

A Rape Myth in Court: The Impact of Victim-Defendant Relationship on Sexual Assault Case Outcomes

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This study investigates the influence of rape myth-related information in court. Rape myths have been shown to affect the way jurors perceive victims and defendants, but as to date few studies have looked at how they contribute to verdicts in real world cases. The current study looked at sexual assault cases (N = 35) tried in Arizona's Maricopa County and the impact that the victim-defendant relationship had on verdicts. Contrary to the primary hypothesis of the study, there was no significant relationship between victim-defendant relationship and verdict. Such results suggest that the rape myth that maintains "real rape" occurs when a stranger sexually assaults a victim may be an outdated perspective. This finding, in turn, indicates that prosecutors should not be hesitant to prosecute acquaintance rapes. Suggestions for

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INTRODUCTION

Rape myths refer to beliefs and behaviors that are based on stereotypes of sexual assault and sexual assault victims, often leading to victim-blaming and to excusing the perpetrators' actions.¹ Statements related to rape myths can be especially detrimental when they are brought up in sexual assault cases, as they tend to shift the blame from the defendant onto the victim and can, therefore, affect jurors' decision-making.²

¹ Martha R. Burt, *Cultural Myths and Supports for Rape*, 38 J. PERSONALITY & SOC. PSYCH. 217, 217, 229 (1980).

² Sokratis Dinos, Nina Burrowes, Karen Hammond & Christina Cunliffe, *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, 45 (2015); Louise Ellison & Vanessa E. Munro, *Reacting to Rape: Exploring Mock Jurors' Assessments of Complainant Credibility*, 49 BRIT. J. CRIMINOLOGY 202, 206–13 (2009); Kathryn R. Klement, Brad J. Sagarin & John J. Skowronski, *Accusers Lie and Other Myths: Rape Myth Acceptance*

Some evidence about the behavior of the victim may be relevant to the case and, as a result, used by a defendant to mount an appropriate defense. Although it is important to gather all relevant evidence to ensure a just verdict is reached, other evidence has been recognized as unnecessarily harmful and prejudicial against victims, particularly evidence that rooted in rape myths. In an effort to reduce biases such information may elicit in jurors, rape shield laws were adopted that combat, at least in part, the introduction of select evidence that is inextricably tied to rape myths, such as a victim's sexual predisposition and sexual history.³ However, little is known about the systemic efficacy of these safeguards and how they function in court. Similarly, there is

Predicts Judgments Made About Accusers and Accused Perpetrators in a Rape Case, 81 SEX ROLES 16, 27–28 (2018); Jennifer Temkin, Jacqueline M. Gray & Jastine Barrett, *Different Functions of Rape Myth Use in Court: Findings from a Trial Observation Study*, 13 FEMINIST CRIMINOLOGY 205, 209–17 (2018). *But see* Richard L. Wiener, Audrey T. Feldman & Thomas Grisso, *Empathy and Biased Assimilation of Testimonies in Cases of Alleged Rape*, 13 LAW & HUM. BEHAV. 343, 351 (1989) (finding that prior experiences with a rape victim better predicted mock-juror verdicts than scores on the Rape Empathy Scale, which includes many rape myths).

³ For instance, the rape shield law in Arizona provides the following:

- A. Evidence relating to a victim's reputation for chastity and opinion evidence relating to a victim's chastity are not admissible in any prosecution for any offense in this chapter. Evidence of specific instances of the victim's prior sexual conduct may be admitted only if a judge finds the evidence is relevant and is material to a fact in issue in the case and that the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence, and if the evidence is one of the following:
 1. Evidence of the victim's past sexual conduct with the defendant.
 2. Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease or trauma.
 3. Evidence that supports a claim that the victim has a motive in accusing the defendant of the crime.
 4. Evidence offered for the purpose of impeachment when the prosecutor puts the victim's prior sexual conduct in issue.
 5. Evidence of false allegations of sexual misconduct made by the victim against others.
- B. Evidence described in subsection A shall not be referred to in any statements to a jury or introduced at trial without a court order after a hearing on written motions is held to determine the admissibility of the evidence. If new information is discovered during the course of the trial that may make the evidence described in subsection A admissible, the court may hold a hearing to determine the admissibility of the evidence under subsection A. The standard for admissibility of evidence under subsection A is by clear and convincing evidence.

ARIZ. REV. STAT. § 13-1421 (LEXIS through 2021 legislation).

scant empirical knowledge about how certain rape myths that lie beyond the reach of rape shield laws might impact jurors' decision-making.⁴ In an attempt to learn more information about the latter phenomenon, the authors analyzed a sample of cases tried in the Superior Court of Maricopa County, Arizona. Specifically, we looked at the presence of rape myth-related case facts and focus on how case outcomes vary based on the relationship between the victim and defendant.

Part I presents a review of the literature on rape and rape myths. Specifically, we summarize how the crime of rape has been legally defined over time in order to provide context for how the law itself has contributed to certain rape myths. We then discuss the prevalence and consequences of sexual assaults; explain the most common rape myths; and review how those rape myths might impact trials for sexual assaults. We conclude Part I by summarizing how the current study adds to this literature on how rape myths affect sexual assault trials.

Part II explains the methods we used in the current research. We explain our study's design, procedures, and coding. And we briefly discuss the two statistical tests we used to analyze the data. We present our results in Part III and then discuss those results in Part IV. We conclude by summarizing our findings within the context of the limitations of the study, offering directions for future research, and suggesting the policy implications of our research.

I. LITERATURE REVIEW

A. Rape at Common Law

At common law, rape was defined as “the unlawful carnal knowledge of woman, by a man not her husband, without her effective consent.”⁵ This definition of the crime contains some terms of art that should be explained because they illustrate how the legal definition of rape was not only shaped by rape myths, but also how its elements perpetuated rape myths across the centuries.

⁴ Indeed, research suggests there is “overwhelming evidence that rape myths affect the way in which jurors evaluate evidence in rape cases.” Fiona Leverick, *What Do We Know about Rape Myths and Juror Decision Making?*, 24 EVID. & PROOF 255, 256 (2020). But most of this research has been conducted in experimental settings with mock-jurors, rather than examining actual case outcomes. *Id.* at 258–59; *see also* Dinos et al., *supra* note 2, at 36 (“Studies investigating jurors’ decision-making have relied on public attitudes using various methods such as mock trials”).

⁵ Henry F. Fradella & Chantal Fahmy, *Rape and Related Offenses*, in *SEX, SEXUALITY, LAW & (IN)JUSTICE* 138, 141 (Henry F. Fradella & Jennifer Sumner eds., 2016) (citing WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 210 (1769)).

First, the term *unlawful carnal knowledge* was operationalized as the “penetration by the male penis of the female vagina, no matter how slight.”⁶ Thus, only men could commit the common law crime of rape and only women could be the victims of the offense. Other types of sexual penetrations, such as sodomy, were punished under other laws.⁷ This narrow and heteronormative conceptualization of the types of sexual penetrations constituting rape contribute to common rape myths about the sex of both the victims and perpetrators of “real rapes.”⁸

Second, husbands were categorically excluded as offenders for incredibly sexist reasons that stemmed from antiquated notions of women as property. Sir Matthew Hale explained the marital exclusion to rape in his treatise *History of the Pleas of the Crown* by saying a “husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.”⁹ This common law exemption for rape liability perpetuates the rape myths that “real rapes” are not committed by spouses or acquaintances, but rather by strangers.¹⁰

Third, the term *without her effective consent* required a woman to prove that she resisted “to the utmost.”¹¹ This requirement—which inevitably caused women to be physically brutalized lest a man have a defense to the charge—stemmed from men’s suspicions of women’s claims of sexual victimization, as evidenced by Hale’s writing: “Rape is . . . an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent.”¹² Notably, the common law definition of rape differed markedly from other crimes. As legal scholar Susan Estrich explained:

The traditional way of defining a crime is by describing the prohibited act (*actus reus*) committed by the defendant and the

⁶ Izabelle Barraquiel Reyes, *The Epidemic of Injustice in Rape Law: Mandatory Sentencing as a Partial Remedy*, 12 UCLA WOMEN’S L.J. 355, 359 (2003); see also Fradella & Fahmy, *supra* note 5, at 142 (citing JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW (4th ed. 2006)).

⁷ Fradella & Fahmy, *supra* note 5, at 142; cf. Henry F. Fradella, *Legal, Moral, and Social Reasons for Decriminalizing Sodomy*, 18 J. CONTEMP. CRIM. JUST. 279, 292–93 (2002) (arguing that forcible sodomy should be punished as rape, while consensual acts of oral and anal sex should be legalized).

⁸ See *infra* at Part I.D.

⁹ Fradella & Fahmy, *supra* note 5, at 142 (quoting MATTHEW HALE, HISTORY OF THE PLEAS OF THE CROWN 628 (1778)).

¹⁰ See *infra* at Part I.D.

¹¹ Fradella & Fahmy, *supra* note 5, at 143.

¹² *Id.* (quoting HALE, *supra* note 9, at 635).

prohibited mental state (*mens rea*) with which he must have done it. We ask: What did the defendant do? What did he know or intend when he did it?

