

SEXUAL VICTIMIZATION AND LEGAL-DECISION MAKING

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ABSTRACT

Despite the prevalence of sexual victimization of children and adults, these cases often face substantial difficulties when it comes to their successful prosecution. Yet, legal decision-making research can provide a wealth of knowledge regarding the factors associated with successful trial outcomes of these cases. This Article considers various extralegal factors that have been shown to influence mock juror decision making in cases of child sexual assault and adult rape. Part I reviews theories of legal decision making. Part II examines methodological issues associated with juror decision-making research. Part III reviews the extralegal factors that have been found to influence mock jurors' decisions. Part IV provides concluding thoughts.

INTRODUCTION

Sexual victimization includes both child and adult victims. It can include contact (e.g., touching, kissing, oral sex, penetrative sex) and non-contact activities (e.g., exposing or flashing, making, viewing, or distributing images or videos)¹. It is important to note from the start that in cases of child victimization the issue of consent is moot—a child cannot consent to a sexual act.² However, a critical aspect of adult rape cases involves establishing that the act was nonconsensual.³ The prevalence of sexual victimization among children and adults is staggering. For example, 2021 data indicated that 588,229 cases of child maltreatment were

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¹ Nat'l Soc'y for the Prevention of Cruelty to Child., *Child Sexual Abuse*, NSPCC (2024), <https://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/child-sexual-abuse/> [<https://perma.cc/99D6-YGVY>].

² See ASAPH GLOSSER ET AL., STATUTORY RAPE: A GUIDE TO STATE LAWS AND REPORTING REQUIREMENTS ES-1 (2004).

³ Jonathan M. Golding et al., *Beyond the Stranger in the Woods: Investigating the Complexity of Adult Rape Cases in the Courtroom*, in 6 *ADVANCES PSYCH. & L.* 1, 2-3 (Brian Bornstein, Monica Miller, & David Dematteo eds., 2022).

substantiated in the US.⁴ This number is likely an underestimate given sexual abuse often goes unreported, especially for boys.⁵ Regarding rape of adult women (the focus of most research on adult sexual victimization), one in four women in the US have experienced rape or attempted rape in their lifetime⁶, and the majority of these assaults involved someone the victim knew.⁷ In addition, rape is one of the least reported crimes.⁸ It is estimated that between 60% and 90% of rapes go unreported. The reasons for not reporting rape include victims are afraid of retaliation; feel the police would not be able to help; elect to avoid additional trauma that would ensue by reporting the rape; and a victim might think others will not take their report seriously if the victim did not fight back, believed a non-violent experience was rape, or if they knew their perpetrator well (e.g., an intimate partner).⁹

Regrettably, prosecuting sexual victimization has had its problems. First, sexual victimization cases often do not see the light of a courtroom. Regarding child sexual assault (CSA), a recent study found that fewer than one in five cases were prosecuted, and about half of these cases led to a guilty verdict or guilty plea.¹⁰ Cases of adult female rape have also fared poorly as far as cases reaching the courtroom: The prosecution of reported rape only occurred in 37% of cases involving adult women victims and fewer than 50% of these cases led to a conviction.¹¹ Given the data about unreported rapes, it is alarming to note that the Rape, Abuse, and Incest

⁴ CHILDREN'S BUREAU, US DEP'T OF HEALTH & HUM. SERVICES, CHILD MALTREATMENT 2021, ii (2021) <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf> [<https://perma.cc/DEP6-8R7C>].

⁵ MARGARET-ELLEN PIPE ET AL., CHILD SEXUAL ABUSE: DISCLOSURE, DELAY AND DENIAL 20 (2007).

⁶ KATHLEEN C. BASILE ET AL., NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, CENTERS FOR DISEASE CONTROL AND PREVENTION: THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON SEXUAL VIOLENCE 3 (2022), https://stacks.cdc.gov/view/cdc/124646/cdc_124646_DS1.pdf [<https://perma.cc/X4KE-3F8K>].

⁷ See generally Golding et al., *supra* note 3; Michele C. Black et al., NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, CENTERS FOR DISEASE CONTROL AND PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 21 (2011), https://www.cdc.gov/violenceprevention/pdf/NISVS_Report2010-a.pdf?ref=eq; *Perpetrators of Sexual Violence: Statistics*, RAINN (2023), <https://www.rainn.org/statistics/perpetrators-sexual-violence> [<https://perma.cc/86DP-56FE>].

⁸ Patricia Tjaden & Nancy Thoennes, EXTENT, NATURE, AND CONSEQUENCES OF RAPE VICTIMIZATION: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, iii (2006).

⁹ Joanne Belknap, *Rape: Too Hard to Report and Too Easy to Discredit Victims*, 16 VIOLENCE AGAINST WOMEN 1335, 1338 (2010); Charity B. Hammond & Karen S. Calhoun, *Labeling of Abuse Experiences and Rates of Victimization*, 31 PSYCH. WOMEN Q 371, 376 (2007); Arnold S. Kahn, *Calling it Rape: Differences in Experiences of Women Who Do or Do Not Label Their Sexual Assault as Rape*, 27 PSYCH. WOMEN Q, 233, 239 (2003); Ruthy Lazar, *Negotiating Sex: The Legal Construct of Consent in Cases of Wife Rape in Ontario, Canada*, 22 CANADIAN J. OF WOMEN & L., 329, 330 (2010).

¹⁰ Stephanie D. Block, et al., US DEP'T OF JUST., PROSECUTION OF CHILD SEXUAL ABUSE: A PARTNERSHIP TO IMPROVE OUTCOMES 1 (2019), <https://www.ojp.gov/pdffiles1/nij/grants/252768.pdf> [<https://perma.cc/3F7X-CHC8>].

¹¹ TJADEN & THOENNES, *supra* note 8, at 33.

National Network (RAINN) estimated that, in the US, fewer than 3% of reported rapes lead to a conviction—only 2.5% result in a prison sentence.¹²

Second, even if a sexual victimization case reaches court, successfully prosecuting a case is difficult. This difficulty is the result of jurors wanting to be presented with concrete evidence (e.g., DNA, eyewitness) and often feel (based on media coverage, including police shows) that concrete evidence should be found for all sexual crimes (e.g., CSI effect).¹³ Yet, such concrete evidence is often absent or not relevant in these cases. This is because sexual victimization typically occurs in private and involves a high level of secrecy—there is little or no corroborating physical evidence and rarely an eyewitness (but see the Sandusky case¹⁴). Moreover, in adult rape cases in which the victim and perpetrator knew one another (most cases)¹⁵, there is usually agreement that sexual intercourse occurred. The she-said-he-said argument concerns whether the victim consented to the sexual activity. Thus, DNA evidence is not of significant value in these contexts. Another difficulty with successfully prosecuting these cases is that sexual assault victims may simply not be believed.¹⁶ In the case of a child, this may occur because jurors feel a child's memory is unreliable, although adults have difficulty assessing the accuracy of children.¹⁷ As for perceptions of an adult victim, research has also shown that these victims are often not viewed as credible.¹⁸ This is especially true if an adult victim was intoxicated at the time of the assault and may not be perceived as able to recall the events surrounding the rape.¹⁹

Given these difficulties, investigating legal decision-making in cases involving sexual crimes of children and adults may offer insight into factors that can lead to a greater number of these cases being prosecuted, and in turn, a greater likelihood of conviction. Moreover, understanding how best to prosecute these cases may ultimately lead to significant psychological relief for victims of sexual assault. Regrettably, these victims are at increased risk for several types of negative

¹² *The Criminal Justice System: Statistics*, <https://rainn.org/statistics/criminal-justice-system> [<https://perma.cc/44RP-CW2M>].

¹³ Donald E. Shelton, *The 'CSI Effect': Does it Really Exist?* 259 NAT'L INST. JUST. J., March 2008, at 1, 2.

¹⁴ Diana Dimond, *The Sandusky Sexual Abuse Case's Biggest Mysteries*, DAILY BEAST (July 13, 2017, 6:59 PM), <http://www.thedailybeast.com/articles/2012/06/05/the-sandusky-sexual-abuse-case-s-biggest-mysteries.html> [<https://perma.cc/SHW5-FCHQ>].

¹⁵ Golding et al., *supra* note 3, at 2.

¹⁶ JOHN E. B. MYERS, LEGAL ISSUES IN CHILD ABUSE AND NEGLECT PRACTICE 18 (Sage Publications, 2nd ed. 1998); *See generally* *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987); DEBRA WHITCOMB ET AL., WHEN THE VICTIM IS A CHILD: ISSUES FOR JUDGES AND PROSECUTORS 19-30 (United States Dept. Just., Nat'l Inst. Just. 1985).

¹⁷ Jonathan M. Golding et al., *Perceptions of Child Sexual Abuse Victims: A Review of Psychological Research with Implications for Law*, in MEMORY AND SEXUAL MISCONDUCT: PSYCHOLOGICAL RESEARCH FOR CRIMINAL JUSTICE, 132, 133 (Joanna Pozzulo, Emily Pica, & Chelsea Sheahan eds., 2020)

¹⁸ *See* Golding et al., *supra* note 3, at 23.

