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An Analysis of the Courtroom Dynamics of Sexual Assault Trials

by

Amanda Parriag, B.A., M.Sc.

**A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements for the degree of**

Doctor of Philosophy

**Carleton University
Ottawa, Ontario
February 26th**

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submitted by

Amanda Parriag

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ABSTRACT

Research suggests that the legal tactics available to the Crown and the Defense in a sexual assault trial can affect the trial outcomes (Kapardis, 1997). In addition, the literature contends that rape myths pervade the legal system, extending into the sexual assault trial, and serve to potentially support bias against the sexual assault victim (Renner, Alksnis & Park, 1997). This program of research examined the differential use and effects of lawyers' legal tactics in the sexual assault trial. The persuasive impact of strategies used by the Defense to undermine the witness' testimony, such as attacking the victim's credibility and illogical arguments, was assessed. In addition, the Crown's use of strategies to counter those used by the Defense, including objection, inoculation and re-direct was examined. Finally, the extent to which rape myths affected the success of lawyers' framing of the sexual assault case was also examined.

Two qualitative analyses of transcripts of the interaction between the lawyers and the victim in sexual assault cases were performed in order to identify the tactics that were used by the Crown and Defense, the frequency of usage by both lawyers, the effect of this usage on verdict and sentences, and the extent to which the attorneys relied on rape mythology as the content of their questions. Results indicated that there was a heavy reliance on rape myths as the content of questions asked of the victim, and that the Crown tended to emphasize question content premised on rape myths in a manner positive to the victim more than the Defense emphasized negative content. Furthermore, the lawyers differentially used the available tactics. The Defense used the legal tactics more frequently than the Crown and with greater impact on trial verdicts. As well, the Defense used illogical lines of questioning. Finally, both lawyers focused most often on attacking or undermining an attack on the victim's credibility.

Three follow-up jury simulation studies were conducted. The jury simulation to assess the extent to which the Defense used the strategy of illogical arguments manipulated three Defense strategies: logical arguments, illogical arguments and attacking the victim's credibility. Results indicated that the Defense's use of illogical arguments influenced the verdict, and further, caused respondents to focus on the witness' poor credibility. Two jury simulations assessed whether the Crown could use legal tactics to undermine the Defense's use of illogical arguments and attack on the victim's credibility. Results indicated that tactics available to the Crown could be used to counteract the Defense's strategy of attacking the victim's credibility in order to successfully influence perceptions of the attorneys' attributes, re-victimizing behavior toward the victim, perceptions of the victim and the verdict. Furthermore, the Crown was effective in thwarting the Defense's use of illogical arguments, particularly in influencing perceptions of the Defense's positive attributes, victim attributes, and trial outcomes such as confidence in verdict and actual verdict. Thus, in general, the Crown's use of strategies proved effective against the Defense's use of strategies in jury simulation studies, with the strategies of re-direct and inoculation proving more effective than objection.

Implications of these results for the behavior of the lawyers within the sexual assault trial, as well as the applied value of these results for legal change are discussed.

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An analysis of the courtroom dynamics of sexual assault trials

The police asked if the man took anything. The victim said, ...not money, just me and that is the worst thing of all. (Case 0052)

Her friends said, He was just drunk - forget about it. He is a nice man. (Case 0030)

Rape constructs a category of Woman which is capricious and mendacious (Smart, 1998, p.56).

Sexual assault is an offence for which the vast majority of perpetrators are men and the victims are almost always women and children (Statistics Canada, 1993). This offence is most likely to be committed by an acquaintance, rather than a stranger (Renner, Alksnis, & Park, 1997; Statistics Canada, 1993). Sexual assault of women is a very prevalent crime; 39% of all women in Canada over the age of 18 have experienced at least one incident of sexual assault (Statistics Canada, 1993), and 45.1% of women in Canadian universities and colleges have reported some type of sexual violence (unwanted sexual contact, sexual coercion, attempted sexual assault or sexual assault) since leaving high school (deKeseredy & Kelly, 1993).

The prevalence of sexual assault has encouraged researchers to examine several facets of this crime over the last few decades (Burgess & Holstrom, 1974; Cowan & Quinton, 1997; Fischer, 1987; Fuller, 1995; Giacomassi & Dull, 1986; Herman, 1988; Johnson, Kuck & Schander, 1997; Miller & Schwartz, 1995; Polan, 1982; Regehr, Marziali & Jansen, 1999; Renner, Wackett & Ganderton, 1988; Roberts & Grossman, 1992; 1994; Salter, 1995). These examinations have included exploration and identification of beliefs surrounding sexual assault victims (Burt, 1980;1991;1998), the social climate surrounding sexual assault (Brownmiller, 1975; Cowan & Quinton, 1997), victims' responses to sexual assault (Burgess & Holstrom, 1974; Furby, Fischhoff

& Morgan, 1992) and techniques for successful recovery (Salter, 1995; Weidner & Griffit, 1983; Workman & Orr, 1996).

In relation to research examining victims' responses to this crime, an unexpected but very important finding was the discrepancy between reported and actual sexual assault cases (Roberts, 1990b; Roberts & Grossman, 1992). Survey and crisis centre evidence indicated victims of sexual assault often do not report the crime to the relevant authorities (Brownmiller, 1975; Roberts, 1990b; Statistics Canada, 1993; Yurchesyn, Keith & Renner, 1992). In fact, Statistics Canada's (1993) survey data indicated that only 6 out of every 100 sexual assaults were reported to the police. Low reporting levels could be expected to translate into similarly low rates of prosecution and conviction, compared to the actual rate of sexual assault (Statistics Canada, 1993; Roberts, 1990b). Statistics Canada noted that only .08% of all sexual assaults allegedly committed resulted in a conviction with jail time (Statistics Canada, 1993).

In addition to, and perhaps contributing to, the low frequency with which sexual assault is reported, anecdotal evidence indicated that victims largely felt that they were re-victimized through the justice process, thereby diminishing their sense of retribution (Brownmiller, 1975; Konradi, 1997a). Victims described their experiences in the legal process as consisting of a mixture of humiliation, frustration and injustice (Goldberg-Ambrose, 1992; Martin & Powell, 1994; Mohr & Roberts, 1994; Renner & Keith, 1985). Victims contended that they were asked to relay seemingly irrelevant facts about the sexual assault in an inappropriate manner and to an unnecessary degree of detail (Bumiller, 1990; Danet, 1980a; 1980b; Konradi, 1997b, 1998b). In addition, victims often perceived Defense attorneys as being unnecessarily hostile, demeaning and belligerent during the cross-examination (Bowland, 1994; Konradi, 1997a; McBarnet, 1983).

In and of themselves, the problem of low reporting rates and feelings of re-victimization are not unusual responses, in comparison to responses of other victims of crime (Brereton, 1997). However, there may be a combination of social and psychological factors that uniquely affect sexual assault victims, which may place their responses distinctly apart from other victims. In particular, the widely entrenched gendered expectations for men and women's sexual behaviour may affect how the crime and the victim are perceived at all levels of the criminal justice process.

Research has extensively documented the existence of gendered expectations in society, which define gender-roles for men and women (Bergen & Williams, 1991; Lewin 1984; Ruble, 1983, Williams & Best, 1990). Males are expected to be aggressive, independent, science-oriented, confident and ambitious, while women are expected to be tactful, gentle, religious, soft-spoken and neat (Ruble, 1983). Men and women who violate these expectations face social sanctions (Ruble, 1983). Although these current gender stereotypes still hold in a large measure today, they reflect beliefs that surfaced during the 19th century in what Welter (1978) termed the Cult of True Womanhood (Lewin, 1984).

The Cult of True Womanhood held that piety, purity, submissiveness and domesticity led to happiness for the Victorian woman (Welter, 1978). As well, women were seen as more pure and devout than men, who could not help but be sinful and brutish. As part of this, the loss of a woman's purity through non-marital sexual activity was equivalent to death, a 'true woman' could withstand the unwanted sexual advances of men by her brilliant and absolute virtue (Welter, 1978). The Cult of True Womanhood, then, defined sexual assault as virtually nonexistent (Welter, 1978). Any woman who wanted to avoid rape could do so, unless she had been beaten into submission. Thus women who claimed to have been raped without other injury and evidence

of resistance were, by default, lying. If a woman could avoid sex if she chose to, she must have wanted any sexual contact that occurred. Women without virtue could not use virtue to avoid sex, and thus, by definition, would not be seen as wishing to avoid sex (Welter, 1978). In effect, this meant that sexually promiscuous women could not be sexually assaulted (Welter, 1978).

Although the Cult of True Womanhood still informs sexual gender roles and stereotypes today (Kauffman, 1999), research has documented some shifting of the traditional gender stereotypes in other areas. For example, general attitudes toward women have become somewhat more feminist and egalitarian over the past 25 years (Twenge, 1997), men are occasionally portrayed in the media in non-traditional roles (Kauffman, 1999), and some expectations for marriage have become more egalitarian for men and women since the 1960's (Botkin, 2000). Nevertheless, the application of traditional gendered beliefs continues to guide romantic and sexual relationships between men and women, creating specific dating behaviors. Men and women are expected to date in order to create lifetime partnerships and produce offspring (Surra & Longstreth, 1990). According to culturally-produced constrictions upon dating behavior (a dating script), males are required to initiate the date, select the activity and initiate the sexual interactions, while women are supposed to focus on their appearance, enjoyment and sexual responses to male advances (Surra & Longstreth, 1990). Within this script and congruent with the Cult of True Womanhood, women are expected to refuse sex, as ready consent would indicate promiscuity and, by extension, impurity (Muelenhard & Hollabaugh, 1988). Under this double standard, men are encouraged to pursue and enjoy sex with numerous women, while women are expected to refuse most sexual advances and enjoy only a restricted number of sexual partners (Muelenhard &

Hollabaugh, 1988; Surra & Longstreth, 1990). The double standard helps to create the complex dynamics around the negotiation of sexual contact (Muelenhard & Hollabaugh, 1988).

The application of this double standard to sexual assault precipitates a host of incorrect assumptions, particularly as they permeate the legal process (Muelenhard & Hollabaugh, 1988). Conclusions are made as to women's presumed desire to present themselves as chaste and hence 'cry rape' after willing sexual participation, that women's desire for sexual contact is indicated in their attire and behavior prior to the sexual assault, that only virgins can be sexually violated, and so on (Burt, 1980). These erroneous but widely held perceptions about sexual assault victims and perpetrators, or 'rape myths', appear to focus on the man and woman as playing socially acceptable roles which are not reflective of reality (Burt, 1980). Re-emergence of these myths in the legal process affects the processing of cases, as, for example, police are less likely to declare a case 'founded' when the victim had a prior relationship with the accused, thus endorsing the myth that sexual assaults are not committed by acquaintances (Edwards & Heenan, 1994).

Research has indicated that rape myths are widely endorsed in many spheres of society, including the legal sphere (Burt, 1980). It was of interest in the present investigation to determine the role of rape myths in the sexual assault trial in terms of responses to the victim and her allegations. Although evidence exists of rape myths in the legal system, the extent to which rape myths are a part of sexual assault trials, and the mechanisms by which rape myths could influence sexual assault trials have not yet been examined.

The conduct of a trial is presumably directed by guidelines that regulate the behavior and strategies of legal officials and lawyers (Canadian Bar Association, 1988). For example, there are restrictions on the type of evidence that can be introduced into all trials, including sexual assault

trials. Further, there are guidelines and suggestions on the manner in which testimony can be elicited, particularly the psychological techniques or tactics that can be applied by the lawyers to the facts of the case (Canadian Bar Association, 1988; Evans, 1995; Kapardis, 1997). This includes the style in which the questions are presented, such that more than the content of the question is conveyed to the listeners. For example, 'word pictures' around sexual assault convey more than a crime, but can convey consent or non-consent, depending for example, on whether the words 'intercourse' or 'sexual attack' are used to describe the event. Anecdotal evidence has suggested that regardless of the guidelines and proscriptions, these factors are used to undermine the credibility of the victim as they continue to enable the highlighting of premises stemming from rape myths (Kapardis, 1997; Konradi, 1997b).

This program of research empirically addressed the hypothesis that sexual assault victims are subjected to courtroom strategies that capitalize on rape myths, and thereby serve to undermine justice through prejudicial verdicts and result in the re-victimization of the victim herself. This issue was examined through a limited review of the role of courtroom players (lawyers and judges) and the guiding principles of the legal profession, the sexual assault legislation, and the nature and function of rape myths. Derived from this, a program of five empirical research studies was conducted to examine the structure of the sexual assault trial and the effects of the psychological tactics adopted by the Crown and Defense counsel in their elicitation of the victim's testimony in a sexual assault trial. In these studies, the content of the lines of questioning and the nature of the tactics to convey a particular interpretation of that content adopted by the lawyers during actual sexual trials were identified. Further, the relative effectiveness of the lawyers' strategies in influencing trial verdict and sentence were assessed.

This led to a more detailed examination through the use of mock jury trials of two tactics that appeared to predominate and may be at the basis of victims' sense of re-victimization, namely, attacking the victims' credibility and the use of illogical arguments. Of particular interest was the exploration of the effectiveness of strategies available to the Crown to undermine the Defense strategies. It was expected that through an examination of the tactics used by the lawyers and the extent to which rape myths were a part of the trial content, a clearer picture of the unique position of sexual assault victims in the court would emerge.

THE LEGAL SYSTEM

Trial advocacy is largely about argument-based persuasion (Kapardis, 1997, p.198)

One vision of law most often invoked in popular culture, legal discourse and legal education, is that of law as an autonomous doctrine independent, separate from the society which it serves (Williams, 1998). Under this view, the law is pre-existing, clear and predictable on any issue; the facts are determined by an objective hearing, and evidentiary rules intended to ensure that the truth will be uncovered are in force (Penman, 1987). According to this view, law is separated from human actors and processes, resulting in the law as a scientific inquiry led by the legal arguments that are included in the courtroom analysis (Williams, 1998). The outcome of a case is determined by applying law to the facts, and any reasonably competent judge should reach the fair and correct decision (Kairys, 1982). This view of law asserts purport that due to its autonomous and fair nature, the legal system supports a basic respect for human dignity in the procedures of justice (Penman, 1987; Phillips, 1992).

Role of the Courtroom Players

In the adversarial justice system, the judge is an impartial umpire, keeping order in the court, enforcing procedural rules, and deciding matters of law which influence the conduct of the trial (Danet, 1980b). The judge says virtually nothing unprompted by legal counsel, other than explaining the law to the jury and instructing them on how they should use the law to render an appropriate verdict (Danet, 1980b, Kapardis, 1997). The lawyers' positions are different, as they are required to be non-objective in defending their client, using psychological techniques when eliciting facts, highlighting issues positive to their client and negative to the other side in a verbally pugilistic manner (Beach & Metzger, 1997; Evans, 1995; Kapardis, 1997; Rue, 1994). While the

judge can interrupt proceedings at any time, the lawyers for the Crown and the Defense must elicit the bulk of their testimony from the victim only at prescribed times: the Crown during direct examination and after the Defense on redirect, and the Defense on cross-examination (Kapardis, 1997; Metzger & Beach, 1996).

The adversarial legal system mandates lawyers to maintain a pugilistic demeanor in the courtroom, which implies that rather than work together to discover the reality of a case, they guard the facts that are at their disposal. As well, lawyers within this system elicit testimony with an eye to highlighting flaws in the case of the other lawyer (Kapardis, 1997). This may mean that the most damaging, rather than the most relevant facts will be those heard by the judge and /or jury. In effect, the behavior of the counsel could result in a situation where the strategy and style of the individual lawyers in the courtroom are potentially more important than the facts of the case (Evans, 1995).

Legal Strategies

Techniques that lawyers are encouraged to use to elicit evidence from a witness are based on social psychology and social influence tactics. These strategies encompass non-verbal or verbal tactics, with by far the more important strategies focusing on the verbal domain (Kapardis, 1997; Konradi, 1997a).

Non-Verbal Strategies

There is a wealth of literature on the most appropriate manner in which lawyers should manage their non-verbal presentation in order to present the best image for the case at hand (Evans, 1995; Kerr & Bray, 1982; Kestler, 1982; Shayne, 1988). Lawyers dress conservatively, manage their position in reference to that of the witness box strategically, stand to ask some

questions and sit when asking others, all of which serve to convey more than question content to the jury and witness (Kerr & Bray, 1982; Wells, 1988). Kestler (1982) admonished lawyers to be sure that their counsel table had items laid out in a manner that conveyed extreme organization, as even this would reflect on the case presented by the lawyers. Similarly, Evans (1995) and Kerr & Bray (1982) both advised lawyers to “look interested” when making eye contact with the jury in order to convey the impression of being an ally.

Verbal Strategies

The language in the trial is also mandated and controlled by the precepts and rules that constitute the legal system (Kestler, 1982). The lawyers are critical in terms of providing the interpretive framework in which to place the testimonies (Kapardis, 1997). This is often done through their lines of questioning and their own verbal re-framing of what has been said by the witness (Evans, 1995). Thus the lawyer who wins his/her case may be the one who most carefully constructs a convincing version of the facts (Kestler, 1982; Schmitz, 1998).

The construction of the facts is often done through the use of psychological techniques (Evans, 1995; Kapardis, 1997; Shayne, 1988). For example, lawyers are taught to use ‘word pictures’, words which have a connotation beyond their meaning, such as “made love” to convey a consensual sex act and “sexual attack” to convey non-consent (Evans, 1995). Using this technique, lawyers can place a connotation on a fact in such a way that it appears to support their position, without changing the fact itself. Lawyers are also trained in ‘impeachment techniques’, in that they will highlight inconsistencies in testimony given at different instances to destroy the witness’ credibility (Shayne, 1988). Using impeachment, lawyers take the human error inherent in the repetition of testimony and capitalize on such error to suggest that all of the testimony is in

doubt (Shayne, 1988). 'Fabrication' is also used, whereby counsel suggest an ulterior motive to the victim's alleged false accusation of sexual assault (Kestler, 1988). Simply planting the idea of an alternative explanation in the minds of the jury is often the crux of a case (Shayne, 1988). Negative or positive tonal tactics are used to enhance the content of the questions, involving for example, a raised voice or sarcastic tone (negative tone) to intimidate the witness or a soothing tone (positive tonal tactic) to win over the witness (Evans, 1995; Kapardis, 1997). 'Over-generalization' is used to capitalize on instances in which a witness uses general terms ('always', 'never') and the lawyer finds exceptions to reflect negatively on the witness (Kestler, 1988). Finally, lawyers directly ask questions to attack the witness's credibility, presenting damaging information in hopes that the jury will apply fallacious logic to assume that damaged credibility in one instance renders the entire testimony unbelievable (Kapardis, 1997; Penman, 1987). Not only are these techniques effective in shaping the testimony elicited from the witness, but they also carry weight in the minds of the jury and their decision-making (Kestler, 1988).

These techniques might be particularly important to the outcome in a sexual assault trial. Sexual assault occurs in a social climate in which men and women have prescribed sexual gender roles based on erroneous perceptions originating more than 200 years ago (Welter, 1978). Such prescriptions may nonetheless be capitalized upon through the techniques adopted by the attorneys. Indeed, it is due to such concerns that heated controversy has existed in relation to sexual assault legislation and the evidence that is viewed as legitimate in such cases.

Selective Review of Sexual Assault Legislation

Similar to legal procedure and protocol, the sexual assault legislation such as Bill C-127 and Bill C-49 permits specific informational content into the courtroom (Evans, 1995). As a

result, the legislation is critical in terms of delineating the information and strategies made available to lawyers in their interpretation and construction of the case (Kapardis, 1997). Sexual assault legislation has evolved since 1983 to the current day, particularly in terms of changes that affect the treatment of victims of sexual assault in the courtroom (Gunn & Linden, 1997; Odem & Clay-Warner, 1998). A brief review of the evolution of the definition of sexual assault and the resulting effects in the court, as well as the effects of three recent Bills on the factual content of the trial are examined, as these all have direct implications on the evidence allowed in a sexual assault trial.

Definition of Sexual Assault

The definition of sexual assault has undergone substantial criticism, and hence, change, over the past 20 years. In sexual assault legislation prior to 1983, a range of offences was lumped together under the heading of “rape” which was defined as “a Male person commits rape when he has sexual intercourse with a female person who is not his wife... without her consent” (Section 143, Criminal Code). Notable characteristics of the definition were that penetration of the vagina by the penis had to occur, men could not be charged with sexual assault of a spouse, and the crime was viewed as a property offence (in this case, as an offence against the man’s property) not as an offence against a person (Clark & Lewis, 1977, p.159).

Women’s groups criticized this definition for defining some women out of protection (i.e., wives), and for failing to take into account women’s actual experiences of sexual assault (for example, sexual assault that did not include penetration). There were criticisms that the justice system was holding witnesses responsible for their sexual assault, making the prosecution and conviction of the assailants difficult, upholding stereotypic beliefs about women (i.e., women lie

about sexual assault) and unnecessarily protecting men (Gunn & Linden, 1997; Mohr & Roberts, 1994; Odem & Clay-Warner, 1998; Russell, 1998).

Bill C-127

In order to respond to criticisms that the law reinforced stereotypes around rape that reflected greater concern with the rights of the accused than those of the victim, and that it resulted in the harassment of the victim on the witness stand, low conviction rates of the accused, and low reporting by the victim, Bill C-127 was passed on January 4th, 1983. Sexual assault became defined as any non-consensual sexual act by either male or female persons to either male or female persons regardless of the relationship between the people involved (Bill C-127)¹. This definition was more inclusive of diverse sexual relationships and more representative of the nature of sexual assault (Ruebesaat, 1987; Toews, 1991). Bill C-127 included a removal of spousal immunity, designation of sexual assault as a gender neutral offense, disqualification of evidence concerning the complainant's background that was not pertinent to the case (the Rape Shield provision), and a change in the rules of evidence around consent (non-consent meant that the complainant did "not resist by reason of: force, threats of force, fraud and exercise of authority", Bill C-127, 1983), corroboration (no corroboration required for conviction) and recent complaint (these rules were abolished) (Bill C-127, 1983; Gunn & Linden, 1997).

Further, this bill reclassified offenses previously identified under the heading of "rape" to three levels of sexual assault based on aggravating factors. These offenses closely mirrored

¹In recognition of increased social awareness and gender neutrality inherent in the use of the term "sexual assault" versus the term "rape", as well as the differences present in both definitions and the time at which "sexual assault" as a term was legislated into existence, when possible "sexual assault" is used to refer to cases from 1983 to the present day and "rape" to refer to cases before 1983.

physical assault offenses; both types of offenses required similar evidence (i.e., evidence of a struggle and/or injuries), and both delineated three levels of severity. In contrast to physical assault, the maximum penalties for sexual assault were higher: ten years (simple sexual assault, the lowest level of severity), fourteen years (sexual assault with a weapon or causing bodily harm, second level of severity), and life imprisonment (aggravated sexual assault, third level of severity) (Bill C-127, 1983).

In re-defining sexual assault Bill C-127 attempted to resolve gender bias, increase reporting, change rules of evidence and create a more equitable law for sexual assault victims. It succeeded in small measure in creating a more inclusive, less gendered definition of sexual assault (Los', 1994). However, there were still concerns with the legislation. Foremost among these was that increased reporting after Bill C-127 passed was not coupled with a corresponding increase in the number of founded cases (police determination of the actual occurrence of a sexual assault) or the number of convictions (Dawson, 1998b; Gunn & Linden, 1997; Renner & Sahjpaul, 1986; Renner & Yurchesyn, 1994). Thus, Bill C-127 appeared to continue to have a discriminatory effect on the presentation of sexual assault cases in the legal system (Gunn & Linden, 1997). Further, given the three levels of seriousness of the offense of sexual assault, there was a perception that offenses that were previously classified as more serious offences before Bill C-127 became classified as less serious offences after Bill C-127 (Marshall, 1996; Renner & Sahjpaul, 1986; Sahjpaul & Renner, 1988).

In light of this, the evidence considered relevant to a sexual assault case under Bill C-127 was challenged. Bill C-127 reformulated crimes of sexual aggression by modeling them on physical assault offenses, which meant that both physical and sexual assault, although

fundamentally different in many ways, required similar evidence to succeed in conviction (Sahjpaul & Renner, 1988). However, using the standards of ordinary assault to evaluate sexual assault was misleading, as the severity of sexual assault was then measured by the level of violence inflicted on the victim (Marshall, 1996). The legislation created a situation where the majority of women subjected to the 'common' sexual assault (by a non-dangerous acquaintance, without a high level of physical evidence) were selected out of the legal system, while the 'atypical' sexual assault was heralded as the norm due to its concordance with physical assault. Indeed, this alignment of founded cases to physical assault criteria is consistent with premises stemming from rape myths (for example, sexual assault by a stranger, with stronger evidence that the woman was physically forced) (Renner & Yurchesyn, 1994). This reliance on a definition based on such mythology meant that the majority of sexual assault victims was still denied justice under this legislation.

Nevertheless, in an attempt to undermine rape myths, Bill C-127 made provisions for the consideration of the sexual activity of the complainant with any person other than the accused, in that it was no longer be a part of the sexual assault trial, known as the 'Rape Shield' portion of the law (Los', 1994; Mohr & Roberts, 1994). This was heralded as a step forward for sexual assault victims (Los', 1994). However, soon after this Bill, the rights of the accused to expect the complainant to answer questions regarding her sexual activities with third parties were reinstated in the R. v. Seaboyer, R. v. Gayme decision (hereafter called the Seaboyer decision) (Dawson, 1998a; 1998b). In this case, the Supreme Court of Canada struck down the rape shield provision of the Criminal Code in the interest of the right to a reasonable defense. The decision to limit sexual history questioning was left to individual trial judges, and hence expanded conditions for permitting sexual history questions emerged (Bowland, 1994). Seaboyer effectively restored the

assumption premised on the Cult of True Womanhood, that a more sexually experienced woman would both consent to sexual activity and then lie about it to re-establish her reputation, and so only a chaste woman was worthy of legal protection (Bowland, 1994). Thus, the Seaboyer decision meant that the law still did not protect a substantial proportion of sexual assault victims and permitted the character of the victims to be derogated and used against them in the trial context (Dawson, 1998, Majury, 1994).

Bill C-49

As a result of backlash to the Seaboyer decision (McIntyre, 1994), Bill C-49 was passed in August 1992. This Bill provided legal parameters for determining the admissibility of a victim's past sexual history as evidence, defined consent and non-consent as applied to sexual assault², and restricted the defense of a 'mistaken belief' in consent, which had been previously used by accused men with near impunity (McIntyre, 1994; Sheehy, 1996).

Bill C-49 required the Defense to apply for a hearing to demonstrate that specific instances of prior sexual activity were relevant to the case at hand before they could be admitted into the trial proceedings (Sheehy, 1996). The judge had to be convinced that the evidence sought should be admissible, and was compelled to justify any decision on this evidence. Furthermore, the judge was compelled to instruct the jury as to the manner in which sexual character evidence could be interpreted (Bill C-49, 1992; Sheehy, 1996). Bill C-49 was designed to take notice that the rights

² Consent was defined as 'voluntary agreement to engage in the activity'. Non-consent was defined as '...the agreement is expressed by the words or conduct of a person other than the complainant...the complainant is incapable of consent...the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority...the complainant expresses, by word or conduct, a lack of agreement to engage in the activity...the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity' (Bill C-49, 1992)

of sexual assault victims to not be re-victimized on the stand were being ignored, and to place them on more equal footing with the defendant in the courtroom (McIntyre, 1994; Sheehy, 1996).

Although created to remedy the Seaboyer decision, Bill C-49 made only limited progress to restore protection to sexual assault victims in court (McIntyre, 1994; Sheehy, 1996). The problems were based on the ease with which this evidence continued to be allowed into the trial (Kessler, 1992; Sheehy, 1996). The relative ease for introducing this evidence in sexual assault trials continued to reflect the belief that women's behaviour invites or provokes a sexual assault in some way (Bowland, 1994; Kessler, 1992). It was argued that even this misguided assumption did not logically justify why evidence of prior consent with third parties should ever be relevant to demonstrating consent in a particular instance (Kessler, 1992). Research shows that probabilistic evidence is often misused to assign blame to an individual (Nesson, 1985). Thus, a court may focus on a non-relevant issue with a high probability rather than a more relevant issue with a low probability. The issue before the court is the non-consensual experience, but the fallacious reasoning legislated for use by the court shifts the issue to include the high probability prior consensual sexual experiences, as though they were equivalent to the low probability non-consensual sexual experiences (Kessler, 1992; Sheehy, 1996). Thus, inaccurate reasoning which was based on rape myths, was used in a sexual assault trial in order to make a presumably reasoned judgement about sexual assault (Kessler, 1992).

Bill C-46

Any progress that was evident by the passage of Bill C-49 in terms of protecting the victim was countered once more when Bill C-46 was passed in June, 1996 (Sheehy, 1996). This bill

came out of a ruling in R. v O'Connor , in which O'Connor, who was the priest and a principal of a residential boarding school, was charged with sexual offenses against four female students who resided, were educated, and subsequently employed in that institution. The women were ordered to release all of their residential school records as part of the evidence in their sexual assault trial. This Bill enabled Defense attorneys to use legal authority to obtain copies of women's records³ when defending persons accused of sexual assault. Records of this nature are only sought in sexual assault cases, and are generally sought to attack the credibility, motive and character of the victim (Busby, 1998).

The legal release of records created further problems for sexual assault victims. One problem was that records that pertain to the healing process that the victim may undergo after experiencing sexual victimization may be used against her (Busby, 1996). In therapy, the victim is often encouraged to disclose her feelings about the sexual assault, including the common reaction of self-blame (Burgess & Holstrom, 1974; Salter, 1995). When these records are introduced into evidence, self-blame is disclosed in court to demonstrate consent to the sexual assault. Although Canadian law supports the premise that everyone has the right to health care, the perception was that Bill C-46 effectively withdrew that right from victims of sexual assault seeking mental health care related to the assault (Busby, 1996). Further, the counseling relationship is undermined by the knowledge that it may become a public relationship if the counseling records are subpoenaed for a sexual assault trial (Busby, 1998).

³Records can include medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services, as well as the victim's own personal journal, agenda book and diary (Bill C-46).

Additionally, asking for such records may become a form of harassment, causing women to withdraw their complaint of sexual assault (Sheehy, 1996). Sheehy (1996) quotes a crisis worker who argued that there is little recorded information that cannot be manipulated to "... generate a myth that the complainant is a liar, an idiot, a something..." (p.105). Often simply the realization that the sexual assault victim must reveal the name of her therapist, or expose less than glowing school reports is enough to make her drop the complaint, thereby reducing the already small numbers of sexual assault victims who go through the legal process (Sheehy, 1996; Schmitz, 1998). Thus, the inclusion of records as evidence at the sexual assault trial is another potential area of bias legislated into the sexual assault trial that undermines women's access to justice, due to the potential for being re-victimized themselves in the process.

Negative Impacts of Sexual Assault Legislation

Sexual assault legislation has historically been enacted in attempts to make the sexual assault trial fairer to both the sexual assault victim and the accused, but the general perception among some researchers, women's groups and victims is that it has made limited progress (Bond, 1994; Bumiller, 1990; Busby, 1998; Sheehy, 1996). The progress of the sexual assault legislation directly translates into the allowable facts in the trial and the behaviors of the attorneys in the courtroom; as such, this legislation is important as a blueprint for the sexual assault trial. A perception that the legal system is a process of re-victimization for the victims of sexual assault persists, despite legislative changes (Toews, 1991; Torrey, 1991). The hallmarks of non-progress can be seen in the increased reporting with a non-consonant increased founding of sexual assault cases, the slow behavioral changes of the actors within the legal system, the entwining of physical with sexual assault, and the resulting selection of sexual assaults out of the system.

Promoting the reporting of sexual assault without increasing the number of cases deemed founded is misleading to women, as there is an implication that the court system is fairer to victims, when it is not (Gunn & Linden, 1997; Roberts & Gebotys, 1993). The legal system still appears to be riddled with incorrect presumptions about women, which are parlayed into the evidence included in the sexual assault trial (Bumiller, 1990; Los', 1994; Marshall, 1996). Including women's sexual history and personal records in the sexual assault trial is viewed as damaging and pejorative to sexual assault victims, but is used because it effectively biases the outcome against their allegations (Busby, 1996; Russell, 1998). Thus, such reporting does not result in retribution, and may be damaging to the well-being of the victim herself.

In addition, although creating legislation is the first step toward achieving change, the behavioural responses of the relevant actors can be slow to follow suit (Gunn & Linden, 1997; Mohr & Roberts, 1994). Tradition-based perceptions about sexual assault victims held by legal professionals such as the police cannot be legislated out of a belief system (Los', 1994). These are reflected not only in their treatment of the victim, but the police's evaluation of the viability of her case (Gunn & Linden, 1997). As well, even if the charges are founded, judges might still be applying sentencing standards enforced prior to the modified legislation (Gunn & Linden, 1997). Although there are presently some high maximum penalties for sexual assault, nationwide the harshest sentences imposed at trial are well below the maximums outlined by the current legislation (Roberts, 1990a; Toews, 1991).

Sexual assault has also been legally equated with physical assault. However, because victims must provide physical evidence that often does not occur with a sexual assault, many sexual assaults are deemed false and selected out of the system (Renner & Sahjapaul, 1986; Renner

& Yurchesyn, 1994; Stermac & Kalembo, 1997). Thus, although the law recognizes that sexual assault is a crime of violence, it fundamentally misunderstands the true nature of sexual assault and falls short of its intended mark (Renner et al., 1997). These factors all are generally perceived as negative impacts of the legislation upon sexual assault victims.

Role of Legislation in Re-victimization

Sexual assault victims contend that they are re-victimized on the witness stand, and this ultimately leads to a miscarriage of justice (Konradi, 1998a; McBarnet, 1983). Re-victimization in this context refers to the perception by the victim in the sexual assault trial that she is experiencing a “second rape” including characterizations of the sexual assault trial as dehumanizing, unnecessarily painful, humiliating, and degrading (Bond, 1994; Konradi, 1997a; Madigan & Gamble, 1989). Although, due to the nature of the crime itself, questions on sexual issues to establish the facts are expected, critics maintain that the questions are often needless, extraneous and asked in a disparaging manner (Brownmiller, 1975; Konradi, 1997b).

Past research suggests that the most direct forms of re-victimization occur in the questions that are directly asked of the sexual assault victim (Konradi, 1998a; Matoesian, 1993; 1995; Wells, 1988). Konradi (1998a) found that sexual assault victims felt intimidated because of the questions they were asked with respect to their attire, sexual behavior prior to the attack and reactions after the assault. Busby (1998) refers to sexual assault victims who felt that they were being asked harmful and irrelevant questions related to their personal records. Edwards and Heenan (1994) report victim concerns with questions they felt were introduced merely to highlight that they had not displayed actions in accordance with how a “true” sexual assault victim would behave, including questions on their sexual history and moral character.

One common feature of complaints of re-victimization is that questions are asked that appear irrelevant to the case, but reflect the stereotypes inherent to rape myths about women (Edwards & Heenan, 1994; Lonsway & Fitzgerald, 1994). For example, although attire prior to a sexual assault is immaterial to an experience of sexual assault, erroneous perceptions based on rape myths may render this question pertinent, in that if the victim was dressed in a 'provocative' manner, she likely consented to sexual advances (Burt, 1980). The influence of rape myths on sexual assault trials suggests an element of partiality and lends support to claims of re-victimization, in that the victim is being denied justice and is unnecessarily degraded, under the guise of presenting important case facts.

A critical approach to sexual assault legislation suggests that the law itself can subvert justice. The sexual assault legislation examined thus far, in some opinions, seems to be problematic in that it appears to leave sexual assault victims unprotected in the courtroom, allows prejudicial information on sexual history and records to be included in the sexual assault case, misleads more women into reporting their sexual assault while not rendering their cases founded, and evaluates sexual assault by the same standards as physical assault, regardless of the dissimilarity between the two crimes (Busby, 1996; Ellsworth & Mauro, 1998; Renner & Yurchesyn, 1994; Sheehy, 1996). These factors represent a failure of social justice (Renner et al., 1997; Rawls, 1998), that is, the ideal of providing fair and just outcomes through the criminal justice system by seeking the truth of each case and ensuring that the procedures, doctrines, laws and principles of the justice system achieve the purposes for which they were intended (Williams, 1998).

Not only are there difficulties with sexual assault legislation, but lawyers are encouraged to capitalize on these factors by employing tactics premised on psychological influence, in order to manipulate the facts of the trial to reflect a framework supportive of their respective cases. Lawyers do not simply elicit information as they attempt to discover the truth of a case. Thus, an understanding of some of the sexual assault provisions might lead to further understanding of the content and tactics which are employed during the sexual assault trial. Furthermore, given the gaps in the legislation pertaining to protection of the sexual assault victim, there are implications as to the justice that victims receive in the trial, which may stem directly from the legislation. Finally, the entwining and propagation of rape myths in the legal system and their effect on the sexual assault trial also stem directly from the legislation.

RAPE MYTHS

"The people she used to meet...(socially)... knew the assailant and Suzie said they now think she's a whore" (Case 0090)

"The police told Kathleen she deserved what she got because she should have locked the door to her hotel room"(Case 0052)

Research shows that there are core beliefs and preconceptions surrounding sexual assault victims and offenders (Brownmiller, 1975; Burt, 1980; Drew, 1992; Lonsway & Fitzgerald, 1994; 1995). These core beliefs, or rape myths, are defined as "prejudicial, stereotypical or false beliefs about rape, rape victims and rapists" (p.217, Burt, 1980), "...that are generally false but are widely and persistently held, and that serve to deny and justify male aggression against women"(p.134, Lonsway & Fitzgerald, 1994). Commonly held myths include: women willingly lie about rape (Dominic & Check, 1986; MacCrimmon, 1991; Miller & Schwartz, 1995); women who wear suggestive clothing provoke the rapist (Lonsway & Fitzgerald, 1994; Workman & Orr, 1996); women will immediately scream and cry after a rape (LaFree, Reskin, & Visher, 1985); women falsely create rape accusations to disguise their own illegitimate sexual activity (Lonsway & Fitzgerald, 1994); only virgins can be raped, as other tainted women 'asked for it' (Lonsway & Fitzgerald, 1994); women derive pleasure from victimization (Burt, 1998); and women are not be assaulted by acquaintances or family members (Johnson et al., 1997; Kershner, 1996). Coupled with these myths about women are comparable myths about men; only mentally unstable men commit rape and men rape because they are unable to control their sexuality (Burt, 1998).

Systematic examination of these rape myths shows that they are unfounded. For instance, one commonly believed myth is that women who were raped 'asked for it'. The implication is that

the woman wanted to be sexually violated and thus the man who assaulted her is not to blame. This myth clearly contradicts documented evidence on the trauma that rape victims experience, the widespread knowledge of that trauma in the general population (Burgess & Holstrom, 1974), and women's monitoring of their activities to avoid being targeted for sexual assault (eg., not walking in dark alleys) (Park & Parriag, 1998). Based on this, it is almost inconceivable that women want to be raped. Another myth, based on the 15th century common law hue and cry doctrine, contends that a legitimate rape victim will immediately report the attack (Bowland, 1994; Brereton, 1997). However, current research contradicts this belief, indicating that a very common reaction for a large number of women is not to recount the assault to anyone (Burgess & Holstrom, 1974; Statistics Canada, 1993). Thus it is not logical to infer from a delay in reporting the attack that there was no attack. Rational examination of each myth in turn shows them to be unbelievable at best (Burt, 1991; Lonsway & Fitzgerald, 1994;1995). Evidence overwhelmingly demonstrates these myths to be untrue.

Belief in rape myths is well documented (Brownmiller, 1975; Burt, 1980; 1998; Drew, 1992; Furby et al., 1992; Gilmartin, 1994; Kalof, 1993; LaFree, 1989; LaFree et al.,1985; Lonsway & Fitzgerald, 1994; MacCrimmon, 1991; Martin & Powell, 1994; Reskin & Visser, 1986; Torrey, 1991; Weidner & Griffit, 1983). Moreover, rape myths appear to be accepted in many levels of society, from high school adolescents (Cassidy & Hewell, 1995; Kershner, 1996) to university students (Dominic & Check, 1986; Szymanski, Devlin, Chrisler, & Vyse, 1993) to ordinary citizens (Feild, 1978; 1979) to prosecuting attorneys (Gyls & Mc Namara, 1996) and judges (Bavelas, 1996).

The most definitive factor predicting the acceptance of rape myths is gender. The majority of results show men to be more accepting of rape myths than women (Barnett & Feild, 1978; Bohner, Reinhard, Rutz, Sturm, Kerschbaum, & Effler, 1998; Gilmartin, 1994; Gylys & McNamara, 1996; Johnson et al., 1997; Workman & Orr, 1996). It has been suggested that men believe myths about rape to a much greater degree than women, as they do not identify with the victim or understand her pain and suffering (Torrey, 1991; Workman & Orr, 1996).

Research has examined the relation between rape myths acceptance and other demographic correlates such as race (Fischer, 1987; Giacopassi & Dull, 1986; Johnson et al., 1997), age (Burt, 1980; Kershner, 1996), education (Burt, 1980). However, the findings have not been consistent. Inconsistencies have been attributed to use of different rape myths scales and the prevalence of often minimal theoretical reasoning behind the inclusion of the supposed correlate of rape myth acceptance (Lonsway & Fitzgerald, 1994). It may be that there is a complex relationship between these variables that is not explained by simple correlations (Lonsway & Fitzgerald, 1994, 1995).

Functions of rape myths

Rape myths have been purported to serve several functions within society. For instance, rape myths may encourage victim blaming in order to reinforce 'Just World' thinking. The Just World phenomenon is a model of justice that suggests that one's own behaviour produces the rewards or punishments one incurs. As a result, people who receive punishment are 'bad' and those who receive rewards are 'good' (Lerner, 1980). Just World reasoning rationalizes why an otherwise good woman would suffer a horrible fate; she was wearing a short skirt suggesting sexual interest, she teased him until he lost control, and so on. This perspective provides an

implicit reassurance that people who appear similar to the victim but who are 'good' people, unlike the victim, do not deserve the same fate (Lonsway & Fitzgerald, 1994; Tetrault, 1989).

From a feminist perspective, rape myths are one of the trappings of a patriarchal society, a society based on a system designed to keep societal power and institutions in male control (Brownmiller, 1975; Burt, 1980; 1998; Fuller, 1995). If one examines the myths, it is apparent that they reinforce negative stereotypes about women, encouraging society to place blame for the rape on the woman, and to exonerate the rapist ("She was raped because she was drunk in the bar", not "She was drunk and vulnerable and he should not have taken advantage of her"). Thus it is argued that men benefit from the existence of the myths, women continue to be oppressed by them, and the current patriarchal order is maintained (Burt, 1998; Fuller, 1995).

The power of rape myths might be linked to their function as stereotypes and heuristics. Rape myths are generally applied to an entire group of women or sexual assault victims (Burt, 1980, 1991; 1998), they are based less on fact than on prevailing preconceptions and they often function as the genesis of initiating, preserving and defending prejudice against sexual assault victims, just as other stereotypes function (Asuncion & Mackie, 1996; Macrae, 2000). Similarly, they operate as heuristics where they present a great deal of incorrect information about the sexual assault victim and the crime of sexual assault (Heath, Tindale, Edwards, Posavac, Bryant, Henderson-King, Suarez-Balcazar & Myers, 1994; Hutchinson & Alba, 1997; Stanovich & West, 1998). As stereotypes and heuristics, they are extremely resistant to change (Asuncion & Mackie, 1996). Information which supports the stereotypes created by rape myths, such as the allegation that the victim was drunk or sexually promiscuous, often creates negative feelings toward the victim, resulting in greater attributions of blame and responsibility (Fischer, 1995; LaFree, 1989;

LaFree et al., 1985; Nario-Redmond & Branscombe, 1996). In fact, female sexual assault victims are found to encounter greater stereotyping than other victims simply due to the existence of rape myths (Nario-Redmond & Branscombe, 1996).

Rape myths also allow the public to dismiss an incident of rape from the category of real rape, and to trivialize a serious crime (Brownmiller, 1975; Burt, 1991; Lonsway & Fitzgerald, 1994; 1995). The greater the belief in rape myths, the more the definition of rape/sexual assault will conform to the classic stereotype, and convictions of rapists or lengthy sentences will be less endorsed (Koss, 1998). If there is a public belief that only rapes that are congruent with rape myths are 'real rapes', then a large proportion of rapes cannot be labeled as such as they involve circumstances that are counter to those mythic conditions which society expects (Burt, 1998).

Rape myths are clearly damaging to the victim of rape. These myths colour public perceptions of sexual assault victims, rapists and the nature of the crime of sexual assault (Burt, 1980). As a result the average sexual assault victim will immediately face a host of negative assumptions about her behaviour and character, resulting in shame and self-blaming (Burgess & Holstrom, 1974). The victim herself may subscribe to these myths and not utilize the legal system because of self-blame and guilt (Giacopassi & Dull, 1986).

Use of rape myths in the justice system

When a woman is sexually assaulted, her initial decision is whether to report the offense to the police. Given the large public endorsement of rape myths it is easy to understand why women have historically been reluctant to report sexual assaults to anyone at all (Ellis, O'Sullivan & Sowards, 1992; Fuller, 1995). An examination of the sexual assault cases selected into the justice system and the perceptions of the relevant legal authorities further indicates that rape myths are

present in the justice system and that they do affect the treatment of sexual assault cases (Edwards & Heenan, 1994; Matoesian, 1995; Renner, et al., 1997).

Selectivity

Statistics Canada (1993) conducted a survey of the general population and found that of the 6% of sexually assaulted women who came forward to the authorities, only 40% of those cases resulted in a charge against the assailant; of those, only 66% of assailants were convicted and of those, less than one half received jail time. The statistic of 6% of all sexual assaults being reported to the police is particularly surprising, as the assailant is often known to the rape victim and so can be easily identified (Clark & Lewis, 1977; Renner, et al., 1997). Although there is always a proportion of crimes that are not processed all the way to trial, recent research has determined that sexual assault crimes are particularly likely to suffer from selectivity into the criminal justice system (Edwards & Heenan, 1994; Renner et al., 1997).

Rape myths appear to serve as a filter for the cases that enter the legal system. For instance, when the victim is acquainted with the accused, appears to be sexually active, or did not report the assault immediately, the police are less likely to lay charges (Frohmann, 1991; 1997; Gregory & Lees, 1996; Kerstetter & VanWinkle, 1990; Winkel & de Winter, 1996). Prosecutors also examine the sexual history or moral character of the victim, as well as the connection between the case considered and knowledge of allegedly 'typical' sexual assault scenarios, in deciding to reject a case (Brereton, 1997; Edwards & Heenan, 1993; Frohmann, 1991). Filtering only a small proportion of sexual assaults into the court room results in a misrepresentation of the true nature of sexual assault (Edwards & Heenan, 1994; Gregory & Lees, 1996). The cases that do come to the attention of authorities are often atypical cases - situations where the rape myths hold true in a

way that supports the victim's case, for example, the assailant is a stranger to the victim (Edwards & Heenan, 1994; Renner et al., 1997).

Discounting

Additional evidence of the legal system applying rape myths to interpret violence against women can be found in the process of discounting:

When a legal procedure is applied in a uniform way, but has a differential effect on an identifiable group of individuals such that it provides them less protection or reduces their access to the legal process, the force of that sanction is discounted. When a sanction is discounted, the offender who would otherwise bear the full burden of the legal doctrine has its impact reduced (p.97, Renner et al., 1997).

