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Social Perception of Rape Victims

The Impact of Legal Reform*

Eugene Borgida† and Phyllis White†

Since 1975, 40 states have enacted "rape shield" statutes which limit the admissibility of a rape victim's prior sexual history in court. These reforms have assumed that jurors regard prior sexual history evidence as much too probative of a victim's credibility and moral character, and that such perceptions have a prejudicial impact on the outcome of the jury decision process. The present research adopted an attributional analysis in order to examine the extent to which the types of legal reform affect social perception of the victim as well as the conviction rate in a videotaped consent defense rape trial. A large-scale jury simulation experiment was conducted with qualified jurors from the Minneapolis–St. Paul metropolitan area. Jurors either viewed an Improbable or Probable Likelihood of (victim) Consent version of the trial, with admission of prior sexual history evidence governed by one of three types of exclusionary rules. The results lend credence to the reformist contention that a rape victim is "on trial" along with the accused. Jurors were reluctant to convict when any testimony about prior sexual history was introduced. Moreover, jurors' close scrutiny of the victim's credibility and moral character was directly related to the conviction rate. Only the most restrictive evidentiary rule, when applied to an Improbable Consent case, curtailed the inference of victim consent, enhanced victim credibility, and increased the likelihood of conviction. Some of the legal and attributional implications of these findings were discussed.

In a recent study based on over 140 interviews with rape victims, the primary reason found for not pressing charges in rape cases was the victim's desire to avoid the ordeal of courtroom testimony (Holmstrom & Burgess, 1978). For the rape victim, testifying

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†Department of Psychology, University of Minnesota.

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in court often precipitates as much of a psychological crisis as the rape itself. Traditional common law rules of evidence, which permit comparatively unrestricted admission of testimony about the victim's prior sexual history with persons other than the defendant, have been strenuously criticized by feminists and legal reformers for distorting the fact-finding process in a manner prejudicial to the rape victim. In order to redress this situation, 40 states, since 1975, have enacted "rape shield" reform statutes which limit, to varying degrees, the admissibility of the victim's prior sexual history with persons other than the defendant. At the federal level, President Carter recently signed into law the Privacy Protection for Rape Victims Act of 1978, which similarly amends the Federal Rules of Evidence as they pertain to the admissibility of prior sexual history evidence.

The rationale behind such reforms is basically twofold. First, the reforms should prevent potentially irrelevant, prejudicial testimony from being heard by the jury. Restricting the admissibility of such evidence should therefore reduce juror prejudice and improve the abysmally low rate of convictions in rape cases. Second, by excluding evidence of the victim's prior sexual history, the victim is less likely to be subjected to humiliating cross-examination in court. In this respect, the reforms are meant to alleviate the extent to which a victim is "on trial" along with the accused assailant. In signing the Privacy Protection for Rape Victims Act, for example, President Carter stated that the legislation was "designed to end the public degradation of rape victims and, by protecting victims from humiliation, to encourage the reporting of rape."

Under the common law rules courts have admitted evidence of the victim's prior sexual history with third parties for several controversial reasons. Two reasons are commonly cited. First, the defense has been allowed to introduce evidence of the victim's unchaste character in order to impeach her credibility as a prosecuting witness. The assumption behind this notion is that a woman's sexual behavior is directly related to her credibility as a witness. If that were so, then one might expect that prior sexual history testimony would also be admissible in any trial in which a woman served as a witness (Note, *Valparaiso Law Review*, 1976). Moral character, however, is not permitted to impeach the credibility of a witness in any other area of criminal law.

The second reason for the use of prior sexual history is to show likelihood of consent in the particular case. The assumption behind this rule is that a woman who has consented to various sexual advances in the past is more likely to have consented to the sexual encounter in question than is a chaste woman (Eisenbud, 1975). The weight of legal commentary in recent years, however, has been highly critical of such an assumption. It has been argued that the fact that a woman has engaged in sexual relations with one man, or with many, does not prove that she consented to the act in issue (Berger, 1977; Harris, 1976; Mathiasen, 1974).

Borgida (in press) has classified the state laws governing the admission of third party sexual history into three categories based on the extent to which evidence concerning prior sexual history is excluded when a consent defense is raised. The *Common Law* category, for example, includes 10 states without an exclusionary statute and assumes the relatively unlimited admissibility of prior sexual history evidence.

