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# Swaying the Jury: The Effect of Expert Witness Testimony on Jury Verdicts in Rape Trials

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**Swaying the Jury:  
The Effect of Expert Witness Testimony on Jury Verdicts in Rape Trials**

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**Abstract**

With the reliance on rape myths to form opinions towards rape victims, the use of expert witnesses is of increased importance. Rape myths may give jurors misinformed notions about why, how, or to whom rape happens. This indicates a need for educational expert testimony in rape jury trials. It is proposed the use of this testimony will help dispel these myths and social biases towards victims of rape. This paper explores the need for expert witness testimony and the relationship between expert witness and jury. It discusses what type of testimony may be presented and who qualifies as an expert. The belief is with expert witness testimony, views will be reversed and a jury will be more likely to convict in a rape trial. Without expert witness testimony jurors are left with a limited understanding of the effects of rape on women. Juries will be more likely to side with the offender without the proper scope of the evidence.

## **Swaying the Jury:**

### **The Effect of Expert Witness Testimony on Jury Verdicts in Rape Trials**

In any trial, witnesses are brought before the court to help deepen the understanding of evidence presented during the proceedings. It is the job of a jury to interpret the evidence presented and deliberate using that evidence to guide their decision-making when determining a verdict. Jurors often lack the capacity to understand all the evidence presented to them, especially in more complex trials, like rape trials where evidence is often based on witness testimony and hearsay. Expert witnesses are sometimes called to help the jury understand a particular subject, in which they are knowledgeable, and have a particular proficiency. These persons are permitted to testify to that knowledge as it is relevant to a certain case. Both the prosecution and defense can call these experts to help strengthen their case. The use of expert witness testimony in sexual assault and rape trials is important to overcome the stigma with common rape myths and bias towards the complainant. This testimony helps educate jurors during their decision-making process. Without this testimony, jurors are left with merely a basic understanding of the effects of rape on women and are likely to reach a different verdict without the expert knowledge. This means some jurors may not fully understand the effects of rape and, therefore, they may misread the evidence presented in court. Therefore, if the jurors were able to hear the expert testimony, they would be able to make a more informed decision for the verdict.

#### **METHODOLOGY**

The research for this study was collected using Sociological Abstracts, an online search engine of peer-reviewed research. This meant the resources were written by experts and

reviewed by other experts for authenticity and quality. The search focused on the relationships between expert witnesses and jury decision making in rape and sexual assault trials. It also focused on characteristics of expert witnesses and jurors as well as the standards for admissible evidence and testimony in court. It was conducted by looking for scholarly research and searches guided by the terms “expert witness,” “expert testimony,” “jury decision-making,” and “rape trial.” It was then researched further and narrowed to “Rape Trauma Syndrome,” “Post-Traumatic Stress Disorder,” “rape myths,” “credibility,” and “evidence requirements.”

The original search was for quantitative research, but that search only yielded a few sources. However, most quantitative studies did not fit with my research goals for this topic. The research then became focused more on a qualitative analysis of the literature. Now, it focused on subjects that repeated multiple times in the literature. Meaning, many ideas repeated and were common within the literature (like RTS, rape myths, etc.). Most of the sources focused on interview-based research on experts and the juries perceptions of them. The focus of the search was narrowed to the limitations placed on expert witnesses on what these experts are allowed to present at trial and how this can hinder the information a jury receives at trial.

I then looked for themes in the literature that provided explanations for excluding certain evidence at trial as well as the effect expert witnesses have on jury decision making. Most of the sources are academic journals, but there is also information from a few books as well. Information from Rape, Abuse & Incest National Network (RAINN), a nationwide database with statistics on offenders and victims of rape and sexual assault, was also used. I found other sources by reviewing some of the reference pages of sources already being used. These were used to help expand upon certain ideas in the literature.

## DEFINING TERMS

Rape Trauma Syndrome or RTS is a “stress response pattern of the victim following forced, non-consenting sexual activity. It consists of somatic, cognitive, psychological and behavioral symptoms resulting from an active stress reaction to a life-threatening situation.” (Biggers, Yim 2003:64). Rape Trauma Syndrome (RTS) differs from Post-Traumatic Stress Disorder (PTSD). Post-Traumatic Stress Disorder or PTSD is the “development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual threatened death or serious injury, or other threat to one’s physical integrity” (Long 2007:16). Most courts accept testimony on PTSD, but the ability to give testimony on RTS is still limited. This is because RTS is not seen as widely accepted by the scientific community. This makes it harder for expert witnesses to testify to all the symptoms a rape victim may experience because PTSD is broader and does not include specific trauma experiences of rape victims.

The Frye Standard is a test to determine the admissibility of scientific evidence into court proceedings. The standard was the original test for determining evidence admissibility in the court. It came from the case, *Frye v. United States, 293 F. 1013 (D.C. Cir. 1923)* which questioned whether polygraphs could be submitted to the court as expert evidence. For over 70 years, the Frye Standard was the leading test for evidence reliability and admissibility. The Frye Standard states expert opinion based on a scientific technique is “admissible only in instances where the technique is generally accepted as reliable in the relevant scientific community” (Frye v. United States, 1923). Those who attempt to present evidence during the trial process that does not meet this standard must provide a number of experts to speak to the validity of the evidence

in question. If it was ruled by a judge that the evidence does not hold validity or the evidence was not pertinent to the case, it will not be allowed to be presented in court

The Daubert Standard provides a rule of evidence regarding the admissibility of expert witness testimony during United States federal legal proceedings. It came from a court ruling in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* [43 F.3d 1311(9<sup>th</sup> Cir. 1995)]. The two petitioners in the case, Jason Daubert and Eric Shuller, presented the court evidence that the drug Bendectin, a drug used during pregnancy to alleviate nausea, caused them serious birth defects. The court sided with the drug company and ruled the evidence presented by the petitioner did not meet the general acceptance standard needed for admissible expert testimony. After appeals to lower courts, the U.S. Supreme Court agreed to consider the expert testimony question. The petitioners argued the Federal Rules of Evidence (FRE) were more applicable than Frye. Congress established these rules in 1975 “to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined” (Grady: 97-98). The Supreme Court agreed with the petitioners. The Daubert Standard followed the ruling in Frye and eventually became the new standard in court. Many jurisdictions replaced Frye with Daubert, but California, Illinois, Maryland, Minnesota, Pennsylvania, New Jersey, New York, and Washington all still follow the Frye Standard when determining admissibility of evidence in court. I will address The Frye and Daubert standards further in more detail later.