¹⁹ *See* Kellie R. Lynch et al., *Who Bought the Drinks? Juror Perceptions of Intoxication in a Rape Trial*, 28 J. INTERPERSONAL VIOLENCE 3205, 3205–22 (2013).

outcomes, including posttraumatic stress disorder, depression, anxiety, and substance abuse.²⁰ As such, the purpose of the present review is to illustrate that CSA and adult rape are both impacted by various extralegal factors (i.e., factors not within the scope of the law). Note that our review is intentionally non-comprehensive. We discuss only some extra-legal factors²¹ and we focus on more recently conducted experimental studies—it is always possible that we missed an article.

I. THEORIES OF LEGAL DECISION-MAKING

In discussing the impact of extra-legal factors on sexual victimization cases in the courtroom, it is necessary to describe theories of juror decision-making. We should note that relatively few studies examine how jurors reach their decisions in these cases.²² However, two models have addressed this issue: the Story Model and the Commonsense Justice model. First, the Story Model posits that as a trial takes place, jurors actively process and organize evidence into a narrative (i.e., story) that describes the case and which they then rely on to render a verdict.²³ Given the opposing theories offered by the Prosecution and Defense, however, jurors may construct multiple stories during a trial. A juror's ability to construct a story involves the evidence presented as well as their own knowledge and beliefs.²⁴ Regarding sexual victimization cases, additional knowledge and beliefs may include information that is incorrect and works against a victim. For example, if a juror believes in certain rape myths (i.e., a set of stereotypical beliefs about what constitutes a "real" rape and a "worthy" rape victim) such as "rape only involves strangers," they might not support a victim of intimate partner rape (e.g., spousal rape) and in turn may vote not guilty.²⁵

Second, the Commonsense Justice model²⁶ recognizes the difference between the law "on the books" and a juror's "commonsense" view of what a law should be. Thus, jurors have their own ideas about human nature, responsibility, fairness, punishment, and justice. The central component of this model is the notion of a

²⁰ See Rebecca Campbell et al., *An Ecological Model of the Impact of Sexual Assault on Women's Mental Health*, 10 TRAUMA, VIOLENCE, & ABUSE 225, 225 (2009).

²¹ The present review does not cover extra-legal factors involving victim characteristics/behaviors such as victim intelligence. In addition, we exclude a discussion of various courtroom extra-legal factors that may impact legal decision-making. These include a victim's demeanor when testifying and empathy toward the victim. For more expanded coverage, see generally Golding et al. *supra* note 17, and Golding et al., *supra* note 3.

²² See Golding et al., *supra* note 3, at 5.

²³ Reid Hastie & Nancy Pennington, *The story model for juror decision making*, in INSIDE THE JUROR: THE PSYCHOLOGY OF JURY DECISION MAKING 192, 192-93 (Reid Hastie ed., 1993).

²⁴ See DANIEL J. DEVINE, JURY DECISION MAKING: THE STATE OF THE SCIENCE 92 (Brian Bornstein & Monica Miller, eds., NY: New York University Press 2012).

²⁵ See Shannon M. Stuart et al., *Rape Perpetrators on Trial: The Effect of Sexual Assault-Related Schemas on Attributions of Blame*, 34 J. INTERPERSONAL VIOLENCE, 310, 310-36 (2019); see Golding et al. *supra* note 3, at 7.

²⁶ NORMAN J. FINKEL, COMMONSENSE JUSTICE: JURORS' NOTIONS OF THE LAW 2 (1995).

prototype or cognitive construct that encompasses the typical characteristics of a group or category (e.g., a prototypical CSA or rape case of a man raping a woman).²⁷ The value of prototypes is that they assist jurors in organizing information, observations, and experiences through mental categorization.²⁸ However, sometimes a juror's prototypes may be inaccurate and/or influenced by media depictions and reporting.²⁹ As a result, inaccurate prototypes may influence their perceptions of the case.³⁰

II. METHODOLOGICAL ISSUES

Research investigating sexual victimization and legal decision-making has used various methodologies. These include field-based studies conducted in a natural setting (e.g., a court trial³¹) and archival studies involving stored data (e.g., court, police reports). The former methodology offers high ecological validity but lacks the ability to manipulate or control certain variables, and the latter are important for studying various phenomena, but again do not allow for control over specific variables.

Thus, most research investigating sexual victimization and legal decision making has used a mock-trial methodology in which a researcher generates a plausible case typically based on actual case facts. These cases include components that allow for a relatively high degree of ecological validity (e.g., legally appropriate charges, realistic witnesses, pattern jury instructions). Nonetheless this methodology is still relatively artificial when generalizing from a mock trial to an actual case.³² This is especially true regarding the mock trial not being real (e.g., the verdict rendered by mock jurors has no impact on the defendant), and a juror's experience is not the same as an actual juror (e.g., length of trial).³³ Further, the mock-trial methodology typically used in the

²⁷ Jennifer J. Groscup & Jennifer Tallon, *Theoretical Models of Jury Decision-Making*, in *JURY PSYCHOLOGY: SOCIAL ASPECTS OF TRIAL PROCESSES* 41, 49 (J.D. Lieberman & D.A. Krouss, eds., Routledge 2016); Jennifer E. Loudon & Jennifer L. Skeem, *Constructing Insanity: Jurors' Prototypes, Attitudes, and Legal Decision-Making*, 25 *BEHAV. SCI. & L.* 449, 451 (2007).

²⁸ Eleanor H. Rosch, *Natural Categories*, 4 *COGNITIVE PSYCH.* 328, 330 (1973).

²⁹ Barbara Krahé, *Police Officers' Definitions of Rape: A Prototype Study*, 1 *J. COMMUNITY & APPLIED PSYCH.* 223, 229 (1991); Vicki L. Smith, *Prototypes in the Courtroom: Lay Representations of Legal Concepts*, 61 *J. PERSONALITY & SOC. PSYCH.* 857, 857 (1991).

³⁰ Kerri L. Pickel & Rachel H. Gentry, *Mock Jurors' Expectations Regarding the Psychological Harm Experienced by Rape Victims as a Function of Rape Prototypicality*, 23 *PSYCH., CRIME & L.* 254, 254 (2017).

³¹ Peter D. Blanck, *The Process of "Field" Research in the Courtroom*, 11 *L. & HUM. BEHAV.* 337, 337 (1987).

³² Shari S. Diamond, *Illuminations and Shadows from Jury Simulations*, 21 *L. & HUM. BEHAV.* 561, 562 (1997); Wayne Weiten & Shari S. Diamond, *A Critical Review of the Jury Simulation Paradigm: The Case of Defendant Characteristics*, 3 *L. & HUM. BEHAV.* 71, 89, (1997).

³³ Brian H. Bornstein, *The Ecological Validity of Jury Simulations: Is the Jury Still Out?* 23 *L. & HUM. BEHAV.*, 75, 75 (1999); Brian H. Bornstein & Sean G. McCabe, *Jurors of the Absurd—The Role of Consequentiality in Jury Simulation Research*, 32 *FLA. ST. L.R.* 443, 447 (2005).

studies we will describe involved mock jurors, not mock juries. That is, most research focused on individual versus group judgments, and thus has not examined group deliberations. This is due to lower costs (i.e., fewer participants are required) and efficiency (i.e., not having to recruit a group of people at the same time at a specific location). Nonetheless, existing research suggests that pre-deliberation individual verdicts often match jury verdicts, and that the deliberations only highlight what most jurors favored before discussion.³⁴

Despite these shortcomings, a laboratory mock-jury study offers experimental control that is critical to ensuring the scientific integrity of research. This control makes it possible to draw definitive conclusions about the effects of a particular factor (e.g., defendant race) only if it is varied while keeping all other factors constant. Of course, an actual trial cannot afford such control given that each case is unique.

There are three important aspects of the mock-trial. First, participants include jury-eligible undergraduate students receiving course credit for participation and/or community members paid for their participation. Recruitment of the latter has included potential jurors waiting for trial, individuals from various public locations or (more recently) from online recruitment services.³⁵ Second, most studies present cases to participants (i.e., mock jurors) in written form as a short vignette, trial summary, or trial transcript.³⁶ Often, the cases are presented online.³⁷ A relatively small number of studies have presented cases via videotaped simulated trials.³⁸ Participants typically receive a single case as part of a between-participant design (e.g., half the participants are randomly assigned to read a case where the victim is described as a boy and the other half read the exact same case except the victim is described as a girl).

Finally, after presenting mock trials to participants, various judgments about a case are measured. Typically, outcome measures are collected—verdict and/or guilt

³⁴ Tamara M. Haegerich & Bette L. Bottoms, *Empathy and Jurors' Decisions in Patricide Trials Involving Child Sexual Assault Allegations*, 24 L. & HUM. BEHAV. 421, 435 (2000); HARRY KALVEN & HANS ZIESEL, *THE AMERICAN JURY* 486–89 (1966); Marla Sandys, & Ronald Dillehay, *First-Ballot Votes, Redeliberation, Dispositions, and Final Verdicts in Jury Trials*, 19 L. & HUM. BEHAV. 175, 175 (1995).

³⁵ We should note that a controversy about using student samples versus community member samples has emerged, with the former seen as less scientifically valid; Richard L. Wiener et al., *Mock Jury Research: Where Do We Go from Here*, 29 BEHAV. SCI. & L. 467, 469 (2011). However, several meta-analytic studies showed that these samples do not differ significantly when making case judgments. Bornstein, *supra* note 33, at 78; Brian H. Bornstein et al., *Mock Juror Sampling Issues in Jury Simulation Research: A Meta-Analysis*, 41 L. & HUM. BEHAV. 13, 24 (2017).

