Reflections on a Rape Trial: The Role of Rape Myths and Jury Selection in the Outcome of a Trial

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This article reviews arguments and jury deliberations from a rape trial that took place in spring 1999 and was retried 7 months later. It presents the circumstances of the case, the evidence and arguments of the prosecution and defense, discussions among jurors during the first trial, and the outcome of each trial. It also raises questions about the treatment of sexual assault victims in the courts, the effect of jury selection on the outcomes of trials, and the persistence of myths regarding women and sexual assault in American society.

Sexual assault continues to be the most underreported violent crime in the United States. According to a report by the Bureau of Justice Statistics (Rennison, 1998), only 31.6% of all rapes and sexual assaults were reported to law enforcement officials in 1998 compared to 62% of all robberies, 57.6% of all aggravated assaults, and 40.3% of all simple assaults. Even with such underreporting, 330,000 women aged 12 and older were the victims of rape, attempted rape, or sexual assault in the United States in 1998, a 7.1% increase from 1997 (Rennison, 1998).

The common rationale for such underreporting of this serious crime is the treatment that victims receive from societal institutions, especially the legal system. The difficulty of bringing a rape case to trial and of obtaining a conviction for this crime has been well documented. For example, in 1984, Russel

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found that "less than 1% of rapes and attempted rapes result in convictions in the U.S." (as cited in Ward, 1995, p. 196). Furthermore, a 3-year investigation of state rape prosecutions by the Committee on the Judiciary, U.S. Senate (1993) revealed:

> Ninety-eight percent of rape victims will never see their attacker apprehended, convicted and incarcerated;
>
> Over half (54 percent) of all rape prosecutions result in either a dismissal or an acquittal;
>
> A rape prosecution is more than twice as likely as a murder prosecution to be dismissed and 30 percent more likely to be dismissed than a robbery prosecution;
>
> Approximately 1 in 10 rapes reported to the police results in time served in prison; 1 in 100 rapes (including those that go unreported) is sentenced to more than 1 year in prison;
>
> Almost one-quarter of convicted rapists are not sentenced to prison, but instead, are released on probation;
>
> Nearly one-quarter of convicted rapists receives a sentence to a local jail—for only 11 months (according to national estimates);
>
> Adding together the convicted rapists sentenced to probation and those sentenced to local jails, almost half of all convicted rapists are sentenced to less than 1 year behind bars. (p. 1)

This article presents an in-depth case study of a rape trial that occurred in Alaska in the spring and fall of 1999, with particular attention to the jury selection process and the reliance on rape-myth arguments throughout the deliberations. It also points to areas for further research and advocacy regarding attitudes toward rape and the treatment of rape victims in this society.

REVIEW OF THE LITERATURE

The acceptance of the myths about rape, which are commonly held beliefs that shift the blame for a sexual assault from the assailant to the victim and serve to minimize the prevalence and seriousness of rape (Stout & McPhail, 1998), has been the focus of many studies. Common myths include the beliefs that "victims are lying, victims are malicious, sex was consensual, and rape is not damaging. . . . The underlying assumptions about rape suggest that women are essentially responsible for male sexual behavior" (Ward, 1995, p. 25). Ward (1995), who studied attitudes toward rape on college campuses, found in 1980 that only 36% of those surveyed disagreed with the statement that rape is provoked by women's appearance and behavior, and 60% maintained that women who go out alone put themselves in a position to be raped. In a 1991 attitude survey by Halcomb and others (as cited in Ward, 1995),

> 24% of the respondents agreed with the statement, "women frequently cry rape falsely" and 22% agreed that rape is often provoked by the victim, 22% agreed a woman could prevent a rape if she really wanted to, 32% agreed that some women ask to be raped and may enjoy it, and 29% agreed that if a woman says no to having sex, she means maybe or even yes. (p. 45)

Several studies have demonstrated that gender is correlated with the acceptance of rape myths. According to Ward's (1995) review of the literature on rape attitudes, "Studies show men are more accepting of rape myths than women (Margolin et al., 1989), more tolerant of rape (Hall et al., 1986), and have less empathy towards victims (Bradley et al., 1991)" (p. 45). Ward also cited Giacopassi and Dull's 1986 study that found that men were more likely to agree that normal men do not commit rape and that women were more likely to disagree with the statement that "women who ask men out are probably looking for sex, that women say no but mean yes, and that date rape should not be considered as serious as stranger rape" (p. 46). After reviewing studies on attitudes toward rape, Ward concluded, "The sensitive issue of coercive sex between people who know each other, the most common form of sexual violence, appears to be trivialized more frequently by men" (p. 46).