Social cognitive theory (SCT) states pieces of an “individual’s knowledge can be attributed to observing others within the setting of social experiences, interactions, and outside media influences” (Bandura 1986: 38). SCT originated from Holt and Brown’s 1931 book *Animal Drive and the Learning Process*. It discussed the ideas of imitation and how a person cannot

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learn to imitate until they are imitated. Miller and Dollard (1941) expanded on Holt's theory. They stated the four factors to learning are cues, drives, responses, and rewards. A cue is any recognition of stimuli as different from other stimuli. A drive is an intense stimulus which motivates a response (hunger). Responses are what occur in relation to the emergence of a cue. Finally, rewards occur when a person realizes the outcome of the response. The behavior will be learned through reinforcement of these practices. Bandura (1961) along with his students, conducted experiments called the Bobo doll experiments to further understand SCT. The study helped him further comprehend how behavior is acquired. He later brought the theory to mass communication in 2001, so it is a relatively new idea in the scientific world. Therefore, SCT has just recently began to explain how communication, both verbal and physically, spreads and influences human thought and behavior and how these behaviors are then adopted by whole societies. SCT has been studied in many areas of human functioning such as career choice, organizational behavior, understanding classroom motivation, learning, and achievement.

## PREVIOUS RESERCH

In criminal cases, expert witnesses may only be called to testify if they are deemed reliable and the evidence they present deemed admissible. A standard under rule 702 of the Expert Rules of Evidence (FRE) determines whether an expert is credible to testify in court. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion. Otherwise, the witness may testify for the following reasons:

- (a) The expert's scientific, technical or other specialized knowledge will help the trier of fact to understand evidence or to determine a fact in issue, (b) the testimony is based off sufficient facts or data, (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case. (Staff 2011:1)

These qualifications and rules allow the court to determine if an expert witness is appropriate to use in a particular trial. If deemed appropriate, the expert can testify to the knowledge they have

in a particular field of study and help provide insight into key concepts which are discussed and relevant in the case.

There are different standards among the states determining whether an expert may be allowed to speak at a trial. Expert witnesses must be aware of “relevant case law in their jurisdiction regarding [the] admission of expert scientific testimony, whether it be based on Frye, Daubert, or another standard” (Lourenco, Anfang 2009:399). Therefore, depending on where the trial takes place, evidence may be allowed in one courtroom and not another. Laws and courts differ in different states; even different counties within the same state may have differing standards. Once a standard is applied in a state, some courts may still refuse to change or modify their standards. This is especially true in sexual assault and rape trials because the lack of evidence in many cases makes courts more hesitant to introduce evidence with less acceptability into evidence which can be presented at trial.

### *Historical Background*

Historically, rape laws were property laws. This came from the origin of the word rape. This was from “the Latin word *rapere* which means to steal seize or carry away” (Sze-Chie Fa: 20). Rape was viewed as less of a crime against a woman, but rather than a crime of theft against a woman’s husband or father. Over time, women were punished along with their attackers and marked as adulterers if they were married at the time of the assault. It was during the 13th century that this historical view of rape law began to change. European countries no longer allowed a man to escape punishment by marrying his victim and the idea of rape as a crime against women began to form.

Before the 1970s, the definition of rape in American states was based off of a 200-year-old definition from English common law. This was that rape was perpetrated by a man on a woman

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and only if it was forcible. This definition was narrow and left out attempted rape. It was not until 2012 that the FBI changed the definition of rape to a broader and encompassing definition. The new definition was “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim” (Mallicoat, Ireland: 72). This now included all genders as victims or perpetrators and was no longer limited to forcible rape only. But with the change being so recent, it is easy to see why rape myths still perpetuate jury member biases and why there has not been a significant change in outcomes at rape trials. Most experts have been dealing with a conflict between “the desire to educate the jury, and the fear that the expert will usurp the jury's function and become the final arbiter” (Ingulli: 174). This has led to a battle over the most recent rape laws involving admissibility of information on RTS.

### *Courtroom Standards*

The battle over admissibility led to two standards being developed. The *Frye* standard came from the legal case *Frye v. United States* [293 F. 1013 (D.C. Cir. 1923)]. This was a federal appellate case in which the court put forth a standard governing the introduction of scientific expert testimony in both state and federal municipalities. The court held “in order for testimony by the expert to be admissible, it should be derived from sufficiently developed scientific knowledge in the relevant discipline and that such knowledge should be ‘generally accepted’ by the scientific community” (Biggers, Yim 2003:63). The court wanted to prevent an expert witness from presenting unscientific testimony to the court as fact. This standard was held by the court for over 70 years and is still accepted in some states today. Today, evidence does not need to be generally accepted as *Frye* states, but rather sufficiently developed. This means that even if

the scientific community does not widely accept a particular viewpoint, it may still be accepted in a court if there is sufficient research to support it.

The Daubert Standard came from the Supreme Court ruling in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* [43 F.3d 1311(9<sup>th</sup> Cir. 1995)]. The lower courts tried to use the *Frye* standard test of admissibility; however, it did not seem to completely cover the scope of the case presented. The reasoning behind the courtrooms judgment in Daubert was Congress passing Rule 702 in the FRE. The primary requirement of Rule 702 is the expert testimony assists the factfinder in understanding the evidence or determining a fact in issue. It permits an expert merely to give a dissertation of the relevant scientific or other principles, “leaving the trier of fact to apply them to the particular circumstances of the case if counsel believes the trier can itself draw the requisite inferences“ (Woocher :49). The *Frye* standard was superseded and the *Daubert* standard has become the new test of reliability. Judges now act as “gatekeepers” for scientific evidence and determine whether it is relevant or reliable. In order to qualify as scientific knowledge, “an inference or assertion must be derived by the scientific method” (Heffernan, Coen 2009:494).

### *Types of Expert Witnesses*

The admissibility of evidence also depends on who is presenting the evidence. Most expert witnesses called to testify are medical professionals such as physicians, physician’s assistants, or Sexual Assault Nurse Examiners (SANE). Psychiatrists, psychologists, psychiatric nurses, clinical social workers and other mental health professionals commonly serve as expert witnesses as well. Some less common experts are victim’s advocates, law enforcement professionals, researchers, counselors, and college professors with expertise in sexual assault crimes and the impact of sexual assault victimization. The expert must have some specific knowledge in a field

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pertaining to the case, and the evidence they present must provide some insight into the facts presented at trial.

Expert testimony by medical professionals is based on the observable physical findings. Physical findings usually include: “physical injury, subjective tenderness described by the victim, stains or substances found on the victim’s body, and other physical evidence collected from the scene of the sexual assault or from the victim’s body or clothes” (Lonsway: 6). These experts tend to describe the process of examining the victim and their interpretations of what they found. If the findings from the medical examination and the victim’s account of the events are consistent, the expert will note this in her testimony. Medical professionals cannot diagnose a sexual assault and may only speak to evidence of sexual contact or recent trauma. They have no way of definitively concluding how much force was used or if there was consent given the sexual activity.