³⁶ See Saul M. Kassin & Katherine K. Neumann, *On The Power of Confession Evidence: An Experimental Test of the Fundamental Difference Hypothesis*, 21 L. & HUM. BEHAV. 469, 480 (1997).

³⁷ Jonathan M. Golding et al., *Impeaching Rape Victims in Criminal Court: Does Concurrent Civil Action Hurt Justice?* 31 J. INTERPERSONAL VIOLENCE 3129, 3133–34 (2016); Kellie R. Lynch et al., *supra* note 19, at 3211.

³⁸ Eugene Borgida & Phyllis White, *Social Perception of Rape Victims: The Impact of Legal Reform*, 2 L. HUM. BEHAV. 339, 339 (1978).

ratings and sentence recommendation. In addition, a wide variety of other case judgments are measured. As noted in Golding et al.,³⁹ these can include ratings of confidence in the verdict,⁴⁰ perceived credibility of witnesses,⁴¹ perceived responsibility and/or blame attributed to the victim and defendant,⁴² sympathy and/or anger toward the victim and defendant,⁴³ and perceptions of sexual behavior (e.g., want, expectations).⁴⁴ More recently, some mock-trial research has included open-ended questions assessing why participants selected a particular verdict or why they thought a victim or defendant presented certain evidence.⁴⁵

III. EXTRA-LEGAL FACTORS

At this point, we will describe the results of studies that offered researchers and practitioners a greater understanding of the impact of some extra-legal factors on legal decision-making in the courtroom. Note that some of these factors have been investigated in both CSA and adult female rape trials. However, there are some factors that have only been studied in one domain or the other. These factors fall into several categories.

A. Juror characteristics

Regarding juror characteristics, the extra-legal factor that has been discussed most often in cases of CSA and adult rape is that of mock-juror gender/sex. Most research studies in these domains⁴⁶ have shown that female mock jurors are more likely than male mock jurors to show a pro-victim/pro-prosecution bias in their judgments (e.g., more guilty verdicts, higher ratings of victim credibility). Although most of these studies have investigated individual judgments (i.e., mock-juror paradigm), a few studies have used a mock-jury paradigm. Included in the latter is a CSA study by Golding et al.⁴⁷ that investigated the impact of gender composition on

³⁹ See generally Golding et al., *supra* note 3, at 10.

⁴⁰ Marc A. Kilippenstine, & Regina Schuller, *Perceptions of Sexual Assault: Expectancies Regarding the Emotional Response of a Rape Victim Over Time*, 18 PSYCH., CRIME LAW 79, 84 (2012).

⁴¹ Ashley A. Wenger & Brian H. Bornstein, *The Effects of Victim's Substance Use and Relationship Closeness on Mock Jurors' Judgments in an Acquaintance Rape Case*, 54 SEX ROLES 547, 551 (2006).

⁴² Shannon Sommer et al., *Mock Juror Perceptions of Rape Victims: Impact of Case Characteristics And Individual Difference*, 31 J. INTERPERSONAL VIOLENCE 2847, 2847 (2016).

⁴³ Jasmine Brown-Iannuzzi et al., *Will Jurors Believe Non-Believers? Perceptions of Atheist Rape Victims in the Courtroom*, 11 PSYCH. RELIGION SPIRITUALITY 119, 119 (2019).

⁴⁴ Kellie R. Lynch et al., *Great Sexpectations: The Impact of Participant Gender, Defendant Desirability, and Date Cost on Attributions of a Date Sexual Assault Victim and Defendant*, 35 J. INTERPERSONAL VIOLENCE 3437, 3437–38 (2017).

⁴⁵ Mary M. Levi & Jonathan M. Golding, *Mental Health in The Courtroom: How Victim Mental Health Status Impacts Juror Decision-Making in a Rape Case*, 2024 PSYCH., CRIME L. 1, 5.

⁴⁶ For reviews see generally Golding et al., *supra* note 17, at 136 for CSA research; Golding et al., *supra* note 3, at 12 for adult rape research.

⁴⁷ Jonathan M. Golding et al., *The Impact of Mock Jury Gender Composition on Deliberations and Conviction Rates in a Child Sexual Assault Trial*, 12 CHILD MALTREATMENT 182, 182 (2007).

jury deliberations and verdicts. The researchers varied the number of men and women on a six-person mock jury so that there was either a female majority or non-female majority. After hearing a CSA case with a 6-year-old victim, the jurors deliberated. What was said during deliberations was coded as well as the votes taken by individual jurors during deliberations. During deliberations, women made an equal number of pro-prosecution/pro-defense statements, whereas men made more pro-defense statements than pro-prosecution statements. In addition, female-majority mock jurors changed from not guilty to guilty more than non-female-majority mock jurors and vice versa.

Why are there such robust gender differences in CSA and adult rape cases? Researchers have offered several explanations. These include issues of identification, such that women identify with the alleged victim more than men,⁴⁸ which may partly reflect women being sexually victimized more often than men.⁴⁹ Indeed, whereas women report greater empathy for CSA and adult rape victims and perceive these victims to be more credible and believable,⁵⁰ men are more fearful of being falsely accused of CSA and report more negative attitudes toward women.⁵¹ In both CSA and adult rape cases, greater empathy and identification with a victim are associated with more pro-victim judgments and greater punitiveness toward defendants.⁵² Alternatively, this gender difference might reflect women typically being more nurturing than men.⁵³ Thus, women may be more inclined to protect defenseless people, such as children and rape victims. Finally, gender differences may be linked to the internalization of societal gender roles, which demand that compared to men, women should be more caring, empathic, and child oriented.⁵⁴

⁴⁸ Susan T. Bell et al., *Understanding Attributions of Blame in Stranger Rape and Date Rape Situations: An Examination of Gender, Race, Identification, and Students' Social Perceptions Of Rape Victims*, 24 J. APPL. SOC. PSYCH., 1719, 1719 (1994).

⁴⁹ HOLLY KEARL, *THE FACTS BEHIND THE #METOO MOVEMENT: A NATIONAL STUDY ON SEXUAL HARASSMENT AND ASSAULT* 7 (2018).

⁵⁰ Bette L. Bottoms et al., *Explaining Gender Differences in Jurors' Reactions to Child Sexual Assault Cases*, 32 BEHAV. SCI. & L. 789, 804 (2014); Sheila R. Deitz et al., *Measurement of Empathy Toward Rape Victims and Rapists*, 43 J. PERSONALITY & SOC. PSYCH. 372, 379 (1982); Bette L. Bottoms, *Individual Differences in Perceptions of Child Sexual Assault Victims*, in CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY, 229, 243 (G. S. Goodman & B. L. Bottoms eds., 1982).

⁵¹ Bottoms et al., *supra* note 50, at 789–90, 806; Tayler M. Jones et al., *Child Victim Empathy Mediates the Influence of Jurors' Sexual Abuse Experience on Child Sexual Abuse Case Judgements: Meta-Analyses*, 26 PSYCH., PUB. POL'Y, & L. 312, 314, 318–19 (2020).

⁵² Jones et al., *supra* note 51, at 315; Suresh Kanekar et al., *Causal and Moral Responsibility of Victims of Rape and Robbery*, 15 J. APPLIED SOC. PSYCH. 622, 631–33 (1985); *see generally* Golding et al., *supra* note 17 (CSA research); Golding et al., *supra* note 3, at 1–37 (adult rape research).

⁵³ Alan Feingold, *Gender Differences in Personality: A Meta-Analysis*, 116 PSYCH. BULL., 429, 449 (1994).

⁵⁴ Carol Gilligan, *Women's Place in Man's Life Cycle*, in IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 5, 7–8, 10–11 (Harvard Univ. Press rev. ed., 1982); Mark A. Barnett & Christina S. Sinisi, *The Initial Validation of a Liking of Children Scale*, 55 J. PERSONALITY ASSESSMENT 161, 162–65 (1990).

B. Victim characteristics/behaviors

For both children and adult victims of sexual assault, research has shown that mock jurors are impacted by victim characteristics/behaviors, although the victim characteristics/behaviors for CSA and adult rape have differed. One particularly relevant factor for CSA researchers is victim age. Specifically, much research demonstrates that mock jurors perceive younger (vs. older) child witnesses to be more credible and trustworthy, and as a result are more likely to find the defendant guilty.⁵⁵ For instance, although not a mock juror study, Voogt et al.⁵⁶ examined Australian adults' perceptions of a forensic interview of a child's disclosure of sexual abuse. The researchers experimentally manipulated victim age (5, 10, or 15 years old) and victim and defendant gender (man, woman) to assess how each related to perceptions of the victim's accuracy, believability, reliability, competency, and truthfulness. Victim age was the most reliable predictor, with participants perceiving the younger children (5- and 10-year-olds) to be higher on each of the five measures of credibility compared to the 15-year-old. Recent mock juror⁵⁷ and archival research⁵⁸ also support this tendency for younger CSA victims to be perceived as more credible and trustworthy than older victims and for their accusers to be punished more harshly. Bottoms and Goodman⁵⁹ posited one explanation for this, which has received substantial support:⁶⁰ In CSA cases, mock jurors may believe that younger children do not possess the sexual knowledge and are too sexually naïve to make up a story involving sexual abuse. In contrast, in non-CSA cases involving child eyewitnesses, older children may receive the benefit of the doubt due to jurors' assumption that older children are more cognitively mature and thus better able to accurately recall and testify to an event they witnessed.⁶¹

The age at which jurors appear to distinguish “younger” versus “older” victims in CSA cases is 12 years old, with children under this threshold being more likely to

⁵⁵ Golding et al., *supra* note 17, at 143–44; *See also* David F. Ross et al., *The Child in the Eyes of the Jury: Assessing Mock Jurors' Perceptions of the Child Witness*, 14 L. & HUM. BEHAV. 5, 17–18 (1990).

