

Rape Myth Effects on Juror Decisions in Deliberations of Rape Cases: How Rape Myths Affect Jury Deliberations

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Abstract

This study examines biases that people hold while in a jury setting. The study determines that jury members do not always change their bias after deliberations, especially in rape cases, but that some may change if they are combated. Through pre-tests, jury deliberation, and post-tests this study watches the participants bias in order to determine if the biases that participants have before coming into a jury deliberation will affect that deliberation. This study found that participants overall in the study self-censored their rape biases, instead of stating them within the group. But the participants did change their minds on the rape myths that were in the case and learned why the myths they supported were wrong.

Introduction

Sexual assault and rape are quite prevalent in today's society. Sexual assault according to U.S. Bureau of Justice Statistics is "generally involving unwanted sexual contact between victim and offender" (Bowman et al. 2018, 3). To understand the prevalence in society today Ayala et al. suggests that "sexual assault is considered to be the most underreported violent crime in the United States," (Ayala et al. 2018, 95). Although sexual assault is under reported, cases do make its way into the court system. Due to the nature of rape cases juries are used in order to offer the assailant a trial by their peers. Juries can also pose another hurdle for a survivor of rape to go over. Pickel and Gentry reference this by stating that "jurors reference their schemas as they judge whether the case before them qualifies as an instance of the crime category," (Pickel and Gentry 2017, 256). The problem arises with the difference schemas or rape myths that people accept.

Rape myths are commonly held beliefs that are false. Crall and Goodfriend 2016 suggest some rape myths such as: "the idea that only men rape and only females are victims, stranger rape is the only kind of rape, perpetrators who are drunk cannot be held responsible for their actions, rape happens when someone's sex drive is out of control, there has to be a weapon present for the incident to be considered rape, and only bad people get raped" (Crall and Goodfriend 2016, 16). These myths and how people perceive these are referred to as Rape Myth Acceptance (RMA). RMA within jurors is one way that survivors can be retraumatized. If jurors believe in many rape myths then they are more likely to find the offender as innocent, if the case contains rape myths. With all of this in mind, this study aims to discover if the internal biases that jurors hold will influence the conversation that happens during the deliberation of rape cases.

Literature Review

Rape is a large problem in our society, and to understand why rape is a true problem we must define what rape is. As stated about the U.S. Bureau of Justice Statistics, "generally involving unwanted sexual contact between victim and offender," (Bowman et al., 2018). The way people think about issues surrounding rape not only comes

from the ways that they form their attitudes but, in the case of rape, stereotypes, schemas, and rape myths all factor into people's attitudes. Not only do these attitudes shape how people react and feel about rape, but these attitudes can affect how people perceive and discuss rape cases within the courtroom. The way jurors perceive rape victims can sway the deliberation and verdict. The perceptions that people have about rape are formed by stereotypes, schemas, rape myths, and conversations. The authors that have studied rape have tried to decipher how much stereotypes and rape myths influence people's attitudes of rape victims and perpetrators. Stereotypical beliefs, "come to mind easily, inadvertently, and without one's awareness, and yet they can have direct effects on perception of and responses to others," (Capezza and Arriaga, 2008) which can affect people's attitudes without them thinking about what they believe. Along with stereotypical beliefs is rape myth acceptance (RMA). RMA leads to beliefs that people hold that females contribute to their assault by dressing provocatively, drinking alcohol, and by flirting with their assailant (Ayala et al., 2018). Additionally, the amount of RMA that jurors specifically hold could be influenced by their own sexual behavior (Sommer et al., 2015). Men are shown to have stronger support for rape myths than women do (Pickel 2017) which could make a big difference if a jury is compiled of nearly half of all males. All of the articles that I have read discuss the beliefs that people hold regarding the blame of the victim. In the UK 38% of men and 34% of women believe rape myths such as: if a woman is out late, wearing provocative clothing, and is drunk then she is partly to blame for her rape (Yapp and Quayle, 2018). Rape myths not only include these but also include: only men rape and only women are victims, stranger rape is the only kind of rape, a weapon is present at the time of the rape, and good people don't get raped (Crall and Goodfriend, 16). This demonstrates how rape myths and stereotypes can affect people's attitudes about rape and towards rape victims.