Expert testimony by law enforcement experts is usually used because these experts have an extensive background in sexual assault cases and with victims of sexual assault. Their testimony can be very helpful to jurors who are trying to make sense of a victim’s behavior, which may seem confusing or unexpected. They can counteract the notions that all victims will have physical signs of trauma or display reactions of hysteria or excessive emotion. They may also testify to offender motives and how perpetrators identify and chose potential victims for their crime. This testimony gives jurors better information on the characteristics of rape and sexual assault crimes. It is best when using a law enforcement expert to have someone other than the investigator of the crime at trial to testify to the court. This is because there will be no perceived bias from an officer who has dedicated time to hopefully get the defendant convicted. It is even better to have someone from another law enforcement agency entirely. Retired law enforcement

professionals are best because they have the experience and will most likely not be connected to the case and can provide impartial information.

Law enforcement experts can also explain the process for analyzing and collecting evidence to jurors. Many jurors may not really know the process; they may only think they know it from television and movies. For instance, they may think DNA evidence is always collected and analyzed. This is not the case when the investigator does not have access to the technology needed to test or when there is a lack of DNA evidence. Some jurors may believe the lack of DNA evidence means the victim is not telling the truth. Having a law enforcement expert to explain the realities of the process and correct any false assumptions regarding crime scene evidence can be very helpful to jurors. Toxicologists and other law enforcement experts can testify in drug-facilitated rapes. This is not a usual type of testimony, but it may be under-utilized and be extremely helpful in understanding the effects of certain narcotics and a victim's behavior and reactions.

Expert testimony from law enforcement officials is also significant when thinking about the idea of "police power." This is the symbolic power which police have from positive reinforcement in the media and other cultural sentiments. This symbolic power was first discussed by Bourdieu (1991). He stated symbolic power is "a power of constituting the given through utterances, of making people see and believe, of confirming or transforming the vision of the world" (Loader: 3). This means often police are looked upon as trustworthy and reliable. Therefore, if an officer is testifying to the court, most jurors would be inclined to believe what the officer is say and not question whether or not they are being truthful in their statements.

Expert testimony by victim advocates is often used because of their experience with victims who display the common reactions of a rape trauma. Jurors sometimes believe cultural rape

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myths and see reactions to rape by victims as proof the victim's credibility is questionable, and the victim's claim doubtful. Such as, if a victim reports a rape and then rescinds their original complaint, but later refiles a complaint. This type of behavior is not uncommon, however to an unformed jury it may seem as though the victim is hiding something. A victim's advocate could help explain this behavior is normal and it does not mean the victim is lying about the assault. A victim advocate can address the dynamics of rape and sexual assault, including documented characteristics which differ from the stereotype of "real rape" and what that can encompass. "Real rape" is the idea that forcing women into sex is not rape if a man does not beat them or knows them prior to the assault. Basically, it is the idea that forcible rape is not rape because it was not as violent or a stranger did not commit the crime, which is the stereotype about what rape is and how it occurs. Sometimes, the victim advocates can be asked to testify to the behavior of the offender or the characteristics of the crime. The admissibility of this kind of testimony does vary depending in which court and in what part of the country the testimony takes place. In some cases, this type of testimony can only be used at the defendant's sentencing and not before a jury. This is because of the prejudicial nature of the testimony and because there is an avoidance of using character evidence in most courts. There are some advantages to using victim advocates as expert witnesses. For instance, they are generally accessible and very cooperative, they may not expect to be paid for their testimony, and they are usually qualified to speak on their own experiences and observations, from being in the field for a long time, and assessing many victims.

There are also some disadvantages to using victim advocates as expert witnesses. These disadvantages which may be called into question including victim advocates who will be cross-examined by the defense, their reputation as an individual, or the agency they work for. The

victim advocate already has a reputation for working on behalf of the victim so their testimony may be seen as biased towards the victim. They may also harm the victim's case accidentally if they are inexperienced with expert testifying or courtroom procedures. There is an even greater disadvantage if the person testifying has directly served the victim in the case. The advocate could be seen as too closely involved to be an effective witness and the defense would likely easily argue the testimony is biased. The victim advocate can no longer protect any of the communications with the victim in a confidential manner. The rule of witnesses that is upheld in most jurisdictions is the advocate can no longer provide services to the victim once they are subpoenaed to testify in court. They victim and the advocate would both serve as witnesses in the trial and therefore would be prohibited from discussing and evidence or testimony, processing emotional reactions, or reviewing trial developments. It is for these reasons, a victim advocate testifying in a rape trial should be one who is not directly linked to or has worked with the victim personally. Like the law enforcement expert, it is better to have a victim advocate from an entirely different agency than the one the victim may have used. This will probably increase the effectiveness of the victim advocate as an expert witness and decrease the perception of bias in the case. This will also allow the protection of the privileged communications and allow the victim advocate working with the victim to continue their services through and after the trial. By entitling certain advocates as potential expert witnesses, this will also give them the ability to develop expertise in providing courtroom testimony.

Testimony by an independent professional, such as a psychiatrist, psychologist, counselor, or clinical social worker, may differ from that of the victim advocate. Testimony from one of these individuals may appear to be more credible and objective and less likely to be damaging to the victim's case. This is because the person testifying has now relationship with the victim and

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therefore, may be deemed a less biased candidate to speak to the court. This is even more so if the testimony is spoken in general terms and not linked to the testimony or the details of the specific case. Although, if the experts do not appropriately frame their deposition, this type of expert may be seen as being paid for testimony to fit the prosecution's narrative. Meaning, jurors may discredit the testimony of an expert they believe is being paid because they believe they are only providing the testimony which favors the side paying them. Typically, these independent professionals testify and present information on Rape Trauma Syndrome and the behavioral, physical, and mental reactions to rape and sexual assault.

### *When Expert Testimony is Used*

The need for an expert witness is usually addressed in a pre-trial hearing when discussing the common juror misconceptions regarding rape. When opposition to an expert witness happens, the argument is typically there is no need for such testimony, or that it is harmful because jurors place too much weight on the opinions of experts. To counteract these claims, attorneys often argue the expert can help with juror selection and *voir dire*<sup>1</sup> questions regarding stereotypes about rape. Attorneys may also argue the expert is needed if opposing counsel claims the victim's behavior is strange or unusual. If the information from the expert is helpful in pre-trial, the judge may find it acceptable to allow the expert to testify, at trial for the jury. If the information helped to clarify terms of victims behavior, which would otherwise be difficult for the jury to understand, the judge will allow an expert to come back to present these ideas at trial. The judge may see a benefit in allowing the jury to gain a greater understanding on terms and concepts surrounding rape, victimization, and offending (the judge and other attorneys may also benefit from hearing the testimony).