⁵⁶ Ashmyra Voogt et al., *The Impact of Extralegal Factors on Perceived Credibility of Child Victims of Sexual Assault*, 26 PSYCH., CRIME, & L. 823, 827 (2020).

⁵⁷ Chelsea L. Sheahan et al., *The Influence of Testimonial Aids, Victim Age, and Familiarity on Mock Juror Decision-Making in a Sexual Offence Case*, 38 J. POLICE & CRIM. PSYCH. 299, 302, 306 (2023).

⁵⁸ Tiffany Lewis et al., *Sentencing in Child Sexual Assault Cases: Factors Influencing Judicial Decision-Making*, 20 J. SEXUAL AGGRESSION 281, 283, 290, 292 (2014).

⁵⁹ Bette L. Bottoms & Gail S. Goodman, *Perceptions of Children's Credibility in Sexual Assault Cases*, 24 J. APPLIED SOC. PSYCH. 702, 703–04 (1994).

⁶⁰ *See* Golding et al., *supra* note 17, at 144.

⁶¹ Indeed, in non-CSA cases when a child is a bystander witness (e.g., to a car accident), older children are perceived as more credible and reliable than younger children. *See* Gail S. Goodman et al., *Jurors' Reactions to Child Witnesses*, 40 J. SOC. ISSUES 139, 149–50, 152 (1984); Golding et al., *supra* note 17, at 143–44; Joanna Pozzulo, *Jurors' Perceptions Of The Young Eyewitness*, in *THE YOUNG EYEWITNESS: HOW WELL DO CHILDREN AND ADOLESCENTS DESCRIBE AND IDENTIFY PERPETRATORS?* 136–53, (J. Pozzulo, ed., 2017).

be perceived as sexually immature and naïve and thus more credible and trustworthy.⁶² Indeed, studies directly comparing child victims under the age of 12 to adult victims of sexual abuse have revealed that young children tend to receive more pro-victim judgments. For instance, although not a mock juror study, Golding et al.⁶³ compared participants' perceptions of a 6- versus 26-year-old sexual assault victim in the context of a plea bargain scenario. They also manipulated the type of plea agreement (probation vs. reduced sentence) and reason for the plea (prevent the victim from reliving the trauma vs. save time in court). Overall, participants perceived the abuse to be more severe and perceived the plea deal less favorably (e.g., less justice served) when the victim was a child compared to an adult.

Although there appear to be differences between perceptions of children and adults, age differences across adulthood have been examined much less, and the results are mixed with age having less of an impact in adult rape cases. In the first published study to examine elder sexual abuse, Hodell et al.⁶⁴ presented undergraduate mock jurors with a case in which the victim was described as 66, 76, or 86 years old. They found no significant effects of age on any of the outcome measures (e.g., verdict, victim credibility). Yet, in a civil mock-juror study, Foley and Pigott⁶⁵ found age effects. Specifically, participants received a case in which the plaintiff was raped by the pool maintenance worker at her apartment complex and was suing the apartment building's manager for his unwillingness to change her locks after she had asked him to do so and told him someone had been in her apartment. Plaintiff age (late-20s vs. mid-60s) was manipulated via photographs, and although age had no effect on participants' ratings of how responsible the plaintiff was, participants did award more money to the plaintiff when she was in her mid-60s compared to late-20s. Future research should continue to examine this understudied area, however. Given laypeople's perceptions that aging is associated with declining cognitive abilities,⁶⁶ it is important to understand whether jurors perceive such declining faculties as being associated with a lowered ability to fabricate claims of victimization and contributing to the credibility of elder adult victims of rape, like how they do with young children.

Beyond victim age, legal decision-making research involving adult rape has extensively examined the role of victim resistance in shaping jurors' decisions. We should note that until relatively recently most rape laws required a rape victim to

⁶² Bottoms & Goodman, *supra* note 60, at 714.

⁶³ Jonathan M. Golding et al., *Justice Served?: Perceptions of Plea Bargaining Involving a Sexual Assault in Child and Adult Females*, 45 CRIM. JUST. & BEHAV. 503, 503 (2018).

⁶⁴ Emily C. Hodell et al., *The Perception of Elder Sexual Abuse in the Courtroom*, 15 VIOLENCE AGAINST WOMEN 678, 684, 687 (2009).

⁶⁵ Linda A. Foley & Melissa A. Pigott, *Belief in a Just World and Jury Decisions in a Civil Rape Trial*, 30 J. APPLIED SOC. PSYCH. 935, 943 (2000).

⁶⁶ Mary Lee Hummert et al., *Judgments about Stereotypes of the Elderly: Attitudes, Age Associations, and Typicality Ratings of Young, Middle-Aged, and Elderly Adults*, 17 RSCH. ON AGING 168, 174 (1995).

actively resist their assailant, or a charge of rape could not be filed.⁶⁷ Recent research has indicated that mock jurors show greater support for a victim who does resist. For instance, Ong and Ward⁶⁸ found that victims who did not resist a rape and victims who resisted later in the man's sexual advances (e.g., resisting intercourse versus touching⁶⁹) were blamed more than those who resisted the rape and resisted earlier in the date's sexual advances. Black and Gold⁷⁰, however, found a nuanced impact to resistance, such that mock jurors recommended harsher punishments for a defendant when the victim verbally resisted a rape rather than when the victim physically resisted.

It is interesting to note that while children resist being sexually assaulted, only two published studies have investigated the impact of victim resistance on legal decision-making. Although the first study⁷¹ did not use the mock-trial paradigm, we felt it important to describe. Community members were presented with police report vignettes describing the sexual assault of a 12-year-old girl. The vignettes varied regarding type of resistance: physical, verbal, or no resistance. Participants rated the perpetrator more culpable when there was physical resistance compared to verbal resistance. However, no difference was found between the no resistance condition and the resistance conditions. In a second study,⁷² undergraduate participants read a trial in which a six-year-old child resisted verbally, verbally with an outside interruption (i.e., someone came to the door of the victim's house), or physically. When a victim physically resisted compared to verbally resisted there were more guilty verdicts. In addition, those in the physical resistance condition, compared to verbal-only, gave higher ratings of victim credibility and more negative perceptions of the defendant. These higher ratings were associated with rendering more guilty verdicts.

Although victim age and resistance have been examined in the context of both child and adult sexual assault, one victim characteristic/behavior that is particularly relevant in the realm of adult rape, but not CSA, literature is victim intoxication. In

⁶⁷ Livia Gershon, *How Reforms to Rape Law Changed Our Understanding of the Crime*, JSTOR DAILY (September 25, 2015), <https://daily.jstor.org/rape-law-reforms-made-rape-visible/> [<https://perma.cc/9WC6-VY3Z>].

⁶⁸ Andy S. J. Ong & Colleen A. Ward, *The Effects of Sex and Power Schemas, Attitudes Toward Women, and Victim Resistance on Rape Attributions*, 29 J. APPLIED SOC. PSYCH. 362, 369–70 (1999); see also D. J. Angelone et al., *Men's Perceptions of an Acquaintance Rape: The Role of Relationship Length, Victim Resistance, and Gender Role Attitudes*, 30 J. INTERPERSONAL VIOLENCE 2278, 2294–95 (2015).

⁶⁹ Beverly A. Kopper, *Gender, Gender Identity, Rape Myth Acceptance, and Time of Initial Resistance on the Perception of Acquaintance Rape Blame and Avoidability*, 34 SEX ROLES 81, 89, 90 (1996).

⁷⁰ Katherine A. Black & David J. Gold, *Gender Differences and Socioeconomic Status Biases in Judgments about Blame in Date Rape Scenario*, 23 VIOLENCE & VICTIMS 115, 123–24 (2008).

⁷¹ See Paul Rogers et al., *Attributions of Blame and Credibility in a Hypothetical Child Sexual Abuse Case: Roles of Victim Disability, Victim Resistance and Respondent Gender*, 56 INT'L J. DISABILITY, DEV. & EDUC. 205, 209–11 (2009).

⁷² Kyle P. Rawn et al., *Impacts of Victim Resistance and Type of Assault on Legal Decision-Making in Child Sexual Assault*, 32 J. CHILD SEXUAL ABUSE 418, 423–24, 430–31 (2023).

presenting research on this issue, one must note that societal views regard women who drink in excess as diverging from prescriptive gender norms.⁷³ These norms have critical implications for how a woman who alleged rape is treated by the legal system. For example, this case may never reach court.⁷⁴ An intoxicated victim might not report the crime, fearing that the police would be unlikely to believe that she could successfully recall the circumstances of the rape.⁷⁵ Moreover, believing that an intoxicated victim (compared to a sober victim) was not credible⁷⁶, and the chances of winning this case are unlikely, prosecutors might not move forward the case.⁷⁷

If a case involving an intoxicated adult woman does reach court, prosecutors will be faced with skeptical jurors, based on many consistent research findings involving a mock-trial paradigm. Schuller and Wall⁷⁸ were first to show this in a court context. They had community members read a trial summary of an acquaintance rape (male perpetrator and female victim) in which either one, neither, or both parties were moderately intoxicated (from alcohol) when the rape occurred. The results showed that when the victim had consumed alcohol versus consumed a non-alcoholic drink, she was found less credible, and the defendant was rated less guilty (regardless of mock juror gender). Similar results were found for a victim who had used LSD in a study using undergraduate participants in an acquaintance or dating context⁷⁹.