There are three ways in which the law discounts the crime of sexual assault against women, all based on longstanding rape myths (Lonsway & Fitzgerald, 1995; Renner et al., 1997).

Consideration of the relationship between the victim and the accused is one way in which the law discounts the seriousness of sexual assault. The issue of relationship in sexual assaults begins with the notion that men and women should seek out romantic partnerships with one another and form a relationship. If they are together romantically, there is an understanding that there is a potential for sexual relations (Bergen & Williams, 1991). Contrast this understanding with the fact that most sexual assaults are committed by an acquaintance (Statistics Canada, 1993). When sexual assault cases involving acquaintances go to trial, however, the Crown is less apt to win the case. The legal system is using a defining characteristic of consensual sexual relationships as a discounting factor to downplay the existence of sexual assault at the trial. A lack of consent is considered inconsistent with expectations in a male-female relationship and

hence is unlikely to be true. Discounting on the basis of prior relationship is supported by the rape myth that women are only sexually assaulted by strangers.

The second discounting factor is the degree of harm, consistent with definitions based on physical assault laws. There is a strong positive relationship between severity of sentence and degree of harm inflicted upon the victim (LaFree, 1989; Renner et al., 1997; Research Section, 1992; Roberts, 1994). However, one of the unique characteristics of sexual assault in comparison to other crimes is the relative absence of physical harm in addition to the sexual assault (Kerstetter & VanWinkle, 1990; Lewis & Clark, 1977). As a general rule, women are physically weaker than men, and prefer not to risk physical injury in addition to sexual violation (Renner et al., 1997). Indeed, women are often counseled by police and other authorities not to attempt to use a weapon or fight aggressively during a sexual assault for two reasons: this action may anger the assailant, and the assailant may be able to use the weapon against the victim (Renner et al., 1988).

Using a low degree of physical harm to discount sexual assault reflects a fundamental misunderstanding of the factors surrounding sexual assault. A male physical presence will often be enough to psychologically threaten the victim without a need for physical harm (Burgess & Holstrom, 1974). Further, after the assault, the psychological harm suffered by the victim persists, often taking months and years before the victim is able to overcome a host of related symptoms (Burgess & Holstrom, 1974). Unfortunately, unless there is clear evidence of physical harm, defendants are not often convicted (Edwards & Heenan, 1994; Renner et al., 1997).

The final characteristic used to discount a sexual assault claim is whether the offender is viewed as dangerous. According to recognized legal principles an offender deemed dangerous to society is incarcerated longer than someone without this designation (Mohr, 1994). Lack of a

previous criminal record, age, employment status, good character, are all used as factors to mitigate a sentence after conviction of sexual assault (Marshall, 1996; Mohr, 1994; Toews, 1991). Sexual assaults are generally committed, not by the deranged stranger leaping out of a bush, but by the supposedly gentle, trusted, ordinary acquaintance (Barnett & Feild, 1978; Burt, 1998; Salter, 1995; Toews, 1991). It is untrue to assume that simply because a person does not display socially accepted hallmarks of danger, that the person was not dangerous to the women who were sexually violated (Burt, 1998; Renner et al., 1997). Since public behaviour is a poor index of the propensity to commit sexual assault and abuse, and also irrelevant to the actual offense, evidence on employment and social standing should be given minimal weight (Marshall, 1996).

Examination of research on sexual assault and the treatment of offenders and victims in the legal system supports the conclusion that discounting historically and currently occurs throughout the legal process (Marshall, 1996; Renner et al., 1997). There is evidence that the factors of prior relationship, level of harm and perceptions of dangerousness of the offender function in the legal system in specific places to mitigate against a conviction and an appropriate sentence for the accused (Renner et al., 1997).

Discounting on these bases initially affects the police decision to criminally charge the offender (Gregory & Lees, 1996). Officers report the accused's lack of criminal record and lack of physical injury as some of the reasons for not charging an accused or charging the accused with a lesser crime (Frohmann, 1991; Gregory & Lees, 1996; Kerstetter & VanWinkle, 1990, LaFree, 1989).

Discounting occurs again after the offender has been charged and prosecutors must decide whether or not to take the case to trial (Edwards & Heenan, 1993). This decision is often

influenced by preconceptions of the appearance and demeanor of the typical sexual assault victim, and the present victim's congruence with these myths (Frohmann, 1991). Prosecutors are generally reluctant to go forward with a case when the evidence indicates that there was a prior consensual sexual relationship between the parties, and when the sexual assault victim appears physically unharmed (Frohmann, 1991).

A third place where discounting occurs is at the trial itself. These factors are all used against the victim by the Defense in order to downplay her allegations and deride the true nature of sexual assault (Marshall, 1996; Smart, 1989). In one outrageous example, a woman raped by six men was asked about her prior relationship with each of them, as though any ordinary woman documented, where any prior relationship between the parties, including a chance meeting or an introduction by a third party, is taken as evidence of a previous relationship and held against the victim (Bumiller, 1990; Frohmann, 1991; LaFree, 1989).

Discounting factors are also prevalent in the verdict (Renner, et al., 1997). This is evidenced by the low numbers of assailants convicted in sexual assault cases (Statistics Canada, 1993). The exact reasons for the acquittal of an accused are difficult to determine as juries may acquit on the basis of several factors or a combination of factors (Bagby, Parker, Rector & Kalembe, 1994; McBarnet, 1983; Nemeth & Scosis, 1973). However, juries do mention the influence of factors such as prior relationship between the parties and the lack of harm experienced by the victim, in their decisions to acquit (LaFree et al., 1985).

Discounting is active in the sentencing of sexual assault perpetrators, as rapists tend to receive more lenient sentences in comparison to those sentenced for other crimes with comparable sentencing requirements, often due to their good reputation in the community or their relationship

with the victim (Marshall, 1996; Renner et al., 1997). Some offenders receive sympathy for the fact that their families have dissolved, even though they have caused the break-up (Eaton, 1983; Toews, 1991). Judges fail to realize the circularity of their reasoning; the family has disintegrated because the offender committed the crime.

The use of rape myths in the legal arena supports allegations of re-victimization. The extent to which they are used in the sexual assault trial and their resulting effect on trial outcomes and perceptions of legal personnel, have not been systematically examined. It is possible that rape myths could contribute to the content of questions which are posed to the victims on the stand. As well, they could be the underpinnings of tactics used by the lawyers, such that if the myths were not present, the tactics would not be nearly as powerful. Given the influence of myths already identified, it is possible that they may play a large role in the trial conduct and outcome. This issue is the focus of this research program.

RESEARCH PROGRAM RATIONALE

The sexual assault legislation, rape mythology, and the attorneys' actions may all function together to create conditions where the retribution imposed on offenders does not easily occur in sexual assault cases. The legislation allows evidence into the trial premised on myths and erroneous assumptions about sexual assault, and beliefs in rape myths influence the selection of cases into the system due to a congruence between case facts and erroneous beliefs about sexual assault victims. Finally, and most relevant for this research, it appears that lawyers have strategies at their disposal with which they can capitalize on the trial content, in a manner that undermines the credibility of the victim by highlighting factors that are also consistent with rape myths.

Although the tactics used by lawyers are expected to be effective, the mechanisms behind their efficacy and an assessment of the effect of these tactics in the sexual assault trial have not been evaluated. Lawyers' courtroom tactics are based on techniques of social influence that have been demonstrated as persuasive in several areas (Copi, 1968). For example, attacking the credibility of the person delivering the message rather than the message itself has been repeatedly used in political campaigns in the last few decades (Copi, 1968). Further, the use of word pictures to convey more information than the meaning of the word itself has been determined to be an effective tool to influence judges' perceptions of whether a sex act is consensual or not (Coates, Bavelas & Gibson, 1994).

Effective tactics capitalize on existing social preconceptions (Parriag & Renner, unpublished manuscript). Given this, it is probable that the tactics in sexual assault trials would capitalize on beliefs about sexual assault victims, and in particular rape myths. Tactics may be important to the sexual assault trial as the content of the trial might be extremely limited, given the

selectivity that occurs before the trial begins (Renner et al., 1997). In effect, the trial outcome may be more contingent on lawyers' success in framing the facts in a manner that is congruent with rape myths and favorable to their client, than in eliciting the truth around the crime in question.

Given apparent biases in trial outcomes, stemming from a mismatch between the selective nature of the cases going forward and the limited number resulting in a guilty verdict, it may be that the Defense is in a better position to employ tactics debilitating to the victim's testimony, than the Crown is to offset the Defense's actions. This potential difference in the success of lawyers' tactics in the sexual assault trial, as well as the effect of such tactics on trial outcomes, was of interest in the present research.

A concurrent but secondary interest of this research was to document the function of rape myths in the questions asked by lawyers of the victims and the direct effect of myths on verdicts and sentences. It has been argued that rape myths are a guiding force in sexual assault trials (Gregory & Lees, 1996). They might dictate the content that is included, affect the questions that are asked, and thus affect the verdict rendered and the sentence bestowed. If rape myths are found to play this role, there are several direct implications. Given that rape myths primarily serve to derogate the victim, their use in the courtroom would indicate support for accusations of re-victimization levied against the legal system. Should questions directed at the victim be based on an unrealistic, inaccurate portrayal of rape, bearing little resemblance to the crime experienced and asked as though the victim should validate these questions by her answers, women may indeed feel re-victimized.

However, it is also possible that sexual assault victims feel re-victimized simply because neither they nor the public fully understand the workings of the law, and the steps that are necessary in order to come to a fair and just verdict in a sexual assault case. It is possible that questions about the sexual assault, by definition, must be sexual, and are therefore inherently intrusive and uncomfortable. If empirical examination of courtroom practices does NOT reveal that questions asked of sexual assault victims are being framed by rape myths, then sexual assault victims may be harboring erroneous perceptions of their courtroom experiences, perhaps because the experience of sexual assault, itself a negative and debilitating experience, has coloured other related events such as the trial. Thus, the extent to which rape myths play a role in the lawyers' framework of the sexual assault case was also examined.

Study 1

Although assumptions have been made that tactics in sexual assault trials capitalize on rape myths, and are utilized more effectively by the Defense than the Crown, there is little empirical evidence on the manner in which tactics are used during the sexual assault trial. One expectation was that each lawyer used tactics in an obviously positive manner for his/her own client. However, there might be previously unexplored strategies for using a tactic in a pre-emptive manner which appears to be negative to the attorney's own client. Given the evidence that sexual assault trials are often lost even after the extensive selection process for viability (Statistics Canada, 1993), it was important to determine the manner in which the use of tactics and content affected trial outcomes.

The sexual assault trial is comprised of language, a series of questions and answers through which the facts of the case are elicited (Danet, 1980b). Language in the courtroom is composed both of content and of tactics applied to the content (Kapardis, 1997). The content of the questions, particularly if grounded in rape mythology, could be perceived as noxious or intrusive to the victim, and thus re-victimizing, when raised in as public a forum as a courtroom (Danet, 1980a; Konradi, 1997a; 1997b; 1998a). In addition, it is possible that the attorneys' questions that make use of tactics create a difficult situation for the sexual assault victim, which may result in a lower chance of a conviction, and what might be perceived as a fair sentence.

Thus, the tactics employed to question the sexual assault victim by both lawyers as well as question content, were examined in this study. Given the research on the potential efficacy of lawyers' tactics usage (Evans, 1995), it was expected that tactics would substantially shape the trial verdict and sentence. If so, given that the trial outcomes are generally more favorable to the

Defense, it was expected that there would be more effective use made of the tactics by the Defense than the Crown. As well, given the negative influence of myths (Lonsway & Fitzgerald, 1995), it was expected that the presence of rape myths would be evident in the lines of questioning, and this would lead to verdicts and sentences negatively biased against the sexual assault victim.

In order to examine the sexual assault trial, the discourse used during the trial as well as the manner in which this dialogue was delivered was examined. As the sexual assault victim on the stand is mainly questioned by the Crown and Defense lawyers only, these interactions were the focus of this study.

Method

As part of the continuing research program outlined in Renner et al., (1997), data from court records were collected for 354 sexual assault cases presented at the Halifax Law Courts from 1988 to 1992. Using a random selection of the sexual assault cases, transcripts were obtained for 58 adult female victim testimonies. The transcripts for the portion of the cases covering interactions between the Crown and the sexual assault victim and the Defense and the sexual assault victim were used as the materials for this study.

A classification system was used to quantify and catalogue the courtroom process in the same manner as a content analysis. This coding system was created by reading transcripts for a sub-sample of sexual assault cases, and then creating a set of categories that would capture the majority of the substantive information for each trial. The system was then pilot-tested and inter-rater reliability measured. (A description of the evolution and pilot testing of this system, and the

inter-rater reliability are detailed in Appendices A and B, while examples of the manner in which scenarios were scored is detailed in Appendix C).

This classification system was used to break down the interactions in a sexual assault trial into identifiable categories. The categories allowed the content of the trial carried in the questions asked by the lawyers and the responses uttered by the victim to be broken down into “scenarios” or manageable pieces of information. It also allowed for an examination of how often each lawyer used each piece of information. As well, because the manner in which the questions were asked as well as the content was scored, specific tactics could be identified.

Procedure

Coding was done by comparing the trial testimony with the examples in the classification scheme. Once it was determined that a run of questions and answers, a “scenario”, fit into any of 16 content categories, an ordinal score was given reflecting the nature of the fit. These scores reflected not only the use of a particular content category, but the valence of this use toward the victim; ‘-1’ denoted negative valence, ‘1’ designated positive valence, and ‘0’ indicated no reference. For example, positive valence would reflect a lawyer highlighting the fact that the victim reported the sexual assault immediately, whereas this would have a negative valence if a lawyer highlighted the fact that the victim did not report the sexual assault immediately after it occurred. After each case was entirely scored, the total number of cases that included each ordinal score for each category was computed across the 58 cases. Each category was only scored once for each case. Means for analyses using these data reflected a proportion of the total number of cases in which a given category was used in a particular way.

The content categories also indicated their basis in myths or non-myths; 13 categories were based on myths and 3 on non-myths. A total score reflecting the use of these content categories (positive or negative to victim) for each case by the Crown and the Defense was created. Thus, if the Crown referred to the victim's clothing, her previous non-sexual history and her resistance all in a manner positive to the victim, this case would receive a frequency score of 3 for the use of rape myths based categories, out of a total possible score of 13. The complete list of content categories comprising those based on myths and not based on myths is outlined in Appendix D.

Frequency counts, rather than ordinal scoring, were made for the tactics categories. Frequencies were compiled for 8 tactics categories, where each scenario was evaluated for the presence or absence of each tactic. A total frequency for each tactic category in a case was calculated. The tactics used by the Crown by definition were techniques used to elicit answers that reflected positively on the sexual assault victim, often used to offset or negate the use of negative tactics by the Defense. Conversely, the tactics used by the Defense reflected negatively on the sexual assault victim.

There appeared to be few instances where the same scenario reflected several content categories, or several tactics categories at the same time. In this circumstance, each category into which the scenario could be placed received a score for that scenario. For example, when a scenario demonstrated information indicating both violence and resistance simultaneously, both content categories received separate ordinal scores.

Each case was also coded for verdict and sentence, where verdict was either coded as guilty (1) or not guilty (2) and sentence coded as either low in severity (1) (suspended sentence,

fine or less than one year), medium in severity (2) (more than 1 year and less than 2 years) or high in severity (3) (2 years or more).

Results

Use of tactics

A 2 (verdict: guilty vs. not guilty) x 2 (lawyer; Crown vs. Defense) mixed measures multivariate analysis of variance (MANOVA) on the 8 tactics used by both lawyers was conducted on the differential use of tactics by the Crown and the Defense in trials finding in favour or against the defendant. The main effect of lawyer, Pillais=.60; $F(8, 57) = 6.9$, $p < .001$, $\eta^2 = .60$, reflected univariate significance for impeachment, $F(1, 55) = 27.8$, $p < .001$, $\eta^2 = .34$, fabrication $F(1, 56) = 26.3$, $p < .001$, $\eta^2 = .32$, attacking the victim's credibility, $F(1, 57) = 11.9$, $p < .001$, $\eta^2 = .18$ and positive vs. negative tactics, $F(1, 56) = 17.1$, $p < .001$, $\eta^2 = .24$. See Table 1 for relevant means, standard deviations, F and η^2 values. Examination of the means indicated that the Crown generally used these tactics less often than did the Defense.

This main effect was qualified by an interaction between verdict and lawyer, Pillais=.36; $F(8, 57) = 3.82$, $p < .001$, $\eta^2 = .45$. Follow-up univariate F-tests indicated that this interaction was significant for word pictures, impeachment and attacking the victim's credibility. See Table 2 for relevant means and standard deviations. Simple effects of verdict at each level of lawyer revealed a significant difference in the verdict depending on the use of word pictures by the Crown $t(56) = -3.21$, $p < .01$. When a not guilty verdict was rendered, the Crown used word pictures less frequently than when a guilty verdict was rendered. Similarly there was a significant difference for the use of word pictures by the Defense, $t(56) = 3.38$, $p < .001$. When a not guilty verdict was rendered the Defense used word pictures more frequently than when a guilty verdict was rendered. As well, there was a significant difference for the use of impeachment by the Defense,

Table 1: Mean Frequencies and Standard Deviations, F and η^2 values for Tactics used by Crown and Defense

Tactic Categories	Mean Frequencies and Standard Deviations					
	Crown		Defense		F	η^2
	M	SD	M	SD		
Word Pictures	1.07	1.41	0.48	0.90	3.41	0.06
Impeachment	0.26	0.71	2.57	3.95	5.23*	0.09
Fabrication	0.26	0.71	1.41	1.91	1.37	0.02
Victim Credibility	1.83	2.16	3.17	3.14	5.17*	0.09
Positive Tactics	0.41	1.10	2.31	4.44	2.69	0.05
Accused Credibility	0.16	0.41	0.28	0.99	0.09	0.00
Overgeneralization	0.00	0.00	0.06	0.25	0.04	0.00
Objections	0.93	1.64	0.55	0.86	0.00	0.00

Note: Potential range of response for tactics categories = 0 (category never used) to

unlimited use of category

: * $p < .05$, ** $p < .01$, *** $p < .001$

Table 2: Means and Standard Deviations for the Interaction between Verdict and Lawyer on Word Pictures, Impeachment and Attacking the Victim’s Credibility

Tactic	Verdict							
	Crown				Defense			
	not guilty ^a		guilty ^b		not guilty		guilty	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Word pictures	0.36	0.66	1.50	1.58	0.95	1.21	0.19	0.47
Impeachment	0.09	0.43	0.29	0.75	3.77	5.11	1.74	2.06
Victim credibility	1.50	1.90	2.03	2.30	4.14	3.93	2.58	2.41

Note: Potential range of response=0 (no word pictures used) to number of scenarios per case

^an=22

^bn=36

$t(56) = 2.10, p < .05$ but not the Crown, $t(56) = -1.08, ns$. When a not guilty verdict was obtained, the Defense used impeachment more frequently than when a guilty verdict was obtained. Finally, there was a significant difference for attacking the victim's credibility by the Defense, $t(56) = 2.00, p < .05$ but not the Crown, $t(56) = -.90, ns$. Not surprisingly, when a not guilty verdict was determined the Defense attacked the victim's credibility more frequently than when a guilty verdict was obtained.

A 3 (sentence: low vs. medium. vs. high)⁴ x 2 (lawyer: Crown vs. Defense) mixed measures MANOVA on the 8 tactics used by both lawyers, was conducted to determine whether use of tactics by the Crown and the Defense was associated with the sentence given the accused. As before, there was a main effect of lawyer, Pillais=.52; $F(8, 37) = 7.00, p < .001, \eta^2 = .60$. However, sentence was not associated with tactics use of either lawyer.

Content addressed

A 2 (valence: positive vs. negative toward victim) x 2 (lawyer; Crown vs. Defense) x 2 (verdict: guilty vs. not guilty) mixed measures MANOVA on the 16 content categories used by both lawyers, was conducted to determine whether use of content categories by the Crown and the Defense differed in cases with guilty versus not guilty outcomes. There was a significant main effect for both valence, Pillais=.77; $F(16, 40) = 8.37, p < .001, \eta^2 = .77$ and lawyer, Pillais=.78; $F(16, 40) = 8.61, p < .001, \eta^2 = .78$, but not for verdict. These main effects were qualified by a 2-way interaction between valence and lawyer, Pillais=.84; $F(16, 40) = 13.39, p < .001, \eta^2 = .84$. Univariate F-tests (family-wise $\alpha = .003$) indicated that this interaction was significant for previous

⁴ low = suspended/ fine/less than one year, medium = more than 1 and less than 2 years and high = more than 2 years

relationship with the accused, $F(1, 55) = 12.56, p < .001, \eta^2 = .18$, psychological adjustment after the assault, $F(1, 55) = 10.90, p < .001, \eta^2 = .17$, clothing, $F(1, 55) = 17.94, p < .001, \eta^2 = .25$, injury, $F(1, 55) = 21.75, p < .001, \eta^2 = .28$, violence, $F(1, 55) = 15.39, p < .001, \eta^2 = .22$, resistance to the assault, $F(1, 55) = 40.78, p < .001, \eta^2 = .43$, character, $F(1, 55) = 57.97, p < .001, \eta^2 = .51$, recency of report, $F(1, 55) = 24.41, p < .001, \eta^2 = .31$, initiation of interaction, $F(1, 55) = 59.54, p < .001, \eta^2 = .52$, feelings at the time, $F(1, 55) = 24.31, p < .001, \eta^2 = .31$, misunderstanding, $F(1, 55) = 22.39, p < .001, \eta^2 = .29$ and consent not given, $F(1, 55) = 57.69, p < .001, \eta^2 = .51$.

Simple main effects of lawyer at each level of valence ($\alpha = .003$) indicated that the Crown and the Defense raised significantly different frequencies of both positive and negative content related to 10 of the 12 content categories with univariate significance. Relevant means, standard deviations and t values are included in Table 3. The Crown was more likely to raise positive content and less likely to raise negative content than was the Defense.

A 2 (valence: positive vs. negative toward victim) $\times$ 3 (sentence: low vs. medium vs. high) $\times$ 2 (lawyer: Crown vs. Defense) mixed measures MANOVA on the 16 content categories used by both lawyers, was conducted to determine whether content raised by the Crown and the Defense was associated with sentencing. As before, there was a significant main effect for lawyer, Pillais=.75; $F(16, 27) = 5.03, p < .001, \eta^2 = .75$ and valence, Pillais=.74; $F(16, 27) = 4.71, p < .001, \eta^2 = .74$ but not for sentence. There was also a comparable interaction between valence and lawyer, Pillais=.69; $F(16, 27) = 3.79, p < .001, \eta^2 = .69$ with identical univariate significance as in the previous analysis, where simple effects analyses indicated as before that the Crown raised more positive and less negative content than did the Defense.

Table 3: Mean Scores, Standard Deviations, and t values for the Interaction between Lawyer and Valence on Content Raised

Valence	Crown		Defense		t
	M	SD	M	SD	
Positive to victim					
Prev Relate Accused	0.32	0.47	0.03	0.18	4.86***
Psych Adj/After	0.21	0.41	0.03	0.18	3.45***
Clothing Torn	0.53	0.50	0.12	0.33	6.34***
Victim Injury	0.71	0.46	0.34	0.48	5.68***
Violence	0.67	0.47	0.31	0.47	5.69***
Resistance to Assault	0.87	0.32	0.37	0.49	7.07***
Character of Victim	0.26	0.44	0.01	0.00	4.46***
Recency of Reporting	0.60	0.49	0.16	0.37	6.37***
Initiation of Interaction	0.78	0.42	0.22	0.42	8.36***
Feelings at Time	0.60	0.49	0.14	0.34	6.60***
Misunderstanding	0.41	0.50	0.07	0.26	5.10***
Consent Not Given	0.76	0.43	0.14	0.34	9.02***
Negative to victim					
Prev Relate Accused	0.21	0.41	0.24	0.43	-0.57
Psych Adj/After	0.02	0.13	0.03	0.18	-0.57
Clothing Torn	0.19	0.40	0.26	0.44	-0.94
Victim Injury	0.07	0.26	0.17	0.38	-1.76
Violence	0.17	0.38	0.28	0.45	-1.63
Resistance to Assault	0.08	0.28	0.24	0.43	-2.41
Character of Victim	0.08	0.28	0.47	0.50	-5.91***
Recency of Reporting	0.29	0.46	0.30	0.46	-1.94
Initiation of Interaction	0.03	0.18	0.20	0.40	-3.46***
Feelings at Time	0.07	0.26	0.09	0.28	-0.37
Misunderstanding	0.00	0.00	0.07	0.26	-2.06
Consent Not Given	0.01	0.01	0.10	0.30	-2.66

Potential range of response = 0 (no reference) to 1 (used this category with this valence)

Note : * $p < .05$, ** $p < .01$, *** $p < .001$

Use of myth-based content

A 2 (valence: positive vs. negative toward victim) x 2 (lawyer: Crown vs. Defense) x 2 (verdict: guilty vs. not guilty) mixed measures ANOVA on myth-based content use revealed a significant main effect for lawyer, $F(1, 55) = 43.8, p < .001, \eta^2 = .44$. Examination of the means indicated that the Crown was more likely to use myth-based material ($M = 3.46, SD = 1.59$) than was the Defense ($M = 2.24, SD = 1.96$). There was also a significant main effect for valence, $F(1, 55) = 15.9, p < .001, \eta^2 = .22$. Examination of the means indicated that myth-based content with positive valence in relation to the victim was raised more frequently ($M = 3.48, SD = 1.80$) than myth-based content with negative valence ($M = 2.28, SD = 1.76$).

These main effects were qualified by two significant interactions, one between lawyer and valence, $F(1, 55) = 116.9, p < .001, \eta^2 = .68$ and the other between valence and verdict, $F(1, 55) = 9.31, p < .01, \eta^2 = .15$. Simple effects of lawyer at each level of valence indicated that the Crown and Defense raised significantly different frequencies of both positive, $t(57) = 14.14, p < .001$ and negative, $t(57) = -3.86, p < .001$ myth-based content. Relevant means are presented in Table 4. The Crown was more likely to raise positive content than was the Defense, and less likely to raise negative content than the Defense. In addition, simple effects of verdict at each level of valence indicated that when negative myth-based content was used, $t(56) = 3.11, p < .01$, the verdict was more likely not guilty than guilty. However, there was no difference in verdict when positive myth-based content was used, $t(56) = -1.60, ns$. See Table 5 for relevant means and standard deviations.

Table 4: Mean Scores and Standard Deviations for the Interaction between Lawyer and Valence on myth-based content

Valence	Lawyer			
	Crown		Defense	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Positive to victim	5.40	1.95	1.72	1.64
Negative to victim	1.55	1.23	2.72	2.30

Note: Potential range of response for rape myths based categories = 0 (use of no categories) to 13 (use of all rape myths based categories)

Table 5: Mean Scores and Standard Deviations for Interaction between Valence and Verdict on Myth-based content

Verdict	Valence			
	Positive to Victim		Negative to Victim	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Guilty ^a	3.79	1.57	1.73	1.80
Not-guilty ^b	3.13	1.81	2.87	1.60

Note: Potential range of response for rape myths based categories = 0 (use of no categories) to 13 (use of all rape myths based categories)

^an=36

^bn=22

A 2 (valence: positive vs. negative toward victim) x 2 (lawyer: Crown vs. Defense) x 3 (sentence: low vs. medium vs. high) mixed measures ANOVA on the extent of using content based in myths revealed significant main effects for lawyer, $F(1, 55) = 48.3, p < .001, \eta^2 = .47$ and valence, $F(1, 55) = 19.8, p < .001, \eta^2 = .26$, and a significant interaction between lawyer and valence, $F(1, 55) = 90.9, p < .001, \eta^2 = .62$. The use of myth-based content was not associated with sentence.

Use of non-myth-based content

A 2 (valence: positive vs. negative toward victim) x 2 (lawyer: Crown vs. Defense) x 2 (verdict: guilty vs. not guilty) mixed measures ANOVA on using content not based in myths indicated a significant main effect for lawyer, $F(1, 55) = 50.59, p < .001, \eta^2 = .48$. Examination of the means indicated that the Crown more often raised non-myth based content ($M = .92, SD = .98$) than did the Defense ($M = .35, SD = .58$). There was also a main effect of valence, $F(1, 55) = 75.6, p < .001, \eta^2 = .58$. Positive content ($M = 1.08, SD = .84$) was raised more frequently than negative content, ($M = .19, SD = .41$).

These main effects were qualified by a significant interaction between lawyer and valence, $F(1, 55) = 76.73, p < .001, \eta^2 = .58$. Simple effects of lawyer at each level of valence indicated that the Crown and Defense raised significantly different frequencies of both positive, $t(57) = 9.82, p < .001$ and negative, $t(57) = -2.39, p < .05$ myth-based content. Relevant means are presented in Table 6. As expected, the Crown used positive non-myth based content more often than did the Defense, and used negative non-myth-based content less often than did the Defense.

A 2 (valence: positive vs. negative toward victim) x 2 (lawyer: Crown vs. Defense) x 3 (sentence: low vs. medium vs. high) mixed measures ANOVA again revealed significant main effects of lawyer, $F(1, 55) = 62.37, p < .001, \eta^2 = .53$ and of valence, $F(1, 55) = 51.8, p < .001, \eta^2 = .49$, and their interaction, $F(1, 55) = 71.86, p < .001, \eta^2 = .57$. The use of non-myth based content was not associated with sentencing. Relevant means and standard deviations are presented in Table 6.

Table 6: Mean Scores and Standard Deviations for Interaction between Lawyer and Valence on non-Myth-based content

Valence	Lawyer			
	Crown		Defense	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Positive to victim^a	1.78	1.08	0.34	0.61
Negative to victim^b	0.07	0.26	0.26	0.55

Note: Potential range of response for non-rape myth-based categories = 0 (use of no categories) to 3 (use of all non-rape myth-based categories)

^an=36

^bn=22

Discussion

This study represented an attempt to determine whether the Crown and Defense differentially used tactics and whether tactics usage was associated with trial outcomes. As well, the potential rape myth basis of question content and the link between question content and trial outcomes was examined.

The tactics examined in this study were available to both lawyers; the Defense could use tactics to undermine the testimony of the victim when eliciting factual information, while the Crown could either offset the tactics once used by the Defense, through re-direct, or could anticipate the Defense's usage of tactics and inoculate against them in direct examination. As well, both lawyers could use the tactic of objection, in order to stem the flow of information elicited by the opposing counsel at any point in the trial. Overall, few tactics were used a great deal by either lawyer. This could suggest that trial outcomes are determined by other factors such as the evidence, content or non-verbal behavior of the lawyers and/or witnesses (Evans, 1994; Matton, 1988), thus there is little need for the use of tactics in order to 'score points' against opposing counsel. It could also suggest that tactics are only effective in certain circumstances, perhaps only as a response to a specific question type asked by the opposing counsel, and these circumstances are relatively rare in dealing with the victim in sexual assault cases.

When tactics were used, they were more likely to be used by the Defense. The Defense most commonly used debilitating tactics that cast the witness in a negative light irrespective of her answers. For example, the Defense brought out negative information on the victim's drinking, sociability and attire in order to attack the victim's credibility. While the Crown could have offset each tactic before or after the Defense used it, he/she rarely did so. The differential use of tactics

might be a reflection of the legal process which is enacted before and leading up to the trial, whereby the Crown selects the cases with the most positive prosecutorial merits for trial; at the trial, the onus may be on the Defense to aggressively highlight flaws in the Crown's cases (Evans, 1994). An alternative explanation could be that the Defense's performance in the courtroom is an artifact of our current legal system where a reputation for winning cases leads to a larger fee for clients, in stark contrast to the Crown, who is paid the same salary regardless of reputation (Makin, 1998). Furthermore, it could be that the Crown feels constrained as he/she has to appear before the same judge repeatedly (Makin, 1998), and thus is less likely to use tactics in any kind of inflammatory manner. The Defense, however, would not suffer from these constraints, as he/she can appear in front of a variety of judges.

Surprisingly, lawyers were not reluctant to emphasize material counter to their courtroom position, in that the Crown brought out information negative to the victim and the Defense the reverse. This may have been a strategic move, in that it was better to introduce the material first, regardless of its connotations, so that it could be manipulated into the particular attorney's own framework.

In this sample, 61% of those accused were found guilty, and 39% were found not guilty. For those found guilty, 25% received a fine or suspended sentence, 23% one year or less, 25% between one to two years, 25% two to five years in prison. Only 2% received a sentence exceeding five years. Thus, although the cases had been filtered at two likely places in the legal process before coming to trial, two-thirds were still lost at the trial phase. In addition, although the maximum sentence for this crime is 14 years to life in prison, the majority of the offenders deemed guilty were often sentenced to well below the maximum (Statistics Canada, 1993). This

suggests that although provisions have been made for the recognition of the severity of the crime of sexual assault (Bill C-127), these provisions do not translate into action in the courtroom.

Not surprisingly, trial tactics were associated with the trial outcomes. Word pictures, impeachment and attacking the victim's credibility were all related to verdict. In each instance, when a guilty verdict was obtained, the Defense used these tactics more frequently than when a not guilty verdict was rendered. When a guilty verdict was rendered, the Crown used only word pictures more often than when a not guilty verdict was obtained. Given that the potential efficacy of word pictures in trials has been documented (Bavelas, 1996; Coates et al., 1994; Danet, 1980a; Danet, 1980b), the Crown's focus appears well placed. However, given the documented effectiveness of impeachment (Martin & Powell, 1994; Wells, 1998) and attacking the victim's credibility (LaFree et al., 1985; LaFree, 1989), it is unclear why the Crown would not also focus his/her efforts on offsetting these tactics.

One potential reason could be that Crown may feel that he/she has relatively limited resources, and thus prefers to direct his/her efforts behind one tactic which could be effectively used. Given the documented heavy caseloads of Crown attorneys (Makin, 1998), it is probable that the Crown has less time available to prepare for a case than the Defense, and this lack of preparation may render the Crown unable to anticipate the Defense's strategies or offset them effectively.

It was not altogether unusual that the tactics used were unrelated to the sentence given, as sentencing can be affected by factors that were not included in this analysis, such as the mitigating factors considered by the judge or jury (whether the accused was employed, had a prior record) and the sympathy of the judge to the victim (Bavelas, 1996; Coates et al., 1994). Conversely, it

could be that the tactics used have a relationship to sentence which is more complex than the connections analyzed in this study. For example, Yarmey (1985a, 1985b) suggested that once the verdict is decided, respondents' views on the legal system and the responsibility of the victim, might most determine sentencing. These processes are not yet well examined, and as such, the factors which determine sentencing are still felt to be complicated.

Surprisingly, the content elicited was not related to the verdict, except when the question content suggested that the victim had contravened the stereotype of the 'typical' rape victim. Experiences counter to those fostered in rape myths were used effectively to work negatively against the victim. Of interest, the verdict did not vary when the content supported rape myths, suggesting that evidence supporting the stereotypical rape victim was not noteworthy to jurors; perhaps it was expected. This is in keeping with research that indicates that the evidence supporting stereotypes can often be easily encoded, as it is expected information, while evidence contradicting stereotypes is more salient (Macrae, 2000). Further, Seta & Seta (1993) found that when individuals were presented with information counter to their strongly held stereotypes, they tended to hyper-compensate by accepting even more stereotypical beliefs in response.

Despite this, the Crown referred to the myth-based content more often than did the Defense, albeit in a manner positive to the victim. This may be due to the nature of the cases that make it to trial, in that they are already pre-selected to be congruent with the legitimate victim established by rape myths (Renner et al., 1997). In this way, they would be rife with rape myths which could be capitalized upon by the Crown, but not necessarily by the Defense. In fact, Crown prosecutors have admitted to using the rape myths to their advantage, when they feel it is necessary to do so in order to win a case (Barnes, MacDonald, Armour & Dumont, 1999).

Alternatively, the Crown's case may rest on other evidence than the victim's testimony, such as non-verbal communication or victim attractiveness (Drew, 1992; Frohmann, 1991). Given that this research was conducted on actual cases that were not manipulated or controlled in any way, it is possible that these factors were present and not measured, but that they did exert influence on the efficacy of the Crown's case. Although this alternative is possible, placing the victim in the face of the Defense's use of negative tactics toward the victim, with a lower frequency of corresponding tactics from the Crown, would suggest that the victim is faced with a difficult situation on the witness stand. Perhaps this is part of the reason that sexual assault victims report distress when they experience cross-examination by a defense lawyer (Brereton, 1997; Konradi, 1998a; 1998b).

These results did not investigate whether the Crown's lack of effective usage of tactics other than word pictures was due to an inability or through choice. Research into the use of tactics by the lawyers would benefit from examining the controlled manipulation of a tactic by the Crown which was previously used effectively by the Defense. This would determine whether other tactics than word pictures can be used effectively by the Crown in order to affect the trial outcomes and perceptions of the lawyers and victim.

Study 2

The Crown has three active strategies used for framing the questions posed of sexual assault victims in the court: inoculation, where the Crown addresses a troublesome point with the victim before the Defense has a chance to do so; redirect, where the Crown asks questions of the victim after she has been cross-examined in an effort to address negative points highlighted by the Defense and objection, where the Crown lodges a verbal dissent with either the delivery or the content of a point that the Defense has raised. As well, the Crown can use no response, where the Crown does nothing after eliciting the direct testimony (Kapardis, 1997; Oddie, 1988). The Crown can use inoculation before the Defense has cross-examined the witness, objection during the Defense's cross-examination and redirect after the cross-examination.

Study 1 suggested that the Crown did not use these strategies as frequently and effectively as did the Defense. This finding, combined with the fact that two-thirds of the cases examined resulted in a guilty verdict, despite the prior selection criteria, suggested that there was potential for the Crown to exert more control over trial outcomes, with an added ability to use tactics more efficiently. This study represented an attempt to investigate the potential effectiveness of the Crown's adopting tactical strategies other than word pictures during the questioning of the victim in the sexual assault trial, and to determine the extent to which other tactics could affect the verdict and outcome of the sexual assault trial. Four tactics were examined, namely: redirect, objection, inoculation, and no response. The effects on offsetting Defense tactics and reducing the perception of re-victimization of the sexual assault victim in the courtroom were also assessed.

One of the effective tactics used by the Defense in Study 1 was that of attacking the victim's credibility. This occurred when the Defense questioned the victim on characteristics that

may have contributed to her misperception or misrepresentation of the events of the sexual assault, for example, whether there was enough light for her to see, or if she was drinking or using drugs. The Defense used this tactic almost three times as often as the Crown offset this tactic, and indeed it was linked to a not guilty verdict. In addition, both the Crown and the Defense used/offset this tactic more frequently than any other tactic, suggesting that the victim's credibility is of integral importance to the lawyers in the sexual assault trial. Therefore, in this experiment, the effectiveness of the four Crown tactics to respond to or to offset the Defense's attack on the victim's credibility were examined.

Much of the literature on rape myth endorsement, perceptions of sexual assault victims including credibility, and characteristics of victims such as attractiveness, culpability, and biases grounded in race and age, as well as similar dimensions of perceptions and biases toward the accused in sexual assault cases comes from the findings of jury decision-making studies (Allison, 1996; Bagby et al., 1994; Erian, Lin, Patel, Neal, & Geiselman, 1998; Foley & Pigott, 1997; Golding, Sanchez & Sego, 1997; Greene, Koehring & Quiat, 1998; Hymes, Leinhart, Rowe & Rogers, 1993; Schuller & Cripps, 1998; Sealy & Wain, 1980; Spanos, Dubreuil, & Gwynn, 1991; Thornton, 1977; Yarmey, 1985a; 1985b). The jury simulation paradigm allows mock jurors to view, hear, or read testimony and/or view pictures that are either from simulated or actual sexual assault trials, and then to make judgements, often individually, on the case. This type of methodology is suitable for experiments that attempt to manipulate factors in the case in order to assess the effects on outcome. Thus a jury simulation paradigm will be used in the current experiment.

Due to the dearth of information on the effectiveness of Crown strategies, and the low frequency with which they were used with any influence on trial outcome, expectations regarding the relative effectiveness of each strategy were limited. Nonetheless, it was expected that the conditions in which the Crown used inoculation, redirect or objection would produce more of an effect against the Defense's attack on the victim's credibility, compared to the control condition in which the Crown did not respond at all. However, given that Kapardis (1997) indicated that constant objections could antagonize the judge, it was further predicted that the conditions in which the Crown used redirect and inoculation would be more effective at thwarting the Defense's attack on victim credibility than when the Crown used objection.

A predominant female bias toward and a male bias against the sexual assault victim exists in the literature (Bottoms & Goodman, 1994; McNamara, Vattano & Viney, 1993; Schutte & Hosch, 1977; Tetford & Schuller, 1996). In addition, there is stronger endorsement of rape mythology among male than female respondents (Burt, 1998; Fischer, 1997; Tetreault, 1989). It was therefore expected that females would be more amenable to positive actions on the part of the Crown, than would men or those with high rape myths endorsement.

Method

Participants

Participants were recruited from Introductory Psychology courses, 49.101 and 49.102 at Carleton University ($n = 200$), and from Heritage College ($n=40$), and included an equal number of males and females. Participants were randomly assigned to one of four groups with equal numbers in each group. They were told they were participating in a study in which they would be making judgements about a sexual assault case, particularly their perceptions of the victim, Crown

and Defense, based on a portion of written transcript. Due to ethical considerations, participants were notified that the study may be disturbing for some.

Fifty-one (21.2%) respondents indicated that they had been sexually assaulted. Chi-squared analyses on victim of assault and gender were significant, $\chi^2 = 37.9$, $p < .001$, indicating that females were more likely to be victims of sexual assault ($n = 45$, 37.5% of women) than males ($n = 6$, 5% of males).

Procedure

Information concerning the study was posted to recruit potential participants (Appendix E). Upon arrival, participants were reminded of the nature and content of the study and asked to read and sign a general informed consent form to this effect (Appendix F).

Each participant was randomly assigned to read one of the four different two page case scenarios reflecting 4 different Crown tactics (no strategy vs. objection vs. inoculation vs. re-direct). Trial transcripts (Appendix G) were drawn from the cases examined in the preliminary studies. The transcripts included a) a brief description of the circumstances of the alleged sexual assault, b) a brief definition of the roles played by the Crown and the Defense in the trial, c) a portion of the testimony between the Defense, the Crown and the witness, and any interruptions from the judge. The case facts and lines of questioning were the same for each of the four cases. Although the questions asked by the Crown were essentially the same, variations reflected the manipulation of the strategy used by the Crown to offset attacks on the victim's credibility.

The basic case facts were as follows: The trial involved the alleged sexual assault victim, a visitor to Ottawa from Halifax. Ms. Smith was a 20 year old, second year university student on her

Spring Break. She went to a local bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. He bought her a drink and they chatted some more. They danced a few times at that bar, and then she left to go on a tour of the city with him, leaving her girlfriend behind. As he was driving her home, she alleged that he sexually assaulted her.

After reading the scenario, participants responded to the questionnaires. Upon completion, participants were debriefed and given a list of contacts which included services specifically for victims of sexual assault and counseling services (Appendix F).

Questionnaires

The questionnaires took approximately 30 minutes to complete (Appendix H).

Manipulation checks. Two questions assessed whether the manipulation for each condition was perceived correctly. The first question defined the strategies which could be used by the Crown in any of the four conditions and asked respondents to indicate whether they thought the Crown actually used each of them, on a 2 point scale where 0 was 'not at all' and 1 was 'used this strategy' (Appendix H)⁵. The second question was similar to the first except that it asked about the use of strategies by the Defense.

Perceptions of guilt. Participants were asked to indicate whether they believed the accused to be guilty (1) or innocent (2) by placing a check mark next to one of the two options.

⁵ Materials for each experimental group were piloted on a convenience sample of 12 males and 12 females. Based on responses from these participants, the manipulation check was modified from an interval to a nominal scale variable with two options. As well, wording for some questions was modified. Pilot study results indicated that the manipulation was effective and the experimental manipulations were more effective than the control in producing responses on the ratings of perceptions of guilt, sentence, and perceptions of the Crown.

Consistent with past research, Bottoms and Goodman (1994), Hymes et al. (1993), Schuller and Cripps (1998), respondents were asked to rate on a 7-point scale, whether they were very confident (1) or not at all confident (7) in their verdict.

Similar to Bottoms and Goodman (1994), Nightingale (1993), Reskin and Visser (1986), Schuller, Smith and Olson (1994), participants were also asked to indicate the probability that the accused was guilty of committing this sexual assault, on a scale from 0 to 100%, with 0 indicating that the accused was not guilty and 100 meaning that the accused was definitely guilty.

Sentencing. Sentencing was measured by a forced choice question with six options, reflective of the types of sentences that were given in the actual trials examined in the preliminary research and the options used in previous studies (Erian et al., 1998; McNamara et al., 1993; Thornton, 1977). Respondents responded to the question, "If a jury in this case found the accused guilty, what sentence would you give him for committing this sexual assault?" by circling one of the six options: \$100 fine; less than 6 months; more than 6 months but less than 1 year; more than 1 year but less than 2 years; more than 2 years but less than 4 years; more than 4 years (Appendix H).

Perceptions of the Crown and Defense. The Crown's effectiveness in the court was measured in terms of his/her credibility, ability to protect the witness, ability to confuse, awkwardness, competence, ability to convince, insensitivity to the victim, and disrespect for the victim (Allison, 1996; Bottoms & Goodman, 1994; McNamara et al., 1993; Nightingale, 1993; Schuller, 1992). For each of these items participants were asked to rate on a 7-point scale whether the Crown did not display the variable at all (1) or whether he/she displayed the variable very much (7), while asking questions of the sexual assault victim (Appendix H).

The eight items used to measure respondents' perceptions of the Crown were factor analysed using a principal components extraction to reveal two factors, based on the scree plot. The first factor accounted for 41.9% of the total variance and was made up of four items which focused on the positive qualities of the Crown attorney (credibility, ability to protect the witness, competence and ability to convince). The second factor accounted for 21.8% of the total explained variance and was comprised of four items which focused on the negative qualities of the Crown attorney (ability to confuse, awkwardness, insensitivity to the victim and lack of respect for the victim). An inter-item reliability analysis was performed on the items within each factor, which showed a Cronbach's alpha of .83 and .69, respectively.

It was thought that perceptions of the Defense might vary depending on the strategy used by the Crown. Participants were asked to rate the credibility of the Defense on the basis of his/her performance in the court on the same 7-point scales as used for the Crown (Appendix H). A reliability analysis was performed on the eight items which were parallel to those used in the two factors for perceptions of the Crown, revealing a Cronbach's alpha of .62 and .60. It was decided that if one of the 4 items for each factor was removed for both the Crown and the Defense, the factors for the Crown would still be reliable and those for the Defense would increase in reliability. Thus, "ability to protect the witness" was discarded from the first factor and "insensitivity to the victim" was discarded from the second, based on having the lowest item-total correlations. The remaining three items were used for each factor with inter-item reliabilities of .85 and .75, respectively, for the Crown and reliabilities of .76 and .65, respectively, for the Defense. Scores were created by taking the average of the items in each factor for each the Crown and the Defense, such that higher scores represented a greater perception that these qualities were applicable.

Re-victimization perceptions. Respondents were given a definition of re-victimization and asked how well they thought the Crown protected the witness against re-victimization in this trial on a 7-point scale, from very well (1) to not at all well (7); and how much the Crown promoted re-victimization in the trial on a 7-point scale, from very much (1) to not at all (7). These two questions were significantly correlated, $r = -.45$, $p < .001$. Thus, the question asking how much the Crown promoted re-victimization was reverse scored, and the responses to both questions on re-victimization averaged, such that high scores indicated that the Crown protected the victim well.