Not only are rape myths adversely affecting survivors of rape, they are seen throughout our society, including our legal system, popular culture, relationships, and marriage. Rape myths have an effect on jurors and jury verdicts, in that jurors implicitly think of rapes and victims by what is perceived as "real". This is seen when, "victims of acquaintance rape are blamed more for their assault than victims of stranger rape" (McKimmie et al., 2014). This is due to the

fact that victims of acquaintance rape are not seen as “real victims” because they knew their perpetrator and consented by socializing with them. “Real” rapes are perceived when weapons are used or injury happens as well as if the perpetrator was a stranger to the victim. All of these implicit rape myths affect the way that jurors view cases and victims, and have negative consequences for women who are victims (McKimmie et al., 2014).

Alongside the ideas of “real” and “fake” rapes comes blame of victims. As stated above, victims of acquaintance rape are blamed more. Ayala et al., postulates that this may be due to the rape myth of victims saying ‘no’ in an ambiguous manner. Acquaintance rape is shown to be a myth with the data that, “between 80% and 90% of victims know their perpetrator, which makes it less likely for the victim to label the assault rape” (Ayala et al., 2018). Alongside acquaintance rape, another category labeled seduction rape exists which is, “consensual flirtation leading to non-consensual sex” (Ayala et al., 2018), this form of rape along with the stereotypes that jurors hold themselves, tends to place a lot of blame on the victim.

Another way that jurors hold rape myths true is in the thought of traditional vs. non-traditional women. The way the victim was portrayed within the courtroom can negatively affect the way the scenario is seen by jurors. The warmth that traditional women have (being a mother) affected the members in a study done such that they placed less blame and more positive perceptions than nontraditional women. This is thought to take place, “because she is cold and not a likable person and is therefore deserving of the abuse” (Capezza and Arriaga, 2008). All of these implicit perceptions that people have affect the way they see victims, “real” and “fake”, “traditional” and “nontraditional”, and acquaintance and stranger rape.

Some of the current research has been done to specifically look at college students. In this, researchers look at RMA and myths that are especially salient. McMahan held a study in which,

“The results indicate that college students in this sample moderately supported rape myths, with certain myths receiving more endorsement than others.... *He didn't mean to* and *She lied* had the highest scores” (McMahan 2010, 9).

These findings suggest that even with all of the rape programs that colleges have, that these schemas are still quite salient in society. Additionally scholars find that “men

report(ed) higher levels of rape myth acceptance than women..." (Crall and Goodfriend 2016, 22).

This idea sets up the picture that RMA is held in women and men, but that men tend to accept myths more than women. This idea helps to reinforce the idea of men not knowing what they did was wrong, when confronted in a sexual assault situation.

All of the articles included in this review touch on aspects from stereotypes to rape myth acceptance, as well as showing the intricate ways that we as humans use the implicit attitudes that we have. Stereotypes and rape myths are in everyday life so much that we do not think about why we have the attitudes that we do, especially regarding rape. These attitudes not only affect us as individuals, but especially when we become jurors. The implicit attitudes we have can negatively impact a person's life that has already had so much taken from them already. The stereotypes and rape myths that we accept can negatively affect another person's life. This research aims to add to the current conversation by looking at college students and how they use the rape myths they prescribe to in the jury deliberations.

Discussion and Methodology

This project focuses on the bias of jurors and how those biases affect the jury deliberations. I have hypothesized that if jurors have biases towards rape myths that those rape myths will come out in the jury deliberations. To gather adequate data this project is grounded in quantitative research. The reason for this is that the basis of the research is about attitudes, and I will be generalizing from the members included in my study to those on the campus. This research data will be gathered through tests and a sort of focus group in which the participants will be asked to act as a jury. This second part of the data is qualitative research but the way that I quantify and code the discussion makes the research overall quantitative. Using this research method, I hoped to gain insight into the way that people's bias change over time and the effect that others bias have on their original thoughts. This insight is crucial to studying the effects on how bias affects jury decisions in rape cases.

The pre and post-tests offer an insight into how participants think about rape before and after the discussion of the rape case with

other participants. This offers insight into how framing and discussion can affect how people perceive their personal biases. The tests help to understand if framing can affect the juror decisions, since one is before the framing and discussion and the other is at the end of the study. The pre-tests helped to gauge what the participants thought about a few of rape myths before the facts of the rape case were shown. Whereas the post-tests were able to gauge the effect of the deliberations on the perceptions of rape myths that the participants had after talking about it.