⁷³ Edith S. Lisansky Gomberg, *Historical and Political Perspective: Women and Drug Use*, 38 J. SOC. ISSUES 9, 16, 20 (1982); Barbara C. Leigh, *A Thing so Fallen, and so Vile: Images of Drinking and Sexuality in Women*, 22 CONTEMP. DRUG PROBS. 415, 417–18 (1995); Sharon C. Wilsnack, *Drinking, Sexuality, and Sexual Dysfunction in Women*, in ALCOHOL PROBLEMS IN WOMEN: ANTECEDENTS, CONSEQUENCES, AND INTERVENTION 189, 199 (Sharon C. Wilsnack & Linda J. Beckman eds., The Guilford Press 1984).

⁷⁴ Rebecca Campbell, *The Psychological Impact of Rape Victims' Experience with the Legal, Medical, and Mental Health Systems*, 63 AM. PSYCH. 702, 704 (2008).

⁷⁵ Sarah L. Cook & Mary P. Koss, *More Data Have Accumulated Supporting Date and Acquaintance Rape as Significant Problems for Women*, in 2 CURRENT CONTROVERSIES ON FAMILY VIOLENCE 97, 102–03 (Donileen R. Loseke, Richard J. Gelles & Mary M. Cavanaugh eds., Sage 2005).

⁷⁶ Cassia Spohn & Katherine Tellis, *The Criminal Justice System's Response to Sexual Violence*, 18 VIOLENCE AGAINST WOMEN 169, 175–77 (2012).

⁷⁷ Celesta A. Albonetti, *Criminality, Prosecutorial Screening, and Uncertainty: Toward a Theory of Discretionary Decision Making in Felony Case Processings*, 24 CRIMINOLOGY 623, 631–33 (1986); Celesta A. Albonetti, *Sentencing Under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentence Outcomes for Drug Offenses, 1991-1992*, 31 L. & SOC'Y REV. 789, 790 (1997).

⁷⁸ Regina A. Schuller & Anne-Marie Wall, *The Effects of Defendant and Complainant Intoxication on Mock Jurors' Judgments of Sexual Assault*, 22 PSYCH. WOMEN Q. 555, 559–60, 565 (1998); See also Kirsty Osborn et al., *Juror Decision Making in Acquaintance and Marital Rape: The Influence of Clothing, Alcohol, and Pre-existing Stereotypical Attitudes*, 33 J. INTERPERSONAL VIOLENCE 1, 3, 5, 15 (2021); Anne-Marie Wall & Regina A. Schuller, *Sexual Assault and Defendant/Victim Intoxication: Jurors' Perceptions of Guilt*, 30 J. APPLIED SOC. PSYCH. 253, 262–63 (2000).

⁷⁹ Ashley A. Wenger & Brian H. Bornstein, *The Effects of Victim's Substance Use and Relationship Closeness on Mock Jurors' Judgments in an Acquaintance Rape Case*, 54 SEX ROLES 547, 549, 552 (2006).

However, the context in which the victim was intoxicated via alcohol can influence perceptions. For example, Lynch et al.⁸⁰ manipulated whether the victim purchased her own alcoholic drinks, or the drinks were purchased by the defendant. Community members had more pro-victim judgments when alcoholic drinks were purchased by the defendant compared to the victim. Male and female participants also rated the defendant as less credible, which led them to vote guilty more often. It appears that when a defendant bought alcoholic drinks, participants perceived that as an indicator that he was planning to take advantage of the victim.

Finally, related to intoxication is the impact of other drugs that can render a victim unconscious, such as “date-rape drugs” (e.g., Rohypnol—“roofies”). Jenkins and Schuller⁸¹ presented a rape case to undergraduates in which the defendant was accused of placing a roofie in the victim’s drink. The researchers manipulated whether a forensic report was negative for the presence of the drug, was negative but accompanied by an expert witness testifying on her behalf that the test was not conclusive, or there was no report and no expert. The results showed that a negative report without an expert led to the lowest guilt rating. In a more recent study, Burke et al.⁸² used a between-participants design to present community members with a trial summary in which the presence of a roofie, based on a hospital test, was positive, negative, or was not tested. When there was a positive test, mock jurors in the positive test condition perceived the victim to be more credible and the defendant to be less credible. These ratings led to more guilty verdicts among both men and women.

C. Victim and defendant gender

Throughout history, sexual victimization was considered a crime in which men assaulted women and girls.⁸³ Regarding CSA, society has generally not recognized boys⁸⁴ and men⁸⁵ as victims; and men have been thought to be better able to resist CSA, and therefore, at least partially responsible for any CSA perpetrated against

⁸⁰ See Lynch et al., *supra* note 19, at 3205.

⁸¹ Gwen Jenkins & Regina A. Schuller, *The Impact of Negative Forensic Evidence on Mock Jurors’ Perceptions of a Trial of Drug-Facilitated Sexual Assault*, 31 L. & HUM. BEHAV. 369, 371, 378 (2007); See also Regina A. Schuller et al., *Mock Juror Sensitivity to Forensic Evidence in Drug Facilitated Sexual Assaults*, 36 INT’L J. L. & PSYCH. 121, 126 (2013).

⁸² Kelly C. Burke et al., *Juror Perceptions of Rape Involving Rohypnol* (forthcoming).

⁸³ Denise A. Donnelly & Stacy Kenyon, “*Honey, We Don’t Do Men*”, in *THE DYNAMICS OF INEQUALITY: RACE, CLASS, GENDER, AND SEXUALITY IN THE UNITED STATES* 376, 378–79 (Patricia Gagné & Richard Tewksbury eds., Prentice Hall 1996); Fran Sepler, *Victim Advocacy and Young Male Victims of Sexual Abuse: An Evolutionary Model*, in 1 *THE SEXUALLY ABUSED MALE: PREVALENCE, IMPACT, AND TREATMENT* 73, 74–75 (Mic Hunter ed., Lexington Books 1990).

⁸⁴ N. Eisenberg et al., *Attitudes of Health Professionals to Child Sexual Abuse and Incest*, 11 *CHILD ABUSE & NEGLECT* 109, 115 (1987).

⁸⁵ See generally Donnelly & Kenyon, *supra* note 84, at 378–79.

them.⁸⁶ Unfortunately, these inaccurate societal attitudes may contribute to lower reporting rates of sexual assault by boys⁸⁷ and men.⁸⁸

Although most research investigating CSA and legal decision-making has investigated the model male perpetrator-female victim scenario, there has been some CSA research examining only victim gender. The results of these studies have been mixed. Haegerich and Bottoms⁸⁹ found that mock jurors were more willing to believe abuse allegations made by a 15-year-old girl than a boy. However, Goodman et al.⁹⁰ found that boys were rated more accurate and believable by undergraduate mock jurors. Finally, some studies have revealed few significant effects of victim gender: (a) Bottoms and Goodman⁹¹ involving 6-, 10-, and 14-year-old victims; (b) Crowley et al.⁹² involving 6-, 9-, and 12-year-old victims; (c) Scheiner⁹³ involving 13- and 15-year-old victims; and (d) Clark and Nightingale⁹⁴ involving a 23-year-old who testified about always-remembered abuse that happened when they were 13 years old.

In discussing victim gender, we should also note a recent study that was unusual in that it only included a male victim. This study⁹⁵ investigated CSA and legal decision-making when a priest was the perpetrator. Based on the Catholic Church priest scandal in which the model victim was a boy, a community sample read a trial where the perpetrator was a priest or janitor accused of sexually assaulting a 6-year-old boy. Participants rendered more guilty verdicts and made more pro-victim judgments (e.g., lower victim blame, more negative perceptions of the defendant) when the defendant was a priest compared to a janitor. Moreover, cognitive networks (i.e., a visual representation of the primary concepts mock jurors used in their

⁸⁶ Carl M. Rogers & Tremaine Terry, *Clinical Intervention with Boy Victims of Sexual Abuse*, in VICTIMS OF SEXUAL AGGRESSION: TREATMENT OF CHILDREN, WOMEN, AND MEN 91, 92 (Irving R. Stuart & Joanne G. Greer, eds., Van Nostrand Reinhold 1984).

⁸⁷ FRANK, G. BOLTON, JR. ET AL., MALES AT RISK: THE OTHER SIDE OF CHILD SEXUAL ABUSE 39 (1989); Anthony J. Urquiza & Lisa Marie Keating, *The Prevalence of Sexual Victimization of Males*, in 1 THE SEXUALLY ABUSED MALE: PREVALENCE, IMPACT, AND TREATMENT 89, 90–91 (Mic Hunter ed., Lexington Books 1990).

