The Potential Impact of Rape Culture on Juror Decision Making: Implications for Wrongful Acquittals in Sexual Assault Trials.

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The Potential Impact of Rape Culture on Juror Decision Making:
Implications for Wrongful Acquittals in Sexual Assault Trials

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Abstract

Feminist writers contend that Americans live in a culture that supports sexualized aggression and violence against women. This “rape culture” is reflected in our society by the pervasive endorsement of rape myths and sexual objectification of women, both of which are legitimized by everyday media. One potential consequence of living in a rape culture is that individuals may themselves come to endorse rape myths and sexually objectify women, and, in turn, perceive certain forms of sexual violence against women as defensible. This is concerning considering the significant role that laypeople play in administering justice in sexual assault cases, but research has yet to consider the impact rape culture may have on juror decision making. We review the concept of rape culture, explain the psychological process by which rape culture might influence juror decision making in sexual assault trials, review evidence for our hypotheses from the extant literature, and, finally, discuss future research directions and potential policy implications.
The Potential Impact of Rape Culture on Juror Decision Making:

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Sexual assault of women by men\(^1\) is a significant problem in the United States, as approximately one in five women are victimized over the course of their lives.\(^2\) Despite the wide scope of this problem, it has been estimated that at best only 5% of sexual assaults result in a criminal conviction.\(^3\) This low conviction rate can be attributed, in part, to the rape culture that exists in the United States. That is, the perpetuation of rape myths, sexual objectification of women, and media’s legitimization of sexual aggression and violence against women are pervasive throughout American society,\(^4\) and this culture affects the extent to which women victims come forward to report their experiences and, subsequently, how their cases are handled in the criminal justice system. For example, rape culture legitimizes erroneous beliefs about what constitutes “real rape”\(^5\) and women’s responsibility for avoiding victimization.\(^6\) Consequently, sexual assaults are particularly likely to go unreported in cases in which women knew their assailant,\(^7\) were not threatened by a weapon,\(^8\) or did not sustain physical injuries,\(^9\) and when women blame themselves for being victimized.\(^10\) This is important to understand considering

\(^{1}\) We focus our review on sexual victimization of women by men. Other forms of sexual victimization are important, but they are beyond the scope of this discussion.


\(^{4}\) Buchwald, E., Fletcher, P. R., & Roth, M. (Eds.). (2005). *Are we really living in a rape culture?* In *Transforming a Rape Culture* (pp. 5-9). Minneapolis, MN: Milkweed Editions. [Page 8]


\(^{8}\) Holstrom & Burgess [Page 34]


that, approximately 64% of women do not report their sexual assault experiences to the police.\textsuperscript{11}

Rape culture also impacts the likelihood that sexual assault will be criminally prosecuted. For example, Kerstetter and Van Winkle found that women who were raped by a stranger were less likely to pursue criminal charges if they violated one or more traditional sex role norms (e.g., the woman was unmarried, she had been in a bar alone, she had invited the man to her home, etc.) as compared to if they did not.\textsuperscript{12} Justice is further precluded by the fact that prosecutors are more likely to perceive cases as “winnable” when evidentiary characteristics of the assault conform to narrow definitions of real rape, for example, electing to prosecute cases in which women were subdued by a weapon more often than other cases.\textsuperscript{13}

Our primary goal, however, is to examine whether rape culture also contributes to low conviction rates in sexual assault cases through its influence on jurors, who play a significant role in administering justice in sexual assault cases.\textsuperscript{14} Kalven and Zeisel’s classic study of jury decision making revealed that juries were four times more likely to convict when sexual assault cases involved aggravating factors such as stranger assailants, multiple assailants, or violence as compared to when they did not.\textsuperscript{15} Further, judges and juries reached the same verdict in 88% of aggravated cases but only 40% of other cases.\textsuperscript{16} Disagreement was explained primarily by the fact that, in cases in which women could be perceived as contributing to their victimization,


\textsuperscript{16} Kalven & Zeisel (1966) [Page 253]
judges found sufficient evidence of guilt to convict the defendant but juries did not.\textsuperscript{17} We propose that such findings can be attributed to rape culture. Specifically, we propose that rape culture negatively impacts juror decision making in sexual assault trials by not only increasing the likelihood that jurors will endorse erroneous beliefs about rape and sexually objectify women, but also by nonconsciously influencing the types of evidence jurors attend to and the extent to which they blame the parties involved. We hypothesize that, through these mechanisms, exposure to rape culture leads jurors to wrongfully acquit alleged perpetrators of sexual assault.

To explain and support our hypotheses, in Part I, we define rape culture and present research regarding its existence in American society. In Part II, we review psychological theories that explain the underlying process by which rape culture likely impacts juror decision making. In Part III, we review extant literature that provides preliminary evidence for the proposed effects. In Part IV, we discuss future research endeavors that may yield a more complete understanding of the influence of rape culture on juror decision making in sexual assault cases as well as potential policy implications.

\textbf{I. What is Rape Culture?}

Buchwald and colleagues define rape culture as “a complex of beliefs that encourages male sexual aggression and supports violence against women.”\textsuperscript{18} Within a rape culture, sexual violence against women is both prevalent and considered to be legitimate.\textsuperscript{19} Scholars contend that sexual aggression and violence are not inherent, but rather manifestations of the values and attitudes that are prevalent in society.\textsuperscript{20} According to Burt, “rape is the logical and psychological

\begin{itemize}
\item \textsuperscript{17} Kalven & Zeisel (1966) [Pages 253-255]
\item \textsuperscript{18} Buchwald, E., Fletcher, P. R., & Roth, M. (Eds.). (2005). \textit{Transforming a rape culture} (pp. XI – XVII). Minneapolis, MN: Milkweed Editions. (2005) [Page XI]
\item \textsuperscript{19} Buchwald et al. (2005) [p. XI]
\end{itemize}
extension of a dominant-submissive, competitive, sex role stereotyped culture.”

Thus, rape culture is problematic because it provides a framework that blames sexual assault on the actions of the victim rather than questioning the behavior of the rapist, thereby increasing the likelihood of sexual violence against women.

Many feminist writers contend that Americans live in a “rape culture,” and this is evident in our society’s widespread endorsement of rape myths and sexual objectification of women, which are further propagated and legitimized by mainstream media. Next, we describe these basic features of rape culture and review literature documenting the extent to which they pervade our everyday lives.