It is also important to note that

> the danger of false rape complaints has been vastly overrated. The police find the number of false rape charges to be comparable to the level of false charges brought in other types of crimes. There are rare occasions when individuals falsely accuse others of crimes, but evidence suggests that the episodes are no more

> frequent in rape cases than in other serious cases. (Hans & Vidmar, 1986, p. 206)

And as Stout and McPhail (1998) noted,

> Although false charges of rape are often widely publicized, FBI statistics (as cited in Lonsway & Fitzgerald, 1994) suggest that only 2% of rape charges are false; this rate is lower than or comparable to the rate for other felonies. (p. 261)

Educational level has also been correlated with the acceptance of rape myths, as noted in Ward's (1995) review of studies of rape. Burt (as cited in Ward, 1995), who sampled approximately 600 adults in Minnesota, found that "education exerted a direct effect on the rejection of stereotyped, prejudicial views of rape. Better educated respondents were less willing to endorse such statements as, 'in the majority of rapes, the victim is promiscuous or has a bad reputation'" (p. 47). Other studies on educational level found similar results. Jeffords and Dull (as cited in Ward, 1995) found that supporters of marital rape legislation in Texas were more likely to be female, single, young, and well educated, and Williams (as cited in Ward, 1995), in a survey of 1,000 San Antonio residents, found education to be the most powerful predictor of attitudes toward rape.

A review of the literature on jurors' attitudes, based on mock juries or posttrial interviews, demonstrated that jurors are influenced by the prior relationship of the victim and assailant as well as the victim's character. In reviewing Kalving and Zeisel's studies on jury trials, Epstein and Langenbahn (1994) noted "not only that juries are prejudiced against the prosecution in rape cases, but also that they were extremely lenient with defendants if there was any suggestion of 'contributory behavior' on the part of the victim" (p. 66). One contributing behavior that clearly affects perceptions of rape is the consumption of alcohol. According to a study by Richardson and Campbell (as cited in Ward, 1995), "People are more likely to see intoxication as contributing to the woman's responsibility in sexual assault" (p. 76). A study by Lafree (as cited in Hans &

Vidmar, 1986), which included posttrial interviews with 331 jurors who heard cases of forcible sexual assault, found that none of the measures of evidence, including eyewitnesses, the number of prosecution witnesses and exhibits, the use of a weapon, or injury to the victim, affected jurors' beliefs about the defendant's guilt or innocence prior to deliberations. However, jurors were affected by the characteristics of the victim and defendant. When the victim held a blue-collar job, when she reportedly had sexual intercourse outside marriage, or when she drank or used drugs, jurors were more likely to believe the defendant was innocent. Jurors who had conservative attitudes about sex roles were especially likely to believe the defendant was not guilty of rape when they learned that the victim used drugs or alcohol. Thus, in cases where the victim's word was a primary issue, jurors were influenced more by the character of the victim than by hard evidence, even corroborative evidence.

Another factor that has been found to contribute to the outcomes of rape trials is whether physical force was used. Deitz (as cited in Ward, 1995) found in jury simulation studies that guilty verdicts are less likely to be rendered in rape cases when there is no evidence that the victim resisted, and Wyler (as cited in Ward, 1995) noted that "women who resist attempted rape are perceived as less responsible and less to blame for their assault than those who do not resist" (p. 77). Also, Williams (as cited in Ward, 1995) found that "when the victim is acquainted with the rapist, the latter is less likely to be charged or convicted" (p. 110).

In light of these studies, Hans and Vidmar (1986), who extensively studied the jury system, noted:

> The results of these studies on jury decisions in rape cases, taken together, are troubling in some respects. Widespread adherence to rape stereotypes and myths make it difficult not only for victims who fail to match the pristine picture of the ideal victim, but also for [the defendant] whose courtroom appearance and lifestyle make him seem like a rapist. (p. 214)

All the studies on jurors' attitudes just reviewed were either with mock juries made up of university students, in which no challenges and dismissals were involved, or posttrial interviews with jurors. The case study reported in this article is unique in that I served as a juror and thus had the opportunity to participate in and note (immediately after the deliberations) the jurors' arguments and the dynamics of the jury, which were not recorded or open to the public.

METHOD

In spring 1999, I was chosen to serve as a juror on a rape and burglary (forcible entry) trial. Because I teach in both the Social Work Department and the Women's Studies Program at the University of Alaska, the lack of challenges to my serving as a juror was a surprise. My service as a juror gave me a unique opportunity to learn firsthand about the court system, to become knowledgeable about court proceedings in a rape trial, to become aware of the treatment of jurors and the dynamics of juries, and to be a participant in a jury's deliberations. This trial lasted 6 days, with jury deliberations covering 2 days.

At the end of each day of jury deliberations, I went directly to my office and recorded as precisely as I could information on arguments and proceedings of the trial and discussions that took place during the deliberations. I recorded only arguments and comments presented during the deliberations but no information about specific jurors, and I did not link comments made during the deliberations to any particular juror.

