

The Effect of Childhood Abuse and Expert Witness Testimony on Jurors in Rape Cases: A Cultural Comparison

Jia Jian Tin¹ & Lissa H. Parker²

Abstract

James Q. Wilson (1997), in his book, criticized the United States (U.S.) courts for accepting the abuse excuse and claimed that it is a problem that plagues the court of law in other countries as well. The aim of the paper is to quantify the possible effect that abuse excuse and expert witnesses have on a jurors to test Wilson's argument while observing if cultural differences play a role as well. The hypothesis of the study is that the abuse excuse alone would increase the likelihood of receiving a guilty verdict while those backed by an expert witness should have decreased likelihood. There would be no differences between the different qualifications of expert witnesses. To test the hypothesis, four different vignettes were created and distributed through the internet across the two nations. The results of the study indicate that the use of the excuse alone did increase the likelihood of receiving a guilty verdict, but the expert witness testimony had minimal effect. The cultural comparison reviews that Malaysians were not affected by the abuse excuse or the expert witness testimony unlike their American counterpart.

Keywords: Abuse excuse, expert witness testimony, rape, vignette, Malaysia

Section 1: Introduction

Excuses are constantly used by individuals with all sorts of intentions, but mainly to avoid responsibility and accountability. Similarly, this happens in the court of law. The excuse of a traumatic childhood (e.g., physical/emotional abuse or neglect) is commonly used by rapists to favorably influence the severity of their sentences. The problem tarnishes the justice system and discourages rape victims from stepping forward and seeking justice. Similar to any form of scientific data introduced to the court of law, the abuse excuse requires the support of expert testimony. However, issues regarding social science are often more debatable and open to interpretation, thus making it unclear whether the introduction of such witnesses will educate the court or further confuse it. While the problems stated above are serious, no studies have attempted to quantify the true effect of the abuse excuse and expert witness testimony in the court of law. Most have only reviewed and criticized court cases involving it.

In 2013, the Federal Bureau of Investigation (FBI) changed the definition of rape (now classified as legacy definition) by removing the term "forcible." The new definition is "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" (FBI, 2013a: para. 1). The Uniform Crime Report recorded 79,770 rapes (legacy definition), an estimated drop of 6.3% as compared to cases reported in 2012. However, the number increased to 108,612 under the revised definition (FBI, 2013b).

¹ California School of Forensic Studies, Alliant International University, Fresno Campus. 5130 E Clinton Way, Fresno, California, 93727. jtin@alliant.edu, (559) – 691 7640

² California School of Forensic Studies, Alliant International University, Fresno Campus. 5130 E Clinton Way, Fresno, California, 93727. lparker@alliant.edu, (559)-253-2230

The move to revise the definition is one step to combating the high rate of under-reporting for rape. By removing the term “forcible,” the definition now includes women who were unable to give consent and excluded from the “forcible rape” notion. The term forcible also added doubt to victims when considering to report the crime. In 2014, the National Crime Victimization Survey (NCVS) reported a total of 300,170 victims of rape (Bureau of Justice Statistics, 2014), which is a significant difference when compared to the number of cases reported. Even with this great difference, researchers believe that because of public stigma and the internalized shame the victims suffer, there is still significant underrepresentation of the true number of rape cases (Koss, 2000).

Underreporting rape results from many different factors. According to a survey by Paperny (2015), some of the top reasons were victim feeling powerless (56%), the shame that accompanies reporting (40%), self-blame (29%), and the belief that reporting would not be beneficial (21%). When asked how they felt after reporting, most victims felt devastated (39%) and abandoned (39%). Only 2% felt vindicated; most victims rated the experience of reporting to be negative (71%).

One key reason for not reporting cases is the inefficiency of the justice system in handling rape cases in general. According to the Felony Defendant report by the U.S. Department of Justice (2013), in 2009, only 584 individuals were charged with rape. Fifty two percent of those charged were released while awaiting trial, 38% of those released were released within a day, and only five were denied bail. Twenty four percent of rape cases were dismissed during trial, and 19.7% were convicted of rape. Another problem with reporting rape is how the justice system indirectly allows the offender to transfer some of the blame onto the victim. Detectives involved with the investigations are insensitive when questioning, often indirectly suggesting the victim themselves were at fault (Maier, 2014). District attorneys also face uphill battles in proving a person’s guilt in rape cases, beyond reasonable doubt to 12 jurors with no experience about sex crime (Kinkade, 2014). When a rapist is finally convicted, factors like an abuse excuse result in a lighter sentence that, again, affects the sense of justice the victim experiences at the end of the trial. This research will attempt to quantify the effects of abuse excuse by exposing potential jurors to it and observing its effect on whether jurors pass a guilty verdict.

Abuse Excuse

Several different types of abuse excuse are used in the court of law; this research, however, focuses specifically on the use of traumatic childhood experience. The researcher defines abuse excuse as the effort of a criminal defendant to negate criminal responsibility by providing evidence of reduced ability to form pure criminal intent due to childhood abuse, such as physical, mental, sexual, or parental neglect.

Moral Responsibility. Strawson (1982) was particularly interested in a condition he called reactive attitudes. He suggested that everyone feels resentment when offended and reacts accordingly. But certain conditions modify the reaction. The excusing condition (Watson, 1987) is when the individual rationalizes that the offense was committed (the criminal act, *actus reus*), but without the intent to harm (the criminal intent, *mens rea*), thus a less severe punishment is warranted. The exempting condition is when the victim acknowledges the condition of the offender (e.g., mental illness) and thus does not hold the offender responsible (Wallace, 1994). This acknowledgment leads to the suspension of reactive attitudes towards the offender temporarily or permanently. When observing court cases, it should be noted that abuse excuse often leads to an excusing condition and not an exempting condition.

Diminished Responsibility. “He was so young, barely four, when he was scarred by abuse that he can’t even take it out and look at it.” Hillary Clinton said in an interview when the Lewinsky scandal surfaced (“The Abuse Excuse,” 1999). Despite the growth and progress the United States has experienced, some researchers have believed that the sense of responsibility and accountability seems to have diminished over time (Dershowitz, 1995; Wilson, 1997). In his book, *Moral Judgement: Does the Abuse Excuse Threaten Our Legal System?* James Q. Wilson (1997) argued that this problem has also “infected” the United States’ judiciary branch. Modern scientific methods are established and accepted by the court of law to help juries make more accurate decisions, but Wilson argued that the understanding of soft science is more fluid, as compared to hard science. Wilson (1997) suggested that the increase in abuse excuse supports the notion of a weakened sense of accountability and responsibility in society by simply using “dubious theories of social causation” (p. 2).

While development in social science has allowed experts to link preceding issues to much human behavior, it should not be used as an excuse to diminish individual responsibility and accountability (De Becker, 1997).

The use of abuse excuse began as early as 1949, and resurfaced in 1966 when the California Supreme Court asserted that malicious intent must exist for an individual to be charged with murder. Otherwise, only a manslaughter charge is possible (DiIulio & Mitchell, 1996). Fletcher (1978) argued that one who is incapable of harboring intent for the crime should not be held responsible for it. The issue with abuse excuse, however, is its attempt to argue that the pure intent was never there or an extenuating circumstance (the preceding issue) led to the intent. The key is to present to the jurors that the defendant was forced into the crime by circumstances that were beyond his control (being abused as a child), thus the intent of the act was never truly malicious. When hearing news of crimes, individuals tend to dehumanize the criminal to reduce the similarity between themselves and the criminal (De Becker, 1997); the abuse excuse is an attempt to humanize the defendant that may have been dehumanized by jurors to allow human emotion (e.g., sympathy) to affect the sentencing process. Wilson (1997) has highly criticized this concept of winning a court case through sympathy. While he acknowledges that the advancement of social science has allowed us to explain many human behaviors, he argued that the judiciary branch is there to judge individuals and not explain their actions. It should be noted that Wilson was a renowned social scientist known for his conservative views and that he had no legal education or training.

Types of Abuse Excuse and its Effect. A variety of excuses have been used in court to plead innocence or reduce guilt. Excuses like drug or alcohol addiction, battered women syndrome, pre-menstrual stress, posttraumatic syndrome, black rage, pornography exposure, XXY chromosome defense, mob mentality, rape trauma syndrome, steroid use, urban survivor syndrome (Dershowitz, 1994), and rotten social background (Delgado, 1985) have all been used in court for this purpose. It should be noted that research that discusses the excuses often relies on a few high profile cases.

In November of 1978, Dan White shot and killed George Moscone and Supervisor Harvey Milk. White confessed to his actions and the evidence available supported the actions of premeditated murder. After the shooting, a psychiatrist examined him and confirmed that he was not psychotic. The attorney handling the case thought it was a premeditated murder. However, at the end of the trial the jury convicted White of voluntary manslaughter. White's attorney suggested that White suffered from depression from his job and, thus, ingested a lot of "junk food" (Weiss, 1984). The court found that White suffered from an abnormal mental condition and that it was impossible for him to have full malicious intent to kill Moscone and Milk. The claim was that depression from his job led to the overconsumption of junk food and resulted in an "abnormal mental state," thus reducing the responsibility for his actions.

As seen in the White trial, the abuse excuse resulted in diminished responsibility (an excusing condition) and not an exempting condition, because White was still held accountable for his crimes, but to a lesser extent. This paper will now discuss traumatic childhood as an abuse excuse. Traumatic childhood experience may involve significant neglect from parents, emotional abuse, physical violence, or even sexual abuse. It is assumed that severe child abuse hampers the development of the moral and emotional disposition of the child because he or she is in a critical developmental phase (Spiecker & Steutel, 2003).

Traumatic Childhood and Rape

In America, 12% of children will experience physical abuse at least once during their lifetimes (Dodge, Bates, & Pettit, 1990). Researchers have suggested that early childhood violence is correlated to later aggression (Burks, Dodge, Price, & Laird, 1999). Victims of childhood sexual abuse have shown symptoms of cognitive distortion, such as viewing the outside world as a negative place (Briere & Elliott, 1994) and the abuse also hampers development of healthy self-identity, which prevents anti-social behaviors (Isely, Busse, & Isely, 1998). Rapists have negative views of women and endorse rape myths. Most have low self-esteem and come from dysfunctional families in which physical abuse, sexual abuse, and significant parental neglect were common (Langevin et al., 1984). Childhood sexual abuse, for example, hinders the development of the child and causes regression in social function, which, in turn, leads to future relationship issues (Ryan & Lane, 1997). Childhood sexual abuse has also been linked to reduced impulse control, which has been linked with spontaneous sex crimes with little planning or premeditation (Hazelwood & Warren, 2000; Knight & Prentky, 1990; O'Brien & Bera, 1986, Worling, 2001). A study by Gill and Tutty (1997) found that men who were sexually abused as children were confused on how to initiate healthy sexual relationships.