Respondents also rated the extent to which the Defense promoted re-victimization and protected the witness against re-victimization on the same 7-point scales. Again, these two variables were significantly correlated, $r = -.32$, $p < .001$. As a result, the question on how much the Defense promoted re-victimization was reverse scored, and scores on both re-victimization variables averaged.

Influence of the Crown and Defense on verdict. Two rating scales measured the degree to which verdict ratings were influenced by the actions of the Crown and Defense respectively (Bottoms & Goodman, 1994). Respondents were asked directly how important the Crown's and the Defense's questions were to their own verdict concerning the accused's guilt on a 7-point scale from 1 (not at all at all important) to 7 (very important).

Perceptions of the witness. Participants rated the witness on several different dimensions, including certainty, credibility, consistency, strength, reliability, ability to convince, believability and persuasiveness (Allison, 1996; Berman, Narby & Cutler, 1995; McNamara et al., 1993), using a 7-point scale indicating whether the witness did not display the variable at all (1) or whether she displayed the variable very much (7), during her testimony (Appendix H). These eight

items were analysed using a principal components analysis to reveal one factor, based on the scree plot. This factor accounted for 53.5% of the total explained variance. A reliability analysis indicated an inter-item Cronbach's alpha reliability of .87. Scores were subsequently created by taking the average of responses to the eight items, such that high scores indicated a greater perception that these qualities were applicable.

Most important factor. An open ended-question asked participants to indicate which factor was most important in determining the accused's guilt. A classification scheme involving 8 distinct categories was derived following an examination of the written responses. Inter-rater reliability (97%) was determined by having two independent raters classify the answers for 20 randomly selected respondents.

Rape Myths Acceptance Scale. Eleven items derived from Burt's (1980) Rape Myths Acceptance Scale were rated using a 7-point scale ranging from strongly disagree (-3) to strongly agree (3). An inter-item reliability analysis indicated a Cronbach's α reliability of .76. The mean score was calculated for each respondent such that higher scores reflected high rape myths endorsement. On average, participants tended to have low rape myths endorsement ($M=-2.14$, $SD=.71$).

Social Desirability Scale. Ten items of the short form of the Social Desirability Scale were rated using a 2-point scale where respondents either indicated true (1) or false (0) to the item content. An inter-item reliability analysis was done on the 10 items of this scale, revealing a Cronbach's alpha reliability of .53 in keeping with the known psychometric properties of the scale. It was concluded that this scale was not as reliable as desired, but given its longevity and extensiveness of use, was analyzed nonetheless. Mean scores were calculated such that higher

scores indicated high social desirability. Participants displayed medium social desirability on average ($M = .46$, $SD = .20$).

Results

Manipulation Checks

To assess whether the experimental manipulations for the Crown lawyer's strategy (control vs. objection vs. inoculation vs. re-direct) were effectively conveyed, the accuracy of participants' perceptions of the presence of particular lawyer strategies was examined. Identifications were coded as correct if they identified the strategy correctly without identifying any other incorrect strategy; incorrect if they identified a strategy that was not used; or ambiguous if they identified two strategies, when only one could be correct. Chi-square analyses on the frequencies of correct vs. incorrect vs. ambiguous identifications showed no difference as a function of condition in participants' accuracy in identifying the strategy used by the Crown, $\chi^2(6) = 5.6$, ns. Table 7 displays relevant frequencies of correct, incorrect and ambiguous identifications for the Crown strategies.

Respondents also indicated whether the Defense attacked the victim's credibility, a strategy that was always used, and whether the Defense objected to questions asked by the Crown, a strategy that was never used. Chi-square analyses for the Defense strategies indicated no difference between conditions⁶, $\chi^2(3) = 4.59$, ns. Table 8 displays relevant frequencies of correct and incorrect identifications for the Defense strategies used for each Crown strategy condition. On the whole, respondents were accurate in identifying the strategy used by the Crown

⁶ Given that no respondents incorrectly identified both strategies as simultaneously used by the Defense, there were no 'ambiguous' identifications. As such, there were only 3 degrees of freedom for this analysis as a result.

Table 7: Frequencies of Correct, Incorrect and Ambiguous Perceptions of Crown Strategies

Frequencies	Crown Strategy			
	none	objection	inoculation	re-direct
correct	57 (95%)	55 (92%)	52 (87%)	53 (88%)
incorrect	3 (5%)	2 (3%)	6 (10%)	4 (7%)
ambiguous	0 (0%)	3 (5%)	2 (3%)	3 (5%)

and the Defense. It was decided that responses from all participants would be included in the analyses in order to maintain sufficient sample size in each cell of the analyses of variance ⁷.

Determination of Viable Covariates.

It was argued that rape myths endorsement and social desirability scores should be used as covariates in examining the effects of gender and lawyer strategy. These potential covariates were examined to assess whether the assumptions of analysis of covariance (ANCOVA) were tenable.

Correlations between rape myths endorsement and all 13 dependent variables were examined to determine whether they satisfied the assumption of a linear relationship. Rape myth endorsement was significantly correlated with 8 of the 13 dependent variables while social desirability scores only significantly correlated with 4 of the 13 dependent variables. Due to the low number of significant correlates, social desirability was not viewed as a useful covariate overall, and so was not considered further. See Table 9 for relevant correlations.

In order to assess whether rape myth endorsement scores satisfied the assumption of homogeneity of regression slopes, multiple regression analyses with rape myths endorsement, Crown strategy and gender as predictors of each dependent variable, were performed. To do so, standardized rape myths scores were calculated and Crown strategy was dummy coded into three variables. A hierarchical regression was performed on each dependent variable, with main effects entered on the first step, the 2-way interactions entered on the second step and the 3 -way interaction entered on the third. The 2-way interactions between rape myth endorsement x group

⁷ In order to ensure that the inclusion of the respondents who failed the manipulation checks did not affect the results, all key analyses were re-conducted without these participants. There were no differences in the results.

Table 8: Frequencies of Correct, Incorrect and Ambiguous Perceptions of Defense Strategies

Defense Strategy Identified	Crown Strategy Condition			
	none	objection	inoculation	re-direct
Credibility	57 (95%)	59 (98%)	55 (92%)	59 (98%)
Objection	3 (5%)	1 (2%)	5 (8%)	1 (2%)
Ambiguous	0	0	0	0

Table 9: Correlations between Rape Myths Endorsement Scores, Social Desirability Scores and Dependent Variables

Dependent Variables	Rape Myths Scores	Social Desirability Scores
	r	r
verdict	.13*	-.15*
probability of guilt	-.16*	0.05
confidence in verdict	-0.03	-.16 *
sentence	-.14*	-0.04
positive attributes of the Crown	-.15 *	0.06
negative attributes of the Crown	.20 **	0.06
positive attributes of Defense	-0.04	-0.02
negative attributes of Defense	-0.06	-0.07
perceptions of the victim	-.23 ***	0.06
index of Crown re-victimization	-0.05	0.09
index of Defense re-victimization	.29 ***	.15*
importance of the Crown's questions	-.16 *	.15 *
importance of Defense's questions	-0.006	0.05

* $p < .05$

** $p < .01$

*** $p < .001$

and/or rape myth endorsement x gender were significant for 8 of the 13 dependent variables. As a result, it was concluded that rape myths endorsement violated the assumption of homogeneity of the regression coefficient. Rather than using it as a covariate, it was included as an independent variable in all analyses. To use ANOVA, it was re-coded as a dichotomous variable using a median split (Median = -2.3), with subjects either possessing high (score above the median) or low (score below the median) rape myths endorsement.

Main Analyses⁸

Dependent variables were analysed in a 2 (lawyer: Crown vs. Defense) x 2 (gender: women vs. men) x 2 (rape myths endorsement: high vs. low) x 4 (Crown strategy: no strategy vs. objection vs. inoculation vs. re-direct) mixed measures design, where lawyer represented the within subjects variable. To control for Type II errors it was decided that any interactions that did not have an effect size of at least $\eta^2 = .05$, were not meaningful, and would not be followed up.

Lawyer attributes. Positive and negative attributes of both lawyers were analysed using a mixed MANOVA. Respondents perceived the attributes to differ significantly as a function of lawyer at the multivariate level, Pillais=.46; $F(2, 223) = 93.8$, $p < .001$, $\eta^2 = .56$. Univariate F -tests indicated that the Crown was seen as more positive toward the victim ($M = 5.26$, $SD = 1.26$) than the Defense ($M = 4.90$, $SD = 1.27$), $F(1, 224) = 7.74$, $p < .01$, $\eta^2 = .03$, and as less negative toward the

⁸To assess whether the dependent variables satisfied the normality assumption for parametric statistics, descriptive statistics were examined. The index of Crown re-victimization was skewed (skew=-.52, $se_{skew} = .16$). A square root transformation was applied to the data, with little improvement in the data distribution. Similarly, the index of Defense re-victimization was skewed with skewness=.69 and $se_{skew} = .16$, and a square root transformation applied to the data showed no substantial improvement. The importance of the Defense's questions to the respondent's verdict was skewed, skewness statistic=-1.0 and $se_{skew} = .16$ and a square root transformation applied to the data, producing a large number of outliers. Thus it was decided to use the raw data in each of these cases, as the statistics which would be applied to the data (ANOVA and regression) were robust with respect to deviations from normality

victim ($M=2.36$, $SD=1.20$) than the Defense ($M=3.91$, $SD=1.38$), $F(1, 223)=172.2$, $p<.001$, $\eta^2=.44$.

Male and female respondents perceived attributes of both lawyers differently, Pillais=.06; $F(2, 223)=6.8$, $p<.01$, $\eta^2=.06$. Univariate F-tests indicated significance only for the negative attributes of the lawyers, $F(1, 224)=11.5$, $p<.01$, $\eta^2=.05$, in that female participants rated the Crown ($M=2.5$, $SD=1.3$) and the Defense ($M=4.2$, $SD=1.2$) more negatively than did male participants ($M=2.2$, $SD=1.1$ and $M=3.6$, $SD=1.5$, respectively).

In addition, respondents perceived the attributes of the lawyers differently depending on which Crown strategy was used, Pillais=.09; $F(6,448)=3.52$, $p<.01$, $\eta^2=.05$. However, this main effect was qualified by a 2-way interaction between lawyer and lawyer strategy, Pillais=.15; $F(6,448)=6.0$, $p<.001$, $\eta^2=.07$. Univariate F-tests indicated that this interaction was significant for both positive ($F(3,224)=10.5$, $p<.001$, $\eta^2=.12$) and negative ($F(3,224)=4.0$, $p<.01$, $\eta^2=.05$) attributes. Simple main effects of Crown strategy at each level of lawyer indicated a significant difference in perceptions of the positive attributes of the Crown, $F(3,239)=11.9$, $p<.001$, the positive attributes of the Defense, $F(3,239)=4.24$, $p<.01$, and the negative attributes of the Defense, $F(3,239)=9.16$, $p<.001$. Planned comparisons were done to compare the effects of the Crown's strategies vs. no strategy, re-direct vs. inoculation, and inoculation and re-direct vs. objection, on respondent ratings of his/her positive attributes. See Table 10 for relevant means and standard deviations. Results indicated that the Crown was seen more positively when any strategy was used than when no strategy was used, $t(236)=-5.13$, $p<.001$, more positively when either the strategy of re-direct or inoculation were used as compared to when objection was used, $t(236)=$

2.66, $p < .001$. There was no significant difference in perceptions of the Crown's positive attributes when inoculation was used vs. re-direct, $t(236) = -1.57$, ns.

Tukey's comparisons ($\alpha = .008$) on respondent ratings of the Defense's positive attributes indicated that the Defense was seen least positively when the Crown used re-direct in comparison to any other strategy. See Table 10 for relevant means and standard deviations. No other pairwise comparison was significant.

Finally, Tukey's comparisons ($\alpha = .008$) on respondent ratings of the Defense's negative attributes indicated that the Defense was seen more negatively when the Crown used re-direct ($M = 4.60$, $SD = 1.30$) than when the Crown used no strategy ($M = 3.60$, $SD = 1.40$, $p < .001$), objection ($M = 3.90$, $SD = 1.40$, $p < .001$), or inoculation ($M = 3.50$, $SD = 1.08$, $p < .001$). No other pairwise comparisons were significant.

Re-victimization of witness. Participants rated the re-victimization behaviour of the Crown as significantly different from that of the Defense, $F(1,224) = 325.30$, $p < .001$, $\eta^2 = .59$. Not surprisingly, respondents rated the Crown as more protecting of the victim ($M = 4.8$, $SD = 1.5$) than the Defense ($M = 2.5$, $SD = 1.24$).

This main effect was qualified by three 2-way interactions. The significant interaction between lawyer and gender, $F(1,223) = 5.02$, $p < .05$, $\eta^2 = .02$, suggested that male and female respondents rated re-victimization by the lawyers differently. Due to the effect size below the criterion, no further analyses were performed on this interaction.

There was also an interaction between lawyer and rape myths endorsement, $F(1,224) = 12.36$, $p < .01$, $\eta^2 = .05$. As can be seen in Table 11, simple effects analyses of rape myths

Table 10: Means and Standard Deviations for the Perceptions of Lawyers' Positive Attributes as a Function of Crown Strategy

Crown Strategy ^a	Crown		Defense	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
control	4.58	1.60	5.17	1.24
objection	5.15	1.20	5.00	1.31
inoculation	5.48	0.97	5.04	1.02
re-direct	5.81	0.82	4.38	1.36

Note: Potential range of response=1 (attribute not displayed at all) to 7 (attribute displayed very much)

^an=60 for each condition

Table 11: Means and Standard Deviations for Re-victimization Ratings as a function of Rape Myths Endorsement and Lawyer

Rape Myths Endorsement	Lawyer			
	Crown		Defense	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Low ^a	4.89	1.61	2.18	1.14
High ^b	4.71	1.32	2.77	1.28

Note. Potential range of response = 1 (re-victimized the witness very much) to 7 (did not re-victimize the witness at all)

^an=118

^bn=122

endorsement at each level of lawyer showed that the Defense was seen as more re-victimizing by respondents with low rape myths endorsement than those with high rape myths endorsement, $t(238) = -3.80$, $p < .05$, whereas there was no difference in perceptions of the Crown, $t(238) = .96$, ns.

Finally, there was a significant interaction between lawyer and Crown strategy, $F(3,223) = 8.2$, $p < .001$, $\eta^2 = .10$. Simple effects analyses of Crown strategy at each level of lawyer were significant for re-victimization by both the Crown, $F(3,236) = 4.16$, $p < .01$ and the Defense, $F(3,236) = 7.0$, $p < .001$. Relevant means and standard deviations are presented in Table 12. Planned comparisons on respondent ratings of the Crown's re-victimization, were performed. The Crown was seen as less re-victimizing when using any strategy vs. no strategy, $t(236) = -4.06$, $p < .001$ and when using re-direct and inoculation as opposed to objection, $t(236) = 3.21$, $p < .01$. There was no significant difference when the Crown used inoculation vs. re-direct, $t(236) = 1.15$, ns.

Tukey's comparisons ($\alpha = .008$) indicated that the Defense was seen as more re-victimizing when the Crown used objection as opposed to inoculation, or re-direct in comparison to inoculation or no response. No other pairwise comparisons were significant.

Perceptions of the victim as a witness. Results indicated a significant main effect for rape myths endorsement, $F(1,223) = 10.89$, $p < .01$, $\eta^2 = .05$. Respondents with low rape myths endorsement rated the victim more positively ($M = 4.63$, $SD = 1.07$) than those with high rape myths endorsement ($M = 4.16$, $SD = 1.15$). There was also a main effect for Crown strategy, $F(3,223) = 5.85$, $p < .05$, $\eta^2 = .07$. Planned contrasts across levels of Crown strategy indicated that the victim was rated most positively when the Crown used any strategy as compared to no strategy,

Table 12: Means and Standard Deviations for Re-victimization Ratings as a function of Crown Strategy and Lawyer

Crown Strategy^a	Lawyer Re-victimization			
	Crown		Defense	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
control	4.57	1.48	2.57	1.19
objection	4.85	1.42	2.42	1.23
inoculation	4.47	1.5	2.96	1.42
re-direct	5.32	1.33	2.08	0.91

Note. Potential range of response = 1 (re-victimized the witness very much) to 7 (did not re-victimize the witness at all)

^an=60 for each condition

$t(236) = -4.06, p < .001$, and that the use of re-direct and inoculation resulted in more positive perceptions of the victim than the use of objection, $t(236) = 3.03, p < .001$. There was no significant difference between the use of re-direct and inoculation, $t(236) = 1.15, ns$. See Table 13 for relevant means and standard deviations.

Importance of questions. Results indicated a main effect for lawyer, $F(1,223) = 7.39, p < .01, \eta^2 = .03$. Examination of the group means showed that respondents rated the Crown's questions as more important ($M = 5.62, SD = 1.3$) than those of the Defense ($M = 5.28, SD = 1.52$).

Outcome ratings. Ratings of verdict, confidence ratings, probability of guilt and sentencing were analyzed using a 2 (gender) $\times$ 2 (rape myths endorsement) $\times$ 4 (Crown strategy) MANOVA. Results indicated a main effect for rape myths endorsement, Pillais = .05; $F(4,220) = 3.13, p < .05, \eta^2 = .05$. Follow-up univariate F-tests indicated a significant effect on probability of guilt, $F(1,223) = 7.70, p < .01, \eta^2 = .03$, and sentence ratings, $F(1,223) = 4.70, p < .05, \eta^2 = .02$. As can be seen in Table 14, respondents with low rape myths endorsement indicated a higher probability of guilt than those with high rape myths endorsement, and subsequently, gave more severe sentences than those with high rape myths endorsement. A main effect for Crown strategy also emerged, Pillais = .17; $F(12,666) = 3.32, p < .001, \eta^2 = .06$. Follow-up univariate F-tests indicated a significant effect only for verdict, $F(3,223) = 7.49, p < .001, \eta^2 = .09$. Planned comparisons indicated that respondents were more likely to vote guilty when the Crown used any strategy rather than no strategy, $t(236) = 4.04, p < .001$. As well, the use of inoculation and re-direct were both more likely to produce a guilty verdict than the use of objection, $t(236) = -4.31, p < .001$, there was no significant difference when the Crown used inoculation vs. redirect, $t(236) = 0.20, ns$.

Table 13: Means and Standard Deviations for Victim Ratings as a Function of Crown Strategy

Crown Strategy	Victim Ratings		
	<u>M</u>	<u>SD</u>	N
control	3.9	1.25	60
objection	4.21	0.97	60
inoculation	4.61	1.06	60
re-direct	4.84	1.01	60

Note. Potential range of response for victim ratings = 1 (not at all positive perceptions of victim) to 7 (very positive perceptions of victim)

Table 14: Means and Standard Deviations for Rape Myths Endorsement on Verdict, Confidence Rating, Probability of Guilt and Sentence Ratings

Outcome Rating	Rape Myths Endorsement			
	Low ^a		High ^b	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
verdict	1.29	0.46	1.43	0.50
confidence rating	3.57	1.70	3.55	1.59
probability of guilt	72.95	20.82	64.66	22.80
sentence	4.80	1.17	4.50	1.40

Note. Potential range of response for:

verdict = 1 (guilty) to 2 (not guilty)

confidence rating = 1 (very confident) to 7 (not at all confident)

probability of guilt = 1 (not guilty) to 100 (definitely guilty)

sentence = 1 (\$100 fine) to 6 (more than 4 years)

^an=118 for each condition

^bn=122 for each condition

Relevant means and standard deviations are presented in Table 15.

Content analysis of important factors. A content analysis evaluated responses to the item asking for the most important factor in beliefs about the accused's guilt. See Table 16 for relevant frequencies for each category. The responses given as to the most important factor in respondents' verdict most often were that the victim was not credible (25.6% of respondents), the victim was credible (21.3%) and the credibility of the Defense (12.5%).

Chi square analyses revealed that the most important factor varied by Crown strategy, $\chi^2(21) = 42.59, p < .01$, and verdict rendered, $\chi^2(7) = 143.52, p < .001$, but not by gender, $\chi^2(7) = 7.66, ns$. See Tables 17 and 18 for relevant frequencies. Of particular note, when no strategy was adopted by the Crown, the victim's lack of credibility was the deciding factor, whereas when any strategy was employed her credibility was key. Indeed, this pattern also corresponds to believing that it was likely that the defendant was not guilty or guilty, respectively. Guilty ratings were also more likely when the accused was believed to be sneaky, the victim has not given consent and the Defense was not credible. In contrast, a lack of evidence was cited as most important to a not guilty verdict.

Table 15: Means and Standard Deviations for Verdicts as a Function of Crown Strategy

Crown Strategy^a	Verdict Ratings	
	<u>M</u>	<u>SD</u>
control	1.57	0.50
objection	1.50	0.50
inoculation	1.18	0.40
re-direct	1.20	0.40

Note. Potential range of response for verdict ratings = 1 (guilty) to 2 (not guilty)

^an=60 for each condition

Table 16: Frequencies of Participants providing Reason for Verdict Choice

Content Analysis Category	Frequency	% of sample
victim not credible	59	25.6
victim credible	51	21.3
accused crafty/sneaky	23	9.6
not enough evidence	19	7.9
no consent	27	11.3
Crown credibility	13	5.4
Defense credibility	30	12.5
other	18	7.5
TOTAL	240	100

Table 17: Frequencies for each Content Analysis Category by Crown Strategy

Content Analysis Category	Crown Strategy			
	control	objection	inoculation	re-direct
victim not credible	27 (45%)	17 (28.3%)	9 (15%)	6 (10%)
victim credible	6 (10%)	12 (20%)	18 (30%)	15 (25%)
accused crafty/sneaky	6 (10%)	7 (11.7%)	7 (11.7%)	3 (5%)
not enough evidence	3 (5%)	8 (13.3%)	2 (3.3%)	6 (10%)
no consent	5 (8.3%)	3 (5%)	7 (11.7%)	12 (20%)
Crown credibility	2 (3.3%)	2 (3.3%)	3 (5%)	6 (10%)
Defense credibility	7 (11.7%)	7 (11.7%)	10 (16.7%)	6 (10%)
other	4 (5%)	4 (5%)	4 (5%)	6 (10%)
Total	60	60	60	60

Note. Potential range of response for frequencies = 0 (not chosen) to 60 (chosen by every respondent in that condition)

Table 18: Frequencies for each Content Analysis Category by Verdict Rating

Content Analysis Category	Verdict			
	guilty		not guilty	
	Frequency	%	Frequency	%
victim not credible	9	5.8	50	57.5
victim credible	50	32.7	1	1.1
accused crafty/sneaky	22	14.4	1	1.1
not enough evidence	1	0.7	18	20.7
no consent	26	17	1	1.1
Crown credibility	8	5.2	5	5.8
Defense credibility	26	17	4	4.7
other	11	7.2	7	8
Total	153	100	87	100

Note. Potential range of response for frequencies = 0 (not chosen) to 240 (chosen by every respondent in that condition)

Discussion

This study sought to examine the possibility that the Crown could use an active strategy in order to affect trial outcomes. Indeed, overall, the use of any tactical strategy by the Crown was more effective in contravening the Defense's attack on the victim's credibility than the use of no strategy. Although there were variations in the effectiveness of the three strategies, the Crown's use of active strategies to combat the Defense also appeared to enhance perceptions of the Crown's advocacy for the victim.

The use of any strategy on the part of the Crown created more positive perceptions of the Crown's attributes and ability to protect the witness from re-victimization, more negative perceptions of the Defense's attributes and ability to re-victimize the victim, and more positive perceptions of the victim as a witness. As well, the most important factor influencing respondents' verdicts when no strategy was used by the Crown respondents was the victim's lack of credibility, whereas this became the victim's positive credibility when any strategy was used by the Crown. Thus, the use of any strategy by the Crown appeared to affect variables within this sexual assault simulation that might be seen to impact on trial outcomes in actual sexual assault trials.

Of the three active strategies used by the Crown, re-direct, inoculation and objection, it appeared that re-direct was the most consistently effective strategy in influencing positive and negative perceptions of the Defense and perceptions of the Defense's re-victimizing behavior. The greater persuasiveness of re-direct relative to objection is consistent with findings by Evans (1995), who suggested that although objections should be used to ensure that the witness is not asked improper questions, they might also create suspicions in the minds of the jury, making them suspect the lawyer's intentions; they might feel that the lawyer is trying to prevent them from hearing some

particularly important fact. In this experiment, respondents might have reacted similarly to objection, seeing it more as an annoyance than a useful argumentative tool.

When examining the relative effect of re-direct versus inoculation on perceptions of the Defense, the difference in effectiveness could be a direct result of the nature of the two strategies. Inoculation is a subtle strategy which requires the Crown to anticipate an attack and refute it in direct examination. A bystander to a trial might remain unaware that this strategy has been used, unless familiar with the facts of the trial prior to the direct examination, given the subtlety of this strategy (Matton, 1988). As re-direct appears more active, perhaps it has the added effect of placing the Defense in a more salient framework, by the introduction and clarification of additional material, than does inoculation.

It is not clear why the use of re-direct particularly affected perceptions of the Defense as opposed to those of the Crown or the victim. It could be that the use of this strategy most persuasively refuted those issues raised by the Defense, making the Defense appear in a more negative light as a result. Future research could examine this issue more closely, by manipulating the issues raised by the Defense and determining the ensuing effectiveness of re-direct on perceptions of the Defense.

Re-direct and inoculation appeared more effective than objection but comparable to one another in influencing positive perceptions of the Crown, perceptions of the Crown's ability to protect the victim from re-victimization, perceptions of the victim as a witness, and a more likely guilty verdict. Re-direct and inoculation may have been more effective strategies than objection because they allowed for an elucidation of an argument and did not simply stop the flow of testimony on technical and perhaps inconsequential grounds, from the respondents' perspectives.

For instance, the Crown would object and supply the legal grounds, i.e., argumentation, without further elaboration. However, when re-directing, the Crown led the witness through previously introduced testimony while casting the exchange in a more positive light for the victim. This may have provided a more balanced and thus credible strategy for respondents, and may have clarified issues that the Defense left intentionally murky. Matton (1988) emphasizes the power of re-direct to highlight issues that have become confused during cross-examination and enhance the witness' testimony and often, her credibility.

In a similar manner, when using inoculation, the Crown could anticipate the Defense's arguments and elicit information underpinning these arguments in a positively reflective manner for the victim. The Defense's cross-examination would then have lessened impact. Matton (1988) suggests that "raising damaging information on direct examination has the effect of inoculating the jury against eventual exposure by the opposition... subjects who hear two-sided arguments ...may be less persuaded by counter-argument than those who initially hear a one-sided argument"(p.230). Re-direct and inoculation may have been more effective than objection because of their appeal to reason, and their relative ability to re-construct the case facts positively for the witness.

Research on the persuasive impact of inoculation in the courtroom is somewhat equivocal. Linz and Penrod (1984) indicate that legal texts both advocate and disclaim the use of this technique, depending on the author's perspective. The effectiveness of inoculation can vary depending on a large number of factors that were not manipulated in this study (for example, the amount of time which elapses between the inoculation and the counter-argument) or the primacy-recency effect (Danet, 1980a; Linz & Penrod, 1984), but that nonetheless may have affected its effectiveness (Schmid & Fiedler, 1998; Wood, 2000). Future research might more closely examine

the persuasiveness of re-direct as compared to inoculation, to determine when one strategy is more effective than the other in influencing variables within the trial and trial outcomes.

Although this study determined that the Crown could use tactics to effectively offset the Defense's attack on the victim's credibility, Study 1 noted that the Crown did not often do this in actual sexual assault trials. Although it is possible that the Crown is simply misdirecting his/her efforts by focusing on the content rather than the tactics (Makin, 1998), it would seem unrealistic that Crown attorneys are unaware of the potential effectiveness of tactic usage in influencing factors within the sexual assault trial. It is also possible that the Crown did not use tactics in Study 1 as they would not have been effective in undermining the Defense's use of strategies, for reasons not examined within the study. Thus, the reasons for this frequency of usage are unclear. However, in both of these studies only the victim's testimony was presented. Thus, it is possible that the Crown's use of tactics would be better used when questioning other witnesses in the sexual assault trial. Future research could examine the Crown's use of strategies in questioning a variety of witnesses in the sexual assault trial, to determine whether the type of witness affects the use of strategies by the Crown.

Rape myths endorsement was found to be a consistent predictor of participants' responses. Respondents with low rape myths endorsement were more sympathetic to the victim and negative toward the Defense than those with higher rape myths endorsement. It was expected that respondents' preconceptions might affect their responses, regardless of the strategies used by the Crown. The fact that the Crown's strategies were effective irrespective of rape myths endorsement implied that the strategies functioned to surmount the rape myths endorsement of respondents, such that respondents were able to see beyond the illogic of their beliefs. As the average rape myths

endorsement was quite low, respondents might have been more likely to respond to the Crown's strategies and produce the perceptions which were evident in the responses. This could be a direct result of using a student population as opposed a more general sample. In fact, Foley and Pigott (2000) suggested that there can be differences in college student populations as compared to non-college student populations when examining perceptions toward rape and rape victims. Yarmey (1985b) suggests that college students might have lower rape myths acceptance than non-college students, and the results for this sample would seem to uphold this assertion. However, there is also contradictory information that rape myths' acceptance does not reliably vary with education (Burt, 1980; 1990), thus the rape myths acceptance of this sample might not be entirely non-representative of the general population.

It was expected also that, given the controversial nature of the issue of sexual assault, social desirability effects would be present in the results (Crowne & Marlowe, 1960). However, no significant effects of social desirability characteristics on individuals were found. A review of the relevant literature indicated that there was no correlation between the Attitudes Toward Rape Myths Scale (ATRMS) (1980) and the Social Desirability Scale (1960) (Burt, 1993; Ellingson, 1999; Schulman & Silverman, 1974; Spohn, 1993; Theriault, 1998).

An additional explanation for the lack of social desirability response sets in this research might have been in the experimental climate under which respondents were tested. Participants were tested individually, privately, and assured of confidentiality and the fact that their responses could not be traced back to them. Many respondents volunteered to the experimenter during debriefing that they had experienced a sexual assault, and disclosed these experiences at length.

Thus, participants may have been extremely comfortable, and may have felt little pressure to conform to social pressures in responding to the measures used.

Another factor that was expected to affect perceptions of sexual assault was respondents' status as a victim of sexual assault. Some research suggested that being oneself or acquainted with a victim of sexual assault was predictive of verdicts in simulated sexual assault trials (Fischer, 1995; Foley & Pigott, 1997a, 1997b, 2000; Seta & Seta, 1993; Sinclair & Bourne, 1998). However, no impact of this status was determined. As some researchers have indicated that the relationship between victim-status and responses to sexual assault victims might be quite complex and difficult to conclusively identify in simulation studies unless explicitly identified as a research focus, this could account for the lack of findings in this study.

Regardless, there might have been nuances present in the responses for victims of sexual assault which were not highlighted in the current research, but which would clearly distinguish these responses from those in the non-victimized population. This would be an area of potential research in the future. It would be interesting to replicate these experiments on distinct samples of victims and non-victims, to determine whether responses differed, and if so, in what manner. This research would have implications for election of jury members in actual sexual assault trials, as well as adding to the body of knowledge on sexual assault victim responses after the attack.

Another potential limitation to these results might be the design. In an actual sexual assault trial, the Defense has several strategies which can be used in conjunction with one another, whereas only one was used in this study, for increased control of the independent variable. However, use of several strategies would have created a more complex design, that would make it more difficult to interpret the effects of the Crown's strategies in undermining those used by the Defense.

Furthermore, although the Crown's use of the three strategies was premised on actual court testimony, artistic license was taken so that respondents would clearly recognize the manipulation. Although this may have made the scenarios more artificial, it also created optimal conditions under which the manipulation could be made clear.

It has been demonstrated that the Crown can effectively refute singly presented Defense tactics. These tactics were previously identified in the literature and thus were easily recognized and manipulated. However, it is possible that another less obvious realm of tactics is employed by the Defense. These may build on the subtle presence of rape myths in question content. Thus, the Defense may use arguments based on the illogic present in rape myths in order to elicit the framework that the sexual assault had not occurred. In this case, the obvious strategies employed by the Crown in the present study may be less effective in undermining those used by the Defense.

The research on the Crown's ability to refute tactics suggested that rape myths may have contributed to an unreal quality in the sexual assault trial. Another corresponding possibility, given the effectiveness of strategies used by the Defense, is that the unreal quality was created from the use of illogical arguments which capitalize on rape myths. Moreover, it is possible that the usual tactics available to the Crown are not effective against this type of Defense strategy.

Given the focus on the tactics used by lawyers in the sexual assault trial, it was of interest to examine whether illogical arguments are being used by the Defense, and if so, whether they can be as easily countered. Although questions forming an argument premised on rape myths might appear intuitively logical because of their congruence with easily accepted rape myths, to the sexual assault victim they might serve to enhance distortion of the facts of the crime. To the jury, however, they might be compelling arguments elucidating facts around the sexual assault and her

credibility. In short, the use of illogical arguments by the Defense could create a situation where the victim might be less likely to receive retribution through the justice system.

Study 3

In the courtroom, lawyers work to construct a version of the facts, which supports their particular view of the crime (Kapardis, 1997; Matton, 1988). This is done by questioning each witness in such a manner that the answers can be made to fit the mental framework which the lawyer has placed on the events of the crime (Matton, 1988). Each fact is logically examined, to determine whether it supports that particular framework, and carefully compiled, until it demonstrates a certain version of the facts to the judge or jury. The verdict is rendered based on the weight of facts which support a particular position (Evans, 1995). The cornerstone of the trial is its reliance on a logical examination of the facts. Because each lawyer has an opposing view of the facts of the case, he/she is not simply examining the facts logically, but is creating a logical argument for the facts to support one version of the event. Thus the logical examination functions to support a specific argument. At the same time, the manner in which facts are revealed to the court is through the questioning of witnesses. Thus the trial is theoretically based on logical argumentation in the form of logical questions asked of the witness, in support of a specific view of the crime under examination.

Evidence suggests, however, that questions asked in a sexual assault trial make little logical sense to the victims on the stand. Konradi (1998b) referred to case studies where sexual assault victims were reportedly concerned with the reasoning underlying questions they were asked by both Crown and Defense while on trial; for example, questions on mode of dress at the time of the assault, their moral conduct and other issues that they felt were unrelated to the assault. She reported victim complaints that the questions were illogical, and that the dearth of logic made the victims feel trapped and apprehensive about responding incorrectly (Konradi, 1998b). In other

research, Konradi (1998a) noted that sexual assault victims were aware and were warned by legal personnel that questions on “cultural stereotypes” could be asked; this included ideas that sexual assault victims wore revealing clothing, were not injured by sexual contact, or that they had falsely alleged the sexual assault in order to take revenge on men. Particularly troubling for the women were the questions on how the “typical” rape victim would have behaved; displaying fear, embarrassment and emotional breakdowns. Questions laden with such expectations are problematic for sexual assault victims who did not feel these emotions (Konradi, 1998a). Several sexual assault victims reported being frustrated by the types of questions they were asked while on the stand, feeling that these questions and the manner in which they were delivered were unreasonable (Konradi, 1998).

Penman (1987) outlined how the discourse engaged in within the trial situation allows for potentially illogical arguments to be introduced, particularly when the questions remove the contextual information from the facts elicited from the witness, in order to portray the facts in a certain framework. This issue was highlighted in Konradi’s (1998b) research which indicated that victims felt that the testimony they gave was manipulated to appear negative toward them, for example, when information that the victim was dancing before the sexual assault was taken out of context and manipulated such that it reflected socially suggestive behavior, rather than was used to describe events around the sexual assault.

No empirical evidence to date has attempted to measure whether the sexual assault trial involves manipulation of logic and use of questions which derive from an illogical line of thought. If the questions are based on illogic, then victims might be questioned in such a way that they are not capable of responding appropriately. An inability to answer appropriately would frustrate

victims' attempts to accurately portray their experiences, which in turn, might affect trial outcomes.

There are concrete legal issues related to the use of illogical questions. Under the legal guidelines witnesses cannot be questioned inappropriately (Canadian Bar Association, 1988). For example, lawyers are not allowed to ask questions in a foreign language or address a deaf person without an interpreter. Further they cannot question a mentally challenged person in a manner that is beyond the person's ability to understand what is asked (Canadian Bar Association, 1988; Park & Renner, 1998). Thus, if a lawyer asked questions of a sexual assault victim in an illogical manner such that she did not understand what was being asked, this could be seen as an injustice in legal procedure. Should an injustice such as this exist in the sexual assault trial, this could indicate that there would be biases against the sexual assault victim that would hinder her access to just retribution.

This study attempted to assess the use of illogical lines of questioning in the sexual assault trial by the Defense. If it was found that rape myths were being used as a basis to ask illogical questions of the sexual assault victim, this would support the contention that the sexual assault victim is treated unjustly. Furthermore, should the Defense be using illogical arguments with impunity, this would be instructive for the Crown, as the prosecution could then find ways to address these arguments in a manner advantageous to the sexual assault victim.

Logical Rules

The branch of philosophy known as logic provides formal rules that establish when an argument may be considered true or false. These rules comprise the only formal, valid standards for evaluating whether an argument rests upon sound reasoning (Copi, 1968). A logical argument

requires accuracy in both structure and content. Philosophers have determined that there are four main types of false logical arguments which can be made in speech (Copi, 1968). One kind of faulty argument is based on false premises. An argument based on false premises may not be easy to recognize. It is rare that the false premise is as obvious as it is in the following simple example:

All horses in the this barn can be considered cows.

All cows give milk.

Thus, any horse in this barn can be milked.

The error in this argument hinges on the false premise that a horse can be a cow. Clearly, the conclusion that a horse in the barn can be milked is false, even though the argument conforms to the formal structure dictated by the rules of logic:

All A are B

C is an A

C is a B

Propaganda, advertising and deliberate distortions of communication frequently incorporate more subtle (yet false) premises within arguments that have the correct formal structure, and which give the appearance of a logical conclusion. This technique has also been detected in sexual assault trials whereby false assumptions based on myths and stereotypes about the nature of sexual assault are incorporated into lawyers' arguments. For example, the assumption is frequently made that all women at a bar who are drinking and dancing are available for sex. When a sexual assault victim reports that she was drinking and dancing at a bar, she is perceived as having consented to sex. When false premises are accepted as part of an argument, membership in a category is sufficient to

reach a false conclusion. This point can be illustrated by substituting women for horse, sexually available for cow and consent for milk in the original example above:

All women in this bar can be considered sexually available.

All sexually available women consent to sex.

Thus this woman consented to sex.

So prevalent is this basic logical error regarding implied consent, that to address it, in 1992 Canadian legislation (Bill C-49) was passed to make consent to sexual activity an explicit requirement, rather than an implied default based on some circumstance, such as drinking and dancing. This change in the law was required because judicial decisions frequently cited the stereotyped belief that consent could be reasonably (although sometimes mistakenly) assumed if there was no evidence of non-consent (Sheehy, 1996).

Another flawed argument is that based on the structure of an argument rather than its content. Formal logical arguments are frequently presented as categorical syllogisms in which there are three propositions and three terms. Each of the terms is used twice and the argument involves explication of how all, some, or none of the elements belong or do not belong in a particular category. In all, there are 256 different relationships among terms that can be delineated within these parameters, most of which comprise invalid deductive arguments according to the rules of logic (Copi, 1968, p.156). For example, whenever the two premises each contain a negative, the conclusion must necessarily be false as is evident in the following argument:

Some Non-Cs are Ts

M is not a T

Therefore M is a C

It is possible to present the elements of this invalid argument in a form that appears logically correct. In sexual assault cases, this invalid argument might be expressed in the following way:

Some Non-Consensual sex acts result in Torn clothing.

Mary's clothing was not Torn.

Therefore Mary gave Consent.

The conclusion in this argument does not follow from the two statements that precede it. Although some non-consensual sex acts result in torn clothing, some do not, thus the lack of torn clothing is not indicative of consensual sex.

In addition to formal errors of logic involving arguments expressed in the form of categorical syllogisms, there is a second category of logical errors involving informal fallacies. Eighteen such fallacies have been delineated by philosophers (Copi, 1968). Arguments based on fallacies can be compelling and may effectively sway listeners' opinions, especially if those arguments are passionately presented. For instance, political campaigns frequently include examples of such logical errors.

One example of an argument involving an informal fallacy is an argument that attacks the character of a person, but does not address the merits of the case (formally known as *argumentum ad hominem*). An example from the sexual assault mythology would be:

Good girls do not go home with men they have just met.

This girl went home with a man she just met.

This girl was not sexually assaulted.

Finally, there are errors of deductive and inductive reasoning. Logicians distinguish between deductive and inductive reasoning in the following way:

... a deductive argument (as) is one whose conclusion is claimed to follow from its premises with absolute necessity, this necessity not being a matter of degree and not depending in any way upon whatever else may be the case. And in sharp contrast we characterize an inductive argument as one whose conclusion is claimed to follow from its premises only with probability, this probability being a matter of degree and dependent upon what else may be the case (Copi, 1978:35).

Either a judge or jury must evaluate the answers the witness gives in response to the questions asked by the Crown and the Defense. Court proceedings are not deductive exercises designed to find categorical truth; seldom, if ever, do the arguments presented in court fit the format of formal deductive reasoning. Rather, a trial involves reducing the events in question to a collection of individual scenarios. These scenarios are connected together in narrative form; the Crown and the Defense each weave a different version of the events in their closing statements in an attempt to lead the judge or jury toward a conclusion of guilty or not guilty. For the judge or jury listening to the versions presented by the Crown and Defense, the task of reaching a conclusion about whether a sexual assault took place is an inductive reasoning process.

Inductive arguments do not always explicitly acknowledge that their conclusions are inferred only with probability. Furthermore, the premises of inductive arguments are not demonstratively valid, nor do the conclusions of such arguments follow with necessity from their

premises. In the behavioral sciences, the confidence with which one can make statements about the likelihood of a particular outcome is reflected in calculations of statistical probability; only when the probability of making an error is low enough ($p < .05$) do researchers feel justified in drawing conclusions about a phenomenon of interest. However, the judge or jury cannot calculate a statistical probability that can serve to guide their decisions regarding the likelihood that a particular sexual act constitutes sexual assault. Rather, they must make a mental approximation of whether the interpretation of guilty can be reached beyond a reasonable doubt (is statistically significant).

The difficulties with estimating probability are not restricted to the final decision about whether a defendant is guilty or not guilty of perpetrating sexual assault. There are decision points all the way through the narrative. The probability of each event in the chain must be considered in order to arrive at a conclusion regarding whether a given woman was the victim of sexual assault rather than a willing participant in consensual sex. Unfortunately, rape myths and stereotypes may lead judges and juries to underestimate or overestimate the probability of different events in the chain (LaFree et al., 1985). As an example of inductive reasoning, consider the rape myth surrounding torn clothing which was used to illustrate a false deduction. If the victim's clothes were torn, the Crown attorney introduces them as evidence of the sexual assault; if not torn, the Defense introduces them as evidence of consensual sex. The torn/untorn distinction is based entirely on the myth that a sexually assaulted woman will actively resist having her clothing removed. Research has shown, however, that a sexual assault victim will usually submit to the assault rather than risk any further injury, often removing her own clothing on demand (Lonsway & Fitzgerald, 1994). Thus it is actually *more probable* that a sexual assault victim will *not* have

her clothing torn. However, the myths regarding what constitutes real sexual assault are powerful enough that the issue of non-torn clothing remains an integral part of the Defense in a sexual assault trial.

Goals

As these are the most common logical errors in verbal arguments (Copi, 1968), false premises, categorical syllogisms, informal fallacies and errors of deductive and inductive reasoning were examined in the present study. The presence of any examples of these types of illogical arguments located in the sexual assault trial transcripts were expected to support the assertion that the questions used in the trial could be illogically based. A qualitative analysis explored whether there was any basis to believe that legal procedures in sexual assault cases are subject to logical fallacies that are based on the use of rape mythology. Although the Crown may be prey to the use of illogic, it is of greater concern to the experience of the victim if illogic is employed by the more aggressive Defense. The Defense's use of illogic is likely going to be tied to attempts to undermine and confuse the victim in her testimony. Given this issue, this analysis only focused on the interactions between the Defense and the victim.

Method

In this study, the classification system outlined in Copi (1968) and in Appendix I was applied to a random sample of 4 court transcripts taken from the 58 cases used in Study 1. Two raters examined these cases in order to determine whether they could identify instances of the four logical errors in arguments which were previously outlined, within the transcripts. Questions and answers were analyzed to determine which of the four categories of false premises, categorical fallacies, informal fallacies and inductive logic they belonged to. The definitions of the four types

of logic as given in Copi (1968) were used as the operational definitions for this experiment. Three of the four definitions, false premises, categorical syllogisms, and errors of deductive and inductive reasoning, have already been illustrated at length. The fourth type of error, the informal fallacies, involves fourteen different categories of fallacy defined by Copi, 1968. (See Appendix I). Thus, category membership was determined by reference to these definitions and with reference to Appendix I.

Once it was determined that a scenario fit into any of the 4 types of arguments, the nature of the logical fallacy was classified. The raters had 90% inter-rater reliability in classifying the identified examples of logical fallacies. The mere presence of such fallacies was the primary interest, thus the number of examples of each of the logical errors was not tallied, and as such, no frequency data are available.

Results

Exemplars of each of the four categories of illogical argument were identified in each of the four cases. Further, in no instance did the judge admonish the Defense not to use such reasoning nor did the Crown object to this logic.

False premises. Arguments based on false premises have a starting point which is illogical. Examples of false premises were found in each of the four cases. For example, in one particular case, a Defense attorney asked a woman why she did not object to the sexual advances made by her alleged attacker. The victim had been forcibly dragged to an isolated location on the waterfront at 2 a.m. on a winter night and forced to disrobe and perform oral sex on her fully clothed assailant:

Defense: And in fact when he said I want you to go down on me, you sat up on your knees and proceeded to perform oral sex on him, is that not correct?

Witness: Yes, yes.

Defense: Now during that time, before doing that, did you ever say to [the accused], No, I don't want to do that.

Witness: I... no, I was afraid. I was...

Defense: Please, [victim's name]! If you could answer the question.

Witness: I said no.

In this instance, the Defense asked the victim whether she protested or made clear to the accused that she was not a willing participant just before performing oral sex. The Defense glossed over the circumstances that the incident occurred in a remote area and that the accused was much stronger than the victim. Yet when the victim answered truthfully that she did not protest at that particular point in the chain of events, the conclusion that was drawn by the Defense (and possibly by the jury -- the defendant in this case was acquitted) was that she did not make it sufficiently clear to the accused that she was not consenting to the sexual activity. This conclusion is logically unsupportable.

Categorical fallacies. This analysis indicated that categorical fallacies also appeared in all of the four cases, often in reference to the victim's torn clothing or in questions as to whether she resisted to the point of incurring physical harm. For example:

Defense: You didn't hit him at any time, did you?

Victim: No.

Defense: You didn't scratch him.

Victim: No.

Defense: There were no marks on him.

The argument here is as follows:

Some non-consensual acts result in injuries to the woman.

This woman was not injured.

Therefore this woman consented.

Clearly this argument when stated in a formal manner makes little logical sense. If only some women are injured during sexual assault, then why make the argument that this woman was not sexually assaulted due to her lack of injuries? It is just as probable that she was sexually assaulted without injury, as with injury. In short, any conclusion about the assault based on a discussion of her lack of injury is illogical.