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<sup>1</sup> A preliminary examination of a witness or juror by a judge or counsel

*Testimony on Victim Behavior*

In rape trials, the defense attorney typically makes arguments based on rape myths during cross-examination or in the presentation of the defense case. These types of arguments are made to discredit the witness and speak to what many jurors may already believe. Expert testimony is usually introduced by the prosecution following the defense's cross-examination. They may also present in rebuttal after the defense's presentation of their case. However, this gives the defense an opportunity to solidify preexisting notions jurors may have, making it harder for experts to refute any inaccurate claims from the opposing council. The best and most effective time to utilize and present expert witness testimony is during the prosecution's case-in-chief.<sup>2</sup> This way, the jurors can understand the case better and more completely and properly interpret the testimony and evidence presented to them.

There are many ways in which an expert witness can provide testimony on the mental health, behavior, and demeanor of sexual assault and rape victims. One way is to give testimony on victim behaviors described by the defense as "unusual." This includes testimony regarding specific behaviors of rape survivors. Based on culturally held beliefs, such behaviors are brought into question to undermine the victim's credibility of the victim and suggest the victim was not really raped. Correcting information on these common victim behaviors could be provided by an expert witness from any number of fields (psychologist, clinical social work, etc.). These experts are bound by ethical guidelines to acknowledge the limits of the knowledge, data, and the conclusions drawn from it. An example is experts cannot testify that behaviors are common unless they are documented, as such, in previous widely accepted scientific research. Courts have typically admitted this type of testimony; however, some have tried to limit this testimony to

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<sup>2</sup> This is the portion of a trial whereby the party with the burden of proof in the case presents its evidence. Not to be confused with the rebuttal, when the party tries to refute the other part's evidence.

refuting only the behaviors specifically mentioned by the defense. This limit does not allow experts to address all the myths that may prejudice juror decision-making against the victim.

The second way an expert can provide testimony on mental health is testimony on common victim responses and general criteria for Post-Traumatic Stress Disorder. Using this type of testimony, the expert does not individually interview the victim, discuss the victim's particular behaviors, or make a conclusion regarding the victim's possible diagnoses for PTSD. Instead, they speak generally about behaviors and symptoms which describe a PTSD diagnoses. Such testimony can help jurors understand victim's behaviors which may otherwise confuse jurors or not make sense to them. They may address that up to "90% of rape survivors experience PTSD symptoms immediately after the rape and 15% of rape survivors are diagnosed with lifetime PTSD," making survivors of rape the largest group of trauma victims to suffer from PTSD (Lonsway 2005: 11). However, they must also make sure to include not all victims suffer from a PTSD diagnoses or present the symptoms associated with PTSD. Victims can often suffer from symptoms not typically associated with PTSD as well, including feelings of humiliation, shame, contamination and feeling self-blame and guilt.

Another way is to provide testimony that the victim's behavior or symptoms are consistent with a PTSD diagnoses. This means the expert testifies not only by describing common victim reactions that accompany a PTSD diagnosis, but also by making a link between this criteria and the specific case, concluding the victim's reactions are consistent with a PTSD diagnoses. This type of testimony is seen as more controversial than the general information level. This is because identifying someone as having PTSD when they were raped without giving context can be misleading. However, it is sometimes admitted because it can assist the jurors in seeing the consistencies between the reactions commonly seen in people who experience sexual assault and

rape victimization and the reactions of the victim. However, some other courts have found the testimony is too prejudicial against the defendant, noting it may inappropriately enhance the victim's credibility.

The fourth way an expert can provide testimony on mental health is testimony that the victim suffers from PTSD. The expert not only testifies on the victim's reactions, but also offers an opinion about whether or not they believe the victim meets the criteria for a PTSD diagnosis. This type of testimony can only be provided by a mental health professional with a background in diagnostic assessment and clinical assessment for PTSD. The expert does stop short of concluding whether or not the victim was in fact raped or sexually assaulted, even though they conclude on the state of their mental health. Some courts allow such testimony on the basis that the expert can be cross-examined by the defense or countered with the testimony of a defense expert. They will be questioned on their credibility to identify and provide such a diagnosis. However, there is also a concern that the victims medical and mental history is opened up for trial.

Any expert testifying to a victim's qualification for a diagnosis of PTSD can do so only through the foundation of an assessment tool which has been demonstrated to be reliable and valid. The limitations of this assessment must be discussed. There are several assessment tools which are used including screening tools, diagnostic instruments, and trauma and symptom severity scales. A mental health professional may conduct an unstructured interview to produce information on symptoms the victim may have relating to PTSD. He or she may also conduct a structured or semi-structured interview such as the Clinician Administered PTSD Scale (CAPS), PTSD Symptom Scale Interview Version (PSS-I) the structured interview for PTSD (SIP), the Diagnosis Interview Schedule (DIS-IV), or the Composite International Diagnosis Interview

(CIDI). To qualify for a PTSD diagnosis a person must fit six criteria. These criteria are: (1) a person “experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self and others” and had a response that “involved intense fear, helplessness, or horror”; (2) a person must qualify for at least one re-experiencing symptom of the event; (3) a person must qualify for at least 3 avoidance symptoms; (4) a person must qualify for at least two increased arousal symptoms; (5) a person must experience symptoms that occur at a clinically significant level; and (6) a person must experience these symptoms for at least one month” (Boeschen, et.al: 417).

The expert must also state the diagnosis of PTSD does not sufficiently provide evidence a sexual assault or rape occurred and was not caused by some other traumatic experience. It is also important to see that serious confidentiality issues may arise if the expert witness testifying is the same as the person who therapeutically treats the victim. It is usually best to use an expert who has not therapeutically treated the victim, but rather only conducted a clinical assessment on a possible diagnosis for PTSD and other psychological disorders, as well as, to determine the symptoms the victim exhibits. This is because the expert could be seen as being too close to the victim and, therefore, the expert may seem bias and defending the victim for being their patient. The defense could exaggerate this relationship and the testimony present could possibly be disregarded, even if it is valid, by a jury.

The final way an expert can provide testimony about a victims behavior, demeanor and mental health, is to give testimony that speaks on the “ultimate issue.” Almost all states refused to admit testimony which speaks to the ultimate issue in sexual assault and rape trials. The “ultimate issue” is testimony which states the victim is telling the truth, the victim was raped, or both. There is little exception when it comes to not admitting this type of testimony in court.

Bayliff (2000) stated that this type of testimony almost always ends in a mistrial of the case or reversal of a conviction on appeal. Therefore, experts should never state a victim is telling the truth or they know a victim was raped. They can say they believe a victim's story or they believe a victim was raped, but they cannot state so with outright certainty.

