

**The Impact of Rape Myths in the
Criminal Justice System**

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Abstract

Date rape is a persistent problem on college campuses, yet it is prosecuted less often than it statistically and legally should be. This research proposal examines how rape myths, false but widely held beliefs about rape, affect the way rape and date rape cases are handled by the criminal justice system. The literature review covers unconscious bias among jurors and judges, research showing that guidance reflecting rape myths can influence verdicts and that rape by a date is judged less serious than rape by a stranger, and the tension between rape shield laws and defendants' Sixth Amendment rights. The proposed study uses a mixed-methods design: a survey of college-age individuals across the United States, selected by simple random sampling; secondary analysis of reports from the Rape, Abuse & Incest National Network (RAINN), police departments, and college and university administrators; and interviews with a random subsample of survey respondents, based on real rape cases categorized by rape myth. The proposal also addresses ethical safeguards for participants, including explaining the research before any questions are asked, optional confidentiality agreements, and survey questions reviewed by a psychology professional, as well as limitations such as interrater reliability. The study seeks to provide new evidence that rape myths can make rape and acquaintance rape appear less serious to both young people and members of the criminal justice system.

Keywords: rape myths, date rape, acquaintance rape, juror bias, rape shield laws, Sixth Amendment, mixed methods

The Impact of Rape Myths in the Criminal Justice System

Date rape, one of the most common forms of nonconsensual forced sex, has been a persistent problem on college campuses. A substantial argument for why it occurs is society's general desensitization to sex and male dominance. These two elements are treated as interchangeable and are most prevalent in social settings as well as in the courtroom.

Investigating how often date rape occurs, and why it occurs during certain years of individuals' lives, reveals serious problems both in how date rape is viewed and in how it is, or is not, handled by the criminal justice system.

This is an important area of research because the topic of date rape has received little focus. One significant reason is that such research relies on individuals' accounts of their past experiences. These experiences are very sensitive and can cause distress and anxiety in those asked to participate in a study. This will be one of the biggest challenges in this research, because it is crucial that questions asked of people who may be victims of date rape are both appropriate and accurate. The proposal begins with a literature review of studies that have covered the impacts of norms and biases on public opinion, verdicts, trial proceedings, and legislation relating to rape. The findings from the research will highlight any impacts of socialized views on the frequency of date rape, as well as the criminal justice system's inability to prosecute offenders effectively and efficiently. Next, the proposal describes how the study will cover this topic, including how information will be obtained and how it will be sampled. Finally, it evaluates ethical considerations, which are especially important given the seriousness of the topic. This research proposal was created to raise awareness of the persistence of rape myths in current culture, how they play a part in date rape, and the resulting shortcomings of the criminal justice system.

Literature Review

A sensible research question must first consider the variety of elements involved in a date rape. The first element is bias: where biases exist, what kinds of biases are present in day-to-day life, and how they factor into date rape. The second is the legislative aspect of rape and how it may or may not correlate with biases stemming from public opinion.

Biases

Many potential biases within rape culture can affect the outcome of a rape trial. Myths, media, and public opinion are all important elements in determining whether an incident will be classified as a rape. While biases are not supposed to be considered by a juror or judge, unconscious biases, stereotypes that people hold without being aware of them (Moule, 2009), are not only present but also used at trial. Therefore, sexual assault cases have among the highest acquittal rates of any offense (Taylor, 2007). Biases exist not only in the courtroom but also influence the case from the very start of the investigation. The way a police officer or school official responds to the rape will create a domino effect that determines how the case proceeds. Analyzing previous research and filling in its gaps or correcting its misconceptions may help to clarify the central question of this research proposal: why date rape is prosecuted less often than it statistically and legally should be in the criminal justice system.

Myths

Rape myths are one of the most dangerous elements in a rape case, because they rest solely on social attitudes and generally false but widely held beliefs about rape that deny or excuse men's sexual aggression against women (Lonsway & Fitzgerald, 1994). There has been much research into rape myths and the value they hold within a trial, but the definitions and measures used in this research still lack adequate theoretical precision (Lonsway & Fitzgerald,

1994). However, this type of research remains highly valuable because of its potential to improve the understanding of sexual assault. A study by Gray (2006) found that rape myth bias in a judge's guidance to jurors influenced verdicts in a date rape scenario in which blame could be seen as ambiguous, regardless of how strongly participants themselves accepted rape myths. Gray's research is consistent with other research suggesting that rape myths may have a substantial effect on the reporting and prosecution of rapes. However, the biggest limitation of Gray's research was that its participants were students at a single university. Narrowing the research to one university limited the variety of perspectives it could capture. While this may not always be negative, it could have a substantial effect on the results if certain views are considered normal and socially accepted at the institution. For example, the university might emphasize a certain religion or political mindset, and the results of the study could be different at a university that emphasized the opposite religious or political mindset. To truly understand how rape myths prevail, research needs a wider range of participants from multiple universities, as well as individuals who are not in college but are still part of the younger generation that experiences such high rates of sexual assault.

