

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.

I. INTRODUCTION

Sexual assault of women by men¹ 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

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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.

² MICHELE C. BLACK ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 1 (2011),

problem, it has been estimated that at best only five percent 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 that approximately sixty-four percent of women do not report their sexual assault experiences to the police.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 had been in a bar alone, she had invited

available at http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

³ Kimberly A. Lonsway & Joanne Archambault, *The "Justice Gap" for Sexual Assault Cases: Future Directions for Research and Reform*, 18 VIOLENCE AGAINST WOMEN 145, 157 (2012).

⁴ See *infra* Part II; see also Emilie Buchwald et al., *Are We Really Living in a Rape Culture?*, in TRANSFORMING A RAPE CULTURE 7–9 (Emilie Buchwald et al. eds., 1993) (reviewing statistics on the incidence of sexual assault in the United States).

⁵ See generally SUSAN ESTRICH, REAL RAPE 4–9 (1987) (contrasting characteristics of "real rapes" with characteristics of sexual assaults that are deemed to be "simple rape[s]" or "only 'technically'" rapes by prosecutors, juries, and society in general).

⁶ See Hubert S. Feild, *Attitudes Toward Rape: A Comparative Analysis of Police, Rapists, Crisis Counselors, and Citizens*, 36 J. PERSONALITY & SOC. PSYCHOL. 156, 161, 171 (1978).

⁷ LYNDIA LYTLE HOLMSTROM & ANN WOLBERT BURGESS, THE VICTIM OF RAPE: INSTITUTIONAL REACTIONS 34 (Transaction Publishers 1983) (1978).

⁸ *Id.*

⁹ Janice Du Mont et al., *The Role of "Real Rape" and "Real Victim" Stereotypes in the Police Reporting Practices of Sexually Assaulted Women*, 9 VIOLENCE AGAINST WOMEN 466, 476–77 (2003).

¹⁰ See Bonnie S. Fisher et al., *Reporting Sexual Victimization to the Police and Others: Results from a National-Level Study of College Women*, 30 CRIM. JUST. & BEHAV. 6, 9–10 (2003).

¹¹ MICHAEL PLANTY ET AL., U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NCJ 240655, FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994–2010, at 7 (2013).

the man to her home) as compared to if they did not.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.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.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.¹⁵ Further, judges and juries reached the same verdict (guilty) in eighty-eight percent of cases with aggravating factors but only agreed on a guilty verdict in forty percent of other sexual assault cases.¹⁶ Disagreement was explained primarily by the fact that, in cases in which women could be perceived as contributing to their victimization, judges found sufficient evidence of guilt to convict the defendant but juries did not.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,

¹² Wayne A. Kerstetter & Barrik Van Winkle, *Who Decides? A Study of the Complainant’s Decision to Prosecute in Rape Cases*, 17 CRIM. JUST. & BEHAV. 268, 272–76 (1990).

¹³ See ESTRICH, *supra* note 5, at 18–19 (listing the factors that prosecutors take into consideration when deciding whether to pursue charges in a sexual assault case, one of which is the assailant’s use of a weapon); Wayne A. Kerstetter, *Gateway to Justice: Police and Prosecutorial Response to Sexual Assaults Against Women*, 81 J. CRIM. L. & CRIMINOLOGY 267, 301, 305 (1990) (finding that the assailant’s use of a weapon significantly predicted whether the prosecutor filed a felony sexual assault charge in cases where the victim and the assailant were acquaintances); Kerstetter & Van Winkle, *supra* note 12, at 279 (finding that the assailant’s use of a weapon significantly predicted whether the complainant pursued sexual assault charges when the assailant was a stranger, but finding no effect when the assailant was an acquaintance).

¹⁴ See generally HARRY KALVEN, JR. & HANS ZEISEL, *THE AMERICAN JURY 12–32* (Phoenix ed., Univ. of Chi. 1971) (1966) (examining the factors that contribute to whether a criminal case results in a jury trial in the United States).

¹⁵ See *id.* at 252–53.

¹⁶ See *id.* at 253.

¹⁷ See *id.* at 253–54.

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 II we define rape culture and present research regarding its existence in American society. In Part III we review psychological theories that explain the underlying process by which rape culture likely impacts juror decision making. In Part IV we review extant literature that provides preliminary evidence for the proposed effects. In Part V 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.

II. 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.”¹⁸ Within a rape culture, sexual violence against women is both prevalent and considered to be legitimate.¹⁹ Scholars contend that sexual aggression and violence are not inherent, but rather manifestations of the values and attitudes that are prevalent in society.²⁰ According to Burt: “Rape is the logical and psychological extension of a dominant-submissive, competitive, sex role stereotyped culture.”²¹ 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.²² Many feminist writers contend that Americans live in a “rape culture,”²³ 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

¹⁸ Emilie Buchwald et al., *Preamble*, in *TRANSFORMING A RAPE CULTURE*, *supra* note 4, at vii, vii.

¹⁹ Patricia Novotny, *Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance?*, 1 *SEATTLE J. SOC. JUST.* 743, 745 n.15 (2003).

²⁰ Buchwald et al., *supra* note 18, at vii; *see also* Vicki McNickle Rose, *Rape as a Social Problem: A Byproduct of the Feminist Movement*, 25 *SOC. PROBS.* 75, 78 (1977) (“From the feminist perspective, rape is a direct result of our culture’s differential sex role socialization and sexual stratification.”).

²¹ Martha R. Burt, *Cultural Myths and Supports for Rape*, 38 *J. PERSONALITY & SOC. PSYCHOL.* 217, 229 (1980).