### *Other Uses for Expert Witnesses*

The expert in the traditional sense provides testimony on a certain field which they have knowledge. However, if the expert does not testify, there are other ways they may have an effect on the trial. They can assist the attorney by helping to evaluate the case and develop a trial strategy. They may help with creating *voir dire* questions and jury selection. They also conduct clinical assessments of the victim, help prepare the victim for trial, and support the victim throughout the trial process. An expert witness can do all of this and it can be very helpful and impact the trial. However, the most effective use of experts is still having them testify in front of a jury.

The crime of rape is unique in that it is the only crime that can be mistaken for something other than a crime, meaning many people find it hard to disassociate rape from consensual intercourse. This leads to people believing in rape myths and perpetuating stereotypes about victims of rape. People see sex as a human necessity for survival and, therefore, have trouble discerning the violent nature of rape from voluntary intercourse. Rape, however, is not about sex or desire; it is about power and control. It is this confusion that increases the need for expert witness testimony to clarify the differences between consent and force. Experts also help jurors recognize which ideas about rape are valid and which ideas are actually myths.

In these cases, experts will often try and offer a perspective on the victim's behavior as well as overall statistics and common misconceptions about these crimes. The prosecution usually

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uses experts to help prove a sexual assault occurred. Such testimony is used to “demonstrate that a victim’s behavior is consistent with that of someone who has been sexually assaulted”

(Lonsway: 3). Today, it is often up to a judge to determine admissibility, while many states have strict rules about what experts can present to juries. These rules include anything that may give insight to the specific case (e.g. if a victim has not met with the expert or the testimony is inadmissible because it is not approved by the scientific community). Most times, experts are only allowed to make general statements about victims and these crimes.

### *Relationship Between Expert and Jury*

The relationship between expert witnesses and jurors in a criminal trial is an important one to study. Historically, the need for expert witnesses grew from the introduction of juries in criminal proceedings. “When the jury... began to function as an integral part of the judicial system, there arose from time to time occasions when the tribunal had to have knowledge or information of a particular sort in order to decide the issues reasonably” (Rosenthal 1935:407). This need for expert witnesses only grew as the language of the law changed and new terminology and fields of study increased. Often, researchers will examine the relationship between expert witnesses and juries to determine if there is an impact on juror’s decisions.

In a study by Brekke and Borgida (1998), researchers found “significant differences between no expert and expert testimony conditions, indicating that inclusion of expert testimony affects juror’s judgments” (Tetreault 1989:245). In the study, there were two groups: jurors who heard specific hypothetical expert testimony and those who heard general expert testimony. The jurors who heard more specific hypothetical testimony were more likely to return a guilty verdict and recommend harsher sentencing than those who did not hear such testimony. This suggests jurors who hear expert witness testimony are more likely to change their original judgments on the case

than those who did not hear expert witness testimony during trial. This could be either an idea they have about rape, why a victim behaves a certain way, or possibly what consent means in the views of the court.

Many rape cases lack physical or any other type of evidence independent of the actual complainant herself. “A lack of independent or other corroborative evidence means that the case inevitably turns wholly or predominantly on the evidence of the complainant alone” (Burrows: 7). This leads to many jurors relying on their own personal judgments rather than what the witness says. The fact that many rape cases lack hard evidence means they are open to outside influences based on a juror’s personal attitudes and stereotypical beliefs. Often when there are gaps in the information, jurors will form their own narrative of what really happen in the absence of a clear understanding of the events. This makes it difficult to build a case without an expert to explain information on rape and the victims of rape. Experts are also needed to possibly provide an interpretation or explanation for the missing information which seems to occur in many rape cases.

It is an expert’s job to present scientific evidence to help explain what may have occurred before, during, or after the commission of a crime. Having enough time during the trial to fully explain and review the relevant evidence is very important. Before presenting their scientific knowledge at trial, the expert must be fully aware of all the particulars of the case. This may mean meeting with the trial attorney, the victim, the offender, and even consulting with other experts. In some cases, not all scientific theories are seen as certainties and are in turn not resolved or published in scholarly journals. Therefore the expert must usually conduct “lengthy independent research to fit the scientific theories to the facts of the case” (Schultz: 114). This will help them stay informed of the latest technological and scientific breakthroughs.

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Maass, Brigham, and West (1985), studied the impact of several forms of expert witness testimony on juror's perception of the defendant's guilt. They found expert testimony led to more lenient pre- and post-deliberation judgments. If the testimony was based on interviews, an opinion with an explanation had a greater impact on guilt judgments than one with an opinion and no explanation. Research-based testimonies were found to have no significant difference between explanation or absence of explanation when it came to determinations of guilt. Those who heard "expert testimony deliberated longer than subjects who heard no expert testimony" (Penrod 1989: 67). So expert testimony had an impact on both jury deliberation, and the type of testimony also had an impact on the verdicts juries delivered. Without expert testimony, juries tended to not deliberate as long and be more lenient with guilty verdicts.

The decision to use expert witness testimony comes from the consideration of the probable impact of that testimony on the trial process and eventual verdict. Credibility comprises the expert's believability, credentials, and likeability. Credibility is the "degree of trust potential jurors ascribe to the expert" (Cramer 2009: 64). In a study by Brodsky and Boccaccini (2002), researchers assessed what factors affected expert credibility. Expert witnesses were seen as most believable if they were "from the same community as participants, provided psychotherapy to clients, had previously testified for both the prosecution and the defense, and were not paid for their testimony" (Cramer 2009: 64). Other factors in credible expert testimony include the use of visual aids in presenting the evidence, use of appropriate narrative style, adjustment of language to fit the level of understanding of the jury, and the avoidance of direct criticism of opposing expert witness testimony. Credibility is also related to verbal aggressiveness and communication apprehension, as well as, competence, dynamism, and objectivity on the part of the expert witness. Experts who employed a slow rate of speech were seen as more composed, calm,

trustworthy and honest compared to those who spoke with a rapid rate of speech. Those with a faster pace of speech were not seen with a high level of credibility.

Confidence is another factor which influences jury decisions. Confidence is the degree of perceivable self-assurance expert witnesses show on the stand. If an expert displays low confidence, it can be seen in verbal and nonverbal cues characteristic of nervousness (cues of nervousness are the result of having low confidence). These cues could be a quivering voice or fixed eye contact. Speech pattern may also affect the perception of an expert having low confidence. O'Barr (1982), distinguished powerful from powerless speech and their relation to confidence. Powerful speech is seen as a function of a higher social class and shows higher confidence. Powerless speech reflects lower social status and conveys low confidence. The study found that juries believed both male and female experts who used powerful speech to be more convincing, confident, truthful, trustworthy, and intelligent than their powerless counterparts.