Informal fallacies. Results showed that attacks were made upon the character of the victim that did not address the merits of the case, but drew attention to other factors that may cause some observers to evaluate the woman negatively. In categorizing the content of sexual assault trials, we found many examples of attacks on the victim's character. Consider this example taken from a case involving an 18-year-old woman:

Defense: On this particular night you were drinking at St. Mary's when you arrived. That was orange juice and ...?

Victim: Peach Schnapps.

Defense: And later on you were drinking Tia Maria and milk?

Victim: Yes

Defense: You were of course eighteen and you knew the drinking age in Nova Scotia was 19?

Victim: Yes I did.

Defense: And then you went out and you went dancing? And you said that your usual practice is to go up to people, *go up to men*, and ask them to dance?

Victim: Yes.

It appears that the Defense is presenting two fallacious arguments simultaneously. The first argument points to the fact that this woman was actually too young to be in the bar legitimately:

Virtuous women do not break the law by drinking under age.

This woman drank while underage.

This woman lied about being sexually assaulted (is not virtuous).

The second argument incorporates a false premise in addition to an attack on the victim's character. It hinges on the acceptance of common myths and stereotypes about sexual assault:

Women who drink and dance all evening are looking for sex (are not virtuous).

This woman danced and drank all evening.

This woman is not a victim of sexual assault (she is not virtuous).

This second personal attack is doubly faulty because it is based on the false premise that women who go to bars to dance are more sexually available than women who stay at home.

Another frequently used informal fallacy that was found in this analysis was when an argument that purports to establish a particular conclusion is actually applicable towards proving a different conclusion (*Ignoratio Elenchi*). Frequently this type of argument involves focusing on

some small detail which is irrelevant to proving whether a sexual assault took place, and using the witness' inability to remember this irrelevant detail to imply that their memory about the assault itself may not be accurate (Loftus, 1993). For example in one case the witness had been threatened with a wrench during her sexual assault and was asked about the weapon.

Defense: You have indicated today that the wrench . . . can you say that THAT is the wrench that was in the van on that particular night or is it just a wrench that looks like it?

Victim: It was a silver adjustable wrench.

Defense: So you wouldn't be in a position to tell one silver adjustable wrench from another?

Victim: Um, well, when he had it in his hand, I, you know, all I saw was a silver adjustable wrench.

Defense: But, I mean, you couldn't really tell one adjustable wrench from another adjustable wrench could you?

Although the witness could not conclusively say that the specific wrench presented in the courtroom was the one used in her attack, it does not negate the fact that a wrench was used in her attack. The important facts were that she told the police she was threatened by an silver adjustable wrench, she was able to correctly name the type and color of the wrench, such a wrench was found in the accused's van, and the wrench found in the van was an exhibit in the courtroom. However, her inability to positively identify the wrench in the courtroom was used by the Defense attorney to question the accuracy of her testimony about the facts of her assault. Clearly, this line of questioning is not logical.

Deductive and inductive reasoning. There were many examples of improperly used inductive and deductive reasoning used in the cases examined. One common illustration of improper inductive reasoning in these sexual assault cases involved the argument that if a woman

spends time in a bar, has social contact with a male, and then invites him into her apartment, any ensuing sex was consensual. Although an argument based on false premises, the Defense lawyer asked questions about the chain of events leading up to the assault in each of the cases examined as though they were part of the victim's master plan for engaging in consensual sex on the occasion in dispute. The improbable event of dancing leading directly to sex was treated as if it were probable when the case reached the courtroom. Consider this example:

Defense: You found Mr. L. to be an attractive man?

Victim: Yes I did.

Defense: And that is one of the reasons why you danced with him so often, as opposed to the other men that night?

Victim: Yes.

Defense: And you were quite content to spend the evening with him weren't you?

Victim: Yes.

Defense: You found him attractive, pleasant, polite, interesting?

Victim: Yes.

In another example, the Defense used a deductive argument fallaciously to imply that because the victim removed a portion of her clothing herself, that the ensuing sexual contact was consensual. In this particular instance, the Defense asked this question after already having received evidence that the victim's hands were pinned after the clothing removal and during the sexual assault, that she was an extremely scared tourist in an unfamiliar city, and that the attack took place in a remote area.

Defense: As I understand it, part of your clothing involved a safety pin that night?

Victim: Yes it did.

Defense: ...Where was that safety pin?

Victim: ...it had been fastened to my jacket.

Defense: And this safety pin was removed, was it not, by yourself?

Victim: Yes it was.

Because the deductive logic is used fallaciously in both of these examples, it seems as though the women were likely to have consented to sex in both of these instances, simply on the basis of drinking, dancing and taking off a jacket. Logically examined, these arguments do not conclusively support the existence or non existence of a sexual assault.

Discussion

The presence of faulty reasoning in each of these cases suggested that the use of fallacious arguments was one method through which the Defense elicited information from the victim in the sexual assault trial. An illogical basis meant that the information elicited may not have been factual, but would likely buttress an argument founded on myths. Thus, the victim who did not experience a sexual assault congruent with rape myths, could find these arguments unreal and irrelevant. This would support previous victim complaints that the trial does not accurately convey the sexual assault experience (Konradi, 1998b). It would also conceivably be easy for the Defense to use an illogical argument to re-frame the victim's experience as consensual sex rather than a crime. In one example, a woman sexually assaulted by a stranger who broke into her home was asked about her paucity of sleep-wear, supporting the myth that a scantily clad woman is provoking sex, and ignoring the facts surrounding the incident (Case 0125). Thus, the use of these illogical arguments can be considered a negative tool in the hands of the Defense, with serious implications for the victim and the case presented by the Crown.

Given that the jury is a microcosm of society, with society's biases and stereotypes potentially represented, the appeal of illogical arguments premised on rape myths might be considerable. The general acceptance of rape myths could potentially lead the jury to accept these arguments as logical and factual, increasing the likelihood that they might buy into the framework created by the Defense of the sexual assault victim's experiences. However, the responses of the jurors to illogical arguments was not assessed in this exploratory study. Thus, the persuasive effectiveness of illogical arguments is unclear.

In an adversarial system it is the responsibility of both lawyers to prevent any miscarriage of justice (Evans, 1995). Typically, this responsibility includes the requirement that the Crown ensure that the state has the best possible case, including the opportunity for victims to give an accurate correct version of the events around the crime. Given the intuitive appeal of rape mythology to the judge and jury in conjunction with the fact that the Crown has already pre-selected the case because of its consistence with rape myths (Gregory & Lees, 1994), the Crown may be loathe to challenge the illogic of the Defense's assertions for fear of undermining his/her own case. It is possible that by perpetuating the introduction of false reasoning, each lawyer is contributing to the biases premised on rape myths and illogic that have already been alleged and supported throughout the legal system.

Given that the Defense uses illogical arguments, it would be most plausible to deduce that they are effective in swaying the jury toward a not guilty verdict and perhaps they may also affect sentences. In the event that these arguments are effective, however, then the Crown's responses to these arguments should be examined. Clearly, the more avenues for the Defense to persuade the jury that are effectively blocked by the Crown, the increased likelihood that the Crown will secure a conviction. However, give that these arguments have not been examined in any known literature to date, the efficacy of the Crown's tactics to offset them is also open to question.

Study 4

Purpose

While presenting illogical arguments in itself would seem intuitively contrary to a good defense, it may be that because of their foundation on rape myths, they may in fact affect trial outcomes, and increase the possibility of acquittal for the accused. Questions based on illogical arguments might also pose a great frustration for the victim for several reasons outlined in Study 1. They might imbue the questions with a respectability of facts, when presented at trial. Illogical arguments might function to render the victim's testimony less convincing to the jury. Research indicates that when sexual assault victims respond to questions with "I don't know", silence or utterances which denote confusion, their credibility is besmirched (Penelope, 1990). These arguments might function to promote such destructive responses in the victim.

The use of illogical arguments in the cases examined with no objection from the opposing counsel or reprimand from the judge suggested that to the extent that they are used in the courtroom, these arguments may be perceived as appropriate. Perhaps they are allowed because they have little persuasive appeal and are largely ignored in the context of other arguments and evidence. This study represented an attempt to investigate whether these arguments are perceived as persuasive by the jury when used by the Defense during a sexual assault trial. The current study presented a combination of false premises, categorical fallacies and informal fallacies. The persuasiveness of logical vs. illogical arguments in influencing the mock jurors' perceptions of the Crown, the Defense and the witness was then assessed.

Given the dynamics of this tactic, it was expected that illogical arguments premised on rape mythology would be more convincing to respondents than the logical arguments that were based

on reason. Given that rape myths are by definition illogical, the presentation of illogical versus logical lines of reasoning was confounded with the reliance on rape myths. To control for this, a third comparison context which relied on rape myths without invoking specific logical errors was included. Study 1 determined that both the Crown and Defense focused on offsetting or attacking the victim's credibility more than any other strategy. As such, to assess the relative effectiveness of using illogical lines of questioning and to control for the use of rape myths, this tactic served as the comparison condition.

Finally, an interaction between the Defense tactic and the level of rape myths endorsement was also expected. Mock jurors with high rape myths endorsement were expected to respond similarly to the illogical and victim credibility conditions, as they would have bought into rape myths regardless of whether they were presented in an attack on the victim's credibility or in an illogical argument. Given their endorsement of rape myths, these respondents would have found both of these arguments to be more compelling than those premised on logic. For example, they would have been less likely to find the accused guilty in these conditions and more likely to find him guilty in the logical argument condition. Respondents with low rape myths endorsement are not as prone to those factors that influence social myths, and thus, these respondents would be more likely to see a problem with illogical arguments or attacks on the victim's credibility, and would find the logical arguments as the most persuasive. Thus respondents with low rape myths endorsement were expected to be more likely to find the accused guilty and the witness credible in the logical argument condition than in the illogical or victim credibility conditions.

Method

Participants

Participants were recruited from Introductory Psychology courses, 49.101 and 49.102 (Appendix J). There were 120 males and 120 females randomly assigned to one of three groups with equal numbers in each group. They were told they were participating in a study in which they would be making judgements about a sexual assault case, particularly their perceptions of the victim, Crown and Defense, based on a portion of written transcript (Appendix K).

Similar to Study 2, fifty-one (21.2%) respondents indicated that they had been sexually assaulted and 189 (78.7%) indicated that they had not been sexually assaulted. Chi-square analyses on victim of assault and gender were significant, $\chi^2 = 37.9$, $p < .001$, indicating that females were more likely to be victims of sexual assault ($n = 44$, 36.7% of women) than males ($n = 8$, 6.7% of males).

Procedure

Information concerning the study was posted to recruit potential participants (Appendix J). Upon arrival, participants were reminded of the nature and content of the study and asked to read and sign a general informed consent form to this effect (Appendix K).

Each participant was randomly assigned to read one of the three different two page case scenarios reflecting 3 different Defense tactics (logical arguments vs. illogical arguments vs. attacking the victim's credibility). Trial transcripts (Appendix L) were drawn from the cases examined in Study 1. Alleged segments of testimony for the victim, the Crown and the Defense attorney were presented. The case facts were the same as those presented in Study 2. However, their presentations varied, such that the Defense asked questions about portions of the testimony

that more appropriately lent themselves to the particular condition. The testimony for the illogical argument condition contained three illogical arguments; the Defense made an illogical argument using a categorical fallacy when he asked the victim about her resistance to the alleged sexual assault while not acknowledging her initial argument that she was scared and had already resisted him by saying no; used false premises when he/she began with the premise that the victim could resist the second alleged sexual assault by attracting attention to herself in the car; and used an informal fallacy and blamed the victim for the alleged sexual assaults, by insinuating that her behaviour resulted in the sexual activity.

In the logical condition, the victim was asked factual questions corresponding to the order and placement of the illogical questions. These questions were similar in content to the illogical ones, but without illogical premises or conclusions. For instance, in the logical condition, the Defense asked whether the victim was frightened, and whether the accused knew her feelings while in the illogical condition, asked further about her resistance and concluded that she had made no serious effort to resist the sexual assault. The victim credibility condition was identical to the no response condition in Study 2.

After reading the scenario, participants responded to the questionnaires. Upon completion, participants were debriefed and given a list of contacts that included services specifically for victims of sexual assault and counseling services (Appendix K).

Questionnaires

The identical measures used in Study 2 to assess perceptions of guilt (verdict, confidence in verdict and probability of guilt), sentencing, perceptions of the Crown and Defense, the influence of the Crown and the Defense on the verdict, the perceptions of the witness as a victim, the most

important factor, the Rape Myths and Social Desirability Scale, were employed in the present study. The inter-item reliabilities can be seen in Table 19 and were comparable to those in Study 2. As in Study 2, the questionnaires took approximately 30 minutes to complete.

In addition, as a check on their ability to recognize logical arguments, participants were asked to indicate whether they perceived a series of eight statements conveying 2 types of arguments to be logical or illogical, using a forced choice format (Appendix M). Two types of arguments were presented; arguments in the form of syllogisms using letters (4 examples of syllogisms in the form of "All A are B") and identical arguments presented in word form using examples of rape myths as their basis (4 examples of rape myths type arguments in the form of "Women who flirt with men at bars want to have sex"), for a total of 8 arguments responded to by all participants. Identification of both argument types were coded as correctly (1) or incorrectly (0) identifying whether the argument was logical or not. The total number of correct identifications of rape myths arguments was computed by adding together all of the correct identifications of word argument items for a single score ranging from 0 (none correct) to 4 (all correct) for each participant. The total number of correct identifications for the syllogisms was also computed⁹.

⁹ Materials for each experimental group were piloted on a convenience sample of 6 males and 6 females. Based on responses from these participants, it was determined that the respondents could identify the logic of arguments presented in the different scenarios and the experimental manipulation appeared to be producing the desired results in the dependent variables.

Table 19: Inter-item Cronbach's α Reliabilities for the Scale Items Representing Attributes of the Lawyers and the Witness

Attributes	Crown		Defense	
	4 items	3 items*	4 items	3 items*
Lawyers				
positive				
credibility				
ability to protect the witness	0.81	0.79	0.65	0.70
competence				
ability to convince				
negative				
confusing				
awkwardness	0.67	0.79	0.56	0.56
insensitivity to the victim				
lack of respect for the victim				
Witness	8 items		7 items**	
certainty				
credibility				
consistency				
strength				
reliability	0.64		0.79	
ability to convince				
believability				
persuasiveness				

Note: * "ability to protect the witness" and "confusing" were excluded

Note: ** "certainty" was excluded

Results

Ability to Recognize Logic

To assess respondents' ability to identify problems in logic, and in turn their ability to identify the logic of statements presented in the scenarios, the accuracy of participants' identifications of abstract logical and illogical arguments was examined. It was determined that if respondents were guessing, they would have 50% accuracy in identifying the logic of the arguments, in that they would guess 2 of the 4 arguments correctly. However, only 3.3% of respondents correctly identified 2 or less rape myth arguments while 11.3% of respondents correctly identified 2 or less syllogistic arguments. This high rate of correct identification, plus the examination of the confidence intervals around the mean number of arguments identified correctly ($\underline{M}=3.74$, $\underline{SD}=0.54$) suggested that participants were capable of detecting the manipulation of logical argumentation at better than chance levels¹⁰.

It was expected that respondents would encounter more difficulty identifying the arguments in rape myth form than those in syllogism form because of familiarity with the rape myths. A paired samples t-test performed on the average number correct for syllogisms vs. rape myths, $t(239) = 5.16$, $p < .001$, indicated that arguments in rape myths form were actually slightly easier for participants to correctly identify ($\underline{M}=3.75$, $\underline{SD}=.54$) than arguments in syllogism form ($\underline{M}=3.46$, $\underline{SD}=.74$).

¹⁰ All analyses were performed both with all respondents and with only the respondents who identified 3 or more items correctly for each of the two types of argument. There was no difference between results.

Determination of Viable Covariates

It was argued, as with Study 2, that rape myths endorsement and social desirability scores should be used as covariates in examining the effects of gender and Defense tactics on the 11 dependent variables. These potential covariates were examined to assess whether the assumptions of ANCOVA were tenable.

Correlations between rape myths endorsement and all 11 dependent variables were examined to determine whether they satisfied the assumption of a linear relationship between the dependent variable and the covariate. Rape myth endorsement was significantly correlated with 8 of the 11 dependent variables while social desirability scores were not significantly correlated with any of the 11 dependent variables. Thus social desirability was not viewed as a useful covariate and was not considered further. See Table 20 for relevant correlations.

In order to assess whether rape myth endorsement scores satisfied the assumption of homogeneity of regression slopes, multiple regression analyses with rape myths endorsement, gender and Defense tactic as predictors of each dependent variable were performed. To do so, standardized rape myths scores were calculated and Defense tactic was dummy coded into two variables. A hierarchical regression was performed on each dependent variable, with main effects entered on the first step, the 2-way interactions entered on the second step and the 3-way interaction entered on the third. The 2-way interactions between rape myth endorsement x Defense tactic and/or rape myth endorsement x gender were significant for 9 of the 11 dependent variables. As a result, it was concluded that rape myths endorsement violated the assumption of homogeneity of the regression coefficients. Rather than using it as a covariate, it was included as an independent variable in all analyses. To use in analyses of variance it was re-coded as a

Table 20: Correlations between Rape Myths Endorsement Scores, Social Desirability Scores and Dependent Variables

Dependent Variables	Rape Myths Scores	Social Desirability Scores
	r	r
verdict	.40***	-0.08
probability of guilt	-.43***	0.08
confidence in verdict	.15*	-0.06
sentence	-.37***	0.02
positive attributes of the Crown	-0.12	0.07
negative attributes of the Crown	.34 **	0.11
positive attributes of Defense	.16*	0.09
negative attributes of Defense	-.23**	0.11
perceptions of the victim	-.40 **	0.05
importance of the Crown's questions	0.1	0.12
importance of Defense's questions	-0.09	0.06

* $p < .05$

** $p < .01$

*** $p < .001$

dichotomous variable using a median split (Median = -2.0), with participants either expressing high (score above the median) or low (score below the median) rape myths endorsement.

Main Analyses¹¹

Dependent variables were analysed in 2 (lawyer: Crown vs. Defense) x 2 (gender: women vs. men) x 2 (rape myths endorsement: high vs. low) x 3 (Defense tactic: illogical vs. logical vs. victim credibility) mixed (M)ANOVA designs where lawyer represented the within subjects variable. To control for Type II errors it was decided that any significant effects that did not have an effect size of at least $\eta^2 = .05$ would not be followed up.

Lawyer attributes. Respondents perceived positive attributes to differ significantly as a function of lawyer, $F(1, 228) = 10.4, p < .01, \eta^2 = .04$. Examination of the means indicated that the Defense ($M = 5.23, SD = 1.09$) was seen more positively than the Crown ($M = 4.99, SD = 1.17$). This main effect was qualified by a 2-way interaction between lawyer and Defense tactic, $F(2, 228) = 3.1, p < .05, \eta^2 = .03$, and a 3-way interaction between lawyer, rape myths and gender, $F(1, 228) = 4.95, p < .05, \eta^2 = .04$. Due to the very small effect sizes, neither interaction was viewed as meaningful.

Respondents also perceived the negative attributes to differ significantly as a function of lawyer, $F(1, 227) = 148.86, p < .001, \eta^2 = .39$. Examination of the means indicated that the Defense ($M = 4.13, SD = 1.07$) was seen more negatively than the Crown ($M = 2.83, SD = 1.21$). This main

¹¹To assess whether the dependent variables satisfied the normality assumption for parametric statistics, descriptive statistics were examined. The probability rating out of 100% was skewed (skew = -.76, $se_{skewness} = .16$). A square root transformation was applied to the data, with little improvement in the data distribution. Similarly, the importance of the Defense's questions was skewed with skewness = .85 and $se_{skewness} = .16$, and a square root transformation applied to the data showed no substantial improvement. Thus it was decided to use the raw data in each of these cases, as the statistics that would be applied to the data (ANOVA and regression) were robust with respect to deviations from normality

effect was qualified by two 2-way interactions; one between lawyer and rape myths, $F(1, 227) = 19.6, p < .001, \eta^2 = .08$ and another between lawyer and Defense tactic, $F(2, 227) = 4.23, p < .05, \eta^2 = .04$. Due to the small effect size, the interaction between lawyer and Defense tactic was not followed further. However, simple effects analyses of rape myths at each level of lawyer indicated a significant difference as a function of rape myths endorsements, in perceptions of the Crown, $t(238) = -4.96, p < .001$ and Defense's, $t(238) = -3.85, p < .001$, negative attributes. Relevant means and standard deviations are presented in Table 21. Respondents with low rape myths endorsement saw the Crown less negatively and the Defense more negatively than did respondents with high rape myths endorsement.

Importance of questions. An ANOVA on the self-reported importance of the Crown and Defense questions in deciding respondents' verdicts indicated a main effect for lawyer, $F(1, 228) = 22.60, p < .001, \eta^2 = .09$, in that the Defense's questions were viewed as more important ($M = 5.51, SD = 1.34$) than those of the Crown ($M = 4.98, SD = 1.53$). There was also a main effect for gender, $F(1, 228) = 5.25, p < .05, \eta^2 = .023$, in that female respondents saw the lawyers' questions as more important ($M = 5.56, SD = 1.24$) than did male respondents ($M = 5.43, SD = 1.32$).

These main effects were qualified by two significant 3-way interactions. Rape myths endorsement interacted with lawyer and Defense tactic, $F(2, 228) = 6.55, p < .01, \eta^2 = .04$ and gender interacted with rape myths endorsement and lawyer, $F(1, 228) = 8.33, p < .01, \eta^2 = .035$. Due to the small effect sizes, these interactions were not analyzed further.

Perceptions of the victim as a witness. There was a significant main effect for rape myths endorsement, $F(2, 228) = 24.50, p < .001, \eta^2 = .10$, in that respondents with low rape myths

Table 21: Means and Standard Deviations for Lawyer and level of Rape Myths Endorsement for Perceived Negative Attributes

Rape Myths Endorsement	Crown		Defense	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
high ^a	3.25	1.14	4.13	1.07
low ^b	2.50	1.17	4.61	1.10

Note: Potential range of response=1 (attribute not displayed at all) to 7 (attribute displayed very much)

^a n=108

^b n=132

endorsement saw the witness as more positive ($M = 4.69$, $SD = 0.99$) than did respondents with high rape myths endorsement ($M = 4.00$, $SD = 0.90$).

Outcome ratings. Ratings of verdict, confidence ratings, probability of guilt and sentence were analyzed using a MANOVA. Results indicated a main effect for rape myths endorsement, Pillais=.15; $F(4,225) = 10.05$, $p < .001$, $\eta^2 = .15$. Follow-up univariate F-tests indicated a significant effect on verdict, $F(1,228) = 20.2$, $p < .001$, $\eta^2 = .07$, probability of guilt, $F(1,228) = 27.4$, $p < .001$, $\eta^2 = .11$, and sentence ratings, $F(1,228) = 23.5$, $p < .001$, $\eta^2 = .09$. As expected, respondents with low rape myths endorsement were more likely to indicate that the accused was likely guilty, assign a higher probability of guilt and give higher sentences than those with high rape myths endorsement. Table 22 displays relevant means and standard deviations.

A main effect for Defense tactic also emerged, Pillais=.10; $F(8,452) = 2.97$, $p < .01$, $\eta^2 = .05$. Follow-up univariate F-tests indicated a significant effect only on verdict, $F(2,228) = 9.03$, $p < .001$, $\eta^2 = .07$. Tukey's¹² comparisons ($\alpha = .02$) indicated that respondents were more likely to indicate guilty when the Defense used illogical arguments ($M = 1.11$, $SD = 0.32$) as compared to when the Defense used logical arguments ($M = 1.49$, $SD = 0.50$, $p < .001$), or attacked the victim's credibility ($M = 1.34$, $SD = 0.48$, $p < .001$). There was no difference between the latter 2 groups.

These main effects were qualified by two 2-way and one 3-way interaction(s). Rape myths endorsement interacted with Defense tactic, Pillais=.06; $F(8,452) = 2.0$, $p < .05$, $\eta^2 = .03$. Gender also interacted with Defense tactic, Pillais=.14; $F(8,452) = 4.28$, $p < .001$, $\eta^2 = .007$. Finally, rape myths endorsement interacted with gender and Defense tactic, Pillais = .08; F

¹² Tukey's comparisons were used as they controlled most appropriately for the family-wise error rate in post hoc tests involving all pairwise comparisons.

Table 22: Means and Standard Deviations for the Main Effect of Rape Myths on Outcome Ratings

Outcome Rating	Rape Myths Endorsement			
	Low ^a		High ^b	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
verdict	1.18	0.39	1.47	0.50
probability of guilt	77.80	22.18	58.50	26.40
sentence	4.81	1.13	3.91	1.30

Note. Potential range of response for:

verdict = 1 (guilty) to 2 (not guilty)

probability of guilt = 1 (not guilty) to 100 (definitely guilty)

sentence = 1 (\$100 fine) to 6 (more than 4 years)

^an=132

^b n=108

$(8,452)=2.30, p<.05, \eta^2 = .04$. Given the small effect sizes, these interactions were not analyzed further.

Content analysis of important factors. A content analysis evaluated responses to the item asking for the most important factor in ratings of the accused's guilt. See Table 23 for relevant frequencies for each category. The responses given most often for the most important factor influencing the verdict were the issue of consent (28.3%), and the victim was (22.1%) or was not credible (24.6%). In addition, χ^2 analyses revealed that the most important factor varied by Defense tactic, $\chi^2(14) = 30.6, p<.01$, and verdict, $\chi^2(7) = 124.9, p<.001$ but not by gender, $\chi^2(7) = 13.78, ns$.

When the Defense used illogical arguments, respondents were more likely to focus on the witness' poor credibility than when the Defense used logic or actually attacked the victim's credibility. See Table 24 for relevant frequencies for each category. When the Defense used logical arguments, however, respondents were more likely to mention the issue of consent followed by the victim's good credibility as the most important factors in the verdict.

These same factors influenced verdict, in that when respondents voted not guilty they most often cited the victim's poor credibility as the most important factor whereas when participants voted guilty, they cited the issue of consent followed by the victim's good credibility as the most important factors. See Table 25 for relevant frequencies.

Table 23: Frequencies of participants providing reason for verdict choice

Content Analysis Category	Frequency	% of sample
victim not credible	59	24.6
victim credible	53	22.1
accused crafty/sneaky	14	5.8
not enough evidence	11	4.6
no consent	68	28.3
Crown credibility	6	2.5
Defense credibility	15	6.3
other	14	5.8
TOTAL	240	100

Table 24: Frequencies of participants giving reason for verdict choice by Defense tactic

Content Analysis Category	Verdict Ratings					
	illogical		logical		victim credibility	
	<u>Frequency</u>	<u>%</u>	<u>Frequency</u>	<u>%</u>	<u>Frequency</u>	<u>%</u>
victim not credible	32	40	9	11.3	18	22.5
victim credible	14	17.5	21	26.3	18	22.5
accused crafty/sneaky	6	7.5	5	6.3	3	3.8
not enough evidence	3	3.8	4	5	4	5
no consent	12	15	31	38.8	25	31.3
Crown credibility	3	3.8	1	1.3	2	2.5
Defense credibility	8	10	3	3.8	4	5
other	2	2.5	6	7.5	6	7.5
TOTAL	80	100	80	100	80	100

Table 25: Frequencies of participants providing reason for verdict choice by verdict ratings

Content Analysis Category	Verdict Ratings			
	Guilty		Not Guilty	
	<u>Frequency</u>	<u>%</u>	<u>Frequency</u>	<u>%</u>
victim not credible	12	7.3	47	62.7
victim credible	52	31.5	1	1.3
accused crafty/sneaky	11	6.7	3	4
not enough evidence	4	2.4	7	9.3
no consent	67	40.6	1	1.3
Crown credibility	2	1.2	4	5.3
Defense credibility	8	4.8	7	9.3
other	9	5.5	5	6.7
TOTAL	165	100	75	100

Discussion

The current experiment attempted to determine whether illogical arguments were effective in prejudicing respondents toward the accused and against the sexual assault victim. This was done through examining the relative effectiveness of the Defense's use of illogical arguments in comparison to logical arguments or attacking the victim's credibility in influencing perceptions of the lawyers and victim, as well as trial outcomes.

Overall, this study indicated that illogical arguments were more persuasive than logical arguments. This result was expected, primarily on the basis of difference between the two strategies; illogical arguments are premised on rape myths while logical arguments are not. Thus, it was expected that as jury members will often have beliefs entrenched in rape mythology (Burt, 1980; Lonsway & Fitzgerald, 1994), they would be likely to believe illogical arguments. These illogical arguments appear to be based in logic and reason, and are probably more compelling than logical arguments as they are able to capitalize on the pre-existing beliefs of jury members. Logical arguments might require that the jury members find each element credible, in order to accept, while illogical arguments begin with a certain amount of credibility in the eyes of the jury. Matton (1988), when advising Defense lawyers on the manner in which to question a rape victim, mentioned that asserting facts indirectly in the questions posed could be very suggestible to the jury. Indirectly, the author touted the efficacy of illogical arguments based on rape myths to bias a jury against a sexual assault victim. Given the potential strength of these arguments in actual sexual assault trials, it is conceivable that they would display similar efficacy in this experiment.

Illogical arguments might also be persuasive because the foundation upon which the sexual assault trial was conducted shifted from one premised in logic to one premised on rape myths.

However, as the foundation of the sexual assault trial was not a specific focus in this research, this issue is not clear.

An unexpected result with further implications for the sexual assault trial was that attacking the victim's credibility was only as effective as using logical arguments, both of which were less convincing than illogical arguments. Research indicates that attacking the victim's credibility is one of the most useful techniques used in the sexual assault trial, as it is often particularly linked to the verdict (Kerr & Bray, 1982; Matton, 1988; Sealy & Wain, 1980; Wall & Schuller, 2000). In addition, Study 1 indicated that both attorneys most often focused on attacking/offsetting attacks on the victim's credibility. Thus, it is surprising that in this study, the attack on the victim's credibility appeared to have little effect on trial outcomes.

The Defense's attack on the victim's credibility can sometimes have logical underpinnings, for instance, when the Defense asked about the amount of light available to the victim in the parking lot, in the scenario presented. This might have equated these two tactics in their logical basis more than had been realized prior to carrying out this study. In effect, the scenario where the Defense attacked the victim's credibility may not have been much different in the amount of logical argumentation used, than the scenario where the Defense used logical arguments. Thus, although the identical scenario which demonstrated the Defense's attack on the victim's credibility in Study 2 was used in the current study, enabling a cross-study comparison, this may not have necessarily been the most precise comparison to be used in this study. Given that the victim credibility condition may not have been the most appropriate comparison for this study, future research might replicate this study with a more equivalent victim credibility condition. This would help to

determine whether attacking the victim's credibility is truly less effective than using illogical arguments in affecting trial outcomes in mock jury studies of sexual assault.

Alternatively, given the number of existing rape myths (Burt, 1980), it is conceivable that some may be more firmly entrenched as societal stereotypes, values and beliefs, as compared to other myths, thus reflecting a continuum of rape myths endorsement (Lonsway & Fitzgerald, 1994). Lonsway & Fitzgerald (1995) suggested that no study has investigated the acceptance of specific subsets or myths and indicated that these analyses are necessary because of the possibility of varying degrees of beliefs in these myths. Possibly the arguments used to attack the victim's credibility used in the scenarios unwittingly relied on less credible myths while illogical arguments relied on more compelling myths. For instance, the argument that because the victim did not resist, she secretly wanted the sex (as in the illogical argument scenario) might be perceived as more credible than the argument that her drug use might have indicated a desire for sex (as in the victim credibility scenario). Participants may have responded to this underlying continuum of rape myths endorsement, rather than the actual illogical arguments themselves, thereby accounting for the dissimilarity in effectiveness of the illogical arguments as opposed to attacking the victim's credibility. Further, this might account for some of the variations in endorsement of rape mythology (Giacopassi & Dull, 1986; Hymes et al., 1993; Nemeth & Scosis, 1973; Thornton, 1977).

Future research might examine the differential impact of the various rape myths identified through scales such as the Attitudes Toward Rape Myths Scale (Burt, 1980). Respondents could rate myths on dimensions of persuasiveness and believability in order to determine whether there is any foundation for the supposed continuum. If this continuum does exist, then a further

examination of the ranking of persuasiveness of myths used in the two scenarios in this research would determine whether these myths were non-equivalent in terms of persuasiveness, thus providing some explanation for the differential effect of the two Defense strategies.

Another explanation for the difference in persuasiveness between the Defense's attacks on victim credibility and illogical arguments could rest in the perceived verbal delivery of the two types of arguments. Although the scenarios were presented in written form, research indicates that written text is often injected with tone, nuance and other attributes of spoken language (Penelope, 1990). When the Defense attacked the victim's credibility, this may have been perceived as an obvious attack, as the Defense might have been seen as raising his/her voice or verbally intimidating the victim. This could have produced hostility toward the Defense which influenced positive feelings toward the victim. The Defense's use of illogical arguments might have been viewed as a more subtle tactic, not necessarily an attack, thus influencing respondents without added negativity toward the Defense.

Matton's (1988) research on the effects of tone and mood of questioning during cross-examination supports this assertion. For example, Matton found that a dramatic, vigorous, rapid-fire method of questioning was associated with being tough minded, assertive and self-assured, which in turn served to make the witness and the jury hostile toward the lawyer asking the questions. Gentle, soft-spoken question delivery, in contrast, was more calculated to lull the witness into a sense of security and elicit the concessions in testimony desired by the lawyer. While these factors were not manipulated in the present study, given the literature on verbal style and the effects on the listener in the courtroom (Danet, 1980b; Drew, 1992; Henley, Miller & Beazley, 1995; Morrill & Facciola, 1992; Bell & Loftus, 1989), the issue of tone of illogical arguments as

opposed to those used to attack the victim's credibility would be of future research interest.

Simply asking the respondents to categorize the verbal style of lawyers depicted using the two different tactics might be an initial starting point to determine the basis of the difference in future research.

In addition, it is possible that the equivalence of logical arguments and attacking the victim's credibility as opposed to the use of illogical arguments was due to a floor effect gained through only examining testimony elicited from the victim. It is possible that the singular focus on the victim's testimony encouraged respondents to be largely sympathetic to the victim, thus creating little difference between conditions. Future research could investigate the differences in persuasive appeal between the types of arguments used by the Defense when testimony from the victim in addition to other witnesses is presented in a mock jury trial.

The effectiveness of illogical arguments might also be due to the ability to shake the confidence portrayed by the victim in her testimony. There is a wealth of literature which indicates that jurors emphasize witness' confidence while testifying over many other factors, even though confidence is not directly reflective of accuracy of testimony (Doyle, 1998; Ebbesen, 2000; Kassir, Ellsworth & Smith, 1989; Penrod & Cutler, 1995; Slovenko, 1999; Wells & Bradfield, 1998). Illogical arguments may function to stymie the victim, thereby eroding her confidence in her answers and thus diminishing her credibility. Attacking the victim's credibility might be such an obvious attack as to make the victim defensive and in doing so, perhaps encourage her confidence. Further research in this area would tap into the perceived confidence displayed by sexual assault victims on the stand, in the face of illogical versus attacks on the victim's credibility, in order to determine whether confidence is a factor in the effectiveness of illogical arguments.

A final explanation for the difference in effectiveness between illogical arguments and attacks on the victim's credibility may be that respondents might have anticipated that the Defense would attack the victim's credibility and thus were not exceptionally influenced by these arguments. However, the illogical arguments may not have been expected, and thus had a greater effect. This would be consistent with research which shows that an expected communication is not as salient as an unexpected one (Linz & Penrod, 1984). This explanation is weakened by the commonality of rape mythology in the sexual assault trial almost to stereotypical levels (Lonsway & Fitzgerald, 1994), and the resulting implausibility that respondents would be surprised that illogical arguments were made.

In addition, while Study 3 identified several forms of illogical argument as used by the Defense, in this study specific examples were chosen without any regard to the potential differential effectiveness of the various argument types. It is possible that illogical arguments are compelling only due to the presence of a particular type of argument. As this was not assessed in this research, future research might examine illogical arguments separately, such that their relative persuasive effects could be examined, thus determining which illogical argument type was most persuasive in the sexual assault trial.

Participants responded along the lines demarcated by rape myths acceptance more than along any other lines, in terms of their perceptions of negative attributes and perceptions of the witness, as well as outcome ratings. This result was not unexpected. As in Study 2, these stereotyped beliefs may be predictive of sexual assault trial outcomes. Indeed, given that the sample was fairly restricted in rape myths acceptance scores, the effects of such stereotypes may be even stronger among jurors who show a wider range of beliefs.

Given the relative positions of the Crown and the Defense, in combination with the results from Study 2, it was unexpected that the Defense was seen as simultaneously displaying more negative and positive attributes than the Crown. It is possible that participants considered the different aspects of each lawyer's performance when responding to the measures, leading to the different ratings. For example, when focusing on the Defense's sensitivity toward the victim, respondents might have seen the Defense more negatively than the Crown. However, when considering his/her competence, the respondents might have seen the more aggressive role of the Defense in this study as a positive attribute and thus responded favorably to the Defense.

The Crown's questions were seen as less important than those of the Defense. Given that the Defense asked more questions and used more active techniques than did the Crown, this result can be understood as a reflection of the positive regard for the more aggressive lawyer, which is often held by lay people (Kapardis, 1997). Future research could examine mock jurors' perceptions of the Crown and the Defense within the context of the sexual assault trial in more detail, to more closely determine the factors that influence these perceptions, and further, to determine whether these perceptions influence trial outcomes. This information would be useful for the respective lawyers in actual sexual assault trial, in order to enhance the likelihood of winning their case.

The finding that illogical arguments were even more persuasive to respondents than the victim's credibility in this study suggests that it would be of interest to assess whether the strategies available to the Crown would be as effective in offsetting the effects of illogical arguments, as on offsetting the attacks on the victim's credibility. Given that illogical arguments

appear to be a more subtle strategy than attacking the victim's credibility, there is the possibility that strategies used by the Crown may not be as effective.

Study 5

In Study 2, it was concluded that the Crown's efforts to undermine the Defense's attack on the victim's credibility were largely effective. As well, results from Study 4 indicated that the Defense's attacks on the victim's credibility were not as effective in influencing ratings of outcome variables as the Defense's use of illogical arguments. In part, it was suspected that this difference was due to the dissimilarities in argument presentation; attacking the victim's credibility was an obvious strategy while using illogical arguments was a more subtle strategy. Thus, although the Crown was effective in undermining attacks on the victim's credibility, it was not possible to generalize the results of Study 2 and conclude that the Crown could also effectively offset the Defense's use of illogical arguments. The current experiment represented an attempt to determine whether the Crown could effectively offset the effects of illogical arguments used by the Defense. As the results from Study 2 indicated that the Crown's use of objection was relatively ineffective in undermining the Defense's case, in the present study the Crown used inoculation or re-direct, as well as the control of no response.

It was expected that given that attacking the victim's credibility can often be based on rape mythology, while illogical arguments are always based on rape mythology, the Crown's effectiveness in highlighting a lack of logic inherent to the rape myths basis of illogical arguments through the identical strategies that were previously effective in Study 2 should make the Crown's strategies effective. Specifically, participants were expected to be positively biased toward the victim more often when the Crown used re-direct or inoculation than when the Crown used no strategy to respond to the Defense's use of illogical arguments.

In addition, it was expected that given the results of Study 2, the Crown's use of re-direct would be more effective than inoculation in offsetting the Defense's use of illogical arguments.

Method

Participants

Participants were recruited from Introductory Psychology courses, 49.101 and 49.102 (Appendix N). There were 120 males and 120 females randomly assigned to one of three groups with equal numbers in each group. They were told they were participating in a study in which they would be making judgements about a sexual assault case, particularly their perceptions of the victim, Crown and Defense, based on a portion of written transcript (Appendix O).

Similar to the previous experiments, fifty-three (22%) respondents indicated that they had been sexually assaulted. Chi-square analyses on victim of assault and gender were significant, $\chi^2 = 36.8, p < .001$, indicating that females were more likely to be victims of sexual assault ($N = 44$, 38.3% of women) than males ($N = 7$, 5.8% of males).

Procedure

Information concerning the study was posted on bulletin boards on the 2nd floor of the Loeb Building, to recruit potential participants (Appendix N). Upon arrival, participants were reminded of the nature and content of the study and asked to read and sign a general informed consent form to this effect (Appendix O).

Each participant was randomly assigned to read one of the three different two page case scenarios reflecting 3 different Crown tactics (no strategy vs. inoculation vs. re-direct). Trial transcripts (Appendix P) were drawn from the cases examined in Study 1. Alleged segments of testimony for the victim, the Crown and the Defense attorney were presented. The case facts were

the same as those used in the previous experiments. However, their presentations varied, with the variation between versions only to allow the manipulation of the strategy used by the Crown (Appendix P).

After reading the scenario, participants responded to the questionnaires. Upon completion, they were fully debriefed and given a list of contacts that included services specifically for victims of sexual assault and counseling services (Appendix O).

Questionnaires. The identical measures used in Study 2 to assess perceptions of guilt (verdict, confidence in verdict and probability of guilt), sentencing, perceptions of the Crown and Defense, the influence of the Crown and the Defense on the verdict, the re-victimization behavior of the Crown and Defense, the perceptions of the witness as a victim, the most important factor, the Rape Myths and Social Desirability Scale, were employed in the present study. The inter-item reliabilities can be seen in Table 26 and were comparable to those in Study 2. As in previous studies, the questionnaires took approximately 30 minutes to complete.

In addition, two questions assessed whether the manipulation for each condition was perceived correctly. The first question defined the strategies which could be used by the Crown in any of the three conditions and asked respondents to indicate whether they thought the Crown actually used each of them, on a 2 point scale where 0 was 'not at all' and 1 was 'used this strategy' (Appendix Q)¹³. The second question was similar to the first except that it asked about the use of strategies by the Defense.

¹³ Materials for each experimental group were piloted on a convenience sample of 6 males and 6 females. Based on responses from these participants, it was determined that the respondents could identify the strategy used by the Crown in the different scenarios and the experimental manipulation appeared to be producing the desired results in verdict, sentence and perceptions of the victim as a witness.

Table 26: Inter-item Cronbach's α Reliabilities for Scale Items Representing Attributes of the Lawyers and the Witness

Attributes	Crown		Defense	
	4 items	3 items*	4 items	3 items*
Lawyers				
positive				
credibility				
ability to protect the witness	0.82	0.78	0.64	0.71
competence				
ability to convince				
negative				
confusing				
awkwardness	0.63	0.69	0.5	0.53
insensitivity to the victim				
lack of respect for the victim				
Witness	8 items		7 items**	
certainty				
credibility				
consistency				
strength				
reliability	0.63		0.78	
ability to convince				
believability				
persuasiveness				

Note: * "ability to protect the witness" and "sensitivity to the victim" were excluded

Note: ** "believability" was excluded

Results

Manipulation Checks

To assess whether the experimental manipulations for the Crown lawyer's strategy (control vs. inoculation vs. re-direct) were effectively conveyed, the accuracy of participants' identification of the presence of particular lawyer strategies was examined. Chi-square analyses on the frequencies of correct vs. incorrect vs. ambiguous identifications showed no difference in participants' accuracy in identifying the strategy used by the Crown across conditions, $\chi^2(4) = 4.3$, ns. Table 27 displays relevant frequencies of correct, incorrect and ambiguous identifications for the Crown strategies.

Respondents also indicated whether the Defense used illogical lines of questioning, a strategy which was always used, and whether the Defense objected to questions asked by the Crown, a strategy which was never used. Chi-square analyses indicated no difference in respondents' identification of the Defense's strategies between conditions, $\chi^2(4) = 4.0$, ns. Table 28 displays relevant frequencies of correct and incorrect identifications for the Defense strategies used for each Crown Strategy condition.

On the whole, respondents were accurate in identifying the strategy used by the Crown and the Defense. It was decided that responses from all participants would be included in the analyses in order to maintain sufficient sample size in each cell of the analyses of variance ¹⁴.

¹⁴ In order to ensure that the inclusion of the respondents who failed the manipulation checks did not affect the results, all key subsequent analyses were re-conducted without these participants. There were no differences in the results.

Table 27: Frequencies of Correct, Incorrect and Ambiguous Perceptions of Crown Strategies

Frequencies	Crown Strategy		
	none	inoculation	re-direct
correct	68 (85%)	68 (85%)	65 (81%)
incorrect	5 (6%)	3 (4%)	8 (10%)
ambiguous	7 (9%)	9 (11%)	7 (9%)

Table 28: Frequencies of Correct, Incorrect and Ambiguous Perceptions of Defense Strategies

Defense Strategy Identified	Crown Strategy Condition		
	none	inoculation	re-direct
Illogic	73 (91%)	76 (95%)	68 (85%)
Objection	1 (1%)	0 (0%)	0 (0%)
Ambiguous	6 (8%)	4 (5%)	12 (15%)

Determination of Viable Covariates

As with the previous experiments, rape myths endorsement and social desirability scores were examined to assess whether the assumptions of ANCOVA were tenable. As before, correlations between the covariates and all dependent variables were examined; rape myths endorsement was significantly correlated with 10 of the 13 dependent variables while social desirability scores only significantly correlated with 2 of the 13 dependent variables; thus as in previous experiments, social desirability was not considered further. See Table 29 for relevant correlations.

Multiple regression analyses with standardized scores on rape myths endorsement, Crown strategy (dummy coded) and gender as predictors of each dependent variable, were performed. The 2-way interactions between rape myth endorsement x group or rape myth endorsement x gender were significant for 11 of the 13 dependent variables, thus as before, rape myths endorsement was included as an independent variable in all further analyses. To use analyses of variance it was re-coded as a dichotomous variable using a median split (Median = -2.04), with subjects either possessing high (score above the median) or low (score below the median) rape myths endorsement.

Table 29: Correlations between Rape Myths Endorsement Scores, Social Desirability Scores and Dependent Variables

Dependent Variables	Rape Myths Scores	Social Desirability Scores
	r	r
verdict	.44**	-0.03
probability of guilt	-.52**	0.09
confidence in verdict	0.07	0.07
sentence	-.31**	0.05
positive attributes of the Crown	-.21**	-0.09
negative attributes of the Crown	.17**	0.07
positive attributes of Defense	.81*	-.14*
negative attributes of Defense	-.26**	0.004
perceptions of the victim	-.45**	0.11
index of Crown re-victimization	-0.04	0.06
index of Defense re-victimization	-.28**	-.14*
importance of the Crown's questions	0.03	0.07
importance of Defense's questions	.14*	0.07

* $p < .05$

** $p < .01$

*** $p < .001$

Main Analyses¹⁵

Dependent variables were analysed in a 2 (lawyer: Crown vs. Defense) x 2 (gender: women vs. men) x 2 (rape myths endorsement: high vs. low) x 3 (Crown strategy: control vs. re-direct vs. inoculation) mixed ANOVA design where lawyer represented the within subjects variable. In order to control for Type II errors, it was decided that any interactions that did not have an effect size of at least $\eta^2 = .05$, would not be followed up.