²² *See* Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths: In Review*, 18 *PSYCHOL. WOMEN Q.* 133, 136–37 (1994).

²³ *See, e.g.*, SUSAN BROWN MILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 389 (1975); Buchwald et al., *supra* note 4, at 9.

media.²⁴ Next, we describe these basic features of rape culture and review literature documenting the extent to which they pervade our everyday lives.

A. Rape Myths

One key feature of rape culture is the endorsement and promotion of myths about rape.²⁵ Burt first defined rape myths as “prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists.”²⁶ 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 to” (e.g., “When a man is very sexually aroused, he may not even realize that the woman is resisting”), (4) “She wanted it” (e.g., “Many women secretly desire to be raped”), (5) “She lied” (e.g., “Many so-called rape victims are actually women who had sex and ‘changed their minds’ afterwards”), (6) “Rape is a trivial event” (e.g., “Women tend to exaggerate how much rape affects them”), and (7) “Rape is a deviant event” (e.g., “In reality, women are almost never raped by their boyfriends”).²⁷ These myths define “real rape” as violent, forced sexual assaults that are perpetrated by strangers and which women verbally and physically resist.²⁸ Yet, rape myths stand in stark contrast to the reality of many actual rapes,²⁹ and thereby construct a narrative that implies that women are responsible for their own victimization, shifts blame from men to women,³⁰ and denies or justifies men’s sexual aggression and violence against women.³¹

²⁴ See *infra* Part II.A–C.

²⁵ Kimberly A. Lonsway & Louise F. Fitzgerald, *Attitudinal Antecedents of Rape Myth Acceptance: A Theoretical and Empirical Reexamination*, 68 *J. PERSONALITY & SOC. PSYCHOL.* 704, 704 (1995).

²⁶ Burt, *supra* note 21, at 217.

²⁷ Diana L. Payne et al., *Rape Myth Acceptance: Exploration of Its Structure and Its Measurement Using the Illinois Rape Myth Acceptance Scale*, 33 *J. RES. PERSONALITY* 27, 49–50 (1999).

²⁸ Linda S. Williams, *The Classic Rape: When Do Victims Report?*, 31 *SOC. PROBS.* 459, 461 (1984).

²⁹ Martha R. Burt, *Rape Myths*, in *CONFRONTING RAPE AND SEXUAL ASSAULT* 129, 130 (Mary E. Odem & Jody Clay-Warner eds., 1998).

³⁰ Burt, *supra* note 21, at 217; see Cathaleene Jones & Elliot Aronson, *Attribution of Fault to a Rape Victim as a Function of Respectability of the Victim*, 26 *J. PERSONALITY & SOC. PSYCHOL.* 415, 419 (1973).

³¹ Lonsway & Fitzgerald, *supra* note 22, at 134.

Social science research shows that rape myths are widely and persistently held in American society.³² For example, Feild's survey of laypeople, police officers, rape crisis counselors, and institutionalized rapists³³ revealed that, on average, participants endorsed fourteen out of thirty-two prejudicial or erroneous beliefs about rape (e.g., "A woman should feel guilty following a rape").³⁴ 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.³⁵ 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.³⁶ These differences show, on the one hand, how erroneous beliefs might contribute to sexual violence against women and, on the other hand, the inaccuracy 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.³⁷ Giacopassi and Dull found that seventeen percent to seventy-five percent of their college student sample endorsed various rape myths.³⁸ For example, 20.7% of students agreed that "[m]any females have fantasy dreams about rape," and 29.7% agreed that "[w]omen often falsely accuse men of rape."³⁹ Thirty-five percent or more of undergraduates in Gilmartin-Zena's survey agreed with fifteen out of twenty-nine rape myths.⁴⁰ For instance, fifty-one percent of undergraduates agreed that "[r]ape usually involves a high level of violence (the rapist has a weapon and he injures the victim)," and

³² See, e.g., John D. Foubert, *The Longitudinal Effects of a Rape-Prevention Program on Fraternity Men's Attitudes, Behavioral Intent, and Behavior*, 48 J. AM. C. HEALTH 158, 160-61 (2000); William O'Donohue et al., *Rape Prevention with College Males: The Roles of Rape Myth Acceptance, Victim Empathy, and Outcome Expectancies*, 18 J. INTERPERSONAL VIOLENCE 513, 527 fig.2 (2003).

³³ Feild, *supra* note 6, at 160.

³⁴ See *id.* at 162-64.

³⁵ *Id.* at 169.

³⁶ *Id.* at 170 tbl.3.

³⁷ Burt, *supra* note 21, at 223 tbl.2.

³⁸ David J. Giacopassi & R. Thomas Dull, *Gender and Racial Differences in the Acceptance of Rape Myths Within a College Population*, 15 SEX ROLES 63, 67 (1986).

³⁹ See *id.* at 69 tbl.1.

⁴⁰ See Pat Gilmartin-Zena, *Attitudes Toward Rape: Student Characteristics as Predictors*, 15 FREE INQUIRY CREATIVE SOC. 175, 178 tbl.1 (1987).

thirty-five percent agreed that “[a]t all costs, a woman must fight off a rapist.”⁴¹ 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.⁴² Men 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.⁴³ Findings like these are important because they suggest that, unless challenged, people’s beliefs in the validity of these myths are persistent.