The definition of rape stands in striking contrast to this tradition because courts, in defining the crime, have focused almost incidentally on the defendant and almost entirely on the victim [T]raditionally at least, the rules associated with the proof of a rape charge . . . placed the victim as much on trial as the defendant. Such a reversal also occurs in the course of defining the elements of the crime. *Mens rea*, where it might matter, is all but eliminated; prohibited force tends to be defined according to the response of the victim; and nonconsent—the *sine qua non* of the offense—turns entirely on the victim’s response.¹³

The focus on victim response, including the requirement of utmost resistance, perpetuated the rape myths that “real rapes” involve significant violence, whereas those lacking high levels of violence are the fault of the fault of the victim, rather than the perpetrator.¹⁴

B. Rape under Contemporary Law

Although the specific definitions of rape vary by jurisdiction, most federal, state, and tribal statutes today mirror the FBI’s definition of the offense: “The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”¹⁵ This approach to the elements of rape is neutral with regard to the sex of both victims and perpetrators, as well as the presumed sexual orientation of the parties. And, as we will describe in more detail, its silence about marital status signals a departure from the common law marital rape exclusion. But the plain language of the attendant circumstance element of *without the consent of the victim* is misleading.

1. Marriage and Lack of Consent

Many modern rape laws have eliminated, either wholly or in part, the spousal exemption to rape in recognition of the sad reality that spousal

¹³ Susan Estrich, *Rape*, 95 YALE L.J. 1087, 1094 (1986).

¹⁴ See *infra* at Part I.D.

¹⁵ *An Updated Definition of Rape*, U.S. DEP’T OF JUST. ARCHIVES (Jan. 6, 2012), <https://www.justice.gov/archives/opa/blog/updated-definition-rape>; *Frequently Asked Questions about the Change in the UCR Definition of Rape*, FBI (Dec. 11, 2014), <https://ucr.fbi.gov/recent-program-updates/new-rape-definition-frequently-asked-questions>; see also Fradella & Fahmy, *supra* note 5, at 144–47.

rapes do occur. Accordingly, a husband who sexually assaults his wife can now be criminally prosecuted for rape in most U.S. jurisdictions.¹⁶ But the approaches to marital rape taken by U.S. states vary greatly, ranging from criminalizing “a narrower range of offenses if committed within marriage,” to subjecting marital rape “to less serious sanctions,” and/or creating “special procedural hurdles for marital rape prosecutions.”¹⁷ In sum, as one critic has put it, the “current state of the law represents a confusing mix of victory and defeat for the exemption’s contemporary feminist critics.”¹⁸ The continued differentiation of rape within the marital union and by others continues to perpetuate the rape myth that “real rape” occurs when the victim and perpetrator are strangers.¹⁹

2. Resistance and Lack of Consent

In contrast to the common law approach, no U.S. state requires resistance to the utmost today. However, proof of the victim’s lack of consent remains the key element in a rape prosecution. Some jurisdictions do not require any resistance at all.²⁰ Yet, in some of these states that purport to have abolished any resistance requirement, simply saying “no” may be insufficient to establish a lack of consent because other provisions in the criminal law of these state “minimize, contradict, or entirely defeat any non-consent language in their sexual assault or rape statutory schemes.”²¹ The Iowa criminal code, for example, states that “it shall not

¹⁶ See generally Michelle J. Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 54 HASTINGS L.J. 1465 (2002); Jessica Klarfeld, *A Striking Disconnect: Marital Rape Law’s Failure to Keep Up with Domestic Violence Law*, 48 AM. CRIM. L. REV. 1819 (2011).

¹⁷ Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 CALIF. L. REV. 1373, 1375 (2000).

¹⁸ *Id.*

¹⁹ See *infra* at Part I.D.

²⁰ Henry F. Fradella & Kegan Brown, *Withdrawal of Consent Post-Penetration: Redefining the Law of Rape*, 41 CRIM. L. BULL. 3, 7 (citing IOWA CODE ANN. § 709.5 (LEXIS through 2021 legislation); MINN. STAT. ANN. § 609.347(2) (LEXIS through 2021 legislation); MONT. CODE ANN. § 45-5-511(5) (LEXIS through June 30, 2021); N.J. STAT. ANN. § 2C:14-5(a) (LEXIS through New Jersey 219th Second Annual Sess.); OHIO REV. CODE ANN. § 2907.02(C) (LEXIS through September 30, 2021); R.I. GEN. LAWS § 11-37-12 (LEXIS through 2021 legislation); VT. STAT. ANN. tit. 13, § 3254(1) (LEXIS through September 30, 2021); VA. CODE ANN. § 18.2-67.6 (LEXIS through 2021).

²¹ John F. Decker & Peter G. Baroni, “No” Still Means “Yes”: The Failure of the “Non-consent” Reform Movement in American Rape and Sexual Assault Law, 101 J. CRIM. L. & CRIMINOLOGY 1081, 1090–91 (2011). Decker and Baroni offer an example from Virginia, noting that although statutory law technically eliminated the requirement of any victim resistance to establish rape liability, “lack of resistance may be considered as

be necessary to establish physical resistance by a person in order to establish that an act of sexual abuse was committed by force or against the will of the person.”²² But it goes on to say: “However, the circumstances surrounding the commission of the act may be considered in determining whether or not the act was done by force or against the will of the other,”²³ thereby inviting a battle over whether a sufficient amount of resistance was offered to establish nonconsent or, alternatively, whether objective circumstances—such as fear—should excuse a lack of resistance.²⁴

Iowa is not alone. Consider Decker and Baroni’s critique of Alabama law:

Alabama’s criminal code states: “Whether or not specifically stated, it is an element of every offense defined in this article, with [one] exception . . . that the sexual act was committed without consent of the victim.” Although the statute’s plain language appears to criminalize sex crimes so long as there is proof that the victim did not consent to the sexual act, the definition of “without consent of the victim” destroys the plain-language meaning. The Alabama code defines lack of consent as resulting from “(1) Forcible compulsion, or (2) Incapacity to consent, or (3) If the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor’s conduct.” By including this definition of non-consent, Alabama effectively negates its non-consent provision, requiring a showing of force or incapacity to prove the lack of consent in order to convict defendants of committing sex crimes.²⁵

evidence that the complainant consented to the sexual act.” *Id.* at 1115 n.230 (citing VA. CODE ANN. § 18.2-67.6 (2009)). They offer the example of *Farish v. Commonwealth*, which held that “although resistance was no longer required to prove rape, the woman’s lack of resistance strengthened the defendant’s contention that consensual sex occurred.” *Id.* (citing *Farish v. Commonwealth*, 346 S.E.2d 736, 739 (Va. Ct. App. 1986)).

²² IOWA CODE ANN. § 709.5 (LEXIS through 2021 legislation).

²³ *Id.*

²⁴ *See, e.g.*, *State v. Bauer*, 324 N.W.2d 320, 322 (Iowa 1982) (upholding a conviction for rape in a case where the defendant did not use or threatened the use of force because “the jury could—and obviously did—believe complainant when she testified to fear which rendered her incapable of protest or resistance”).

²⁵ Decker & Baroni, *supra* note 21, at 1091 (internal citations omitted). Montana’s law is similarly contradictory. Section 45-5-501(2)(a) of the Montana Code requires, *inter alia*, the “infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender” for criminal liability for rape, classified as aggravated sexual intercourse without consent under § 45-5-508. The element of force or threatened use of force is not required for a lesser degree of rape liability under Montana Code § 45-5-503. With regard to the latter crime, Montana provides that

By contrast, other states continue to require that the victim undertook “some resistance”—defined as whatever resistance is appropriate under the circumstances.²⁶ In such jurisdictions, rape occurs when a sexual act is accomplished by force, threats of force or kidnapping, fraud, or because the victim lacked the capacity to grant consent.²⁷

3. *Incapacitation and Lack of Consent*

In most states, a person lacks the capacity to grant consent to sexual activity on account of youthful age, unconsciousness, intoxication, or cognitive deficit. Consider the language in Arizona’s rape statute:

The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. For the purposes of this subdivision, “mental defect” means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another.²⁸

Not all U.S. jurisdictions are in accord with this approach, however. Even in 2021, the notion that victims are responsible for

“[r]esistance by the victim is not required to show lack of consent.” MONT. CODE ANN. § 45-5-511(5) (LEXIS through June 30, 2021). But that same provision goes on to qualify that statement in a manner which undercuts the notion that words alone can establish a lack of consent by saying “Force, fear, or threat is sufficient alone to show lack of consent.” *Id.* By conflating a showing of force, fear, or threats with a lack of consent, Montana more than opens the door for defendants to argue that they believed their victims consented to sex acts because they offered no resistance. *See, e.g.*, *State v. Haser*, 20 P.3d 100, 108 (Mont. 2001) (reversing defendant’s conviction for sexual assault because he did not use force or threaten his victims when digitally penetrating them during photo shoots, reasoning that his actions did not cause “a species of pain, illness, or impairment . . . [that compelled his victims] to submit to his repeated acts of digital penetration”); *State v. Stevens*, 53 P.3d 356, 364 (Mont. 2002) (reversing convictions of a massage therapist who had sexual intercourse with his clients during sessions on the grounds that (1) the victims were not in a “sleeplike state” which rendered them “physically helpless,” and (2) the defendant did not use or threaten the use of force such that the victims were “too frozen, frightened, and physically helpless to resist”).