In contrast, the two categories of reform statutes reflect the arguments put forth by critics of traditional rape laws. The difference between the reform statutes rests in

the amount of discretion which is left to the trial judge in determining the admissibility of third party prior sexual history evidence. In the 21 states governed by a *Moderate Reform* exclusionary rule, prior sexual history evidence is generally excluded unless the court determines the evidence to be material to a fact in issue. Laws of this type allow the trial judge considerable discretion in weighing the probative and prejudicial aspects of the evidence in question. But the effect of the statute is clearly to screen the admissibility of prior sexual history evidence as compared to the Common Law.

Finally, 19 states have adopted statutes with a more restrictive *Radical Reform* exclusionary rule. The Radical Reform statutes require exclusion of third party prior sexual history evidence because it introduces the risk of "unfair prejudice," confusion of the issues, or misleading the jury. "Unfair prejudice" here refers to "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one" (Rule 403, *Federal Rules of Evidence,* 1975). However, some legal scholars have criticized the restrictiveness of these Radical Reform statutes because, in certain circumstances, exclusion of the victim's prior sexual history may violate the due process clause of the Fourteenth Amendment and the Sixth Amendment rights of confrontation and cross-examination (e.g., Child, 1975; Herman, 1977).

The central social psychological assumptions underlying these various reform statutes are that jurors regard evidence of prior sexual history as much too probative of a rape victim's credibility and general moral character, and that such inferences will have an "unfair prejudicial" impact on the outcome of the jury decision process in rape cases. Kalven and Zeisel (1966) addressed these assumptions in their interpretation of judge-jury disagreements in cases of forcible rape:

> The law recognizes only one issue in rape cases other than the fact of intercourse: whether there was consent at the moment of intercourse. The jury, as we come to see it, does not limit itself to this one issue; it goes on to weigh the woman's conduct in the prior history of the affair. It closely, and often harshly, scrutinizes the female complainant and is moved to be lenient with the defendant whenever there are suggestions of contributory behavior on her part (p. 249).

There is some research in social psychology and law that has found that evidence that evokes and implicates character may influence simulated juror judgments (cf. Davis, Bray, & Holt, 1977; Gerbasi, Zuckerman, & Reis, 1977; Stephan, 1975). In particular, several studies have shown that evidence of "good" character or "bad" character influence the fact-finding process in hypothetical rape cases (e.g., Catton, 1975; Feldman-Summers & Lindner, 1976; Jones & Aronson, 1973; Smith, Keating, Hester, & Mitchell, 1976). Feldman-Summers and Lindner (1976) and Smith et al. (1976), for example, found that perceived victim responsibility for rape decreased as general respectability of the victim increased. Jones and Aronson (1973) also reported an inverse relationship between victim respectability and recommended punishment. And Brooks, Doob, and Kirshenbaum (Note 1) showed that when a man was convicted of raping a woman with a history of prostitution ("bad" character) as opposed to a woman of chaste character, both male and female subjects felt that justice had not been served.

Thus, to the extent that testimony about prior sexual history conveys pejorative information about a victim's general moral character, the admission of such evidence may adversely affect juror perceptions of the rape victim's character and credibility as a witness. Testimony about the victim's prior sexual history may convey the erroneous

impression that the victim has consistently been sexually acquiescent. Such perceptions about the possible contributory behavior of the victim may have significant personal consequences for the victim, and may reduce the likelihood of conviction. In this context, the effects associated with the admission of prior sexual history evidence may be understood in terms of attribution theory and, in particular, Kelley's covariance principle (Kelley, 1967, 1971, 1973).

Attribution theory has characterized people as "intuitive psychologists" who logically (and often illogically) utilize various principles and causal schemata in order to attribute causal explanations for social behavior (cf. Ross, 1977). According to Kelley's covariance principle, for example, the lay attributor assesses the degree of covariance between observed behaviors and possible causes for these "effects." Three sources of information are considered in this process: distinctiveness (Does the person behave in this manner in similar situations as well, or only in this particular situation?), consistency (Does the person usually behave in this manner, or only occasionally?), and consensus (Do other people behave in this manner in this situation, or is the response relatively rare?). Attribution of cause to either situational or personal factors, therefore, depends on the nature of the information pattern under consideration.

The admission of prior sexual history evidence in a rape case may enhance the likelihood that jurors attribute personal responsibility to the victim for the sexual assault. Knowledge that the victim had an active sexual history may be regarded as a pattern of low distinctiveness and high consistency information from which jurors make personal rather than situational attributions for the sexual assault. Person attributions would involve the belief that a woman who has consented to sexual advances in the past is the type of woman who would be more likely to consent to the act in issue. As a result, jurors may be more likely to scrutinize the victim's character and to place the victim on trial as much as the accused.