As pointed out by De Becker, "Children who do not learn to expect and accept love in natural ways become adults who find other ways to get it" (p. 217). Faller (1989) argued that victims of sexual abuse gain a sense of control and mastery when they overpower their victims, thus accomplishing a sense of coping. Groth and Hobson (1983) argued that societal norms train young boys to "get even," suggesting that this encourages male victims of sexual abuse to become victimizers themselves. Increasing research has also shown that sexual offenders have reported much higher rates of sexual victimization as compared to nonsexual offenders (Finkelhor, 1984; Groth, 1979a, 1979b; Lyne, 1992; Petrovich, 1982; Tingle, Barnard, Robbins, & Newman, 1986). In Groth's (1979) book, "Men Who Rape: The Psychology of the Offender" he listed clinical examples of how his patients from different categories of Groth's typology have experienced some form of childhood abuse.

While society at large has acknowledged that most sex offenders were prior victims of childhood sexual abuse (Fortney, Levenson, Brannon, & Baker, 2007; Katz-Schiavone et al., 2008), a meta-analysis by Jespersen, Lalumiere, and Seto reported that "not all sex offenders have a history of sexual abuse, so sexual abuse history is neither a sufficient nor a necessary condition for adult sexual offending" (2009, p. 190). The group went on to conclude that most who experienced childhood abuse did not go on to become sexual offenders themselves. These studies suggest that many other factors affect the relationship between childhood abuse and subsequent offending—individual characteristics of the offenders being one of them (Jespersen et al., 2009). Salter (2003) argued that society has attempted to ignore why sex offenders commit their crimes, while finding it "strangely comforting" to simply believe "offenders are just victims" who turn into victimizers (p. 74).

However, samples from those studies were all from incarcerated populations, potentially skewing the results. Based on the expanded Groth Rape Typology (1979) by Knight and Prentky (1990), rapists were classified into anger rapists, power rapists, sadistic rapists, and opportunistic rapists. The typology is the most empirically driven typology (Fradella & Brown, 2007; McCabe & Wauchope, 2005). The power rapist and opportunistic rapists are believed to represent the largest groups in the typology; Groth found 55% of his sample to be power rapists, but argued that power rapists were rarely convicted because of their style and the overall doubt-inducing behavior of their surviving victims. The opportunistic rapists would likely be able to plead down their charges because their sexual offenses were often nonviolent and committed along with other crimes considered more serious (Knight & Prentky, 1990).

Thus, though the previous studies appear to suggest a link between childhood trauma and future criminal behavior, their limitations should not be ignored. Lyne (1992), for example, acknowledged the diversity among sex offenders and noted that simply observing incarcerated populations was not sufficient to generalize to the entire population. Lyne concluded that it was impossible for one to predict which victim would turn victimizer. In De Natale's unpublished dissertation, she suggested that narcissism is a key determinant of future predation, but acknowledged that some victims with high narcissism turn into compulsive caretakers, working in fields like childcare, teaching, and even child protective service agencies.

Similar to the previously listed syndromes, this paper acknowledges the potential after effects of those conditions and incidents, but agrees with De Becker's (1997) argument that such preceding issues should not excuse an individual from responsibility and accountability for crimes committed.

Issues with Abuse Excuse

Expert Witnesses. A social science expert witness may be introduced to court in an attempt to reach a judgment of guilt when physical evidence is insufficient (Hagen, 1997). In the case of abuse excuse, these expert witnesses are introduced to increase the strength of the excuse used and to convince juries that the offenders are genuine victims of their pasts. The definition of an expert in the court of law is extremely loose. Anyone can be qualified based on "knowledge, skill, experience, training, or education" (Federal Rules of Evidence, §702). Thus, a scholar with a doctorate is held in similar standing as another with a doctorate, multiple publications, public speeches, and honors. The problem with social science, or soft science, is that ordinary people can give it too much credence, allowing the expert to facilitate wrong decisions.

Frye v. United States (1923) ensured that flawed scientific methods cannot be admitted into a court of law. The Supreme Court ruled that judges are responsible for filtering and evaluating scientific evidence and determining its relevance and reliability (*Daubert v. Merrell Dow Pharmaceuticals, Inc*, 1993; *General Electric Co. V. Joiner*, 1997; *Kumho Tire Co. v. Carmichael*, 1999), but studies have shown that judges have not always been able to judge the validity of modern scientific evidence and testimony (Kovera & McAuliff, 2000; Wingate & Thornton, 2004).

The Court noted that unreliable evidence must still survive cross-examination and presentation of contrary evidence, but, jurors often find it difficult to decide which evidence or expert testimony is the true science (Groscup & Penrod, 2002; Kovera, McAuliff, & Hebert, 1999). Jurors' stereotypes may lead them to believe statements that reinforce their stereotypes. Studies also found that cross-examination provided little assistance to jurors in making the right decision regarding scientific evidence and expert testimony; contradicting expert testimony has little effect on the original expert testimony (Cutler & Penrod, 1995; Devenport & Cutler, 2004; Greene, Downey, Goodman-Delahunty, 1999; Griffith, Libkuman, & Poole, 1998; Kovera, Levy, Borgida, & Penrod, 1994).

The Complexity of Social Science. The job of a clinical psychologist is to explain; thus they are expert at giving comprehensive explanations. Thus, when dealing with more complicated psychological issues, it is nearly impossible for one psychologist to claim the explanation or interpretation of another psychologist is completely wrong (Cutler & Penrod, 1995; Devenport & Cutler, 2004; Greene, Downey, Goodman-Delahunty, 1999; Kovera, et al., 1999; Libkuman & Poole, 1998). Hagen (1997) pointed out that clinical psychologists with personal agendas often claimed their explanations were right simply because they could not be disproven. At the same time, a psychological issue is often difficult to falsify within a short period of time. Extensive research has to be done that may not even provide a conclusive result. A court trial cannot wait for such elaborate research before passing a verdict, and a defendant cannot be brought before court to face criminal charges again simply because new evidence has surfaced 10 years after his trial has ended.

Psychologists' jobs in clinics and courts are very different. In a clinical setting, the goal is to evaluate the client and propose a suitable treatment plan. This can be a long process, sometimes taking years. In the court of law, the opinion given by the psychologist after his or her evaluation is a one-time decision that often must often be made within a short period. Within this short period, many factors can affect why clinicians have contradicting opinions in court. As pointed out in a seminar (Resnick, 2014), attorneys shop for clinicians who agree with their opinions; thus, generating unavoidable conflicts of interest for them. Furthermore, unethical clinicians receiving financial compensation would likely present altered data to ensure success.

Hagen (1997) further pointed out that multiple psychologists with the same diagnostic booklet and the same patient could end up with multiple evaluations and recommendations. Personal experience, subjective interpretation, and many other factors affect outcomes. Unlike other evidence in court that has rigid criteria, social science evidence depends on variables that different psychologists value differently. In most cases, one cannot simply claim the variable he or she uses is a better one than that of another psychologist. Thus, evaluations by different psychologists yield different recommendations (Hagen, 1997). This issue is carried into the court of law; as one expert witness can never say another is completely wrong (Sales & Shuman, 2005). And because the court of law deals with an extremely specific case, it is very difficult for one to claim another psychologist is wrong. At such an individual level, a psychologist can explain and convince the jury why generalized statistics should not be considered in that particular case.

Financial Compensation. Another major argument regarding the admission of social science expert witness testimony is its fairness. The role of financial superiority is an ongoing debate in the court of law. The services of expert witnesses are similar to the service of attorneys—it is available only with compensation. Though the constitution ensures the poor have access to attorneys, the preparation those attorneys put into their work differs greatly from those who receive substantial monetary compensation. It is the same for expert witnesses. The compensation reflects the amount of risk expert witnesses are willing to take when defending a less scientifically-based opinion (Sales & Shuman, 2005). Expert witnesses are valued for their experience and knowledge. This allows them to provide the court with their expert, yet personal, opinions. Thus, political affiliations, moral interests, and other personal factors may affect those opinions (Sales & Shuman, 2005).

Cultural Differences in Assessing Abuse Excuse

Differences in Statutes between Malaysia and the United States of America. The Evidence Act of 1950 highlighted the major differences between Malaysia and the USA. While the U.S. has the *Daubert* test and *Fyre* test as safeguards for unqualified expert witnesses, the Malaysian Evidence Act provides only general criteria for someone to be an expert witness in court.

45. (1) *When the court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting of finger impressions, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions, are relevant facts.*

(2) *Such persons are called experts.*

Act 56, Evidence Act 1950

The act would continue to provide several illustrations of an expert, illustrations (b) specifically refer to psychological experts.

(b) *The question is whether A, at the time of doing a certain act, was by reason on unsoundness of mind, incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.*

The opinions of experts upon the question whether symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do or of knowing that what they do is either wrong or contrary to law, are relevant.

Act 56, Evidence Act 1950

Secondly, Malaysia's Evidence Act of 1950 does not provide detail criteria for judges to allow or disallow expert witnesses. However, this may be due to that fact that demand for expert witness is lower in the country. Malaysia also has minimal statutory regulation of the practice of psychology within the country (Malaysia Psychological Association, n.d.). An individual with a master's degree can practice as a clinical psychologist, which is a lower standard from the U.S. requirement of a doctoral degree. While several organizations, like the Malaysia Psychological Association and the Malaysia Society of Clinical Psychology, attempt to provide ethical standards and oversight, a practitioner is not required to register with them.

Rape Crime Differs across Cultures

Researchers have agreed that it is difficult to ignore cultural differences when studying the issue of rape (Brickman & Briere, 1984; Herold, Mantle, & Zemitis, 1979; Zverina, Lachman, Pondelickova, & Vanek, 1987). Rape is a crime based on the understanding and acceptance of the individual, community, and thus the nation. For example, child marriage is not acceptable in the U.S. and the act of having sexual intercourse with an underage girl, regardless of consent, is considered statutory rape. In some cultures, child marriage is accepted as long as the parent of the girl consents. Consequently, what is considered statutory rape in most of the U.S. may be an acceptable form of sexual intercourse somewhere else.