B. 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.⁴⁴ 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, and they are denied various aspects of personhood.⁴⁵ 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) or animals (e.g., nature, instinct).⁴⁶ Results of the categorization task indicated that, compared to personalized women or men who were either objectified or personalized, objectified

⁴¹ *Id.*

⁴² See Foubert, *supra* note 32, at 159–60.

⁴³ *Id.* at 160–61.

⁴⁴ See SANDRA LEE BARTKY, *FEMININITY AND DOMINATION: STUDIES IN THE PHENOMENOLOGY OF OPPRESSION* 26 (1990).

⁴⁵ Barbara L. Fredrickson & Tomi-Ann Roberts, *Objectification Theory: Toward Understanding Women’s Lived Experiences and Mental Health Risks*, 21 *PSYCHOL. WOMEN Q.* 173, 175 (1997); Jeroen Vaes et al., *Are Sexualized Women Complete Human Beings? Why Men and Women Dehumanize Sexually Objectified Women*, 41 *EUR. J. SOC. PSYCHOL.* 774, 774 (2011).

⁴⁶ Vaes et al., *supra* note 45, at 776–77.

women were less likely to be associated with human concepts.⁴⁷ 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 status (i.e., deserving of moral or fair treatment).⁴⁸ 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.”⁴⁹ 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.⁵⁰ Results revealed that sixty-five percent of women experienced at least one gender-based incident, twenty-three percent of which involved experiencing or witnessing some sort of sexual objectification (e.g., street harassment, threats of sexual contact).⁵¹ 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.

C. *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 rap, on every billboard, in every shop window, on every museum wall we found evidence of rape culture.”⁵² Buchwald and colleagues described media as reflecting rape culture, but media messages that

⁴⁷ *Id.* at 777–78.

⁴⁸ Steve Loughnan et al., *Objectification Leads to Depersonalization: The Denial of Mind and Moral Concern to Objectified Others*, 40 EUR. J. SOC. PSYCHOL. 709, 712 (2010).

⁴⁹ Dawn M. Szymanski et al., *Sexual Objectification of Women: Advances to Theory and Research*, 39 COUNSELING PSYCHOLOGIST 6, 11 (2011).

⁵⁰ Janet K. Swim et al., *Everyday Sexism: Evidence for Its Incidence, Nature, and Psychological Impact from Three Daily Diary Studies*, 57 J. SOC. ISSUES 31, 33–34 (2001).

⁵¹ *See id.* at 36–38.

⁵² Emilie Buchwald et al., *Editor’s Preface*, in TRANSFORMING A RAPE CULTURE, *supra* note 4, at 1, 2.

communicate rape myths and the sexual objectification of women also play a significant role in establishing and maintaining rape culture.⁵³ 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.⁵⁴

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 wanna get nasty."⁵⁵ It has been suggested that these lyrics reinforce the myth that "no" does not always mean "no" in sexual situations.⁵⁶ Yet, the song was embraced and celebrated by American society—it led the weekly *Billboard* Hot 100 for twelve weeks in a row and was named "Song of the Summer" in 2013.⁵⁷ 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 took to Twitter to discuss the allegations that he had spiked the woman's drink with Ecstasy without her consent, and argued that his subsequent sexual intercourse with her while she was unconscious was consensual.⁵⁸ Specifically, Green tweeted that "[p]eople who have really been raped REMEMBER!!!"⁵⁹ Even so, rape charges were not filed.⁶⁰

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.⁶¹ Brinson examined the prevalence of four

⁵³ L. Monique Ward et al., *Breasts Are for Men: Media, Masculinity Ideologies, and Men's Beliefs About Women's Bodies*, 55 *SEX ROLES* 703, 705 (2006).

⁵⁴ Nicola Henry & Anastasia Powell, *The Dark Side of the Virtual World: Towards a Digital Sexual Ethics*, in *PREVENTING SEXUAL VIOLENCE: INTERDISCIPLINARY APPROACHES TO OVERCOMING A RAPE CULTURE* 84, 90–91 (Nicola Henry & Anastasia Powell eds., 2014); Ward et al., *supra* note 53, at 705.

⁵⁵ ROBIN THICKE, *Blurred Lines*, on *BLURRED LINES* (Star Trak Entertainment & Interscope Records 2013).

⁵⁶ James C. McKinley, Jr., *A Romantic Has a Naughty Hit*, *N.Y. TIMES*, July 21, 2013, at AR15.

⁵⁷ Gary Trust, *Robin Thicke's 'Blurred Lines' Is Billboard's Song of the Summer*, *BILLBOARD* (Sept. 5, 2013), <http://www.billboard.com/articles/news/5687036/robin-thicke-blurred-lines-is-billboards-song-of-the-summer>.

⁵⁸ August Brown, *Cee Lo Green Temporarily Deletes Twitter Account After Rape Comments*, *L.A. TIMES* (Sept. 2, 2014), <http://www.latimes.com/entertainment/music/posts/la-et-ms-cee-lo-green-ecstasy-no-contest-rape-twitter-20140902-story.html>.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See Susan L. Brinson, *The Use and Opposition of Rape Myths in Prime-Time Television Dramas*, 27 *SEX ROLES* 359, 366 (1992); LeeAnn Kahlor & Dan Morrison, *Television Viewing*

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 twenty-six primetime television drama storylines involving sexual assault.⁶² Her content analysis revealed that, on average, each storyline suggested five rape myths.⁶³ The most frequently introduced rape myth—in forty-six percent 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.⁶⁴ Brinson’s analysis further showed that the storylines more commonly endorsed rape myths than challenged them.⁶⁵

Messages that sexually objectify women are also common in American media.⁶⁶ For instance, Ferris and colleagues found that women are referred to as sexual objects almost six times per hour during television shows that are popular among U.S. college students.⁶⁷ Krassas and colleagues examined the content of editorial photographs in popular men’s magazines.⁶⁸ Their study demonstrated that eighty-one percent of women were depicted as sex objects⁶⁹ and women were more likely than men to appear scantily clad⁷⁰ and in contorted or demeaning positions.⁷¹ Women are also likely to be sexually objectified in advertising platforms,⁷² more so than men.⁷³ Lin’s analysis of primetime television commercials showed that women were significantly more likely than men to be portrayed in “two-dimensional” roles; that is, women were more likely to be sexualized and dehumanized.⁷⁴ Consistent

and *Rape Myth Acceptance Among College Women*, 56 *SEX ROLES* 729, 731 (2007).