A JURY SIMULATION APPROACH

A large-scale jury simulation experiment was conducted in order to examine the impact of legal reform on these inferential processes (cf. Borgida & White, Note 2). The transcript of an actual rape trial involving a consent defense was first edited. Then six two-hour videotaped variations of the trial (hereafter referred to as *State v. McNamara*) were produced with the assistance of professional actors and actresses, and two experienced trial attorneys. All videotaped trials included opening remarks from the judge, opening arguments from the prosecution and defense attorneys, the victim's testimony and cross-examination, four prosecution witnesses, all of whom were cross-examined, the defendant's testimony and cross-examination, closing arguments, and the judge's final charge to the jury. In addition, the victim always maintained that she had been forcibly raped and the defendant always claimed that the victim had voluntarily consented to sexual intercourse. Corroborative physical evidence, including an emergency room physician's testimony, was also identical. The six versions of *State v. McNamara* varied on the basis of two factors: (1) likelihood of victim consent and (2) the type of exclusionary rule applied to evidence of the victim's prior sexual history.

Particularly in rape cases, certain features of a fact pattern (e.g., location of the assault, prior relationship between victim and defendant, presence or absence of force, evidence of victim resistance, corroborative physical evidence, etc.) may suggest victim consent or contributory behavior to jurors. The presence of such features in any given case could reduce the likelihood of conviction, whether or not evidence of prior sexual history had been admitted. For example, jurors may be more likely to infer victim consent (and perhaps question the victim's moral character) if the defendant and victim had met in a notorious singles bar and weak evidence of coercive force and victim resistance were presented during the trial. Thus, in the absence of testimony about prior sexual history, the case fact pattern itself may be sufficiently suggestive about a victim's contributory behavior and moral character that jurors nevertheless attribute victim blame and responsibility (Borgida, in press; Holmstrom & Burgess, 1978).

Two levels of likelihood of victim consent were therefore presented. One-half of the trials embodied an *Improbable Likelihood of Consent* fact pattern and the other half embodied a *Probable Likelihood of Consent* fact pattern. These two overlapping but distinct fact patterns were developed by modifying certain critical features of the original trial transcript. Prior acquaintance of the victim and the defendant, the extent of victim resistance, and location of the initial meeting place on the night in question were varied somewhat between fact patterns. Whereas the victim and defendant "hardly knew each other" in Improbable Likelihood of Consent, they were "very close friends" and had been physically affectionate with one another in Probable Likelihood of Consent. Testimony by the defendant about the victim's failure to resist, for example, was emphasized in Probable Likelihood of Consent. Furthermore, the victim and defendant had met earlier in the evening at a bar–disco in Probable Likelihood of Consent, while in Improbable Likelihood of Consent they both just happened to visit the trailer home of a mutual friend earlier in the evening. Pretest ratings of the two trial fact patterns from the same juror population clearly supported the two different levels of likelihood of consent: victim consent was regarded as "unlikely" in Improbable Likelihood of Consent and "likely" in Probable Likelihood of Consent ($p = .006$).

The type of exclusionary rule applied to evidence of the victim's prior sexual history was the second factor varied across the videotaped trials. In accordance with Borgida's (in press) classification, the defense testimony of a prior sexual history witness whose testimony would have been admissible (on the basis of a "common plan or scheme" criterion) was included in the *Moderate Reform* versions of both fact patterns.[1] This male witness testified that after meeting the victim at a local bar one evening she willingly accompanied him to his parked van and had sexual intercourse with him. In the *Common Law* versions of both fact patterns the defense also presented the testimony of a second prior sexual history witness whose testimony would only have been admissible under the Common Law Rule. This particular

[1]The "common plan or scheme" criterion justifies the admission of prior sexual history evidence when the testimony involves a repetitive pattern or set of factual circumstances that was similar to the fact pattern in question. The determination of what constitutes a "repetitive pattern" is left to the trial judge's discretion. This criterion, which has been adopted by seven of the Moderate Reform states, is more stringent than the balancing criterion adopted by the other Moderate Reform jurisdictions. The latter stipulates that the trial judge must decide whether the offered evidence is more probative than prejudicial.

witness, the victim's former roommate, testified that the victim had a reputation for being sexually "loose." Moreover, the witness testified that she had asked the victim to leave their shared apartment after discovering her engaged in a *ménage-a-trois* with two men. No prior sexual history evidence was added to either fact pattern in the *Radical Reform* versions.