Check and Malamuth's (1983) pointed out that political viewpoint predicts the perception of rape. Political liberals rated rape more negatively than did conservatives, which could affect how individuals react to abuse excuse. Based on the current state of sexual abuse laws, America can be considered more politically liberal when compared to Malaysia. If an individual, is less accepting of rape, would the individual be more accepting of the abuse excuse? No research could be found that studies mock jurors' reactions to abuse excuse used in rape crime, thus making it difficult to predict how individuals from different cultural backgrounds will react to it.

This research looks to compare the differences between the acceptances of abuse excuse as a mitigating factor by U.S. and Malaysian citizens. An example of how rape may be different between the two countries is that marital rape in Malaysia is yet to be recognized as a crime. Under Malaysian law, unless the husband causes harm or fear of death to the wife when forcing her to have sexual intercourse, he can not be criminally charged (Malaysia Penal Code, Section 375A, 1997). In general, Malaysia's progress regarding policies of sexual abuse is much slower compared to the United States.

Understanding of Diminished Responsibility across Cultures. The concept of diminished responsibility relies heavily upon the understanding of mental illness and developmental issues. Wilson (1997) pointed out that Americans have been more likely than other nations to excuse offenders. Hagen (1997) also suggested that American have been more influenced by expert testimony, citing how marketing strategies in the U.S. often use expert opinion to sell products. If the result of this research supports the notion made by Wilson and Hagen, a review of the current policies might be necessary. Researchers have suggested that perception and beliefs of illness and mental illness vary across cultures (Edman & Kameoka, 1997; Kleinman, 1980; Narikiyo & Kameoka, 1992). Communities in the U.S. have better understandings of mental illness, but many in the South East Asia region still believe that mental illness is a result of karma, demons, or spirits (Banerjee & Roy, 1998). Indigenous healers are sought instead of professional psychologists because of the traditional beliefs and also to avoid the public stigma of having a family member with mental illness. Research by Edman and Teh (2000) found that there were no generational differences in mental illness beliefs in Malaysia. It should be noted that advanced education is still considered a privilege in Malaysia. Their research found that Malaysians preferred to use prayer when seeking help for mental illness, using modern medicine only later, if prayer did not work. Lack of accessibility and affordability of modern medicine may be key reasons for Malaysians shying away from it. Malaysians, especially those with limited exposure to modern medicine, may have a significantly different view of abuse excuse. Abuse excuse centers on the idea that earlier childhood sexual abuse of the offender has resulted in significant mental damage and thus the offender has a diminished responsibility for his or her crime. Thus, the more traditional view of mental illness itself may result in a different reaction.

Section 2: Hypotheses

Hypothesis 1 claims that participants reading *Vignette B* will be more likely to find the defendant guilty than participants reading *Vignette A*. This is because the abuse excuse alone should be observed as admission of guilt. Hypothesis 2 claims that participants will be less likely to find the defendant guilty for cases with abuse excuse claims and an expert witness supporting the claim (*Vignettes C* and *D*) when compared to *Vignette B*, and also when compared with *Vignette A* (Hypothesis 3). There should be no statistically significant differences between the likelihood of finding the defendant guilty between *Vignettes C* and *D* (Hypothesis 4). For the cross-cultural comparison, it is hypothesized that the Malaysian sample will be less likely to find the defendant guilty when compared to their American counterparts (Hypothesis 5). As a majority Muslim country, the cultural understanding of rape may be lacking when compared to communities in the United States, which results in a more accepting mindset. Because of the lack of understanding on psychological issues like trauma and early childhood development, the Malaysian sample should show no statistical differences between the likelihood of finding the defendant guilty across all four vignettes (Hypothesis 6).

Section 3: Method

Participants

A total of 515 participants completed the survey through the online data collection software (alliant.qualtrics.com). U.S. participants qualified for the study if they met a set of criteria that mimicked the general rules of qualification for jury service in the U.S.: U.S. citizenship; 18 years of age; a legal resident of the county in which the individual currently resides; no history of felony conviction; not a current sworn Peace Officer; not currently or formerly an attorney, paralegal or judge; not a subject of guardianship or conservatorship; and free of any other known circumstance that would exclude the individual from jury service. Two specific criteria were added to the list: (a) "Not a victim of sexual abuse" and (b) "Have no close friends or families who have experienced sexual abuse." These criteria were added because these individuals would almost always be excused for cause as jurors. For the Malaysian participants, the criterion was localized. Participants had to be Malaysian citizens who were at least 18 years of age, regardless of guardianship or conservatorship issues because the legal concept does not exist in Malaysia. Other criteria remained the same.

Materials and Procedure

A standardized message describing the nature of the study was used during distribution of the online survey. A consent form further describing the study and clarifying the potential harm from participating before demographic information is collected and either the U.S. citizen qualification criteria or the Malaysian citizen qualification criteria is displayed.

A congratulating message and a final warning about potential risk is shown before one of four vignettes were randomly displayed to the participants, with a question asking for their verdict upon completion of the reading (see Appendices A, B, C, & D). There is also a thank you message for the completion of the survey or for participants who were rejected.

Vignette A contains the description of an accusation involving a 23-year-old male college senior who is also a promising football player raping a 21-year-old college junior. The vignette has a short description of the event leading up to the accusation, some discussion of evidence collected from the alleged crime scene, and eyewitness testimony. Participants were asked to decide the likelihood of giving a guilty verdict on a semantic differential rating scale.

Vignette B contains the same description as Vignette A, but with an additional claim of abuse excuse by the defendant's attorney, with physical evidence supporting the claims, but no expert witness. Vignette C contains the same description as Vignette A, but with an additional claim of abuse excuse, this time backed by physical evidence and an expert witness. Vignette D contains the same description as Vignette A, but with an additional claim of abuse excuse, this time backed by physical evidence and an expert witness with very high qualifications.

In each case, the rape scenario is exactly the same. Vignettes B, C, and D, however, add elements of doubt in the guilt of the defendant in the form of a traumatic childhood experience—abuse excuse. Each vignette has a different level of support for the claim. Once the participants have finished reading a vignette, they will be asked about the likelihood of providing a guilty verdict. The language added can be seen at the end of each vignette (Appendix A, B, C, & D).

Section 4: Results

Descriptive Statistics

Of the 515 participants who attempted the survey, 97.3% (N = 501) consented to participate in the research. For those who gave consent, Table 1 describes their demographics.

Table 1: Participant Demographics

Variable	%	N
Gender		
Male	41.7%	(215)
Female	55.5%	(286)
Country		
American	61.6%	(317)
Malaysian	35.7%	(184)
Education		
Bachelor's	37.1%	(186)
Diploma	25.9%	(130)
Associate's	23.4%	(117)
Graduate	12.2%	(61)
No diploma	1.4%	(7)
Met criteria		
American	90.4%	(284)
Malaysian	86.1%	(161)

The number of participants who answered each vignette is displayed in Table 2.

Table 2: Number of Participants Who Answered Each Vignette According to Citizenship

Variable	American	Malaysian	Total
Vignette A	72	48	120
Vignette B	70	36	106
Vignette C	72	37	109
Vignette D	70	40	110
Total	284	161	445

Data Analysis

Effect of Abuse Excuse and Expert Witness Testimony. The descriptive statistics for each vignette can be found in Table 3 below. In order to investigate Hypotheses 1, 2, 3, and 4, an Analysis of Variance (ANOVA) test was performed using Statistical Procedures for the Social Sciences (SPSS) software. Before an ANOVA was performed, the assumption of normality was evaluated and determined to be satisfied, as the distribution was associated with skew and kurtosis less than $|2.0|$ and $|9.0|$, respectively (Schmider, Ziegler, Danay, Beyer, & Buhner, 2010). The assumption of homogeneity of variances was also tested and it was found that it did not satisfy based on Levene's F test, $F(3, 441) = 2.710$, $p = 0.045$. The independent between-groups ANOVA yielded a statistically significant effect, $F(3,441) = 4.829$, $p = 0.003$, Eta-square = 0.032. Because the data did not satisfy the Levene's test, two robust tests of equality of means were performed to support the initial ANOVA F test. The tests were the Welch F test, $F(3, 243.690) = 4.521$, $p = 0.004$ and Brown-Forsythe F test, $F(3, 424.958) = 4.882$, $p = 0.002$. Both found the model to be statistically significant; therefore, the null hypothesis that there are no differences between the means was rejected. The ANOVA test also showed that 3.2% of the variance in guilt level was accounted for by the different scenarios in each vignette.

Table 3: Descriptive Statistics for Each Vignette

Variable	N	M	SD	Skew	Kurtosis
Vignette A	118	77.991	20.286	-1.154	1.008
Vignette B	108	85.435	17.205	-1.366	1.545
Vignette C	109	86.724	14.387	-1.023	0.302
Vignette D	110	83.836	18.536	-1.340	1.493

In order to test Hypotheses 1, 2, 3, and 4, the statistically significant ANOVA was followed-up with a post hoc Games-Howell test because of the unequal variances and unequal groups. Hypothesis 1 was supported by the post hoc test, which showed that differences in means between *Vignette A* ($M = 78.358$, $SD = 20.313$) and *Vignette B* ($M = 85.160$, $SD = 17.250$) were significant, $p = 0.035$. The post hoc test, however, disproved Hypotheses 2 and 3, as there was no statistically significant differences between *Vignettes B, C* ($M = 86.725$, $SD = 14.387$), and *D* ($M = 83.836$, $SD = 18.536$). The post hoc supported Hypothesis 4, as there were no statistically significant differences between *Vignettes C* and *D* (see Table 4).

Table 4: Post Hoc Games-Howell Test for Overall Model

Variable		Mean differences	Sig.
<i>Vignette A</i>	<i>Vignette B</i>	-6.8020*	0.035
	<i>Vignette C</i>	-8.3664**	0.002
	<i>Vignette D</i>	-5.4780	0.144
<i>Vignette B</i>	<i>Vignette A</i>	6.8020*	0.035
	<i>Vignette C</i>	-1.5644	0.889
	<i>Vignette D</i>	1.3240	0.948
<i>Vignette C</i>	<i>Vignette A</i>	8.3664**	0.002
	<i>Vignette B</i>	1.5644	0.889
	<i>Vignette D</i>	2.88841	0.571
<i>Vignette D</i>	<i>Vignette A</i>	5.4780	0.144
	<i>Vignette B</i>	-1.3240	0.948
	<i>Vignette C</i>	-2.8884	0.571

Note. * The mean difference is significant at the 0.05 level.