When this case was retried 7 months later, I attended almost every day of the 9-day trial, including the jury selection proceedings. Doing so afforded me the opportunity to ascertain how the makeup of juries is affected by peremptory challenges and to check the accuracy of details in my notes from the first trial regarding the presentations of the defense's and prosecution's cases as well as to record any differences in evidence presented during the two trials. All this information gave me the opportunity to check the validity of my impressions as a participant observer during the first rape trial and to gain a fuller picture of the case, the court proceedings, and the outcome of the trial. Because I could not take down verbatim quotes during the first trial, I used statements made by the attorneys for the defense and prosecution during the jury selection proceedings and opening and closing statements at the second trial to present exact quotations. The arguments presented by the defense and prosecution were consistent in the two trials. The only significant difference between the cases in the two trials was the amount of expert testimony and evidence presented on DNA in the second trial.

THE CASE

Description

The alleged rape and burglary (forced entry) that was the focus of this trial took place in fall 1998 in a primarily Athabascan Indian village in Alaska. The village is not on the road system and has a population of 150 to 200 people. It is a wet village, meaning that alcohol can be purchased and consumed within the village boundaries. In this remote village, the only law enforcement presence is one village public safety officer (VPSO), whose job is to keep order in the community. The VPSO does not carry a gun and does not make arrests or investigate felony crimes. In the case of an allegation of a serious crime, such as a rape, the VPSO would take the victim's statement and then call state troopers, who would fly into the village to investigate the crime. In this village, routine health care is provided by a health aide, a local resident who is trained in basic first-aid techniques. The health aides in the villages are instructed in procedures to follow in cases of alleged rape and are given rape kits to use during their examinations of victims. The kits include swabs for collecting evidence and procedures to follow so that evidence is not contaminated.

The incident that was the focus of this trial took place on a weekend of celebrations in the village that included a softball tournament and a wedding and brought many out-of-town visitors to the village. The alleged crime was the rape of a 66-year-old Alaska Native woman from the village where the incident occurred. The alleged victim had lived her entire life in the village, had never received any formal schooling, was the mother of 12 children and a grandmother, and recently had back surgery and walked with a slight limp.

The alleged assailant was a 55-year-old Alaska Native man from a neighboring village who had known the alleged victim since childhood and who occasionally hunted and fished with her husband and brother. He stated that he was in the village where the attack took place to visit his brother who lived in the village and to partake in the celebrations.

The Prosecution's Case

According to the alleged victim, she had been visiting the homes of friends and relatives on the evening before the assault and had consumed some alcoholic beverages along with her friends. In the evening, she returned to her home alone (her husband was out of town fishing) and locked the door to her house and went to bed. At around 5:00 a.m., someone knocked on her door. Thinking it was her brother who had planned to come over for coffee, she opened the door. According to the alleged victim, the alleged assailant pushed her into the house and into the bedroom, pulled off her pants, raped her, and then left her house. The alleged victim stated that she felt dirty and showered and burned the clothes she had been wearing along with the trash. When her grandson came over to do laundry later in the day, he found her lying on the couch looking depressed. He asked her what was wrong, and she told him that she had been raped and asked him to get the VPSO.

The VPSO took the alleged victim's statement in which she identified the alleged assailant and then drove her to the village health clinic, where she was given a pelvic examination. A swab from her vaginal area was taken and subsequently sent to the crime lab in Anchorage as possible evidence. The alleged victim was later sent by plane to the hospital in the nearest urban center for an examination with a culpascope, a machine that takes pictures of the inside of the vagina to see if internal bruising, which may be consistent with forced sexual intercourse, is present. The alleged victim underwent a second culpascope examination 9 days after the first examination. The second examination, a standard procedure in the case of a sexual assault, is used to determine whether any bruising that was present in the first examination is also present 9 days later. If the bruising is not present in the second examination, it is assumed that a trauma, such as a sexual assault, caused the bruising, which has subsequently healed. If the bruising or anomaly in the vaginal area is still present in the second examination, it is assumed that this is a normal condition for the woman examined and was not the result of trauma to the vaginal area.

In the courtroom, the alleged victim identified the alleged assailant as the man who had entered her home and raped her. This was the same man she identified to the VPSO, the village health aide, and the hospital nurse.

The evidence presented by the prosecuting attorney included a chart showing the match between the accused assailant's DNA and the semen that was on the swab taken during the initial examination of the alleged victim. The DNA analysis was done by the crime lab in Anchorage using a six-marker test. The alleged assailant accused another man, who he said had sexual intercourse with the alleged victim, but the DNA profile precluded this possibility. The prosecuting attorney explained that an Athabascan database establishing the statistical probability of another DNA match in the Athabascan population had not been established; however, research on neighboring Alaska Native populations showed that the likelihood of a similar DNA profile using the six-marker test would be in the range of 3,000 to 1.