Public Biases and Individual Opinion

Rape myths play heavily into creating socially accepted biases and opinions toward rape and acquaintance rape. In a court case, jurors have most of the power in deciding an offender's future. However, these jurors, who are supposed to be impartial, could be influenced by the defense's rhetoric, which might point out specific details to remind jurors of their partial, biased beliefs. Setting aside potential flaws in the trial due to gender, race, religion, and ethnicity, the degree to which jurors are exposed to the defense's attempts to connect with their doubts about the victim's account will play into the success of the defense. Thacker (2017) argued that

because the media perpetuate rape culture, police, attorneys, and judges are often skeptical of rape victims, and rape myths are often at the root of jurors' prejudices. A study by L'Armand and Pepitone (1982) tested whether the social context of a rape swayed people's judgments of it. These results extended the evidence on rape myths that the social context of rape, and of date rape itself, is brought into consideration (when it should not be) when deciding a verdict. In the study, respondents who read a simulated newspaper account judged rape by a date or an intimate partner to be less serious than rape by a stranger, and they judged rape less serious when the victim was described as having either limited or extensive sexual experience than when no sexual history was given (L'Armand & Pepitone, 1982). What the researchers did not examine was the extent of the relationship and socialization between a person who reads about a case (and forms an opinion) and a juror who does not read about it (and receives only that peer's opinion). Different relationships may or may not have different impacts on opinions. Analyzing any differences in opinions formed through stronger or weaker relationships may help to clarify whether socialization truly does affect the opinions of jurors when they enter the courtroom.

Law

Understanding how legal fissures in the criminal justice system allow offenders to be found not guilty is the other component of researching why rape cases less frequently result in the prosecution of an offender. Research into the laws around rape cases is just as important as research into the social biases and opinions that may also sway a verdict. There has been a significant lack of reflection on laws surrounding rape, as well as on any legislation that could improve the prosecution's chances of winning a case. Many of the laws regarding rape and date rape cases are outdated. A policy referral should be drafted to reform these laws and create new ones that are in accordance with contemporary societal views. Baker and Oberman (2020)

examined U.S. rape law reform, which between 1970 and 1990 changed rape from a crime requiring force and resistance to one requiring only sex without consent. They noted that reporting, prosecution, and conviction rates for rape rose only slightly after these reforms, but they rejected the view that reform had simply failed, arguing that consent-based laws have helped change cultural and institutional norms about unwanted sex. Because their analysis covers rape law reform in general, it is hard to say whether the same holds for rape shield laws. This research proposal therefore attempts to use both specific cases and general oversight to compile evidence that attempts to implement rape shield laws truly do fail throughout the criminal justice system, a substantial element of the lack of prosecution in rape cases.

Rape Shield Laws and the Sixth Amendment

The Sixth Amendment guarantees the rights of criminal defendants, including the right to a speedy and public trial, the right to an impartial jury, the right to be informed of the charges, the right to confront the witnesses against them, and the right to a lawyer. However, in rape cases, rape shield laws limit the ability to introduce evidence about rape complainants' past sexual behavior or to cross-examine them about it. This contradiction is what often allows the defense to use the Sixth Amendment as a loophole to expose the victim's past sexual history, which can be very damaging to the prosecution's argument. Tanford and Bocchino (1980) analyzed the legality of rape shield laws under the Sixth Amendment. Writing after 45 states had passed some form of rape shield law, they concluded that some of these laws violate the Sixth Amendment, because they bar defendants in rape cases from offering kinds of evidence that other criminal defendants may offer. Whether such Sixth Amendment challenges make date rape and rape cases less likely to succeed remains open for review. A more recent review by Gray and Horvath (2018) examined how rape myths are used in rape trials, how they affect jurors'

decisions, and what has been done to limit their use in court, and it called for thorough evaluation of those efforts. Nonetheless, more research should be done to understand whether passing new rape shield laws will keep the defense from using the Sixth Amendment in a potentially damaging way. If new rape shield laws limit the Sixth Amendment, this could also keep the prosecution from using any prior criminal record (especially involving sexual assault) that the offender may have.