Note. ** The mean difference is significant at the 0.005 level

Cultural Comparison

A two-way ANOVA was also performed to observe the effect of citizenship and the different vignettes on the level of guilt assigned to the defendant. The assumption of homogeneity of variance was tested and did not satisfy based on Levene's F test, $F(7, 437) = 2.498$, $p = 0.016$. There was no statistically significant interaction between the effects of citizenship and the different vignettes on the level of guilt assigned to the defendant, $F(3, 437) = 1.507$, $p = 0.212$, $\eta^2 = 0.010$.

A main effects analysis showed that Malaysians were less likely to find the defendant guilty as compared to their American counterparts (Hypothesis 5), $F(1, 437) = 21.428, p < 0.000, \eta^2 = 0.047$. Because the assumption of homogeneity of variance was violated, an independent-sample t -test was performed to further support the finding, confirming the statistically significant differences between Malaysians' likelihood to find the defendant guilty ($M = 77.673, SD = 17.636$) and Americans' ($M = 86.345, SD = 18.212$), $t(444) = 4.892, p < 0.000$.

To have a clearer picture of the effects of citizenship, two individual one-way ANOVAs were performed to test Hypothesis 6. The American sample was found to have violated the assumption of homogeneity of variances based on the Levine's test, $F(3, 280) = 4.649, p = 0.003$. The ANOVA model itself was statistically significant, $F(3, 280) = 4.728, p = 0.003$; the ANOVA test was further supported with a Welch test, $F(3, 149.704) = 4.839, p = 0.003$, and Brown-Forsythe test, $F(3, 245.646) = 4.721, p = 0.003$. The Malaysian sample did not violate the assumption of homogeneity of variance, and the ANOVA model was not statistically significant, $F(3, 155) = 1.034, p = 0.379$ (see Table 5).

The post hoc result shows that within the American sample, there were highly statistically significant differences between the means of *Vignettes A* and *C*, $p = 0.001$. As for the Malaysian sample, there were no statistically significant mean differences between any of the vignettes, which support Hypothesis 6 of the study (see Figure 1).

Table 5: Post Hoc Games-Howell Test for American Sample and Malaysian Sample

Variable		American	Malaysian
		Mean Difference	
<i>Vignette A</i>	<i>Vignette B</i>	-6.7988	-6.0702
	<i>Vignette C</i>	-10.7778***	-2.3750
	<i>Vignette D</i>	-8.0274	-0.6167
<i>Vignette B</i>	<i>Vignette A</i>	6.7988	6.0702
	<i>Vignette C</i>	-3.9790	3.6952
	<i>Vignette D</i>	-1.2286	5.4536
<i>Vignette C</i>	<i>Vignette A</i>	10.7778***	2.3750
	<i>Vignette B</i>	3.9790	-3.6952
	<i>Vignette D</i>	2.7504	1.7583
<i>Vignette D</i>	<i>Vignette A</i>	8.0274	0.6167
	<i>Vignette B</i>	1.22857	-5.4536
	<i>Vignette C</i>	-2.7504	-1.7583

***. The mean difference is significant at the 0.001 level

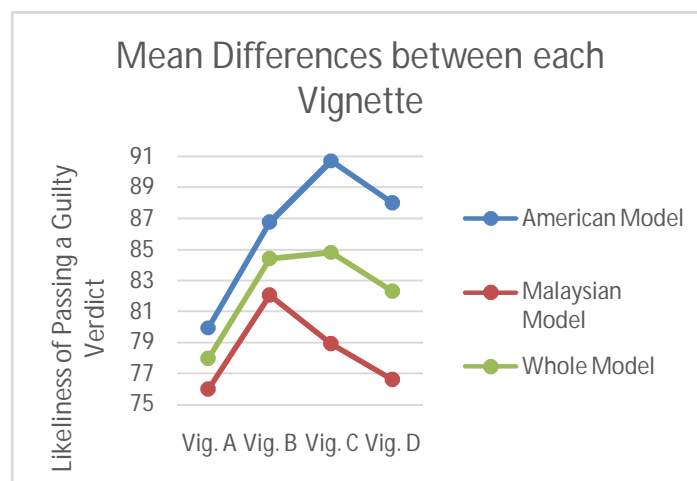


Figure 1: Mean differences between each vignette.

Sex and Education Level

An independent-sample *t*-test was performed to compare the differences in the likelihood of passing a guilty verdict between males and females. There were no statistically significant differences in the likelihood of passing a guilty verdict between males ($M = 82.021$, $SD = 18.973$) and females ($M = 84.066$, $SD = 18.063$), $t(444) = -1.157$, $p = 0.248$. The American sample similarly reported no statistically significant differences between males ($N = 101$, $M = 83.921$, $SD = 21.138$) and females ($N = 183$, $M = 87.683$, $SD = 15.283$), $t(282) = -1.672$, $p = 0.096$.

The Malaysian sample also reported no statistically significant differences between males ($N = 89$, $M = 79.865$, $SD = 16.015$) and females ($N = 71$, $M = 74.535$, $SD = 19.217$), $t(158) = 1.913$, $p = 0.058$. Education was another variable investigated by performing a one-way ANOVA. The ANOVA model was found to be not statistically significant $F(3, 441) = 2.574$, $p = 0.053$. A post hoc Games-Howell test found no statistically significant differences among any of the education levels. When the sample was tested separately to account for cultural differences, the American ANOVA model provided no statistically significant differences among any of the education levels $F(3, 279) = 0.870$, $p = 0.457$. The Malaysian ANOVA model was also not statistically significant, $F(3, 156) = 1.268$, $p = 0.287$. A post hoc Games-Howell test for both countries provided no statistically significant differences among any of the education levels (see Table 6).

Table 6: Descriptive Statistics for Education

Variable	Total			American			Malaysian		
	N	M	SD	N	M	SD	N	M	SD
High school/SPM, or similar	116	85.397	20.117	102	86.745	20.297	13	75.000	16.668
Associate's/ diploma/ STPM or similar	108	79.028	21.271	61	83.082	21.106	47	73.766	20.525
Bachelor's	168	83.857	15.894	88	87.364	14.724	79	79.747	16.271
Graduate	53	84.547	15.069	32	88.219	13.581	21	78.952	15.813

Note. There was only one participant below the education level of High School/SPM or similar and thus the two groups were excluded from statistical analysis

Section 5: Discussions

Abuse Excuse and Expert Witnesses in Rape Cases

The results appear to show that the abuse excuse, with or without the expert witness, would only increase the likelihood of a guilty verdict. This is a good sign, as it suggests that individuals are not as easily influenced as previously feared. In fact, as expected, the use of abuse excuse alone saw an increase in the likelihood of a guilty verdict, while the use of an expert witness, regardless of qualification, had minimal effect on the likelihood of a guilty verdict. These findings suggest that while abuse excuse is often used in court in an attempt to reduce defendant responsibility, the excuse defense seems to have little effect on the guilty verdict itself. Though, over time, several high profile cases have successfully pulled off excuse defense to reduce the severity of the charges, the current findings suggest that they were probably outliers. The increase in likelihood of passing a guilty verdict suggests that jurors are more likely to find the defendant guilty of the charges brought against him.

Limitations

Nevertheless, due to the way the question was put forward, there were several issues when attempting to interpret the results. Because the survey did not ask for a directly guilty or not guilty verdict, it is impossible to tell whether the abuse excuse and expert witness affected the actual verdict. While it may be argued that an individual who responded with a 95% likelihood of giving a guilty verdict would have selected the "guilty" option if available, an individual who responded with a 70% becomes debatable. Another aspect for future research would be different charges: first-degree rape (5 years to life), aggravated sexual assault (not less than 6, 10, or 15 years and which may be for life imprisonment), sexual assault (no more than 10 years), or others.

The different charges would likely lead to different opinions and also confidences of the jurors to pass certain verdicts. The issue of the abuse excuse, as discussed, was that it would excuse a certain amount of responsibility and not completely excuse the individual, thus testing different severities of the verdicts might yield different results. Furthermore, Wilson (1997) argued that while individuals would often agree that a criminal should be held accountable and receive the necessary punishment, citizens tended to have a “remarkable transformation” when on jury duty. An individual who would usually denounce crime would, in turn, accept excuses raised in court by defendants. While his argument was never truly tested, it should not be blatantly ignored, either. Taking that into account, it was not possible for this research to account for such “transformations” in behavior. The setting within a criminal court case could potentially increase the stress of the individuals on jury duty. While participants were told to imagine themselves as jurors, it was impossible to provide the environment of a criminal courtroom through an online survey.

This leads to the topic of humanization, which was a large part of the discussion when the paper talked about the abuse excuse. In a courtroom, the jurors see the defendant, they see the well-dressed and professional looking expert witness, the defendant could even cry in court whether truthfully or in an attempt to deceive the jurors. Nonetheless, all these are key characteristics within the courtroom that an online survey cannot replicate. The online survey effectively dehumanized both the defendant and the expert witness, which may have reduced the effectiveness of the abuse excuse and expert witness testimony. Remland (1993), a professor in communication studies, pointed out in a paper that nonverbal communication in the courtroom plays a key role in determining the outcome of verdicts. He continued to explain that some jurors are more easily influenced by such nonverbal communication than others. It is impossible to say which of this study's participants would have been influenced by these nonverbal communications, but it is clear that the online vignette had no way to properly ensure that perception was consistent for every participant.

Cultural Comparison between America and Malaysia

Overall, the results based on nationality were predicted by the hypotheses of the study. Malaysians reported a statistically significant lower likelihood of agreeing to a guilty verdict in all four vignettes. Very few studies, and mostly unpublished, have investigated sexual abuse and rape in Malaysia (Endut, Oon, Lai, Azmi, & Hashim, 2011), compounding the rape problem within the country. This lack of understanding is also reflected in the Malaysian Law on Rape, as it still requires victims to provide evidence of full resistance against the perpetrator (Malaysia, 1997) and that a victim's testimony needs to be corroborated by an independent witness or other evidence (*Apardv Sathial v Public Prosecutor*, 1957). However, this should not be viewed as a primarily Malaysian problem. Many developing nations within Asia have the above-mentioned attitudes regarding sexual violence and they are often reflected in their laws.

The result of the research, once again, highlights the issue of rape in Malaysia: the mean difference found between the two groups was 8.672, which suggests that Malaysians were about 9% less likely to find the same defendant guilty when compared to Americans. While the U.S. government has acknowledged and taken significant steps to combat rape (Reilly, Lott, Caldwell, & DeLuca, 1992; Neville & Heppner, 2002), the Malaysian government has been more reluctant. Often, the official has redirected discussions from the actual topic of rape. For example, in 2015, when a nongovernment organization campaigned to raise awareness about rape, instead of supporting the campaign, the government hit back by focusing on one of the campaign posters stating that marital rape was illegal, pointing out that Malaysian law did not recognize marital rape as a crime (Carvalho, 2015; Patto, 2015). What followed was a large debate regarding the issue of marital rape and everyone forgot about the initial anti-rape campaign.