The prosecuting attorney also showed full-color photographs and a television-screen image of the alleged victim's vaginal area taken from the culpascope examination, which showed severe internal bruising. The nurse who examined the alleged victim testified that the bruising evident in the pictures was consistent with a sexual assault. The bruising in the vaginal area was not evident 9 days later, demonstrating that such bruises were not normal for this woman.

The Defense's Case

The accused assailant maintained that he "never touched that woman," and the defense attorney claimed this was a case of mistaken identity and an inadequate targeted investigation by the VPSO and state troopers. The defense attorney discredited the alleged victim's identification of the alleged assailant, stating that she had been drinking and thus would have difficulty identifying anyone. The questions that the defense attorney asked the alleged victim included, "Weren't you drunk? Weren't you obnoxious? Did you drink this much or this much? Is 'My back hurt' all you said to the assailant?"

The defense attorney also discounted the utility of DNA evidence, noting that it gave information only on a DNA match, but there was always a possibility that there were other matches. He also focused on the lack of established DNA probability ratios for Athabascan Indians and challenged the statistical background of the state's DNA expert and her credibility as an expert witness. He further argued that the culpascope examination provided no useful information because there was a strong possibility that a 66-year-old woman would not lubricate during sexual intercourse, and thus the bruising apparent in the culpascope pictures could have been the result of vigorous consensual sex. He also questioned the credibility of the nurse who explained the culpascope pictures because of the length of training she had received on the culpascope.

Witnesses who were called by the defense included a woman (who appeared to be intoxicated on the stand) who stated that the alleged assailant had slept on her living room floor on the night of the attack and the VPSO's wife, who testified that she saw the alleged assailant knock on the alleged victim's door the morning of the attack. The defense asked her what the man was wearing to determine if it was the same man the alleged victim identified. The VPSO's wife stated emphatically that the man she saw knocking on the alleged victim's door was the same man she saw the next day at the softball field and was the alleged assailant who was present in the courtroom, only he was wearing a different jacket on the morning she saw him at the alleged victim's house.

In his concluding remarks, the defense attorney maintained there were too many unanswered questions in this case. He stated:

> We're not here to say [alleged victim] didn't have sex with someone. What she did and who she did it with is her business. Maybe she doesn't want to reveal that. We're saying this man didn't do it. He had no reason to hurt that lady. He didn't break in to physically assault her or hurt her. This wasn't like breaking in to jimmy a door. No one forced their way into this house. Her husband was away. She partied. One way she partied was she got drunk. She got pretty good and drunk. She was so drunk she said it happened on Friday morning but didn't report it 'till 15 hours later. She may have had sex with somebody when she was passed out, and she may think it was [defendant], but she is wrong.

According to Epstein and Langenbahn (1994), defense attorneys use the following three basic strategies in rape cases: consent, identification, and denying that the crime occurred. In the consent defense, the attorney acknowledges that the defendant engaged in sexual relations with the complainant but argues that the complainant consented. In the identification defense, the attorney neither denies nor acknowledges that rape occurred but claims that the accused was not the attacker. In the third defense, the attorney argues either that the alleged acts do not constitute rape or that no such acts occurred.

In this case, the defense used the identification strategy by claiming that this was a case of mistaken identity. He attempted to establish that the alleged assailant had on different clothes than the man who had been seen by the VPSO and his wife knocking on the alleged victim's door. He noted that DNA testing is not an accurate test and that there was a likelihood of a similar DNA profile. He called a witness who stated that the alleged assailant was asleep on her floor along with several others the morning of the attack, and he claimed that the state trooper had too quickly arrested the alleged assailant without looking for other possible suspects. The defense attorney also noted that the alleged victim was drunk and that the bruising evidenced in her vaginal area could be the result of “vigorous sex,” not necessarily sexual assault. Thus, in accordance with the literature on public perceptions of good rapes versus bad rapes, the defense attorney attempted to present this case as a dubious or bad rape, an acquaintance rape in the alleged victim’s home where there was no sign of a physical struggle and where the alleged victim had consumed alcohol.

OUTCOME OF THE FIRST TRIAL

The jury deliberated on this case for approximately 12 hours over the course of 2 days. The outcome was a deadlocked jury, meaning that no consensus was reached. Deadlocked juries occur in about 1 in 20 cases (Hans & Vidmar, 1986). With a deadlocked or hung jury, the alleged assailant would go free unless the prosecution thought that there was a strong enough case to go forward with a retrial and the alleged victim agreed to undergo a second trial.