**Rape Myths**

One key feature of rape culture is the endorsement and promotion of myths about rape. Burt first defined rape myths as “prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists.” Payne and colleagues identified seven distinct categories of rape myths:

1. She asked for it (e.g., “If a woman is raped while she is drunk, she is at least somewhat responsible for letting things get out of control”);
2. It wasn’t really rape (e.g., “A rape probably didn’t happen if the woman has no bruises or marks”);
3. He didn’t mean it (e.g., “When a man is very sexually aroused, he may not even realize that the women is resisting”).

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25 Burt (1980) [Page 217]
27 Payne et al. (1999) [Page 49 – Table 2]
28 Payne et al. (1999) [Page 49 – Table 2]
29 Payne et al. (1999) [Page 49 – Table 2]
(4) She wanted it (e.g., “Many women secretly desire to be raped”);\(^{30}\) (5) She lied (e.g., “Many so-called rape victims are actually women who had sex and ‘changed their minds’ afterwards”);\(^ {31}\) (6) Rape is a trivial event (e.g., “Women tend to exaggerate how much rape affects them”);\(^ {32}\) and (7) Rape is a deviant event (e.g., “In reality, women are almost never raped by their boyfriends”).\(^ {33}\) These myths define “real rape” as violent, forced sexual assaults that are perpetrated by strangers and which women verbally and physically resist.\(^ {34}\) Yet, rape myths stand in stark contrast to the reality of many actual rapes,\(^ {35}\) and thereby construct a narrative that implies that women are responsible for their own victimization, shifts blame from men to women,\(^ {36}\) and denies or justifies men’s sexual aggression and violence against women.\(^ {37}\)

Social science research shows that rape myths are widely and persistently held in American society.\(^ {38}\) For example, Feild’s survey of laypeople, police officers, rape crisis counselors, and institutionalized rapists\(^ {39}\) revealed that, on average, participants endorsed 14 out of 32 prejudicial or erroneous beliefs about rape (e.g., “A woman should feel guilty following rape”).\(^ {40}\) Attitudes toward rape differed significantly between rapists and the other subgroups of participants, but not necessarily in the direction one might expect. For example, rapists were
more likely than other participants to think it is women’s responsibility to prevent rape. Yet, community members, police officers, and rape crisis counselors were more likely than rapists to think that women precipitate rape through their appearance or behavior and that women should try to resist rape during an attack.41 These differences show, on the one hand, how erroneous beliefs might contribute to sexual violence against women and, on the other hand, the innaccuracy of societal beliefs related to this problem. Similarly, Burt’s survey of adults revealed support for the beliefs that women who go out in public braless or wear short skirts are “asking for trouble,” and that accompanying a man to his home on the first date implies a willingness to have sex.42 Giacopassi and Dull found that 17% to 75% of their college-student sample endorsed various rape myths.43 For example, 21% of students agreed that “many females have fantasy dreams about rape” and 30% agreed that “women often falsely accuse men of rape.”44 Thirty-five percent or more of undergraduates in Gilmartin-Zena’s survey agreed with 14 out of 29 rape myths.45 For instance, 51% of undergraduates agreed that “rape usually involves a high level of violence (the rapist has a weapon and he injures the victim)” and 35% agreed that “at all costs, a woman must fight off a rapist.”46 Together, these findings suggest that rape myths are endorsed by an alarming number of citizens in our society.

Researchers have also documented that rape myth endorsement is stable over time. For instance, Foubert studied a sample of college fraternity men who were randomly assigned to either participate in a one-hour, victim empathy-based rape-prevention workshop or not.47

41 Feild (1978) [Page 170]
42 Burt (1980) [Page 223]
44 Giacopassi & Dull (1986) [Page 69 – Table 1]
46 Gilmartin-Zena (1987) [Page 178]
who participated in the rape-prevention program endorsed rape myths significantly less after seven months, but men who did not participate in the program reported a stable level of rape myth acceptance over time.\textsuperscript{48} Findings like these are important because they suggest that, unless challenged, people’s beliefs in the validity of these myths are persistent.

\textit{Sexual Objectification of Women}

Another central aspect of rape culture relates to the sexual objectification of women. A woman is sexually objectified whenever her body, body parts, or sexuality are reduced to individual pieces that are regarded as mere parts to be used rather than as representative of the woman as a whole person.\textsuperscript{49} In other words, when objectified, women are treated as existing for the use and pleasure of others, with their value tied to their sexual utility,\textsuperscript{50} and they are denied various aspects of personhood. For example, Vaes and colleagues measured undergraduates’ implicit associations between (a) pictures of women and men that were either objectified (i.e., partially nude, in a sexually provocative position, etc.) or personalized (i.e., centered on faces, doing day-to-day activities, etc.) and (b) concepts that were related to either humans (e.g., culture, values, etc.) or animals (e.g., nature, instinct, etc.).\textsuperscript{51} Results of the categorization task indicated that, compared to personalized women or men who were either objectified or personalized, objectified women were less likely to be associated with human concepts.\textsuperscript{52} Other research has shown that, in addition to being perceived as less human than others, objectified women are also attributed less mind (i.e., perception, emotion, thought, and intention) and moral

\textsuperscript{48} Foubert (2000) [Page 160 – Table 2; 161]
\textsuperscript{52} Vaes et al. (2011) [Page 777]
status (i.e., deserving of moral or fair treatment). In sum, sexual objectification of women perpetuates rape culture by dehumanizing women, reducing moral concern and sympathy for them, and denying that sexual assault violates not only their bodies, but also their human rights.

Szymanski and colleagues assert that being sexually objectified is a regular occurrence for many women in the United States. This is supported by research conducted by Swim and colleagues. Specifically, the researchers asked women undergraduates to keep a diary of incidents in which they, someone else, or women in general were treated differently based on gender over a two-week period. Results revealed that 65% of women experienced at least one gender-based incident, 23% of which involved experiencing or witnessing some sort of sexual objectification (e.g., street harassment, threats of sexual contact, etc.). The high frequency with which women in our society are directly subjected to sexual objectification is evidence of America’s rape culture, and the practice of treating women as sex objects is legitimized by messages that are widely broadcast in the media, as reviewed next.