The second key topic is the cultural comparison for the effect of the abuse excuse and expert witness on potential jurors. It was hypothesized that the lack of understanding of mental illness would lead jurors to not sympathize with a defendant's history of victimization. The results suggest that the hypothesis was accurate, as Malaysians viewed all four scenarios similarly and did not report any statistically significant differences between them. There is still some positives to be gleaned from the results in the fact that Malaysians did not report a lower percentage for the vignette with the abuse excuse, and the vignettes with expert witnesses as well. While Malaysians failed to see the abuse excuse as a form of admittance of guilt, they also did not sympathize with the defendant.

Similar to Malaysians, Americans did not view the abuse excuse as an admittance of guilt, but neither did they sympathize with the defendant. However, when an expert witness with minimal qualifications was introduced, there was a statistically significant increase in likelihood of passing a guilty verdict. This phenomenon is particularly interesting because a highly qualified expert witness yielded no statistically significant differences. This suggests that a highly qualified expert witness may still be able to reduce the severity of the sentence given to the defendant. As discussed above, future research may look to compare the differences in the likelihood of passing a guilty verdict for different sentences for a similar scenario.

Sex and Education Level

One variable that is almost never left out of research related to rape is sex. Much research has documented the differences in opinion towards rape between male and female (Bell, Kuriloff, & Lottes, 1994; Bridges, 1991; Caron & Carter, 1997; Ewoldt, Monson, & Langhinrichsen-Rohling, 2000; Freetly & Kane, 1995; Johnson, Kuck, & Schander, 1997; Lonsway & Fitzgerald, 1994; Monson, Langhinrichsen-Rohling, & Biderup, 2000). Results from this paper suggest otherwise. There were no statistical differences found between male and female. This could mean that the differences in gender opinion towards rape is decreasing, which is always a welcoming finding. However, the research is, after all, based on the setting of a courtroom and a mock trial, which may have helped eliminate the natural gender bias found in other research, which often involves direct public opinion. Nonetheless, if this is true, at least it represents that jurors are less likely to carry gender bias into the court of law.

Another variable investigated by the paper was education level. The results indicated no statistically significant differences among the education levels. While peremptory challenge based on race has been deemed unconstitutional, that lawyers would reject more jurors that are educated using the peremptory challenge still exists. The results from this paper suggest that such fear from those who support the notion that lawyers would reject more jurors that are educated is unnecessary. Even if lawyers are found to reject more educated jurors, it may not affect the final verdict, as the paper suggests that education level has minimal effect on the likelihood of passing a guilty verdict based on each scenario.

Other Notable Limitations

Though the paper collected a reasonably large sample size, it is impossible to determine if the sample size was actually a true representation of the population. Only 41.7% of the participants were male, which is not a true representation of either nation. Also, both the U.S. and Malaysia are highly diverse nations. The research did not collect any racial information, as it was deemed unnecessary because race is not a variable considered for jury selection. However, this means that it is impossible to tell if the research had a sample size that would represent the racial diversity from either nation. Similar to the issue of race, the paper did not ask participants for age range for the exact same reason and, thus, has similar limitations in that respect.

Conclusion

While the paper has, to a certain extent, successfully shown that abuse excuse and expert witness does not reduce the guilt of the defendant (exempting condition), the suggestion that abuse excuse and expert witness would reduce the sentence given to the defendant (excusing condition) is not addressed. Future research should attempt to address the limitations discussed in the paper and investigate further an excusing condition instead of an exempting condition. Until more research can support the notion that abuse excuse has minimal effect on both exempting conditions and excusing conditions, Wilson's fear of the abuse excuse plaguing the court of law should be examined.

References

- Apardv Sathial vs. Public Prosecutor (1957) 2CLJ, 391.
- Banerjee, G., & Roy, S. (1998). Determinants of help-seeking behavior of families of schizophrenic patients attending a teaching hospital in India: An indigenous explanatory model. *International Journal of Social Psychiatry, 44*(3), 199-214.
- Bell, S. T., Kuriloff, P. J., & Lottes, I. (1994). Understanding attributions of blame in stranger rape and date rape situations: An examination of gender, race, identification, and students' perception of rape victims. *Journal of Applied Social Psychology, 24*(19), 1719-1734.

- Brickman, J., & Briere, J. (1984). Incidence of rape and sexual assault in an urban Canadian population. *International Journal of Women's Studies*, 7(3), 195-206.
- Bridges, J. S. (1991). Perceptions of date rape and stranger rape: A difference in sex role expectations and rape-supportive beliefs. *Sex Roles*, 24(5), 291-307.
- Briere, J., & Elliott, D. (1994). Immediate and long-term impacts of child sexual abuse. *The Future of Children*, 4(2), 54-65
- Caron, S. L., & Carter, D. B. (1997). The relationships among sex role orientation, egalitarianism, attitudes toward sexuality, and attitudes toward violence against women. *Journal of Social Psychology*, 137(5), 568-587.
- Carvalho, M. (2015, June 10). Government maintains marital rape not criminal. *The Star*. Retrieved from <http://www.thestar.com.my/news/nation/2015/06/10/govt-maintains-marital-rape-not-crime/>
- Check, J. V. P., & Malamuth, N. M. (1983). Sex role stereotyping and reactions to depictions of stranger versus acquaintance rape. *Journal of Personality and Social Psychology*, 45(2), 344-356.
- Cutler, B. L., & Penrod, S. D. (1995). *Mistaken identification: The eyewitness, psychology, and the law*. New York: Cambridge University Press.
- Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993). 113 S. Ct. 2786.
- De Becker, G. (1997). *The gift of fear and other survival signals that protect us from violence*. New York: Little, Brown.
- Delgado, R. (1985). Rotten social background: Should the criminal law recognize a defense of severe environmental deprivation? *Law and Inequality Journal*, 3(9), 9-90.
- Dershowitz, A. M. (1994). *The abuse excuse*. Boston: Little, Brown.
- Dershowitz, A. M. (1995). *The abuse excuse: And other cop-outs, sob stories, and evasions of responsibility*. New York: Little, Brown.
- Devenport, J. L., & Cutler, B. L. (2004). Impact of defense-only and opposing eyewitness experts on juror judgements. *Law and Human Behavior*, 28(5), 569-576.
- Dilulio, J. J. Jr., & Mitchell, G. A. (1996). Who really goes to prison in Wisconsin? *Wisconsin policy research institute report*, 9(4), 1-37.
- Dodge, K. A., Bates, J. E., & Pettit, G. S. (1990). Mechanisms in the cycle of violence. *Science*, 250(4988), 1678-1683.
- Edman, J. L., & Kameoka, V. A. (1997). Cultural differences in illness schema: An analysis of Filipino and American illness attribution. *Journal of Cross-Cultural Psychology*, 28(3), 252-265.
- Edman, J. L., & Teh, Y. K. (2000). Mental illness beliefs in Malaysia: Ethnic and intergenerational comparisons. *International Journal of Social Psychiatry*, 46(2), 101-109.
- Endut., N., Oon, S. W., Lai, W. T., Azmi, Z., Ali, S. H., & Hashim, R. (2011). Understanding and experiences of sexual harassment amongst university students: A case study of undergraduates in Universiti Sains Malaysia. *International Conferences of Humanities, Society and Culture*, 20, 7-11.
- Ewoldt, C. A., Monson, C. M., & Langhinrichsen-Rohling, J. (2000). Attributions about rape in a continuum of dissolving marital relationship. *Journal of Interpersonal Violence*, 15(11), 1175-1183.
- Faller, K. C. (1989). Characteristics of boy and girl victims of sexual abuse. How they differ. *Child Abuse and Neglect*, 13(2), 281-291.
- Federal Bureau of Investigation. (2013a). *Rape*. Retrieved from <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/violent-crime/rape>
- Federal Bureau of Investigation. (2013b). *Table 2: Crime in the United States*. Retrieved from http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.2013/tables/2tabledatadecoverviewpdf/table_2_crime_in_the_united_states_by_community_type_2013.xls
- Federal Rules of Evidence, §702
- Finkelhor, D. (1984). *Child sexual abuse: New theory and research*. New York: The Free Press.
- Fletcher, G. (1978). *Rethinking criminal law*. Boston: Little, Brown.
- Fortney, T., Levenson, J. S., Brannon, Y., & Baker, J. N. (2007). Myths and facts about sexual offenders: Implications for treatment and public policy. *Sexual Offender Treatment*, 2(1), 1-17.
- Fradella, H. F., & Brown, K. (2007). The effects of using social scientific rape typologies on juror decisions to convict. *Law & Psychology Review*, 31, 1-19.