Jury Selection

To understand this trial’s outcome, one must first consider the jury selection process and resultant makeup of the jury. The jury selection process for the first trial lasted a day and a half. In this process, the names of 14 jurors (12 jurors and 2 alternates) were chosen at random out of a pool of approximately 40 people. Each of the 14 potential jurors gave information on his or her place of residence, occupation, spouse’s occupation, number of children and ages, birthplace, interests, involvement in prior lawsuits, previous experience as a juror, and whether he or she knew anyone associated with the trial. The potential jurors were each interviewed by the prosecution and defense attorneys.

Potential jurors can be dismissed in two ways. They can be released for cause, meaning that because of prior knowledge of the case, a relationship with someone associated with the trial, or previous experiences that may prejudice them, they could be deemed unable to be objective and thus would be dismissed. They can also be dismissed from a case through peremptory challenges. In criminal cases in Alaska, each lawyer is allowed 10 peremptory challenges (and an additional challenge for each alternate on a case) in which potential jurors can be dismissed from the case without stating a cause. In this case, the defense attorney first asked questions of all potential jurors as a group. The following examples of the questions he asked illustrate the criteria that the defense used to select jurors who were favorable to his case and his attempt to build his case during the jury selection process: Do you feel when police investigate crimes they have an obligation to be thorough and investigate both sides? How many know enough about fingerprint evidence to know it might be useful in an investigation? Raise your hand if you feel fibers and hair are useful to an investigation. Raise your hand if you have ever had mistaken identity happen to you. Do any of you personally know of anyone who when they are real drunk has made a claim that is fantastic or unbelievable? Do you feel police investigators have a duty to produce evidence they know exists? Raise your hand if you know what the letters *DNA* stand for. Have any of you had special courses in the fields of biology? Any particular courses in DNA? Any particular training in statistics? Is there anybody that cannot accept the proposition that the accused does not have the burden of proving anything? Have you ever had to rely on lab tests and later found out the lab test was wrong? Anybody here ever heard the phrase "There are lies, damn lies, and statistics?"

The prosecuting attorney's questions focused on whether anyone had been on a jury and if so, whether the jury had reached a verdict. He also asked the potential jurors about their views on drinking.

In the first trial, those who were dismissed by the defense attorney included a woman who had written a master's thesis on DNA, an individual related to a police officer, a lawyer and relative of a lawyer, and a middle-aged Alaska Native woman. The prosecuting attorney dismissed anyone who had a prior negative experience with the courts; the prosecution's other reasons for dismissals were not clear to me. The jury that remained was made up of 8 men and 4 women. All the jurors were non-Native and Caucasian and currently resided in the urban center where the trial was held; 2 of the jurors (both female) had college degrees.

Because I was a potential juror, I did not have the opportunity to take notes on all who were selected and dismissed during this trial. However, during the retrial of this case, I kept notes on all the potential jurors and compared the initial and final juror seatings. From this analysis, I found that in the retrial, the defense dismissed significantly more women (6) than men (3) and that of the 8 individuals who were dismissed, 7 were in occupations that required a college degree. Thus, in keeping with the literature on the believability of rape myths (that level of education and gender are the best predictors of acceptance of rape myths), the final jury seated after the defense and prosecution challenges would be expected to be more likely to believe rape myths than the initial jurors who were randomly selected.

Jury Deliberations

In the first deadlocked jury, 5 jurors voted for a guilty verdict (3 women and 2 men), and 7 voted for acquittal (1 woman and 6 men). However, during most of the jury deliberations, 2 female jurors held out for a guilty verdict while others argued either for an acquittal or were undecided. Throughout the deliberations, 7 of the 8 male jurors sat at one end of the table, and all 4 female jurors and 1 male juror sat together at the other end. At the final vote, the 3 female and 1 male jurors who sat together voted guilty, and 6 of the 7 male jurors who sat together voted for acquittal.

The jurors who voted for acquittal agreed with the defense attorney's arguments. Many thought that the alleged victim was not credible because she had consumed alcoholic beverages and suspected that she was lying to cover up consensual sex. Most of the jurors agreed with the defense attorney that both the DNA evidence and the pictures taken from the culpascope examination should not be considered in this case because DNA tests show only a probable match and the severe bruising evident in the alleged victim's vaginal area could have been the result of vigorous consensual sex. Also, many jurors believed that the state did a sloppy job of investigation and that a targeted investigation had occurred. The sentiment among some jurors was that the VPSO's wife started spreading the word around the village that the man she saw knocking at the alleged victim's door that morning committed the rape because "she wanted to be a big cheese" and was "the perfect police officer's wife." Some jurors believed that she told her husband her feelings, which he then told the state trooper, and that the trooper immediately arrested the alleged assailant upon entering the village.