⁶² Brinson, *supra* note 61, at 365 (internal quotation marks omitted).

⁶³ *Id.* at 366.

⁶⁴ *Id.* (internal quotation marks omitted).

⁶⁵ *Id.* at 367–70.

⁶⁶ See, e.g., Janna L. Kim et al., *From Sex to Sexuality: Exposing the Heterosexual Script on Primetime Network Television*, 44 *J. SEX RES.* 145, 150–51 (2007).

⁶⁷ Amber L. Ferris et al., *The Content of Reality Dating Shows and Viewer Perceptions of Dating*, 57 *J. COMM.* 490, 499–500 (2007).

⁶⁸ Nicole R. Krassas et al., “*Master Your Johnson*”: *Sexual Rhetoric in Maxim and Stuff Magazines*, 7 *SEXUALITY & CULTURE* 98, 104 (2003).

⁶⁹ *Id.* at 108.

⁷⁰ *Id.* at 111, 113.

⁷¹ *Id.* at 109, 113.

⁷² AM. PSYCHOLOGICAL ASS’N, REPORT OF THE APA TASK FORCE ON THE SEXUALIZATION OF GIRLS 10 (2010), available at <http://www.apa.org/pi/women/programs/girls/report-full.pdf>.

⁷³ See, e.g., S. Plous & Dominique Neptune, *Racial and Gender Biases in Magazine Advertising: A Content-Analytic Study*, 21 *PSYCHOL. WOMEN Q.* 627, 638 (1997) (“Female body exposure was approximately four times more common than male body exposure”); Tom Reichert, *The Prevalence of Sexual Imagery in Ads Targeted to Young Adults*, 37 *J. CONSUMER AFF.* 403, 408 (2003).

⁷⁴ Carolyn A. Lin, *Beefcake Versus Cheesecake in the 1990s: Sexist Portrayals of Both Genders in Television Commercials*, 8 *HOWARD J. COMM.* 237, 241–43 (1997).

with that finding, Stankiewicz and Rosselli's content analysis of fifty-eight popular U.S. magazines showed that fifty-two percent of advertisements used women's sexuality to sell products.⁷⁵ 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.⁷⁶ These studies do not even begin to address the pervasiveness of rape myths and sexual objectification in pornographic media.⁷⁷

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.⁷⁸ Exposure to material that sexually objectifies women probably has similar negative impacts on societal perceptions of 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.⁷⁹ Zillmann and Bryant reported that viewing even nonviolent pornography is positively correlated with the trivialization of rape and loss of compassion for women victims.⁸⁰ 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 audio recordings that depicted a nonconsensual sexual encounter in which the woman exhibited either arousal (rape myth consistent) or disgust (rape myth inconsistent).⁸¹ Men who were exposed to a

⁷⁵ Julie M. Stankiewicz & Francine Rosselli, *Women as Sex Objects and Victims in Print Advertisements*, 58 *SEX ROLES* 579, 583–84 (2008).

⁷⁶ Tom Reichert et al., *Cheesecake and Beefcake: No Matter How You Slice It, Sexual Explicitness in Advertising Continues to Increase*, 76 *JOURNALISM & MASS COMM. Q.* 7, 14 (1999).

⁷⁷ See Catharine A. MacKinnon, *Sexuality, Pornography, and Method: "Pleasure Under Patriarchy"*, 99 *ETHICS* 314, 327 (1989) ("Pornography . . . constructs women as things for sexual use and constructs its consumers to desperately want women to desperately want possession and cruelty and dehumanization.").

⁷⁸ Burt, *supra* note 21, at 219, 229.

⁷⁹ Elizabeth M. Perse, *Uses of Erotica and Acceptance of Rape Myths*, 21 *COMM. RES.* 488, 495, 508 (1994).

⁸⁰ Dolf Zillmann & Jennings Bryant, *Pornography, Sexual Callousness, and the Trivialization of Rape*, 32 *J. COMM.* 10, 13, 16–17 (1982).

⁸¹ Neil M. Malamuth & James V. P. Check, *The Effects of Aggressive Pornography on Beliefs in Rape Myths: Individual Differences*, 19 *J. RES. PERSONALITY* 299, 300, 303–04

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.⁸² Thus, exposure to rape myth consistent media led men to endorse rape myths.⁸³

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.⁸⁴ 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.⁸⁵ Kahlor and Morrison further demonstrated that such effects are related not only to sexually 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.⁸⁶

D. 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.⁸⁷ Sexual objectification reduces women to features of their bodies⁸⁸ and leads them to be less valued and deserving of concern and protection from sexual violence.⁸⁹ Prior work has shown that both rape myths⁹⁰ and sexual objectification⁹¹ of women are prevalent in American society. Further, research has demonstrated that exposure to media that includes these features, regardless of the

(1985).