²⁶ *E.g.*, DEL. CODE ANN. tit. 11, § 761(k)(1) (LEXIS through 83 Del. Laws, c.257); IDAHO CODE § 18-6101(4)–(6) (LEXIS through 2021 legislation); LA. REV. STAT. ANN. § 14.42.1(A)(1) (LEXIS through 2021 Act 142); WASH. REV. CODE § 9A.44.010(6) (LEXIS through 2021 legislation); *see also* Decker & Baroni, *supra* note 21, at 1103–11 (exploring the ways select states require proof of some resistance).

²⁷ Fradella & Fahmy, *supra* note 5, at 146–47.

²⁸ *See, e.g.*, ARIZ. REV. STAT. § 13-1401(A)(7)(b) (LEXIS through 2021 legislation). For a critique of some of this common statutory language, see Jasmine E. Harris, *Sexual Consent and Disability*, 93 N.Y.U. L. REV. 480 (2018).

someone sexually assaulting them is disgracefully alive and well in many states—especially with regard to the voluntary consumption of alcohol or drugs. In fact, Arizona is in the minority.²⁹ Minnesota’s statutory provision serves as an example: “‘Mentally incapacitated’ means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, *administered to that person without the person’s agreement*, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.”³⁰ Due to this provision excluding voluntary intoxication as the basis of vitiating the ability to grant consent to sex, the Minnesota Supreme Court ruled that a twenty-four-year-old man could not be guilty of raping a twenty-year-old woman because she had consumed five shots of vodka and a prescription pill before blacking out and then awakening to find she was being sexually assaulted.³¹ Such an outrageous outcome demonstrates how the law continues to perpetuate select rape myths that blame the victim rather than the perpetrator.

C. The Prevalence and Consequences of Sexual Assault

According to the Bureau of Justice Statistics, the rate of rape and sexual assault is 1.7 per 1,000 people.³² This estimate is thought to be conservative, with only an estimated 33.9% of rape or sexual assault cases having been reported to police. Based on data collected in 2015, 21.3% of women—approximately one in five—reported a completed or attempted rape at some point in their lifetime, and 2.6% of males were estimated to have experienced rape at some point in their lifetime.³³ Disproportionately high rates of sexual assaults occur on college campuses and in the military—contexts with “internal procedures that have proven inadequate to deal with them.”³⁴

The high prevalence of sexual assault is especially concerning

²⁹ See Michal Buchhandler-Raphael, *The Conundrum of Voluntary Intoxication and Sex*, 82 BROOK. L. REV. 1031, 1051 (2017) (reporting that as of 2016, forty states did not include the voluntary consumption of alcohol or drugs as a barrier to consent).

³⁰ MINN. STAT. § 609.341, subd. 7 (2020) (emphasis added).

³¹ *State v. Khalil*, 956 N.W.2d 627, 629 (Minn. 2014) (describing the factual circumstances as “an experience no person should ever have to endure”).

³² RACHEL E. MORGAN & JENNIFER L. TRUMAN, BUREAU OF JUST. STATISTICIANS, U.S. DEP’T OF JUST., CRIMINAL VICTIMIZATION, 2019, at 3 (2020), <https://www.bjs.gov/content/pub/pdf/cv19.pdf>.

³³ SHARON G. SMITH ET AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF—UPDATED RELEASE 2–3 (2018), <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>.

³⁴ Deborah L. Rhode, *Rape on Campus and in the Military: An Agenda for Reform*, 23 UCLA WOMEN’S L.J. 1, 2 (2016).

given its numerous and long-standing negative effects on victims. Among these is the possibility of developing post-traumatic stress disorder (PTSD). PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event, and includes symptoms such as: reliving the event through flashbacks or nightmares, depression, anxiety, fear, anger, detachment, withdrawal, stress, and impaired work performance.³⁵ Sexual assault and molestation are among the most frequent causes of PTSD in women and men.³⁶ Between 19% and 50% of women who have been sexually assaulted exhibit PTSD symptoms.³⁷ It is not surprising then that sexual assault victims also commonly report major depressive episodes (43%)³⁸ and acute stress disorders (24%).³⁹ Some may also develop alcohol and drug abuse disorders.⁴⁰

D. Rape Myths

The misconceptions people hold about rape and rape victims contribute to sexual assault case attrition. Rape myths are stereotypical beliefs and perceptions about rape.⁴¹ As previously suggested, some rape myths are a function of the common law definition of the crime. For instance, many people have preconceived notions about what a “real” sexual assault looks like—namely that it occurs between a male assailant

³⁵ AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 271–72 (5th ed. 2013); John E. Helzer, Lee N. Robins & Larry McEvoy, *Post-Traumatic Stress Disorder in the General Population*, 317 NEW ENG. J. MED. 1630, 1631–34 (1987).

³⁶ Ronald C. Kessler, *Posttraumatic Stress Disorder in the National Comorbidity Survey*, 52 ARCHIVES OF GEN. PSYCHIATRY 1048, 1053 (1995).

³⁷ Maria Bragesjö1, Karin Larsson, Lisa Nordlund, Therese Anderbro, Erik Andersson & Anna Möller, *Early Psychological Intervention After Rape: A Feasibility Study*, 11 FRONTIERS IN PSYCH. (2020), <https://doi.org/10.3389/fpsyg.2020.01595>; Anna Tiihonen Möller, Torbjörn Bäckström, Hans Peter Söndergaard & Lotti Helström, *Identifying Risk Factors for PTSD in Women Seeking Medical Help after Rape*, 9 PLOS ONE (2014), <https://doi.org/10.1371/journal.pone.0111136>.

³⁸ Bragesjö1 et al., *supra* note 37, at 2; *see also* Heidi M. Zinzow, Heidi S. Resnick, Jenna L. McCauley, Ananda B. Amstadter, Kenneth J. Ruggiero & Dean G. Kilpatrick, *Prevalence and Risk of Psychiatric Disorders as a Function of Variant Rape Histories: Results from a National Survey of Women*, 47 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 893, 897 (2012).

³⁹ Ask Elklit & Ole Brink, *Acute Stress Disorder in Physical Assault Victims Visiting a Danish Emergency Ward*, 18 VIOLENCE & VICTIMS 461, 465 (2003).

⁴⁰ *See* Dean G. Kilpatrick, Ron Acierno, Heidi S. Resnick, Benjamin E. Saunders & Connie L. Best, *A 2-Year Longitudinal Analysis of the Relationships between Violent Assault and Substance Use in Women*, 65 J. CONSULTING & CLINICAL PSYCH. 834, 841–45 (1997).

⁴¹ Burt, *supra* note 1, at 217.

and female victim who have no prior relationship, and that there should be signs of severe physical violence. However, this stereotypical scenario is not necessarily the case; in fact, criminologists estimate that about 80% of female sexual assault victims knew their assailant beforehand, and about 9% of victims are males.⁴² When individuals accept these prejudices and preconceived notions, it forms the basis for rape myth acceptance (RMA)—acceptance of rape myth attitudes and beliefs.⁴³ Common rape myths can be seen, and are arguably glorified, in pop culture songs (e.g., the holiday song, “Baby It’s Cold Outside”; Robin Thicke’s “Blurred Lines”),⁴⁴ movies (e.g., Ridley Scott’s *Blade Runner*; John Hughes’ *Sixteen Candles*),⁴⁵ and television (e.g., HBO’s *Game of Thrones*; Netflix’s *Orange is the New Black*).⁴⁶ Glorified depictions of

⁴² MICHAEL PLANTY, LYNN LANGTON, CHRISTOPHER KREBS, MARCUS BERZOFSKY & HOPE SMILEY-MCDONALD, BUREAU OF JUST. STAT., FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994-2010 3–4 (2013), <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>.

⁴³ Burt, *supra* note 1, at 217.

⁴⁴ FRANK LOESSER, BABY IT’S COLD OUTSIDE (Susan Publications/Edwin H. Morris & Co. 1949); PHARRELL WILLIAMS, ROBIN THICKE, CLIFFORD HARRIS JR. & MARVIN GAYE, BLURRED LINES (Star Track/Interscope 2013). For a discussion of how the lyrics in the former song contribute to rape myth acceptance concerning the nature of consent, see Emily Corckett, *Why “Baby, It’s Cold Outside” Became an Annual Controversy about Date Rape and Consent*, VOX (Dec. 19, 2016, 1:40 PM), <https://www.vox.com/identities/2016/12/19/13885552/baby-its-cold-outside-feminist-date-rape-romantic>. For a similar critique of latter song, see Dominique Mosbergen, *Robin Thicke’s ‘Blurred Lines’ Dubbed ‘Rapey,’ Hit Song Under Fire From Critics*, HUFF. POST (Dec. 6, 2017), https://www.huffpost.com/entry/robin-thicke-blurred-lines-rapey_n_3461215. For additional examples in music, see Fina Valenzuela, *5 Songs that “Get” Consent, & 5 That Don’t*, SEATTLE AGAINST SLAVERY (May 18, 2020), <https://www.seattleagainstsavery.org/2020/05/18/5-songs-that-get-consent-5-that-dont/>.