**The Media’s Role in Perpetuating Rape Culture**

Commenting on the pervasiveness of rape culture in the United States, Buchwald and colleagues noted,

We saw with increasing clarity the extent of the problem: On TV programs and ads, in newspapers, novels, poetry, songs, opera, rock, and rape, on every billboard, in every

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56 Swim et al. (2001) [Page 36]

57 Swim et al. (2001) [Page 38 – Table 1]
shop window, on every museum wall we found evidence of rape culture.\footnote{Buchwald et al. (2005). [Page XIV]}

Buchwald and colleagues describe media as reflecting rape culture, but media messages that communicate rape myths and the sexual objectification of women also play a significant role in establishing and maintaining rape culture.\footnote{See generally Brownmiller (1975).} This is concerning in light of how common and heavily promoted such messages are in American media, including music lyrics and videos, television, movies, magazines, advertisements, and social media.\footnote{Ward, L. M., Merriwether, A., & Caruthers, A. (2006). Breasts are for men: Media, masculinity ideologies, and men’s beliefs about women’s bodies. Sex Roles, 55, 703-714. [Page 705 – music lyrics and videos, television, movies, magazines & advertisements] Henry, N., & Powell, A. (2014). The dark side of the virtual world: Towards a digital sexual ethics. In N. Henry and A. Powell (Eds.) Preventing sexual violence: Interdisciplinary approaches to overcoming a rape culture (pp. 84-104). New York, NY: Palgrave Macmillan. [Pages 90-91 – social media]}

For instance, Robin Thicke’s song *Blurred Lines* includes lyrics such as “I hate these blurred lines, I know you want it, but you’re a good girl, the way you grab me, must want to get nasty.”\footnote{Thicke, R. A., Williams, P., & Harris, C. (2013). Blurred lines [Recorded by Thicke, R. A. featuring T.I. and Williams, P.]. On Blurred Lines [CD]. Virginia Beach, VA: Star Trak Entertainment.} It has been suggested that these lyrics reinforce the myth that “no” does not always mean “no” in sexual situations.\footnote{McKinley, J. C., Jr. (2013, July 19). Robin Thicke, a Romantic, Has a Naughty Hit. New York Times. Retrieved from http://www.nytimes.com/2013/07/21/arts/music/robin-thicke-a-romantic-has-a-naughty-hit.html?pageid=1 [Page 2]}

Yet, the song was embraced and celebrated by American society—it led the weekly Billboard Hot 100 for 12 weeks in a row and was named song of the summer in 2013.\footnote{Trust, G. (2013, September 5). Robin Thicke’s ‘Blurred Lines’ is Billboard’s Song of the Summer. Billboard. Retrieved from http://www.billboard.com/articles/news/5687036/robin-thicke-blurred-lines-is-billboards-song-of-the-summer.} Consider, also, music artist Cee Lo Green’s social media communiqué regarding an allegation that he had sexually assaulted a woman after drugging her. Green acknowledged on Twitter that he had spiked the woman’s drink with Ecstasy without her consent, but argued that his subsequent sexual intercourse with her while she was unconscious was consensual. Specifically, Green tweeted that, “People who have really been raped REMEMBER.”\footnote{Brown, A. (2014, September 2). Cee Lo Green Temporarily Deletes Twitter Account After Rape Comments. Los Angeles Times. Retrieved from http://www.latimes.com/local/la-me-ln-cee-lo-green-twitter-rape-comments-20140902-story.html [Page 2]}
rape charges were not prosecuted.

Media messages like Thicke’s and Green’s function to create and sustain rape culture by invoking myths about “real rape” and excusing sexual violence against women. Unfortunately, such messages are common. Brinson examined the prevalence of four rape myths (i.e., “she asked for it,” “she wanted it,” “she lied about it,” and “she wasn’t really hurt by the attack”) in 26 prime-time television drama storylines involving sexual assault. Her content analysis revealed that, on average, each storyline suggested 5 rape myths. The most frequently introduced rape myth—in 46% of storylines—was the contention that the victim had “asked for it” or somehow invited an attack because of the way she dressed or acted. Brinson’s analysis further showed that the storylines more commonly endorsed rape myths than challenged them.

Messages that sexually objectify women are also common in American media. For instance, Ferris and colleagues found that women are referred to as sexual objects almost 6 times per hour during television shows that are popular among U.S. college students. Krassas and colleagues examined the content of editorial photographs in popular men’s magazines. Their study demonstrated that 81% of women were depicted as sex objects, and women were more

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likely than men to appear scantily clad\textsuperscript{72} and in contorted or demeaning positions.\textsuperscript{73} Women are also likely to be sexually objectified in advertising platforms,\textsuperscript{74} more so than men.\textsuperscript{75} Lin’s analysis of prime-time television commercials showed that women were significantly more likely than men to be portrayed in “sexist, nonthinking, ‘two-dimensional’ roles”\textsuperscript{76}; that is, women were more likely to be sexualized and dehumanized.\textsuperscript{77} Consistent with that finding, Stankiewicz and Rosselli’s content analysis of 58 popular U.S. magazines showed that 52\% of advertisements used women’s sexuality to sell products.\textsuperscript{78} Also, Reichert and colleagues study of magazine advertisements demonstrated that women were three times more likely than men to be dressed in a sexually explicit manner.\textsuperscript{79} These studies do not even begin to address the pervasiveness of rape myths and sexual objectification in pornographic media.\textsuperscript{80}

Considering these findings, it is important to understand how media messages that perpetuate rape myths and sexually objectify women affect perceptions of sexual assault and women who are victimized. Burt suggested that exposure to material containing rape myths leads to increased rape myth acceptance and normalizes sexual violence.\textsuperscript{81} Exposure to material that sexually objectifies women probably has similar negative impacts on societal perceptions of