⁸² *Id.* at 309.

⁸³ *Id.* at 313.

⁸⁴ Neil M. Malamuth & James V. P. Check, *The Effects of Mass Media Exposure on Acceptance of Violence Against Women: A Field Experiment*, 15 J. RES. PERSONALITY 436, 438 (1981).

⁸⁵ *Id.* at 441.

⁸⁶ Kahlor & Morrison, *supra* note 61, at 733–34.

⁸⁷ Burt, *supra* note 21, at 217.

⁸⁸ BARTKY, *supra* note 44, at 26.

⁸⁹ See Steve Loughnan et al., *Sexual Objectification Increases Rape Victim Blame and Decreases Perceived Suffering*, 37 PSYCHOL. WOMEN Q. 455, 459 (2013).

⁹⁰ See Foubert, *supra* note 32, at 160 tbl.2; O'Donohue et al., *supra* note 32, at 527 fig.2.

⁹¹ See Kim et al., *supra* note 66, at 150–51; Swim et al., *supra* note 50, at 33, 37.

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.

III. 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,⁹² the evidence reviewed previously 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 un concerning 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.

A. 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.⁹³ A schema refers to knowledge related to a given "concept, its attributes, and its relation to other concepts" (e.g., a woman).⁹⁴

⁹² See *supra* Part II.

⁹³ See Robert P. Abelson, *Psychological Status of the Script Concept*, 36 AM. PSYCHOLOGIST 715, 715 (1981); Shelley E. Taylor & Jennifer Crocker, *Schematic Bases of Social Information Processing*, in 1 SOCIAL COGNITION: THE ONTARIO SYMPOSIUM 89, 123–24 (E. Tory Higgins et al. eds., 1981).

⁹⁴ L. Rowell Heusmann, *The Role of Social Information Processing and Cognitive Schema in the Acquisition and Maintenance of Habitual Aggressive Behavior*, in HUMAN AGGRESSION:

Schemas are used “to make inferences and to draw conclusions” about other concepts.⁹⁵ A script is a series of linked schemas that are related to a specific event (e.g., a sexual assault).⁹⁶ A script outlines the behaviors which one believes are appropriate, as well as “the sequence of events that one believes are likely to happen” in a given situation.⁹⁷

According to theory, when exposed to new information, people perceive and classify that information based on existing schemas and scripts.⁹⁸ 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 subschemas are stored and can be differentially activated.⁹⁹ For example, under the general schema of “women” two contradictory subschemas exist that portray women as either sex objects or nurturers.¹⁰⁰ Because these subschemas are contradictory, when one is activated the other becomes less accessible.¹⁰¹ To test their hypothesis, Rudman and Borgida exposed undergraduate men to commercial advertisements that either did or did not include sexist imagery.¹⁰² 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

THEORIES, RESEARCH, AND IMPLICATIONS FOR SOCIAL POLICY 73, 79 (Russell G. Geen & Edward Donnerstein eds., 1998).

⁹⁵ *Id.* at 80.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Mike Z. Yao et al., *Sexual Priming, Gender Stereotyping, and Likelihood to Sexually Harass: Examining the Cognitive Effects of Playing a Sexually-Explicit Video Game*, 62 *SEX ROLES* 77, 81 (2010).

⁹⁹ See Laurie A. Rudman & Eugene Borgida, *The Afterglow of Construct Accessibility: The Behavioral Consequences of Priming Men to View Women as Sexual Objects*, 31 *J. EXPERIMENTAL SOC. PSYCHOL.* 493, 511 (1995).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 498.

were nonsexual in nature (e.g., mother, sister, nurturer).¹⁰³ In contrast, men who were exposed to sexist advertisements recognized sexually objectifying words *faster* than other words.¹⁰⁴ Thus, exposure to rape culture is likely to increase the extent to which the subschema 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).¹⁰⁵

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.¹⁰⁶ As Bateman observed, it is frequently perceived that women are the gatekeepers of sexuality, and that it is within women's control to dictate whether sexual encounters occur or not.¹⁰⁷ 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.¹⁰⁸

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 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.

¹⁰³ *Id.* at 501–02, 511.

¹⁰⁴ *Id.*

¹⁰⁵ LINDA A. FAIRSTEIN, SEXUAL VIOLENCE: OUR WAR AGAINST RAPE 135–36 (1993).

¹⁰⁶ See Abelson, *supra* note 93, at 715.

¹⁰⁷ Py Bateman, *The Context of Date Rape*, in DATING VIOLENCE: YOUNG WOMEN IN DANGER 94, 97 (Barrie Levy ed., 1991).

¹⁰⁸ See *supra* Part II.A.

B. 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.¹⁰⁹ This basic social psychological bias begins when individuals assume that a certain hypothesis is true.¹¹⁰ 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.¹¹¹ On the other hand, they might become blind to information that could possibly refute their hypothesis.¹¹² Both of these selective information processing strategies—or, as Bodenhausen referred to them, selective *evidence* processing strategies¹¹³—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 mock jurors who were more, rather than less, racially biased were less likely to acquit untrustworthy-looking defendants despite the existence of exonerating evidence.¹¹⁴ 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.¹¹⁵ Also, Hernandez and Preston’s online study showed that mock jurors who were exposed to either

¹⁰⁹ Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. GEN. PSYCHOL. 175, 175 (1998).

¹¹⁰ *See id.*

¹¹¹ *Id.*

¹¹² *Id.* at 177.