As already noted, the admissibility of prior sexual history testimony in this case was determined by the *legal* criteria that define a given Exclusionary Rule category. In order to corroborate discretionary judgments based on such criteria, a District Court Judge from the Fourth Judicial District Court in Minneapolis and a veteran prosecutor for the County Attorney's Office, both of whom had extensive experience with sexual assault cases, viewed the trials and ruled on the admissibility of the prior sexual history testimony. Their rulings independently corroborated the present operationalization. Whereas these legal criteria are applicable to other rape cases, it should be noted that the specific content of the prior sexual history admitted in *State v. McNamara* may limit the generalizability of the present research to rape cases that do not involve a consent defense.

Participants for the jury simulation experiment ($N = 348$) were selected from two independent samples of prospective jurors from the Minneapolis–St. Paul metropolitan area. Forty-three percent of the participants had not previously served jury duty with the Fourth Judicial District Court but were eligible for jury duty at the time they were randomly sampled from the metropolitan voter registration file. Fifty-three percent of the participants were from a second sample of jurors who had already served on a District Court criminal jury (excluding those jurors who had served on cases involving sexual assault). The modal juror in the sample was white (97.7%), middle-class (average family income was between $20,000 and $24,999 per year), and middle-aged (45–54 years old) with some college education. Sixty-four percent of the jurors were female and 36% were male. All jurors were scheduled for four-hour sessions in the courtrooms at the University of Minnesota's Law School and were randomly assigned to one of the six experimental conditions. After viewing *State v. McNamara*, jurors deliberated the case in six-person juries for a maximum of 50 minutes before they completed an extensive research questionnaire. All jury deliberations were governed by a unanimous verdict decision rule.

Thus, the present research focused on the extent to which the types of legal reform affect not only juror inference of victim consent and juror perceptions of the victim and the defendant, but also the conviction rate in *State v. McNamara*. In addition, the research examined the extent to which the varying degrees of implied victim consent that often characterize rape cases processed through the criminal justice system moderate the efficacy of these reforms. The admission of testimony about prior sexual history with the Common Law or Moderate Reform Rule is expected to enhance the likelihood that jurors will make pejorative person attributions about the victim's character and contributory behavior. Therefore, juror verdicts should reflect a greater likelihood of conviction with the more restrictive Radical Reform Rule, which should curtail this attributional process. Jurors should also perceive the victim as more credible, more respectable, and attribute less responsibility to the victim for the rape with the more restrictive evidentiary rule.

Consistent with other findings which suggest that males are more likely to infer victim consent in rape cases (e.g., Calhoun, Selby, & Warring, 1976; Selby, Calhoun,

& Brock, 1977; Smith et al., 1976), it was expected that male jurors would infer more victim consent and render fewer convictions than female jurors. Finally, interactions between Type of Exclusionary Rule and Likelihood of Consent were expected. Improbable Consent fact patterns are less informative about the victim's contributory behavior and less suggestive about the victim's moral character than Probable Consent fact patterns. Therefore, juror verdicts should reflect the highest likelihood of conviction when the Radical Reform Rule is applied to the Improbable Consent fact pattern. Jurors should also infer less victim consent and perceive the victim as more credible, more respectable, and attribute less responsibility to the victim.

RESULTS AND IMPLICATIONS

In order to examine these hypotheses, a subset of the measures collected in the jury simulation experiment (cf. Borgida & White, Note 2) was first analyzed by $3 \times 2 \times 2$ (Type of Exclusionary Rule $\times$ Likelihood of Consent $\times$ Sex of Juror) analyses of variance.[2] These dependent measures included a verdict measure,[3] inferred likelihood of victim consent, attribution of victim and defendant responsibility,[4] and 11 bipolar adjective ratings of the victim and the defendant: sincere–insincere, unattractive–attractive, not similar to me–similar to me, respectable–not respectable, not believable–believable, likeable–not likeable, convincing–not convincing, certain–uncertain, dishonest–honest, interesting–boring, and calm–nervous.