Lawyer attributes. Respondents perceived the positive attributes of the lawyers to differ significantly as a function of lawyer; $F(1,228) = 7.45$, $p < .01$, $\eta^2 = .03$. Examination of the group means indicated that the Defense was seen as more positive ($M = 5.10$, $SD = 1.19$) than the Crown ($M = 4.63$, $SD = 1.21$). In addition, there was a main effect of Crown strategy condition, $F(2,228) = 12.6$, $p < .001$, $\eta^2 = .10$. Planned contrasts across levels of Crown strategy indicated that respondents saw the lawyers most positively when the strategies of re-direct ($M = 5.04$, $SD = 1.09$) and inoculation ($M = 4.79$, $SD = 1.11$) were used as compared to when no strategy was used ($M = 4.05$, $SD = 1.21$), $t(237) = 4.03$, $p < .001$. Further, the lawyers were seen more positively when the Crown used re-direct as opposed to inoculation, $t(237) = 1.99$, $p < .05$. No other effects met the effect size criteria for further interpretation.

Respondents perceived the negative attributes to differ significantly as a function of lawyer, $F(1,228) = 200.89$, $p < .001$, $\eta^2 = .47$, indicating that the Defense was seen more negatively

¹⁵To assess whether the dependent variables satisfied the normality assumption for parametric statistics, descriptive statistics were examined. The probability rating out of 100% was skewed ($skew = .90$, $se_{skewness} = .16$). A square root transformation was applied to the data, with a new data distribution with two modes created. Similarly, the importance of the Defense's questions was skewed with skewness $= .85$ and $se_{skewness} = .16$, and a square root transformation applied to the data showed no substantial improvement in skewness. Thus it was decided to use the raw data in each of these cases, as the statistics which would be applied to the data (ANOVA and regression) were robust with respect to deviations from normality

($\underline{M}$ =4.63, $\underline{SD}$ =1.19) than was the Crown ($\underline{M}$ =2.89, $\underline{SD}$ =1.24). There was also a main effect of gender, $F(1,228) = 7.32$, $p < .01$, $\eta^2 = .06$, in that females respondents ($\underline{M}$ =4.93, $\underline{SD}$ =1.05) saw the lawyers more negatively than did male respondents ($\underline{M}$ =4.33, $\underline{SD}$ =1.26). No other effects met the effect size criteria for further interpretation.

Re-victimization of witness. Participants rated the re-victimization behaviour of the Crown as significantly different from that of the Defense, $F(1,228) = 44.30$, $p < .001$, $\eta^2 = .16$. Not surprisingly, respondents rated the Crown as more protective of the victim ($\underline{M}$ =4.0, $\underline{SD}$ =1.4) than the Defense ($\underline{M}$ =5.0, $\underline{SD}$ =1.5).

Participants also rated lawyers' re-victimization differently depending on their own rape myths endorsement, $F(1,228) = 8.40$, $p < .01$, $\eta^2 = .04$. Examination of the group means showed that as expected, respondents with low rape myths endorsement ($\underline{M}$ =5.45, $\underline{SD}$ =1.42) saw the lawyers as more re-victimizing than respondents with high rape myths endorsement ($\underline{M}$ =4.59, $\underline{SD}$ =1.54). No further effects met the effect size criteria for interpretation.

Perceptions of the victim as a witness. Analysis of the perceptions of the witness indicated a significant main effect for rape myths endorsement, $F(1,228) = 35.99$, $p < .001$, $\eta^2 = .14$. Respondents with low rape myths endorsement rated the victim more positively ($\underline{M}$ =4.67, $\underline{SD}$ =1.07) than those with high rape myths endorsement ($\underline{M}$ =3.69, $\underline{SD}$ =0.91). There was also a gender by Crown strategy interaction, $F(2,228) = 3.45$, $p < .05$, $\eta^2 = .05$. Simple effects analyses of gender at each level of Crown strategy indicated that females saw the victim more positively than males when the Crown used no strategy, $t(78) = -5.10$, $p < .001$ or re-direct, $t(78) = -2.31$, $p < .05$ but that there was no difference in perceptions of the victim by gender when the Crown used

inoculation, $t(78) = -.15$, ns. No other effects met the effect size criteria for further interpretation. See Table 30 for relevant means and standard deviations.

Importance of questions. Analysis of the perceived importance of the Crown and Defense questions in deciding respondents' verdicts indicated a main effect for lawyer, $F(1,228)=7.75$, $p<.01$, $\eta^2 = .03$. Examination of the group means showed that respondents rated the Crown's questions as less important ($M=4.70$, $SD=1.60$) than those of the Defense ($M=4.93$, $SD=1.78$). No further effects met the effect size criteria for interpretation.

Outcome ratings. Ratings of verdict, confidence ratings, probability of guilt and sentence were analyzed using a 2 (gender) x 2 (rape myths endorsement) x 3 (Crown strategy) MANOVA. Results indicated a main effect for rape myths endorsement, Pillais=.21; $F(4,225) = 15.35$, $p<.001$, $\eta^2 = .21$. Follow-up univariate F-tests indicated a significant effect on verdict, $F(1,228) = 25.97$, $p<.001$, $\eta^2 = .10$, probability of guilt, $F(1,228)= 53.92$, $p<.001$, $\eta^2 = .19$, and sentence ratings, $F(1,228) = 13.93$, $p<.001$, $\eta^2 = .06$. As can be seen in Table 31, respondents with low rape myths endorsement indicated a higher probability of guilt, were more likely to vote guilty, and gave more severe sentences than those with high rape myths endorsement.

A main effect for Crown strategy also emerged, Pillais=.14; $F(8,452)= 4.37$, $p<.001$, $\eta^2 = .07$. Follow-up univariate F-tests indicated a significant effect for verdict, $F(2,228)= 4.56$, $p<.05$, $\eta^2 = .03$ and confidence ratings, $F(2,228)= 8.96$, $p<.001$, $\eta^2 = .07$. Planned comparisons across levels of Crown strategy indicated that respondents were more confident in their verdict when the Crown used re-direct ($M=3.70$, $SD=1.71$) or inoculation ($M=3.83$, $SD=1.63$) as compared to when no strategy was used ($M=2.28$, $SD=1.13$), $t(237) = 4.65$, $p<.001$. Similarly, respondents were more likely to vote guilty when the Crown used re-direct ($M=1.33$, $SD=0.47$)

Table 30: Means and Standard Deviations for Victim Ratings as a function of Crown Strategy and Gender

Crown Strategy ^a	Victim Ratings			
	Male		Female	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
control	3.88	1.12	4.61	0.93
inoculation	4.21	0.82	4.24	1.04
re-direct	3.98	1.29	4.59	1.05

Note. Potential range of response = 1 (victim perceived not at all positively) to 7 (victim perceived very positively)

^an=80 for each condition

Table 31: Means and Standard Deviations for Verdict, Confidence Rating, Probability of Guilt and Sentence Ratings as a Function of Rape Myths Endorsement

Outcome Rating	Rape Myths Endorsement			
	Low ^a		High ^a	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Verdict	1.22	0.41	1.53	0.5
Confidence rating	2.93	1.60	3.21	1.43
Probability of guilt	82.37	16.49	53.56	30.79
Sentence	4.72	1.04	3.81	1.40

Note. Potential range of response for:

verdict = 1 (guilty) to 2 (not guilty)

confidence rating = 1(very confident) to 7 (not at all confident)

probability of guilt = 1 (not guilty) to 100 (definitely guilty)

sentence = 1 (\$100 fine) to 6 (more than 4 years)

^an=120

or inoculation ($M=1.25$, $SD=0.44$) as compared to when no strategy was used ($M=1.55$, $SD=0.50$), $t(237) = -4.08$, $p < .001$. There was no difference when the Crown used re-direct vs. inoculation for either the confidence, $t(237) = .05$, ns or verdict, $t(237) = -1.0$, ns, ratings.

There was also a significant main effect for gender, Pillais=.13; $F(4,225) = 8.24$, $p < .001$, $\eta^2 = .13$. Follow-up univariate F-tests indicated a significant effect only for sentence, $F(1,228) = 10.46$, $p < .001$, $\eta^2 = .04$. Examination of the group means indicated that female respondents ($M=4.68$, $SD=1.20$) indicated more severe sentences than did male respondents ($M=3.86$, $SD=1.31$). No other effects met the effect size criteria for further interpretation.

Content analysis of important factors. A content analysis evaluated responses to the item asking for the most important factor in ratings of the accused's guilt. See Table 32 for relevant frequencies for each category. The responses most often given were that the victim was credible (37.5%), not credible (30%), or hinged on the issue of consent (12.9%). Further, χ^2 analyses revealed that the most important factor varied by Crown strategy, $\chi^2(14) = 36.67$, $p < .01$, and verdict, $\chi^2(7) = 152.35$, $p < .001$ but not gender, $\chi^2(7) = 8.84$, ns. Respondents were most likely to cite the poor credibility of the victim when the Crown used no strategy, and were least likely to cite this when the Crown used re-direct. They were most likely to cite the good credibility of the victim when the Crown used re-direct, and only cited this reason half as often when the Crown used no strategy or inoculation. See Table 33 for relevant frequencies.

When voting guilty, not surprisingly, respondents were most likely to cite the good credibility of the victim as the most important factor. Similarly, respondents focused on the poor credibility of the victim when voting not guilty. See Table 34 for relevant frequencies.

Table 32: Frequencies of Participants Providing Reason for Verdict Choice

Content Analysis Category	Frequency	% of sample
victim not credible	72	30.0
victim credible	90	37.5
accused crafty/sneaky	11	4.6
not enough evidence	7	2.9
no consent	31	12.9
Crown credibility	3	1.3
Defense credibility	12	5.0
other	14	5.8
TOTAL	240	100.0

Table 33: Frequencies for each Content Analysis Category by Crown strategy

Content Analysis Category*	Crown strategy		
	control	re-direct	inoculation
victim not credible	32 (40%)	14 (17.5%)	26 (32.5%)
victim credible	24 (30%)	44 (55%)	22 (27.5%)
accused crafty/sneaky	2 (2.5%)	0	9 (11.3%)
not enough evidence	0	1 (1.3%)	2 (2.5%)
no consent	12 (15%)	8 (10%)	11 (13.8%)
Crown credibility	1 (1.3%)	0	2 (2.5%)
Defense credibility	3 (3.8%)	7 (8.8%)	2 (2.5%)
other	3 (3.8%)	5 (6.3%)	6 (7.5%)
Total	80 (100%)	80 (100%)	80 (100%)

Note. Potential range of response for frequencies = 0 (not chosen) to 80 (chosen by every respondent in that condition)

Table 34: Frequencies for each Content Analysis Category by Verdict

Content Analysis Category	Verdict			
	guilty		not-guilty	
	Frequency	%	Frequency	%
victim not credible	5	3.3	67	74.4
victim credible	83	55.3	7	7.8
accused crafty/sneaky	11	7.3	0	0
not enough evidence	5	3.3	2	2.2
no consent	28	18.7	3	3.3
Crown credibility	1	0.7	2	2.2
Defense credibility	5	3.3	7	7.8
other	12	8	2	2.2
Total	150	62.5	90	37.5

Note. Potential range of response for frequencies = 0 (not chosen) to 240 (chosen by every respondent in that condition)

Discussion

This experiment attempted to determine whether the Crown could use re-direct and inoculation to neutralize illogical arguments used by the Defense. The use of re-direct and inoculation was determined to be more effective than the use of no strategy by the Crown on positive perceptions of the Crown, confidence in verdict and verdict ratings. Thus there are positive implications for the Crown's use of strategies against the Defense's use of illogical arguments in the sexual assault trial.

The use of re-direct and inoculation increased the likelihood of a guilty verdict and supported perceptions of the victim's credibility, in comparison to the use of no strategy by the Crown. This confirms results from Study 2 that also indicated the effectiveness of these strategies against the Defense's attacks on the victim's credibility. That the Crown can use strategies to effectively undermine the Defense's use of illogical arguments is a positive finding for victims of sexual assault. It is possible that the use of any strategy by the Crown might be seen to impact on trial outcomes in actual sexual assault trials.

The use of re-direct was more effective than the use of inoculation in highlighting positive perceptions of the Defense and issues which were important to the verdict, such as the victim's credibility. However, re-direct appeared to undermine the female respondents' perceptions of the witness, while inoculation did not have this effect. It is possible that although the use of either strategy is more persuasive than the use of no strategy by the Crown, that there is a complex relationship between the efficacy of each strategy in influencing issues relevant to the verdict and perceptions of the witness.

Given that re-direct was more effective in influencing perceptions of the victim's credibility, it may be that there are some situations where re-direct is more effective than inoculation. It could be that the effectiveness of both strategies depends on the characteristics of the victim on the stand and the gender distribution of the jury. Although one study determined that inoculation was effective in verdict ratings and perceptions of the victim's credibility, it did not examine the effects of gender of the participants (Williams, Bourgeois & Croyle, 1993). Future research in this area should vary the gender distribution of the jury (Hahn & Clayton, 1996; Riger, Foster, Nelson-Kuma & Curran, 1995), the strategies used by the Crown (Linz & Penrod, 1984), victim characteristics which may affect her credibility, such as drinking at the time of the assault (Fischer, 1995) and her confidence while testifying (Doyle, 1998).

In general, the results that the Crown's use of re-direct and inoculation were largely more effective than the use of no strategy at all supports research which indicates that strategy use should be effective in the courtroom (Evans, 1995; Linz & Penrod, 1984). Future research which extends this research to actual trials would suggest that Crown attorneys could attempt to include these strategies in their arsenal, and perhaps learn the extent to which these strategies positively affect the trial outcomes.

The Defense was perceived as displaying more positive attributes than the Crown and as asking more important questions than the Crown. As in Study 4, this could be the result of participants considering different aspects of each lawyer's performance when assessing his/her attributes. Nonetheless, the Crown was viewed as more protective of the victim than was the Defense. Thus, while the Crown may have served a protective role, when the Defense used illogical arguments or attacked the victim's credibility, these may have served to enhance positive

perceptions of the Defense, irrespective of the strategies used by the Crown. Future research could examine the differential perceptions of the lawyers in the context of the different strategies employed, to determine the exact nature of the variation in respondents' perceptions due to the strategies used.

Gender of respondent affected sentence ratings and perceptions of the victim. This is different than results found in Study 4, where there were no gender effects, and results from Study 2, where gender affected negative perceptions of the lawyers. Collectively, gender did not manifest a large effect on perceptions of the Crown, Defense and the witness, and outcome ratings. Future research would replicate these experiments to determine whether the gender effect is hardy or an artifact of this experimental process.

As well, endorsement of rape myths was influential in affecting perceptions of re-victimization, outcome ratings, and perceptions of the victim as a witness. This result was similar to those found in the previous studies, suggesting that rape myths endorsement, even in a sample with limited variability, is a strong predictor of respondent perceptions in the sexual assault trial.

The results from this study support the Crown's use of re-direct and inoculation over no strategy usage, in order to undermine the Defense's use of illogical arguments. However, the results on the superiority of one strategy over the other are not entirely conclusive. The more research performed in the future on the precise variables affecting the relative efficacy of these strategies used by the Crown in affecting perceptions of the lawyers, the victim and trial outcome, the increased likelihood of gaining a clear picture of the dynamics behind these strategies. Future research might examine the Crown's use of these strategies against a wide range of strategies used

by the Defense, while manipulating variables such as the characteristics of the victim, the jurors and the delivery of the two strategies.

GENERAL DISCUSSION

This program of research examined the differential use and effects of lawyers' legal tactics in the sexual assault trial. The persuasive impact of strategies such as attacking the victim's credibility, the use of illogical arguments, objection, inoculation and re-direct was assessed. Further, the extent to which rape myths affected the success of lawyers' framing of the sexual assault case was also examined. Qualitative analyses of transcripts of the interaction between the lawyers and the victim in sexual assault cases confirmed that the Defense was more aggressive than the Crown in utilizing common legal strategies. Follow-up jury simulation studies indicated that tactics available to the Crown could be used to counteract the Defense strategy to protect the victim as a witness and to strengthen the Crown's case. However, critical to the lawyer's strategies was the presumption that they must deal with rape myths to effectively sway the jury.

The endorsement of rape myths among participants simulating jurors was positively associated with perceptions of the defendant as not guilty, recommending a lighter sentence if he was found to be guilty, reduced perceptions of the credibility of the sexual assault victim, as well as greater perceptions of the competence of the lawyers and the unlikelihood that the lawyers themselves contributed to the re-victimization of the victim. This is consistent with past research indicating the influence of rape myths endorsement in sexual assault research studies, with some researchers concluding that jurors' belief in rape myths is the strongest predictor of legal outcomes in sexual assault trials (Edwards & Heenan, 1994; Sinclair & Bourne, 1998). Their usage in the line of questioning in the sexual assault trial is more than likely linked to lawyers' understanding of the social perceptions around sexual assault held by lawyers and juries, and hence their ability to capitalize on such stereotypes and heuristics (Fischer, 1995; Seta & Seta, 1993).

It is of note that this pattern of relations between rape myths endorsement and juror perceptions was evident, even though respondents in the present studies generally reported low levels of endorsement of rape myths. These samples may not have been representative of the general population, in that they were relatively young and highly educated, and were likely well informed due to exposure to sexual assault campaigns on campus. Moreover, respondents who took part in the experiments might have self-selected due to a low rape myths endorsement. Indeed, past research has noted that college students had lower rape myths endorsement levels than that observed in the general population (Giacopassi & Dull, 1986; Yarmey, 1985b). Given the limited variability in this construct in the empirical studies, a corresponding lack of power would be expected. As there was a prediction that participants with low rape myths endorsement would be less likely to subscribe to the stereotypes and assumptions about sexual assault promoted by rape myths, the finding that respondents in these samples were still responsive to the myths is illustrative of the powerful effect of the rape myths construct. Thus, there appears to be a very low threshold for the application of rape myth stereotypes, at least among this sample.

If the negative stereotypes of sexually assaulted women that underlie rape myths are a driving force within the trials, then even in the face of conflicting information (Asuncion & Mackie, 1996), it is possible that jurors enter the trial with preconceptions that victims can do little to change. In effect, by virtue of stereotypes of the crime itself, women who are victimized are viewed with skepticism that not only undermines their testimony, but as well, provides the Defense with a strategic line that takes very little to confirm the negative stereotypes. This might be part of the basis for victim complaints when they charge the legal system with re-victimization within the sexual assault trial. Should this be the case, then jurors' vulnerability to such a line of questioning

presents a strong prejudice in favor of the Defense and against the victim, and should be the basis for objection to inclusion as a juror. However, it may be that the attenuated endorsement of such beliefs stems from a recognition that they are socially unacceptable. If so, then even minimal endorsement could reflect a much stronger belief in rape myths than would appear based on the possible range of scores. Clearly in a society that plays to political correctness, the ability to identify those with prejudicial attitudes will be difficult. It may be that Crown attorneys prefer female jurors for exactly this reason, as some research has indicated that in general, women tend to show less bias against sexual assault victims than do men (Fischer, 1997; Hahn & Clayton, 1996; Schutte & Hosch, 1997).

The literature has suggested that there are potential gender differences in endorsement of rape myths (Burt, 1980). Giacomassi & Dull (1986) postulated that individuals were more likely to reject those myths that reflected on themselves and to accept those which deflected to other groups. Consistent with these, women were less likely to endorse rape myths in the present studies. Thus, it is not unreasonable for lawyers to prefer male to female jurors in the selection process.

However, it may be that men and women do not wholly endorse any, all or none of the myths, but rather are differentially selective in which ones they endorse. For example, men may be more likely than women to assume that a woman who says no to sex is actually consenting. This potential variation in persuasive appeal of rape myths may prove to be an important issue for future research. Examination of endorsement of singular myths by males and females, rather than an entire rape myths scale, would indicate which myths were endorsed along gender lines. This might allow for a greater understanding of the nature of beliefs about rape, as well as present a clearer

picture for social change opportunities. However, for better or worse, such information would undoubtedly be the basis for lawyers' courtroom strategies, in that it would highlight directions that are most influential in swaying jurors.

Research on gender as a predictor in responses to sexual assault cases is not definitive. Some findings demonstrate no gender difference in jurors' perceptions of sexual assault trials (LaFree, et al., 1985; Nelligan, 1988; Weir & Wrightsman, 1990; Yarmey, 1985b); others establish a difference whereby women are more sympathetic to the victim than are men (Bottoms & Goodman, 1994; Fischer, 1997; Foley & Pigott, 2000; McNamara et al., 1993; Schutte & Hosch, 1997), and still others indicate that men are more sympathetic to the victim than are women (Sinclair & Bourne, 1998). No gender difference was found in studies that used actual sexual assault trial jurors (LaFree et al., 1985; Nelligan, 1988), a mixture of community members and undergraduates (Yarmey, 1985b) or only undergraduates (Weir & Wrightsman, 1990). There was no common type of respondent within these studies. Researchers used data taken from both actual trials (LaFree et al., 1985; Nelligan, 1988; Weir & Wrightsman, 1990) and simulated trials (Yarmey, 1985b) and examined gender differences in ratings of verdict and perceptions of the victims. Thus, the trial types were not a commonality between these studies.

Similar to the present studies, the research indicating that women were more sympathetic than men toward the victim tends to be based on the use of undergraduates in mock jury studies (Bottoms & Goodman, 1994; Fischer, 1997; Foley & Pigott, 2000; Schutte & Hosch, 1997). Mock jurors are asked whether they attribute responsibility to the victim (Foley & Pigott, 2000), rate her credibility (Bottoms & Goodman, 1994) and give verdict ratings (Bottoms & Goodman, 1994; Fischer, 1997; Schutte & Hosch, 1997). Female respondents tend to attribute less

responsibility to the victim, find her more credible and are more likely to convict than are male respondents. Using a Just World rationale, these results might reflect the perception that since a woman is similar to the victim, it could not have been her fault; therefore, she is less blameworthy. Why this would be more evident in juror simulations with undergraduate students is not clear. Future research in this area needs to explore the context and basis for gender differences in perceptions of sexual assault.

It has been suggested that gender of respondents in jury simulation research on sexual assault can interact with status as a victim of sexual assault (Foley & Pigott, 1997a; Sinclair & Bourne, 1998), as the general presumption is that more women are subjected to sexual assault than are men, thus widening the differentiation in responses between the two groups. However, while a substantial proportion of female participants in the present research series indicated that they had been victimized in past, it did not appear to affect their responses. Nevertheless, it is possible that victimization or vulnerability to it was an underlying factor in the gender effects. Future research might examine the issue of responses related to status as a victim of sexual assault more carefully than was done in this research. In this research, the measure used to determine status as victim of sexual assault was vague and open to interpretation, as it did not require that participants respond to a standard definition of sexual assault, when indicating their status as a victim. Thus, large variability may have been captured in this measure, which would be reflected in the inability to determine the relationship between this status and perceptions of the sexual assault trial. Future research might expand the measure used to assess victimhood to include a definition of sexual assault or further items specifically focused on potentially victimizing experiences. This would

more clearly detail the relationship between gender and victimhood in relation to perceptions of the lawyer and their tactics in simulated sexual assault trials.

The application of rape myths is not the sole purview of those in judgment of the sexual assault trial. The qualitative analysis of the transcripts of the questioning of the victim by the Defense and Crown attorneys in sexual assault trials indicated that much of the content of their questioning was oriented to the notions held in rape myths. This would suggest that lawyers are clearly not unaware of the jury's vulnerability to such myths, if indeed they do not endorse such myths themselves. Furthermore, this indicated that the lawyers spend much of the interaction with the victim highlighting the consistency of her responses to expectations stemming from rape myths. Examples of this are in the form of the Defense suggesting that the victim was lying to cover up having consented to sex, or alternatively, the Crown attempting to show that the victim was clearly physically hurt implying that she had not consented. To the extent that the line of questioning adopted with the victim is representative of the case more generally, it may be that despite legislative changes, winning a sexual assault trial continues to be harnessed to capitalizing on the preconceptions about sexual assault and victims of sexual assault held by jurors before they enter the courtroom. As rape myths affect the selection of sexual assault cases into the legal system (Giacopassi & Dull, 1986; Lonsway & Fitzgerald, 1994), and are believed by police, prosecutors and judges (Bowland, 1994; Bumiller, 1990), it is not surprising that rape myths might be highlighted not only by the Defense, but as well by the Crown, both of whom are willing to play into such myths in order to maximize the strength of the case.

Introduction of bias into the trial is contrary to the premise of trials as forums where logic, reason and unbiased examination of the facts prevail (Kapardis, 1997). Thus, the use of rape

myths as the basis for the content of a line of questioning contravenes the foundation of justice upon which trials are conducted. The influence of rape myths in the sexual assault trial was further compounded by the tactics lawyers chose to adopt, some commonly used legal strategies and other founded on illogical lines of reasoning premised on rape mythology.

Strategy use in the sexual assault trial appears to be based on a combination of psychological research on persuasion and general truisms which are indicated as effective courtroom tools within the legal community (Jonas, Eagly & Stroebe, 1995; Kapardis, 1997; Kerr & Bray, 1982; Matton, 1988). When this information is concretized for attorneys, it generally translates into how to use logical argumentation in the most effective manner to break down the testimony elicited from the witness in a manner that supports a particular framework (Jonas et al., 1995). Thus using strategies in the courtroom is a method of persuasive argumentation.

Given that the attorneys are in court to each persuade jurors to a certain opposing perspective, the reliance on rape myths is not surprising. Their persuasive appeal would be of great potential appeal. The use of strategies to capitalize on the rape myths content and further bring around jurors to a particular framework was also examined, however, as strategy use was an active persuasion tool that could impact on trial outcomes and affect perceptions of the lawyers and victim.

Although the tactics were available to both lawyers, the Defense was in general more likely to use any strategy than was the Crown, in actual sexual assault trial transcripts of testimony between the lawyers and the victim. Further, there was an intimation that the Defense was more adept at the use of strategies to sway jurors toward a not guilty verdict, than the Crown was at strategy usage in order to convince jurors to render a guilty verdict. One particular result was that

both lawyers focused most frequently on attacking or undermining the victim's credibility, depending on their respective roles. However, the Defense used this tactic more frequently than the Crown, and with a resulting impact on verdict. Thus, the findings suggested that in actual sexual assault trials, the Defense was adept at re-framing the victim's testimony in a manner that supported an alternative perspective of the sexual assault. A further implication was that the Defense exerted a greater degree of control over the trial outcomes, thereby placing the Crown and by extension the victim, at a disadvantage.

The Crown did not use strategies in actual sexual assault trials with the same frequency and resulting effect as did the Defense. When questioning the victim, the Crown used a lower frequency of strategies with a lessened effect on trial outcomes. When assessed in the context of questioning the victim in trial transcripts, the general consensus among handbooks for trial attorneys appears to be that proficient strategy usage will increase argument persuasiveness for the jury and judge, and thus increase the likelihood of winning the case (Evans, 1995; Kapardis, 1997; Linz & Penrod, 1984; Matton, 1988; Reskin & Visser, 1986; Shayne, 1988). Thus the finding that the Crown only won 66% of the cases examined in this research combined with the lower frequency of strategy usage of the Crown, is not surprising.

It could be that the political climate in the court is such that prosecutors feel constrained as to how frequently they can use strategies (Barnes, et al., 1999; Makin, 1998). Although some suggestions have been put forth as to the reasons for this, from not wanting to offend the trial judge (Barnes, et al., 1999) to not feeling adequately prepared because of the heavy caseloads (Makin, 1998), there is no conclusive reason why this situation currently exists. Future research could examine this issue further, by manipulating some of the potential impediments to strategy use

by the Crown in simulated trials, such as repeated presentation before the same trial judge, and determining which of these factors does affect the frequency of strategy of use. This would be useful information for Crown attorneys to use in actual cases, where they could determine whether some of the identified factors are present in their trial settings and then devise ways to circumvent these factors, if possible. Another focus of future research could be to determine how the Crown uses strategies in eliciting testimony from other witnesses in the sexual assault trial. Perhaps when questioning the accused, the Crown uses strategies more frequently to undermine the witness than the Defense uses them to bolster the accused's testimony. This research would indicate whether the Crown's lower frequency of strategy use identified when questioning the sexual assault victim in fact applies to the entire sexual assault case.

In the jury simulation studies where the Crown's use of tactics was not manipulated, results indicated that the Defense used illogical arguments to effectively undermine the victim's testimony, with an effect on trial verdicts over that of logical arguments and the strategy of attacking the victim's credibility. In addition, the use of illogical arguments promoted a perception of the victim's poor credibility. Thus, the Defense was influential in affecting the trial outcomes when using very subtle strategies premised on rape myths, as opposed to more obvious strategies.

While results suggest that the use of these arguments was more likely to garner an acquittal in simulated sexual assault studies, the grounds upon which they were effective were not disentangled. Thus, the mechanisms behind the illogical arguments need to be examined. Future research might manipulate the verbal delivery of illogical arguments (Matton, 1988; Penelope, 1990), and the confidence of the victim's response (Ebbesen, 2000) in order to further examine this issue.

The jury simulations that examined the effectiveness of different Crown strategies in offsetting the Defense attempts to undermine the credibility of the victim, or to apply logical or illogical argumentation in lines of questioning, indicated that the Crown could effectively re-frame testimony such that the lawyers were both seen as more competent and less re-victimizing of the victim. As well, the Crown's adoption of any of the offsetting strategies resulted in a greater likelihood of a guilty verdict among respondents. Extending these results to actual sexual assault trials suggests that when the Crown does use such strategies, this can effectively bolster his/her case in a positive manner towards the victim. Future research might examine in more detail the underlying mechanisms that make these strategies effective. For example, while it is suggested that the Crown's more protective behaviour increases the perceived confidence of the victim and hence the strength of her testimony, these perceptions were not assessed. Indeed, given the nature of the simulation, the actual effect of these strategies on a victim's demeanor during her testimony was not examined. Future research could adopt different a research strategy in which participants become the focus of questioning, and they are subject to differential questioning tactics in order to assess the effects of these tactics on their confidence, clarity, and consistency.

The link between use of strategies by the Crown and the Defense and trial outcomes may have implications for the treatment and perceptions of the victim herself. When sexual assault victims complain of the trial experience, they often claim that it is "re-victimizing", in that it is demeaning, embarrassing and humiliating. Allegations are made of these trials as the "second rape", in that victims are asked to give such detailed accounts of their experiences as to almost render the testimony lurid in its content (MacKinnon, 1990). Given that the analysis of actual court transcripts indicated that the Crown did not often use strategies to convey the victim's

perceptions of the sexual assault, while the Defense used more clearly aggressive tactics with a greater link to trial outcomes, sexual assault victims might be referring in part to the differences in strategy use when they lodge these complaints.

Further, although the Defense has the right to cross-examine the victim, with large leeway as to how this can be properly done, the Code of Professional Conduct (Canadian Bar Association, 1988) indicates that a lawyer must not “needlessly abuse, hector, or harass a witness; needlessly inconvenience a witness”. Using strategies that serve to undermine the victim’s credibility and destroy her confidence, although advantageous in eliciting a guilty verdict for the Defense, can possibly be construed by the sexual assault victim as re-victimizing. In addition, Konradi (1997b) indicated that some victims in actual sexual assault trials felt that they received less support on the witness stand than they desired from the prosecutors. It is possible that in a situation where the Defense uses strategies to undermine the victim’s testimony while the Crown does not use comparable strategies to strengthen her testimony, the victim might experience this loss of support as further evidence of re-victimization.

Given that results from the jury simulations indicated that the protective strategies used by the Crown reduced respondents’ perceptions that the victim was subjected to re-victimization, it may be that while the use of protective strategies may not strongly impact the trial outcome in and of themselves, to the extent that they allow the victim’s self-confidence to remain intact throughout her testimony, the Crown attorney may indirectly strengthen the case for the victim. In contrast, by not making efforts to support the victim, increased feelings of re-victimization might result in a loss of confidence by the victim, which would then negatively impact on trial outcomes in terms of the victim receiving justice (Penrod & Cutler, 1995). This is a positive finding for Crown attorneys

and victims, as a part of the re-victimization dynamic might be nullified should the Crown use strategies in a more aggressive manner when eliciting testimony from the victim.

The influence of rape myths, the influence of gender and the tactics used by the lawyers were all examined in the present research studies in terms of their effects on perceptions and the outcomes of sexual assault trials. However, any conclusions must be qualified by the methodological limitations that arise from this research. The research program included five studies, two that employed on data from actual sexual assault trials and three experimental simulations. While these two types of studies were complementary to one another, each had limitations.

The actual court trial transcripts were taken from cases examined in Halifax courts between 1988 and 1992. These cases were chosen because of their convenience and availability to the researchers, as opposed to being selected to achieve representativeness or generalizability. These cases were tried before the passing of Bills C-46 and C-49, legislation that concerns the introduction of prior sexual history evidence and evidence from records. It is not known how these trials might have been different should they have been conducted after the passing of this legislation. More specifically, it may be that with the passing of that legislation, the Defence may be in a stronger position to respond more aggressively to the victim, and the Crown may feel compelled to be more protective, given the absence of protection from the law. It may be of interest in light of concerns about victim re-victimization to assess differences in her treatment during her testimony under more recent legislation.

As well, in the studies which focused on actual case data, only the portion of the transcript covering the victim's testimony was analyzed. Although the victim's testimony was isolated for

issues of control and research focus, evidence other than the victim's testimony might have influenced trial behaviors and outcomes. Factors which might have affected the verdict and sentence, as well as the actions of the Crown and Defense, might have been related to testimony from other witnesses, testimony from the accused or medical evidence, all of which were not included in these analyses. Thus, the conclusions from this research should only be generalized to the treatment of the victim during her own testimony.

Despite these limitations, the actual court data included both stranger and acquaintance sexual assaults, with varying degrees of violence, resistance and injury. As well, the victims displayed a wide range of attributes represented in their status as prostitutes, college students and mentally challenged housewives. This diversity in types of sexual assault cases suggests that the results are representative of a wide variety of sexual assault situations, and are generalizable to a wide range of sexual assault as a result.

Mock jury simulations also have several methodological limitations that should be addressed. Not unlike similarly conducted studies (eg., Golding et al., 1997; Greene et al., 1998; Hymes et al., 1993), the present studies relied on undergraduate students as participants. While some research has indicated no differences in responses of undergraduate and community samples in the verdict and sentence (Cutler, Penrod & Dexter, 1990; Feild, 1979), other findings do show the responses to be different (Foley & Pigott, 2000; Yarmey, 1985a). Of particular interest, Foley and Pigott (2000) found that community participants perceived rape victimization as more serious than did college undergraduates. Yarmey (1985a) found that community members attributed more responsibility and were more likely to vote not guilty, in comparison to university undergraduates. Thus, as Foley and Pigott (2000) note, a more representative cross section of the population with

demographic characteristics consistent with that of actual jurors may contribute to the generalizability of the findings. As such, a replication of these studies on more representative populations might be of benefit.

As well, the focus of this research was on female sexual assault victims, thus restricting conclusions to the population of male sexual assault victims. It is suspected that male sexual assault victims have dissimilar experiences from female victims and furthermore, that responses to these victims differ from responses to female victims (Perrott & Webber, 1996; Smith, Pine, & Hawley, 1988). Although respondents are equally empathetic to both genders, female victims are attributed with more responsibility for provoking the attack while men are more likely blamed for not physically repelling their attackers (Anderson, 1999; Perrott & Webber, 1996). As well, male sexual assault victims seem to experience different after-effects than female victims, appearing more hostile, depressed and less likely to exhibit sexual dysfunction (Frazier, 1993; Sarwer, Crawford & Durlak, 1997). Thus, there may be a different set of rape myths for male sexual assault victims. However, as male sexual assault appears not as common as female sexual assault, these myths might be less pervasive within the general population. As such, attorneys might rely less on these myths in eliciting testimony from male sexual assault victims, than the comparable myths for female sexual assault victims when questioning them. Further, the Crown's strategy use might have a different level of effectiveness against those used by the Defense for male than female sexual assault victims. As well, the Defense might be less likely to use strategies to capitalize on myths that are not as widely endorsed for male victims as those widely endorsed for female victims. In future research, the differential use of the myths and the tactics by the attorneys in male sexual

assault trial could be investigated, to give a more comprehensive picture of the treatment of sexual assault victims of both genders in the courtroom.

Another shortcoming can be seen in the nature of the actual sexual assault crime used in the experimental manipulations. The sexual assault depicted in the scenarios could be classified as an acquaintance rape as opposed to that by a stranger. There is evidence that perceptions vary in classifications of sexual assault (Allison & Wrightsman, 1993; Allison, 1996). For example, respondents are more judgmental of women who are sexually assaulted by acquaintances than those sexually assaulted by strangers, and are more likely to vote for acquittal in cases of acquaintance than stranger rape (Lonsway & Fitzgerald, 1994). As such, the findings from these experiments can only be generalized to other similar sexual assault situations.

If a stranger sexual assault scenario were used in this research, given the function of rape myths, respondents may have been more sympathetic toward the victim, and hence the Defense lawyer's use of illogic or strategies to undermine her credibility might have been less effective. Indeed, in these circumstances, active protection on the part of Crown might be less necessary, as the Defense will have to be more careful in eliciting testimony from the victim, given her fit with rape myths, and hence the greater sympathy from the jury.

In addition, the length of the testimony presented was significantly condensed in relation to actual sexual assault trials. Consequently, the comprehensiveness of information presented to participants was extremely restricted, potentially limiting the accumulated effect of the manipulations. Bermant, McGuire, McKinlet & Salo (1974) indicated that the more information presented during a jury research study, the more likely to approximate the actual trial and thus receive a verdict more reflective of that received in actual trials. The responses in this research

might have been somewhat more sensitive to the manipulations than if the manipulations were buried in more information from other witnesses and evidence. Presenting only the victim's side of the story might have made her issue more salient to the victim, thus increasing the likelihood that respondents would sympathize with her (Weir & Wrightsman, 1990). On the other hand, the victim's testimony has been found to be critical to the outcomes of assault trials (Allison, 1996; Sealy & Wain, 1980), and as such, variations in perceptions as a function of this testimony may have a strong influence on how other dimensions of the trial are interpreted. Future research could replicate include added testimony from other witnesses, in order to determine specifically how the perceptions of the lawyers and victim, as well as the effectiveness of the tactics used, might vary.

Finally, given the need for experimental control, only one lawyer strategy was manipulated at a time. Although this allowed for control over the variables examined, it limited the external validity of the findings. In actual sexual assault trials, any strategies could be used in conjunction with one another. For example the Defense could simultaneously or interchangeably use negative tactics such as shouting while impeaching a victim. Similarly, the Crown may use several offsetting strategies. Of greater importance may be the interaction between the Defense and Crown, and the determination of which strategies play off one another in the most effective way. In addition, there are a host of factors that might interact with lawyer strategy, but that were not a part of this research program. These might include the attitude of the victim, for example, a demure rather than an aggressive victim (LaFree, 1989; Yarmey, 1985b), the intoxication of the victim and assailant (Fischer, 1995; Wall & Schuller, 2000), or the confidence of the victim (Penrod & Cutler, 1995) among other factors. Future research might examine the complex interplay between lawyer strategies to determine synergistic and counterproductive effects.

The manipulations were presented in written form, which would have excluded several types of factors present in the actual sexual assault trial, for example, non-verbal behaviors. As research shows that non-verbal information can be important to perceptions of lawyers and verdict in a sexual assault trial (Henley, Miller & Beazeley, 1995; Penelope, 1990), it is possible that responses might have differed had respondents been able to see the actions and reactions of the lawyers and victims during the trial. Their responses may have differed for example depending on whether the victim showed that she was upset and flustered, in comparison to maintaining a cool and even response. Future research might present these scenarios in videotaped format, in order to determine whether there is a difference in the effectiveness of lawyers' tactics when nonverbal cues are available.

Finally, respondents took part in these experiments out of desire for extra credit in the Introductory Psychology course or to assist the researcher in her efforts. Ultimately, they were not concerned that their responses would have a significant impact on their future lives, nor the life of the victim or defendant. Respondents knew that this was a mock trial, they were asked for opinions rather than responses beyond a reasonable doubt. Thus, they might have been less attentive to the basis for their considerations; while they felt free to express an opinion, this might not have translated automatically into an actual verdict choice in a real trial (Erian et al., 1998; Nightingale, 1993). Moreover, they may have been more sensitive to demand characteristics, given the politically sensitive nature of this type of research.

It is important to note that although limited in scope, this research may have important implications. The experimental control gained through this methodology allowed for more definitive conclusions than less controlled studies, i.e., case studies and interviews. Furthermore,

these results supported those found in the less controlled studies (Bavelas, 1996; Coates et al., 1994; Konradi, 1997a) and could be seen as adding to the discussion of the tactics used by lawyers and the reliance on rape myths, in the sexual assault trial

Implications for Courtroom Practices

Previous literature indicated that the legislation was creating a quandry for women whereby the increase in reporting of sexual assaults to the appropriate authorities was not accompanied by a comparable increase in the number of cases deemed founded (Bowland, 1994). Researchers asserted that the legislation was not providing opportunities for more cases to be won in the courts (Los', 1994; Mohr, 1994). This program of research has shed some light on factors that may contribute to this situation, by highlighting the differential use of tactics by the Crown and the Defense, and the inclusion of rape myths into the sexual assault trial, thereby providing some support for allegations that the legal system may be somewhat biased against sexual assault victims. Both the Crown and the Defense use rape myths, which rape victims perceive as pejorative (Burt, 1990). In addition, the Defense appears to use strategies which are more closely linked with trial outcomes, in comparison to the Crown, although the results indicate that the Crown can use these strategies successfully against the Defense. Moreover, the mock jurors appeared to be influenced by factors that appealed to rape myths.

Social justice is the ideal of seeking the truth in an effort to provide fair and just outcomes through the criminal justice process (Renner et. al., 1997). The standard by which the ideal of social justice is achieved requires that the legal doctrine underlying legislation designed to protect women from unfair exploitation in the courtroom actually performs this function (Renner et al.,

1997). As such, the present studies suggest that there are several avenues available by which social justice ideals in the sexual assault trial can be met.

A critical examination of the legal doctrine itself is required before law reform can be implemented (Guinier, Fine, Balin, Bartow & Stachel, 1994). Past law reforms have perhaps fallen short of their intention for female sexual assault victims as they have originated from the conventional legal framework dominated by traditional interests likely to preserve the status quo and resist the evolution of social change (Guinier et al., 1994; Marshall, 1996). Efforts at reform are still largely perceived as a reflection of the male perspective (Edwards & Heenan, 1994).

“To break the past cycle of ineffective reforms may require a form of re-definition which moves to a social science level of analysis, rather than one based solely on traditional legal scholarship” (Renner et al., 1997, p.100).

Until the legal system, its practices and doctrines, are held accountable to the ideal of social justice, and shortfalls are used as the basis for further conceptual refinements, truth, fairness, and justice will never be achieved (Renner et al., 1997). To hold the success of these idyllic achievements accountable to the standards of science might be accomplished through the methodological framework of social science research (Renner et al., 1997, p.101).

The solution appears to be multi-faceted. Changes in the legislation are needed in order to respond to the fact that rape mythology is still a factor upon which sexual assault cases are selected into the system, tried, verdicts rendered and sentences given (Gregory & Lees, 1994; Renner et al., 1997). The legislation, as the blueprint for the machinations of the legal system, could limit or eliminate questions premised on rape mythology, in the same manner as it has attempted to limit testimony on previous sexual history (Bill C-127). The effects of reliance on rape myths within this

research suggests that limits placed on the extent to which rape myths can be emphasized in sexual assault trials would increase the potential for jurors to believe female sexual assault victims.

As research has indicated that changing the legislation does not necessarily translate into actions (Boyle, 1994), legislative changes could be accompanied by re-education of the legal professionals. One segment of this re-education would focus specifically on the Crown attorneys. They could be educated about the effects and effectiveness of particular strategies for approaching the victim, particularly if future research determines that they are using the strategies less effectively than the Defense in any part of the sexual assault trial. In addition, Crown prosecutors could identify the barriers to the use of these strategies within the trial, such as the issues around appearing repeatedly before the same judge, in order that solutions for the removal of these obstacles could be determined.

The re-education program would also include trial judges. Part of the reason that the Crown may not use particular strategies frequently as indicated by the results, may be due to a presumed negative judicial response (Goldberg-Ambrose, 1992). Although a quiet adjudicator of the court process, the judge wields enormous control over the trial process (Evans, 1994; Kapardis, 1997; Renner et al., 1997). Along with controlling the allowable facts and witnesses, and the relative conduct of the lawyers, he/she controls the jury by instructing them on points to consider when rendering a verdict (Kairys, 1982; Kapardis, 1997). Kapardis (1997) made direct reference to the fact that lawyers could aggravate a judge when constantly objecting, a suggestion that was supported by these results. It may stand to reason that, should a Crown prosecutor act in a manner contrary to that expected by a judge, this would also prove aggravating and negatively

affect the Crown's case. Judges should be made aware of the potential effect of their actions within the courtroom, in the context of the prosecutors' inhibited strategy usage.

Because rape myths and illogical arguments premised on these myths might be so embedded within the social consciousness as to be undetected, it might be beneficial for the Crown's case to include expert testimony on the pejorative effect of these myths in the sexual assault trial. Although there are a multitude of factors which can affect the influence of the testimony of expert witnesses, such as gender (Schuller & Cripps, 1988), the timing of the testimony (Brekke & Borgida, 1988; Schuller & Cripps, 1988; Spanos et al., 1991) and the instructions given to the jury regarding the testimony (Schuller, 1995), it is generally accepted that expert testimony concerning rape myths can be effective in removing biases toward sexual assault victims, and encouraging jurors (mock or real) to render a guilty verdict (Brekke & Borgida, 1988; Marable, 1999; Spanos et al., 1991; Tetreault, 1989). If this testimony is effective, then efforts should be made to include this testimony as part of the proficient Crown's case.

Conclusion

Despite the limitations of the present research, the results nonetheless provide insight into the effect of rape myths and tactics used by lawyers in the sexual assault trial. It appears that rape myths are pervasive within the legal system and the trial setting, with a potentially negative effect as a result of their presence. The Crown and the Defense both capitalize on these myths, perhaps because they are the means by which cases are selected into the system (Bowland, 1994). This suggests that the current perspective of the legal system is one where rape myths are not seen as disparaging. Thus the legal system might be perpetuating bias against sexual assault victims within the very arena where a lack of bias should be endorsed (Kapardis, 1997).

In addition, the lawyers can use tactics to effectively undermine the victim's testimony when it does not fit within their particular framework. Although the mechanisms behind the efficacy of the tactics are unclear, that the tactics can be effective tools to re-frame the victim's testimony is not in dispute. How the tactics can be more effectively employed by the Crown in particular is a matter for future research and debate within the legal community. Clearly, however, the fact that these tactics can be seen as persuasive in simulated trials suggests that they can be used proficiently in actual sexual assault trials, particularly by the Crown. In this way, it is possible that the sexual assault victim may feel less re-victimized during the court process.

The results of this research program can be used in an applied setting as a tool for legal change, once the efforts to change the current legal responses to sexual assault focus on several fronts at the same time. When this change is enacted on several levels simultaneously, it may be more likely to occur effectively (Roberts & Mohr, 1994).

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APPENDIX A: CREATION OF A CLASSIFICATION SCHEME FOR SEXUAL ASSAULT TRIAL DYNAMICS

Sahjpaul & Renner (1988) began an examination of courtroom dynamics by examining questions asked in 27 assault cases, 22 physical assaults and 5 sexual assaults. This material was used to draft a coding manual which was intended to capture in a quantitative manner the type and content of the questions asked of the sexual assault victim on the witness stand. The manual initially classified each question into one of five stages, signifying which part of the sexual assault was being examined. These five stages were as follows: "Prior to Incident" questions asked about the details and facts which were present prior to the victim meeting the accused; "Meeting the Accused" questions concentrated on the setting when the victim met the accused; "Incident Scene" questions focused on the specific physical details of the sexual assault; "After the Incident" questions asked how and when the victim parted from the accused and "Present Time" questions were both those which asked about previous testimony given in the preliminary hearing and those which were asked and answered in the present tense (Sajpaul & Renner, 1988).