- Freetly, A. J. H., & Kane, E. W. (1995). Men's and women's perceptions of non-consensual sexual intercourse. *Sex Roles, 33*(11/12), 785-802.
- Frye v. United States, (1923). 54 App. D. C. 46, 293 F. 1013.
- General Electric Co. v. Joiner, (1997). 522 U.S. 136.
- Gill, M., & Tutty, L. (1997). Sexual identity issues for male survivors of childhood sexual abuse: A qualitative study. *Journal of Child Sexual Abuse, 6*(3), 31-47.
- Greene, E., Downey, C., & Goodman-Delahunty, J. (1999). Juror decisions about damages in employment discrimination cases. *Behavioral Sciences and the Law, 17*(1), 107-121.
- Griffith, J. D., Libkuman, T. M., & Poole, D. A. (1998). Repressed memories: The effects of expert testimony on mock jurors' decision making. *American Journal of Forensic Psychology, 16*(1), 5-23.
- Groscup, J., & Penrod, S. D. (2002). *Jury instructions effects on juror assessments of scientific reliability*. Paper presented at the biennial meeting of the American Psychology-Law Society, San Antonio, TX.
- Groth, A. N. (1979). *Men who rape: The psychology of the offender* (pp. 13-58). New York: Basic Books.
- Groth, A. N. (1979). Sexual trauma in the life histories of rapists and child molesters. *Victimology: An International Journal, 4*(1), 10-16.
- Groth, A. N., & Hobson, W. F. (1983). In L.B. Schlesinger, & E. Revich (Eds.), *Sexual dynamics of antisocial behavior*. Springfield, Ill: Charles C. Thomas.
- Hagen, M. A. (1997). *Whores of the court: The fraud of psychiatric testimony and the rape of American justice*. New York: HarperCollins.
- Hazelwood, R. R., & Warren, J. I. (2000). The sexually violent offender: Impulsive or ritualistic? *Aggression and Violent Behavior, 5*(3), 267-279.
- Herold, E. S., Mantle, D., & Zemitis, O. (1979). A study of sexual offenses against females, *Adolescence, 14*(53), 65-72.
- Isely, P., Busse, W., & Isely, P. (1998). Sexual assault of males in late adolescence: A hidden phenomenon. *Professional School of Counseling, 2*(2), 153-162.
- Jespersen, A. F., Lalumiere, M. L., & Seto, M. C. (2009). Sexual abuse history among adult sex offenders and non-sex offenders: A meta-analysis. *Child Abuse & Neglect, 33*(3), 179-192.
- Johnson, B. E., Kuck, D. L., & Schander, P. R. (1997). Rape myth acceptance and sociodemographic characteristics: A multidimensional analysis. *Sex Roles, 36*(11-12), 693-707.
- Kingkade, T. (2014). Prosecutors rarely bring charges in college rape cases. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/2014/06/17/college-rape-prosecutors-press-charges_n_5500432.html
- Knight, R. A., & Prentky, R. A. (1990). Classifying sexual offenders: The development and corroboration of taxonomic models. In Marshall, W. L. (Ed); Laws, D. R. (Ed); Barbaree, H. E. (Ed); *Handbook of Sexual Assault: Issues, Theories, and Treatment of the Offender*, (pp. 23-52).
- Koss, M. P. (2000). Shame, blame, and community: Justice responses to violence against women. *The American Psychologist, 55*(11), 1332-1343.
- Kovera, M. B., & McAuliff, B. D. (2000). The effects of peer review and evidence quality on judge evaluations of psychological science: Are judges effective gatekeepers? *Journal of Applied Psychology, 85*(4), 574-586.
- Kovera, M. B., Levy, R. J., Borgida, E., & Penrod, S. D. (1994). Expert testimony in child sexual abuse cases: Effects of expert evidence type and cross examination. *Law and Human Behavior, 18*(6), 653-674.
- Kovera, M. B., McAuliff, B. D., & Hebert, K. S. (1999). Reasoning about scientific evidence: Effects of juror gender and evidence quality on juror decisions in a hostile work environment case. *Journal of Applied Psychology, 84*(3), 362-375.
- Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999).
- Langevin, R., Bain, J., Ben-Aron, M. H., Couthard, R., Day, D., Handy, L. C., Heasman, R., Hucker, S. J., Purins, J. E., Roper, V., Bain, Russon, A. R., Webster, C. D., & Wortzman, G. (1985). Sexual aggression: Constructing a predictive equation: A controlled pilot study. In R., Langevin (Ed.), *Erotic preference, gender identity, and aggression in men: New research studies* (pp. 39-76). Hillsdale, NJ: Lawrence Erlbaum.
- Lonsway, K. A., & Fitzgerald, L. F. (1994). Rape myths: In review. *Psychology of Women Quarterly, 18*(2), 133-164.
- Lyne, M. (1992). *Childhood sexual victimization of men who later were convicted of rape or sexual child abuse* (Unpublished doctoral dissertation). California School of Professional Psychology, Fresno.
- Maier, S. L. (2014). *Rape, victims, and investigations: Experiences and perceptions of law enforcement officers responding to reported rapes*. New York: Routledge.

- Malaysia. (1997). *Penal Code, Section 375A*. Retrieved from <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574%20-%20Penal%20Code.pdf>
- Malaysia Ministry of Justice. (2006). *Act 56, Evidence Act 1950*. The Commissioner of Law Revision, Malaysia.
- Malaysia Psychological Association. (n.d.). *Psychology resources around the world* [Web log post]. Retrieved from <http://resources.iupsys.net/iupsys/index.php/iupsysresources/195-malaysia-articles/8036-malaysia-malaysia-psychological-association>
- McCabe, M. P., & Wauchope, M. (2005). Behavioral characteristics of men accused of rape: Evidence for different types of rapist. *Archives of Sexual Behavior, 34*(2), 241-253.
- Monson, C. M., Langhinrichsen-Rohling, J., & Biderup, T. (2000). Does "no" really mean "no" after you say "yes"?: Attributions about date and marital rape. *Journal of Interpersonal Violence, 15*(11), 1156-1174.
- Narikiyo, T. A., & Kameoka, V. A. (1992). Mental health values and preference for mental health resources of Japanese-American and Caucasian-American students. *Professional Psychology: Research and Practice, 21*(4), 291-296.
- Neville, N. A., & Heppner, J. J. (2002). Prevention and treatment of violence against women: An examination of sexual assault. In C. L. Jun-tunen & D. Atkinson (Eds.), *Counseling across the lifespan: Prevention and treatment* (pp. 261-277). Thousand Oaks, CA: Sage.
- O'Brien, M., & Bera, W. H. (1986). Adolescent sexual offenders: A descriptive typology. *Preventing Sexual Abuse, 4*(3), 1-4.
- Paperny, A. M. (2015, February 23). Why don't women report rape? Because most get no justice when they do. *GlobalNews*. Retrieved from <http://globalnews.ca/news/1845136/why-dont-women-report-rape-because-most-get-no-justice-when-they-do/>
- Patto, K. (2015, June 11). *Malaysian government's decision to keep Section 375 of the Penal Code is a threat to women*. Retrieved from <http://aseanmp.org/2015/06/11/malaysian-governments-decision-to-keep-section-375-of-the-penal-code-which-does-not-criminalize-marital-rape-shows-it-is-regressive-patriarchal-and-a-threat-to-women-from-all-walks-of-lif/>
- Petrovich, M. (1982). *The assessment of motivational dimensions of convicted rapists: Aggression, control/power, and sexual gratification* (Unpublished doctoral dissertation). California School of Professional Psychology, Fresno.
- Reilly, M. E., Lott, B., Caldwell, D., & Deluca, L. (1992). Tolerance for sexual harassment related to self-reported sexual victimization. *Gender and Society, 6*(1), 122-138.
- Remland, M. S. (1993). The importance of nonverbal communication in the courtroom. *U.S. Department of Education, Educational Resources Information Center. ED 378 612, CS 508 785*.
- Resnick, P. (2014). *The psychiatrist as expert witness*. New York: American Psychiatric Association, 167th Annual Meeting.
- Ryan, G., & Lane, S. (1997). *Juvenile sexual offending: Causes, consequences and correction*. San Francisco: Jossey-Bass.
- Sales, B. D., & Shuman, D. W. (2005). *Experts in courts: Reconciling law, science and professional knowledge*. Washington, DC: American Psychological Association.
- Salter, A. (2003). *Predators: Pedophiles, rapists, and other sex offenders: Who they are, how they operate, and how we can protect ourselves and our children*. New York: Basic Books.
- Schmider, E., Ziegler, M., Danay, E., Beyer, L., & Buhner, M. (2010). Reinvestigating the robustness of ANOVA against violations of the normal distribution assumption. *Methodology European Journal of Research Methods for the Behavioral and Social Science, 6*(4), 147-151.
- Spiecker, B., & Steutel, J. (2003). Is a traumatic childhood just another abuse excuse? *Educational Philosophy and Theory, 35*(4), 441-450.
- Strawson, P. (1982). Freedom and resentment. In G. Watson (Ed.), *Free will*. Oxford: Oxford University Press.
- "The Abuse Excuse" [Editorial]. (1999). *The New Republic, 221*(8), 11-12.
- Tingle, D., Barnard, G. W., Robbins, L., & Newman, G. (1986). Childhood and adolescent characteristics of pedophiles and rapists. *International Journal of Law and Psychiatry, 9*(1), 103-116.
- U.S. Department of Justice. (2012). *Uniform crime report*. Retrieved from <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeOneYearofData.cfm>
- U.S. Department of Justice, Bureau of Justice Statistics. (2013). *Felony defendants in large urban counties, 2009 – Statistical tables*. Retrieved from <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf>

- U.S. Department of Justice, Bureau of Justice Statistics. (2014). *Criminal victimization, 2013 (Revised)*. Retrieved from <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5111>
- Wallace, R. J. (1994). *Responsibility and the moral sentiments*. Cambridge: Harvard University Press.
- Watson, G. (1987). Responsibility and the limits of evil. In F. Schoeman (Ed.), *Responsibility, character, and the emotions: New essays in moral psychology*. Cambridge: Cambridge University Press.
- Weiss, M. (1984). *Double play: The San Francisco city hall killings*. Boston: Addison-Wesley.
- Wilson, J. Q. (1997). *Moral judgement: Does the abuse excuse threaten our legal system?* New York: HarperCollins.
- Wingate, P. H., & Thornton, G. C. III. (2004). Industrial/organizational psychology and the federal judiciary: Expert witness testimony and the Daubert standards. *Law and Human Behavior, 28*(1), 97-114.
- Worling, J. R. (2001). Personality-based typology of adolescent male sexual offenders: Differences in recidivism rates, victim-selection characteristics, and personal victimization histories. *Sexual Abuse: A Journal of Research and Treatment, 13*(3), 149-166.
- Zverina, J., Lachman, M., Pondelickova, J., & Vanek, J. (1987). The occurrence of atypical sexual experience among various female patient groups. *Archives of Sexual Behavior, 16*(4), 321-326.

APPENDIX A

Vignette A

A 23-year-old male college senior who is also a promising football player was accused of raping a college junior, a 21-year-old female freshman in the college. The act is believed to have taken place in the dorm room of the female victim.

During the prosecutor's case-in-chief, the prosecutor first called the victim to the stand. The victim testified that she had *hung out* with the defendant several times before the incident. She also testified that the defendant had request her to be his date for prom earlier that semester. However, she promised her girlfriends that they would be attending prom together without a date and, therefore, turn the defendant down. On the night of the event, the defendant and the victim were both attending an end of semester party at the university café to celebrate the end of the academic year. The victim testifies that she did not consume any alcohol during the event.

The event ended around one in the morning, and the defendant offered to walk the victim back to her dorm. She accepted. Back at her dorm, the victim testified feeling a little dizzy but thought it was just due to the late hours. She also confirmed running into the security guard on duty in front of her dorm. She was helped onto her bed and testifies that she does not remember much after that until her friend woke her up the next morning. Her pants and underwear had been removed. She then believed she was raped and immediately lodged a police report. During cross-examination, the defense attorney questioned whether the victim can confirm that his client was the one that rape her? The victim answered that she could not.