Examples of statements made during jury deliberations in the first trial are presented next, organized in relation to some of the commonly held rape myths presented in Stout and McPhail (1998). The jurors' comments demonstrate arguments that were used in and affected the outcome of the trial. It is important to remember that in this case, the alleged victim identified the alleged assailant consistently, and the alleged assailant maintained that he never touched the woman. Also, no one other than the alleged assailant made any claims that the alleged victim had slept with anyone else, and the man that the alleged assailant claimed had sex with the alleged victim had a DNA profile that excluded him as a sexual partner.

1. Women routinely lie about rape for their purposes: "She had sex with someone else and said it was him to cover it up." "She claimed rape so her husband wouldn't get mad." "It wasn't [the defendant] but someone with close DNA."

2. Only bad women are raped: “She was drunk.” “How could she recognize who it was?”
3. You can’t rape an unwilling woman: “When asked what she said to him, she said ‘My back is hurting.’ Why didn’t she just say no?” “She didn’t fight him off.”
4. Women who are raped must have provoked the rape by leading men on or dressing provocatively: “She had consensual sex with him and wanted to cover it up so her husband wouldn’t get mad.” “She encouraged him at [name’s] house and later he came over and it went too far.” “‘Don’t, stop’ can mean two different things.”
5. Most rape is committed by African American men against European women: This myth was not evident in this trial, but racism was apparent as can be seen in such comments as, “They were all soused and lying.” “They were all soused; it just depends which drunk you want to believe.” “Want to know my personal experience with Natives and sex? They all cover up for one another.” “I lived in a village; I know how they party.”
6. Most women secretly desire rape and enjoy it: “He was on top of her, and then she started feeling guilty and worried her husband would find out.”
7. It can be called rape only if the assailant is a stranger who has a weapon and causes great physical injury: “She had no bruises.”
8. Our society abhors rape and gives rapists long and harsh sentences: “We could ruin a guy’s life.” “If there is a reasonable doubt, we are required to give a verdict of not guilty.” “I think he’s guilty, but I don’t feel comfortable passing a guilty verdict and knowing he’s going to prison.”

DISCUSSION OF THE OUTCOME OF THE FIRST TRIAL

The outcome of this trial was a shock to me because I found the alleged victim to be believable (she was a 66-year-old grandmother who consistently identified the alleged assailant, who was reported to be extremely distraught by all who came in contact with her after the assault, and who broke down in tears on the stand when discussing the sexual assault). I also thought that the state had provided sound scientific data that a sexual assault had occurred and that the alleged assailant was linked in several ways to the crime. During the trial, I thought that without scientific tests, the prosecution would have had great difficulty getting a conviction in this case but that with DNA evidence linking the alleged assailant to the crime and with pictures taken during the culpascope examination showing severe bruising of the victim's vaginal area, a conviction would be the outcome. The fact that both the DNA evidence and the results of the culpascope examination were disregarded was surprising. In regard to the pictures showing serious vaginal bruising being disregarded because of the alleged victim's age and lack of lubrication, I asked the other jurors, "Why would a woman who just had recent back surgery and who bruised so severely have consensual sex?" Their response was that she was too drunk to care or feel any pain. Thus, this jury's verdict was consistent with Lafree's (as cited in Hans & Vidmar, 1986) findings that jurors may disregard even corroborative evidence if they believe that the alleged victim's character is questionable.

The jurors' fascination with a targeted investigation and the idea of mistaken identity was also surprising. Throughout the jury deliberations, I thought that sexism was evident because many jurors discredited both the crime lab expert ("Who does she think she is strolling in here with a suit and briefcase?") and the female nurse who did the culpascope examination ("Why did the state bring a nurse; a doctor would have had instant credibility?"). Similarly, many jurors thought that the VPSO's wife, who stated she saw the alleged assailant knock on the alleged victim's door, contributed to a targeted investigation although neither attorney implied or even mentioned this possibility. Most of the jurors did not consider the alleged victim to be believable, believing that she was lying to cover up other sexual escapades or consensual sex with the alleged assailant. Most of the jurors thought that the state did not prove its case because fingerprints were not taken, clothing and bedclothes were not tested for semen, and other suspects were not considered, although a DNA specimen was taken during the vaginal examination and the alleged victim consistently identified the alleged assailant.

In conclusion, one could say that in this sexual assault case, most jurors thought there was reasonable doubt that the alleged victim had been sexually assaulted. Rather, they believed that the alleged victim either had consensual sex with the alleged assailant or consensual sex with someone else but was not raped and did not suffer harm. When statements made during the jury deliberations were considered in regard to common rape myths, it became apparent that almost every myth was validated by some jurors and used as an argument for acquittal. Many male jurors could identify on some level with the alleged assailant, as was evidenced by comments such as these: "Mistaken identity happened to me once"; "'Don't, stop' can mean two different things, and it's hard to know which"; and "Would you want to ruin a man's life?" The lack of gravity about this sexual assault trial was apparent in such jurors' comments as the following: "Why don't they have *Playboy* magazines here to read?" in reference to reading materials supplied in the jurors' quarters. Other comments that trivialized the case included "They were all soused; it just depends which drunk you want to believe" and "They all cover up for one another." At the end of the deliberations, when the final vote had been taken, a male juror stated, "Seven to five, we still kicked ass."