⁴⁵ BLADE RUNNER (Warner Bros. 1982); SIXTEEN CANDLES (Universal 1984). For a description of the controversial scene that perpetuates and arguably rewards predatory male behavior in *Blade Runner*, see Julie Beck, *When Pop Culture Sells Dangerous Myths About Romance*, THE ATLANTIC (Jan. 17, 2018), <https://www.theatlantic.com/entertainment/archive/2018/01/when-pop-culture-sells-dangerous-myths-about-romance/549749/>. For a similar critique of *Sixteen Candles*, see Constance Grady, *The Rape Culture of the 1980s, Explained by “Sixteen Candles,”* VOX (Sept. 27, 2018, 5:20 PM), <https://www.vox.com/culture/2018/9/27/17906644/sixteen-candles-rape-culture-1980s-brett-kavanaugh>.

⁴⁶ GAME OF THRONES (HBO television broadcast 2011–2019); ORANGE IS THE NEW BLACK (Netflix television broadcast 2013–2019). For a critique of numerous scenes of sexual violence in *Game of Thrones*, see Katy Fulfer, *Rape Culture and HBO’s Game of Thrones*, KATY FULFER (Feb. 20, 2017), <https://www.katyfulfer.com/rape-culture-and-game-of-thrones/>. For similar analysis of *Orange is the New Black*, see Amber Lopez, *Consent Behind Bars: Changing Depictions of Sexual Assault in Orange is the New Black*, in CAGED WOMEN: INCARCERATION, REPRESENTATION & MEDIA (Shirley A. Jackson & Laurie L. Gordy eds., 2018). For an extensive exploration of television

rape or those that romanticize sexual assault are conducive to creating society members who may dismiss rape, view it as a less serious offense, and look for reasons to blame the victim rather than assailant (consistent with the common law history of the offense).⁴⁷

Researchers who have studied rape myths generally identify four main themes of rape myth endorsement:

- 1) beliefs that blame the victim (e.g., she was wearing provocative clothes; she acted seductively and/or carelessly; she is to blame for drinking or taking drugs; her delay in disclosure calls her credibility into doubt);
- 2) beliefs that excuse the assailant (e.g., he just drank too much; he was provoked to a point of no return; rape is a crime of passion);
- 3) beliefs that create doubt about the veracity of allegations (e.g., she made it up; she didn't fight back, so it wasn't really rape; she consented to sex in the past, so she must have consented to it again), and
- 4) beliefs that suggest rape is exclusive to specific groups of society (e.g., it only happens to women; rape involves violence perpetrated by strangers; women cannot be raped by their husbands; prostitutes cannot be raped).⁴⁸

This framework echoes the development of scales by researchers who measure rape myth acceptance. Indeed, the four main subscales in RMA instruments include: (1) she asked for it, (2) he didn't mean to do it, (3) it wasn't really rape, and (4) she lied.⁴⁹

Rape myths have long been recognized, even if not always by that moniker. Some studies from the 1970s show patterns of rape myth endorsement among police, citizens, counselors, legal workers, and crisis center workers, which suggests this has been a recognized issue for

depictions of rape through the 1990s, see LISA M. CUKLANZ, *RAPE ON PRIME TIME: TELEVISION, MASCULINITY, AND SEXUAL VIOLENCE* (1999).

⁴⁷ See generally David P. Bryden & Sonja Lengnick, *Rape in the Criminal Justice System*, 87 J. CRIM. L. & CRIMINOLOGY 1194 (1997).

⁴⁸ Gerd Bohner, Friederike Eyssel, Afroditi Pina, Frank Siebler & G. Tendayi Viki, *Rape Myth Acceptance: Cognitive, Affective and Behavioural Effects of Beliefs That Blame the Victim and Exonerate the Perpetrator*, in *RAPE: CHALLENGING CONTEMPORARY THINKING* 17, 19 (Miranda Horvath & Jennifer Brown eds., 2013); Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths: In Review*, 18 PSYCH. OF WOMEN Q. 133, 136–37 (1994). Such contemporary work on rape myths grew out of the foundation positing that some sexual assaults were considered more “real” than others. See SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* (1975); SUSAN ESTRICH, *REAL RAPE: HOW THE LEGAL SYSTEM VICTIMISES WOMEN WHO SAY NO* (1976).

⁴⁹ Sarah McMahon & G. Lawrence Farmer, *An Updated Measure for Assessing Subtle Rape Myths*, 35 SOC. WORK RSCH. 71, 72 (2011).

decades.⁵⁰ Although there has been positive change, current work on the issue highlights the persisting role of rape myths.

The presence of rape myths in the justice system can have detrimental effects on victims. In addition to the immediate and direct consequences victims have from the original victimization, they may experience secondary victimization. *Secondary victimization* refers to additional distress and trauma victims experience due to post-crime events such as interactions with medical professionals, police, or the justice system.⁵¹ Police or health services personnel usage of language that endorses rape myths during interviews with victims especially contributes to secondary victimization.⁵² But such attitudes can also affect the way they handle the investigation of the case. Police officers who subscribe to rape myths, for example, may be less likely to follow all the investigative procedural steps⁵³ which, in turn can negatively impact case outcomes.⁵⁴

E. Sexual Assault Cases in Court

Beyond the low rates of reporting sexual assault, survivors face additional challenges when they choose to report. Consider that of the 124,817 rapes and attempted rapes reported to police throughout the United States in 2019, only 32.9 % and 37.1%, respectively, were cleared by arrest.⁵⁵ Researchers who conducted an in-depth, mixed-method study

⁵⁰ Hubert S. Feild, *Attitudes Toward Rape: A Comparative Analysis of Police, Rapists, Crisis Counselors, and Citizens*, 36 J. PERSONALITY & SOC. PSYCH. 156, 171–77 (1978); Julia R. Schwendinger & Herman Schwendinger, *Rape Myths in Legal, Theoretical, and Everyday Practice*, 1 CRIME & SOC. JUST. 18, 18–23 (1974).

⁵¹ Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 SOC. JUST. RSCH. 313, 314 (2002); see generally Jo-Anne Wemmers, *Victims' Experiences in the Criminal Justice System and Their Recovery from Crime*, 19 INT'L REV. VICTIMOLOGY 221 (2013) (reporting that victims' perceptions of unfair procedures negatively impacted their recovery).

⁵² Anna C. Baldry, *Rape Victim's Risk of Secondary Victimization by Police Officers*, 25 ISSUES IN CRIMINOLOGICAL & LEGAL PSYCH. 65, 67 (1996); Rebecca Campbell & Sheela Raja, *Secondary Victimization of Rape Victims: Insights From Mental Health Professionals Who Treat Survivors of Violence*, 14 VIOLENCE & VICTIMS 261 (1999); Rebecca Campbell & Sheela Raja, *The Sexual Assault and Secondary Victimization of Female Veterans: Help-Seeking Experiences with Military and Civilian Social Systems*, 29 PSYCH. OF WOMEN Q. 97 (2005).

⁵³ Jessica Shaw, Rebecca Campbell & Debi Cain, *The View from Inside the System: How Police Explain Their Response to Sexual Assault*, 58 AM. J. OF CMTY. PSYCH. 446, 456 (2016).

⁵⁴ Debra Patterson, *The Linkage Between Secondary Victimization by Law Enforcement and Rape Case Outcomes*, 26 J. INTERPERSONAL VIOLENCE 328, 340–41 (2010).

⁵⁵ Table 27: *Crime in the United States, Percent of Offenses Cleared by Arrest or*

of sexual assault cases in six U.S. jurisdictions reported that the overall arrest rate for sexual assaults was actually closer to only 19%.⁵⁶ Put differently, between two-thirds and four-fifths of sexual assaults reported to law enforcement do not result in arrest.⁵⁷ This stands in sharp contrast to other violent crime as evidenced by the fact that 61.4% of nonnegligent homicides and 52.3% of aggravated assaults were cleared by arrests in 2019.⁵⁸ Moreover, of the sexual assault cases that are cleared by an arrest, prosecutors decline to move forward with between 20.8% and 25.5% of cases.⁵⁹

These data suggest that sexual assault cases do not move forward the same ways in which other crimes do, perhaps because victims are especially susceptible to a type of scrutiny by police and prosecutors that victims of other types of crime do not face. Of course, the nature of these crimes sometimes makes it difficult for prosecutors to secure convictions, which, in turn, contributes to declinations to prosecute.⁶⁰ For instance, cases may lack physical evidence, and some may involve victims who are reluctant or refuse to aid in the prosecution due to embarrassment or fear of secondary victimization.⁶¹

Exceptional Means: Additional Information about Select Offenses by Population Group, 2019, FED. BUREAU OF INVESTIGATION: UNIF. CRIME REPORTING (2020) [hereinafter FBI, *Arrest Clearances, 2019*], <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-27>.

⁵⁶ Melissa S. Morabito, Linda M. Williams & April Pattavina, *Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Case Attrition in the U.S.*, at iii, 117 (NCJRS Rep. No. 252689, 2019), <https://www.ojp.gov/pdffiles1/nij/grants/252689.pdf>.