O'Barr (1982) also examined hypercorrect versus formal speech styles. Hypercorrect speech styles "refer to people in impersonal ways, use technical terminology and pedantic word choice" (Cramer: 64). Formal speech styles use people's names, lay terminology, and more understandable vocabulary. Jurors found convincing when they used formal speech patterns compared to hypercorrect speech patterns. Experts who used terms like "absolutely certain" indicated high confidence in their knowledge. This is unlike experts who used terms like "reasonably certain" displayed fewer cues of confidence in their knowledge of what they were presenting to the court.

Those who receive large amounts of information tend to make surface judgments about those relaying the information. Receivers judge the most confident communicators as being the most accurate and credible. There is also a link between confidence and ability to persuade others.

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Those who show moderate levels of confidence have the greatest chance of persuasion. This may be because over-confidence can sometimes come off as arrogance and therefore dissuade jurors from belief in what an expert is stating as true. If an expert displays a moderate level of confidence, the expert will have the greatest chance of persuading the jury than someone with little confidence or overconfidence.

One of the important factors in determining how a jury will react to an expert witness comes from the actual witness' personality. Likeability can actually go a long way with a jury. Whether or not a jury will find an expert witness credible is determined by two overarching domains: competence and character. In a study by Brodsky, et al. (2009), researchers found a link between the likability of an expert witness and decisions made by jurors. They found experts who are more extroverted tended to have more of an impact on juries. And even more so on jurors who were also extroverted. Researchers explained "extroverts have a stronger need for stimulation and are thus more likely than introverts to interact with other persons...the extrovert learns to be more responsive to the positive and/or negative reinforcement potential of other persons" (Brodsky, Stanley, Neal, Cramer, Ziemke 2009:526). This means juries with extroverted persons are more likely to respond to experts who are more charismatically explaining and reinforcing the evidence they are presenting to the court.

Observing jury personality traits and how they affect decision-making, two personality traits were significant in changing verdict outcomes. First, openness to experience and examining imagination or intellectual acumen, which includes openness to ideas, fantasy, and esthetics. Jurors who are high to openness are less likely to be influenced by other jurors. These jurors were more likely to listen to expert witness testimony and use it to determine their decisions. Second is conscientiousness, which incorporates self-control in forms including being organized,

disciplined, and determined. Jurors who are conscientious are more influenced by their peers than the expert and these jurors are likely to change their mind in group dynamics.<sup>3</sup>

Another main factor contributing to the outcome of guilty verdicts relating to expert testimony was also found in a study by Klettke and Powell (2011). Out of three factors: credentials of expert, the coherence of testimony, and strength of evidence; only one was shown to increase the rate of a guilty verdict for a defendant when experts presented “high rather than low strength of evidence” (Klettke, Powell 2011:267). The actual credentials of the expert were not significant enough to sway the jury’s decision-making. This study suggests evidence is more important than the actual expert and their personality was a lesser factor in the study. Although, it should be noted that this study did not investigate deeply into jurors’ characteristics on the verdicts they delivered, meaning the traits of the jurors were not taken into account only the experts and the outcomes of the verdicts they produced.

Juries tend to commit to guilty verdicts particularly when experts link general information with case-specific facts. There is also increased likelihood of a guilty verdict when the expert presents testimony earlier on in a trial. An earlier introduction to the general dynamics of rape and sexual assault in a trial served as a framework for understanding the issues and facts later presented during trial. Introducing expert testimony late in trial was shown to be insufficient to overcome common stereotypes and myths which may fame juror understanding. In opposition to this argument, it was found the effects and expert may have on a jury can be reversed if experts who are subjected to cross-examination by the defense. This note can be used to argue against the idea that the use of expert testimony is unduly prejudicial to the defendant in a sexual assault or rape case because it can be effectively managed through cross-examination. Expert testimony is seen to influence judgments on victim perception; however, it is not seen to sufficiently

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<sup>3</sup> Findings from Cramer (2009), page 66.

influence judgments on the credibility of the defendant. Rather, the effect of the expert seems to be limited to victim credibility only.

*Rape Trauma Syndrome & Post- Traumatic Stress Disorder*

Victims of sexual assault and rape often develop psychological reactions to rape trauma, such as Rape Trauma Syndrome (RTS). RTS is a “stress response pattern of the victim following forced, non-consenting sexual activity. It consists of somatic (having to do with actual physical symptoms like pain and fatigue), cognitive, psychological and behavioral symptoms resulting from an active stress reaction to a life-threatening situation.” (Biggers, Yim 2003:64). It is an acute stress reaction experienced by some rape victims. Often victims display feelings of fear, anger, shock, anxiety, new phobias (fear of being alone, crowds, people, etc.) and may appear to be calm, subdued, or unstable. Experts recognize individual reactions to being raped may vary according to the victims’ “age, access to supportive friends or relatives, ability to cope with disruptive events, and the circumstances of the rape” (Lauderdale 1984:1369).

Many researchers and legal experts recommend not using RTS terminology or framework and instead relying on a more general testimony that describes common behavior and reactions of rape victims. The arguments against RTS sometimes suggest there is a lack of clear definition and scientific reliability. Others criticize the social and political implications of the syndrome framework. They are concerned the simplified model of victim response may leave some victims without a credible case if their responses do not meet the RTS model. Women of color and other women who tend to have very different and marginalized experiences may not fit the model of a “typical” victim or respond in a “typical” way (therefore they may not be equally represented under the RTS model). Some courts fear based on the language used in the syndrome suggests the conclusion in which an individual was in fact sexually assaulted or raped. It is because of

this that so many courts have opted to only let testimony on PTSD and its effects on victims, while the use of RTS terminology and testimony is limited.

In many courts, RTS only as a disorder in the scientific community. This means experts often cannot present RTS to courtrooms because qualifies as a form of Post-Traumatic Stress Disorder (PTSD). This is because many courts who apply the Frye Standard often note RTS is not widely accepted it is deemed inadmissible. PTSD was originally constructed for war veterans, not for victims of crime or any other form of trauma. PTSD is the “development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual threatened death or serious injury, or other threat to one’s physical integrity” (Long 2007:16). In the court’s eyes RTS classifies as a form of PTSD, so experts often speak on only the effects of PTSD. Unfortunately, the scientific community’s reliance on PTSD “negates the specificity of rape victims’ reactions and excludes some key features exhibited by rape victims, such as long-term depression, feelings of humiliation, and sexual dysfunction” (McGowan, Helms 2003:56). This leads to a lack of true understanding of the psychological effects of rape on victims.

The overwhelming feelings of humiliation cannot be described by a diagnosis of PTSD, nor any other psychological diagnoses, yet are clearly described in the diagnosis of RTS. With a diagnosis of PTSD (and stating RTS as a sub-form of PTSD), many symptoms rape victims experience are trivialized and ignored. The lack of symptom overlap between RTS and PTSD presents a problem when stating RTS is a form of PTSD because it fails to explain the variability of rape reactions and how those reactions differ from other reactions to trauma. It may also present the problem of a jury’s inability to pinpoint from where the victim’s trauma came because the diagnoses could have come from any form of trauma. If the expert is allowed to

present the symptoms as RTS, it makes it much easier to differentiate a rape victim from PTSD victims or other victims of trauma.