Four different jury groups were held, a female, male, and two mixed panels. The female and the first mixed panel had five members, the second mixed panel consisted of seven members, and the male panel consisted of four members. The different panels will be utilized in order to ascertain if gender caused a discernible difference in discussion. The mixed panels were utilized to determine if the separated gender panels were needed. This was used due to previous research that has been done that finds that males tend to align with rape myth more often than women. The use of the four different panels were used in order to determine if the same was found in college campuses.

The juries were shown a short twelve-minute video with facts from an actual rape case. The defendant asked the victim to a Halloween party, in which she decided to attend due to her friends attending. She wore a sexy costume to the party and had a total of five drinks that night, and the victim had never drunk before. After vomiting several times the defendant walked the victim back to her dorm room, at which time there was a discrepancy between the times that the victim and the defendant swiped into their rooms/dorms. After this, the victim, according to the defendant, initiated oral sex, afterwards the defendant assumed consent had been established and sexual intercourse occurred. The next morning after the defendant left, the victim told a friend of the alleged assault, and the friend persuaded the victim to report it.

This study will use pseudonyms in order to keep the participants' identities confidential. The discussions that the juries have will be coded in order to see the similarities and differences that gender and the framing videos have on the jurors' discussion and biases. The case includes rape myths in order to make sure that the myths would be discussed within the jury panels.

Findings

The study was broken into three parts: the pre-test, jury deliberation, and the post-test. Each of these plays an important role in how to interpret what was found in this study. Each part helped to reveal something different out of each jury member (participant). This study had 21 participants, five members in the female and first mixed jury, seven members in the second mixed jury, and four in the male jury.

The pretest was utilized to find the baseline of each member of the juries acceptance to rape myths, with no prompting at all. This was obtained by hiding the rape myth questions by adding more off topic questions (distractor questions) like: presidential approval, values that important to teach children, and interest in politics. The pre-tests in the study showed that about 48% of those that participated in the study agreed with at least one of the four rape myths that were described on the pre-test. Two of the four questions involving rape myths respondents aligned with the rape myth. The first question asked if a person's clothing affects their chances of being sexually assaulted or not, and the second dealt with whether one can assume consent has been established at the start of sexual contact. The myths that were given on the pre-test were a strong indicator of the information that were brought up in the rape myth case, that the jury members would be deliberating about.

Table 1 shows the breakdown of the answers of the two rape myth questions that the participants responded to. The first question asked which people believed in their opinion, the first choice was that clothing does affect a person's chances and the second choice was that the clothing does not affect their chances. This can seem as if this was more of a perception question, which would be true at the first read. But, during the jury panels when each panel came to this question, they asked the moderator to clarify the question. After this the moderators had me clarify what I meant by the question, in which I replied that it went to their perception of how clothing affected a person's' chances of being assaulted. Something that was interesting from the pre-tests was that out of the members that supported at least one of the rape myths, three were woman the other seven were males.

Table 1: Pre-Test Rape Myth Acceptance N=21

| | Yes (%) | No (%) |
|--|---------|--------|
| A person's clothing does/ does not affect their chances of being sexually assaulted. | 33.3 | 66.7 |
| Is it ok for a person to assume that consent has been established, for both parties, at the start of sexual contact? | 9.5 | 90.5 |

The jury deliberations were a vital part of trying to see what the participants believed after prompting with a framing video. The juries were shown a video of the facts of the case and then shown a short video that supported a rape myth in the case. The deliberations in the mixed, women, and men's groups all went differently. The women's and both mixed groups found the defendant guilty, whereas the men's jury came out with a hung jury. Although the verdicts seem to suggest that rape myths were denied in the juries this wasn't exactly the case.

The women's jury shut down all the rape myths that were discussed at one point one participant stated, "Haven't we moved past that?" when discussing the victims' costume. The women's jury brought up each of the rape myths that were discussed in the case, and each time the participants shut them down immediately. All of the participants in the jury agreed and no dissenting voices were heard. All of the participants in the jury talked around the same amount of time and each had something that they contributed to the deliberation. The group was very sure at the end of twenty minutes that the defendant was guilty beyond a shadow of the doubt, which was different from the other two studies which took the whole forty minutes to deliberate.