⁵⁷ Compare FBI, *Arrest Clearances, 2019*, *supra* note 55, with Morabito et al., *supra* note 56, at 117.

⁵⁸ Table 25: *Crime in the United States, Percent of Offenses Cleared by Arrest or Exceptional Means by Population Group, 2019*, FED. BUREAU OF INVESTIGATION: UNIF. CRIME REPORTING (2020), <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-25>.

⁵⁹ Morabito et al., *supra* note 56, at iii, 138 (reporting prosecutorial declination rates of between 20.8% to 22.8%); *National Incident-Based Reporting System: Using NIBRS Data to Understand Victimization* (NCJ 248480), OFF. FOR VICTIMS OF CRIME (2014), <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/NIBRS/caseclearances.html> (reporting prosecutorial declination rate of 25.5%).

⁶⁰ See Morabito et al., *supra* note 56, at 44 (noting that declinations are particularly common in “‘he said/she said’ cases where the victim alleged a sexual assault occurred and the suspect claimed that the victim consented”); see also Cassia C. Spohn & Katherine Tellis, *The Criminal Justice System’s Response to Sexual Violence*, 18 VIOLENCE AGAINST WOMEN 169, 177 (2012) (reporting a similar pattern of declinations in “‘he said/she said’ cases”).

⁶¹ See, e.g., Mary C. Anders & F. Scott Christopher, *A Socioecological Model of Rape Survivors’ Decisions to Aid in Case Prosecution*, 35 PSYCH. OF WOMEN Q. 92, 102

As might be expected, victims whose cases were not prosecuted report higher dissatisfaction than those whose cases went to trial.⁶² And although those who went to trial had higher levels of satisfaction, some still reported harmful experiences with the criminal legal system—a finding that is likely a function of the fact that the criminal legal system is not especially protective of or sensitive to the needs of victims.⁶³

In one study that examined rape victim experiences with the justice system, testifying in court was reported not only among victims' top five fears, but also as the main cause of anxiety one year after the offense.⁶⁴ This is not surprising given the nature of cross-examination and evidence used against victims.⁶⁵

Rape shield laws, such as the one contained in Federal Rule of Evidence 412, are in place to limit evidence pertaining to a victim's sexual history and predispositions in order to reduce the prejudicial impact of such information on jurors.⁶⁶ These rules generally exclude evidence

(2011); Nina Beck Hansen et al., *Are Rape Cases Closed Because of Rape Stereotypes? Results from a Danish Police District*, 71 NORDIC PSYCH. 51 (2018); Morabito et al., *supra* note 56, at iv, 3, 107.

⁶² Rebecca Campbell, Sharon M. Wasco, Courtney E. Ahrens, Tracy Sefl & Holly E. Barnes, *Preventing the "Second Rape,"* 16 J. INTERPERSONAL VIOLENCE 1239, 1250 (2001); Debra Patterson, *The Linkage Between Secondary Victimization by Law Enforcement and Rape Case Outcomes*, 26 J. INTERPERSONAL VIOLENCE 328, 341 (2010).

⁶³ Patterson, *supra* note 62, at 341. For an in-depth discussion of how victims perceive the criminal legal system and its processes, see DAVID W. NEUBAUER & HENRY F. FRADELLA, *AMERICA'S COURTS AND THE CRIMINAL JUSTICE SYSTEM* 263–77 (13th ed. 2019).

⁶⁴ Karen S. Calhoun, Beverly M. Atkeson & Patricia A. Resick, *A Longitudinal Examination of Fear Reactions in Victims of Rape*, 29 J. COUNSELING PSYCH. 655, 659 (1982).

⁶⁵ Orth, *supra* note 51, at 316.

⁶⁶ Frank Tuerkheimer, *A Reassessment and Redefinition of Rape Shield Laws*, 50 OHIO ST. L.J. 1245, 1246–47 (1989). FED. R. EVID. 412 provides:

- (a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:
 - (1) evidence offered to prove that a victim engaged in other sexual behavior; or
 - (2) evidence offered to prove a victim's sexual predisposition.
- (b) Exceptions.
 - (1) *Criminal Cases.* The court may admit the following evidence in a criminal case:
 - (A) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;
 - (B) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by

“relating to the alleged victim’s mode of dress, speech, or life-style.”⁶⁷ However, studies suggest that they may not be as effective at keeping evidence out as they were intended to be, perhaps because some justice system actors view these rules of evidence with skepticism.⁶⁸ In particular cases, there may be constitutional reasons to allow such evidence to be admitted, such as when evidence is relevant to a question of consent.⁶⁹ Due to such exceptions, as well as possible gatekeeping failures, statements perpetuating rape myths may be prevalent.⁷⁰ This is especially

-
- the prosecutor; and
 - (C) evidence whose exclusion would violate the defendant’s constitutional rights.
- (2) *Civil Cases*. In a civil case, the court may admit evidence offered to prove a victim’s sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim’s reputation only if the victim has placed it in controversy.
- (c) Procedure to Determine Admissibility.
- (1) *Motion*. If a party intends to offer evidence under Rule 412(b), the party must:
- (A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;
 - (B) do so at least 14 days before trial unless the court, for good cause, sets a different time;
 - (C) serve the motion on all parties; and
 - (D) notify the victim or, when appropriate, the victim’s guardian or representative.
- (2) *Hearing*. Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.
- (d) Definition of “Victim.” In this rule, “victim” includes an alleged victim.

For discussions about rape shield laws, see Rosanna Cavallaro, *Rape Shield Evidence and the Hierarchy of Impeachment*, 56 AM. CRIM. L. REV. 295 (2019); Bennett Capers, *Rape, Truth, and Hearsay*, 40 HARV. J. L. & GENDER 183 (2017); Harriett R. Galvin, *Shielding Rape Victims in the State and Federal Courts: A Proposal for the Second Decade*, 70 MINN. L. REV. 763 (1986); Uriel Hinberg, *Rape Shield, Not Rape Force-Field: A Textualist Argument for Limiting the Scope of the Federal Rape Shield Law*, 57 AM. CRIM. L. REV. ONLINE 54 (2020).

⁶⁷ FED. R. EVID. 412(b); see also Tuerkheimer, *supra* note 66, at 1245.

⁶⁸ Cassia Spohn & Julie Horney, “The Law’s the Law, But Fair Is Fair:” *Rape Shield Laws and Officials’ Assessments of Sexual History Evidence*, 29 CRIMINOLOGY 137, 163 (1991).

⁶⁹ *Olden v. Kentucky*, 488 U.S. 227 (1988); see also Shawn J. Wallach, *Rape Shield Laws: Protecting the Victim at the Expense of the Defendant’s Constitutional Right*, 13 N.Y.L. SCH. J. HUM. RTS. 485, 486 (1996).

⁷⁰ See Olivia Smith & Tina Skinner, *How Rape Myths Are Used and Challenged in Rape*

concerning in the age of social media because snippets from victims' online presence can be used to cast doubt on their credibility in ways that rape shield laws were aimed at curbing.⁷¹ Whatever the efficacy of rape shield laws may be with curbing juror exposure to rape myths that are intertwined with certain types of evidence, it is clear that these laws do not exclude any evidence about our primary variable of interest, namely whether the victim and defendant knew each other prior to the incident.

A large body of research demonstrates the negative effects that RMA can have on a criminal trial. Researchers have established a significant correlation between RMA and guilt attribution.⁷² For instance, Hammond, Berry and Rodriguez found that participants who endorsed rape myths indicated a lower perception of guilt and were less likely to find the defendant guilty than people who did not endorse rape myths.⁷³ Frese, Moya and Megías reported that people with high levels of RMA “attribute more responsibility to the victim, estimate victim trauma as less severe, and would be less likely to recommend the victim to report the rape to the police than people with low RMA.”⁷⁴ They also found that

and Sexual Assault Trials, 26 SOC. & LEGAL STUD. 441, 453 (2017) (reporting that although prosecutors sometimes attempt to prevent juries from hearing rape myths, these stereotypes are nonetheless routinely used during trials).

⁷¹ Kim Loewen, *Rejecting the Purity Myth: Reforming Rape Shield Laws in the Age of Social Media*, 22 UCLA WOMEN'S L.J. 151, 153 (2015).

⁷² See, e.g., Dinos et al., *supra* note 2, at 45 (reporting that eight of nine studies included in a systematic review “fully or partially . . . supported the hypothesis that rape myths affect juror decision making”); Jacqueline M. Gray, *Rape Myth Beliefs and Prejudiced Decision Guidance: Effects on Decisions of Guilt in a Case of Date Rape*, 11 LEGAL & CRIMINOLOGICAL PSYCH. 75, 78 (2006) (reporting higher levels of RMA were associated with higher levels of not-guilty verdicts); Philipp Süssenbach, Friederike Eyssel, Jonas Rees & Gerd Bohner, *Looking for Blame: Rape Myth Acceptance and Attention to Victim and Perpetrator*, 32 J. INTERPERSONAL VIOLENCE 2323, 2323 (2017) (reporting that higher levels of RMA predicted “stronger anti-victim and pro-defendant judgments”). But see Cheryl Thomas, *The 21st Century Jury: Contempt, Bias and the Impact of Jury Service*, 11 CRIM. L. REV. 987, 1001–02 (2020) (reporting that only a small number of actual jurors—averaging only one person on a jury of twelve—in a sample of 65 cases in England and Wales exhibited acceptance of rape myths).