\textsuperscript{72} Krassas et al. (2003) [Page 111, 113]
\textsuperscript{73} Krassas et al. (2003) [Page 109, 113]
\textsuperscript{76} Lin, C. (1997). Beefcake versus cheesecake in the 1990s: Sexist portrayals of both genders in television commercials. Howard Journal of Communications, 8, 237-249. [Page 242 – Results, 243 – Table 1]
\textsuperscript{77} Lin, (1997) [Page 242-243 Results]
\textsuperscript{81} Burt (1980) [Page 219]
women and violence against them. Research supports both of these propositions. For example, Perse found that undergraduates’ self-reported exposure to pornographic magazines, movies, and books was positively associated with their rape myth acceptance. Zillmann and Bryant reported that viewing even nonviolent pornography is positively correlated with the trivialization of rape and loss of compassion for women victims. Experimental research has replicated these findings. To explore whether media that depicts rape myths promotes acceptance of violence against women, Malamuth and Check exposed undergraduate men to audiorecordings that depicted a nonconsensual sexual encounter in which the woman exhibited either arousal (rape-myth consistent) or disgust (rape-myth inconsistent). Men who were exposed to a nonconsenting but aroused woman were subsequently significantly more likely to believe that women enjoy being raped and forced to do something sexual that they did not want to do than were men who listened to the disgusted woman. Thus, exposure to rape-myth consistent media led men to endorse rape myths. In a separate experiment, Malamuth and Check exposed undergraduate women and men to films that either did or did not depict sexual violence against women. Exposure to the films did not impact women’s attitudes, but men who viewed sexual violence reported greater acceptance of rape myths and interpersonal violence than did other men. Kahlor and Morrison further demonstrated that such effects are related not only to sexually

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86 Malamuth & Check (1985) [Page 309 & Figures]
87 Malamuth & Check (1985) [Page 303]
89 Malamuth & Check (1981) [Page 441 – Figure 1]
explicit media, but also general media: The more college women watch entertainment television, television news, and music videos, the more likely they are to endorse rape myths.\textsuperscript{90}

\textit{Summary}

To review, we have discussed two key features of rape culture—rape myths and sexual objectification of women—as well as the media’s role in propagating and sustaining rape culture. Rape myths are stereotypical and erroneous beliefs about sexual assault, women who are victims of sexual assault, and men who perpetrate sexual assault. These myths deny or downplay the significance of sexual violence and blame women for their own victimization.\textsuperscript{91} Sexual objectification reduces women to features of their bodies\textsuperscript{92} and leads them to be less valued and deserving of concern and protection from sexual violence.\textsuperscript{93} Prior work has shown that both rape myths\textsuperscript{94} and sexual objectification\textsuperscript{95} of women are prevalent in American society. Further, research has demonstrated that exposure to media that includes these features, regardless of the type of media, increases individuals’ rape myth acceptance and their likelihood of sexually objectifying women, thus further perpetuating our society’s rape culture. Taken together, these findings have significant implications for understanding the impact of rape culture on juror decision making, as outlined in the following section.

\textbf{II. How Might Rape Culture Impact Juror Decision Making?}

Because rape culture leads individuals to endorse rape myths, sexually objectify women, and perceive sexual violence against women as normative,\textsuperscript{96} the evidence reviewed previously

\textsuperscript{90}Kahlor & Morrison [Page 735]
\textsuperscript{91}Burt (1980) [Page 217]
\textsuperscript{94}See e.g., Foubert, J. D. (2000). [Page 160]; O’Donohue et al. (2003). [Page 527 – Figure 2]
\textsuperscript{95}Swim et al. (2001) [Page 37]
\textsuperscript{96}Buchwald et al. (2005) [Page XI]
suggests that rape culture increases the likelihood that potential jurors will be indoctrinated to endorse the cultural narrative defining “real rape” as forcible sexual assaults, which are perpetrated by strangers and resisted but nonetheless injurious to women. We predict that rape culture leads jurors to perceive sexual assaults that deviate from that narrow definition as unconcerning or defensible, and to be more likely to acquit defendants in such cases. Drawing from psychological theory on schematic information processing, confirmation bias, and causal attributions, we predict that rape culture influences juror decision making in sexual assault trials via an integrated three-stage process, whereby (a) rape-culture consistent cognitive schemas and scripts are activated, (b) confirmation bias affects information processing, and (c) different types of attributions determine jurors’ final judgments. We explain each of these stages next.

**Schemas and Scripts**

Social-cognitive theories provide the foundation for the three-stage process that we propose underlies the impact of rape culture on juror decision making. Specifically, we rely on work that posits that knowledge is structured as cognitive schemas and scripts. A schema refers to knowledge related to a given concept, its attributes, and its relation to other concepts (e.g., a woman). Schemas are used to make inferences and draw conclusions about other concepts. A script is a series of linked schemas that are related to a specific event (e.g., a sexual assault). A script outlines the behaviors which one believes are appropriate as well as the sequence of events.

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99 Heusman (1998) [Page 80]

100 Heusman (1998) [Page 80]
that one believes is likely to happen in a given situation.\textsuperscript{101}

According to theory, when exposed to new information, people perceive and classify that information based on existing schemas and scripts.\textsuperscript{102} How is this relevant to juror decision making? When jurors encounter victims, witnesses, and defendants, observable characteristics of those parties (e.g., gender) activate several schemas. Jurors then use the content of the activated schemas (e.g., positive or negative attitudes towards women) to form initial judgments about the parties. We predict that rape culture increases the extent to which rape-myth consistent schemas about women and men are cognitively accessible for jurors. We expect that such schemas, in turn, guide jurors’ thinking about both women who allege that they were sexually assaulted and the men they accuse. In support, Rudman and Borgida proposed that, under a general gender schema, different sub-schemas are stored and can be differentially activated.\textsuperscript{103} For example, under the general schema of “women,” two contradictory sub-schemas exist that portray women as either sex objects or nurturers.\textsuperscript{104} Because these sub-schemas are contradictory, when one is activated, the other becomes less accessible.\textsuperscript{105} To test their hypothesis, Rudman and Borgida exposed undergraduate men to commercial advertisements that either did or did not include sexist imagery. On a subsequent lexical decision task, men who did not view the sexist advertisements recognized words that describe women as sexual objects (e.g., babe, bimbo, playboy) more slowly than words that were nonsexual in nature (e.g., mother, sister, nurturer).\textsuperscript{106}

In contrast, men who were exposed to sexist advertisements recognized sexually objectifying

\textsuperscript{101} Heusman (1998) [Page 80]
\textsuperscript{104} Rudman & Borgida (1995) [Page 511 – Discussion]
\textsuperscript{105} Rudman & Borgida (1995) [Page 511 – Discussion]
\textsuperscript{106} Rudman & Borgida (1995) [Page 501-502, 511 – Discussion]
words faster than other words.\textsuperscript{107} Thus, exposure to rape culture is likely to increase the extent to which the sub-schema that depicts women as sex objects is cognitively accessible for jurors. Rape culture may also activate schemas about men that affect jurors’ beliefs about whether any given defendant is likely to have perpetrated a sexual assault (e.g., the myth that attractive men do not need to commit sexual assault because women want to have sex with them\textsuperscript{108}).