The first mixed jury showed something entirely different. The panel consisted of 5 members, four male and one female. Although this grouping would seem that the woman would be shut out conversation, this was not the case. All members in this study tended to speak at about the same amount. This panel was particularly interesting, because one of the jurors was a clear dissenter in the group. The member kept bringing up that someone could give

consent while under the influence because “She initiated it,” when speaking to the oral sex that was given to the defendant by the victim before the alleged sexual assault. This member brought this up three different times during the course of the deliberation and each time was shut down with statements of how a person needs to be sober to give consent. The response to the dissenting member was made by all of the other participants in the panel. This was particularly interesting because each time the member gave the dissenting idea more members would speak up about why the member was wrong. This eventually led to all of the other members of the jury speaking up at the third time of the dissenting idea coming up, with one juror raising their voice in passion. The members in the jury panel seemed to be very comfortable when they were speaking, and not much crosstalk happened.

The second mixed jury was different from all other in the study. The panel consisted of seven members, two males and five females. Although it may seem that the group would be large and shut others out of the conversation this was not the case. Each member on the jury had something to contribute to the conversation. This jury was a little different in how they discussed the facts of the case, which I found interesting. Instead of following things that they didn’t agree with or facts that stuck out to the individual members, this jury looked at the case and discussed bits along the timeline that the stories from the prosecution and defense were giving. At one point when discussing the disagreements between the two sides during the case about a key card entry one juror mentioned, “Sexual Assault can happen in seconds.” This statement was continually referred to throughout the rest of the study, by all members in the jury. The interesting part of this jury was that all members seemed to shut down the rape myths as they came up, even when prompted by a rape myth from the moderator the jury members still shut the myth down. This was dramatically different from what was shown on their pre and post-tests. Although this was the case, overall each member in the jury spoke and contributed to the conversation and none of the members looked uncomfortable with the topic.

The male jury was completely different from both the women and mixed jury panels and came out with a hung jury. Two members thought the defendant was not guilty and two thought the defendant was guilty. This was especially interesting because the conversations

within the deliberation surrounded around the victim having her story perfect and how sober she would have been at the time at the rape. Several times during the deliberation the fact that the victim had 5 drinks during the course of the night and that it had been about four and a half hours since her last drink before the alleged rape that the victim would have been sober by the time it took place. This was shut down almost immediately each time this was brought up by the same member of the jury that stated it was her first time drinking so the group could not assume how it had gone through her system. This member also stated that the fact that the defendant was 100% sober and that he had seen the victim drink, vomit, and struggle to walk that any person would have decided not to have sex because of the obvious intoxication of the victim. Even though this thread was brought up several times, the two members of the jury that held the sober thoughts continued to think it up to the end and used it as the reason that they found the defendant not guilty. Each member on the jury spoke about the same amount, and none of the members seemed to show any sign of discomfort with the conversation.

After all of this, the post-test was administered. It combined all of the myths that could have been brought up during the jury deliberations and a couple extra that are commonly heard throughout our daily lives. The post-test was especially important because it revealed that about 72% of people that participated in the study accepted at least one of the fourteen rape myths on the post-test. This shows that although most people that participated in the jury panels seemed to deny the rape myths in the deliberations, they still accept them on an implicit or deeper level.

Table 2 examines how consistent respondents were between the pre and post-tests. The first question of Table 2 deals with if the respondent has had experience with sexual assault, although there is some change between the pre and the post test, the change is not pertinent to my study. The other question in Table 2 that shows some difference between the pre and post-tests was about being able to assume consent has been established at the start of sexual contact. The tests show that the 9.5% that responded in the beginning that it could be assumed, by the post-test had changed their minds and aligned with the rest of the participants to deny the rape myth that the question was getting at. This shows that people questioned and changed their minds over the course of the study.