The idea that RTS is seen as inadmissible in court may seem arbitrary. This is probably because the court takes emotional trauma less seriously than a more noticeable physical trauma. Ruling out the possibility of presenting RTS as a legitimate disorder, a victim could suffer, would be like stating the bruises and marks from a rape could have come from another altercation. “Neither the physician who testifies that a woman has physical bruises nor a psychologist who testifies that a woman suffers from RTS can state unequivocally that the condition was caused by a specific incident of nonconsensual intercourse” (Massaro: 440). And yet, the evidence of a victim's physical injuries is deemed undoubtedly relevant in a rape case and the admissibility of this evidence is done without hesitation. This discrepancy in the rules for admissible evidence leads many supporters of the RTS diagnoses to wonder why it is not more widely accepted. Especially when, many of the signature indicators presented in RTS can be distinguished from PTSD.

### *Rape Myths*

In cases of sexual assault and rape, there are often prevailing attitudes directed towards victims of these crimes. These attitudes can often be categorized into what are called rape myths. Rape myths are the erroneous misconceptions and beliefs held about victims of rape, rapists, and sexual assaults. Despite the wide and considerable research on rape, many of these myths are generally still considered true. Rape myths originate from various cultural beliefs, social norms, gender roles, acceptance of interpersonal violence, and a misunderstanding of the nature of sexual assault.<sup>4</sup> Rape myths are perpetuated in social arenas and by the media. The public's belief in rape myths is reflected by case law. This is most notable in the conviction rate for

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<sup>4</sup> Ideas from Burt (1980).

offenders accused of rape. Three out of 100 perpetrators of rape ever face any form of punishment. Those who commit sexual assault offenses are “less likely to go to jail or prison than other types of criminals” (Anon, 2016).

Because of the lack of hard evidence to guide juries in most rape trials, these cases are extremely susceptible to influences from stereotypes and attitudes. This is evidenced by the trends among different demographic groups. Men are more likely to acquit rape defendants than women. People who hold rape myths are more likely to have negative attitudes towards other groups such as women, homosexuals, and ethnic minorities. Victims of rape are also likely to hold rape myths. This can lead them to feel guilty and/or responsible for their rape.

Victims are often judged based on their clothing and their character. Those who wear more revealing clothing or are seen as less respectable are judged more harshly and held responsible for incidents of rape (seen as provoking an attack). The consumption of alcohol or other substances is often seen as a victim “asking” to be raped or somehow getting what they deserve. There is also a strong belief that many women falsely report rape when they regret having sex or feel ashamed (evidence shows 0.2 percent of all reports of rape are actually false). In cases of male rape, a common myth is that it takes place only between gay men. People believe that the offender is gay and the victim was acting in a gay manner (most cases of male rape are between two heterosexual men). This idea about male rape probably stems from another myth; rape is about sexual desire or passion. However, rape is about power, violence, and control over another. It is because of these ideas and many others that rape trials are more likely to have pre-trial prejudice which can affect the outcome of the trial.

This means it is often an expert witness' duty to help dispel rape myths to educate jurors who may not know what misinformation exists about rape. Some examples of rape myths are rapists

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are strangers who do not know their victim, a “‘real victim’ would have promptly reported her assault to the authorities,” and women secretly wish to be raped (Long 2007:5). These myths tend to place all the decisions made on the victim and completely cut out the influence the offender has on the events that transpired. They also tend to approach these decisions with the power of hindsight and do not actually look at them in terms of what was occurring while the violent act was taking place. Victims have no way of predicting another’s behavior and often the behaviors they displayed were probably no different than many other people who did become the victim of rape. Often, many jurors are unaware of what a victim’s behaviors may be in these circumstances, and therefore substitute rape myths to help cure their lack of knowledge or understanding. One myth tends to be a common shared belief among most jurors is the belief that victims could have fought back during the attack or in some way prevented the attack by defending themselves. If an expert were to inform the juror not all victims fight back (some do physically resist, some freeze or become physically paralyzed and cannot defend themselves, or some try to befriend their attacker trying to talk their way out of the impending situation) it may help clear up the misconception that all victims are capable of fighting off their attackers and preventing their rape. Jurors with these conceptions develop prior expectations of what a victim’s behavior should be, and can become disillusioned with a victim who does not respond accordingly.

Many courts have recognized expert testimony is necessary to prevent jurors from misjudging a victim based upon their own misconceptions of victims. This means experts are often tasked with providing background on victim behavior and statistics on rape victims (such as acquaintance rape, lack of reporting, etc.). They may also provide information that not all victims act the same or that the set of circumstances experienced in the case affected the victim’s

behavior. Without the proper context to evaluate victim credibility, juries are often left to make their decisions based off their own assumptions about rape victims. Experts are therefore necessary to provide a context for victim behavior that will allow juries to make better judgments in rape and sexual assault trials.

### *Expert Testimony*

Experts may also testify and provide knowledge on offenders and their behaviors. They can speak to juries on offender motives and patterns found in offenders who commit certain types of rape. They may also explain how rape is a crime of power and counteract the ideas that rape is about lust or desire. They can also help emphasize the difference between a rapist and a non-rapist, that being consent or lack thereof. Experts may also testify to the accepted theories on rape offenders and provide the jury with more context in relation to the events of the incident being discussed at trial. Having the jury focus away from the victim and analyzing her past sexual experience or her decisions leading up to the rape, experts can focus on the offender and questioning their actions and behavior. This may allow the jury a better understanding of what happened and dispel rape myths they may have believed to be true before the testimony of the expert.

Testimony from expert witnesses will generally be accepted as long as it is both scientifically valid or beyond the common understanding of most jurors. There is some degree of consensus when it comes to the general dynamics of rape and sexual assault and the characteristic reactions of victims of these crimes. However, in respect to RTS, there is a lack of consensus. This can reinforce the need for expert witnesses to either help explain RTS or to explain a more general view of the dynamics of rape and victim reactions. Most likely the general discussion will be admissible, rather than an explanation of RTS.

When talking about juror understanding, expert testimony is generally allowed when it will make clear issues which are beyond the common understanding of the average jury member. When the general population hold myths and misconceptions as true about rape, perpetrators, and victims, such testimony only becomes increasingly important to helping jurors deliberating in a rape trial. It is clear then, the expert testimony on general information on rape and common victim behaviors is not only scientifically valid, it is also beyond the comprehension and common understanding of an average juror. Therefore, many courts deem testimony necessary to help dispel rape myths. This allows jurors a clear understanding of the terms and the ideas presented.