Although various schemas related to the alleged victim and perpetrator likely influence jurors’ perceptions and decision making, theoretically, scripts regarding what constitutes appropriate behavior and expectations about relevant situations also shape jurors’ judgments.\textsuperscript{109} As Bateman observed, women are frequently perceived to be the gatekeepers of sexuality\textsuperscript{110} and that it is within women’s control to dictate whether sexual encounters occur or not. This script places responsibility for sexual assaults squarely on women’s shoulders, a view that is bolstered by rape myths suggesting that women invite attacks through their own choices and behavior. Thus, we hypothesize that jurors’ scripts for sexual assault are based on the cultural “real rape” narrative, and that facts of sexual assault cases are assessed in light of this script. That is, when a woman alleging sexual assault behaved in ways that are inconsistent with the real-rape script (e.g., she was drinking prior to the assault, she did not physically fight her attacker, she did not report the assault immediately) or men’s behavior is legitimized by cultural norms (e.g., expectations about what happens when a woman goes home with a man), jurors may be less likely to believe that a sexual assault occurred. Thus, we propose that, in cases in which women’s behavior and their allegations of events do not conform to jurors’ script-based

\textsuperscript{107} Rudman & Borgida (1995) [Page 501-502, 511- Discussion]
expectations, jurors are less likely to conclude beyond a reasonable doubt that the defendant committed a sexual assault, and more likely to wrongfully acquit the defendant.

**Confirmation Bias and Selective Evidence Processing**

In the first stage of our model, rape culture facilitates the activation of negative schemas and scripts that restrict what types of assaults are perceived as “real rape.” In the second stage, those schemas and scripts, in turn, impact jurors’ ability to attend to and absorb trial evidence. More specifically, we propose that jurors’ rape-culture consistent schemas and scripts lead them to engage in a nonconscious, one-sided case-building process known as confirmation bias.\(^\text{111}\) This basic social psychological bias begins when individuals assume that a certain hypothesis is true. Jurors’ schemas and scripts might become the hypotheses that they unwittingly try to prove. On the one hand, jurors might selectively attend to and interpret information and evidence in ways that bolster their belief in their hypothesis.\(^\text{112}\) On the other hand, they might become blind to information that could possibly refute their hypothesis.\(^\text{113}\) Both of these selective information processing strategies—or, as Bodenhausen referred to them, selective evidence processing strategies\(^\text{114}\)—operate to increase the likelihood that jurors will recall more evidence that is consistent than inconsistent with their hypothesis, and, as a consequence, determine that their hypothesis was, in fact, true.

These effects have been documented in the literature on juror decision making. For example, Korva and colleagues demonstrated that undergraduate and community member\(^\text{115}\)

\(112\) Nickerson (1998) [Page 175]
\(113\) Nickerson (1998) [Page 177]
mock jurors who were more rather than less racially biased were less likely to acquit untrustworthy-looking defendants despite the existence of exonerating evidence.\textsuperscript{116} This effect emerged even though the defendants were Caucasian, suggesting that mock jurors’ racial bias encouraged tunnel vision and biased decision making based on the defendants’ personal appearance.\textsuperscript{117} Also, Hernandez and Preston’s online study showed that mock jurors\textsuperscript{118} who were exposed to either positive or negative information about a defendant rendered verdicts in line with that information when materials were presented in a fluent format (i.e., visually easier to read), but not when presented in a disfluent format (i.e., visually harder to read).\textsuperscript{119} This indicates that unless situational constraints demand more careful analysis and processing, jurors’ preconceived beliefs bias their decision making.

In another mock trial study, Bodenhausen explored whether selective evidence processing underlies confirmation bias, specifically focusing on the process by which stereotypes lead jurors to make discriminatory judgments. Undergraduates were asked to act as jurors in a case involving a defendant whose name was (a) either ethnically stereotypical or not and (b) presented either before or after the case evidence.\textsuperscript{120} They read a booklet describing both incriminating and exculpatory evidence, made guilt determinations, and, finally, recalled the evidence that had been presented to them. The mock jurors recalled more incriminating than exculpatory evidence when the ethnic stereotype had been activated, but only when the activation occurred prior to the presentation of evidence.\textsuperscript{121} Thus, activating a stereotype about a group to which the defendant belonged led mock jurors to attend to and recall more evidence that

\begin{thebibliography}{99}
\bibitem{note116} Korva et al. (2013) [Page 392]
\bibitem{note117} Korva et al. (2013) [Page 392]
\bibitem{note119} Hernandez & Preston (2013) [Page 181]
\bibitem{note120} Bodenhausen (1988) [Page 728-729]
\bibitem{note121} Bodenhausen (1998) [Page 731]
\end{thebibliography}
was consistent rather than inconsistent with that stereotype. We propose that, in the context of sexual assault trials, jurors with preconceived hypotheses, developed on the basis of their schemas for women and men and scripts for sexual encounters and sexual assault, will seek out information that is consistent with their hypotheses and disregard inconsistent information. Specifically, we suggest that exposure to rape culture increases the likelihood that jurors will endorse rape myths and view women as sex objects and, in turn, attend to schema- and script-consistent denials and justifications put forth by alleged perpetrators while simultaneously ignoring contradictory evidence. As explained next, these effects are likely to translate into biased attributions for women’s and men’s behavior and, ultimately, wrongful acquittals.