The prosecutor then calls the security guard to the stand. The guard testifies that he spotted the victim and the defendant walking towards him which alarmed him because male students were not allowed in the dorm room area late at night. He approached them, but the victim assures him that the defendant was just walking her back to her room. The guard testifies that the victim looked dizzy, but the guard ensured that the defendant closed the door and left the area right away. When asked if he checked if the room was locked, he testifies that he did not check whether the door was locked. The prosecutor then questioned whether the guard checks to see if the defendant may have stolen the victim's dorm room keys. The guard testifies that he did not have sufficient belief to check the defendant for stolen items. During cross-examination, the defense attorney asked if there had been any breaking-and-entering cases at the female dorms. The guard testified that there had been multiple incidents that semester, he explained that he was the only guard hired to patrol the large compound, and there was no fencing around the area as well. The defense then questions whether it was possible that if the door was unlocked, anyone could have walked into the victim's room and rapes her. The guard agrees that it was completely possible.

Next the prosecutor calls the investigator to the stand. The investigator first testifies that his team recovered a stained bed sheet from the victim's dorm room and the rape kit from the hospital as well. His initial impression was that the victim was drunk or drugged because the victim could not remember being raped but testifies that the medical report suggests otherwise. He then informs the court that he requested the medical examiner obtain permission from the victim to conduct a blood test for alcohol and potential date rape drugs.

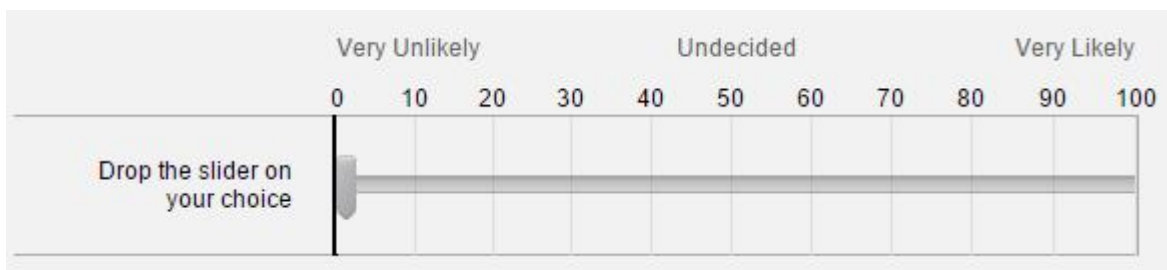
The investigator confirms that police officers also recovered Klonopin pills from the defendant's dorm room. The defense attorney did not cross-examine this witness. Next, the prosecutor calls the criminal lab medical examiner to the stand. The medical examiner testifies that DNA test confirms that the stain on the bed sheet was semen from the defendant. The DNA test of the rape kit also confirms that the semen belongs to the defendant. When questioned whether there was any drug in the victim's system, the medical examiner informs the court that the Blood Alcohol Content (BAC) was <0.01 (legal limit 0.08) and tested positive for benzodiazepine.

The prosecutor requested the witness to explain that result to the court. The medical examiner explains that the BAC level supports the victim's statement that she did not consume any alcohol that night. The positive result for benzodiazepine is likely from antianxiety medicines that are also commonly used as a date rape drug. When asked whether the Klonopin is one of those drugs the witness agrees that consumption of Klonopin would lead to a positive test for benzo. The medical examiner further explains that Klonopin is a common, inexpensive date rape drug, easily purchase on the street illegally. The defense attorney did not cross-examine this witness. The prosecutor was done presenting its case-in-chief.

End of Vignette

The Foreman, the head of the jury, has asked you to complete a ballot indicating your vote anonymously. How likely would you, as a juror at this trial, choose a guilty verdict?

[Please drag and drop the marker along this line to indicate your answer.]



APPENDIX B

Vignette B

A 23-year-old male college senior who is also a promising football player was accused of raping a college junior, a 21-year-old female freshman in the college. The act is believed to have taken place in the dorm room of the female victim.

During the prosecutor's case-in-chief, the prosecutor first called the victim to the stand. The victim testified that she had *hung out* with the defendant several times before the incident. She also testified that the defendant had request her to be his date for prom earlier that semester. However, she promised her girlfriends that they would be attending prom together without a date and, therefore, turn the defendant down. On the night of the event, the defendant and the victim were both attending an end of semester party at the university café to celebrate the end of the academic year. The victim testifies that she did not consume any alcohol during the event.

The event ended around one in the morning, and the defendant offered to walk the victim back to her dorm. She accepted. Back at her dorm, the victim testified feeling a little dizzy but thought it was just due to the late hours. She also confirmed running into the security guard on duty in front of her dorm. She was helped onto her bed and testifies that she does not remember much after that until her friend woke her up the next morning. Her pants and underwear had been removed. She then believed she was raped and immediately lodged a police report. During cross-examination, the defense attorney questioned whether the victim can confirm that his client was the one that rape her? The victim answered that she could not. The prosecutor then calls the security guard to the stand. The guard testifies that he spotted the victim and the defendant walking towards him which alarmed him because male students were not allowed in the dorm room area late at night. He approached them, but the victim assures him that the defendant was just walking her back to her room.

The guard testifies that the victim looked dizzy, but the guard ensured that the defendant closed the door and left the area right away. When asked if he checked if the room was locked, he testifies that he did not check whether the door was locked. The prosecutor then questioned whether the guard checks to see if the defendant may have stolen the victim's dorm room keys. The guard testifies that he did not have sufficient belief to check the defendant for stolen items. During cross-examination, the defense attorney asked if there had been any breaking-and-entering cases at the female dorms. The guard testified that there had been multiple incidents that semester, he explained that he was the only guard hired to patrol the large compound, and there was no fencing around the area as well. The defense then questions whether it was possible those if the door was unlocked, anyone could have walked into the victim's room and rape her. The guard agrees that it was completely possible.

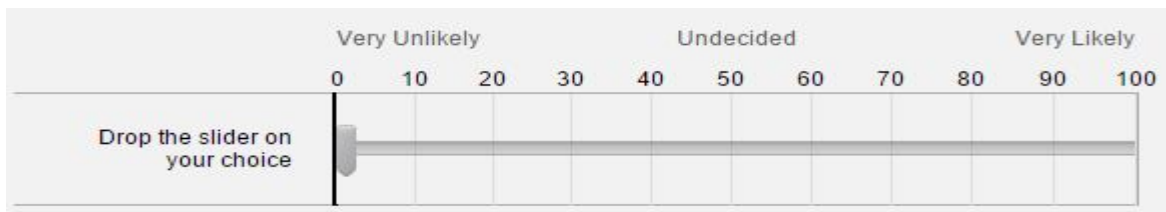
Next the prosecutor calls the investigator to the stand. The investigator first testifies that his team recovered a stained bedsheet from the victim's dorm room and the rape kit from the hospital as well. His initial impression was that the victim was drunk or drugged because the victim could not remember being raped but testifies that the medical report suggests otherwise. He then informs the court that he requested the medical examiner obtain permission from the victim to conduct a blood test for alcohol and potential date rape drugs. The investigator confirms that police officers also recovered Klonopin pills from the defendant's dorm room. The defense attorney did not cross-examine this witness. Next the prosecutor calls the criminal lab medical examiner to the stand. The medical examiner testifies that DNA test confirms that the stain on the bedsheet was semen from the defendant. The DNA test of the rape kit also confirms that the semen belongs to the defendant. When questioned whether there was any drug in the victim's system, the medical examiner informs the court that the Blood Alcohol Content (BAC) was <0.01 (legal limit 0.08) and tested positive for benzodiazepine. The prosecutor requested the witness to explain that result to the court. The medical examiner explains that the BAC level supports the victim's statement that she did not consume any alcohol that night. The positive result for benzodiazepine is likely from antianxiety medicines that are also commonly used as a date rape drug. When asked whether the Klonopin is one of those drugs the witness agrees that consumption of Klonopin would lead to a positive test for benzo. The medical examiner further explains that Klonopin is a common, inexpensive date rape drug, easily purchase on the street illegally. The defense attorney did not cross-examine this witness. The prosecutor was done presenting its case-in-chief.

During the defendant's case-in-chief, the defendant was called to the stands. The defendant expresses remorse to raping the victim. He admits to the act but explains that he could not control his impulses at that time. The defense attorney then asked the defendant to talk about his childhood. The defendant testifies that he had seven other brothers and sisters. He also added that he was physical and sexually abused as a child and his parents never really took care of him or his siblings. The defense attorney then presents police reports and medical reports documenting those abuses. Cross-examination of the defendant fails to discredit him in any way. In the defense attorney's closing argument, he argued that the suspect should not be held fully responsible for the crime. The attorney argued the only reason the crime occurred was society's failure to protect the defendant when he was a child and again, society's failure to ensure the defendant's proper recovery from his childhood trauma.

End of Vignette

The Foreman, the head of the jury, has asked you to complete a ballot indicating your vote anonymously. How likely would you, as a juror at this trial, choose a guilty verdict?

[Please drag and drop the marker along this line to indicate your answer.]



APPENDIX C

Vignette C

A 23-year-old male college senior who is also a promising football player was accused of raping a college junior, a 21-year-old female freshman in the college. The act is believed to have taken place in the dorm room of the female victim. During the prosecutor's case-in-chief, the prosecutor first called the victim to the stand. The victim testified that she had *hung out* with the defendant several times before the incident. She also testified that the defendant had request her to be his date for prom earlier that semester. However, she promised her girlfriends that they would be attending prom together without a date and, therefore, turn the defendant down. On the night of the event, the defendant and the victim were both attending an end of semester party at the university café to celebrate the end of the academic year. The victim testifies that she did not consume any alcohol during the event. The event ended around one in the morning, and the defendant offered to walk the victim back to her dorm. She accepted. Back at her dorm, the victim testified feeling a little dizzy but thought it was just due to the late hours. She also confirmed running into the security guard on duty in front of her dorm. She was helped onto her bed and testifies that she does not remember much after that until her friend woke her up the next morning. Her pants and underwear had been removed. She then believed she was raped and immediately lodged a police report. During cross-examination, the defense attorney questioned whether the victim can confirm that his client was the one that rape her? The victim answered that she could not.