⁸⁸ Michelle Davies & Paul Rogers, *Perceptions of Male Victims in Depicted Sexual Assaults: A Review of the Literature*, 11 AGGRESSION & VIOLENT BEHAV. 367, 368–69 (2006); Karen G. Weiss, 12 MEN & MASCULINITIES 275, 284–86 (2010).

⁸⁹ Haegerich & Bottoms, *supra* note 34, at 435.

⁹⁰ Gail S. Goodman et al., *Nearly 4 Years After an Event: Children's Eyewitness Memory and Adults' Perceptions of Children's Accuracy*, 26 CHILD ABUSE & NEGLECT 849, 873 (2002).

⁹¹ Bottoms & Goodman, *supra* note 60, 714–15.

⁹² Michael J. Crowley et al., *The Juridical Impact of Psychological Expert Testimony in a Simulated Child Sexual Abuse Trial*, 18 L. & HUM. BEHAV. 89, 93, 97 (1994).

⁹³ See also Peter K. Isquith et al., *Blaming the Child: Attribution of Responsibility to Victims of Child Sexual Abuse*, in CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY 203, 206 (Gail S. Goodman & Bette L. Bottoms, eds., Guilford Press 1993).

⁹⁴ Holly L. Clark & Narina Nunez Nightingale, *When Jurors Consider Recovered Memory Cases: Effects of Victim and Juror Gender*, 25 J. OFFENDER REHAB. 87, 92 (1997).

⁹⁵ Anne Lippert et al., *A Symbol of Purity or Pedophilia? Courtroom Perceptions of Priest-Perpetrated Child Sexual Assault* (forthcoming) (on file with author).

reasoning for deciding upon a verdict)⁹⁶ showed that the Catholic Church priest scandal was stated as a reason for finding the priest guilty.

In addition to research investigating victim gender, there are a few studies that have manipulated only defendant gender. The scarcity of this research is again likely due to people thinking that only men assault children. Moreover, this thinking likely is the reason why registration and incarceration of sex offenders was rated as more appropriate for men than for women.⁹⁷ Regarding legal decision-making research, sexual assault perpetrated by a woman tends to be perceived less negatively than assault by a man.⁹⁸

Finally, in thinking about victim and defendant gender, researchers have investigated whether these two factors interact. Evidence for such an interaction was found in an early study by Maynard and Wiedermann⁹⁹ in which more blame was assigned to perpetrators of same-gender abuse when a victim was 15- versus 7-years old. The manipulation of victim and defendant gender also allows for examining a unique CSA context—a male victim and a female defendant. In the case of adolescent boys and older women, social norms suggest that some view this behavior as permissible.¹⁰⁰ Researchers have examined the male victim, female perpetrator CSA scenario in the context of teacher-student sexual assault. These cases do not require any evidence of forcible compulsion (i.e., threat of force or actual force) that is often a part of sexual assault statutes¹⁰¹ because coercion via authority is present, and (as in all CSA cases) the victim is legally unable to consent.

Most research investigating perceptions of teacher-adolescent student CSA has included only male-female assault or has completely crossed victim gender and perpetrator gender. Regarding the former, several studies¹⁰² presented vignettes (i.e., not actual court cases) that described a sexual encounter between a male teacher and a female student, or a female teacher and a male student. Participants then rated their perceptions of the CSA. Overall, (a) perceptions of the sex were more negative

⁹⁶ ROGER W. SCHVANEVELDT, *PATHFINDER ASSOCIATIVE NETWORKS: STUDIES IN KNOWLEDGE ORG.* (Ablex Publishing, 1990).

⁹⁷ Jacquie Hetheron & Lynn Beardsall, *Decisions and Attitudes Concerning Child Sexual Abuse: Does the Gender of the Perpetrator Make a Difference to Child Protection Professionals?* 22 *CHILD ABUSE & NEGLECT* 1265, 1278 (1998).

⁹⁸ David Finkelhor & Dennis Redfield, *How the Public Defines Sexual Abuse*, in *CHILD SEXUAL ABUSE: NEW THEORY AND RESEARCH* 107, 132 (D. Finkelhor (ed.), New York: Free Press 1984); William O'Donohue et al., *The Credibility of Child Sexual Abuse Allegations: Perpetrator Gender and Subject Occupational Status*, 10 *SEXUAL ABUSE: J. RSCH & TREATMENT* 17, 23 (1998).

⁹⁹ Carri Maynard & Michael Wiederman, *Undergraduate Students' Perceptions of Child Sexual Abuse: Effects of Age, Sex, and Gender-Role Attitudes*, 21 *Child Abuse & Neglect* 833, 839–840 (1997).

¹⁰⁰ Jodi A. Quas et al., *Effects of Victim, Defendant and Juror Gender on Decisions in Child Sexual Assault Cases*, 32 *J. APPLIED SOCIAL PSYCH.* 1993, 1995 (2002).

¹⁰¹ KY. REV. STAT. ANN. § 510.060 (2015).

¹⁰² Mary E. Fromuth & Aimee R. Holt, *Perception of Teacher Sexual Misconduct by Age of Student*, 17 *J. CHILD SEXUAL ABUSE* 163, 167–68 (2008); see also Daniel Sahl & Jennifer R. Keene, *The Effects of Age, Authority, and Gender on Perceptions of Statutory Rape Offenders*, 27 *J. INTERPERSONAL VIOLENCE* 3701 (2012).

between a male teacher and a female student than between a female teacher with a male student; and (b) women viewed CSA as more serious than men, believing that it would have more negative effects on the student. Later studies extended these findings by including all combinations of male and female victims and perpetrators, and thus allowing for investigations of same-gender sexual encounters. One of these studies¹⁰³ used a criminal court context. Once again, there were lower negative perceptions of male student and female teacher CSA (i.e., fewer guilty verdicts). Also, Pals et al.¹⁰⁴ investigated the perception of plea agreements involving a teacher-adolescent student CSA case with community members using a 2 (teacher gender: man or woman) x 2 (student gender: boy or girl) x 2 (punishment type: probation or jail) within-participant design with participant gender included as a between-participant factor. They found overall lower support for plea agreements offered to male teachers compared to female teachers, and that these judgments were impacted by how upset participants were by the plea bargain being offered.

As noted above, sexual victimization has been considered a crime in which men assaulted women and girls.¹⁰⁵ The National Incident Based Reporting System¹⁰⁶ collected data from 6,444 law enforcement agencies in the US and found that almost 91% of all reported rapes involved a female-victim and a male perpetrator. Legal decision-making research involving the remaining 9% of rape cases, most of which include male victims (8%),¹⁰⁷ is extremely limited.

Regarding the legal decision-making studies investigating rape and victim gender, only two such studies included a verdict outcome measure. Both studies used undergraduate samples and the less common stranger rape scenario.¹⁰⁸ Carter et al.¹⁰⁹ did not find a significant difference in guilty verdicts between cisgender (i.e., someone who identifies as the same gender as their biological sex determined at birth) male and female victims. However, their results suggested the cisgender male victim's sexual assault was perceived as less severe than that of a female victim. The other study¹¹⁰ was unique in that it examined the impact of a male sexual assault victim's sexual orientation on legal decision-making. Results did not lead to a

¹⁰³ See Quas et al. *supra* note 102, at 1999–2001.

¹⁰⁴ Andrea M. Pals et al., *Perceptions of a Plea Agreement in Cases of Teacher and Adolescent Student Sexual Assault*, 31 J. CHILD SEXUAL ABUSE, 930, 937–39 (2022).

¹⁰⁵ See Donnelly & Kenyon, *supra* note 84, at 379.

¹⁰⁶ Kathleen C. Basile et al., NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, CENTERS FOR DISEASE CONTROL AND PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON SEXUAL VIOLENCE, 11 (2022), <https://www.cdc.gov/nisvs/documentation/nisvsReportonSexualViolence.pdf> [https://perma.cc/M8Y2-SGPD]

¹⁰⁷ Richard B. Felson & Patrick R. Cundiff, *Sexual Assault as a Crime Against Young People*, 43 ARCHIVES SEXUAL BEHAVIOR 273, 274–75 (2014).

¹⁰⁸ Lisa M. Carter et al., *The Effects of Victim Gender Identity, Juror Gender, and Judicial Instructions on Victim Blaming, Crime Severity Ratings, and Verdicts in Sexual Assault Trials*, 70 J. HOMOSEXUALITY 1187, 1194–97 (2023).

¹⁰⁹ *Id.* at 1206–07.

¹¹⁰ Holly Ellingwood et al., *The Influence of Victim Sexual Orientation, Gender, and Gender Identity on Mock Jurors' Judgments*, 38 J. POLICE & CRIM. PSYCH. 461, 464 (2023).

significant impact of sexual orientation on verdict, including no significant differences on guilty verdicts rendered when comparing gay, straight, and bisexual male victim conditions. The issue of sexual orientation raises several issues concerning male victim rape and legal decision-making. For example, male victims of male-perpetrated sexual assault are sometimes assumed to be gay.¹¹¹ This may have the unfortunate consequence of male rape victims being perceived as “allowing” the rape to occur.