**Attribution Theory**

Attribution theory has been foundational for researchers interested in understanding decision making in legal contexts, and it is relevant in sexual assault cases as well. According to Fiske and Taylor, attribution theory explains how people use information to explain the causes of others’ behavior, and how that information is used to assign responsibility to actors in a given situation. Heider asserts that behavior may be attributed to either internal causal factors—influences that come from within the actor—or external causal factors—influences that come from outside of the actor. Attribution theory also acknowledges that people pass judgment regarding the perceived ability of the actor to control his or her behavior. When people believe

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122 Nickerson (1998) [Page 176]
an actor’s behavior is caused by internal or controllable factors, they are more likely to attribute responsibility for the behavior to the individual. In contrast, when perceivers believe an actor’s behavior is caused by external or uncontrollable factors, they are less likely to attribute responsibility for the behavior to the individual.\textsuperscript{127} Both of these processes are likely to play out in sexual assault trials that occur within a rape culture, considering that rape myths tend to explain sexual assault as resulting from internal, controllable factors associated with victims (e.g., “When girls get raped, it’s often because the way they said ‘no’ was unclear;” “If a girl goes to a room alone with a guy at a party, it is her own fault if she is raped”) and external, uncontrollable influences on perpetrators (e.g., “If a guy is drunk, he might rape someone unintentionally;” “Rape happens when a guy’s sex drive goes out of control”).\textsuperscript{128} Thus, we propose that rape culture, through its effects on the types of schemas and scripts that are activated in sexual assault trials and resulting confirmation bias and selective evidence processing, affects the way jurors assign responsibility to victims and defendants.\textsuperscript{129} Specifically, jurors who have been exposed to rape culture might be prone to making internal, controllable attributions for women victims while simultaneously making external, uncontrollable attributions for the men who are accused of sexual assault. This process will increase the likelihood that jurors will perceive victims as more responsible and perpetrators as less responsible and, ultimately, render not guilty verdicts in sexual assault trials. Indeed, research has shown that attributional processes are generally malleable, susceptible to influence by a range of variables.


\textsuperscript{129} Grubb & Turner (2012) [Page 444]
and cognitive biases, and this malleability can result in erroneous interpretations of events.¹³⁰

Summary

Combined, schemas and scripts, confirmation bias and selective evidence processing, and attribution theory help to lay the foundation for understanding how rape culture might lead to wrongful acquittals in sexual assault trials. We hypothesize that jurors who live in and consume more rape culture are more likely than other jurors to have developed schemas and scripts that conform to the cultural “real rape” narrative, and these schemas and scripts are activated in sexual assault trials. In turn, jurors are more likely to engage in biased hypothesis testing by selectively attending to evidence that is consistent with those schemas and scripts. That is, if jurors endorse rape myths, perceive women as sexual objects, and believe that a sexual assault is a real rape only if it is violent, forced, perpetrated by a stranger, and resisted by the woman, they will attend to and recall evidence that is consistent with relevant schemas and scripts while simultaneously ignoring or discounting inconsistent evidence. This confirmation bias and selective evidence processing will lead jurors to make more internal, controllable attributions for a sexual assault to the woman who alleges that it occurred and more external, uncontrollable attributions for the accused man. Thus, jurors will consider the woman more blameworthy and the man less blameworthy and, ultimately, wrongfully acquit him of the sexual assault charge.¹³¹

Prior mock trial research on juror decision making in this context has provided preliminary evidence for this process, as outlined in the following section.

III. Supporting Evidence from the Extant Literature


Previous psychological research has explored the effects of rape myth acceptance on jurors’ perceptions of victims and likelihood of convicting a defendant accused of sexual assault. In general, these studies indicate that the more jurors endorse rape myths, the more likely they are to blame the woman for being victimized,\textsuperscript{132} deny that the experience constitutes a real rape, and acquit the accused perpetrator.\textsuperscript{133} For instance, Stewart and Jacquin’s mock trial research demonstrated that undergraduates’ endorsement of rape myths was associated with perceptions of the victim and defendant as well as verdicts. Specifically, as compared to jurors who were low in rape myth acceptance, jurors who were high in rape myth acceptance perceived the victim to be less credible and more blameworthy and the defendant to be more credible, less blameworthy, and less guilty.\textsuperscript{134} Similarly, Gray showed that undergraduate mock jurors who endorsed higher rather than lower levels of rape-myth acceptance were more likely to believe a defendant accused of sexual assault was not guilty.\textsuperscript{135} Dinos and colleagues’ recent meta-analysis of nine studies confirmed that there is a positive association between jurors’ rape myth acceptance and tendency to acquit in sexual assault trials.\textsuperscript{136}

Researchers have also attempted to disentangle effects of jurors’ individual differences in rape myth acceptance from those related to rape-myth consistent evidence in sexual assault trials. In particular, researchers have focused on the impact of victim characteristics (e.g., whether the

\footnotesize{\textsuperscript{132} Stewart, D. N., \\& Jacquin, K. M. (2010). Juror perceptions in a rape trial: Examining the complainant’s ingestion of chemical substances prior to sexual assault. \textit{Journal of Aggression, Maltreatment, and Trauma, 19}, 853-874. [Page 866]
\textsuperscript{134} Stewart & Jacquin (2010) [Page 866-867]
\textsuperscript{135} Gray (2006) [page 78]
\textsuperscript{136} Dinos et al. (2014) [Page 11]}
victim was intoxicated,\textsuperscript{137} what the victim was wearing,\textsuperscript{138} etc.) on perceptions and decision making. To begin with, Finch and Munro showed that community members attributed more blame to a victim and less blame to the defendant when the victim had been drinking prior to the assault as compared to when she had not.\textsuperscript{139} In addition, Workman and Orr presented undergraduates with a photograph of a woman and a scenario describing a sexual assault. Participants who were low in rape myth acceptance were unaffected by the type of clothing the woman was shown wearing, but those who were high in rape myth acceptance perceived the woman as wanting sex more, leading the man on more, behaving more suggestively, and less serious when protesting the man’s sexual advances when she wore a short rather than long skirt.\textsuperscript{140} In light of rape myths suggesting that a man would not sexually assault an unattractive woman\textsuperscript{141} and that an attractive man does not need to commit sexual assault,\textsuperscript{142} Vrij and Firmin also examined reactions to the physical appearance of victims and defendants in the context of a sexual assault case.\textsuperscript{143} They provided undergraduates with photographs of the victim and defendant as well as a vignette describing a sexual assault.\textsuperscript{144} Consistent with prior findings, participants who endorsed rape myths to a greater extent perceived the same case evidence to be weaker when the victim was unattractive rather than attractive. In contrast, participants who were lower in rape myth acceptance were unaffected by the attractiveness of the victim when

\textsuperscript{139} Finch & Munro (2005) [Page 36]
\textsuperscript{142} Fairstein (1993) [Pages 135-136]
\textsuperscript{143} Vrij, A., & Firmin, H. R. (2001). Beautiful thus innocent? The impact of defendants’ and victims’ physical attractiveness and participants’ rape beliefs on impression formation in alleged rape cases. \textit{International Review of Victimology}, 8, 245-255. [Page 246]
\textsuperscript{144} Vrij & Firmin (2001) [Page 249]
evaluating case evidence. Thus, jurors do use rape myths to guide their judgments about the type of woman who is likely to be sexually assaulted as well as the type of man who is likely to sexually assault her. Taken together, the research supports our hypothesis that jurors who are socialized in a rape culture are likely to emphasize rape-culture consistent extralegal factors (e.g., the victim’s behavior, clothing, appearance, etc.) in their decision making and conclude that women are more to blame than men for sexual assaults.