The outcome of this trial raises some serious questions regarding our judicial system in general and sexual assault trials in particular. The first concern is with the jury selection process. If this jury were indeed a representative sample of the community and a true jury by peers, the outcome would be disturbing in terms of prevalent attitudes toward women and sexual assault. As I mentioned earlier, throughout the jury deliberations, it was apparent that the majority of jurors strongly held many rape myths. Unfortunately, it is obvious that this jury was neither a randomly selected cross-section of the community nor a jury of peers. Potential jurors were excluded if they knew anything about DNA or were familiar with the law or law enforcement officers, more women than men were excused, and the only Native woman who was selected as a potential juror was excused. The result was a jury consisting of twice as many men as women, with only two jurors in occupations requiring college degrees and no Alaska Natives or residents of rural villages.

In 1999, Supreme Court Justice Sandra Day O'Connor called for a review of lawyers' rights to exclude possible jurors without giving a reason or for cause because they heard about the case from the media. She said that these practices give the impression of "unrepresentative juries." O'Connor warned that

> the use of unlimited "cause" challenges to prospective jurors, coupled with extensive media coverage of some cases, leaves some courts to search out the most ignorant and poorly informed citizens to serve as jurors in high-profile cases, because only those citizens are likely to have avoided forming any opinion. ("O'Connor Urges Examination," 1999, p. A-8)

Furthermore, in this case, both the alleged assailant and the alleged victim were from small rural villages, but the jurors were all non-Natives living in an urban area. Such a jury allows for stereotypes and suppositions that would probably not enter into the deliberations of a true jury of one's peers. Blatantly racist comments, including suppositions about Natives' alcohol consumption and sexual practices, were made, as were comments about small villages and the way people gossip and stick together. It is important to note that felony trials in interior Alaska are routinely scheduled in the urban center, although the defense can request that a trial be moved to a regional center closer to the village. In a regional center, however, it would probably be difficult to select jurors who had no prior knowledge of the case or anyone involved in it.

Another issue of concern in this trial was the treatment of the alleged victim, who was asked grilling questions about her alcohol consumption. In addition, although the defense attorney said in his concluding statement that he would not go into the sex life of a 66-year-old woman, he implied that the jurors should consider it (which they clearly did), asking such questions in the retrial as, "Can you tell this jury that absolutely you did not have sex with anyone there?" Full-color pictures of the alleged victim's genital area taken during the culpascope examination were passed around to the jurors and displayed on two television screens with the caption, "Genital Area of [alleged victim]." If a 66-year-old grandmother is treated this way and suspected of lying to cover up sexual escapades, one wonders what would be included in the court proceedings and jury deliberations of a date rape trial of a young woman.

THE RETRIAL

Seven months after the original trial, a retrial was held, conducted by the same judge with the same prosecuting and defense attorneys. The jury was different in its gender makeup (7 men and 7 women), and one of the jurors was married to an Alaska Native woman. At the retrial, I took detailed notes on all the potential jurors who were called and questioned by the prosecuting and defense attorneys to ascertain how peremptory challenges changed the makeup of the jury.

Of the initial randomly selected pool of 14 jurors in the second trial, 9 were women and 5 were men, and in terms of educational background related to current occupation, there were 2 undergraduate college students, 1 doctoral student, 1 accountant, and 3 school teachers. No Alaska Natives were included in this initial pool. Both the defense and prosecution dismissed 9 jurors each, which meant that 32 potential jurors were reviewed for this case.

The nine potential jurors who were dismissed by the defense in the second trial were six Caucasian women and three Caucasian men, eight of whom were either college students or in careers that required college degrees. Of the nine jurors who were dismissed by the defense, eight were in occupations that require college degrees: three college students, one high school math teacher, two accountants, one social worker, and one engineer. Thus, there was a high level of educational attainment in that seven potential jurors were seeking or had completed postsecondary degrees. The defense also dismissed an Alaska Native woman. The nine who were dismissed by the prosecution included six men and three women. Occupational status did not seem to matter in the prosecution's dismissals as much as attitudes toward drinking (two persons were dismissed who believed that drinking was wrong) and prior experience with the courts either for driving while intoxicated, child custody, or past service as a juror on a criminal trial. After peremptory challenges, the final jurors included 7 men and 7 women. Two of the men were school teachers, but no other jurors were in occupations in which an educational degree beyond the secondary level was required. Thus, peremptory challenges in this case changed the juror pool in terms of its gender makeup and educational level as determined by current occupational status. As one female observer during the jury selection process stated, "They sure don't want any smart women on that jury, do they?"