There have been a number of legal reviews of the respectability and admissibility of expert testimony in cases of sexual assault and rape. These typically focused on issues of admissibility in regards to RTS. A total of twenty-five states and the military allow expert testimony on Rape Trauma Syndrome and deem it admissible in trial. Another seven states have ruled expert testimony on RTS as inadmissible. And eighteen states and the District of Columbia have not directly addressed their ruling on the admissibility of RTS in sexual assault and rape trials. It is partly this varying application that goes along with the questioning of RTS as a valid syndrome, which makes the ideas of RTS so hard to identify clearly.

There are certain types of testimony which the court has deemed to be inadmissible at trial. As stated before, testimony on the “ultimate issue” of whether the victim is telling the truth and whether the victim was sexually assaulted is inadmissible. Other types of testimony which are typically excluded are issues of false reporting, profiles of victims, and profiles of offenders. Issues of false reporting have been excluded before because they were seen as improperly addressing the subject of victim credibility. There have been many instances where an appellate

decision upheld the use of expert witness testimony suggesting a defendant did not fit the profile of a sexual offender. Although research has concluded that there is no scientifically accepted use or reliable concept of a sexual offender profile, so this type of testimony should not be used in a sexual assault trial. For almost the same reasons, testimony on the profile of a rape victim or the use of the statistical percentage of victims suffering from RTS may be seen as unsuitable to use at trial.

Social cognitive theory states pieces of an individual's knowledge can be attributed to observing others within the context of social experiences, interactions, and outside media influences. The idea is one sees a behavior and the subsequent consequences to the behavior. And then uses this information to guide her future behaviors. If someone does something and is punished in a negative way, it may deter others from following or performing the same behavior. If positive consequences occur or no consequences occur, there is a greater likelihood these behaviors will be duplicated. Therefore, people do not learn behaviors by trying them on their own. They learn these behaviors by replicating the actions of others. This is the idea explored in social cognitive theory. In social cognitive theory, "people draw on their knowledge and cognitive and behavioral skills to produce desired results" (Bandura 1989:1181). In the case of rape myths, these ideas are often generated by the consequences following a victim's assault (e.g. victim blaming, assailant not arrested or charged, etc.). When rape and sexual assault is not seen as serious in the general society and often goes unpunished, it is likely these behaviors will persist, as well as, the rape myths behind the acceptance of these behaviors.

The use of expert witness testimony helps dispel rape myths and is necessary to help combat misconceptions that may arise in rape trials. Often, many jurors enter into a rape trial with preconceived notions about rape and the behaviors of victims of rape show. These

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misconceptions are called rape myths. These rape myths produce misinformed jury members, who may react to evidence differently than those who understand a victim's behaviors and the true statistics on the who is raped and why rape occurs. With the help of expert witness testimony, these misconceptions can be reversed and the jurors can gain a better knowledge on what really happens to victims of rape. These experts may testify on statistics and psychological behaviors are seen in victims of rape.

Without expert witness testimony, jurors are left with a basic understanding of the effects of rape on women and are likely to have a different verdict without the knowledge. In trials without expert witness testimony, jurors are likely not to convict an offender. This could be the result of an uninformed jury, which cannot recognize why a victim displays certain behaviors. The trials with expert testimony are more likely to convict. This could be the result of a more informed jury. The lack of testimony has a significant impact on jurors. It leaves a gap where important information to support the victim's statements would be. This information includes the distinction between Rape Trauma Syndrome and Post-Traumatic Stress Disorder. Lack of conviction in these trials only helps further rape myth beliefs and leaves many victims feeling as though they cannot turn to the criminal justice system. This further distorts the true statistics on rape.

## DISCUSSION SECTION

I believed the use of expert witness testimony in a rape trial would affect the jury's decision making process leading to more guilty verdicts. The expert witness would educate and persuade jury members to return a guilty plea or be more inclined to side with the victim after being given testimony. Although this is what the research suggested, it was much more complicated than what was proposed. Certain types of testimony were found to have more of an effect on juries. Experts who were more extroverted, likeable, and confident had a greater chance

of swaying the jury. Professionals in the medical and legal fields seem to be the most persuasive given they are assumed to have a level of inherent believability, which other professionals may not. And professionals who were seen as close to the victim had more mixed results because of their perceived biases. I believe the results were this way because if a person is being presented as an expert and is seen to have considerable knowledge in a field, they will ultimately be more believable than the victim, offender, or any other witness. The type of testimony is also a major factor in jury decision making. I think the more general testimony about rape victims or PTSD gives a separation which is needed between victim and expert. This makes what the expert is saying more believable and impartial.

This could have a huge impact on rape trial verdicts because the lack of evidence in these cases make the expert's testimony that much more important. With the wrong type of expert or no testimony at all it could cost the prosecution their case. Expert testimony is therefore crucial for getting a guilty sentence in a rape trial. Without the experts many more offenders will go free. It is also important when it comes to the social implications of rape myths. The general public is not offered the type of knowledge about misleading rape myths which an expert can offer a jury. Without this information it is damaging because sexist ideals will prevail leading to fewer convictions in rape trials. This coincides with Patricia Hill Collin's idea of controlling images. This is the idea that images and narratives are used in the media and in society to make sexism seem natural, normal, and an inevitable part of everyday life. If the expert can properly address the jury about these rape myths, it could change the perspective of jurors who may have never had an opportunity to confront these misconceptions.

## CONCLUSION

The use of expert witness testimony as a way to clarify misconceptions and help explain concepts beyond the scope of what most jury members can discern helps juries through the decision-making process in rape and sexual assault trials. In these cases, the use of expert testimony may be at its most valuable due to the many cases that lack other forms of evidence. Medical and mental health professionals are the most effective experts, as they tend to be seen as more credible and reliable witnesses. Experts who showed characteristic of confidence and likability were the most effective with jury decision-making. Trials that allow the inclusion of expert testimony on rape myths and Rape Trauma Syndrome will be the most successful at helping to dispel common misconceptions about rape and sexual assault. This testimony is most effective early on in a trial to combat the misconceptions the defense may perpetuate in their arguments. Those without such testimony are most likely not going to impact a jury and lead to acquittal of offenders. The use of experts in trials like these is paramount in helping educate the court on the truths about rape and give the jurors a chance to overcome their potential bias or misunderstanding of victims of rape.

## FURTHER RESERCH

Research is lacking on the effects of expert witness testimony based on gender. This includes both the gender of the expert and of the jury and how this may affect the decision making process. There is also limited research in the same respect when it comes to race and class. Class may be the hardest to study because it is less obvious than a person's race or gender and may go unnoticed by a jury. If I were to further research the subject I would look at race, class, and gender and its effect on expert and jury relationships in rape trials.

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