Research also supports our contention that exposure to sexually objectifying media influences jurors’ decision making. Loughnan and colleagues showed undergraduates a picture of a woman and described her as a rape victim. When she was sexually objectified (i.e., shown wearing a bikini) as compared to when she was not (i.e., shown wearing jeans and a shirt), participants reported less moral concern for the woman, blamed her for the sexual assault more, and believed she suffered less harm from the assault. In Milburn and colleagues’ research, undergraduates viewed either sexually explicit or non-explicit scenes from an R-rated movie and then read a magazine article about a victim of date rape. Results showed that exposure to the sexually explicit material led men (but not women) to be more likely to believe that the victim “got what she wanted.” These findings suggest that exposure to sexually objectifying media might lead jurors to feel less moral concern for women alleging assault and find them more responsible for being victimized. However, these effects have not been replicated in more ecologically valid research using mock trial methodology or actual jurors, nor have the

145 Vrij & Firmin (2001) [Page 254]
146 Vrij & Firmin (2001) [Page 254]
147 Lonsway & Fitzgerald (1994) [Page 137]
148 Loughnan et al. (2013) [Page 458]
149 Loughnan et al. (2013) [Page 458]
151 Milburn et al. (2000) [PAGE 660]
underlying psychological mechanisms been assessed. Yet, we expect that the effects translate into jurors’ verdicts, such that jurors who are exposed to more media that sexually objectifies women will blame women more for being assaulted and hold men less responsible for perpetrating sexual assault, and, ultimately, be more likely than other jurors to acquit defendants in sexual assault trials.

IV. Future Directions and Implications

As we have reviewed, researchers have documented the existence of rape culture in American society. Rape myths are prevalent, women are frequently sexually objectified, and the media promotes these features in ways that legitimize sexual aggression and violence against women. Researchers have shown that rape myth acceptance has deleterious effects on jurors’ perceptions of women alleging sexual assault and judgments in their cases, and exposure to sexually objectifying media leads to negative perceptions of sexual assault victims. To our knowledge, however, no one has attempted to link the broader cultural context to juror decision making in sexual assault trials. Thus, researchers should seek to answer whether exposure to rape culture leads jurors to wrongfully acquit men who have been accused of sexual assault.

One way to advance the literature would be to explore whether variations in the extent to which rape culture exists correlate with outcomes of sexual assault trials in nations that implement a jury or lay judge system. Evidence that nations differ in their tolerance of violence against women can be garnered from research showing that some governments (e.g., Australia, Canada) have been more responsive than others (e.g., Denmark, Switzerland) in terms of developing policy to address the problem, as well as studies showing differences in citizens’

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attitudes toward violence against women.\textsuperscript{153} For example, Nayak and colleagues showed that women and men from the United States reported more positive attitudes toward sexual assault and spousal physical violence (i.e., less endorsement of victim-blaming beliefs) than did women and men from Japan.\textsuperscript{154} Heaven and colleagues demonstrated that Australian undergraduates were less likely to blame victims of sexual assault for their victimization than were South African undergraduates.\textsuperscript{155} Future work is needed to determine whether such cross-national differences reflect differences in rape culture, and whether they relate to citizens’ decision making in sexual assault trials.

It is also important that future studies explore whether the three-stage process we proposed accounts for the effect of rape culture on juror decision making. Does rape culture enhance the cognitive accessibility of schemas and scripts that derogate women who have been sexually assaulted? Do these schemas and scripts, in turn, lead jurors to engage in a biased information search, whereby they selectively attend to and recall evidence that is schema- and script-consistent while ignoring or discounting contradictory evidence? Does this selective evidence processing then lead to differential causal attributions and perceptions of responsibility and, ultimately, wrongful acquittals in cases that do not conform to the cultural “real rape” narrative? These questions might be answered using mock trial research. For example, researchers could experimentally expose participants to media that either evokes rape culture (e.g., songs like Robin Thicke’s \textit{Blurred Lines}, popular men’s magazines like \textit{Maxim}) or does not, and, in a supposedly unrelated task, ask participants to serve as mock jurors for a sexual

\textsuperscript{154} Nayak et al. (2003) [Page 338]
\textsuperscript{155} Heaven et al. (1998) [Page 132]
assault trial. After introducing the mock jurors to a woman alleging sexual assault and the accused man, researchers could ask jurors to report their spontaneous reactions to the parties involved as well as what jurors think happens in a typical sexual assault case and what might have happened in the current case. Following Bodenhuasen,\textsuperscript{156} mock jurors could then read about a sexual assault involving some facts that are consistent with the real-rape narrative (e.g., the victim had been drinking, the victim physically resisted, etc.) and others that are inconsistent (e.g., the perpetrator was acquainted with the victim, the victim did not report the assault immediately, etc.). Finally, jurors would report their verdicts, recall evidence, and rate how influential the evidence was in their decision making. Support for our hypotheses would be found if rape-culture media increases the frequency with which jurors spontaneously describe rape-culture consistent schemas and scripts, recall and emphasize rape-culture consistent evidence in their decision making, and wrongfully acquit the defendant. Such work would allow researchers to understand not only whether but also how exposure to rape culture affects juror decision making in sexual assault trials.