Research Methods

A combined quantitative and qualitative research design will be used to explore whether an intervention may influence an outcome and whether there are common experiences among individuals, a shared culture, and individual stories. Research will be conducted using three methods: a survey, secondary data analysis, and interviews. The survey and secondary data analysis will follow a quantitative approach, while the interviews will follow a more qualitative design. The reason for the mixed-methods design is that these three methods will provide an abundance of data to answer questions as the study continues. A broad population is needed to sample from for the quantitative measures, while the qualitative details from interviews will provide both support for and reasoning behind the numbers.

For the quantitative design, a survey will be sent to young individuals around college age across various parts of the United States. The survey will consist of closed-ended questions in multiple formats, intended to provide data on whether individuals think cultural biases such as rape myths (stereotyped and false beliefs about sexual assault) exist in society and whether these biases affect their judgment of rape cases. Questions about the age and gender of respondents will provide important information for measuring potential differences of opinion (male/female, older/younger). The survey will also measure the extent of the respondent's exposure to the topic

and whether this has an impact on their decision, a question that will have to be carefully thought out to avoid reluctance. Secondary data analysis will be the second research method and will provide statistics to compare previous findings with those of this study's survey. Sources for this analysis will come mostly from nonpublic reports by the Rape, Abuse & Incest National Network (RAINN), police departments, and college and university administrators. This research method will be very cost- and time-efficient and will only use reports that have already been established as valid. To limit the weaknesses of secondary data analysis, out-of-date reports will not be used. Only the most recent reports will be analyzed; if the most recent report is more than 10 years old, another report will be sought.

For the qualitative design, interviews will be conducted with more open-ended questions to see how individuals respond to cultural biases that they may or may not see in their day-to-day lives. This information will come from case examples that ask underlying questions and draw more detailed responses. Hypothetical scenarios will not be used, to prevent fabrication in the research; instead, several real rape cases will be chosen to draw out the feelings or potential judgments of the person being interviewed. Each case will be categorized under certain rape myths to help measure the data more accurately.

Though the theory of this proposal contains many moving parts, specific variables need to be examined to determine a causal relationship between juror bias and the final verdict. The sources of information will help collect the data, and sampling will narrow it down to the most important and conclusive results. A limitation of this approach is the voluminous information that will be collected, but the solution is to understand which information helps determine juror bias and which information is excess. Specifically, the analysis will look for the elements of bias in individuals discussed in the literature review. A simplified example of a measurement that can

help establish this causal relationship is whether an individual believes a defendant's sexual history should be taken into consideration in the present case. If not, the determination is that the individual would judge solely on the information provided in the present trial. However, if the individual answers yes, it is fair to assume they will hold preexisting notions about the defendant that will affect their view of the defendant in the present trial. To summarize this example, a defendant's past sexual history is an independent variable that can affect the verdict, the dependent variable.

Sampling Methods

The survey will be sent by email to young, college-age individuals across multiple states and backgrounds. This will avoid an abundance of similar responses due to a lack of geographical variety. Opinions differ in different areas, as noted in the literature review, which is why it is important to survey as much of the United States as possible. It will also provide a large population to sample from, making the sample more heterogeneous. Once the deadline for completing the survey has passed, simple random sampling will be used to obtain a sample. Each element (survey) will be assigned a number, and a set number of elements will then be chosen for the sample through random number generation. The limitation of simple random sampling is that, because of the sample's randomness, the research will be unable to compare any potential findings on a correlation between rape myths and trial proceedings in urban and rural areas. However, an overrepresentation of one geographical location might make certain answers more similar, bringing bias into the research and corrupting later results.

Secondary data analysis will provide statistics to compare previous findings with those of this study's survey. Sources for this analysis can include nonpublic reports by RAINN, police departments, and college and university administrators. This statistical analysis will be designed

to resemble the quantitative analysis of the survey. For example, if RAINN's statistics show that X of every Y people do not report date rape, that finding can arguably be confirmed in this study if the survey shows a similar ratio. Data sampled from these organizations will have to center on the survey questions and the hypothesis of this study to stay within a relevant range of data collection, which makes this part of the sampling purposive. The organizations that data will be sampled from will be randomly selected, with the specific data mining serving as a secondary filter for the large number of organizations included in the collection.