⁷³ Elizabeth M. Hammond, Melissa A. Berry & Dario N. Rodriguez, *The Influence of Rape Myth Acceptance, Sexual Attitudes, and Belief in a Just World on Attributions of Responsibility in a Date Rape Scenario*, 16 LEGAL & CRIMINOLOGICAL PSYCH. 242, 243 (2011).

⁷⁴ Bettina Frese, Miguel Moya & Jesús L. Megías, *Social Perceptions of Rape: How Rape Myth Acceptance Modulates the Influence of Situational Factors*, 19 J. INTERPERSONAL VIOLENCE 143, 154 (2004). The researchers concluded that RMA interacts with situational factors of sexual assaults to influence verdicts such that “the less stereotypic the rape situation was, the greater was the influence of attitudes toward rape on attributions.” *Id.* at 143.

victim-blaming was significantly higher in acquaintance rape situations than in marital or stranger rape cases.⁷⁵ The findings from much of this experimental research are externally validated by qualitative reports of participant-observers in actual cases. Consider the account of a juror in a sexual assault/robbery case who published her experience; it illuminates the discussion of rape myths that can happen during the deliberation phase.⁷⁶ She reported that jurors seemed to express agreement with several points the defense made regarding the use of alcohol making the alleged victim less credible and that she was covering up consensual sex. This observation was based on comments that were made during deliberation such as: “She claimed rape so her husband wouldn’t get mad,” and “She was drunk, how could she recognize who it was.”⁷⁷ Such arguments during deliberations that embody rape myths likely affect case outcomes.⁷⁸

The degree to which a sexual assault fits the “stereotypical” rape also influences blame attribution and verdicts, although these stereotypes may impact decision-makers differently depending on their roles. For example, criminologists Cassia Spohn and David Holleran examined a range of sexual assault cases from Kansas City and Philadelphia in the mid-1990s that were referred for prosecution.⁷⁹ Specifically, they looked at the relationship between victims and putative defendants (i.e., strangers, acquaintances, and intimate partners) and whether that had any impact on prosecutorial decisions to move forward with criminal charges.⁸⁰ Consistent with victim-blaming rape myth themes, they found that “prosecutors were less likely to file charges if there were questions about the victim’s character or behavior at the time of the incident.”⁸¹ Contrary to a different rape myth, however, they found that a prior relationship between the victim and a suspect did not have a significant effect on prosecutors’ charging decisions.⁸² The researchers were

⁷⁵ *Id.* at 155.

⁷⁶ Judy Shepherd, *Reflections on a Rape Trial: The Role of Rape Myths and Jury Selection in the Outcome of a Trial*, 17 *AFFILIA* 69, 83–84 (2002).

⁷⁷ *Id.*

⁷⁸ Leverick, *supra* note 4, at 263–70.

⁷⁹ Cassia Spohn & David Holleran, *Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances, and Intimate Partners*, 18 *JUST. Q.* 651, 654 (2001).

⁸⁰ *Id.* at 666–67.

⁸¹ *Id.* at 651.

⁸² *Id.* at 676; *see also* Rodney F. Kingsnorth, Randall C. Macintosh & Jennifer Wentworth, *Sexual Assault: The Role of Prior Relationship and Victim Characteristics in Case Processing*, 16 *JUST. Q.* 275, 287 (1999) (presenting similar findings about

surprised by this finding:

We anticipated that prosecutors would be most likely to file charges in cases involving strangers, and least likely to do so in cases involving intimate partners. Our finding that the likelihood of charging did not vary by relationship type suggests that prosecutors in these two jurisdictions do not automatically classify cases involving nonstrangers as “junk or garbage cases.”⁸³

In contrast to Spohn and Holleran’s research on prosecutors making charging decisions, ample research suggests that *jurors* are far more likely to convict in stranger rape cases than in acquaintance rape cases.⁸⁴ In the latter type of case, jurors appear to place more consideration on victim-blaming attributions when a rape does not fit stereotypical characteristics, such as when a victim knows the assailant.⁸⁵

Despite small sample sizes, studies that use naturalistic data from actual court proceedings provide important insights into how rape myths are used by key courtroom actors. Such studies, however, are relatively rare compared to those using simulation studies. The latter offer the benefits attendant to experimental designs without the constraints attendant to public access to real court information—especially with regard to jury deliberations. But experiments may lack ecological validity. The current study avoids that pitfall using actual court cases. In doing so, the study adds to the limited body of literature on rape myths in

prosecutors’ decisions to charge).

⁸³ Spohn & Holleran, *supra* note 79, at 677.

⁸⁴ E.g., Genevieve F. Waterhouse, Ali Reynolds & Vincent Egan, *Myths and Legends: The Reality of Rape Offenses Reported to a UK Police Force*, 8 EUR. J. PSYCH. APPLIED TO LEGAL CONTEXT 1, 4 (2016) (reporting a 72.7% conviction rate in case involving strangers compared to a 35.7% conviction rate in cases in which the victim and defendant were acquainted with each other).

⁸⁵ Frese et al., *supra* note 74, at 151–52; see also Hammond et al., *supra* note 73, at 242 (reporting that higher levels of RMA is correlated with mock-jurors focusing more on victim-blaming case attributions than those concerning perpetrators’ responsibility); Barbara Krahé, Jennifer Temkin, Steffen Bieneck & Anja Berger, *Prospective Lawyers’ Rape Stereotypes and Schematic Decision Making about Rape Cases*, 14 PSYCH., CRIME & L. 461, 461 (2008) (reporting that law students in Germany assessed defendant liability “lower when there was a prior relationship between the parties” and victim blaming was higher when respondents held higher RMA attitudes, including those relating to a prior relationship between the parties); 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, 853 (2010) (finding lower propensity of mock-jurors to convict when they held higher levels of RMA, especially with regard to victims’ voluntary consumption of alcohol or drugs).

court by examining whether there was a relationship between the victim and defendant.

F. The Current Study

This study reports the results of an analysis of adult-victim sexual assault cases that were adjudicated in a felony trial court in one of the nation's largest urban counties.⁸⁶ Specifically, we examined the relationship between the victim and defendant and case verdicts. Building on previous research, we hypothesized that stranger sexual assault cases would result in more guilty verdicts than non-stranger assaults.

II. METHODS

A. Design and Procedure

This study utilizes redacted files provided to the researchers by personnel in the Maricopa County Superior Court system. Case files provided some of the basic facts of the cases, as well as limited demographic information about the alleged victim and defendant.

With assistance from the sex crimes division of the Maricopa's County Attorney Office (MCAO), we collected data from thirty-five sexual assault cases.⁸⁷ These cases account for nearly all of the sexual assault cases involving adult victims and defendants eighteen years of age or older that were filed between 2011 and 2019 and that attorneys in the MCAO took to trial during the five-year period between 2015 and 2019, as opposed to the hundreds, if not thousands, that were resolved via negotiated guilty pleas.⁸⁸ The MCAO provided us with case numbers and

⁸⁶ Maricopa County is Arizona's largest county and the fourth-largest county in the United States in terms of population. *Maricopa County Quick Facts* (n.d.), <https://www.maricopa.gov/3598/County-Quick-Facts> (last visited Oct. 6, 2021) (citing Maricopa County, Arizona, U.S. CENSUS BUREAU (2021), <https://www.census.gov/quickfacts/maricopacountyarizona>). The county is home to Phoenix, the fifth largest city in the United States, as well as numerous suburbs that form mid-size cities in their own right, such as Mesa, Scottsdale, and Glendale, each of which has a population between 241,000 and 505,000 residents.

⁸⁷ This study focuses on Maricopa County because the researchers are affiliated with a major research university located in that county. As a result of professional relationships with various court actors, the MCAO agreed to share limited access to their case files with us—something that is often hard for empirical research to obtain. We are grateful to the MCAO for their assistance and cooperation.

⁸⁸ In the words of the Bureau Chiefs of the Sex Crimes Unit in the MCAO, “[w]e don’t keep a database of cases that we have taken to trial.” E-mail from Michael A. Minicozzi, Bureau Chief, Sex Crimes West, Maricopa Cnty. Att’y Off. to Kristen McCowan, researcher and lead author (Sept. 29, 2020, 2:31 PM MST) (on file with authors). Thus,

the relationships between the victims and the defendants. The case numbers allowed us to obtain additional demographic information from public databases, such as the defendants' ages at the time of the alleged offenses (see Table 1). We purposefully limited our sample to adult victims and defendants to eliminate potentially confounding variables in child abuse cases, which tend to have unique circumstances (e.g., different relationships to the defendants and complications with cross-examination and memory credibility).

Overall, a majority of cases resulted in guilty verdicts (57.14%); two of these cases originally resulted in hung juries but eventually resulted in guilty verdicts. Of the remaining cases, about 37% resulted in not guilty verdicts (one of which originally ended in a hung jury), and about 6% never resulted in a unanimous verdict. A majority of the cases were non-stranger assaults (54%), most of which were people intimate with or related to the victim (43%); 11% were acquaintances. Approximately 37% of victims did not know their alleged assailant.