Juror Verdicts

Table 1 presents mean juror verdicts as a function of Type of Rule and Likelihood of Consent. As predicted, jurors are more certain of defendant guilt with the restrictive Radical Reform Rule than with either the Moderate Reform or Common Law Rules, which both admit evidence of prior sexual history ($p < .001$). In addition, jurors are more certain of defendant guilt in Improbable rather than Probable Consent trials ($p < .001$) and female jurors are more certain of defendant guilt than male jurors ($p < .02$).

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[2]Deliberated juror verdicts are treated as independent in these analyses because whether or not jurors deliberated is an independent variable (with two levels) in the overall experimental design [cf. Borgida & White, 1979 (Note 2)]. If this had not been the case, *jury* would have been treated as a nested factor for these analyses.

[3]The 20-point verdict measure was constructed by combining the dichotomous (guilty, not guilty) verdict with a 100-point certainty (of verdict) scale in the following manner: Guilty verdicts = $+.1 \times$ certainty score (0–100) + 10. Not Guilty verdicts = $-.1 \times$ certainty score (0–100) + 10. Thus, jurors who found the defendant "not guilty" and were 100% certain of their judgment received a scale score of 0. On the other hand, jurors who found the defendant "guilty" and were 100% certain of their judgment received a scale score of 20. Guilty and not guilty judgments with 0% certainty were both assigned a scale score of 10. Therefore, higher means are interpreted in terms of greater certainty of guilty, and lower means in terms of greater certainty of a not guilty verdict. Separate analyses on the dichotomous verdict and certainty scale yield an almost identical pattern of results.

[4]Attribution of responsibility was measured by the following 5-point scale: "On the basis of the testimony that you heard, how responsible do you believe (victim's name/defendant's name), the accusing witness (the defendant), was for the events on the night in question?"

Table 1. Mean Verdicts for Deliberated Jurors as a Function of Type of Rule and Likelihood of Consent[a]

Likelihood of consent	Type of exclusionary rule		
	Common law	Moderate reform	Radical reform
Improbable	5.74 ($n=58$)[b]	9.63 ($n=52$)	15.53 ($n=66$)
Probable	3.97 ($n=60$)	8.70 ($n=54$)	8.13 ($n=53$)

[a]Verdicts are based on a 20-point verdict certainty scale. Higher means indicate guilt and greater certainty of guilt; lower means indicate not guilty and greater certainty of innocence.
[b]Sample size deviations from a multiple of six within a particular cell indicate missing data in those cells.

As expected, there is also a significant interaction between Type of Rule and Likelihood of Consent ($p < .02$) for the juror verdicts shown in Table 1. For the Improbable Consent trials, jurors are more certain of guilt with the Radical Reform Rule than with either the Moderate Reform or Common Law Rules. When the trial fact pattern conveys Probable Consent, however, *neither* type of legal reform enhances juror certainty about guilt; jurors render not guilty verdicts with about 20% certainty in both Moderate Reform and Radical Reform. Thus, only the Radical Reform Rule with Improbable Consent trials effectively increase the conviction rate in *State v. McNamara*.

Inference of Victim Consent

How do the types of legal reform affect juror inference of victim consent or contributory behavior? Table 2 presents mean inferred consent judgments as a func-

Table 2. Mean Inferred Consent Judgments for Deliberated Jurors as a Function of Type of Rule and Likelihood of Consent[a]

Likelihood of consent	Type of exclusionary rule		
	Common law	Moderate reform	Radical reform
Improbable	5.81 ($n=59$)[b]	5.23 ($n=53$)	3.32 ($n=65$)
Probable	6.93 ($n=60$)	5.00 ($n=53$)	5.92 ($n=53$)

[a]Higher means indicate greater perceived likelihood that the victim voluntarily consented to have sex with defendant (1 = not at all likely that she agreed, 5 = somewhat unlikely, 10 = very likely that she agreed).
[b]Sample size deviations from a multiple of six within a particular cell indicate missing data in those cells.

tion of Type of Rule and Likelihood of Consent. As predicted, jurors infer a greater likelihood of consent with the least restrictive Common Law Rule than with either type of legal reform ($p < .001$). Consistent with the experimental manipulation, jurors infer more victim consent in Probable than in Improbable Consent trials ($p < .001$). And consistent with anticipated sex differences in the social perception of rape victims, male jurors are more likely to infer victim consent than female jurors ($p < .04$).