A recent study¹¹² investigating male rape victims aimed to help clarify the current state of the literature by examining legal decision-making in a rape case in which the victim’s gender and sexual orientation were manipulated. Levi et al. (2024) presented community members with a trial summary in which a male perpetrator was accused of sodomizing either: a (1) straight man, (2) gay man, (3) ambiguous man (i.e., sexual orientation not stated), or (4) straight woman. Overall, results showed: (a) participants were more pro-victim (e.g., higher perceived victim credibility) when the victim was a woman versus a man; (b) participants were more sympathetic toward the straight man victim compared to the non-straight man victims; and (c) beliefs that only a male victim was attracted to men were associated with perceptions that the victim wanted sex, which led to lower victim credibility and lower ratings of the defendant.

D. Victim and defendant relationship

With respect to the relationship between a victim and defendant, for both children and adults, most cases of sexual victimization involve a perpetrator who is known to the victim.¹¹³ Cases of adult rape typically involve either an acquaintance, such as a friend or co-worker,¹¹⁴ or intimate partner, such as a spouse or romantic partner¹¹⁵. Consistent with these data, many laboratory studies examine mock juror decision-making in cases where the defendant and victim know one another.¹¹⁶ A handful of studies, however, have explored mock jurors’ decisions

¹¹¹ Lana Stermac et al., *Stranger and Acquaintance Sexual Assault of Adult Males*, 19 J. INTERPERSONAL VIOLENCE 901, 901–02 (2004).

¹¹² Mary Levi et al., *Perception of Male-Perpetrated Sexual Assault: The Impact of Victim Gender and Perceived Sexual Orientation*, PSYCH. OF SEXUAL ORIENTATION AND GENDER DIVERSITY, 1, 4-7.

¹¹³ Nearly 60% of perpetrators of CSA are non-relative acquaintances of the victim and 30% are relatives. Less than 10% of cases involve strangers. Julia Whealin & Erin Barnett, *Child Sexual Abuse*, NAT’L CTR. FOR PTSD, U.S. DEPARTMENT OF VETERAN AFFAIRS, https://www.ptsd.va.gov/professional/treat/type/sexual_abuse_child.asp#four. [https://perma.cc/Q9A3-LLFB]

¹¹⁴ 41% of cases involving female victims, 52% involving male victims; Black et al., *supra* note 7, at 21.

¹¹⁵ 29-53% of Cases; Black et al., *supra* note 7, at 21; Kathleen C. Basile et al., *Prevalence and Characteristics of Sexual Violence Victimization Among U.S. Adults, 2001–2003*, 22 VIOLENCE & VICTIMS 437, 438 (2007); Dean G. Kilpatrick et al., *Rape in America: A Report to the Nation*, NAT’L VICTIMS CTR., 4 (1992); Tjaden & Thoennes, *supra* note 8, at 21.

¹¹⁶ See generally Golding et al., *supra* note 3.

in cases where the victim and defendant do not know each other. An early study¹¹⁷ examining CSA revealed no significant effects of stranger versus known perpetrator.¹¹⁸ Yet, more recent studies mirror the results described above in CSA cases involving male perpetrators known to the victim (e.g., teachers, priests). Mock jurors are more likely to believe the victim and tend to be more punitive and report more negative perceptions when the perpetrator is the victim's father compared to their mother, another relative, or a stranger.¹¹⁹ Similarly, mock jurors perceived CSA perpetrated by a father (vs. babysitter) to be more traumatizing for a child.¹²⁰

With respect to adult rape cases, however, a different pattern emerges in cases where the perpetrator is either a stranger, acquaintance, or intimate partner.¹²¹ For example, undergraduate mock jurors tended to be least punitive in cases involving an intimate partner versus stranger or acquaintance.¹²² In other cases, however, effects of the victim/defendant relationship depended on other factors, such as the victim's reaction. For instance, in cases of acquaintance rape, community member male mock jurors made fewer pro-victim judgments and more pro-defendant judgments (e.g., acquittal) when a victim was described as behaving in a counter-stereotypical manner (i.e., did not cooperate with authorities nor physically resist the perpetrator) compared to a stereotypical manner (cooperated and physically resisted). Yet, when the case involved stranger rape, there were no differences as a function of the victim's reaction.¹²³ The psychological consequences of rape can also interact with the victim/defendant relationship¹²⁴ as can other irrelevant factors, such

¹¹⁷ Michelle R. McCauley & Janet F. Parker, *When Will a Child be Believed? The Impact of the Victim's Age and Juror's Gender on Children's Credibility and Verdict in a Sexual-Abuse Case*, 25 CHILD ABUSE & NEGLECT 523, 530 (2001).

¹¹⁸ For forensic interviewers' perceptions of actual CSA cases, see Irit Hershkowitz et al., *Changes in Interviewers' Use of Supportive Techniques During the Revised Protocol Training Changes in Interviewers' Use of Supportive*, 31 APPL. COGNIT. PSYCH. 340 (2017).

¹¹⁹ Monica L. McCoy & Jennifer M. Gray, *The Impact of Defendant Gender and Relationship to Victim on Juror Decisions in a Child Sexual Abuse Case.*, 37 J. APPLIED SOC. PSYCH. 1578, 1587 (2007).

¹²⁰ Brian H. Bornstein et al., *Child Abuse in the Eyes of the Beholder: Lay Perceptions of Child Sexual and Physical Abuse*, 31 CHILD ABUSE & NEGLECT 375, 389 (2007).

¹²¹ Golding et al., *supra* note 3, at 17.

¹²² Osborn et al., *supra* note 79, at 3. Of great concern, actual cases of intimate partner (e.g., spousal) rape are also less likely to be pursued by prosecutors compared to cases of stranger rape; Golding et al., *supra* note 3, at 10; Eryn N. O'Neal, *Prosecuting Intimate Partner Sexual Assault: Legal and Extra-Legal Factors that Influence Charging Decisions*, 21 VIOLENCE AGAINST WOMEN 1237, 1242 (2015).

¹²³ Blake M. McKimmie et al., *What Counts as Rape? The Effect of Offense Prototypes, Victim Stereotypes, and Participant Gender on how the Complainant and Defendant are Perceived*, 29, J. INTERPERSONAL VIOLENCE 2273, 2287 (2014).

¹²⁴ In cases of stranger rape, a defendant was more likely to be convicted when the victim suffered PTSD (vs. mild anxiety). In contrast, in cases of date rape, the defendant was more likely to be convicted when the victim suffered from mild anxiety, but not PTSD. Pickel & Gentry, *supra* note 30, at 265.

as what the victim was wearing while she was in court.¹²⁵ Perhaps surprisingly, however, length of the relationship has not been found to influence verdict judgments.¹²⁶

E. Victim and defendant race

CSA involving children of color occurs as frequently, if not more frequently, as that involving White children,¹²⁷ and children of color, particularly Black children, are overrepresented in reported cases.¹²⁸ Yet, cases involving Latinx¹²⁹ and Black children¹³⁰ are significantly less likely to be substantiated (i.e., result in a determination that the abuse allegation is supported according to law/policy) even when abuse is disclosed.¹³¹ When cases are substantiated, those involving Black (vs. White) girls are less likely to lead to arrest or conviction.¹³² Moreover, although individuals consider White perpetrators to be the more stereotypical perpetrators of CSA than Black or Hispanic perpetrators¹³³, cases involving perpetrators of color and White victims are more likely to be substantiated, whereas those involving White perpetrators and victims of color are less likely to be substantiated.

Given these real-life disparities, laboratory research has sought to examine the role of victim race in CSA cases, revealing similar effects to these real-world cases: Individuals assign greater responsibility to Black and Hispanic victims compared to White victims.¹³⁴ Illustrating the role that racial stereotypes play, in a recent study,

¹²⁵ When a victim wore casual (vs. smart) clothing in court, participants were less likely to convict the alleged perpetrator of intimate partner rape, whereas this pattern did not emerge in cases of acquaintance rape. Osborn et al., *supra* note 79, at 15.

¹²⁶ Angelone et al., *supra* note 69, at 1.

¹²⁷ ANDREA J. SEDLAK ET AL., ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4): REPORT TO CONGRESS 1, 25 (2010); for review, *see* Golding et al., *supra* note 17, at 141.

¹²⁸ Amanda Luken et al., *On Racial Disparities in Child Abuse Reports: Exploratory Mapping the 2018 NCANDS*, 26 CHILD MALTREATMENT 267, 267 (2021).

¹²⁹ Laurie M. Graham et al., *Substantiated Reports of Sexual Abuse Among Latinx Children: Multilevel Models of National Data*, 33 J. FAM. VIOLENCE 481, 482 (2018); *but see* Kadee D. Atkinson et al., *Racial Disparities in Child Physical and Sexual Abuse Substantiations: Associations with Childs' and Accused Individuals' Race*, 32 J. CHILD & FAM. 44, 49 (2023).

¹³⁰ Atkinson et al., *supra* note 131, at 49.

¹³¹ Margaret C. Stevenson & Molly A. Rivers, *When Disclosure Fails to Substantiate Abuse: Child and Perpetrator Race Predict Child Sexual Abuse Substantiation*, 28 CHILD MALTREATMENT 621, 625 (2023).

¹³² Linda M. Williams & Ronald A. Farrell, *Legal Response to Child Sexual Abuse in Day Care*, 17 CRIM. JUST. & BEHAV. 284, 300 (1990); *but see* Wendy A. Walsh et al., *Prosecuting Child Sexual Abuse: The Importance of Evidence Type*, 56 CRIME & DELINQ. 1, 9 (2010).