B. Coding Scheme

Three cases did not provide relationship information between the victim and defendant. In the remaining cases, the relationships between the victim and defendant were coded as either stranger sexual assault, intimate assault (this included one familial assault), and acquaintance assault (which includes, but is not limited to, sexual assaults commonly referred to as "date rapes").⁸⁹

to assemble this list, the Bureau Chief had to reach out to the prosecutors in the sex crime unit and ask for a list of the rape cases that each attorney had taken to trial. After amalgamating what those prosecutors reported, the Bureau Chief sent the researchers "a list of *all* the sex assault trials that [they] had in the last five years." E-mail from Michael A. Minicozzi, Bureau Chief, Sex Crimes West, Maricopa Cnty. Att'y Off. to Kristen McCowan, researcher and lead author (Oct. 5, 2020, 4:00 PM MST) (emphasis added) (on file with authors). But we cannot independently verify that the list does, in fact, represent the entirety of all such cases. It is possible that a handful of trials were not included in the data that the MCAO sent to us because an individual prosecutor may not have accurately reported their list of trials. So, in an abundance of caution, we use the qualifier "nearly all" to describe the cases that went to trial between 2015 and 2019.

⁸⁹ The data that MCAO provided to us did not specify any details about the nature of cases involving intimate and acquaintance categories or the prevalence of each. As a result, we do not know the number of relationships in the intimate sexual assault category that involved spouses compared to those that unmarried intimate partners. We do know, however, that only one case involved a familial sexual assault that did not involve romantic partners. Similarly, the data do not disclose the nature of the acquaintance-rape relationships. As a result, we do not know the number of relationships in that category involved friends, classmates, neighbors, or people who were casually dating. The only

Verdicts were coded as guilty, not guilty, or hung. Cases that resulted in retrials after motions for new trials or successful appeals were coded as what the subsequent verdicts were rather than the original verdicts.

C. Analytic Strategy

To test whether the relationship between the victim and defendant was related to verdict, a chi-square test of independence was performed.⁹⁰ Cases that resulted in hung juries or did not provide victim-defendant relationship information were excluded from analysis ($n = 5$). For the purpose of this analysis acquaintance and intimate relationships were combined to form an overarching “non-stranger” variable to account for both, primarily because if they had been kept separate, one of the key mathematical assumptions of the Chi-Square tests would have been violated.⁹¹

specific types of relationships MCAO disclosed concerned two relationships that they classified as sexual assaults between strangers, rather than acquaintances. One involved a police officer defendant and the other was the victim’s massage therapist. While not “strangers” in terms of people who had never encountered each other at all, MCAO considers these to be stranger assaults because the parties’ knowledge of each other were so superficially or fleeting that they lacked any type of relationship akin to those in the acquaintance rape category.

⁹⁰ A Chi-square test is used to determine whether there are significant differences between nominal/categorical variables. The test is particularly useful in determining the independence of or relationship between cross-tabulated data. The statistical procedure tests

whether an association exists between the two variables by comparing the observed pattern of responses in the cells to the pattern that would be expected if the variables were truly independent of each other. Calculating the Chi-Square statistic and comparing it against a critical value from the Chi-Square distribution allows the researcher to assess whether the observed cell counts are significantly different from the expected cell counts.

The calculation of the Chi-Square statistic is quite straight-forward and intuitive:

$$\chi^2 = \sum \frac{(f_o - f_e)^2}{f_e}$$

where f_o = the observed frequency (the observed counts in the cells) and f_e = the expected frequency if no relationship existed between the variables.

Using *Chi-Square Statistic in Research*, STATS. SOLS. <https://www.statisticssolutions.com/using-chi-square-statistic-in-research/> (last visited Mar. 11, 2021). In the present study (see Table 2), the verdicts in cases are cross-tabulated by whether the victim and the accused were strangers or if they knew each other.

⁹¹ Specifically, the Chi-Square test requires that the expected value (f_e) for each cell in a cross-tabulation be at least five. Because that assumption would have been violated for

Although we did not hypothesize that there would be any salient age differences, we ran a logistic regression to test whether the age of the defendant was related to verdict.⁹² That relationship between age and case outcome has not been explored in detail in prior research, although age of twenty-five and older has been linked to suspects in stranger rape cases compared to younger ages in acquaintance rape cases.⁹³ Because our data included defendants' ages, we tested for any relationship to see if defendant age might be a factor in case outcomes.

III. RESULTS

The ages of the defendants at the time of the alleged offenses ranges from twenty to fifty-five years, with an average age of 33.7 and standard deviation of 9.7 years. Table 1 summarizes case outcomes and the nature of the relationship between the victims and defendants.

Table 1. Case Characteristics

	Cases (N = 35)	
	n	%
Verdict		
<i>Guilty</i>	20	57.14
<i>Not Guilty</i>	13	37.14
<i>Hung</i>	2	5.71
Relationship		
<i>Acquaintance</i>	4	11.43
<i>Intimate/Familial</i>	15	42.86
<i>Stranger</i>	13	37.14
<i>Unknown</i>	3	8.56

the acquaintance cases, Table 2 combines all people known to each other whether intimately or more casually.

⁹² Logistic regression is a form of linear regression that is used when there is one, dichotomous dependent variable, such as “yes” or “no” or, as in the present study, “guilty” or “not guilty.”

Linear regression is a basic and commonly used type of predictive analysis. The overall idea of regression is to examine two things: (1) does a set of predictor variables do a good job in predicting an outcome (dependent) variable? (2) Which variables in particular are significant predictors of the outcome variable, and in what way do they—indicated by the magnitude and sign of the beta estimates—impact the outcome variable?

What Is Linear Regression, STATS. SOLS., <https://www.statisticssolutions.com/what-is-linear-regression/> (last visited Mar. 11, 2021).

⁹³ Waterhouse et al., *supra* note 84, at 5.

Contrary to our hypothesis, there was no significant relationship between the victim-defendant relationship and the case outcome, $\chi^2_{(3, 30)} = 2.8, p = .42$. That is, the likelihood of a guilty verdict did not differ significantly depending on whether the victim and defendant were strangers or non-strangers (see Table 2). A logistic regression with defendant predicting verdict indicated that verdict did not significantly vary depending on the age of the defendant, $b = .02, SE = .04, p = .59$, a finding that is consistent with some of the limited prior research on that particular variable.⁹⁴

Table 2. Victim-Defendant Relationship and Verdict Crosstabulation

			Victim-Defendant Relationship		
			Stranger	Non-Stranger	Total
Verdict	Guilty	count	8	11	19
		% within	61.5%	64.7%	63.3%
	Not Guilty	count	5	6	11
		% within	38.5%	35.3%	36.7%
Total		count	13	17	30
		% within	100%	100%	100%

IV. DISCUSSION AND CONCLUSION

A. Findings

Analysis of case details and outcomes suggest that the relationship between the defendant and victim did not impact verdict outcomes. This was contrary to our hypothesis and to most prior research which suggests that stranger sexual assaults are treated more harshly in the legal system.⁹⁵ The fact that the hypothesis was not confirmed may be due to the limited sample size, although it may also be a function of the fact that a majority of cases resulted in guilty verdicts, regardless of the relationship and, therefore, there was not enough variance in case outcomes to measure. In fact, our findings align with at least one other study of sexual assault case outcomes that found the prior relationship between the victim and the defendant did not influence prosecutors' charging decisions.⁹⁶

⁹⁴ E.g., Samantha Lundrigan, Mandeep K. Dhimi & Kelly Agudelo, 10 *Factors Predicting Conviction in Stranger Rape Cases*, 10 FRONTIERS IN PSYCH. 8 (2019), <https://doi.org/10.3389/fpsyg.2019.00526> (reporting no statistically significant differences in perpetrator ages between rape acquittal cases compared to ones ending in convictions).

⁹⁵ Leonore M. Simon, *Legal Treatment of the Victim-Offender Relationship in Crimes of Violence*, 11 J. INTERPERSONAL VIOLENCE 94, 94 (1996).

⁹⁶ E.g., Spohn & Holleran, *supra* note 79, at 651.

Despite the findings showing, contrary to our hypothesis, that victim-defendant relationship did not impact jury verdicts, the data still present an interesting pattern of convictions when compared to what we know about criminal conviction rates. Although a majority of the cases in this sample resulted in guilty verdicts (57%), this rate is actually quite lower than the average criminal conviction rates. Generally, cases unlikely to result in conviction will not be taken to trial. Annual reports on criminal cases show that about 90% of prosecuted cases lead to a conviction.⁹⁷ Yet, the lower conviction rates for sexual assault crimes is apparent in larger contexts as well. Overall, roughly 68% lead to a conviction, and about 11% of those ultimately end in only a misdemeanor charge.⁹⁸ Therefore, the seemingly unusually low conviction rates found in the current study may be an accurate representation of how sexual assault cases are adjudicated in the court system.