Table 2 also reflects a significant interaction between Type of Rule and Likelihood of Consent ($p < .001$). Jurors are more likely to infer victim consent with Common Law and Radical Reform Rules for Probable Consent than for Improbable Consent trials. Thus, only the Radical Reform Rule when applied in an Improbable Consent trial effectively curtails the inference of victim consent associated with the admission of prior sexual history testimony. Furthermore, the inference of victim consent has striking implications for juror verdicts: the more jurors infer victim consent, the less likely they are to convict the defendant ($r = -.82$, $p < .001$).

Perceptions of the Victim

How do the types of legal reform affect social perception of the rape victim? In order to address this question, the entire set of 11 adjective ratings, which jurors used to evaluate the defendant as well as the victim, were first analyzed by a $3 \times 2 \times 2$ multivariate analysis of variance (MANOVA). There are highly significant MANOVA main effects on the set of victim ratings for Type of Rule, Likelihood of Consent, and Sex of Juror, and there is a significant interaction between Type of Rule and Likelihood of Consent.

Separate univariate ANOVAs, however, are more informative with respect to examining specific perceptions of the rape victim. For example, Table 3 presents the mean credibility ratings of the victim (and the defendant) as a function of Type of Rule and Likelihood of Consent. Credibility is measured by a summed index of the

Table 3. Mean Credibility Ratings of the Victim and Defendant for Deliberated Jurors as a Function of Type of Rule and Likelihood of Consent[a]

	Type of exclusionary rule					
	Common law		Moderate reform		Radical reform	
Likelihood of consent	Victim	Defendant	Victim	Defendant	Victim	Defendant
Improbable	19.74 ($n=58$)[b]	21.48 ($n=58$)	23.12 ($n=51$)	19.06 ($n=53$)	24.84 ($n=64$)	18.87 ($n=62$)
Probable	17.63 ($n=57$)	25.55 ($n=55$)	22.26 ($n=50$)	23.04 ($n=50$)	20.57 ($=49$)	24.75 ($n=51$)

[a]The credibility measure is based on a summed index of five 7-point bipolar adjectives: believable–not believable, convincing–unconvincing, certain–uncertain, honest–dishonest, sincere–insincere. Higher means indicate greater credibility.

[b]Sample size deviations from a multiple of six within a particular cell indicate missing data in those cells.

five variables (sincere, honest, believable, certain, and convincing) which load on the credibility factor from a principal components factor analysis of the set of victim ratings. Jurors perceive the victim as less credible in the Common Law trials than in either the Moderate Reform or Radical Reform trials ($p < .00001$). Also as predicted, jurors perceive the victim as less credible in Probable Consent than in Improbable Consent trials ($p < .00001$).

There is also a significant interaction between Type of Rule and Likelihood of Consent ($p < .0009$). As may be seen in Table 3, the victim is perceived as most credible under the Radical Reform Rule with an Improbable Consent fact pattern. More important, however, perceptions of the victim's credibility have clear consequences for the victim's fate in court: the correlation between victim credibility and verdict is .77 ($p < .001$). In addition to her credibility as a witness, the victim's moral character is related to juror verdicts: the correlation between victim respectability and verdict is .39 ($p < .001$).

There are also univariate effects on several other dependent measures centrally related to jurors' perceptions of the victim. Jurors perceive the victim as less respectable, interesting, and likeable, and attribute more responsibility to the victim in the Common Law trials than in either Moderate Reform or Radical Reform trials. Furthermore, jurors perceive the victim as less respectable, less similar, and attribute more responsibility for the sexual assault to the victim in Probable Consent than in Improbable Consent cases. Jurors who viewed the Improbable Consent trials, however, rate the victim as more respectable, sincere, and interesting with the Radical Reform Rule than with either the Moderate Reform or Common Law Rules. Thus, perceptions of the victim are indeed detrimental when the case fact pattern is governed by the traditional Common Law Rule and most credible in an Improbable Consent case governed by the restrictive Radical Reform Rule.

Perceptions of the Defendant

Juror perceptions of the defendant are rather limited and the underlying factor structure is much less differentiated in comparison with juror perceptions of the victim. There are highly significant MANOVA main effects on the defendant's set of adjective ratings for Type of Rule, Likelihood of Consent, and Sex of Juror. An examination of the separate univariates, however, suggests that it is the victim and not the defendant who is more closely scrutinized by jurors. The mean credibility ratings of the defendant are presented in Table 3. Credibility is again measured by a summed index of the five variables (sincere, honest, believable, certain, and convincing), which comprise the credibility factor from a factor analysis of the set of defendant ratings. Jurors perceive the defendant as more credible in the Common Law trials than in either Moderate Reform or Radical Reform trials ($p < .02$). In contrast to the credibility ratings of the victim, the defendant is perceived as more credible in Probable Consent than in Improbable Consent ($p < .00001$). These perceptions of credibility are also consequential for the defendant: the correlation between defendant credibility and verdict is $-.62$ ($p < .001$). But the defendant's moral character, as measured by his respectability, is significantly less related to verdict ($r = -.13$, $p < .004$) than is the victim's moral character.