Table 2: Pre-Test v. Post-Test Rape Myth Acceptance Questions
N=21

| Question | Pre-Yes | Pre-No | Post-Yes | Post-NO | % Difference between pre and post |
|--|---------|--------|----------|---------|-----------------------------------|
| Have you personally had experience with sexual assault? | 14.3 | 85.7 | 9.5 | 90.5 | 4.8 |
| Do you think that drinking alcohol increases the likelihood of sexual assault? | 85.7 | 14.3 | 90.5 | 9.5 | 4.8 |
| Is it possible to be raped by someone you know? | 100 | 0 | 100 | 0 | - |
| Is it ok for a person to assume that consent has been established, for both parties, at the start of sexual contact? | 9.5 | 90.5 | 0 | 100 | 9.5 |

Along with Table 2, Table 3 looks at the rest of the questions that were given on the post-test. This is important to be able to see what other myths the respondents agreed with. Several of the questions the respondents agreed with the rape myths, the largest amount of support was with the question that dealt with a student having intercourse with a teacher for a better grade. This question had 47.7% of respondents agreeing with the myth that this was not sexual assault. Other questions that the rape myths were supported in were: if drugs are used and sexual contact happens is this rape, if a man wears a condom during the assault is it still assault, if someone is assaulted by a clergy member is this assault, and if consensual sex is happening and the condom is removed without the woman's knowledge is this assault. These questions are useful to determine the level that the participants were censoring themselves and their own beliefs within the study. Another interesting point that was found from the post-tests was that out of the fifteen members that aligned with at least one of the rape myths, only five were women and the

other ten members were men. This shows that men tend to align more with the rape myths shown than women.

Although, this could seem that the participants within the study have grown in their rape myth acceptance over the course of the study, this is not the fact. The pre-test only asked for the participants perception on four rape myths, whereas the post-test looks at fourteen different questions about the rape myths. The answers on the pre and post-test were also useful in discovering those participants that were self-censoring twelve out of the fifteen that had aligned with a rape myth on the pre or post-test did not state them in the deliberation. This is self-censoring, the participants believed in the myths but did not state them. This could have come from the fact that they may have known some of the other participants on the panel or that the small size of the campus affected their belief that none of the information or discussion would leave the room after the conclusion of the research.

Table 3: Post-Test Rape Myth Acceptance Questions n=21

| Question | Yes (%) | No (%) |
|---|---------|--------|
| Do you think that someone is asking to be raped if they are dressing provocatively? | 0 | 100 |
| If a woman stops resisting does that count as consenting to sex? | 0 | 100 |
| If a woman is using drugs and sexual contact happens, was it consensual? | 9.5 | 90.5 |
| If a woman is walking alone at night, she's practically asking to be raped? | 4.8 | 95.2 |
| If a woman doesn't actively say no, is that the same as giving consent? | 4.8 | 95.2 |
| If a man wears a condom during a sexual assault event is it still rape? | 95.2 | 4.8 |
| If a person is assaulted by a clergy member is it rape? | 95.2 | 4.8 |
| If a student has sexual contact with a teacher to receive a better grade, is it sexual assault? | 52.3 | 47.7 |
| If consensual sex is happening, and the man takes the condom off without the woman knowing, is it sexual assault? | 95.2 | 4.8 |
| If a woman consents to sexual contact with one person, is it ok for other people to join in? | 0 | 100 |

Conclusion

This study adds to current conversations that happen in the literature surround rape myth acceptance on college campuses and in juries. This study shows that although participants hold rape myths, they are able to think and combat the rape myths. The participants in the study changed their minds, on how they felt about certain rape myths. This study also takes both conversations that happen in the literature around juries and college campuses and combines them to

give an overall view of what would happen if both were studied at the same time.

Although my hypothesis that if participants held biases towards rape then they would bring those biased beliefs up in the jury deliberation, was found false this research helps to show that people are willing to learn and question the beliefs they have. Even though self-censoring was found in this study, the idea of participants learning and changing their ideas, leads me to think that the self-censoring of some members was not their comfort level but their limit of knowledge on the subject. This study also asked if the biases towards rape would come up in the jury deliberations, and this was found to be somewhat true. Although only three members brought up their bias in the jury deliberation the fact that it was brought up is a sign that people are interested in learning.

This research was able to answer the most basic questions of juries on college campuses. Due to the small number of participants further research should be done to include a greater number of students in the jury pools. The small N allows for the generalization of the research to only the campus of Illinois Wesleyan. If the N were to have been bigger, the generalization may have been able to be used surrounding other universities.

Future research should also look at the possibility of adding framing effects to see if the members on the juries respond differently to framing. Another possible place for future research would be to have the members change the panels they were on. For example, if a member was on the male jury then they would also participate on a mixed jury, this would be able to see if the self-censoring was only a problem for the individual in the mixed panel versus the single gendered panels.

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