¹³³ Tyler N. Livingston et al., *Race/Ethnicity and Relationship Stereotypes in Child Sex Abuse Cases*, 127 PSYCH. REP. 1, 3 (2022); Jeanine L. Skorinko & Barbara A. Spellman, *Stereotypic Crimes: How Group-Crime Associations Affect Memory and (Sometimes) Verdicts and Sentencing*, 8 VICTIMS & OFFENDERS 278, 288 (2013).

¹³⁴ Bette L. Bottoms et al., *Effects of Victim and Defendant Race on Jurors' Decisions in Child Sexual Abuse Cases*, 34 J. APPLIED SOCIAL PSYCH. 1, 11 (2004).

Alley et al. assessed undergraduate participants' endorsement of stereotypes associating Black girls with hypersexuality.¹³⁵ In an ostensibly unrelated session, they primed participants with music videos of famous White or Black women performing in a sexualized way. Next, participants read a summary of a CSA trial involving either a Black or a White girl victim. Not only did participants consider the Black CSA victim to be less traumatized by the abuse than the White victim, but priming participants with sexualized videos of Black women led participants to perceive the Black CSA victim to be less credible than the White victim. Likewise, male participants who agreed with stereotypes associating Black girls with hypersexuality perceived the Black (vs. White) victim to be less credible.

Importantly, however, the ways in which race influences juror decision making extends beyond the role of victim race—laboratory research highlights the interactive effects that victim, defendant, and in some cases juror, race have in the courtroom. Indeed, in a CSA case involving adolescents, a sample of predominantly White undergraduate mock jurors were more punitive (e.g., more likely to recommend the case be tried in adult court) when the abuse was interracial versus intraracial, especially when the defendant was Black versus White.¹³⁶ Reflecting the complex ways in which victim, defendant, and juror race interact with each other, Foley and Chamblin¹³⁷ found a similar pattern among White, but not Black, undergraduate mock jurors. That is, White jurors reported higher degree-of-guilt ratings in interracial cases involving a White victim and Black defendant. In contrast, Black jurors were more punitive in cases where victim and defendant race were the same.¹³⁸ Contrary to Fix et al.¹³⁹, but consistent with Black jurors in Foley and Chamblin¹⁴⁰, Bottoms et al.¹⁴¹ found that White undergraduate mock jurors rated the defendant in a CSA case significantly more guilty in intraracial (vs. interracial) cases, which stemmed from participants' belief that intraracial CSA is more common and thus more believable than interracial CSA,¹⁴² which is in fact true.¹⁴³

Racial disparities also arise in cases involving adult rape at various stages of the criminal justice system, including police investigations (e.g., police regard Black victims to be less cooperative and are less likely to pursue additional investigative stops in their cases), and prosecution decisions and outcomes (e.g., interracial cases

¹³⁵ Deborah Alley et al., *Race-Based Sexual Stereotypes Influence Ratings of Child Victims in Sexual Abuse Cases*, 2 INT'L J. ON CHILD MALTREATMENT 287, 288 (2019).

¹³⁶ Rebecca L. Fix et al., *Simulated Judicial Decision-Making for African and European American Adolescents with Illegal Sexual Behavior: The Impact of Medical Data and Victim Race/Ethnicity*, 38 BEHAV. SCI. & THE L. 51, 51 (2020).

¹³⁷ Linda A. Foley & Minor H. Chamblin, *The Effect of Race and Personality on Mock Jurors' Decisions*, 112 J. OF PSYCH. 47, 49 (1982).

¹³⁸ These effects, however, were no longer significant after statistically controlling for victim and defendant SES.

¹³⁹ Fix et al., *supra* note 138, at 51.

¹⁴⁰ Foley & Chamblin, *supra* note 139, at 49.

¹⁴¹ Bottoms et al., *supra* note 136, at 19.

¹⁴² Bottoms et al., *supra* note 136, at 20.

¹⁴³ Stevenson & Rivers, *supra* note 133, at 622.

involving Black defendants and White victims are more likely to be charged and punished more severely).¹⁴⁴ Moreover, like laboratory studies of CSA cases, cases involving adult stranger and acquaintance rape reveal mixed findings involving the roles that defendant and victim race play in the courtroom.¹⁴⁵

Mirroring the punitive decisions mock jurors make in CSA cases involving Black defendants and White victims,¹⁴⁶ Feild¹⁴⁷ found that mock jurors recommended longer prison sentences for a Black, but not White, defendant accused of committing stranger rape against a White victim. When the victim was Black, however, no differences emerged as a function of defendant race. In contrast, in another study, only victim (not defendant) race influenced guilt ratings such that mock jurors were more punitive when the victim was White versus Black.¹⁴⁸ Yet, others have found no effects of victim race on verdict decisions.¹⁴⁹

In cases of acquaintance rape, White mock jurors reported higher degree-of-guilt judgments for both Black and White defendants in interracial versus intraracial cases.¹⁵⁰ Yet, others have only found an effect of victim race (participants were more punitive toward Black versus White victims, regardless of whether the rape was interracial or intraracial).¹⁵¹ Still yet, others have found evidence of ingroup favoritism¹⁵² among White women judging cases involving White versus Latina victims.¹⁵³

Only a handful of studies have examined whether racial differences emerge when directly comparing stranger and acquaintance rape. For instance, George and Martínez¹⁵⁴ found that mock jurors perceived victims of interracial (Black/White) vs. intraracial rape more negatively (e.g., more blameworthy, less credible) and perceived defendants less negatively (e.g., less blameworthy), regardless of whether it was a stranger or acquaintance rape. In contrast, Willis¹⁵⁵ observed that jurors

¹⁴⁴ Jessica Shaw & HaeNim Lee, *Race and the Criminal Justice System Response to Sexual Assault: A Systematic Review*, 64 AM J. CMTY. PSYCH. 256, 259 (2019).

¹⁴⁵ Hubert S. Feild, *Rape Trials and Jurors' Decisions*, 3 L. & HUM. BEHAV. 261, 272 (1979); Kitty Klein & Blanche Creech, *Race, Rape, and Bias: Distortion of Prior Odds and Meaning Changes*, 3 BASIC & APPLIED SOC. PSYCH. 21, 30 (1982).

¹⁴⁶ Fix et al., *supra* note 138, at 51; Foley & Chamblin, *supra* note 139, at 49.

¹⁴⁷ Feild *supra* note 147, at 277.

¹⁴⁸ Klein & Creech, *supra* note 147, at 24.

¹⁴⁹ R. Michael Bagby et al., *Racial Prejudice in the Canadian Legal System: Juror Decisions in a Simulated Rape Trial*, 18 L. & HUM. BEHAV. 339, 345 (1994).

¹⁵⁰ Robert W. Hymes et al., *Acquaintance Rape: The Effect of Race of Defendant and Race of Victim on White Juror Decisions*, 133 J SOC. PSYCH. 627, 631 (1993).

¹⁵¹ Linda A. Foley et al., *Date Rape: Effects of Race of Assailant and Victim and Gender of Subjects on Perceptions*, 21 J. BLACK PSYCH. 6, 12 (1995).

¹⁵² Henri Tajfel, *Social Psychology of Intergroup Relations*, 33 ANN. REV. OF PSYCH. 1, 25 (1982).

¹⁵³ Jorge A. Jimenez & José M. Abreu, *Race and Sex Effects on Attitudinal Perceptions of Acquaintance Rape*, 50 J. COUNS. PSYCH. 252, 255 (2003).

¹⁵⁴ William H. George & Lorraine J. Martínez, *Victim Blaming in Rape: Effects of Victim and Perpetrator Race, Type of Rape, and Participant Racism*, 26 PSYCH. WOMEN Q. 110, 114 (2002).

¹⁵⁵ Cynthia E. Willis, *The Effect of Sex Role Stereotype, Victim and Defendant Race, and Prior Relationship on Rape Culpability Attributions*, 26 SEX ROLES 213, 224 (1992).

perceived a victim more negatively when she was allegedly raped by a Black acquaintance (vs. stranger), and they perceived Black women more negatively if they were victims of acquaintance (vs. stranger) rape. These patterns did not emerge for the White perpetrator nor victim, however. Yet, in some instances, the effect of victim and defendant race is further nuanced depending on other factors such as jurors' attitudes,¹⁵⁶ gender,¹⁵⁷ and race/ethnicity.¹⁵⁸

CONCLUSION

This Article reviewed the various extralegal factors that have been shown to influence mock jurors' judgments in cases involving CSA and adult rape. Despite the prevalence of sexual victimization of children and adults,¹⁵⁹ prosecution of these cases is often difficult for a variety of reasons.¹⁶⁰ As such, it is critical to understand which factors are associated with successful prosecution outcomes. By understanding the extralegal factors that influence mock jurors' judgments—including juror, victim, and defendant factors—the legal system can help ensure that perpetrators are convicted of their crimes and victims receive justice and much-needed psychological relief.

¹⁵⁶ See George & Martínez, *supra* note 156, at 115; Patricia Hebert Landwehr et al., *Racism in Rape Trials*, 142 J. SOC. PSYCH. 667, 668 (2002).

¹⁵⁷ See George & Martínez, *supra* note 156, at 116.

¹⁵⁸ See Jimenez & Abreu, *supra* note 155, at 255.

¹⁵⁹ See generally *supra* note 3–7.

¹⁶⁰ See generally *supra* note 8–18.