Researchers should also explore whether rape culture interacts with juror gender to impact sexual assault trial outcomes. Women and men might view sexual assault through the lens of different scripts related to expectations about sexual interest and encounters. Abbey’s examination of gender differences in women and men undergraduates’ perceptions of friendly behavior during a five-minute conversation revealed that men were more likely than women to perceive cross-gender interaction partners as seductive and promiscuous.\textsuperscript{157} Thus, men might be prone to misinterpreting a woman’s friendly behavior as a sign of sexual interest. Further, Alksnis and colleagues found that, whereas women thought that a man who engaged in sexually

\textsuperscript{156} See generally Bodenhausen (1988) [Methods]
\textsuperscript{157} Abbey (1982) [Page 834 – Table 1]
aggressive behaviors (e.g., making sexual advances too early) would be a bad date rather than a
typical or good date, men thought that a woman who engaged in sexually aggressive behaviors
would be a good date rather than a typical or bad date.\textsuperscript{158} Such gender differences in expectations
could lead women and men to perceive sexual assaults differently, with men being more likely to
assume sexual interest on the part of the victim and less likely to construe sexual encounters as
nonconsensual.\textsuperscript{159} In addition, Lonsway and Fitzgerald have shown that, on average, men are
more accepting of rape myths than are women.\textsuperscript{160} Of importance, in studies that were described
previously in more detail, regardless of mock jurors’ rape myth acceptance, compared to women,
men perceived a victim as more responsible for a sexual assault incident,\textsuperscript{161} the defendant as less
responsible,\textsuperscript{162} and the incident as less likely to have been a rape\textsuperscript{163} and were more likely to
believe that the defendant was innocent.\textsuperscript{164} Also, Milburn and colleagues demonstrated that
exposure to sexually objectifying media negatively affected men’s but not women’s perceptions
of date-rape victims.\textsuperscript{165} Finally, in Grubb and Harrower’s undergraduate sample, men were more
likely than women to attribute blame to a sexual assault victim.\textsuperscript{166} Although both women and
men are exposed to rape myths and sexually objectifying media throughout American society,
the extant literature suggests that rape culture might have a stronger impact on decision making
for men than women jurors.

If researchers are able to establish the link between rape culture and juror decision

\begin{footnotes}
\item\textsuperscript{158} Alksnis et al. (1996) [Page 333]
\item\textsuperscript{159} Alksnis et al. (1996) [Page 333]
\item\textsuperscript{160} Lonsway & Fitzgerald (1994) [Page 142]
\item\textsuperscript{161} Workman & Orr (1996) [Page 279]
\item\textsuperscript{162} Workman & Orr (1996) [Page 280]
\item\textsuperscript{163} Workman & Orr (1996) [Page 281]
\item\textsuperscript{164} Gray (2006) [Page 78]
\item\textsuperscript{165} Milburn, Mather, & Conrad (2000) [Page 655]
\item\textsuperscript{166} Grubb, A. R., & Harrower, J. (2009). Understanding attribution of blame in cases of rape: An analysis of
participant gender, type of rape and perceived similarity to the victim. \textit{Journal of Sexual Aggression, 15,} 63-81. [Page 70]
\end{footnotes}
making, there are several practical implications that should be considered. For example, during voir dire, prosecuting attorneys may use the extent to which potential jurors are exposed to and consume rape culture as a reason for their removal from sexual assault trials. Also, during trial, prosecuting attorneys could tailor their opening statements and closing arguments to invalidate rape myths, reinforce moral concern for women, and shift blame away from the sexual assault victim and back to the defendant. Indeed, Haegerich and colleagues found that prosecutors’ opening statements and closing arguments could activate sympathetic stereotypes about juvenile offenders, and that those stereotypes, in turn, led jurors to render more pro-juvenile defendant judgments (i.e., more support for letting the juvenile be tried in juvenile court rather than adult criminal court). The effect of the prosecutors’ appeals was so strong that it remained significant even after statistically accounting for jurors’ pre-trial beliefs about juvenile offenders. Prosecuting attorneys might be able to counteract the impact of rape culture on juror decision making in sexual assault trials, too.

It is important to note, however, that Haegerich and colleagues also found that defense attorney comments could activate unsympathetic stereotypes about juvenile offenders and lead jurors to render less pro-juvenile defendant judgments (i.e., more guilty verdicts). Thus, defense attorneys may attempt to play on rape culture by evoking rape myths, reducing moral concern for women, and shifting blame away from the defendant and on to the sexual assault victim. Taslitz contended that defense attorneys do in fact use such tactics to imply that a victim’s behavior before or after an assault reflects consent. For example, Taslitz recounted a

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168 Haegerich et al. (2013) [Page 90]
169 Haegerich et al. (2013) [Page 88-89]
case in which the defense attorney constantly referred to a sexual assault victim’s “sexy clothing” while cross-examining her to imply that her attire expressed her consent to engage in sexual intercourse.\textsuperscript{171} It is imperative that attention be paid to the possible impact of rape-culture consistent dialogue such as this in sexual assault trials. Reducing the extent to which defense attorneys are allowed to activate the rape-culture mindset in jurors will go a long way toward leveling the playing field for victims of sexual assault. The legal system should strive to find ways to minimize the effects of rape culture on juror decision making, such as through the use of expert testimony designed to counteract preexisting beliefs about what constitutes real rape and who is a legitimate victim.

V. Conclusion

In response to its proliferation in our society, victim advocates have begun to focus their efforts on educating the public about rape culture and why it is problematic. For example, Zerlina Maxwell, a political analyst and writer, formed the #RapeCultureIsWhen hashtag on Twitter, hoping “that it would spark a public dialogue about rape culture and shift the conversation away from the myths that shame so many survivors into silence.”\textsuperscript{172} That dialogue revealed the fundamental tenets of rape culture: Rape myths are pervasive, women are frequently sexually objectified, and sexual aggression and violence towards women is legitimized by the media. Yet, the dialogue also revealed how important it is that this issue be given serious consideration and evaluation. The Twitter hashtag has received numerous contributions by women and men—52 in the past week alone\textsuperscript{173}—calling for greater societal attention to factors

\textsuperscript{171} Taslitz (1999) [Page 84]
that function to maintain rape culture as well as the need for understanding its potential consequences for sexual assault victims. The possibility that rape culture might lead to wrongful acquittals in sexual assault trials is only one example, but the problem must first be identified and recognized so that strategies can be designed to respond to it. The instant work provides a theoretical framework for future research endeavors aimed at exploring this problem and assisting the criminal justice system in its effort to ensure justice is served when women are sexually victimized.

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