¹¹³ Galen V. Bodenhausen, *Stereotypic Biases in Social Decision Making and Memory: Testing Process Models of Stereotype Use*, 55 J. PERSONALITY & SOC. PSYCHOL. 726, 727 (1988).

¹¹⁴ Natasha Korva et al., *Dangerous Decisions: Influence of Juror Attitudes and Defendant Appearance on Legal Decision-Making*, 20 PSYCHIATRY PSYCHOL. & L. 384, 388–89, 391–92 (2013).

¹¹⁵ *Id.* at 395.

positive or negative information about a defendant rendered verdicts in line with that information when materials were presented in a fluent format (visually easier to read), but not when presented in a disfluent format (visually harder to read).¹¹⁶ 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.¹¹⁷ 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.¹¹⁸ They read a booklet describing both incriminating and exculpatory evidence, made guilt determinations, and, finally, recalled the evidence that had been presented to them.¹¹⁹ 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.¹²⁰ Thus, activating a stereotype about a group to which the defendant belonged led mock jurors to attend to and recall more evidence that was consistent, rather than inconsistent, with that stereotype.¹²¹

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.¹²² 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.

¹¹⁶ Ivan Hernandez & Jesse Lee Preston, *Disfluency Disrupts the Confirmation Bias*, 49 J. EXPERIMENTAL SOC. PSYCHOL. 178, 180–81 (2013).

¹¹⁷ Bodenhausen, *supra* note 113, at 728.

¹¹⁸ *Id.* at 729.

¹¹⁹ *Id.* at 729–30.

¹²⁰ *Id.* at 731.

¹²¹ *Id.*

¹²² See Nickerson, *supra* note 109, at 175.

C. Attribution Theory

Attribution theory has been foundational for researchers interested in understanding decision making in legal contexts,¹²³ 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.¹²⁴ 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).¹²⁵ Attribution theory also acknowledges that people pass judgment regarding the perceived ability of the actor to control his or her behavior.¹²⁶ When people believe an actor's behavior is caused by internal or controllable factors, they are more likely to attribute responsibility for the behavior to the individual.¹²⁷ 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.¹²⁸ 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 are 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

¹²³ See Amy Grubb & Emily Turner, *Attribution of Blame in Rape Cases: A Review of the Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming*, 17 *AGGRESSION & VIOLENT BEHAV.* 443, 445 (2012).

¹²⁴ SUSAN T. FISKE & SHELLEY E. TAYLOR, *SOCIAL COGNITION* 23 (2d ed. 1991); see Grubb & Turner, *supra* note 123, at 444.

¹²⁵ See FRITZ HEIDER, *THE PSYCHOLOGY OF INTERPERSONAL RELATIONS* 82–84 (1958) (discussing the effect of personal and environmental factors on the outcome of a person's actions); see also Bernard Weiner, *The Development of an Attribution-Based Theory of Motivation: A History of Ideas*, 45 *EDUC. PSYCHOLOGIST* 28, 30 (2010) (explaining that Heider's three determinants of performance were understood as being either internal or external to the actor).

¹²⁶ See BERNARD WEINER, *SOCIAL MOTIVATION, JUSTICE, AND THE MORAL EMOTIONS: AN ATTRIBUTIONAL APPROACH* 12 (2006).

¹²⁷ Grubb & Turner, *supra* note 123, at 444.

¹²⁸ See Cynthia J. Najdowski & Bette L. Bottoms, *Understanding Jurors' Judgments in Cases Involving Juvenile Defendants: Effects of Confession Evidence and Intellectual Disability*, 18 *PSYCHOL. PUB. POL'Y & L.* 297, 301 (2012).

when a guy's sex drive gets out of control").¹²⁹

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.¹³⁰ 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 and susceptible to influence by a range of variables and cognitive biases, and this malleability can result in erroneous interpretations of events.¹³¹

D. 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

¹²⁹ Sarah McMahon & G. Lawrence Farmer, *An Updated Measure for Assessing Subtle Rape Myths*, 35 SOC. WORK RES. 71, 72, 77 tbl.1 (2011).

¹³⁰ See, e.g., Grubb & Turner, *supra* note 123, at 444.

¹³¹ *Id.*

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.¹³² Prior mock trial research on juror decision making in this context has provided preliminary evidence for this process, as outlined in the following section.

IV. 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,¹³³ deny that the experience constitutes a "real rape," and acquit the accused perpetrator.¹³⁴ 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.¹³⁵ 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.¹³⁶ Similarly, Gray showed that undergraduate mock jurors who endorsed higher rather than lower levels of rape myth acceptance were more likely to believe that a defendant accused of sexual assault was not guilty.¹³⁷ 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.¹³⁸

Researchers have also attempted to disentangle the effects of jurors' individual differences in rape myth acceptance from those

¹³² *Id.* at 449. See generally Julian B. Rotter, *Generalized Expectancies for Internal Versus External Control of Reinforcement*, 80 PSYCHOL. MONOGRAPHS: GEN. & APPLIED 1, 1 (1966) (noting the difference between internal and external control).

¹³³ Destin N. Stewart & Kristine M. Jacquin, *Juror Perceptions in a Rape Trial: Examining the Complainant's Ingestion of Chemical Substances Prior to Sexual Assault*, 19 J. AGGRESSION MALTREATMENT & TRAUMA 853, 866 (2010).