There are few univariate effects on other defendant ratings. First, the defendant is regarded as more respectable, more similar, and more interesting when evidence of

the victim's prior sexual history is excluded completely, i.e., in the Radical Reform trials. And jurors attribute less responsibility to the defendant in the Common Law trials. Second, jurors perceive the defendant as more respectable, more similar, more interesting, and more likeable in the Probable Consent than in the Improbable Consent trials.

In sum, these results strongly support the reformist contention that a rape victim is "on trial" along with the accused. As an attributional analysis would suggest, when specific evidence of the victim's prior sexual history is admitted in a consent defense rape case like *State v. McNamara,* jurors infer victim consent, carefully and unfavorably scrutinize the victim's credibility and moral character, and tend to attribute more responsibility to the victim. Most important, these juror perceptions of victim credibility, moral character, and contributory behavior are directly related to the conviction rate in *State v. McNamara.* Although defendant credibility is a consideration, perceptions of the defendant's general moral character are much less of a consideration than the victim's general moral character. Defense counsel are intuitively aware of this and therefore try to capitalize on the victim's prior sexual history and certain features of the fact pattern to suggest that the victim may have consented to the sex. The strategy of course is to persuade the jury that as the defendant contends rape did not occur.

In *State v. McNamara,* this strategy is quite effective. Jurors are reluctant to convict the defendant when any testimony about prior sexual history is introduced in support of the consent defense. As predicted, only the Radical Reform Rule, when applied to an Improbable Consent fact pattern, seems to restrict the inference of victim consent, enhance victim credibility, and increase the likelihood of conviction. A particularly distressing aspect of this pattern, as Table 1 suggests, is that the impact of prior sexual history evidence with Moderate Reform and Common Law Rules in an otherwise Improbable Consent case is apparently detrimental to the prosecution's case. Moreover, for Probable Consent cases, *neither* type of legal reform effectively counteracts the implication of victim consent conveyed by the Probable Consent fact pattern. Probable Consent cases in fact are often screened out before they reach court by police "unfounding" criteria or by the prosecutor's office (Holmstrom & Burgess, 1978). For those that are prosecuted, we suspect that there are few convictions, especially in those jursidictions governed by a Common Law Rule.

The present results also underscore the breadth and flexibility of the attributional perspective which has now been applied to a number of legal issues of concern to the criminal justice system (e.g., Carroll & Payne, 1976; Carroll, 1978; Fontaine & Kiger, 1978; Kidder & Cohn, in press; Perlman, in press). Juror perception and verdicts in *State v. McNamara* are clearly consistent with attributional predictions about the impact of prior sexual history information. The admission of this evidence seems to enhance the likelihood that jurors make person attributions and attribute more personal responsibility to the victim for the rape. Jurors also are more likely to infer victim consent from testimony about prior sexual history. And the inference of victim consent, promoted by the admission of prior sexual history evidence, is strongly associated with the verdicts rendered in *State v. McNamara.* The results therefore provide support for the critical but often neglected link between attributions and actual behavior (Snyder, 1976).

To what extent prior sexual history evidence is relevant to or probative of consent

is still a matter of divergent legal opinion. In Moderate Reform jurisdictions, the trial judge must decide whether evidence of prior sexual history is more probative than prejudicial. That decision has already been made by the legislature in Radical Reform states. The view in those states is that prior sexual history is more prejudicial than probative when offered to prove consent and therefore must be excluded. Any constitutional challenges to the Radical Reform statutes must presume that prior sexual history is more probative of consent and therefore relevant. To be sure, there is no violation of constitutional rights when a court refuses to permit the introduction of irrelevant and prejudicial evidence. Resolution of this issue will therefore require informed consideration of the probative and prejudicial status of prior sexual history evidence. The present research has potential value for this debate in that it provides a strong empirical demonstration of the prejudicial effects associated with the admission of third party prior sexual history evidence.

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