Interviews will be reviewed extensively, and key words, phrases, and answers will be noted to determine whether there is a pattern across participants. At the end of the survey, participants will be asked whether they would like to participate in an interview. The interviews will not be sampled from a separate group; rather, they will be the product of a sample. From the survey participants who wish to be interviewed, a second (much smaller) random sample will be drawn to select the participants for an interview. The limitation of this selection is that the research cannot formally reach out to participants and instead offers a gateway through the survey question. This limitation may also be self-correcting if individuals who are more willing to participate further give more accurate details and accounts of date rape and the criminal justice system.

Ethical Considerations

Ethical standards are very important to the integrity of proposed research and the institutions that conduct it. Awareness of the standards and regulations is important to producing ethical research. While there are many different types of standards, this proposal focuses on a select few to make sure the research poses minimal risk to participants. The biggest element to understand about this research is the psychological and legal risk. Rape is a very serious and

traumatizing event that can severely affect a person's life, either in the short term or permanently. First, the research method will be explained to every participant, so they know what the study involves before they are asked questions. Making sure that people are comfortable being asked certain questions is the key first step in ethical considerations. Additionally, anyone who becomes uncomfortable with the questions could give false answers, which is why it is important to stress the weight of the questions before asking them. A partially detailed summary of the study will be created and reviewed by a psychology professional to make sure participants know what the study is about.

Possibly the most important ethical consideration in this research is the need to keep participant information and participation details private. To make sure that (a) participants are comfortable participating in the study and (b) no private information is released to the public, each individual will be offered an optional confidentiality agreement (also known as a nondisclosure agreement, or NDA). Participants who want to may sign the confidentiality agreement, which legally binds the receiving party not to release the information they give in the study. Participants who do not want to sign it must sign a waiver declaring that they chose not to sign the confidentiality agreement. All participants will be assured that their information is confidential and will not be released in the findings of the study. The waiver will help prevent a future situation in which the study is held accountable for potentially releasing information from participants who chose not to sign the confidentiality agreement.

Finally, the questions will be respectful and appropriate, avoiding poor wording that could either turn participants away or affect their psychological state. Having the questions reviewed and corrected by a psychology counselor could help create an ethical survey. An example of a bad question is "Do you believe that a boyfriend can rape his girlfriend if they are

in a relationship?” A better way to ask this question is “Do you believe it is possible for an individual in a committed relationship to be sexually assaulted by the other?” The new question excludes gender completely and specifically states that there is a dating relationship between the two individuals. By following these guidelines, the research should produce vast amounts of data with little to no risk to the participants.

Limitations and Other Information

A rape case involves a significant number of elements, including whether it was reported (or the reason it went unreported), the trial and prosecution, and the social myths that surround these factors. Because not all the data in this research can be understood through one lens, I will aggregate the data into key concepts that address the elements of my research. One indicator for my question will be, if the crime was reported, whether the offender was prosecuted, based on a sample of select cases in which rape myths are either present or not present. The dimension in which rape myths are present may indicate that the offender was not prosecuted for the rape, while the dimension in which no rape myths are present may indicate that the offender was prosecuted for their actions. This is where my research methods will come into play, as they will distinguish between the dimensions and help direct the results toward the general indicators. If a result does not match the indicator, it may show something different from previous criminological research, opening a new question about whatever dimension the indicator was mistaken for. The three research methods used to conceptualize the data and measure certain elements of the research may not be fully expressible in numbers. For example, the survey will show a consensus of support for or dismay at social myths about either rape in general or rape as it pertains to a specific case. For reliability, the data will have to be examined in terms of interrater reliability to determine whether the indicators of a previously stated element or

dimension are correct. If the data do not reach consensus, that may point to new research questions about the interchangeability of rape, rape myths, and trial proceedings that another study could examine.

Conclusion

Understanding how rape myths, through opinions and beliefs, affect trial proceedings in rape cases across U.S. college campuses is important to the integrity of the criminal justice system and its educational counterpart. The individuals who operate the criminal justice system experience these biases when they attend college themselves. Giving offenders light sentences, or none at all, makes the impact on the continuation of this culture more substantial. Data showing a gap between the high number of rape incidents and the low rate of reporting should be taken into consideration when examining how the culture of sex dominates both public opinion and judicial review. This research, through its literature review, survey, and secondary analysis, seeks to provide new evidence that rape myths can make rape and acquaintance rape appear less serious to both young individuals and members of the criminal justice system.

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