Each question was further categorized into one of the following six types: "Information" questions on the victim's background or the scene of the crime; "Credibility" questions to either corroborate/credit the victim's story or do the opposite; "Past History" questions on the victim's moral character; "Corroboration" questions on physical evidence; "Consent" questions focused on the victim's actions that indicated willingness or resistance to the actions of the accused; "Other" questions which did not fit into the other five categories. Finally, each question was evaluated for its tone. Tone was coded positively if the question brought credit to the victim and negatively if used to discredit the victim.

Using this classification scheme, the researchers found that the Defense emphasized more negative and non-information questions (i.e., credibility, past history) than the prosecution. Finally, the prosecution emphasized events that showed that the victim was emotional while the Defense emphasized details of the incident scene.

Although this classification scheme gave some detail on sexual assault trial content, Mallon (1993) recognized that more research was needed to comprehensively describe the type of questions being asked of the victims, the type of answers given, and the effect both questions and answers had on their testimony. She revised the Sahjpaul & Renner (1988) coding manual to more exhaustively code questions into three large categories with thirty-two sub-categories, sixteen for each lawyer (Appendix B). These categories and subcategories appeared to be influenced by societal myths about sexual assault; the violent nature of the assault, the victim's personal characteristics and psychological adjustment, and the tactics and strategies used by both lawyers. The thirty two sub-categories each corresponded to a distinct line of questioning. All questions which fit into these categories were coded and analysed. Mallon (1993) applied the classification scheme to 27 adult sexual assault cases tried in the Halifax Law Courts between 1983 and 1990. She concluded that the focus of the typical sexual assault case was on questions about injury, violence, resistance, character, recency of complaint and initiation of encounter. She determined that the Crown used a majority of questions to establish the violent nature of the case. The author also found that the victim's character was often questioned in a way that supported stereotypes about sexual assault; if examination of her character showed her to be pure and chaste consistent with rape myths then she was seen as a "true" victim. Mallon (1993) also examined a

number of tactics used by both lawyers to find that the Defense made frequent use of all six tactics compared to the Crown who only used one tactic.

In the preliminary work done for this proposed research project, Mallon's (1993) coding manual was refined and streamlined, such that it could be used for a more detailed analysis of courtroom dynamics than either Mallon (1993) or Sahjpaul & Renner (1988) had previously accomplished. It was decided that there were some categories which she should have included or further subdivided. For example, Mallon (1993) had six tactics categories; it was deemed necessary to include the category of "objection" and break down the "tactics" category into the two categories of "positive" and "negative" tactics. In addition, the content categories of "previous sexual history", "previous non-sexual history", "previous relationship with the accused", "feelings at the time:", "place", and "consent explicitly not given" were added in order to capture questions in a more detailed fashion than had been done with Mallon's classification scheme. This third version of the coding manual contained 48 categories, 24 categories for each lawyer (comparable to Mallon's sub-categories). These included 16 categories based on themes about sexual assault and eight categories based on techniques or strategies used in the courtroom, for each lawyer.

The logical structure of the classification system was pilot tested on the same 27 sexual assault cases heard at the Halifax Law Courts between 1988-1992, used to develop Mallon's classification scheme (Mallon, 1993). On the basis of this pilot test, the written definitions for each of the categories were expanded and clarified. The final version used in the present study consisted of a 27 page manual of definitions with a 60 page appendix of actual examples (Appendix C for an abridged version of this manual). This manual was then used by new raters to

re-score the original 27 cases and to score an additional 31 un-scored cases selected from the Halifax Law Courts between 1988-1882. The scores gained from the total 58 cases were used as the basis for a preliminary research study, discussed in the body of this document.

Scoring method and categories

The questions asked of the sexual assault witness and her answers, called a “scenario”, can be placed into one or more of the 16 content categories and 8 tactic categories in this classification system. A scenario begins when the lawyer asks a question which reflects one of the 24 categories and ends when the lawyer asks a question on another topic. Scenarios can be as short as several lines or span several pages, depending on the depth of questioning in a certain category. The entire testimony of the sexual assault victim given to both the Crown and the Defense is scored in the manner. It is possible that a scenario may fit into more than one category, for example, a question on torn clothing can be asked using a negative tactic, thus fitting the same scenario into two different categories. This occurs because categories focus on the content of a question as well as on the techniques utilized to ask the question. For example:

D: (rapidly) And then you took off your shirt, didn't you?

W: ...

D: (rapidly) And then you took off your bra, didn't you?.

W:..

D: (rapidly) And then you took off your panties, didn't you?

W: ...

D: (raised voice) The answer is YES! Isn't it?

The 16 categories based on themes reflect socially accepted myths and stereotypes about sexual assaults used in questions by both the Crown and the Defense when questioning the sexual assault victim on the witness stand. These categories include the victim's previous relationship with the accused, the state of her clothing and the level of violence used by the accused on the victim. In any particular case both the Crown and the Defense may use any of the categories in a manner that is either advantageous or disadvantageous to the victim, or the categories may be ignored by both lawyers. Question content was scored using a three-category nominal scale, e.g., in the category of torn clothing, '1' clothing was torn, '2' clothing was not torn, and '3' no reference to torn clothing by the lawyer.

The eight categories based on techniques used in the courtroom consist of strategies that are engaged in by both the Crown and the Defense to respectively strengthen and weaken victim testimony. For these categories, a frequency count was made every time the strategy was used, indicating how active each lawyer was, and the relative frequency with which victims encountered each strategy.

Continuous data creates two issues of reliability: threshold and consistency. In order to establish these two issues, raters were asked to perform two concurrent tasks: first, to find and agree on the existence of discrete scenarios from a continuous transcript filled with potential scenarios, and second, to classify each scenario into one of 48 categories, 24 for each lawyer. Raters readily identified and agreed on the category for the scenarios that formed the core of the case. For instance, a series of rapid fire questions was clearly a negative tactic. Similarly, a sequence that ended with "Well did you lie then or are you lying now?" was always classified as impeachment. However, problematic classification involved the filler questions that served as

transitions between scenarios, and efforts that started in one direction but went nowhere. Often, these were questions that seemed to buy time while the lawyer prepared for the next important series of questions. For example, a series of questions ending with "And, about what time was that!" may have been an attempt at impeachment that did not work, or a weak insinuation of lack of credibility. Thus, the most difficult task for individual raters, from the standpoint of reliability, was to establish a consistent and uniform threshold for including or excluding these marginal examples. However, the threshold for the items around which the Crown and the Defense built the core of their case was easily established, as these items were generally clear and identifiable to all the raters.

The reliability of the new raters using the revised manual was assessed by selecting eight random cases scored by two raters and by evaluating the degree of convergence for both identifying scenarios and for categorizing them. For these eight cases, each scored twice, there were 340 instances in which both raters selected the same material to constitute the scenarios. In 312 of those 340 total instances (92%), the scenarios were assigned to the identical categories; raters did not assign the same scenario to the same categories only 8 % of the time (28 scenarios). The difficulty of establishing a consistent threshold for inclusion was evident by the identification of 147 additional scenarios by only one, but not both, of the raters. When these unique scenarios were categorized by an independent third rater, however, there was 96% agreement on the category designation, that is, the third rater categorized the scenarios in the identical manner as the original raters 96% of the time. Thus, there is little difficulty in naming a category, but some difficulty in bracketing material within the free flow of testimony. The reliability assessment is

strong enough, however, that there is confidence that the scoring accurately reflects the actual courtroom dynamics in content, if not in an exact frequency count.

APPENDIX B: CLASSIFICATION SCHEME USED BY MALLON (1993)

Variable Name	Crown	Defense	No Reference
	Emphasis	Emphasis	
Psych Adj Before/Crown			
Psych Adj Before/Defense			
Psych Adj/After/Crown			
Psych Adj/After/Defense			
Clothing Torn, Removed/Crown			
Clothing Torn, Removed/Defense			
Victim Injury/Crown			
Victim Injury/Defense			
Violence/Crown			
Violence/Defense			
Resistance/Crown			
Resistance/Defense			
Character/Crown			
Character/Defense			
Recency/Crown			
Recency/Defense			
Initiation/Crown			
Initiation/Defense			
Misunderstood/Crown			
Misunderstood/Defense			
Word Pictures			
Impeachment			
Overgeneralization			
Fabrication			
Credibility			
Tactics			

**APPENDIX C: DEFINITION OF CATEGORIES USED IN REVISED CLASSIFICATION
SCHEME (1998)**

History

This category helps establish the victim's sexual and non-sexual character, generally at the beginning of the trial.

1. Previous Sexual History

Any direct or indirect effort to get at the past sexual history of the victim with others or with the accused, including whether she was "experienced."

1 - chaste, virgin. The victim has limited sexual partners, doesn't sleep around.

2 - active. The victim has an active sex life, sleeps with several men, etc.

3 - no reference

2. Previous Non-sexual History

These will usually be things prior to the incident in question used to establish that the victim is of a certain character. Using this approach, the Defense may try to suggest that the victim is unreliable and would misperceive/lie about an assault, or has certain characteristics that are associated with "loose sexuality"; for example, drinks, frequents certain kinds of establishments, has poor cognitive/memory skills. The Crown may try to show that the victim was a good student, volunteered and is known for her truth-telling.

1 - pure as gold. The victim does not lie, works and goes to school, no bad historical flaws.

2 - lies and cheats. The victim drinks, hangs out with bad characters, has a previous criminal record, etc.

3 - no reference

3. Previous Relationship With the Accused

Whether the victim previously maintained any type of relationship with the accused.

1 - no connection, avoided. The victim did not return the accused's phone calls, did not go on dates with him, only knew him by sight or not at all.

2 - had sex/relationship before. The victim and the accused dated at one time, they were developing a relationship, he had given her rides home before, they had sex before, they were friends before, etc.

3 - no reference. No explicit reference is made to the relationship between the victim and the accused.

Psychological

This category refers to emotions and feeling as they pertain to the case, as they are often used as proof of the existence or nonexistence of an assault.

1. Adjustment Before The Assault

This category is a measure of the victim's general state of mind or mental health prior to the incident. This category can be used by the Defense in one of two ways: (a) the victim is disturbed and would lie about the occurrence of sexual activity; or (b) the victim uses sex in an "unhealthy" way, engaging in sex consensually but claiming rape later. This category is used by the Crown to show that the victim was well adjusted before the assault and is not now, so an assault must have taken place.

1 - good. The victim was generally well adjusted up to the incident. Good psychological adjustment is often illustrated by the fact that she held down a job, got along well with family and friends and was not in need of any psychological counselling.

2 - bad. The victim is shown to have been mentally or emotionally unstable prior to the incident. This can be illustrated by the need of the victim to seek psychological counselling or take medication (ie. antidepressants); a difficulty in holding down a job or maintaining relationships with family and friends and/or dependency on alcohol (only if it is shown that the victim needed alcohol to deal with problems habitually). This may also include a poor state of mind at the time of the incident, e.g., because of a fight with her boyfriend, she was walking down the dirt road alone.

3 - no reference. No deliberate reference was made to the victim's past mental or emotional state.

2. Adjustment After The Assault

A measure of the victim's general state of mind or mental/emotional health after and as a result of the incident; problems coping after the assault. If the victim required counselling after the assault, was suffering from the "rape trauma syndrome", or showed no emotional distress, these are all markers of her adjustment.

1 - good. The victim did not suffer any adverse psychological difficulties as a result of the incident. It may be shown that she did not need to seek counselling, her relationships did not suffer any serious deterioration and/or she did not appear to be visibly distraught after the incident.

2 - bad. As a direct result of the incident, one or more areas of the victim's mental or emotional health were adversely affected, either temporarily or for an extended period of time. For example, she finds it hard to maintain relationships, she suffered disruptions in eating and sleeping habits, she was in shock and has suffered partial memory loss, she has sought psychological counselling, she has developed a dependency on alcohol. Reference may also be made to any significant change in the victim's attitude toward or belief in the criminal justice system.

3 - no reference. No deliberate reference was made to the victim's subsequent mental or emotional state.

3. Feelings at Time

This category refers to questions on the victim's feelings at the time of the assault. Most often the Defense uses the lack of an emotional response at the time of the assault to suggest that no rape took place. The Crown will use evidence that the victim was upset at the time, e.g., crying, to suggest that an assault took place.

1 - emotional. The victim was crying, hysterical, visibly upset at the time of the assault.

2 - calm. The victim showed no overt signs of being upset.

3 - no reference. No deliberate reference was made to the victim's feelings at the time of the assault.

Themes

1. Victim Injury

Questions that introduce or challenge testimony of injury, bruises, scrapes, or physical evidence of the use of force.

1 - no injury. Questions were brought up to explicitly show that the victim was not injured in the assault.

2 - injury. The victim suffered bruising, cuts, scrapes, and/or other surface injuries as a result of the incident which persisted for a few days at least. Includes soreness around parts of her body where the incident took place.

3 - harm. The victim incurred some significant, if not debilitating injury, as a result of the incident. There is evidence that medical treatment was required as result of the injuries, ie., stitches, a cast, etc.

4 - no reference. No deliberate reference was made to victim injury.

2. Resistance

Questions that introduce or challenge testimony that there was active verbal or physical resistance on the part of the victim. This category goes directly to the issue of what steps an adult witness took to tell the accused that the sexual activity was unwanted and unasked for. This includes both degree and timing of resistance that the victim exhibits. The coding is a rating of the level of resistance.

1 - none. The victim does not attempt to resist, either psychically or verbally.

2 - verbal. The victim verbally resists, usually by saying "no", "stop" or other similar phrases.

3 - defensive. The victim attempts to physically defend herself, but is prevented from doing so by some form of restraint (i.e., the accused pinned her arms down). This rating includes any defensive attempts by the victim (i.e., covering the vagina with the hands) and attempts to leave the situation.

4 - active. The victim physically defends herself by kicking, scratching, biting, hitting, etc. Often accompanied by screaming or other verbal protest, but this physical component is necessary.

5 - no reference. No deliberate reference is made to the attempts of the victim to defend herself.

3. Clothing Torn, Removed

This category covers all questions about the condition of clothing, or who removed the clothing or parts of clothing.

1 - torn. As a result of the actions of the accused, the victim's clothing was visibly torn, ripped or soiled.

2 - not torn. The victim's clothing was not torn, ripped or soiled as a result of the incident.

3 - no reference. No reference was made to the torn or soiled state of the victim's clothing.

4. Violence Or Intimidation

This category may include threats, restraining the victim or more active forms of violence. The coding is a rating of the level of force.

1 - none. Accused neither verbally nor physically threatened or harmed the victim.

2 - low. The accused used or threatened to use physical force. The physical force used at this level is normally used as a form of intimidation, an unspoken threat of what could follow, should the victim not comply. Examples include pinning the victim against the wall, holding the victim's throat, holding the victim's hands down, pulling the victim's hair.

3 - middle. The accused used strong physical force which resulted in persistent hurt to the health or comfort of the victim. Examples of this level of force include threats with a weapon, slaps, punches, throwing the victim on a bed or against a wall.

4 - high violence. The accused used extreme physical force and/or put the victim's life in danger. Examples of this include use of a weapon on the victim, threatening to kill the victim while the weapon is present.

5 - no reference. No deliberate reference was made to any form of violence of the accused on the victim.

5. Place

Questions that introduce or challenge testimony about the physical location and circumstances of the assault.

1 - not usual. This code is given when the incident in question takes place in a location considered unusual for sexual encounters. Examples of this include a dirt road, in bushes, in an alley, on the ground in a parking lot.

2 - unusual, normal. This code is given if the encounter takes place in a location where consensual sex can normally take place. Examples of this include in a bedroom, on a couch, in a parked car.

3 - no reference. No deliberate reference was made to the place where the incident took place.

6. Character

Questions that introduce or challenge the testimony by addressing the culpability or character of the witness. Encompasses a wide range of things, i.e., clothing, personality traits. Sometimes this tactic is used to show that the witness should not be believed (as part of a credibility strategy), but most often the underlying premise is that the situation was exactly what "that kind of person" (the witness) invited and wanted at the time implying consent). This line of questioning would be used by the Crown to illustrate that the victim was not "leading" the accused on, or that she invited this action. Illustrations of character may be examples from the victim's past or examples taken from the chain of events leading up to the particular incidents in question. Examples of questions in the category include questions on drinking habits.

1 - good. The victim is of good character; she is responsible, respectable, not the type of person who gets herself into compromising situations.

2 - bad. The victim is irresponsible, reckless, the type of person who would get themselves into compromising situations. She may have lied on previous occasions, her sexual history may be examined by the Defense, she may have dropped out of school or she may have an unstable family life.

3 - no reference. No deliberate reference is made to the victim's character.

7. Recency Of Complaint

This category is comprised of questions that introduce or challenge testimony about how soon and to whom the witness reported the assault. The incident is considered to be reported as soon as the victim tells another person, i.e., friend, relative, doctor or police.

1 - recent. The victim reported the incident immediately to reasonable and appropriate people.

2 - selective. The victim reported the event recently after it happened, but there were missed opportunities and the victim was unreasonably selective about who was informed and when, i.e., the victim may have driven by the police station to go home and tell her roommate about the incident.

3 - delayed. The victim delayed for a period of time before reporting the incident.

4 - waited. Long interval before anyone is told. Waiting for years is applicable here if the Crown continues asking questions about why the victim waited.

5 - no reference. No reference was made to the time at which the victim first reported the incident.

8. Initiation

Includes any line of questions concerning how the victim met the accused that day/night and in what context (who initiated the activities) the assault took place. This category may take on subtler forms, i.e., the victim asks the accused out, or more direct forms, i.e., the victim initiates the sexual activity.

1 - victim initiation. The victim initiated the first and/or this specific contact with the accused. Victim initiation may consist of calling the accused on the phone, waving to him from across the bar, asking him to dance, initiating the sexual encounter, etc.

2 - not victim initiation. The victim in no way initiated contact with the accused, and the accused initiated contact.

3 - no reference. No reference was made to the manner in which the victim and the accused first came into contact, initially or at the time of the incident.

9. Misunderstanding

This category refers to the fact that a sexual assault does not take place if the accused honestly believed that he had consent. Here it is what the accused understood which is important.

1 - confused message. The accused honestly thought that he had the victim's consent to the activity in question, through her actions and/or words or lack thereof..

2 - not a confused message. The accused knew that the victim was not consenting to the sexual acts in question, the victim claims that there was no consent. Both parties are clear that there was NOT a misunderstanding. Neither claims that there was any possibility of confusion about the consent.

3 - no reference. No reference was made to the message between the victim and the accused.

10. Consent

Questions that introduce or challenge testimony that there was or was not the communication of sexual intent.

1 - no consent explicit. The victim said verbally and/or physically that she was not giving consent for the sexual acts in question to take place.

2 - consent given. The victim said verbally and/or nonverbally that she was giving consent for the sexual acts in question to take place.

3 - no reference. No explicit reference was made to whether or not the victim gave consent to the accused.

Strategies

1. Word Pictures

Word pictures are created by using words which have extra meaning, i.e., provocative words or phrases that have strong connotations. As an example, in an abortion case an expert witness was asked if the **dead baby** showed any signs of life. The witness answered that the **fetus** showed no signs of life. In sexual assault cases, attorneys and witnesses usually use neutral, polite words for the sexual incident. The Defense may use words like "make love" or "have sex with", often the Crown and the witness fall into using the same words. The same experience would be perceived far differently if the Crown and the witness used the words, "assaulted by" instead. Word pictures can be used to describe the sexual act or aspects of the entire incident - they are simply words which create a certain image of the complainant or the situation beyond the meaning of the word itself.

This is a summative score, rather than a rating. Score each instance when the Crown or the Defense uses a word picture, or an inoculation/re-direct.

2. Impeachment

This refers to questions that introduce or challenge whether testimony that was given on one occasion has been contradicted by testimony given on another occasion. Although this technique challenges the testimony of the witness, it is the issue of contradiction that is the essential element. It often occurs in the context of trivial details surrounding the assault. Although small details might be overlooked or forgotten by the victim with minimal impact on the accurate recollection of major events, the Defense treats such slips by the victim as indicative that the victim is

unreliable. In one example, the Defense spent an inordinate amount of time establishing that the victim could not conclusively state whether the accused had shoved four or three fingers into her vagina. The Crown can do an impeachment inoculation/antidote where they attempt to explain why the victim may have contradicted prior testimony. This can occur during direct examination (inoculation) or redirect (antidote), ie., "So if you were to tell us something different now Miss Smith, it would be because at this point you are suffering from traumatic amnesia?"

This is a summative score rather than a ranking. Score each instance when the Defense uses a question which denotes impeachment of the witness, or the Crown asks a question indicative of inoculation/re-direct.

3. Overgeneralization

Lawyers are trained to watch out for words such as "always" and "never" as an opportunity to suggest that none of the victim's testimony is accurate. Trained witnesses do not fall into this trap. For example, the victim may say, "I invited him in for dinner or something". The Defense replies, "Or something? And that exactly did you mean by that?" The Crown can do an overgeneralization inoculation/antidote to offset damage done by the Defense. For example, "When you said 'or something', you didn't mean anything sexual did you?"

This is a summative score of each instance where a question denotes overgeneralization or an antidote/re-direct.

4. Implied Fabrication

This category refers to questions that introduce or challenge testimony that the witness has some motivation that would cause them to make up events that did not happen in order to serve some other purpose. The Defense attempts to present reasons why the victim might lie about having been sexually assaulted, either by presenting consensual encounter as forced or by fabricating the entire sexual experience. Possible explanations for lying include ulterior motives (money, revenge), being married and not wanting the partner to know that the wife was having extramarital sex or having been coached.

This is a summative score rather than a ranking. Score each instance where the Defense uses a question which implies that the witness is fabricating all or parts of her testimony, or the Crown offers an inoculation or re-direct.

5. Tactics And Style

a. Pin Down

Asking questions that involve small specific details that the witness may not remember or can be shown to be factually incorrect; these questions actually introduce or challenge testimony about details. The Crown may use this tactic to give the witness a chance to say that she does not remember that particular detail within the context of friendly questions that keep the focus on the central issue. In contrast the Defense will try to focus on often insignificant details over which there may be confusion. For example, the Defense may ask if the knife in the courtroom is "the same one" used during the attack. They would be sidestepping the issue that a weapon was in fact

used and that most people would not memorize the specific characteristics of the weapon itself but would only remember that a knife was used at all.

b. Tag Questions

The "tag" procedure is to ask a harmless question or lines of questions, and then "tag" a new line of questions or question on the end which implies something more than the harmless beginning seems to imply.

c. Aggression

a) elevated voice level. The Defense raises his/her voice to the point that he/she is virtually yelling at the victim. Often used in conjunction with other negative tactics.

b) rapid fire questions. A quick line of questions one after the other, leaving the victim little time to answer completely, dazed and confused.

This is a summative score rather than a ranking. Score each instance where the Defense uses one of these strategies or the Crown provides an inoculation/re-direct.

Credibility/victim

These are questions which will call the credibility of the testimony into question. Refers to victim characteristics that may contribute to a misperception or misrepresentation of the events in question or to aspects of the situation that may prevent the victim from accurately assessing the event. These have to do with whether there was enough light to see, whether the person is too old to remember. These are attacks or inoculations dealing with whether the testimony itself is credible. For example, the Crown may ask a victim how much they had to drink, whether they were in control, what they could remember about the time and place in order to show that they were not out of it.

Note that credibility (of testimony) is different from simple and direct attacks on the character of the person. Character indicates the type of person the victim is while credibility indicates whether she is telling a believable story.

This is a summative score rather than a ranking. Score each instance where the Defense uses a question which implies that the witness' testimony cannot be considered credible (victim not credible/Defense) and each instance in the separate category where the Crown shows that the victim's testimony is credible (victim credible/Crown).

Credibility/accused

Refers to attempts by the Defense to enhance the portrayal of the accused, either by presenting aspects of his life to show that he is a "nice guy" or by getting the victim to admit that she perceived the accused to have positive qualities.

This is a summative score of each instance where the Defense uses a question which implies that the accused's testimony can be considered credible (accused credible/Defense) and each instance

in the separate category where the Crown shows that the accused's testimony is not credible (accused not credible/Crown).

Objections by Crown

Sum the number of objections made by the Crown.

Objections by Defense

Sum the number of objections made by the Defense.

Judge intervention

Sum the number of instances in which the judge interrupts the proceedings. This can include responses to objections, questions to the witness, etc.

Redirect by Crown

This usually takes place after the Defense has questioned the witness and is generally done in order to offset the damage the Defense may have done to the witness' testimony. Generally questions asked during redirect include impeachment antidotes, generalization antidotes, etc.

Outcome/Court records

Outcome of the trial as recorded in the court records.

1 - not guilty/dismissed

2 - guilty

Sentence

Length of the sentence given the accused (if applicable) as recorded in the court records.

APPENDIX D: MYTHS UNDERLYING THE CATEGORIZATION SCHEME

Variable Name	Rape Myth*
Prev Sexual History	If a woman is not chaste, all sexual contact is consensual.
Prev Non-Sexual History	This woman would lie about being sexually assaulted.
Prev Relate Accused	Only strangers rape; if she knew him, he could not have raped her.
Psych Adj Before	Women who accuse men of rape are often deranged.
Feelings at Time	not applicable
Psych Adj/After	Raped women display signs of emotional trauma.
Clothing Torn	Rape victims have their clothing torn off by the rapist.
Victim Injury	Rape cannot be accomplished without injuring the victim.
Violence	Violence must be used on the woman in order to rape her.
Resistance	A woman who did not want to be raped would resist.
Place	Rape is committed in alleyways and other strange places.
Character	Bad women are more likely to be raped than good women.
Recency	A raped woman immediately reports the rape to the authorities.
Initiation	If the woman initiates the contact, she is asking for sex
Misunderstood	not applicable
Consent Not Given	not applicable

* Based on Burt (1980, 1998) and Lonsway & Fitzgerald (1994)

APPENDIX E: RECRUITMENT SHEET**Psychology 49.101/102**

Experiment Title: _____
Experimenter's Name & Room#: _____
Experimenter's Phone #: _____
Location of Experiment: _____
Experiment
Number: _____
Faculty Advisor: _____

BRIEF DESCRIPTION

A study is being conducted to investigate perceptions about sexual assault trials. Participants will be asked to make judgements about one sexual assault case based on an excerpt of actual sexual assault trial testimony where the Defense and Crown attorneys question the sexual assault victim. Participants will be required to read the written transcript of the case, approximately one to two pages long, and respond to questions on aspects of the case, attitudes toward sexual assault, and personal perceptions and experiences. The entire experiment will take approximately 30 minutes. All students will receive 1 course credit for their participation in this study

SUBJECTS WILL RECEIVE _____ CREDIT(S) FOR THIS EXPERIMENT.

YOU MUST: KEEP A RECORD OF THE EXPERIMENTER'S NAME
TITLE OF THE EXPERIMENT
LOCATION AND TIME

IT IS YOUR RESPONSIBILITY TO KNOW WHERE AND WHEN THE EXPERIMENT IS HELD.

SIGN-UP SHEETS FOR THIS EXPERIMENT ARE UNDERNEATH. PLEASE PROVIDE INFORMATION REQUESTED.

APPENDIX F: ETHICS MATERIALS FOR STUDY 2

Description of Purpose

This study represents an attempt to investigate the Crown's use of tactical strategies during the questioning of the victim in the sexual assault trial. This research will address the issue of how the Crown can best control victim testimony through the use of the four options available for framing testimony, namely: redirect, objection, inoculation, and no response, in order to offset Defense tactics and reduce the re-victimization of the sexual assault victim in the courtroom.

One of the most effective tactics used by the Defense in the preliminary research was that of attacking the victim's credibility. This occurred when the Defense questioned the victim on characteristics that may have contributed to her misperception or mis-representation of the events of the sexual assault, for example, whether there was enough light for her to see, or if she was drinking or using drugs. This tactic was linked to verdict and sentence when used by the Defense, although the Crown's attempts to offset the Defense's use of this tactic were unrelated to trial outcome. Given the extremely personal nature of this tactic, and its clear link to verdict and sentence, it is possible that this tactic is influential on the victim's feelings of re-victimization on the stand. Because the Crown appears to be ineffective in dealing with this tactic, the victim's feelings of re-victimization may be augmented. Given its importance to trial outcome, it is important that the Crown be able to effectively cope with attacks on victim credibility. Therefore, in this experiment, the effectiveness of four strategies the Crown can use to respond to or to offset the Defense's attack on the victim's credibility, namely; objections, redirect, inoculation, and no response, will be examined.

Description of Methods

Materials. Four different two page case scenarios, one for each of the experimental conditions reflecting Crown tactics will be presented. Each participant will be randomly assigned to one of the four conditions portrayed within each written scenario. Alleged segments of testimony from the victim, lawyers and judge will be presented. Trial transcripts (Appendix E) are drawn from the cases examined in the preliminary studies. The transcripts will include a) a brief description of the circumstances of the alleged sexual assault, b) a brief definition of who the Crown and the Defense are in the trial, c) a portion of the testimony between the Defense, the Crown and the witness, as well as any interruptions from the judge.

The case facts will be the same for each of the four cases. The questions asked by the Crown will also be essentially the same, with the variation reflecting the manipulation of the strategy used by the Crown. The basic case facts are as follows: The trial involves the alleged sexual assault victim, a visitor to Ottawa from Halifax. Ms. Smith is a 20 year old, second year university student on her Spring Break. She went to a local bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. He bought her a drink and they chatted some more. They danced a few times at

that bar, and then she left to go on a tour of the city with him, leaving her girlfriend behind. As he was driving her home, she alleged that he sexually assaulted her.

Participants will be asked to rate the guilt of the accused and to give an appropriate sentence for him if he was found guilty. They will also be asked to give ratings of the both attorneys on their credibility, believability, consistency, ability to convince, aggression toward the witness, respect for the witness, awkwardness, among other dimensions. They will also be asked to rate the witness on several different dimensions, including certainty, credibility, consistency, strength, reliability, ability to convince, believability and persuasiveness (Appendix F). Respondents will be given a definition of re-victimization and asked how well they think the did or did not Crown protect the witness against re-victimization, and how well the Defense protected or promoted re-victimization of the victim (Appendix F). Respondents will be asked how important the Crown and Defense's questions were to their own verdict concerning the accused's guilt (Appendix F). As well, an open ended-question will ask participants to indicate which factor was most important in determining the accused's guilt (Appendix F). As a manipulation check, participants will be asked to indicate the extent to which the Crown and the Defense used each of several strategies (Appendix F). Participants will also be asked to complete the Rape Myths Acceptance Scale (Burt, 1980) and a short form of the Marlowe-Crown Social Desirability scale (Crowne & Marlowe, 1960) (Appendix F). Finally, respondents will be asked to indicate whether they have been the victim of sexual assault (Appendix F).

Method. Participants will be run individually. Upon arrival, they will be informed that this study concerns a trial of a person accused of sexually assaulting a woman. Further, they will be presented with a written excerpt of testimony of that trial, showing a portion of the questions asked by the Crown attorney and the Defense attorney to the woman who alleges that she was sexually assaulted. They will also be informed that due to the emotional nature of the trial, they can discontinue their participation at any time without penalty. All participants will then be asked to read and sign an informed consent form (Appendix G). They will read the transcript appropriate for their assigned condition (Appendix E) and respond to the questionnaire (Appendix F). Upon completion, they will be fully debriefed and provided with a list of contacts should they have any further questions (Appendix G).

Informed Consent Form

The purpose of an informed consent is to ensure that you understand the purpose of the study and the nature of your involvement. The informed consent must provide sufficient information such that you have the opportunity to determine whether you wish to participate in the study.

Research Personnel. The following people are involved in this research project and may be contacted at any time. Amanda Parriag (Principal Investigator, 520-2600, x 6622); Dr. K. Matheson (Faculty Sponsor, 520-2600, x 2648). If you have any ethical questions or concerns regarding this experiment, please contact either Dr. M. Gick (Chair of the Ethics Committee, 520-2600, x2664) or Dr. K. Matheson (Chair of the Psychology Department, 520-2600, x2648).

Purpose. You are about to read a portion of a transcript involving a simulated trial (based on actual trials) where a sexual assault victim is testifying in court to questions asked by the Defense lawyer and the Crown attorney. The purpose of this study is to examine the decisions that are made in the context of a sexual assault trial and how these decisions affect the resulting verdict and sentence.

Task Requirements. You will be asked to read a transcript. After reading it you will be asked to answer a series of questions on aspects of the case, attitudes toward sexual assault, personal perceptions and experiences.

Duration and Locale. The experimental sessions will take about thirty minutes and will take place in a laboratory.

Potential risk/discomfort. Some people may find the issue of sexual assault, along with other aspects of the trial, to be offensive and upsetting. Your participation is voluntary and you are under no obligation to continue with the study.

Anonymity/Confidentiality. The data gathered in this study are confidential and will only be used by researchers associated with this project. Your personal identity will be anonymous.

Right to Withdraw. You may withdraw from this study at any time without academic penalty.

Signatures. I have read the above form and understand the conditions of my participation. My participation in this study is voluntary and if for any reason, at any time, I wish to leave the experiment I may do so without having to give an explanation and with no penalty whatsoever. Furthermore, I am also aware that the data gathered in this study are confidential and anonymous with respect to my personal identity. My signature indicates that I agree to participate in the experiment.

Participant's name

Investigator's name

Date

Participant's signature

Investigator's signature

Debriefing

We would like to thank you for participating in this study. Your participation will help us in the understanding of how people make decisions about sexual assault victims based on the questions that they are asked by Defense and Crown attorneys. We would like to emphasize the extreme seriousness of the crime of sexual assault. Victims of sexual assault often suffer severe psychological and emotional problems, termed "Rape Trauma Syndrome". A sexual assault victim never asks to be sexually assaulted, although one of the components of Rape Trauma Syndrome is self-blame.

The purpose of the study in which you have participated was to examine the effect that the Crown's responses to the Defense questions had on your ratings of trial outcome and sentence, and on your perceptions of the Crown, the Defense and the victim. Specifically, you read testimony where the Defense always used the same strategy of attacking the victim's credibility, but the Crown either did not respond, or used one of three strategies to respond. The Crown either objected, where he/she verbally disagreed with either the delivery of the content of a point that the Defense raised; he/she used inoculation, where a troublesome point was raised with the victim before the Defense could do this; or the Crown redirected, where questions were asked of the victim after the Defense had already questioned her. We think that the three strategies used by the Crown will affect your perceptions of the guilt or innocence of the accused. If we find one strategy to more effective than the other, we hope that these results will be helpful to Crown attorneys in future sexual assault cases.

We appreciate your taking the time to answer the questions and want to stress that all of your answers are valuable. The portion of transcript presented to you was based on real trial testimony from our files. We understand that the scenarios may be anxiety provoking for some people and we encourage you to contact myself or one of the agencies listed below if you have any concerns regarding this study or the issues referred to in this study. This list of contacts includes agencies within both the university and the community that are available for men and women.

Due to the nature of the research, we ask you not to discuss the participant matter with potential participants until testing is complete (approximately June of 1999). If you have any questions about this study, you may contact Amanda Parriag in room A402 Loeb (520-2600 x 6622) or Dr. K. Matheson (520-2600, x2648). If you have questions and/or ethical concerns regarding this experiment, you may also contact either of the following faculty members: Dr. M. Gick (Chair of the Ethics Committee, 520-2600, x2664) or Dr. K. Matheson (Chair of the Psychology Department, 520-2600, x2648).

Contact Numbers

24 hour distress lines

Rape Crisis Line	238-3311
Sexual Assault Centre	234-4641
Ottawa Distress Centre	238-3311

Help for victims of sexual abuse and their families

Family Service Centre 725-3601
Sexual Assault Support Centre 234-2266

Counselling Services for Men 238-8478

Health Services Carleton University 520-2600, x6674
(agency providing on-campus counselling)

APPENDIX G: SCENARIOS USED IN STUDY 2

(1) Ms. Smith is a visitor to Ottawa from Halifax. She is a 20 year old, second year university student on her Spring Break. She went to a bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. They danced a few times at that bar, and then she left with him, leaving her girlfriend behind. She alleges that he sexually assaulted her on the way home. You are going to read a portion of her trial testimony as a witness testifying against Mr. Parks.

The testimony begins with Ms. Smith being questioned by the Crown, the lawyer who tries to prove that the accused committed a sexual assault. Ms. Smith is then cross-examined by the Defense, the lawyer who tries to prove that the accused did NOT commit a sexual assault.

- Crown: Ms. Smith, could you please tell the court about the events of the night of March 27th, 1999.
- Ms. Smith: I had a drink or two with my girlfriend at her house, and then we went downtown to the Ace bar.
- Crown: What happened when you entered the Ace Bar?
- Ms. Smith: My friend and I both went over to the dance floor and danced a bit. Then I went over to get a beer from the bar and that's where I met Mr. Parks.
- Crown: How did that happen?
- Ms. Smith: I was trying to get my drink at the bar which was really crowded and he started helping me. After that we started talking. He was really nice. A good song came on, so we raced over to dance for that song and then stayed for a few others.
- Crown: What happened after that, Ms. Smith?
- Ms. Smith: He asked me if I would like a tour of the city and then he would take me home. He seemed nice enough so I said yes. So we went into his car and he started driving through the city, and then we were at this place that I found out later was called Mooney's Bay. He said that he wanted to show me the water and he pulled into the parking lot. While we were there he lit up a joint and we talked a bit while he smoked it. Then he kissed me. He suddenly started to feel my breasts, and when I resisted he glared at me in this very frightening way. The next thing I knew he was pressing my hands backward and saying that he was going to have sex with me. I said no, and I also said that this was the scariest thing that had ever happened to me. He just gave me this evil stare and laughed. Then he raped me.
- Crown: Can you explain what you mean by that?
- Ms. Smith: He put his penis in my vagina and moved it, against my will.
- Crown: Please continue. I know this is hard.
- Ms. Smith: After that he drove me to my girlfriend's apartment. I ran out of the car and into the lobby, where I couldn't even remember her buzzer number because I was so upset. I finally got into her apartment and told her what happened and then I started crying.
- Crown: Thank you Ms. Smith. No further questions.

The defense begins questioning Ms. Smith.

- Defense: You said that you had a drink or two at your girlfriend's house, right?
- Ms. Smith: Yes I did.
- Defense: Was it one or two or maybe three?
- Ms. Smith: It was two, two or three beer. Definitely not more than three.
- Defense: And at the bar, you were in line for yet another drink when you met Mr. Parks, correct?
- Ms. Smith: I guess so.
- Defense: So you would have had at least three, probably four drinks that night?
- Ms. Smith: Yes, but I wasn't drunk or anything.
- Defense: Were you maybe a bit tipsy? Were you giggling and stumbling a bit?
- Ms. Smith: Well, it was probably only four beer at the most. I might have been a little tipsy, but I don't think that I was acting drunk.
- Defense: Okay, so let's move on. You went into the car with Mr. Parks and he took you to Mooney's Bay, and stopped in the parking lot. Did you think that you were in downtown Ottawa?
- Ms. Smith: No, I guessed that it was a beach or something. I asked him why he was stopping. He said that he thought maybe he could give me a kiss, and I didn't say anything, because I thought he was cute and I wouldn't have minded kissing him. But that was all I wanted to do.
- Defense: And after you stopped, you say that he pulled out a joint and smoked it. Wasn't it actually true that you pulled out the joint and lit it up, and asked Mr. Parks if he wanted to have some?
- Ms. Smith: No, he took it out. I was really surprised when he did that.
- Defense: You are sure that you didn't have any of it at all?
- Ms. Smith: Look, I'm not sure of anything about that night, I was really upset and (starts sobbing), no, I don't think that I would have had any. I really don't like drugs, so no, I didn't.
- Defense: Let's move on to the glaring and evil staring that you say Mr. Parks did. Were you in a well lit part of the parking lot?
- Ms. Smith: Not really, but there was some light.
- Defense: Could you have read a book in that light?
- Ms. Smith: No, not really.
- Defense: So how do you know for sure that Mr. Parks was glaring and staring at you in an evil way?
- Ms. Smith: Well, I was close enough to see that.
- Defense: Did you see anything else on Mr. Parks' face? Any distinguishing marks?
- Ms. Smith: No.
- Defense: Did you know that Mr. Parks has a scar over his right eyebrow?
- Ms. Smith: No.
- Defense: So you didn't see that scar, but yet you saw those frightening facial expressions?
- Ms. Smith: Well, yes. I don't know how I didn't see the scar but I didn't.
- Defense: Thank you, Ms. Smith.

(2) Ms. Smith is a visitor to Ottawa from Halifax. She is a 20 year old, second year university student on her Spring Break. She went to a bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. They danced a few times at that bar, and then she left with him, leaving her girlfriend behind. She alleges that he sexually assaulted her on the way home. You are going to read a portion of her trial testimony as a witness testifying against Mr. Parks.

The testimony begins with Ms. Smith being questioned by the Crown, the lawyer who tries to prove that the accused committed a sexual assault. Ms. Smith is then cross-examined by the Defense, the lawyer who tries to prove that the accused did NOT commit a sexual assault.

Crown: Ms. Smith, could you please tell the court about the events of the night of March 27th, 1999.

Ms. Smith: I had a drink or two with my girlfriend at her house, and then we went downtown to the Ace bar.

Crown: What happened when you entered the Ace Bar?

Ms. Smith: My friend and I both went over to the dance floor and danced a bit. Then I went over to get a beer from the bar and that's where I met Mr. Parks.

Crown: How did that happen?

Ms. Smith: I was trying to get my drink at the bar which was really crowded and he started helping me. After that we started talking. He was really nice. A good song came on, so we raced over to dance for that song and then stayed for a few others.

Crown: What happened after that, Ms. Smith?

Ms. Smith: He asked me if I would like a tour of the city and then he would take me home. He seemed nice enough so I said yes. So we went into his car and he started driving through the city, and then we were at this place that I found out later was called Mooney's Bay. He said that he wanted to show me the water and he pulled into the parking lot. While we were there he lit up a joint and we talked a bit while he smoked it. Then he kissed me. He suddenly started to feel my breasts, and when I resisted he glared at me in this very frightening way. The next thing I knew he was pressing my hands backward and saying that he was going to have sex with me. I said no, and I also said that this was the scariest thing that had ever happened to me. He just gave me this evil stare and laughed. Then he raped me.

Crown: Can you explain what you mean by that?

Ms. Smith: He put his penis in my vagina and moved it, against my will.

Crown: Please continue. I know this is hard.

Ms. Smith: After that he drove me to my girlfriend's apartment. I ran out of the car and into the lobby, where I couldn't even remember her buzzer number because I was so upset. I finally got into her apartment and told her what happened and then I started crying.

Crown: Thank you Ms. Smith. No further questions.

The defense begins questioning Ms. Smith.

Defense: You said that you had a drink or two at your girlfriend's house, right?

- Ms. Smith: Yes I did.
- Defense: Was it one or two or maybe three?
- Ms. Smith: It was two, two or three beer. Definitely not more than three.
- Defense: And at the bar, you were in line for yet another drink when you met Mr. Parks, correct?
- Ms. Smith: I guess so.
- Defense: So you would have had at least three, probably four drinks that night?
- Ms. Smith: Yes, but I wasn't drunk or anything.
- Defense: Were you maybe a bit tipsy? Were you giggling a bit and stumbling a bit?
- Ms. Smith: Well, it was probably only four beer at the most. I might have been a bit tipsy, but I don't think that I was acting drunk.
- Defense: If you aren't sure how many drinks you had, how can you be sure you weren't drunk?
- Crown: Objection, your honor. The witness has already said that she was not drunk. The Defense is trying to destroy her credibility by hinting that she is drunk.
- Judge: Sustained. Move on counselor.
- Defense: Okay, so you went into the car with Mr. Parks and he took you to Mooney's Bay, and stopped in the parking lot. Did you think that you were in downtown Ottawa?
- Ms. Smith: No, I guessed that it was a beach or something. I asked him why he was stopping. He said that he thought maybe he could give me a kiss, and I didn't say anything, because I thought he was cute and I wouldn't have minded kissing him. But that was all I wanted to do.
- Defense: And after you stopped, you say that he pulled out a joint and smoked it. Wasn't it actually true that you pulled out the joint and lit it up, and asked Mr. Parks if he wanted to have some?
- Ms. Smith: No, he took it out. I was really surprised when he did that.
- Defense: You are sure that you didn't have any of it at all?
- Ms. Smith: Look, I's not sure of anything about that night, I was really upset an (starts sobbing), no, I don't think that I would have had any. I really don't like drugs, so no, I didn't.
- Defense: But you're not really sure of anything, are you?
- Crown: Objection, your honor. By trying to say that my client was smoking a joint, which she was not, the Defense is making her entire testimony sound unreliable.
- Judge: Sustained. Please move on to another topic.
- Defense: Let's move on to the glaring and evil staring that you say Mr. Parks did. Were you in a well lit part of the parking lot?
- Ms. Smith: Not really, but there was some light.
- Defense: Could you have read a book in that light?
- Ms. Smith: No, not really.
- Defense: So how do you know for sure that Mr. Parks was glaring and staring at you in an evil way?
- Ms. Smith: Well, I was close enough to see that.
- Defense: Did you see anything else on Mr. Parks' face? Any distinguishing marks?
- Ms. Smith: No.
- Defense: Did you know that Mr. Parks has a scar over his right eyebrow?
- Ms. Smith: No.

Defense: So you didn't see that scar, but yet you saw those frightening facial expressions?

Ms. Smith: Well, yes. I don't know how I didn't see the scar but I didn't.

Defense: If you didn't see the scar, might you also not have seen his threatening facial expressions?

Crown: Objection, your honor. Whether Ms. Smith could read a book, or identify a scar above Mr. Parks eyebrow is irrelevant to whether she saw his facial expressions.

Judge: Sustained.

Defense: That's all I have for now, your honor. Thank you, Ms. Smith.

(3) Ms. Smith is a visitor to Ottawa from Halifax. She is a 20 year old, second year university student on her Spring Break. She went to a bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. They danced a few times at that bar, and then she left with him, leaving her girlfriend behind. She alleges that he sexually assaulted her on the way home. You are going to read a portion of her trial testimony as a witness testifying against Mr. Parks.

The testimony begins with Ms. Smith being questioned by the Crown, the lawyer who tries to prove that the accused committed a sexual assault. Ms. Smith is then cross-examined by the Defense, the lawyer who tries to prove that the accused did NOT commit a sexual assault.

Crown: Miss Smith, could you please tell the court about the events of the night of March 27th, 1999.

Ms. Smith: I had a drink or two with my girlfriend at her house, and then we went downtown to the Ace bar.

Crown: What happened when you entered the Ace Bar?

Ms. Smith: My friend and I both went over to the dance floor and danced a bit. Then I went over to get a beer from the bar and that's where I met Mr. Parks.

Crown: How did that happen?

Ms. Smith: I was trying to get my drink at the bar which was really crowded and he started helping me. After that we started talking. He was really nice. A good song came on, so we raced over to dance for that song and then stayed for a few others.

Crown: So let's address some points that might be misperceive by the Defense, Miss Smith. So far you said that you have had three drinks. Were you drunk?

Ms. Smith: No, I wasn't.

Crown: Were you a bit tipsy?

Ms. Smith: Not really. I had those drinks over about a nine hour period, which really isn't a lot when you work it out.