¹³⁴ Sokratis Dinos et al., *A Systematic Review of Juries' Assessment of Rape Victims: Do Rape Myths Impact on Juror Decision-Making?*, 43 INT'L J.L., CRIME & JUST. 36, 39, 46 (2015); Jacqueline M. Gray, *Rape Myth Beliefs and Prejudiced Instructions: Effects on Decisions of Guilt in a Case of Date Rape*, 11 LEGAL & CRIMINOLOGICAL PSYCHOL. 75, 78 (2006).

¹³⁵ See Stewart & Jacquin, *supra* note 133, at 869–70.

¹³⁶ *Id.* at 869.

¹³⁷ Gray, *supra* note 134, at 78.

¹³⁸ Dinos et al., *supra* note 134, at 36, 46.

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 victim was intoxicated,¹³⁹ what the victim was wearing)¹⁴⁰ 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.¹⁴¹ In addition, Workman and Orr presented undergraduates with a photograph of a woman and a scenario describing a sexual assault.¹⁴² Participants who were low in rape myth acceptance were less affected by the type of clothing the woman was shown wearing as compared with those who were high in rape myth acceptance, who perceived the woman as wanting sex more, leading the man on more, behaving more suggestively, and being less serious when protesting the man's sexual advances when she wore a short rather than a long skirt.¹⁴³

In light of rape myths suggesting that a man would not sexually assault an unattractive woman¹⁴⁴ and that an attractive man does not need to commit sexual assault,¹⁴⁵ Vrij and Firmin also examined reactions to the physical appearance of victims and defendants in the context of a sexual assault case.¹⁴⁶ They provided undergraduates with photographs of the victim and defendant as well as a vignette describing a sexual assault.¹⁴⁷ 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.¹⁴⁸ In contrast, participants who were lower in rape myth acceptance were unaffected by the attractiveness of the victim when evaluating case

¹³⁹ E.g., Emily Finch & Vanessa E. Munro, *Juror Stereotypes and Blame Attribution in Rape Cases Involving Intoxicants: The Findings of a Pilot Study*, 45 BRIT. J. CRIMINOLOGY 25, 30 (2005).

¹⁴⁰ E.g., Jane E. Workman & Robin L. Orr, *Clothing, Sex of Subject, and Rape Myth Acceptance as Factors Affecting Attributions About an Incident of Acquaintance Rape*, 14 CLOTHING & TEXTILES RES. J. 276, 276 (1996).

¹⁴¹ Finch & Munro, *supra* note 139, at 36.

¹⁴² Workman & Orr, *supra* note 140, at 279.

¹⁴³ *Id.* at 282.

¹⁴⁴ Marsha B. Jacobson & Paula M. Popovich, *Victim Attractiveness and Perceptions of Responsibility in an Ambiguous Rape Case*, 8 PSYCHOL. WOMEN Q. 100, 100–01 (1983).

¹⁴⁵ FAIRSTEIN, *supra* note 105, at 135–36.

¹⁴⁶ Alder Vrij & Hannah R. Firmin, *Beautiful Thus Innocent? The Impact of Defendants' and Victims' Physical Attractiveness and Participants' Rape Beliefs on Impression Formation in Alleged Rape Cases*, 8 INT'L REV. VICTIMOLOGY 245, 246–47 (2001).

¹⁴⁷ *Id.* at 249–50.

¹⁴⁸ *Id.* at 253–54.

evidence.¹⁴⁹ 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.¹⁵⁰ 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) in their decision making and conclude that women are more to blame than men for sexual assaults.¹⁵¹

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.¹⁵² 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.¹⁵³

In Milburn and colleagues' research, undergraduates viewed either sexually explicit or nonexplicit scenes from an R-rated movie and then read a magazine article about a victim of date rape.¹⁵⁴ Results showed that exposure to the sexually explicit material led men, but not women, to be significantly more likely to believe that the victim "got what she wanted."¹⁵⁵ These findings suggest that exposure to sexually objectifying media might lead jurors to feel less moral concern for women alleging sexual 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 underlying psychological mechanisms been assessed.¹⁵⁶ 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, hold men less responsible for perpetrating sexual assault, and, ultimately, be more likely than

¹⁴⁹ *Id.* at 254.

¹⁵⁰ *Id.* at 253–54.

¹⁵¹ *See, e.g.,* Lonsway & Fitzgerald, *supra* note 22, at 136–37.

¹⁵² Loughnan et al., *supra* note 89, at 457.

¹⁵³ *Id.* at 457, 459.

¹⁵⁴ Michael A. Milburn et al., *The Effects of Viewing R-Rated Movie Scenes that Objectify Women on Perceptions of Date Rape*, 43 *SEX ROLES* 645, 651–52 (2000).

¹⁵⁵ *Id.* at 655.

¹⁵⁶ *See* Stewart & Jacquin, *supra* note 133, at 870; Lonsway & Fitzgerald, *supra* note 22, at 153.

other jurors to acquit defendants in sexual assault trials.

V. 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 corresponding 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,¹⁵⁷ as well as studies showing differences in citizens' attitudes toward violence against women.¹⁵⁸ 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.¹⁵⁹ Heaven and colleagues demonstrated that Australian undergraduates were less likely to blame victims of sexual assault for their victimization than were South African undergraduates.¹⁶⁰ Future work is needed to determine whether such cross-national differences reflect differences in rape culture,

¹⁵⁷ S. LAUREL WELDON, PROTEST, POLICY, AND THE PROBLEM OF VIOLENCE AGAINST WOMEN: A CROSS-NATIONAL COMPARISON 53 *tbl.2-7* (2002).