Research on rape myths suggests that due to prejudices formed throughout the trial, sexual assault cases are less likely to lead to a conviction due to leniency toward the defendant and victim-blaming tendencies.⁹⁹ Others offer a more optimistic possible explanation for why we see fewer convictions for sexual assault cases. Despite the fact that trials can lead to secondary victimization, empirical evidence suggests that trials can offer benefits for some victims vis-à-vis the catharsis of having their cases heard in court, thereby improving their healing process through an engagement with a procedural justice process.¹⁰⁰ As such, prosecutors may be more willing to prosecute and let victims of assault have their day in court, even if the evidence is not ironclad and may not

⁹⁷ In the federal system, the conviction rate is around 94%. EXEC. OFFICE FOR U.S. ATT'YS, U.S. DEP'T OF JUST., UNITED STATES' ATTORNEYS' ANNUAL STATISTICAL REPORT FISCAL YEAR 2019, at 7 Table 2A (2020), <https://www.justice.gov/usao/page/file/1285951/download>. The overall conviction rate in the seventy-five largest counties in the United States is approximately 66%, but that is largely a function of charge dismissals. Of the cases in which charges are not dismissed, only 1% result in acquittals and 9% are resolved via diversion or deferred prosecution programs, meaning that the conviction rate for cases that are fully prosecuted is approximately 90%. BRIAN A. REAVES, BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2009 – STATISTICAL TABLES (NCJ 243777) 24 (2013), <https://www.bjs.gov/content/pub/pdf/fdluc09.pdf>.

⁹⁸ Reaves, *supra* note 97, at 22, 24.

⁹⁹ See, e.g., Hammond et al., *supra* note 73, at 242 (reporting that such biases formed during trial lead jurors to exhibit leniency to defendants and assign responsibility to victims, both of which logically suggest a greater likelihood of acquittals).

¹⁰⁰ Bruce Feldthusen, Olena Hankivsky & Lorraine Greaves, *Therapeutic Consequences of Civil Actions for Damages and Compensation Claims by Victims of Sexual Abuse*, 12 CAN. J. WOMEN & L. 66, 75 (2000).

lead to a conviction. Regardless of the cause of the lower conviction rates, it is important to acknowledge the challenges of prosecuting sexual assault cases (e.g., lack of physical evidence and victim credibility), and ways to combat these challenges to minimize the possibility of erroneous outcomes and wasted resources.

B. Limitations

Although this study used information from actual court cases, the data presented various limitations. First, the sample size was small and the data came from a single jurisdiction. As a result, the results may not be representative of case outcomes in other places. This limitation places constraints on the conclusions one can draw about sexual assault cases in other states or even in other counties in Arizona. Future research might seek to expand on our study with a larger number of cases from more jurisdictions.

Second, partly in response to the COVID-19 restrictions on public trials, we attempted to obtain demographic data through online resources that are limited and often difficult to access. Although we were able to obtain data on the ages of defendants, we were unable to obtain racial and ethnic information that could have impacted case outcomes. It is, therefore, unclear whether there are underlying differences in case outcomes based on the races of victims and defendants in our sample.¹⁰¹ Future research should examine what effects, if any, racial and ethnic differences have in this context.

C. Directions for Future Research

The results from this study challenge the commonly held belief that case outcomes vary based on whether the victim and defendant were strangers (which conjures the myth what a “real” rape is) or were acquainted (which runs counter to that rape myth). But the notion that “real” rapes are committed by strangers is just one of several types of rape myths that come up in court.¹⁰² In the future, we plan to expand our research to examine the prevalence of other rape myths during trials, as well as the contexts in which they appear (i.e., comparing testimony from police, victims, experts, and defendants; comparing the content of attorney questions on direct versus cross-examination). We also plan to

¹⁰¹ For example, a body of research suggests that different racial dyads between victims and offenders influence both clearances by arrest, charging decisions, and case outcomes. For a review, see Jessica Shaw & HaeNim Lee, *Race and the Criminal Justice System Response to Sexual Assault: A Systematic Review*, 64 AM. J. CMTY. PSYCH. 256 (2019).

¹⁰² See Smith & Skinner, *supra* note 70, *passim*.

examine whether specific rules of evidence—such as rape shield laws¹⁰³ or rules that permit the exclusion of relevant evidence “if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence”¹⁰⁴—are used to challenge evidence that perpetuates rape myths.

D. Potential Policy Implications

Overall, the findings presented in this study suggest promising shifts in the way people understand rape. The rape myth that “real rape” occurs when a stranger sexually assaults a victim may be an outdated perspective.¹⁰⁵ Individuals may be more aware of the complex nature of sexual assault and, accordingly, be less inclined to judge whether a rape occurred based on whether strangers or acquaintances were involved. Certainly, the lack of statistically significant differences in case outcomes in the present study suggests that well may be truer now than in the past. In fact, researchers recently reported that rape myth acceptance has decreased over time and, therefore, people do not endorse the beliefs underlying rape myths to the same degree as in the past.¹⁰⁶ This may be due, in part, to rape prevention programs aimed at reducing sexual violence, such as “Safe Dates,” “Shifting Boundaries,” “Greet Dot,” and “Coaching Boys into Men,”¹⁰⁷ as well as educational campaigns that focus on debunking rape myths and educating people about the prevalence of acquaintance rape—many of which started only a generation ago.¹⁰⁸ Research suggests that programs have been reasonably effective at changing attitudes about rape.¹⁰⁹

¹⁰³ *E.g.*, ARIZ. REV. STAT. § 13-1421 (LEXIS through 2021 legislation).

¹⁰⁴ FED. R. EVID. 403.

¹⁰⁵ Frese, Moya & Megías, *supra* note 85, at 143.

¹⁰⁶ Sarah Beshers & Margaret DiVita, *Changes in Rape Myth Acceptance Among Undergraduates: 2010 to 2017*, J. OF INTERPERSONAL VIOLENCE (2019) (advance online publication), <https://doi.org/10.1177/0886260519867153>.

¹⁰⁷ *See, e.g.*, *Violence Prevention: Sexual Violence: Prevention Strategies*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/sexualviolence/prevention.html> (last updated Feb. 5, 2021).

¹⁰⁸ *See, e.g.*, Kimberly A. Lonsway, *Preventing Acquaintance Rape Through Education: What Do We Know?*, 20 PSYCH. OF WOMEN Q. 229 (1996).

¹⁰⁹ Linda A. Anderson & Susan C. Whiston, *Sexual Assault Education Programs: A Meta-Analytic Examination of Their Effectiveness*, 29 PSYCH. OF WOMEN Q. 374, 381–82 (2005) (reporting that a meta-analysis of 69 studies that involved 102 interventions revealed that such programs increased knowledge about rape to a “medium” degree (as defined by Cohen’s influential treatise on statistical power, see JACOB COHEN,

Even more recently, the #MeToo movement amplified the voices of victims of sexual violence and sexual harassment and, in turn, broadened societal understandings of the prevalence and impact of range of behaviors on continuum of sexual abuse.¹¹⁰ There is now evidence to show that as the #MeToo movement grew, people were more willing to report sexual assaults and police were more willing to make arrests.¹¹¹

In short, there appears to have been a change in societal views away from rape myths and stereotypes and toward an understanding of the realities of sexual victimization. This shift has important implications for the criminal legal system. If similar results of the present study occur elsewhere, it signals that jurors are no longer as reluctant to convict defendants who knew their sexual assault victims as in the past. This, in turn, indicates that prosecutors should not be hesitant to move forward with prosecuting these cases. Recall that in 2001, Spohn and Holleran reported that the relationship between the defendant and victim did not impact prosecutorial charging decisions in two different cities.¹¹² The results from the present study suggest their research is not an anomaly. This is promising, as it suggests justice may be becoming more possible for victims of sexual violence—a result that is long overdue.

STATISTICAL POWER ANALYSIS FOR THE BEHAVIORAL SCIENCES (2nd ed. 1988)), and had a “small but positive influence” on decreasing attitudes associated with RMA, with longer interventions yielding more significant attitudinal changes). For an extensive discussion of “what works” to reduce RMA, see Lara Hudspith, Nadia Wager, Dominic Willmott & Bernard Gallagher, *Forty Years of Rape Myth Acceptance Interventions: A Systematic Review of What Works in Naturalistic Institutional Settings and How This Can Be Applied to Educational Guidance for Jurors*, TRAUMA, VIOLENCE, & ABUSE (forthcoming) (advanced online publication available at <https://doi.org/10.1177%2F15248380211050575>).

¹¹⁰ See Sarah Jaffe, *The Collective Power of #MeToo*, 65 DISSENT 80, 81 (2018); Edward Fesenthal, *The Choice: TIME's Editor-in-Chief on Why the Silence Breakers Are the Person of the Year*, TIME (Dec. 6, 2017), <http://time.com/time-person-of-the-year-2017-silence-breakers-choice> (highlighting the reasons why the influential news magazine selected the women driving the #MeToo movement as its “Person of the Year”).

¹¹¹ Ro'ee Levy & Martin Mattsson, *The Effects of Social Movements: Evidence from #MeToo*, SSRN (2020), <http://dx.doi.org/10.2139/ssrn.3496903>.

¹¹² Spohn & Holleran, *supra* note 79, at 651.