstanding/accident/"he said/she said"
- Effects of trauma
Jury Selection: The Reality

Rape Myths
- What have you heard?
- Why is it a myth?
- What informs the myth?
- How does the myth perpetuate silence about sexual assault?

Assumption of Risk
- Dress?
- Behavior?
- Age?
- Less safe choices?
- Ever known anyone to do these things and not get raped? What was different?

Victims/Perpetrators in Venire
- Confidential questionnaire
- Individual questioning
- Sensitivity to re-traumatization

Expectations
- Demeanor
- Injury
- Report
- Subsequent contact with defendant

Rape-able offenses
- Making a choice you wouldn't
- Drinking/using drugs
- Underage drinking/using drugs
- Behavior
- Disability
Effects of Trauma
- Combat veterans
- Car accident
- Natural disaster
- Police shootings

Misunderstanding/Accident/
“He Said/She Said”
- How to get to vulnerable, accessible, lacking in credibility?
- Rapists select targets based on the likelihood that they can rape without meaningful consequence.

I’ve Got A Secret:
Uncovering Juror Biases, Experiences and Beliefs

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