The prosecutor then calls the security guard to the stand. The guard testifies that he spotted the victim and the defendant walking towards him which alarmed him because male students were not allowed in the dorm room area late at night. He approached them, but the victim assures him that the defendant was just walking her back to her room. The guard testifies that the victim looked dizzy, but the guard ensured that the defendant closed the door and left the area right away. When asked if he checked if the room was locked, he testifies that he did not check whether the door was locked. The prosecutor then questioned whether the guard checks to see if the defendant may have stolen the victim's dorm room keys. The guard testifies that he did not have sufficient belief to check the defendant for stolen items. During cross-examination, the defense attorney asked if there had been any breaking-and-entering cases at the female dorms. The guard testified that there had been multiple incidents that semester, he explained that he was the only guard hired to patrol the large compound, and there was no fencing around the area as well. The defense then questions whether it was possible that if the door was unlocked, anyone could have walked into the victim's room and rapes her. The guard agrees that it was completely possible.

Next the prosecutor calls the investigator to the stand. The investigator first testifies that his team recovered a stained bedsheet from the victim's dorm room and the rape kit from the hospital as well. His initial impression was that the victim was drunk or drugged because the victim could not remember being raped but testifies that the medical report suggests otherwise. He then informs the court that he requested the medical examiner obtain permission from the victim to conduct a blood test for alcohol and potential date rape drugs. The investigator confirms that police officers also recovered Klonopin pills from the defendant's dorm room. The defense attorney did not cross-examine this witness.

Next the prosecutor calls the criminal lab medical examiner to the stand. The medical examiner testifies that DNA test confirms that the stain on the bedsheet was semen from the defendant. The DNA test of the rape kit also confirms that the semen belongs to the defendant. When questioned whether there was any drug in the victim's system, the medical examiner informs the court that the Blood Alcohol Content (BAC) was <0.01 (legal limit 0.08) and tested positive for benzodiazepine. The prosecutor requested the witness to explain that result to the court. The medical examiner explains that the BAC level supports the victim's statement that she did not consume any alcohol that night. The positive result for benzodiazepine is likely from antianxiety medicines that are also commonly used as a date rape drug. When asked whether the Klonopin is one of those drugs the witness agrees that consumption of Klonopin would lead to a positive test for benzo. The medical examiner further explains that Klonopin is a common, inexpensive date rape drug, easily purchase on the street illegally. The defense attorney did not cross-examine this witness. The prosecutor was done presenting its case-in-chief.

During the defendant's case-in-chief, the defendant was called to the stands. The defendant expresses remorse to raping the victim. He admits to the act but explains that he could not control his impulses at that time. The defense attorney then asked the defendant to talk about his childhood. The defendant testifies that he had seven other brothers and sisters. He also added that he was physical and sexually abused as a child and his parents never really took care of him or his siblings. The defense attorney then presents police reports and medical reports documenting those abuses. Cross-examination of the defendant fails to discredit him in any way.

The defense attorney then introduces an expert witness and lay out the expert's foundation by questioning the experts on his experience in the field. The expert witness testifies that he is an assistant professor of psychology in a state university. He has five-year clinical experience dealing with victims of child sexual abuse and assists them to recover from their traumatic experience. The judge and the prosecutor were satisfied with the qualification of the expert witness. The expert witness testifies that a traumatic childhood such as the one experienced by the defendant can cause regression in his social functions thus affecting his ability to form healthy and secure relationships. The trauma can affect the defendant's ability to form healthy self-identity and could affect his ability to initiate proper sexual relationships.

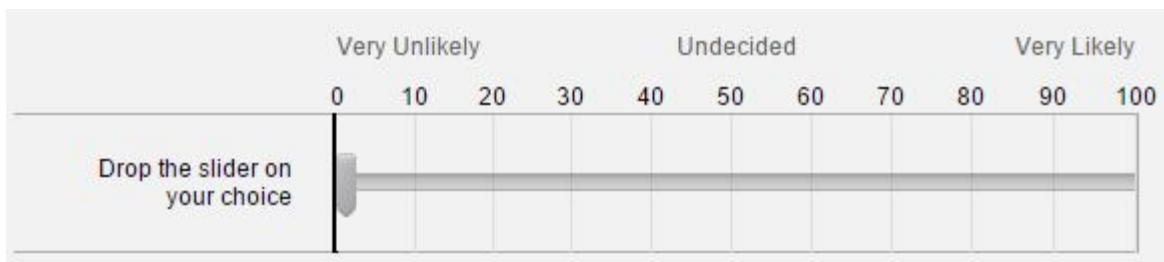
The expert witness further testifies that he had witnessed many victims of childhood abuse that did not receive help recovering become much more violent criminals. During cross-examination, the expert witness was confident and answered all the question of the prosecutor. The prosecution failed to discredit him in any way.

In the defense attorney's closing argument, he argued that the suspect should not be held fully responsible for the crime. The attorney argued the only reason the crime occurred was society's failure to protect the defendant when he was a child and again, society's failure to ensure the defendant's proper recovery from his childhood trauma.

End of Vignette

The Foreman, the head of the jury, has asked you to complete a ballot indicating your vote anonymously. How likely would you, as a juror at this trial, choose a guilty verdict?

[Please drag and drop the marker along this line to indicate your answer.]



APPENDIX D Vignette D

A 23-year-old male college senior who is also a promising football player was accused of raping a college junior, a 21-year-old female freshman in the college. The act is believed to have taken place in the dorm room of the female victim.

During the prosecutor's case-in-chief, the prosecutor first called the victim to the stand. The victim testified that she had *hung out* with the defendant several times before the incident. She also testified that the defendant had request her to be his date for prom earlier that semester. However, she promised her girlfriends that they would be attending prom together without a date and, therefore, turn the defendant down. On the night of the event, the defendant and the victim were both attending an end of semester party at the university café to celebrate the end of the academic year. The victim testifies that she did not consume any alcohol during the event.

The event ended around one in the morning, and the defendant offered to walk the victim back to her dorm. She accepted. Back at her dorm, the victim testified feeling a little dizzy but thought it was just due to the late hours. She also confirmed running into the security guard on duty in front of her dorm. She was helped onto her bed and testifies that she does not remember much after that until her friend woke her up the next morning. Her pants and underwear had been removed. She then believed she was raped and immediately lodged a police report.

During cross-examination, the defense attorney questioned whether the victim can confirm that his client was the one that rape her? The victim answered that she could not. The prosecutor then calls the security guard to the stand. The guard testifies that he spotted the victim and the defendant walking towards him which alarmed him because male students were not allowed in the dorm room area late at night. He approached them, but the victim assures him that the defendant was just walking her back to her room. The guard testifies that the victim looked dizzy, but the guard ensured that the defendant closed the door and left the area right away. When asked if he checked if the room was locked, he testifies that he did not check whether the door was locked. The prosecutor then questioned whether the guard check to see if the defendant may have stolen the victim's dorm room keys. The guard testifies that he did not have sufficient belief to check the defendant for stolen items. During cross-examination, the defense attorney asked if there had been any breaking-and-entering cases at the female dorms. The guard testified that there had been multiple incidents that semester, he explained that he was the only guard hired to patrol the large compound, and there was no fencing around the area as well.

The defense then questions whether it was possible that if the door was unlocked, anyone could have walked into the victim's room and rapes her. The guard agrees that it was completely possible. Next, the prosecutor calls the investigator to the stand. The investigator first testifies that his team recovered a stained bed sheet from the victim's dorm room and the rape kit from the hospital as well. His initial impression was that the victim was drunk or drugged because the victim could not remember being raped but testifies that the medical report suggests otherwise. He then informs the court that he requested the medical examiner obtain permission from the victim to conduct a blood test for alcohol and potential date rape drugs. The investigator confirms that police officers also recovered Klonopin pills from the defendant's dorm room. The defense attorney did not cross-examine this witness.

Next the prosecutor calls the criminal lab medical examiner to the stand. The medical examiner testifies that DNA test confirms that the stain on the bedsheet was semen from the defendant. The DNA test of the rape kit also confirms that the semen belongs to the defendant. When questioned whether there was any drug in the victim's system, the medical examiner informs the court that the Blood Alcohol Content (BAC) was <0.01 (legal limit 0.08) and tested positive for benzodiazepine. The prosecutor requested the witness to explain that result to the court. The medical examiner explains that the BAC level supports the victim's statement that she did not consume any alcohol that night. The positive result for benzodiazepine is likely from antianxiety medicines that are also commonly used as a date rape drug. When asked whether the Klonopin is one of those drugs the witness agrees that consumption of Klonopin would lead to a positive test for benzo. The medical examiner further explains that Klonopin is a common, inexpensive date rape drug, easily purchase on the street illegally. The defense attorney did not cross-examine this witness. The prosecutor was done presenting its case-in-chief.

During the defendant's case-in-chief, the defendant was called to the stands. The defendant expresses remorse to raping the victim. He admits to the act but explains that he could not control his impulses at that time. The defense attorney then asked the defendant to talk about his childhood. The defendant testifies that he had seven other brothers and sisters. He also added that he was physical and sexually abused as a child and his parents never really took care of him or his siblings. The defense attorney then presents police reports and medical reports documenting those abuses. Cross-examination of the defendant fails to discredit him in any way.

The defense attorney then introduces an expert witness and lay out the expert's foundation by questioning the experts on his experience in the field. The expert witness testifies that he is a professor of psychology in a state university who specializes on the effects of childhood trauma. He has fifteen-year clinical experience dealing with victims of child sexual abuse and assists them to recover from their traumatic experience. The expert witness has multiple journal publication in the field and has written several top sellers on issues regarding childhood trauma. The judge and the prosecutor were satisfied with the qualification of the expert witness. The expert witness testifies that a traumatic childhood such as the one experienced by the defendant can cause regression in his social functions thus affecting his ability to form healthy and secure relationships. The trauma can affect the defendant's ability to form healthy self-identity and could affect his ability to initiate proper sexual relationships. The expert witness further testifies that he had witnessed many victims of childhood abuse that did not receive help recovering become much more violent criminals. During cross-examination, the expert witness was confident and answered all the question of the prosecutor.

The prosecution failed to discredit him in any way. In the defense attorney’s closing argument, he argued that the suspect should not be held fully responsible for the crime. The attorney argued the only reason the crime occurred was society’s failure to protect the defendant when he was a child and again, society’s failure to ensure the defendant’s proper recovery from his childhood trauma.

End of Vignette

The Foreman, the head of the jury, has asked you to complete a ballot indicating your vote anonymously. How likely would you, as a juror at this trial, choose a guilty verdict?

[Please drag and drop the marker along this line to indicate your answer.]