Additional evidence presented by the state in the second trial included a database for the probability of a DNA match in the Athabascan population, a more sophisticated DNA analysis done by a Seattle laboratory with results presented by its director (a man with a Ph.D.), a local respected (male) physician's corroboration of the nurse's culpascope conclusions, and a young girl who said the assailant made lewd comments to her on the morning of the alleged rape. The defense again used the mistaken identity argument and attempted to discredit the alleged victim because she was drunk and had not fought off her assailant. The prosecution meticulously presented the DNA evidence showing the probability of another matching DNA profile in the Athabascan population to be in the range of 1 to 2.5 million.

After fewer than 3 hours, the jury in the second trial found the alleged assailant guilty of both first-degree rape and first-degree burglary. Jurors' comments to the judge on returning to the jurors' room after the verdict had been given indicated that the DNA evidence convinced them because this was argued as a case of mistaken identity. However, in both trials, some jurors questioned why the defense did not use the argument that this was a case of consensual sex. In both trials, some jurors stated that there would not have been a case if the defense had argued consensual sex (i.e., the alleged victim's testimony and evidence of bruising from the culpascope examination would not have mattered).

CONCLUSION

Participation as a juror in this 1999 sexual assault trial was a disconcerting and eye-opening experience both in terms of the jury selection process and the sexist, racist remarks that were evident in the jury's deliberations, which are not open to the public or recorded. Because this was a review of only one trial in one location, it is possible that the deliberations and outcome of the trial can be attributed merely to the poor job of jury selection and case presentation by the prosecuting attorney or to the uniqueness of the region where the trial took place. This would be a comforting thought and might be the case. On the other hand, in light of the previously mentioned findings that (a) almost all rape victims never see their attackers caught, tried, and imprisoned; (b) about 25% of convicted rapists never go to prison; and (c) another 25% receive sentences in local jails, where the average sentence is 11 months, the outcome of this trial does not appear to be an aberration. Rather, it seems consistent with the outcomes of other sexual assault trials, and thus an examination of jury selection and deliberations in this trial can perhaps contribute to an understanding of why the rates for reporting of and conviction for rape are so low in the United States.

Involvement as a juror in the first trial led me to conclude that there are several areas that people who are concerned about violence against women must focus. First, the court system needs to be monitored in regard to the treatment of rape victims and the representativeness of jurors. Gender, educational background, and racial and class representation are important considerations for a true trial by peers. Ten peremptory juror challenges coupled with challenges for cause can dramatically alter the composition of juries and affect the outcomes of trials. As Ward (1995) noted, "Legal analysts frequently argue that on many occasions the evidence presented at a rape case does not reliably predict a verdict as trial outcome is based more on jurors' attitudes about rape" (p. 111).

Second, more research is necessary in relation to factors that affect the outcomes of sexual assault trials and the sentencing of assailants, and this research should be widely publicized. Third, rape victims still need to know clearly what they will face in court in terms of the continued prevalence of rape myths, peremptory challenges, and the state's need to prove the case beyond a "reasonable doubt."

Finally, and of utmost importance, there is a need for more education about sexual respect and sexual assault in the American educational system and workplace. Rape myths are still persistent in our society in spite of the efforts of women's groups and feminist researchers. As Stout and McPhail (1998) stated, "Changes in laws have made it somewhat easier for rapists to be prosecuted and for rape victims to be protected, yet if the jury still believes in rape acceptance myths, all is lost" (p. 283). Rape myths serve "to blame women for the rape and shift the blame from the perpetrators to the victim and allow men to justify their sexual aggression. Accepting rape myths also serves to minimize the seriousness and prevalence of rape" (Stout & McPhail, 1998, p. 260). Educational programs in schools, workplaces, and universities must strive to reach a broad audience, which includes those who are the most likely to hold rape myths. From a more societal perspective,

> Rape is not an isolated symptom to be plucked out of society. It is an act that is often supported, condoned, tolerated, encouraged, and regulated by a patriarchal society that gives men a sense of entitlement and privilege. The conditions in society that allow rape to flourish must be confronted. (Stout & McPhail, 1998, p. 284)

This case demonstrated that DNA evidence, culpascope pictures of bruising consistent with sexual assault, and the victim's identification of the assailant can all be readily disregarded by jurors who believe common rape myths that blame the victim and minimize the seriousness of the crime. As I noted previously, members of both juries stated that in this case, a defense argument of consensual sex would have been readily believed. Only through careful monitoring of legal procedures that include the selection of a jury for representativeness from one's community and one's peers and through widespread educational efforts regarding sexual assault can we expect to see a change in both the rate of reporting and prosecution for rape.

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