¹⁵⁸ E.g., Patrick C. L. Heaven et al., *Victim Characteristics and Attributions of Rape Blame in Australia and South Africa*, 138 *J. SOC. PSYCHOL.* 131, 132 (1998); Madhabika B. Nayak et al., *Attitudes Toward Violence Against Women: A Cross-Nation Study*, 49 *SEX ROLES* 333, 338 (2003).

¹⁵⁹ Nayak et al., *supra* note 158, at 338.

¹⁶⁰ Heaven et al., *supra* note 158, at 132.

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 *Blurred Lines*, popular men's magazines like *Maxim*) or does not, and, in a supposedly unrelated task, ask participants to serve as mock jurors for a sexual 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 Bodenhausen,¹⁶¹ 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) and others that are inconsistent (e.g., the perpetrator was acquainted with the victim, the victim did not report the assault immediately). 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. This knowledge will be critical for those

¹⁶¹ See generally Bodenhausen, *supra* note 113, at 726, 728–29, 733 (discussing the two mock trial experiments at the center of Bodenhausen's research).

interested in interrupting the psychological process that we propose leads to wrongful acquittals 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.¹⁶² Thus, men might be prone to misinterpreting a woman's friendly behavior as a sign of sexual interest.¹⁶³ Further, Alksnis and colleagues found that, whereas women thought that a man who engaged in sexually 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.¹⁶⁴ 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.¹⁶⁵ In addition, Lonsway and Fitzgerald have shown that, on average, men are more accepting of rape myths than are women.¹⁶⁶

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,¹⁶⁷ the defendant as less responsible,¹⁶⁸ and the incident as less likely to have been a rape,¹⁶⁹ and were more likely to believe that the defendant was innocent.¹⁷⁰ Also, Milburn and colleagues demonstrated that exposure to sexually objectifying media negatively affected men's, but not women's, perceptions of

¹⁶² Antonia Abbey, *Sex Differences in Attributions for Friendly Behavior: Do Males Misperceive Females' Friendliness?*, 42 J. PERSONALITY & SOC. PSYCHOL. 830, 831-32, 834 tbl.1 (1982).

¹⁶³ *Id.* at 833-34.

¹⁶⁴ Christine Alksnis et al., *Gender Differences in Scripts for Different Types of Dates*, 34 SEX ROLES 321, 333 (1996).

¹⁶⁵ *Id.*

¹⁶⁶ Lonsway & Fitzgerald, *supra* note 22, at 142.

¹⁶⁷ Workman & Orr, *supra* note 140, at 279.

¹⁶⁸ *Id.* at 280.

¹⁶⁹ *Id.* at 281.

¹⁷⁰ Gray, *supra* note 134, at 78.

date-rape victims.¹⁷¹ Finally, in Grubb and Harrower's undergraduate sample, men were more likely than women to attribute blame to a sexual assault victim.¹⁷² 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 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 projuvenile-defendant judgments (i.e., more support for letting the juvenile be tried in juvenile court rather than adult criminal court).¹⁷³ The effect of the prosecutors' appeals was so strong that it remained significant even after statistically accounting for jurors' pretrial beliefs about juvenile offenders.¹⁷⁴ 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* projuvenile-defendant judgments (i.e., more guilty verdicts).¹⁷⁵ 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

¹⁷¹ Milburn et al., *supra* note 154, at 655.

¹⁷² Amy R. Grubb & Julie Harrower, *Understanding Attribution of Blame in Cases of Rape: An Analysis of Participant Gender, Type of Rape and Perceived Similarity to the Victim*, 15 J. SEXUAL AGGRESSION 63, 70 (2009).

¹⁷³ See Tamara M. Haegerich et al., *Are the Effects of Juvenile Offender Stereotypes Maximized or Minimized by Jury Deliberation?*, 19 PSYCHOL. PUB. POL'Y & L. 81, 90 (2013).

¹⁷⁴ *Id.*

¹⁷⁵ *See id.*

assault victim.¹⁷⁶ 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.¹⁷⁷ For example, Taslitz recounted a 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.¹⁷⁸ 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.

VI. 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."¹⁷⁹ 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 over one million contributions by women and men¹⁸⁰

¹⁷⁶ See, e.g., ANDREW E. TASLITZ, RAPE AND THE CULTURE OF THE COURTROOM 83–84 (1999).

¹⁷⁷ *Id.* at 82–84.

¹⁷⁸ *Id.* at 84.

¹⁷⁹ Zerlina Maxwell, *Rape Culture Is Real*, TIME (Mar. 27, 2014), <http://time.com/40110/rape-culture-is-real/>.

¹⁸⁰ Tara Culp-Ressler, *Feminists Take to Twitter to Explain that Rape Culture Is Alive and Well*, THINK PROGRESS (Mar. 25, 2014), <http://thinkprogress.org/health/2014/03/25/3418728/rape-culture-hashtag/>; Ashley Jordan, *TIME Magazine Is Wrong. Rape Culture Does Exist*, HUMANIST.COM (Apr. 3, 2014), <http://thehumanist.com/commentary/time-magazine-is-wrong-rape-culture-does-exist>; Danielle Paradis, *#RapeCultureIsWhen Is the Perfect Answer to Everyone Who Denies Rape*, IDENTITIES.MIC (Mar. 27, 2014), <http://mic.com/articles/86187/rape-culture-is-when-is-the-perfect-answer-to-everyone-who-denies-rape>.

calling for greater societal attention to factors that function to maintain rape culture as well as the need for understanding its potential consequences for sexual assault victims.¹⁸¹ 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.

¹⁸¹ Culp-Ressler, *supra* note 180.