Crown: Did you ever act in a way that might have made other people think that you were drunk?

Ms. Smith: Well, I know that I was giggling a lot and once I stumbled while I was doing this crazy move on the dance floor. But that was because I was having fun. That's it.

Crown: What happened after that, Miss Smith?

Ms. Smith: He asked me if I would like a tour of the city and then he would take me home. He seemed nice enough so I said yes. So we went into his car and he started driving through the city, and then we were at this place that I found out later was called Mooney's Bay. He said that he wanted to show me the water and he pulled into the parking lot. While we were there he lit up a joint and we talked a bit while he smoked it.

Crown: Okay, let me stop you here for a moment to clarify this point. Did you have any of this joint?

Ms. Smith: He offered it to me, and I was going to, just because I didn't want to seem silly, and then I said no. I really don't like drugs very much.

Crown: So you might have started to accept, and then you did not at the last minute. Correct?

Ms. Smith: That's true.

Crown: Continue with your testimony, Miss Smith.

Ms. Smith: Well, after that he kissed me. He suddenly started to feel my breasts, and when I resisted he glared at me in this very frightening way. The next thing I knew he was pressing my hands backward and saying that he was going to have sex with me. I said no, and I also said that

this was the scariest thing that had ever happened to me. He just gave me this evil stare and laughed.

Crown: I'll stop you here again. So, you said that Mr. Parks glared at you and also stared at you in an evil way. Let's clarify this a bit before the Defense questions you. How did you know this?

Ms. Smith: Well, I was sitting right next to him, looking at his face. Even though it was a bit dark in the parking lot, I could see his face quite clearly, and most of all, I could see his eyes. That was the scariest part.

Crown: So tell the court what else happened to you.

Ms. Smith: After that he raped me.

Crown: Can you explain what you mean by that?

Ms. Smith: He put his penis in my vagina and moved it, against my will.

Crown: Please continue. I know this is hard.

Ms. Smith: After that he drove me to my girlfriend's apartment. I ran out of the car and into the lobby, where I couldn't even remember her buzzer number because I was so upset. I finally got into her apartment and told her what happened and then I started crying.

Crown: Thank you Miss Smith. No further questions.

The defense begins questioning Miss Smith.

Defense: You said that you had a drink or two at your girlfriend's house, right?

Ms. Smith: Yes I did.

Defense: Was it one, two or maybe three?

Ms. Smith: It was two, two or three beer. Definitely not more than three.

Defense: And at the bar, you were in line for yet another drink when you met Mr. Parks, correct?

Ms. Smith: I guess so.

Defense: So you would have had at least three, probably four drinks that night?

Ms. Smith: Yes, but I wasn't drunk or anything.

Defense: You were giggling and stumbling. Were you maybe a bit tipsy?

Miss Smith: Well, I had only four beer at the most. I might have been a little tipsy, but I don't think that I was acting drunk.

Defense: Okay, so let's move on. You went into the car with Mr. Parks and he took you to Mooney's Bay, and stopped in the parking lot. Did you think that you were in downtown Ottawa?

Ms. Smith: No, I guessed that it was a beach or something. I asked him why he was stopping. He said that he thought maybe he could give me a kiss, and I didn't say anything, because I thought he was cute and I wouldn't have minded kissing him. But that was all I wanted to do.

Defense: And after you stopped, there was a joint passed around. Are you certain that you didn't have any of that?

Ms. Smith: No, he took it out. I was really surprised when he did that.

Defense: You are sure that you didn't have any of it at all?

Ms. Smith: Look, I'm not sure of anything about that night, I was really upset and (starts sobbing), no, I don't think that I would have had any. I really don't like drugs, so no, I didn't.

Defense: Let's move on to the glaring and evil staring that you say Mr. Parks did. Were you in a well lit part of the parking lot?

Ms. Smith: Not really, but there was some light.

Defense: Could you have read a book in that light?

Ms. Smith: No, not really.

Defense: So how do you know for sure that Mr. Parks was glaring and staring at you in an evil way?

Ms. Smith: Well, I was close enough to see that.

Defense: Did you see anything else on Mr. Parks' face? Any distinguishing marks?
Ms. Smith: No.
Defense: Did you know that Mr. Parks has a scar over his right eyebrow?
Ms. Smith: No.
Defense: So you didn't see that scar, but yet you saw those frightening facial expressions?
Ms. Smith: Well, yes. I don't know how I didn't see the scar but I didn't.
Defense: Thank you, Miss Smith.

(4) Ms. Smith is a visitor to Ottawa from Halifax. She is a 20 year old, second year university student on her Spring Break. She went to a bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. They danced a few times at that bar, and then she left with him, leaving her girlfriend behind. She alleges that he sexually assaulted her on the way home. You are going to read a portion of her trial testimony as a witness testifying against Mr. Parks.

The testimony begins with Ms. Smith being questioned by the Crown, the lawyer who tries to prove that the accused committed a sexual assault. Ms. Smith is then cross-examined by the Defense, the lawyer who tries to prove that the accused did NOT commit a sexual assault.

Crown: Ms. Smith, could you please tell the court about the events of the night of March 27th, 1999.

Ms. Smith: I had a drink or two with my girlfriend at her house, and then we went downtown to the Ace bar.

Crown: What happened when you entered the Ace Bar?

Ms. Smith: My friend and I both went over to the dance floor and danced a bit. Then I went over to get a beer from the bar and that's where I met Mr. Parks.

Crown: How did that happen?

Ms. Smith: I was trying to get my drink at the bar which was really crowded and he started helping me. After that we started talking. He was really nice. A good song came on, so we raced over to dance for that song and then stayed for a few others.

Crown: What happened after that, Ms. Smith?

Ms. Smith: He asked me if I would like a tour of the city and then he would take me home. He seemed nice enough, so I said yes. So we went into his car and he started driving through the city, and then we were at this place that I found out later was called Mooney's Bay. He said that he wanted to show me the water and he pulled into the parking lot. While we were there he lit up a joint and we talked a bit while he smoked it. Then he kissed me. He suddenly started to feel my breasts, and when I resisted he glared at me in this very frightening way. The next thing I knew he was pressing my hands backward and saying that he was going to have sex with me. I said no, and I also said that this was the scariest thing that had ever happened to me. He just gave me this evil stare and laughed. Then he raped me.

Crown: Can you explain what you mean by that?

Ms. Smith: He put his penis in my vagina and moved it, against my will.

Crown: Please continue. I know this is hard.

Ms. Smith: After that he drove me to my girlfriend's apartment. I ran out of the car and into the lobby, where I couldn't even remember her buzzer number because I was so upset. I finally got into her apartment and told her what happened and then I started crying.

Crown: Thank you Ms. Smith. No further questions.

The defense begins questioning Ms. Smith.

Defense: You said that you had a drink or two at your girlfriend's house, right?

Ms. Smith: Yes I did.

- Defense: Was it one or two or maybe three?
- Ms. Smith: It was two, two or three beer. Definitely not more than three.
- Defense: And at the bar, you were in line for yet another drink when you met Mr. Parks, correct?
- Ms. Smith: I guess so.
- Defense: So you would have had at least three, probably four drinks that night?
- Ms. Smith: Yes, but I wasn't drunk or anything.
- Defense: Were you maybe a bit tipsy? Were you giggling and did you stumble once or twice?
- Ms. Smith: Well, it was probably only four beer at the most. I might have been a little tipsy, but I don't think that I was acting drunk.
- Defense: Okay, so let's move on. You went into the car with Mr. Parks and he took you to Mooney's Bay, and stopped in the parking lot. Did you think that you were in downtown Ottawa?
- Ms. Smith: No, I guessed that it was a beach or something. I asked him why he was stopping. He said that he thought maybe he could give me a kiss, and I didn't say anything, because I thought he was cute and I wouldn't have minded kissing him. But that was all I wanted to do.
- Defense: And after you stopped, you say that he pulled out a joint and smoked it. Wasn't it actually true that you pulled out the joint and lit it up, and asked Mr. Parks if he wanted to have some?
- Ms. Smith: No, he took it out. I was really surprised when he did that.
- Defense: You are sure that you didn't have any of it at all?
- Ms. Smith: Look, I'm not sure of anything about that night, I was really upset and (starts sobbing), no, I don't think that I would have had any. I really don't like drugs, so no, I didn't.
- Defense: Let's move on to the glaring and evil staring that you say Mr. Parks did. Were you in a well lit part of the parking lot?
- Ms. Smith: Not really, but there was some light.
- Defense: Could you have read a book in that light?
- Ms. Smith: No, not really.
- Defense: So how do you know for sure that Mr. Parks was glaring and staring at you in an evil way?
- Ms. Smith: Well, I was close enough to see that.
- Defense: Did you see anything else on Mr. Parks' face? Any distinguishing marks?
- Ms. Smith: No.
- Defense: Did you know that Mr. Parks has a scar over his right eyebrow?
- Ms. Smith: No.
- Defense: So you didn't see that scar, but yet you saw those frightening facial expressions?
- Ms. Smith: Well, yes. I don't know how I didn't see the scar but I didn't.
- Defense: Thank you, Ms. Smith.
- Crown: Your honor, permission to redirect please.
- Judge: Go ahead, counselor.

- Crown: Ms. Smith, if I could just ask you to clarify some issues which were brought up by my learned friend. You said that you had between three and four beers on the night of the 27th. Over what time period did you have these beers?
- Ms. Smith: It was about nine hours from the time I went over to my girlfriend's to the time I left the bar.
- Crown: So it is conceivable that you were not drunk, as nine hours is a fairly long time to have four beers.
- Ms. Smith: Yes.
- Crown: Why were you stumbling and giggling?
- Ms. Smith: I know that I was giggling a lot and once I stumbled while I was doing this crazy move on the dance floor. But that was because I was having fun. That's it.
- Crown: Let's talk a bit about the joint. Did you have any of this joint?
- Ms. Smith: He offered it to me, and I was going to, just because I didn't want to seem silly, and then I said no, I really don't like drugs very much.
- Crown: So you might have started to accept, and then you did not at the last minute. Correct?
- Ms. Smith: That's true.
- Crown: Why did you not remember this event clearly when talking to my learned colleague?
- Ms. Smith: Well, he confused me when he said I might have brought out the joint. I got flustered.
- Crown: Let's talk finally about Mr. Parks' facial expressions. You said that Mr. Parks glared at you and also stared at you in an evil way? How do you know this?
- Ms. Smith: Well, I was sitting right next to him, looking at his face. Even though it was a bit dark in the parking lot, I could see his face quite clearly, and most of all, I could see his eyes. That was the scariest part.
- Crown: And how is it that you were not able to see his scar?
- Ms. Smith: I looked at his eyes. Honestly, I never even looked at his eyebrows.
- Crown: Thank you Ms. Smith.

APPENDIX H: QUESTIONNAIRE FOR STUDY 2

Question 1: As a member of the jury, you would be called upon to state what you think the verdict should be. The accused is the person whom the witness accuses of committing the crime of sexual assault against her. On the basis of the limited testimony that you just read, please indicate whether you would vote guilty or not guilty.

guilty _____

not guilty _____

Question 2: Please rate your confidence in the rating given above.

1 2 3 4 5 6 7

very confident

not at all confident

Question 3: The accused is the person whom the witness accuses of committing the crime of sexual assault against her. On the basis of the limited testimony that you just read, could you please rate the probability that the accused in this case is guilty of committing a sexual assault, on a scale from 0 to 100%, with 0 indicating that the accused is not guilty and 100 indicating that the accused is definitely guilty

-----%

Question 4: If a jury in this case found the accused guilty, what sentence would you give him for committing this sexual assault? (Please circle only one of the following six options)

3. \$100 fine
2. Less than 6 months
3. More than 6 months but less than 1 year
4. More than 1 year but less than 2 years
5. More than 2 years but less than 4 years
6. More than 4 years

Question 5: You read a piece of testimony from a sexual assault trial in which the Crown and the Defense both asked questions of the sexual assault victim. Could you please rate your perceptions of the Crown (the attorney who tries to prove that the accused committed a sexual assault) in this case. To do so, please use the following rating scales:

1 2 3 4 5 6 7

not at all credible

very credible

1 2 3 4 5 6 7

not at all able to
protect witness wellable to
protect witness very well

1 2 3 4 5 6 7

not at all confusing

very confusing

1 2 3 4 5

6 7

not at all awkward

very awkward

1 2 3 4 5

6 7

not at all competent

very competent

1 2 3 4 5

6 7

not at all convincing

very convincing

1 2 3 4 5

6 7

not at all
insensitive to the victimvery
insensitive to the victim

1 2 3 4 5

6 7

not at all
disrespectful of the victimvery
disrespectful of the victim

Question 6: Re-victimization refers to asking the witness questions in a derogatory manner, asking questions which are created to upset the victim and making the court experience extremely negative for the sexual assault victim. Could you please rate your perceptions of the Crown attorney and their ability to deal with re-victimization in the court by answering the following two questions:

- a) How well do you think the Crown protected the witness against re-victimization in this trial on a scale of 1 to 7, where 1 is not at all well and 7 is very well?**

1 2 3 4 5 6 7

not at all well

very well

- b) How much do you think that the Crown promoted re-victimization of the witness in this trial on a scale of 1 to 7, where 1 is not at all and 7 is very much?**

1 2 3 4 5 6 7

not at all

very much

Question 7: You read a piece of testimony from a sexual assault trial in which the Crown and the Defense both asked questions of the sexual assault victim. Could you please rate your perceptions of the Defense (the attorney who tries to prove that the accused did NOT commit a sexual assault) in this case. To do so, please use the following rating scales:

1 2 3 4 5 6 7

not at all credible

very credible

1	2	3	4	5	6	7
not at all able to protect witness well						able to protect witness very well
1	2	3	4	5	6	7
not at all confusing						very confusing
1	2	3	4	5	6	7
not at all awkward						very awkward
1	2	3	4	5	6	7
not at all competent						very competent
1	2	3	4	5	6	7
not at all convincing						very convincing
1	2	3	4	5	6	7
not at all insensitive to the victim						very insensitive to the victim
1	2	3	4	5	6	7
not at all disrespectful of the victim						very disrespectful of the victim

Question 8: Re-victimization refers to asking the witness questions in a derogatory manner, asking questions which are created to upset the victim and making the court experience extremely negative for the sexual assault victim. Could you please rate your perceptions of the Defense attorney and their ability to re-victimize the witness in the court by answering the following two questions:

- a) How well do you think the Defense protected the witness against re-victimization in this trial on a scale of 1 to 7, where 1 is not at all well and 7 is very well?

1	2	3	4	5	6	7
not at all well						very well

- b) How much do you think that the Defense promoted re-victimization of the witness in this trial on a scale of 1 to 7, where 1 is not at all and 7 is very much?

1	2	3	4	5	6	7
not at all						very much

Question 9: Based on the testimony which you read, could you please rate your perceptions of the witness in this case. To do so, please use the following rating scales:

1	2	3	4	5	6	7
not at all uncertain						very uncertain

1	2	3	4	5	6	7
not at all credible						very credible

1	2	3	4	5	6	7
not at all inconsistent						very inconsistent

1	2	3	4	5	6	7
not at all strong						very strong

1	2	3	4	5	6	7
not at all unreliable						very unreliable

1	2	3	4	5	6	7
not at all convincing						very convincing

1	2	3	4	5	6	7
not at all believable						very believable

1	2	3	4	5	6	7
not at all persuasive						very persuasive

Question 10: How important were the Crown's questions to your own verdict concerning the accused's guilt?

1	2	3	4	5	6	7
not at all important						very important

Question 11: How important were the Defense's questions to your own verdict concerning the accused's guilt?

1	2	3	4	5	6	7
not at all important						very important

Question 12: What was the most important factor in determining your own verdict concerning the accused's guilt? Please write in the space given below.

Question 13: The Crown has available several strategies to protect the victim on the stand. To what extent do you think the Crown (the lawyer who tries to prove that the accused committed a sexual assault) used each of the following:

inoculation (the Crown addresses a troublesome point with the victim before the Defense has a chance to question her, for example, bringing up the number of drinks that the victim had before the Defense does)

0

not at all

1

used this strategy

re-direct (The Crown questions the victim after she has already been cross-examined in an effort to address negative points introduced by the Defense, for example, clarifying the number of drinks that the victim had and pointing out that it wasn't very much over the time span)

0

not at all

1

used this strategy

objection (The Crown disagrees with the delivery or the content of a point raised by the Defense, by saying something to the effect of, "Your Honour, I object".)

0

not at all

1

used this strategy

Question 14: The Defense has available several strategies to attack the victim on the stand. To what extent do you think the Defense (the lawyer who tries to prove that the accused did NOT commit a sexual assault) used each of the following:

attacked the victim's credibility (where the Defense asks questions which make the victim appear to be a bad person)

0

not at all

1

used this strategy

- 7) If the girl engages in necking or petting and she lets things get out of hand, it's her own fault if her partner forces sex on her.

-3 -2 -1 0 1 2 3

strongly disagree **strongly agree**

- 8) **Women who get raped while hitchhiking get what they deserve.**

-3 -2 -1 0 1 2 3
 strongly disagree strongly agree

- 9) **A woman who is stuck-up and thinks she is too good to talk to guys on the street deserves to be taught a lesson.**

-3 -2 -1 0 1 2 3

strongly disagree **strongly agree**

- 10) Many women have an unconscious wish to be raped, and may then unconsciously set up a situation where they are likely to be attacked.

-3 -2 -1 0 1 2 3

strongly disagree **strongly agree**

- 11) If a woman gets drunk at a party and has intercourse with a man she's just met there, she should be considered "fair game" to other males at the party who want to have sex with her too, whether she wants to or not.

-3 -2 -1 0 1 2 3
strongly disagree strongly agree

Question 16: Listed below are a number of statements concerning personal attitudes and traits. Read each item and decide whether the statement is true or false as it pertains to you personally.

- 1) I like to gossip at times.

true **false**

- 2) I'm always willing to admit it when I make a mistake.

true **false**

- 3) **There have been occasions when I took advantage of someone.**

true false

- 4) I always try to practice what I preach.

true false

- 5) I sometimes try to get even rather than to forgive and forget.

true false

- 6) At times I have really insisted on having things my own way.

true false

- 7) There have been occasions when I felt like smashing things.

true false

- 8) I never resent being asked to return a favour.

true false

- 9) I have never been irked when people expressed ideas very different from my own.

true false

- 10) I have never deliberately said something that hurt someone's feelings.

true false

Question 17: It would be helpful to our research to know a little about your experiences with sexual assault, as different experiences may affect one's answers in different ways. Could you please answer the following question:

Have you ever been a victim of sexual assault?

Yes

No

APPENDIX I: INFORMAL FALLACIES OF RELEVANCE AND AMBIGUITY

Type	Explanation	Example from Sexual Assault Content Categories
1. Argumentum ad Baculum (appeal to force)	Use of "strong-arm" methods to coerce another into compliance, e.g., lobby groups remind a politician that they represent a substantial number of voters so the politician will endorse their position.	<p>The Defense suggests to the victim that if she wants to be helpful and avoid lengthy questioning, then she should respond in a particular manner.</p> <p>Q: Mrs. M., if you'd answer the question then we'll go on to the next one in a logical fashion. I know you are wanting to be helpful.</p>
2. Argumentum ad Hominem (abusive, also known as the "Genetic Fallacy")	Instead of attempting to disprove the truth of an opponent's argument, one attacks the opponent, not the argument itself.	<p>The victim is a blamable person because she drinks on the weekend. Therefore her testimony about the sexual assault is suspect.</p> <p>Q: On that weekend, was there drinking every weekend when you went up?</p> <p>A: Not every weekend.</p> <p>Q: It was frequent though, wasn't it?</p> <p>A: Yah.</p> <p>Q: And you'd be drinking too.</p> <p>A: Yah.</p>
3. Argumentum ad Hominem (circumstantial)	(awkward) Instead of attempting to prove the truth of an argument, one highlights the "special circumstances" of the opponent which require acceptance of the argument.	<p>Because of the victim's special circumstance, i.e., she is religious and her faith dictates it is wrong to have sex outside of marriage, she is unable to "admit" what "really" happened was consensual sex.</p> <p>Q: You are a very religious person, are you not?</p> <p>A: Yes, I am.</p> <p>Q: And you faithfully attend a church.</p> <p>A: I try to. Yes, I do.</p> <p>Q: I take it that if you had consensual intercourse with anybody while you were married you would feel somewhat guilty about that, would you not?</p>

4. Argumentum ad Ignorantiam (argument from ignorance)	Argument that a premiss is true simply because it has not been proved false, or vice versa, i.e., often used with psychic phenomena, telepathy.	<p>One rape myth asserts that if a woman does not actively physically resist the sexual assault, the sex was consensual . The Defense will introduce evidence whenever possible that active resistance did not take place to substantiate the claim of consensual sex.</p> <p>Q: "You didn't hit him at any time did you?" A: "No." Q: "You didn't scratch him." A: "No." Q: "There were no marks on him." A: "No."</p>
5. Accident	Applying a general rule to a particular case whose "accidental" circumstances render the rule inapplicable, assuming that the rule is true universally, without qualification or context.	<p>Because the victim did not resist the assault (as all victims should), the Defense implies that it was not an assault. He glosses over the specific facts that the victim was pulled into the room, frightened, and that resistance may have been useless.</p> <p>Q: You indicated then that you did not wish to go into the bedroom. A: No I didn't. Q: Why then, perhaps, would you not have called out or sought assistance to prevent Zachary from forcing you into the bedroom? If indeed that's what he did? A: 'Cause I know how Zachary is.</p>
6. Converse Accident (hasty generalization)	Using an atypical case to generate a rule that is supposed to apply generally (but does not). For example, because this person in pain is on morphine everyone in pain should be on morphine.	<p>Although it is true that the presence of weapons would suggest that coercion had occurred, it is not true that no weapons means there was no coercion.</p> <p>Q: Did he every say look 'I have a gun, I have a knife, you better cooperate, I am going to hurt you with this?' A: No, he didn't.</p>

7. False Cause	Mistaking coincidence or temporal succession for causal connection, i.e., going outside in winter gives you a cold.	<p>The Defense suggests a lesser form of intimacy had already occurred (which it had not), and that this activity was causally connected to the incidents of oral sex and attempted intercourse.</p> <p>Q: Is it not correct that prior to getting to the parking lot that you and the accused had embraced and in fact had kissed.</p> <p>A: No, that is definitely not correct.</p>
8. Petitio Principii (begging the question)	Premiss and conclusion are identical but worded sufficiently differently that this fact is obscured, i.e., a circular argument.	<p>Regardless of the victim's responses, the Defense maintains his premiss and conclusion that the victim was fabricating her testimony in the courtroom.</p> <p>Q: And your memory at that time would have been fresh with respect to the events that occurred earlier that evening? Would they not have been?</p> <p>A: I think they were quite muddled.</p> <p>Q: Were they?</p> <p>A: I think I was in shock.</p> <p>Q: ... When you gave a statement to the police, you didn't mention to the police any more than he hit you in...the nose...</p> <p>A: Nnhmm.</p>

<p>9. Complex Question</p>	<p>Several questions rolled into one, presupposes that a definite answer has been given to an unasked prior question., e.g., "When did you stop beating your wife?" implies the prior question, "Were you beating your wife?" Answering the complex question has the effect of answering the prior unasked question as well.</p>	<p>The phrasing used by the Defense leaves the witness with no reasonable answer to his question.</p> <p>Q: Isn't it true that in the statement you tell the police of only three incidents?</p> <p>A: Yes I believe there are only three.</p> <p>Q: ...<i>Now</i>, you go through the first incident and then you allude to the second incident...and the second incident if I take what's shown there ... (reading) "everything for a few days was fine, ..and then he asked me to cuddle with him...I didn't know what he meant" ...and then you go through the second incident on the couch ...(reading) "a few days after the first incident" ... <i>so were you wrong then or are you wrong today again?</i></p>
<p>10. Ignoratio Elenchi (irrelevant conclusion)</p>	<p>An argument that purports to establish a particular conclusion is actually applicable towards proving a different conclusion. For example, the prosecution may argue the abhorrence of murder while trying a murder case, but this does not imply that the defendant is guilty of murder.</p>	<p>The victim has already testified that she was attracted to the accused and expected that there would be some kissing. The Defense takes each facet of the evening of the sexual assault, and strings them together to create the impression that consensual sex, rather than kissing, was inevitable.</p> <p>Q: Miss B., I suggest to you that you met Mr. L. that night and you found him to be an attractive male. And as the evening went on, you found yourself in a romantic situation with him. There was the rose, there was the drink, and there was some touching. I suggest to you that when it was suggested, at 3 o'clock in the morning or whenever it was, that you went together to see the sights, that you were going to further that romantic engagement. And you knew that!</p>

11. Equivocation	Confusing the different meanings of a word within the same argument, i.e., some dogs have fuzzy ears, my dog has fuzzy ears, therefore my dog is <i>some</i> dog!	<p>By getting the victim to admit that the “sole reason” intercourse did not occur was because the accused did not have an erection, the Defense implies intercourse would have been a desirable outcome. The victim meant was that she believed she would have been raped otherwise.</p> <p>Q: You would agree with me then, according to your evidence that the sole reason there was not intercourse was that the accused never attained a hard enough erection?</p> <p>A: That is correct.</p>
12. Accent	Different meanings can be attributed to a statement depending on which words/phrases are stressed and whether any words/phases are taken out of context. For example, the statement “Woman without her man would be lost” has two distinct meanings depending on which part of the sentence is accented, making it acceptable to members of both sexes.	<p>In this instance, the victim was a strong witness, able to correct the fallacious conclusion to her statement when the Defense attorney reinterpreted her innocent statement made in a very general context.</p> <p>Q: He arrived and it was in fact your idea that you go out for dinner?</p> <p>A: I suggested that we go for dinner or something . . . I didn't have any set idea or plan.</p> <p>Q: “<i>Or something?</i>”</p> <p>A: “Go for dinner or something, not... (sigh)...<i>something.</i>”</p> <p>Q: What do you mean by “<i>or something?</i>”</p> <p>A: You know perfectly well that I meant nothing at all by that.</p>

13. Composition	Reasoning from the attributes of the parts of a whole to the attributes of the whole itself, e.g., each scene in the play was a model of artistic perfection therefore the play as a whole was artistically perfect.	<p>The Defense outlines each separate fact of the case to imply that they lead to consensual sex between the victim (a prostitute) and the accused (her john) rather than sexual assault.</p> <p>A: I helped him with it anyway because I just wanted to get it over with.</p> <p>Q: Okay. And your clothing wasn't damaged.</p> <p>A: No it wasn't.</p> <p>Q: Okay. In any way whatsoever.</p> <p>A: No.</p> <p>Q: Okay, and you didn't receive any marks or scratches.</p> <p>A: No.</p> <p>Q: And you weren't struck in any way.</p> <p>A: No.</p> <p>Q: And you didn't get your money.</p> <p>A: Exactly.</p>
14 Division (reverse of #17)	Arguing that what is true of the whole (or collection of elements) is true of its parts (or elements themselves), e.g., IBM is a very important company, Mr. X works for IBM therefore Mr. X. is very important.	<p>(iffy) The Defense is making the point that since the witness gave graphic, detailed testimony about the sexual assault in the courtroom, that she should have given the same description to her friend immediately after the assault.</p> <p>Q: In fact, what you had told R. of what had happened wasn't all this great gory detail we've heard today about this horrible frightening experience, but you merely told him you'd been raped.</p> <p>A: That's right.</p>

APPENDIX J: RECRUITMENT SHEET FOR STUDY 4**Psychology 49.101/102**

Experiment Title: _____
Experimenter's Name & Room#: _____
Experimenter's Phone #: _____
Location of Experiment: _____
Experiment
Number: _____
Faculty Advisor: _____

BRIEF DESCRIPTION

A study is being conducted to investigate perceptions about sexual assault trials. Participants will be asked to make judgements about one sexual assault case based on an excerpt of actual sexual assault trial testimony where the Defense attorney questions the sexual assault victim. Participants will be required to read the written transcript of the case, approximately one to two pages long, and respond to questions on aspects of the case as well as some questions about themselves. The entire experiment will take approximately 30 minutes. All students will receive 1 course credit for their participation in this study

SUBJECTS WILL RECEIVE _____ CREDIT(S) FOR THIS
EXPERIMENT.

YOU MUST: KEEP A RECORD OF THE EXPERIMENTER'S NAME
TITLE OF THE EXPERIMENT
LOCATION AND TIME

**IT IS YOUR RESPONSIBILITY TO KNOW WHERE AND WHEN THE EXPERIMENT IS
HELD.**

**SIGN-UP SHEETS FOR THIS EXPERIMENT ARE UNDERNEATH. PLEASE PROVIDE
INFORMATION REQUESTED.**

APPENDIX K: ETHICS MATERIALS FOR STUDY 4

Description of Purpose

The Crown has four strategies which can be used to frame the questions asked of sexual assault victims in the court: inoculation, where the Crown addresses a troublesome point with the victim before the Defense has a chance to do so; redirect, where the Crown asks questions of the victim after she has been cross-examined in an effort to address negative points highlighted by the Defense; objection, where the Crown lodges a verbal dissent with either the delivery or the content of a point that the Defense has raised; and no response, where the Crown does nothing after eliciting the direct testimony (Kapardis, 1997; Oddie, 1988). The Crown can use inoculation before the Defense has cross-examined the witness, objection during the Defense's cross-examination and redirect after the cross-examination.

It appears likely that if the Crown could use tactics as effectively as the Defense, then he/she would have more influence on the verdict and sentence, which would create more verdicts and sentences positive to the sexual assault victim, and less re-victimization. Thus it is of interest to investigate the use of tactics by the Crown to counter the Defense's use of illogical arguments in sexual assault cases.

Although Study 3 suggests that illogical arguments will intensify the victim's feelings of re-victimization and simultaneously, that these arguments are endorsed as appropriate arguments by the jury, it is not known conclusively whether this occurs in the courtroom. The fact that only .08% of all sexual assaults result in a conviction with incarceration (Statistics Canada, 1993), and less than 70% of the cases in this sample resulted in a conviction of any kind, suggests, given the presence of illogical arguments in the sexual assault cases previously examined, that illogical arguments may be perceived as appropriate arguments by the jury in sexual assault trials. The jury may accept these arguments as valid and logical, given the public acceptance of rape myths and the fact that these same myths are the foundation upon which the illogical arguments rest. The proposed study represents an attempt to investigate this previously unexamined issue which may be pivotal to the re-victimization experience of the sexual assault victim. Thus this study will address the issue of whether these arguments are perceived as valid by the jury when used by the Defense during a sexual assault trial.

Description of Methods

Materials. Three different one to two page case scenarios, 1 for the illogical, 1 for the logical and 1 for the victim credibility condition will be presented. Each participant will be randomly assigned to one of the three conditions portrayed within each written scenario. Alleged segments of testimony from the victim and the Defense attorney will be presented. Trial transcripts (Appendix I) are drawn from the actual cases examined in the preliminary studies. the transcripts will include a) a brief description of the circumstances of the alleged sexual assault, b), a brief definition of who the Defense is in the trial, c) a brief definition of who the Crown is in the trial and d) a portion of the testimony between the Defense and the witness.

The case facts will be the same for each of the two cases. The questions asked by the Defense will also be essentially the same, with the variation only to allow the manipulation of the

strategy used by the Defense. Each of the written scenarios reflect the appropriate behavior of the Defense (illogical argument vs. no illogical argument vs. victim credibility). The basic case facts are as follows: The trial involves the alleged sexual assault victim, a visitor to Ottawa from Halifax. Ms. Smith is a 20 year old, second year university student on her Spring Break. She went to a local bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. He bought her a drink and they chatted some more. They danced a few times at that bar, and then she left to go on a tour of the city with him, leaving her girlfriend behind. As he was driving her home, she alleged that he sexually assaulted her.

Participants will be asked to rate the guilt of the accused and to give an appropriate sentence for him if he was found guilty. They will also be asked to give ratings of the both attorneys on their credibility, believability, consistency, ability to convince, aggression toward the witness, respect for the witness, awkwardness, among other dimensions. They will also be asked to rate the witness on several different dimensions, including certainty, credibility, consistency, strength, reliability, ability to convince, believability and persuasiveness (Appendix J). Respondents will be asked how important the Crown and Defense's questions were to their own verdict concerning the accused's guilt (Appendix J). As well, an open ended-question will ask participants to indicate which factor was most important in determining the accused's guilt (Appendix J). As a manipulation check, participants will be asked to indicate the extent to which 8 statements are illogical (Appendix J). Participants will also be asked to complete the Rape Myths Acceptance Scale (Burt, 1980) and a short form of the Marlowe-Crown Social Desirability scale (Crowne & Marlowe, 1960).

Method. Participants will be run individually. Upon arrival, they will be informed that this study concerns a trial of a person accused of sexually assaulting a woman. Further, they will be presented with a written excerpt of testimony of that trial, showing a portion of the questions asked by the Defense attorney to the woman who alleges that she was sexually assaulted. They will also be informed that due to the emotional nature of the trial, they can discontinue their participation at any time without penalty. All participants will then be asked to read and sign an informed consent form (Appendix K). Participants will be asked to complete the Rape Myths Acceptance Scale and a short form of the Marlowe-Crown Social Desirability scale (Appendix J). They will then read the transcript appropriate for their assigned condition (Appendix I) and respond to the questionnaire (Appendix J). Upon completion, they will be fully debriefed and provided with a list of contacts should they have any further questions (Appendix K).

Informed Consent Form

The purpose of an informed consent is to ensure that you understand the purpose of the study and the nature of your involvement. The informed consent must provide sufficient information such that you have the opportunity to determine whether you wish to participate in the study.

Research Personnel. The following people are involved in this research project and may be contacted at any time. Amanda Parriag (Principal Investigator, 520-2600, x 6622); Dr. K. Matheson (Faculty Sponsor, 520-2600, x 2648). If you have any ethical questions or concerns regarding this experiment, please contact either Dr. M. Gick (Chair of the Ethics Committee, 520-2600, x2664) or Dr. K. Matheson (Chair of the Psychology Department, 520-2600, x2648).

Purpose. You are about to read a portion of a transcript involving a simulated trial (based on actual trials) where a sexual assault victim is testifying in court to questions asked by the Defense lawyer and the Crown attorney. The purpose of this study is to examine the types of decisions that are made in the context of a sexual assault trial and how these decisions affect the verdict and sentence of the accused.

Task Requirements. You will be asked to read a transcript. After reading it you will be asked to answer a series of questions.

Duration and Locale. The experimental sessions will take about thirty minutes and will take place in a laboratory.

Potential risk/discomfort. Some people may find the issue of sexual assault, along with other aspects of the trial, to be offensive and upsetting. Your participation is voluntary and you are under no obligation to continue with the study.

Anonymity/Confidentiality. The data gathered in this study are confidential and will only be used by researchers associated with this project. Your personal identity will be anonymous.

Right to Withdraw. You may withdraw from this study at any time without academic penalty.

Signatures

I have read the above form and understand the conditions of my participation. My participation in this study is voluntary and if for any reason, at any time, I wish to leave the experiment I may do so without having to give an explanation and with no penalty whatsoever. Furthermore, I am also aware that the data gathered in this study are confidential and anonymous with respect to my personal identity. My signature indicates that I agree to participate in the experiment.

Participant's name

Investigator's name

Participant's signature

Investigator's signature

Date

Debriefing

We would like to thank you for participating in this study. Your participation will help us in the understanding of how people make decisions about sexual assault victims based on the questions that they are asked by Defense and Crown attorneys. We would like to emphasize the extreme seriousness of the crime of sexual assault. Victims of sexual assault often suffer severe psychological and emotional problems, termed "Rape Trauma Syndrome". A sexual assault victim never asks to be sexually assaulted, although one of the components of Rape Trauma Syndrome is self-blame.

The purpose of the study in which you have participated was to examine the effect that the attorney's questions had on your ratings of trial outcome and sentence, and on your perceptions of the Defense, Crown and the victim. Specifically, you read testimony where the Defense either used an illogical argument, a logical argument, or attacked the victim's credibility, in questioning the victim about the sexual assault. We think that the logical argument will be least persuasive, in comparison to both the illogical argument and the attack on victim's credibility. We expect that this may explain in part why sexual assault victims are often not believed on the witness stand.

We appreciate your taking the time to answer the questions and want to stress that all of your answers are valuable. The portion of transcript presented to you was based on real trial testimony from our files. We understand that the scenarios may be anxiety provoking for some people and we encourage you to contact myself or one of the agencies listed below if you have any concerns regarding this study or the issues referred to in this study. This list of contacts includes agencies within both the university and the community that are available for men and women.

Due to the nature of the research, we ask you not to discuss the participant matter with potential participants until testing is complete (approximately June of 1999). If you have any questions about this study, you may contact Amanda Parriag in room A402 Loeb (520-2600 x 6622) or Dr. K. Matheson (520-2600, x2648). If you have questions and/or ethical concerns regarding this experiment, you may also contact either of the following faculty members: Dr. M. Gick (Chair of the Ethics Committee, 520-2600, x2664) or Dr. K. Matheson (Chair of the Psychology Department, 520-2600, x2648).

Contact Numbers

24 hour distress lines

Rape Crisis Line	238-3311
Sexual Assault Centre	234-4641
Ottawa Distress Centre	238-3311

Help for victims of sexual abuse and their families

Family Service Centre	725-3601
Sexual Assault Support Centre	234-2266

Counselling Services for Men	238-8478
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Health Services Carleton University 520-2600, x6674
(agency providing on-campus counselling)

APPENDIX L: MATERIALS FOR STUDY 4

Ms Smith is a visitor to Ottawa from Halifax. She is a 20-year old, second year university student on her Spring Break. She went to a bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. They danced a few times at that bar, and then she left with him, leaving her girlfriend behind. She alleges that he sexually assaulted her on the way home. You are going to read a portion of her trial testimony as a witness testifying against Mr. Parks.

The testimony begins with Ms. Smith being questioned by the Crown, the lawyer who tries to prove that the accused committed a sexual assault. Ms. Smith is then cross-examined by the Defense, the lawyer who tries to prove that the accused did NOT commit a sexual assault.

1) condition with logical fallacy present

Crown: Ms. Smith, where did you go with your girlfriend the night of March 27th, 1999.

Ms. Smith: We went out to the Ace bar in downtown Ottawa. We wanted to have a few drinks, talk to people and dance a bit. Basically we just wanted to have a good time.

Crown: What happened when you entered the Ace Bar?

Ms. Smith: My friend and I both went over to the dance floor. We danced a bit, and then I went over to get a beer from the bar and that's where I met Mr. Parks.

Crown: How did that happen?

Ms. Smith: I was trying to get my drink at the bar which was really crowded and he started helping me. After that we started talking. He was really nice and I thought he was quite cute as well, so I liked talking to him. A really good song came on, so we raced over to the dance floor and danced for that song and then stayed for a few others.

Crown: What happened after that Ms. Smith?

Ms. Smith: He asked me if I wanted him to show me around the city a bit and then he would give me a ride home and I said yes. So we went into his car and he started driving through the city, and then we were at this place that I found out later was called Mooney's Bay. He said that he wanted to show me the water and so he pulled into the parking lot. After the car stopped he took my seat belt off and he kissed me. He also asked if he could feel my breasts, but he asked in a way that scared me a bit. The next thing I knew he was pressing my hands backward and saying that he was going to have sex with me. I said no, and I also said that this was the most frightening thing that had ever happened to me, and he laughed. And then he raped me. After that he drove for a bit more and I asked him repeatedly to take me to my girlfriend's apartment. He took me to the parking lot behind the apartment building and raped me again. Then I ran out of the car and into the lobby, where I couldn't even remember her buzzer number because I was in such shock. I finally got into her apartment and told her what happened and we just stayed up all night talking about it.

Crown: Thank you Ms. Smith. No further questions.

The defense begins questioning Ms. Smith.

Defense: You voluntarily left the bar with Mr. Parks, did you not?

Ms. Smith: Yes I did.

Defense: And when you left, what happened?

Ms. Smith: He suggested that we go for a drive and he could show me around the city a bit. It was my first time in Ottawa, so I didn't mind that at all.

- Defense: Okay, so at 3 o'clock in the morning, he was going to show you the city?
- Ms. Smith: I guess so.
- Defense: What happened after you got into the car?
- Ms. Smith: He started driving and we passed some buildings and a canal and he was pointing stuff out to me, then he suddenly pulled into this parking lot at this beach called Mooney's Bay.
- Defense: And what did you do?
- Ms. Smith: I asked him why he was stopping. He said that he thought maybe he could give me a kiss, and I didn't say anything, because I thought he was cute and I wouldn't have minded kissing him at all.
- Defense: So after he kissed you, you said that he asked you if he could feel your breasts.
- Ms. Smith: Well, yes he did but in a really mean way.
- Defense: Okay, so regardless of how he asked, the point is that he and you made some sexual contact and you were not struggling or telling him to stop.
- Ms. Smith: Well, I was moving away from him and I thought he could tell that it wasn't okay to go that far with me.
- Defense: Okay, so after this initial sexual contact what happened?
- Ms. Smith: He started undoing my pants. I didn't want him to do that at all and I said "no".
- Defense: Did you say no loudly?
- Ms. Smith: Well, he should have heard me, he was right next to me.
- Defense: So we don't know if he heard you. So after you said this, you testified that you and the defendant had sexual intercourse.
- Ms. Smith: Yes. Even though I said no.
- Defense: Did you scream?
- Ms. Smith: No, I....
- Defense: Did you strike the defendant?
- Ms. Smith: No, I was scared...
- Defense: Did you run away?
- Ms. Smith: Well no, I couldn't, I... you don't understand....
- Defense: Okay, so you made no serious effort to avoid this sexual incident. After you had sexual intercourse, you testified that he started driving you around the city again.
- Ms. Smith: Yes, he did. At that point I really wanted to go to my friend's place. He didn't say much but he finally came to my friend's place. He then parked in the lot behind the apartment and said, "We are going to have sex one more time before you go inside". I was upset at that point and I just said, "Okay, just don't hurt me", because I wanted the whole thing over as soon as possible. So we had sex once more and then he let me go.
- Defense: So you were right behind your friend's apartment, and you did not run out of the car?
- Ms. Smith: Well, he was right next to me.. I think it's hard to understand, but..... I was scared.....
- Defense: Did you honk on the horn so other people could help you?
- Ms. Smith: No, I was embarrassed and, well, I didn't know, well.... who was around....it really happened so fast.....
- Defense: So again, you made no serious effort to stop this sexual incident from taking place. Okay, so you are saying, Ms. Smith, that you and the defendant had sexual encounters twice in the car on the way home.
- Ms. Smith: Yes.
- Defense: You spent the night talking to the defendant at a bar?
- Ms. Smith: Yes, I did.
- Defense: And you voluntarily got into his car at 3:00 in the morning?

Ms. Smith: Well....yes.

Defense: And yet you are saying that you did not voluntarily have sex with him?

Ms. Smith: Well, yes, I mean.....

Defense: Thank you, Ms. Smith.

Ms Smith is a visitor to Ottawa from Halifax. She is a 20 year old, second year university student on her Spring Break. She went to a bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. They danced a few times at that bar, and then she left with him, leaving her girlfriend behind. She alleges that he sexually assaulted her on the way home. You are going to read a portion of her trial testimony as a witness testifying against Mr. Parks.

The testimony begins with Ms. Smith being questioned by the Crown, the lawyer who tries to prove that the accused committed a sexual assault. Ms. Smith is then cross-examined by the Defense, the lawyer who tries to prove that the accused did NOT commit a sexual assault.

2) condition with logical fallacy absent

Crown: Ms. Smith, where did you go with your girlfriend the night of March 27th, 1999.

Ms. Smith: We went out to the Ace bar in downtown Ottawa. We wanted to have a few drinks, talk to people and dance a bit. Basically we just wanted to have a good time.

Crown: What happened when you entered the Ace Bar?

Ms. Smith: My friend and I both went over to the dance floor. We danced a bit, and then I went over to get a beer from the bar and that's where I met Mr. Parks.

Crown: How did that happen?

Ms. Smith: I was trying to get my drink at the bar which was really crowded and he started helping me. After that we started talking. He was really nice and I thought he was quite cute as well, so I liked talking to him. A really good song came on, so we raced over to the dance floor and danced for that song and a then stayed for a few others.

Crown: What happened after that Ms. Smith?

Ms. Smith: He asked me if I wanted him to show me around the city a bit and then he would give me a ride home and I said yes. So we went into his car and he started driving through the city, and then we were at this place that I found out later was called Mooney's Bay. He said that he wanted to show me the water and so he pulled into the parking lot. After the car stopped he took my seat belt off and he kissed me. He also asked if he could feel my breasts, but he asked in a way that scared me a bit. The next thing I knew he was pressing my hands backward and saying that he was going to have sex with me. I said no, and I also said that this was the most frightening thing that had ever happened to me, and he laughed. And then he raped me. After that he drove for a bit more and I asked him repeatedly to take me to my girlfriend's apartment. He took me to the parking lot behind the apartment building and raped me again. Then I ran out of the car and into the lobby, where I couldn't even remember her buzzer number because I was in such shock. I finally got into her apartment and told her what happened and we just stayed up all night talking about it.

Crown: Thank you Ms. Smith. No further questions.

The defense begins questioning Ms. Smith.

Defense: You voluntarily left the bar with Mr. Parks, did you not?

Ms. Smith: Yes I did.

Defense: And when you left, what happened?

Ms. Smith: He suggested that we go for a drive and he could show me around the city a bit. It was my first time in Ottawa, so I didn't mind that at all.

Defense: Okay, so at 3 o'clock in the morning, he was going to show you the city?

Ms. Smith: I guess so.

- Defense: What happened after you got into the car?
- Ms. Smith: He started driving and we passed some buildings and a canal and he was pointing stuff out to me, then he suddenly pulled into this parking lot at this beach called Mooney's Bay.
- Defense: And what did you do?
- Ms. Smith: I asked him why he was stopping. He said that he thought maybe he could give me a kiss, and I didn't say anything, because I thought he was cute and I wouldn't have minded kissing him at all.
- Defense: So after he kissed you, you said that he asked you if he could feel your breasts.
- Ms. Smith: Well, yes he did but in a really mean way.
- Defense: Okay, so regardless of how he asked, the point is that he and you made some sexual contact and you were not struggling or telling him to stop.
- Ms. Smith: Well, I was moving away from him and I thought he could tell that it wasn't okay to go that far with me.
- Defense: Okay, so after this initial sexual contact what happened?
- Ms. Smith: He started undoing my pants. I didn't want him to do that at all and I said "no".
- Defense: Did you say no loudly?
- Ms. Smith: Well, he should have heard me, he was right next to me.
- Defense: So we don't know if he heard you. So after you said this, you testified that you and the defendant had sexual intercourse.
- Ms. Smith: Yes. Even though I said no.
- Defense: Were you wearing tight pants?
- Ms. Smith: Well, kind of.
- Defense: Were they difficult to remove?
- Ms. Smith: I guess a bit.
- Defense: After this, you testified that he started driving you around the city again.
- Ms. Smith: I really wanted to go to my friend's place.
- Defense: And did you ask the defendant to take you there?
- Ms. Smith: Yes.
- Defense: And did he grant your wish by driving you to your friend's place.
- Ms. Smith: Yes. He didn't say much but he finally came to my friend's place. He then parked in the lot behind the apartment and said, "We are going to have sex one more time before you go inside". I was upset at that point and I just said, "Okay, just don't hurt me", because I wanted the whole thing over as soon as possible. So we had sexual intercourse once more and then he let me go.
- Defense: So this second incident was also unsolicited in any way?
- Ms. Smith: Well...yes.....
- Defense: Okay, so you are saying, Ms. Smith, that you and the defendant had sexual encounters twice in the car on the way home.
- Ms. Smith: Yes.
- Defense: Unsolicited by yourself in any way, correct?
- Ms. Smith: Well, I don't know.....well, yes....
- Defense: And you are sure it was twice?
- Ms. Smith: Well, yes.
- Defense: Thank you, Ms. Smith.

Ms Smith is a visitor to Ottawa from Halifax. She is a 20 year old, second year university student on her Spring Break. She went to a bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. They danced a few times at that bar, and then she left with him, leaving her girlfriend behind. She alleges that he sexually assaulted her on the way home. You are going to read a portion of her trial testimony as a witness testifying against Mr. Parks.

The testimony begins with Ms. Smith being questioned by the Crown, the lawyer who tries to prove that the accused committed a sexual assault. Ms. Smith is then cross-examined by the Defense, the lawyer who tries to prove that the accused did NOT commit a sexual assault.

3) condition with victim credibility attacked

Crown: Ms. Smith, where did you go with your girlfriend the night of March 27th, 1999.

Ms. Smith: We went out to the Ace bar in downtown Ottawa. We wanted to have a few drinks, talk to people and dance a bit. Basically we just wanted to have a good time.

Crown: What happened when you entered the Ace Bar?

Ms. Smith: My friend and I both went over to the dance floor. We danced a bit, and then I went over to get a beer from the bar and that's where I met Mr. Parks.

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Ms. Smith: I was trying to get my drink at the bar which was really crowded and he started helping me. After that we started talking. He was really nice and I thought he was quite cute as well, so I liked talking to him. A really good song came on, so we raced over to the dance floor and danced for that song and then stayed for a few others.

Crown: What happened after that Ms. Smith?

Ms. Smith: He asked me if I wanted him to show me around the city a bit and then he would give me a ride home and I said yes. So we went into his car and he started driving through the city, and then we were at this place that I found out later was called Mooney's Bay. He said that he wanted to show me the water and so he pulled into the parking lot. After the car stopped he took my seat belt off and he kissed me. He also asked if he could feel my breasts, but he asked in a way that scared me a bit. The next thing I knew he was pressing my hands backward and saying that he was going to have sex with me. I said no, and I also said that this was the most frightening thing that had ever happened to me, and he laughed. And then he raped me. After that he drove for a bit more and I asked him repeatedly to take me to my girlfriend's apartment. He took me to the parking lot behind the apartment building and raped me again. Then I ran out of the car and into the lobby, where I couldn't even remember her buzzer number because I was in such shock. I finally got into her apartment and told her what happened and we just stayed up all night talking about it.

Crown: Thank you Ms. Smith. No further questions.

The defense begins questioning Ms. Smith.

Defense: You voluntarily left the bar with Mr. Parks, did you not?

Ms. Smith: Yes I did.

Defense: And when you left, what happened?

Ms. Smith: He suggested that we go for a drive and he could show me around the city a bit. It was my first time in Ottawa, so I didn't mind that at all.

Defense: Okay, so at 3 o'clock in the morning, he was going to show you the city?

Ms. Smith: I guess so.

- Defense: What happened after you got into the car?
- Ms. Smith: He started driving and we passed some buildings and a canal and he was pointing stuff out to me, then he suddenly pulled into this parking lot at this beach called Mooney's Bay.
- Defense: And what did you do?
- Ms. Smith: I asked him why he was stopping. He said that he thought maybe he could give me a kiss, and I didn't say anything, because I thought he was cute and I wouldn't have minded kissing him at all.
- Defense: So after he kissed you, you said that he asked you if he could feel your breasts.
- Ms. Smith: Well, yes he did but in a really mean way.
- Defense: Okay, so regardless of how he asked, the point is that he and you made some sexual contact and you were not struggling or telling him to stop.
- Ms. Smith: Well, I was moving away from him and I thought he could tell that it wasn't okay to go that far with me.
- Defense: Okay, so after this initial sexual contact what happened?
- Ms. Smith: He started undoing my pants. I didn't want him to do that at all and I said "no".
- Defense: Did you say no loudly?
- Ms. Smith: Well, he should have heard me, he was right next to me.
- Defense: So we don't know if he heard you. So after you said this, you testified that you and the defendant had sexual intercourse.
- Ms. Smith: Yes. Even though I said no.
- Defense: By the way Ms. Smith, were you drunk when you were in the car with Mr. Parks?
- Ms. Smith: No, I only had a few drinks at the bar.
- Defense: How many was a few?
- Ms. Smith: Well, maybe three or four beers....wait, yes, it was about three or four.....
- Defense: So you had maybe three or four, could that have been four or five?
- Ms. Smith: I don't think so.....
- Defense: Okay, so you are not sure of exactly how drunk you may have been while having this sexual incident with Mr. Parks. Let's move on shall we, to your previous testimony? You testified that after you had sexual intercourse, he started driving you around the city again.
- Ms. Smith: Yes, he did. At that point I really wanted to go to my friend's place. He didn't say much but he finally came to my friend's place. He then parked in the lot behind the apartment and said, "We are going to have sex one more time before you go inside". I was upset at that point and I just said, "Okay, just don't hurt me", because I wanted the whole thing over as soon as possible. So we had sex once more and then he let me go.
- Defense: Let's just recap for a moment. Have you ever had sex in a car before?
- Ms. Smith: Well, yes, but I don't know why you are asking me this.
- Defense: I am wondering, do you often have sex with men in cars?
- Ms. Smith: Well no.....what, no.....
- Defense: But you have had sex in cars before, with other men, and you did have sex in this instance with Mr. Parks, without making any serious effort to stop this sexual incident from taking place. Okay, so you are saying, Ms. Smith, that you and the defendant had sexual encounters twice in the car on the way home.
- Ms. Smith: Yes.
- Defense: Have you ever lied about sexual encounters before, Ms. Smith?
- Ms. Smith: No, of course not.
- Defense: You have never told a friend that you had not had sexual intercourse when in fact you had?
- Ms. Smith: Well.....yes, but the circumstances were different...

Defense: If you lied then about sex, why would you not be lying now? Why would we believe that you did not voluntarily have sex with him?

Ms. Smith: Well, this is the truth.....I am telling the truth.

Defense: Thank you, Ms. Smith.

1	2	3	4	5	6	7
not at all competent					very competent	

1	2	3	4	5	6	7
not at all convincing					very convincing	

1	2	3	4	5	6	7
not at all insensitive to the victim					very insensitive to the victim	

1	2	3	4	5	6	7
not at all disrespectful of the victim					very disrespectful of the victim	

Question 6: You read a piece of testimony from a sexual assault trial in which the Crown and the Defense both asked questions of the sexual assault victim. Could you please rate your perceptions of the **Defense** (the attorney who tries to prove that the accused did not commit a sexual assault) in this case. To do so, please use the following rating scales:

1	2	3	4	5	6	7
not at all credible					very credible	

1	2	3	4	5	6	7
not at all able to protect witness well					able to protect witness very well	

1	2	3	4	5	6	7
not at all confusing					very confusing	

1	2	3	4	5	6	7
not at all awkward					very awkward	

1	2	3	4	5	6	7
not at all competent					very competent	

1	2	3	4	5	6	7
not at all convincing					very convincing	

1	2	3	4	5	6	7
not at all insensitive to the victim					very insensitive to the victim	

1	2	3	4	5	6	7
not at all disrespectful of the victim					very disrespectful of the victim	

Question 7: Based on the testimony which you read, could you please rate your perceptions of the **witness** in this case. To do so, please use the following rating scales:

1	2	3	4	5	6	7
not at all uncertain					very uncertain	

1	2	3	4	5	6	7
not at all credible						very credible
1	2	3	4	5	6	7
not at all inconsistent						very inconsistent
1	2	3	4	5	6	7
not at all strong						very strong
1	2	3	4	5	6	7
not at all unreliable						very unreliable
1	2	3	4	5	6	7
not at all convincing						very convincing
1	2	3	4	5	6	7
not at all believable						very believable
1	2	3	4	5	6	7
not at all persuasive						very persuasive

Question 8: How important were the Crown's questions to your own verdict concerning the accused's guilt?

1	2	3	4	5	6	7
not at all important						very important

Question 9: How important were the Defense's questions to your own verdict concerning the accused's guilt?

1	2	3	4	5	6	7
not at all important						very important

Question 10: What was the most important factor in determining your own verdict concerning the accused's guilt? Please write in the space given below.

Question 11: Arguments can either be logical, where the argument is considered accurate and true or illogical, where the argument is considered inaccurate and false. Please read the following statements and indicate whether you feel that the structure of the argument is logical or illogical.

- 1) Some women can resist a sexual assault.
This woman did not resist the sexual assault.
Therefore this woman was not sexually assaulted.

Logical _____ Illogical _____

- 2) All A are B.
Some C are B.
Therefore some C are A.

Logical _____ Illogical _____

- 3) Women who spend time with men late at night are not virtuous.
This woman spent time late at night with a man.
This woman was not sexually assaulted (is not virtuous).

Logical _____ Illogical _____

- 4) All A are B.
All C are A.
Therefore all C are B.

Logical _____ Illogical _____

- 5) Some non-A are B.
C is not an A.
Therefore all C are B.

Logical _____ Illogical _____

- 6) Women who flirt with men at bars want to have sex.
This woman flirted with a man at a bar.
This woman wanted to have sex.

Logical _____ Illogical _____

- 7) All A are B.
All C are A.
Therefore some C are B.

Logical _____ Illogical _____

- 8) Some women can resist a sexual assault.
This woman did not resist a sexual assault.
Therefore this woman may or may not have been sexually assaulted.

Logical _____ Illogical _____

Question 12: Please read the following statements and choose the response which best illustrates your attitudes.

- 1) A woman who goes to the home or apartment of a man on their first date implies that she is willing to have sex.

-3	-2	-1	01	2	3
strongly disagree					strongly agree

- 2) Any female can get raped.

-3	-2	-1	01	2	3
strongly disagree					strongly agree

- 3) One reason that women falsely report a rape is that they frequently have a need to call attention to themselves.

-3	-2	-1	01	2	3
strongly disagree					strongly agree

- 4) Any healthy woman can successfully resist a rapist if she really wants to.

-3	-2	-1	01	2	3
strongly disagree					strongly agree

- 5) When women go around braless or wearing short skirts and tight tops, they are just asking for trouble.

-3	-2	-1	01	2	3
strongly disagree					strongly agree

- 6) In the majority of rapes, the victim is promiscuous or has a bad reputation.

-3	-2	-1	01	2	3
strongly disagree					strongly agree

- 7) If the girl engages in necking or petting and she lets things get out of hand, it's her own fault if her partner forces sex on her.

-3	-2	-1	01	2	3
strongly disagree					strongly agree

- 8) Women who get raped while hitchhiking get what they deserve.

-3	-2	-1	01	2	3
----	----	----	----	---	---

strongly disagree

strongly agree

- 9) A woman who is stuck-up and thinks she is too good to talk to guys on the street deserves to be taught a lesson.

-3 -2 -1 01 2 3

strongly disagree

strongly agree

- 10) Many women have an unconscious wish to be raped, and may then unconsciously set up a situation where they are likely to be attacked.

-3 -2 -1 01 2 3

strongly disagree

strongly agree

- 11) If a woman gets drunk at a party and has intercourse with a man she's just met there, she should be considered "fair game" to other males at the party who want to have sex with her too, whether she wants to or not.

-3 -2 -1 01 2 3

strongly disagree

strongly agree

Question 13: Listed below are a number of statements concerning personal attitudes and traits. Read each item and decide whether the statement is true or false as it pertains to you personally.

- 1) I like to gossip at times.

true

false

- 2) I'm always willing to admit it when I make a mistake.

true

false

- 3) There have been occasions when I took advantage of someone.

true

false

- 4) I always try to practice what I preach.

true

false

- 5) I sometimes try to get even rather than to forgive and forget.

true

false

- 6) At times I have really insisted on having things my own way.

true

false

- 7) There have been occasions when I felt like smashing things.

true false

- 8) I never resent being asked to return a favour.

true false

- 9) I have never been irked when people expressed ideas very different from my own.

true false

- 10) I have never deliberately said something that hurt someone's feelings.

true false

Question 14: It would be helpful to our research to know a little about your experiences with sexual assault, as different experiences may affect one's answers in different ways. Could you please answer the following question:
Have you ever been a victim of sexual assault?

Yes

No

APPENDIX N: RECRUITMENT SHEET FOR STUDY 5**Psychology 49.101/102**

Experiment Title: _____
Experimenter's Name & Room#: _____
Experimenter's Phone #: _____
Location of Experiment: _____
Experiment
Number: _____
Faculty Advisor: _____

BRIEF DESCRIPTION

A study is being conducted to investigate perceptions about sexual assault trials. Participants will be asked to make judgements about one sexual assault case based on an excerpt of actual sexual assault trial testimony where the Defense and Crown attorneys question the sexual assault victim. Participants will be required to read the written transcript of the case, approximately one to two pages long, and respond to questions on aspects of the case as well as some questions about themselves. The entire experiment will take approximately 30 minutes. All students will receive 1 course credit for their participation in this study

SUBJECTS WILL RECEIVE _____ CREDIT(S) FOR THIS EXPERIMENT.

YOU MUST: KEEP A RECORD OF THE EXPERIMENTER'S NAME
TITLE OF THE EXPERIMENT
LOCATION AND TIME

IT IS YOUR RESPONSIBILITY TO KNOW WHERE AND WHEN THE EXPERIMENT IS HELD.

SIGN-UP SHEETS FOR THIS EXPERIMENT ARE UNDERNEATH. PLEASE PROVIDE INFORMATION REQUESTED.

APPENDIX O: ETHICS MATERIALS FOR STUDY 5

Description of Purpose

The Crown has four strategies which can be used to frame the questions asked of sexual assault victims in the court: inoculation, where the Crown addresses a troublesome point with the victim before the Defense has a chance to do so; redirect, where the Crown asks questions of the victim after she has been cross-examined in an effort to address negative points highlighted by the Defense; objection, where the Crown lodges a verbal dissent with either the delivery or the content of a point that the Defense has raised; and no response, where the Crown does nothing after eliciting the direct testimony (Kapardis, 1997; Oddie, 1988). The Crown can use inoculation before the Defense has cross-examined the witness, objection during the Defense's cross-examination and redirect after the cross-examination.

It appears likely that if the Crown could use tactics as effectively as the Defense, then he/she would have more influence on the verdict and sentence, which would create more verdicts and sentences positive to the sexual assault victim, and less re-victimization. Thus it is of interest to investigate the use of tactics by the Crown to counter the Defense's use of illogical arguments in sexual assault cases.

Although preliminary research suggests that illogical arguments will intensify the victim's feelings of re-victimization and simultaneously, that these arguments are endorsed as appropriate arguments by the jury, it is not known conclusively whether this occurs in the courtroom. The fact that only .08% of all sexual assaults result in a conviction with incarceration (Statistics Canada, 1993), and less than 70% of the cases in this sample resulted in a conviction of any kind, suggests, given the presence of illogical arguments in the sexual assault cases examined in preliminary research, that illogical arguments may be perceived as appropriate arguments by the jury in sexual assault trials.

This experiment will address the presence of illogical arguments in the courtroom by determining whether the Crown can effectively offset these arguments. This issue is particularly important, given the influence that illogical arguments wield in society at large, and the potential for influence within the court (Copi, 1968, Kapardis, 1997). This will be examined in this experiment by utilizing the two most effective strategies from Study 2 used by the Crown attorney in conjunction with the Defense's use of the illogical arguments.

Description of Methods

Materials. Three different one to two page case scenarios, 2 for the experimental condition and 1 for the control condition will be presented. Each participant will be randomly assigned to one of the three conditions portrayed within each written scenario. Alleged segments of testimony from the victim, lawyers and judge will be presented. Trial transcripts (Appendix M) are drawn from the cases examined in the preliminary studies. The transcripts will include a) a brief description of the circumstances of the alleged sexual assault, b) a brief definition of who the Crown and the Defense are in the trial, c) a portion of the testimony between the Defense, the Crown and the witness, as well as any interruptions from the judge.

The case facts will be the same for each of the two cases. The questions asked by the Defense will also be essentially the same, both allowing the Defense to include illogical arguments, with the variation between versions only to allow the manipulation of the strategy used by the Crown. Each of the written scenarios reflect the appropriate behavior of the Crown (tactic vs. no tactic). As it is unknown which tactic will be most effective by the Crown in Study 2 at this time, four scenarios will be presented in Appendix M. However, only two of these, the no response version and the other determined most effectively used by the Crown in Study 2, will be used in this experiment. The basic case facts are as follows: The trial involves the alleged sexual assault victim, a visitor to Ottawa from Halifax. Ms. Smith is a 20 year old, second year university student on her Spring Break. She went to a local bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. He bought her a drink and they chatted some more. They danced a few times at that bar, and then she left to go on a tour of the city with him, leaving her girlfriend behind. As he was driving her home, she alleged that he sexually assaulted her.

Participants will be asked to rate the guilt of the accused and to give an appropriate sentence for him if he was found guilty. They will also be asked to give ratings of the both attorneys on their credibility, believability, consistency, ability to convince, aggression toward the witness, respect for the witness, awkwardness, among other dimensions. They will also be asked to rate the witness on several different dimensions, including certainty, credibility, consistency, strength, reliability, ability to convince, believability and persuasiveness (Appendix N). Respondents will be given a definition of re-victimization and asked how well they think the did or did not Crown protect the witness against re-victimization, and how well the Defense protected or promoted re-victimization of the victim (Appendix N). Respondents will be asked how important the Crown and Defense's questions were to their own verdict concerning the accused's guilt (Appendix N). As well, an open ended-question will ask participants to indicate which factor was most important in determining the accused's guilt (Appendix N). As a manipulation check, participants will be asked to indicate the extent to which the Crown and the Defense used each of several strategies (Appendix N). Participants will also be asked to complete the Rape Myths Acceptance Scale (Burt, 1980) and a short form of the Marlowe-Crown Social Desirability scale (Crowne & Marlowe, 1960).

Method. Participants will be run in small groups. Upon arrival, they will be informed that this study concerns a trial of a person accused of sexually assaulting a woman. Further, they will be presented with a written excerpt of testimony of that trial, showing a portion of the questions asked by the Defense attorney to the woman who alleges that she was sexually assaulted. They will also be informed that due to the emotional nature of the trial, they can discontinue their participation at any time without penalty. All participants will then be asked to read and sign an informed consent form (Appendix O). Participants will complete the Rape Myths Acceptance Scale (Burt, 1980) and a short form of the Marlowe-Crown Social Desirability scale (Crowne & Marlowe, 1960) (Appendix N). Then they will read the transcript appropriate for their assigned condition (Appendix M) and respond to the questionnaire (Appendix N). Upon completion, they will be fully debriefed and provided with a list of contacts should they have any further questions (Appendix O).

Informed Consent Form

The purpose of an informed consent is to ensure that you understand the purpose of the study and the nature of your involvement. The informed consent must provide sufficient information such that you have the opportunity to determine whether you wish to participate in the study.

Research Personnel. The following people are involved in this research project and may be contacted at any time. Amanda Parriag (Principal Investigator, 520-2600, x 6622); Dr. K. Matheson (Faculty Sponsor, 520-2600, x 2648). If you have any ethical questions or concerns regarding this experiment, please contact either Dr. M. Gick (Chair of the Ethics Committee, 520-2600, x2664) or Dr. K. Matheson (Chair of the Psychology Department, 520-2600, x2648).

Purpose. You are about to read a portion of a transcript involving a simulated trial (based on actual trials) where a sexual assault victim is testifying in court to questions asked by the Defense lawyer and the Crown attorney. The purpose of this study is to examine the types of decisions that are made in the context of a sexual assault trial and how these decisions affect the verdict and sentence of the accused.

Task Requirements. You will be asked to read a transcript. After reading it you will be asked to answer a series of questions.

Duration and Locale. The experimental sessions will take about thirty minutes and will take place in a laboratory.

Potential risk/discomfort. Some people may find the issue of sexual assault, along with other aspects of the trial, to be offensive and upsetting. Your participation is voluntary and you are under no obligation to continue with the study.

Anonymity/Confidentiality. The data gathered in this study are confidential and will only be used by researchers associated with this project. Your personal identity will be anonymous.

Right to Withdraw. You may withdraw from this study at any time without academic penalty.

Signatures

I have read the above form and understand the conditions of my participation. My participation in this study is voluntary and if for any reason, at any time, I wish to leave the experiment I may do so without having to give an explanation and with no penalty whatsoever. Furthermore, I am also aware that the data gathered in this study are confidential and anonymous with respect to my personal identity. My signature indicates that I agree to participate in the experiment.

Participant's name

Investigator's name

Participant's signature

Investigator's signature

Date

Debriefing

We would like to thank you for participating in this study. Your participation will help us in the understanding of how people make decisions about sexual assault victims based on the questions that they are asked by Defense and Crown attorneys. We would like to emphasize the extreme seriousness of the crime of sexual assault. Victims of sexual assault often suffer severe psychological and emotional problems, termed "Rape Trauma Syndrome". A sexual assault victim never asks to be sexually assaulted, although one of the components of Rape Trauma Syndrome is self-blame.

The purpose of the study in which you have participated was to examine the effect that the Crown's responses to the Defense questions had on your ratings of trial outcome and sentence, and on your perceptions of the Crown, the Defense and the victim. Specifically, you read testimony where the Defense always used the same strategy of attacking the victim's credibility, but the Crown either did not respond, or used an active strategy in responding. The Crown either used inoculation, where a troublesome point was raised with the victim before the Defense could do this; or re-directed, where questions were asked of the victim after the Defense had already questioned her. We think that the strategy used by the Crown will affect your perceptions of the guilt or innocence of the accused. If we find this strategy to more effective than the other, we hope that these results will be helpful to Crown attorneys in future sexual assault cases.

We appreciate your taking the time to answer the questions and want to stress that all of your answers are valuable. The portion of transcript presented to you was based on real trial testimony from our files. We understand that the scenarios may be anxiety provoking for some people and we encourage you to contact myself or one of the agencies listed below if you have any concerns regarding this study or the issues referred to in this study. This list of contacts includes agencies within both the university and the community that are available for men and women.

Due to the nature of the research, we ask you not to discuss the participant matter with potential participants until testing is complete (approximately June of 1999). If you have any questions about this study, you may contact Amanda Parriag in room A402 Loeb (520-2600 x 6622) or Dr. K. Matheson (520-2600, x2648). If you have questions and/or ethical concerns regarding this experiment, you may also contact either of the following faculty members: Dr. M. Gick (Chair of the Ethics Committee, 520-2600, x2664) or Dr. K. Matheson (Chair of the Psychology Department, 520-2600, x2648).

Contact Numbers

24 hour distress lines

Rape Crisis Line	238-3311
Sexual Assault Centre	234-4641
Ottawa Distress Centre	238-3311

Help for victims of sexual abuse and their families

Family Service Centre	725-3601
Sexual Assault Support Centre	234-2266

Counselling Services for Men 238-8478

Health Services Carleton University 520-2600, x6674
(agency providing on-campus counselling)

APPENDIX P: MATERIALS FOR STUDY 5

Ms Smith is a visitor to Ottawa from Halifax. She is a 20 year old, second year university student on her Spring Break. She went to a bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. They danced a few times at that bar, and then she left with him, leaving her girlfriend behind. She alleges that he sexually assaulted her on the way home. You are going to read a portion of her trial testimony as a witness testifying against Mr. Parks.

The testimony begins with Ms. Smith being questioned by the Crown, the lawyer who tries to prove that the accused committed a sexual assault. Ms. Smith is then cross-examined by the Defense, the lawyer who tries to prove that the accused did NOT commit a sexual assault.

(1) no response

Crown: Ms. Smith, where did you go with your girlfriend the night of March 27th, 1999.

Ms. Smith: We went out to the Ace bar in downtown Ottawa. We wanted to have a few drinks, talk to people and dance a bit. Basically we just wanted to have a good time.

Crown: What happened when you entered the Ace Bar?

Ms. Smith: My friend and I both went over to the dance floor. We danced a bit, and then I went over to get a beer from the bar and that's where I met Mr. Parks.

Crown: How did that happen?

Ms. Smith: I was trying to get my drink at the bar which was really crowded and he started helping me. After that we started talking. He was really nice and I thought he was quite cute as well, so I liked talking to him. A really good song came on, so we raced over to the dance floor and danced for that song and then stayed for a few others.

Crown: What happened after that Ms. Smith?

Ms. Smith: He asked me if I wanted him to show me around the city a bit and then he would give me a ride home and I said yes. So we went into his car and he started driving through the city, and then we were at this place that I found out later was called Mooney's Bay. He said that he wanted to show me the water and so he pulled into the parking lot. After the car stopped he took my seat belt off and he kissed me. He also asked if he could feel my breasts, but he asked in a way that scared me a bit. The next thing I knew he was pressing my hands backward and saying that he was going to have sex with me. I said no, and I also said that this was the most frightening thing that had ever happened to me, and he laughed. And then he raped me. After that he drove for a bit more and I asked him repeatedly to take me to my girlfriend's apartment. He took me to the parking lot behind the apartment building and raped me again. Then I ran out of the car and into the lobby, where I couldn't even remember her buzzer number because I was in such shock. I finally got into her apartment and told her what happened and we just stayed up all night talking about it.

Crown: Thank you Ms. Smith. No further questions.

The defense begins questioning Ms. Smith.

Defense: You voluntarily left the bar with Mr. Parks, did you not?

Ms. Smith: Yes I did.

Defense: And when you left, what happened?

Ms. Smith: He suggested that we go for a drive and he could show me around the city a bit. It was my first time in Ottawa, so I didn't mind that at all.

Defense: Okay, so at 3 o'clock in the morning, he was going to show you the city?

Ms. Smith: I guess so.

Defense: What happened after you got into the car?

Ms. Smith: He started driving and we passed some buildings and a canal and he was pointing stuff out to me, then he suddenly pulled into this parking lot at this beach called Mooney's Bay.

Defense: And what did you do?

Ms. Smith: I asked him why he was stopping. He said that he thought maybe he could give me a kiss, and I didn't say anything, because I thought he was cute and I wouldn't have minded kissing him at all.

Defense: So after he kissed you, you said that he asked you if he could feel your breasts.

Ms. Smith: Well, yes he did but in a really mean way.

Defense: Okay, so regardless of how he asked, the point is that he and you made some sexual contact and you were not struggling or telling him to stop.

Ms. Smith: Well, I was moving away from him and I thought he could tell that it wasn't okay to got that far with me.

Defense: Okay, so after this initial sexual contact what happened?

Ms. Smith: He started undoing my pants. I didn't want him to do that at all and I said "no".

Defense: Did you say no loudly?

Ms. Smith: Well, he should have heard me, he was right next to me.

Defense: So we don't know if he heard you. So after you said this, you testified that you and the defendant had sexual intercourse.

Ms. Smith: Yes. Even though I said no.

Defense: Did you scream?

Ms. Smith: No, I...

Defense: Did you strike the defendant?

Ms. Smith: No, I was scared...

Defense: Did you run away?

Ms. Smith: Well no, I couldn't, I..

Defense: Okay, so you made no serious effort to avoid this sexual incident. After you had sexual intercourse, you testified that he started driving you around the city again.

Ms. Smith: Yes, he did. At that point I really wanted to go to my friend's place. He didn't say much but he finally came to my friend's place. He then parked in the lot behind the apartment and said, "We are going to have one more sexual incident before you go inside". I was upset at that point and I just said, "Okay, just don't hurt me", because I wanted the whole thing over as soon as possible. So we had sexual intercourse once more and then he let me go.

- Defense:** So you were right behind your friend's apartment, and you did not run out of the car?
- Ms. Smith:** Well, he was right next to me and I was scared to do anything to upset him. It was dark and pretty late at night and I didn't want him to chase me and...
- Defense:** Did you honk on the horn so other people could help you?
- Ms. Smith:** No, I was embarrassed and I didn't know who was around...it really happened very fast.
- Defense:** So again, you made no serious effort to stop this sexual incident from taking place. Okay, so you are saying, Ms. Smith, that you and the defendant had sexual encounters twice in the car on the way home.
- Ms. Smith:** Yes.
- Defense:** You spent the night talking to the defendant at a bar?
- Ms. Smith:** Yes, I did.
- Defense:** And you voluntarily got into his car at 3:00 in the morning?
- Ms. Smith:** Well, yes.
- Defense:** And yet you are saying that you did not voluntarily have sex with him?
- Ms. Smith:** Well, yes.
- Defense:** Thank you, Ms. Smith.

Ms Smith is a visitor to Ottawa from Halifax. She is a 20 year old, second year university student on her Spring Break. She went to a bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. They danced a few times at that bar, and then she left with him, leaving her girlfriend behind. She alleges that he sexually assaulted her on the way home. You are going to read a portion of her trial testimony as a witness testifying against Mr. Parks.

The testimony begins with Ms. Smith being questioned by the Crown, the lawyer who tries to prove that the accused committed a sexual assault. Ms. Smith is then cross-examined by the Defense, the lawyer who tries to prove that the accused did NOT commit a sexual assault.

(3) redirect

Crown: Ms. Smith, where did you go with your girlfriend the night of March 27th, 1999.

Ms. Smith: We went out to the Ace bar in downtown Ottawa. We wanted to have a few drinks, talk to people and dance a bit. Basically we just wanted to have a good time.

Crown: What happened when you entered the Ace Bar?

Ms. Smith: My friend and I both went over to the dance floor. We danced a bit, and then I went over to get a beer from the bar and that's where I met Mr. Parks.

Crown: How did that happen?

Ms. Smith: I was trying to get my drink at the bar which was really crowded and he started helping me. After that we started talking. He was really nice and I thought he was quite cute as well, so I liked talking to him. A really good song came on, so we raced over to the dance floor and danced for that song and then stayed for a few others.

Crown: What happened after that Ms. Smith?

Ms. Smith: He asked me if I wanted him to show me around the city a bit and then he would give me a ride home and I said yes. So we went into his car and he started driving through the city, and then we were at this place that I found out later was called Mooney's Bay. He said that he wanted to show me the water and so he pulled into the parking lot. After the car stopped he took my seat belt off and he kissed me. He also asked if he could feel my breasts, but he asked in a way that scared me a bit. The next thing I knew he was pressing my hands backward and saying that he was going to have sex with me. I said no, and I also said that this was the most frightening thing that had ever happened to me, and he laughed. And then he raped me. After that he drove for a bit more and I asked him repeatedly to take me to my girlfriend's apartment. He took me to the parking lot behind the apartment building and raped me again. Then I ran out of the car and into the lobby, where I couldn't even remember her buzzer number because I was in such shock. I finally got into her apartment and told her what happened and we just stayed up all night talking about it.

Crown: Thank you Ms. Smith. No further questions.

The defense begins questioning Ms. Smith.

Defense: You voluntarily left the bar with Mr. Parks, did you not?

- Ms. Smith: Yes I did.
- Defense: And when you left, what happened?
- Ms. Smith: He suggested that we go for a drive and he could show me around the city a bit. It was my first time in Ottawa, so I didn't mind that at all.
- Defense: Okay, so at 3 o'clock in the morning, he was going to show you the city?
- Ms. Smith: I guess so.
- Defense: What happened after you got into the car?
- Ms. Smith: He started driving and we passed some buildings and a canal and he was pointing stuff out to me, then he suddenly pulled into this parking lot at this beach called Mooney's Bay.
- Defense: And what did you do?
- Ms. Smith: I asked him why he was stopping. He said that he thought maybe he could give me a kiss, and I didn't say anything, because I thought he was cute and I wouldn't have minded kissing him at all.
- Defense: So after he kissed you, you said that he asked you if he could feel your breasts.
- Ms. Smith: Well, yes he did but in a really mean way.
- Defense: Okay, so regardless of how he asked, the point is that he and you made some sexual contact and you were not struggling or telling him to stop.
- Ms. Smith: Well, I was moving away from him and I thought he could tell that it wasn't okay to get that far with me.
- Defense: Okay, so after this initial sexual contact what happened?
- Ms. Smith: He started undoing my pants. I didn't want him to do that at all and I said "no".
- Defense: Did you say no loudly?
- Ms. Smith: Well, he should have heard me, he was right next to me.
- Defense: So we don't know if he heard you. So after you said this, you testified that you and the defendant had sexual intercourse.
- Ms. Smith: Yes. Even though I said no.
- Defense: Did you scream?
- Ms. Smith: No, I...
- Defense: Did you strike the defendant?
- Ms. Smith: No, I was scared...
- Defense: Did you run away?
- Ms. Smith: Well no, I couldn't, I..
- Defense: Okay, so you made no serious effort to avoid this sexual incident. After you had sexual intercourse, you testified that he started driving you around the city again.
- Ms. Smith: Yes, he did. At that point I really wanted to go to my friend's place. He didn't say much but he finally came to my friend's place. He then parked in the lot behind the apartment and said, "We are going to have one more sexual incident before you go inside". I was upset at that point and I just said, "Okay, just don't hurt me", because I wanted the whole thing over as soon as possible. So we had sexual intercourse once more and then he let me go.
- Defense: So you were right behind your friend's apartment, and you did not run out of the car?

Ms. Smith: Well, he was right next to me and I was scared to do anything to upset him. It was dark and pretty late at night and I didn't want him to chase me and...

Defense: Did you honk on the horn so other people could help you?

Ms. Smith: No, I was embarrassed and I didn't know who was around...it really happened very fast.

Defense: So again, you made no serious effort to stop this sexual incident from taking place. Okay, so you are saying, Ms. Smith, that you and the defendant had sexual encounters twice in the car on the way home.

Ms. Smith: Yes.

Defense: You spent the night talking to the defendant at a bar?

Ms. Smith: Yes, I did.

Defense: And you voluntarily got into his car at 3:00 in the morning?

Ms. Smith: Well, yes.

Defense: And yet you are saying that you did not voluntarily have sex with him?

Ms. Smith: Well, yes.

Defense: Thank you, Ms. Smith.

crown redirects

Crown: Ms. Smith, I would like to review some of the testimony that you just gave to my learned colleague today. You said that at the time of the first sexual intercourse between you and the defendant, you didn't scream, strike the defendant or run away. Did this mean that you actually wanted the sexual intercourse to take place?

Ms. Smith: No, not at all. I was scared, he was much bigger than me and I didn't even think to do those things at the time.

Crown: And at the time of the second sexual incident between you and the defendant, you were right near your friend's apartment and yet you did not honk the horn or yell. Why was this?

Ms. Smith: I was scared, it was dark and late at night, I was so ashamed that I was being raped.....

Crown: So you not doing those things did not mean that you wanted to have consensual sexual intercourse with the defendant?

Ms. Smith: No, not at all. I was raped.

Crown: And when you got into the defendant's car at 3:00 in the morning, were you expecting that you were have consensual sex with him?

Ms. Smith: No, I wasn't. I thought we would kiss a bit, but that was it.

Crown: Thank you. No further questions.

Ms. Smith is a visitor to Ottawa from Halifax. She is a 20 year old, second year university student on her Spring Break. She went to a bar downtown with her girlfriend on her first night in Ottawa. While at the bar, she met a local university student, Mr. Parks, and they started chatting. They danced a few times at that bar, and then she left with him, leaving her girlfriend behind. She alleges that he sexually assaulted her on the way home. You are going to read a portion of her trial testimony as a witness testifying against Mr. Parks.

The testimony begins with Ms. Smith being questioned by the Crown, the lawyer who tries to prove that the accused committed a sexual assault. Ms. Smith is then cross-examined by the Defense, the lawyer who tries to prove that the accused did NOT commit a sexual assault.

(4) inoculation

Crown: Ms. Smith, where did you go with your girlfriend the night of March 27th, 1999.

Ms. Smith: We went out to the Ace bar in downtown Ottawa. We wanted to have a few drinks, talk to people and dance a bit. Basically we just wanted to have a good time.

Crown: What happened when you entered the Ace Bar?

Ms. Smith: My friend and I both went over to the dance floor. We danced a bit, and then I went over to get a beer from the bar and that's where I met Mr. Parks.

Crown: How did that happen?

Ms. Smith: I was trying to get my drink at the bar which was really crowded and he started helping me. After that we started talking. He was really nice and I thought he was quite cute as well, so I liked talking to him. A really good song came on, so we raced over to the dance floor and danced for that song and then stayed for a few others.

Crown: What happened after that Ms. Smith?

Ms. Smith: He asked me if I wanted him to show me around the city a bit and then he would give me a ride home and I said yes. So we went into his car and he started driving through the city, and then we were at this place that I found out later was called Mooney's Bay. He said that he wanted to show me the water and so he pulled into the parking lot. After the car stopped he took my seat belt off and he kissed me.

Crown: Were you surprised when he kissed you?

Ms. Smith: No. I knew that if we were driving around at that time of night, it probably meant that we would kiss a bit. But that was all I was expecting.

Crown: Okay, continue your testimony Ms. Smith.

Ms. Smith: After that, he asked if he could feel my breasts, but he asked in a way that scared me a bit. The next thing I knew he was pressing my hands backward and saying that he was going to have sex with me. I said no, and I also said that this was the most frightening thing that had ever happened to me, and he laughed. And then he raped me.

Crown: Now, at the time when he raped you, did you run, scream or hit the defendant?

Ms. Smith: No, I did not. I was scared, he was much bigger than I was, and I thought he might hurt me if I didn't let him rape me.

Crown: Okay, carry on.

- Ms. Smith: After that he drove for a bit more and I asked him repeatedly to take me to my girlfriend's apartment. He took me to the parking lot behind the apartment building and raped me again.
- Crown: Now at that time, you were quite near to where your girlfriend was. Did you scream or try to get her or anyone else's attention?
- Ms. Smith: No I didn't. I was very scared by then, I was so ashamed that I was raped and being raped again, I just couldn't believe that all of this was happening to me. I just suffered through it.
- Crown: Okay, carry on.
- Ms. Smith: After he was done, I ran out of the car and into the lobby, where I couldn't even remember her buzzer number because I was in such shock. I finally got into her apartment and told her what happened and we just stayed up all night talking about it.
- Crown: Thank you Ms. Smith. No further questions.

The defense begins questioning Ms. Smith.

- Defense: You voluntarily left the bar with Mr. Parks, did you not?
- Ms. Smith: Yes I did.
- Defense: And when you left, what happened?
- Ms. Smith: He suggested that we go for a drive and he could show me around the city a bit. It was my first time in Ottawa, so I didn't mind that at all.
- Defense: Okay, so at 3 o'clock in the morning, he was going to show you the city?
- Ms. Smith: I guess so.
- Defense: What happened after you got into the car?
- Ms. Smith: He started driving and we passed some buildings and a canal and he was pointing stuff out to me, then he suddenly pulled into this parking lot at this beach called Mooney's Bay.
- Defense: And what did you do?
- Ms. Smith: I asked him why he was stopping. He said that he thought maybe he could give me a kiss, and I didn't say anything, because I thought he was cute and I wouldn't have minded kissing him at all.
- Defense: So after he kissed you, you said that he asked you if he could feel your breasts.
- Ms. Smith: Well, yes he did but in a really mean way.
- Defense: Okay, so regardless of how he asked, the point is that he and you made some sexual contact and you were not struggling or telling him to stop.
- Ms. Smith: Well, I was moving away from him and I thought he could tell that it wasn't okay to go that far with me.
- Defense: Okay, so after this initial sexual contact what happened?
- Ms. Smith: He started undoing my pants. I didn't want him to do that at all and I said "no".
- Defense: Did you say no loudly?
- Ms. Smith: Well, he should have heard me, he was right next to me.
- Defense: So we don't know if he heard you. So after you said this, you testified that you and the defendant had sexual intercourse.
- Ms. Smith: Yes. Even though I said no.

- Defense:** Did you scream?
- Ms. Smith:** No, I...
- Defense:** Did you strike the defendant?
- Ms. Smith:** No, I was scared...
- Defense:** Did you run away?
- Ms. Smith:** Well no, I couldn't, I..
- Defense:** Okay, so you made no serious effort to avoid this sexual incident. After you had sexual intercourse, you testified that he started driving you around the city again.
- Ms. Smith:** Yes, he did. At that point I really wanted to go to my friend's place. He didn't say much but he finally came to my friend's place. He then parked in the lot behind the apartment and said, "We are going to have one more sexual incident before you go inside". I was upset at that point and I just said, "Okay, just don't hurt me", because I wanted the whole thing over as soon as possible. So we had sexual intercourse once more and then he let me go.
- Defense:** So you were right behind your friend's apartment, and you did not run out of the car?
- Ms. Smith:** Well, he was right next to me and I was scared to do anything to upset him. It was dark and pretty late at night and I didn't want him to chase me and...
- Defense:** Did you honk on the horn so other people could help you?
- Ms. Smith:** No, I was embarrassed and I didn't know who was around...it really happened very fast.
- Defense:** So again, you made no serious effort to stop this sexual incident from taking place. Okay, so you are saying, Ms. Smith, that you and the defendant had sexual encounters twice in the car on the way home.
- Ms. Smith:** Yes.
- Defense:** You spent the night talking to the defendant at a bar?
- Ms. Smith:** Yes, I did.
- Defense:** And you voluntarily got into his car at 3:00 in the morning?
- Ms. Smith:** Well, yes.
- Defense:** And yet you are saying that you did not voluntarily have sex with him?
- Ms. Smith:** Well, yes.
- Defense:** Thank you, Ms. Smith.

1	2	3	4	5	6	7
not at all competent				very competent		

1	2	3	4	5	6	7
not at all convincing				very convincing		

1	2	3	4	5	6	7
not at all insensitive to the victim				very insensitive to the victim		

1	2	3	4	5	6	7
not at all disrespectful of the victim				very disrespectful of the victim		

Question 6: Re-victimization refers to asking the witness questions in a derogatory manner, asking questions which are created to upset the victim and making the court experience extremely negative for the sexual assault victim. Could you please rate your perceptions of the Crown attorney and their ability to deal with re-victimization in the court by answering the following two questions:

- a) How well do you think the Crown **protected the witness against re-victimization** in this trial on a scale of 1 to 7, where 1 is **not at all well** and 7 is **very well**?

1	2	3	4	5	6	7
not at all well				very well		

- b) How much do you think that the Crown **promoted re-victimization of the witness** in this trial on a scale of 1 to 7, where 1 is **not at all** and 7 is **very much**?

1	2	3	4	5	6	7
not at all				very much		

Question 7: You read a piece of testimony from a sexual assault trial in which the Crown and the Defense both asked questions of the sexual assault victim. Could you please rate your perceptions of the Defense (the attorney who tries to prove that the accused did NOT commit a sexual assault) in this case. To do so, please use the following rating scales:

1	2	3	4	5	6	7
not at all credible				very credible		

1	2	3	4	5	6	7
not at all able to protect witness well				able to protect witness very well		

1	2	3	4	5	6	7
not at all confusing				very confusing		

1	2	3	4	5	6	7
not at all awkward				very awkward		

1	2	3	4	5	6	7
not at all competent					very competent	

1	2	3	4	5	6	7
not at all convincing					very convincing	

1	2	3	4	5	6	7
not at all insensitive to the victim					very insensitive to the victim	

1	2	3	4	5	6	7
not at all disrespectful of the victim					very disrespectful of the victim	

Question 8: Re-victimization refers to asking the witness questions in a derogatory manner, asking questions which are created to upset the victim and making the court experience extremely negative for the sexual assault victim. Could you please rate your perceptions of the Defense attorney and their ability to re-victimize the witness in the court by answering the following two questions:

- a) How well do you think the Defense **protected the witness against re-victimization** in this trial on a scale of 1 to 7, where 1 is **not at all well** and 7 is **very well**?

1	2	3	4	5	6	7
not at all well					very well	

- b) How much do you think that the Defense **promoted re-victimization of the witness** in this trial on a scale of 1 to 7, where 1 is **not at all** and 7 is **very much**?

1	2	3	4	5	6	7
not at all					very much	

Question 9: Based on the testimony which you read, could you please rate your perceptions of the witness in this case. To do so, please use the following rating scales:

1	2	3	4	5	6	7
not at all uncertain					very uncertain	

1	2	3	4	5	6	7
not at all credible					very credible	

1	2	3	4	5	6	7
not at all inconsistent					very inconsistent	

1	2	3	4	5	6	7
not at all strong					very strong	

1	2	3	4	5	6	7
---	---	---	---	---	---	---

not at all unreliable

very unreliable

1 2 3 4 5 6 7

not at all convincing

very convincing

1 2 3 4 5 6 7

not at all unbelievable

very believable

1 2 3 4 5 6 7

not at all persuasive

very persuasive

Question 10: How important were the Crown's questions to your own verdict concerning the accused's guilt?

1 2 3 4 5 6 7

not at all important

very important

Question 11: How important were the Defense's questions to your own verdict concerning the accused's guilt?

1 2 3 4 5 6 7

not at all important

very important

Question 12: What was the most important factor in determining your own verdict concerning the accused's guilt? Please write in the space given below.

Question 13: The Crown has available several strategies to protect the victim on the stand. To what extent do you think the Crown (the lawyer who tries to prove that the accused committed a sexual assault) used each of the following:

inoculation (the Crown addresses a troublesome point with the victim before the Defense has a chance to question her, for example, bringing up the number of drinks that the victim had before the Defense does)

0
not at all

1
used this strategy

re-direct (The Crown questions the victim after she has already been cross-examined in an effort to address negative points introduced by the Defense, for example, clarifying the number of drinks that the victim had and pointing out that it wasn't very much over the time span)

0

1

not at all

used this strategy

objection (The Crown disagrees with the delivery or the content of a point raised by the Defense, by saying something to the effect of, "Your Honour, I object".)

0

1

not at all

used this strategy

Question 14: The Defense has available several strategies to attack the victim on the stand. To what extent do you think the Defense (the lawyer who tries to prove that the accused did NOT commit a sexual assault) used each of the following:

attacked the victim's credibility (where the Defense asks questions which make the victim appear to be a bad person)

0

1

not at all

used this strategy

objection (The Defense disagrees with the delivery or the content of a point raised by the Crown, by saying something along the lines of, "Your Honour, I object")

0

1

not at all

used this strategy

Question 15: Please read the following statements and choose the response which best illustrates your attitudes.

- 1) A woman who goes to the home or apartment of a man on their first date implies that she is willing to have sex.

-3 -2 -1 0 1 2 3

strongly disagree

strongly agree

- 2) Any female can get raped.

-3 -2 -1 0 1 2 3

strongly disagree

strongly agree

- 3) One reason that women falsely report a rape is that they frequently have a need to call attention to themselves.

-3 -2 -1 0 1 2 3

strongly disagree

strongly agree

- 4) Any healthy woman can successfully resist a rapist if she really wants to.

-3 -2 -1 0 1 2 3

strongly disagree

strongly agree

true false

- 3) There have been occasions when I took advantage of someone.

true false

- 4) I always try to practice what I preach.

true false

- 5) I sometimes try to get even rather than to forgive and forget.

true false

- 6) At times I have really insisted on having things my own way.

true false

- 7) There have been occasions when I felt like smashing things.

true false

- 8) I never resent being asked to return a favour.

true false

- 9) I have never been irked when people expressed ideas very different from my own.

true false

- 10) I have never deliberately said something that hurt someone's feelings.

true false

Question 17: It would be helpful to our research to know a little about your experiences with sexual assault, as different experiences may affect one's answers in different ways. Could you please answer the following questions: Have you ever been the victim of a sexual assault?

Yes

No