

BLAMING THE VICTIM

A Look at Sexual Assault Adjudication in the Milwaukee County Courthouse

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Introduction

Approximately one in three women will experience sexual assault in their lifetime (Allison and Wrightsman 1993: 8). Effects of sexual assault on adults include PTSD, depression, anxiety, substance abuse, relationship and sexual problems (Bradley, Miller, and Ruskino 2010: 357), while effects on children include anxiety, nightmares, bedwetting, depression, and suicidal thoughts (Lowenstein 2011: 296). Despite these common outcomes, most victims do not formally report their assaults to police (Matoesian 1993: 6).

When sexual assault victims do report, their experiences often fail to meet what scholars have called criteria for “real rape” (Ehrlich 2001: 19). For example, stranger rapes are relatively rare as over 80% of victims know their offender (Allison and Wrightsman 1993: 5). Therefore, courtroom actors may disregard victims by blaming them using common cultural rape narratives and myths. Victim blaming refers to the “negative attitudes towards crime victims” that propose sexual assault survivors were somehow responsible for their own victimization (Allison and Wrightsman 1993: 105-106).

In cases of sexual assault, defense attorneys seek to do one of three things: show the victim has wrongfully identified the defendant, prove the sexual encounter was consensual, or prove that no sexual encounter occurred (Konradi 2007: 99). The defense often focuses on issues of credibility, sexual history, and moral character of the victim, despite the fact that these factors are irrelevant in determining whether a sexual assault occurred (Matoesian 1993: 20). Common rape myths used by defense attorneys include the belief that men cannot sexually control themselves, women say “no” when they really mean “yes,” and women should not dress in a way that provokes men to rape them (Bartollas and Wormer 2011: 202).

Prior studies have examined these common cultural narratives used by defense attorneys to blame adult sexual assault victims, but few have addressed if, and how, defense counsel blames child sexual assault victims. This project thus investigated the cultural narratives utilized by defense attorneys to blame child sexual assault victims and how these narratives compare to those rape myths used in cases of adult sexual assault.

Research Questions

How do defense attorneys use victim-blaming strategies in sexual assault cases? What types of cultural narratives are involved? Do these narratives differ based on whether the victim is a child or adult?



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Findings

Organized by theme, study findings below illustrate how defense attorneys utilized common cultural narratives to blame the victim during rape trials.

Narratives of Consent

Consent signifies a person has given permission to engage in sexual activity. Partaking in sexual activity without the other person’s consent indicates a sexual assault.

State v Carpenter (2012): “She did not resist. She did not say no! You have to intend to sexually assault somebody.”

State v Wilkins (2013): The defense attorney questioned why the 13-year-old victim did not call out to her family if she was truly being sexually assaulted.

The Question of Credibility

Defense counsel attempts to damage a victim’s credibility by tainting her reputation.

State v Bell (2013): “Someone who uses a lot of substances, you can’t believe everything they say.”

State v Feltz (2013): “A child that age who needs help asks for it...[She could have told her aunt] but she didn’t!”

The Role of Corroborating Evidence

Includes any sign of injury (bruises, scrapes, etc.) and DNA evidence (semen, blood, etc.)

State v Carpenter (2012): The victim claimed the defendant beat and raped her; however, to contest her allegation defense counsel pointed out, “You can barely see bruises!”

State v Akinshemoyin (2012): The defendant’s semen was found in the 4-year-old victim’s underwear. Defense counsel explained the semen was transferred through laundry.

The Rebellious Kid Narrative

This narrative incorporates both consent and credibility. The purpose is to show that the child victim either wanted the sexual encounter to occur due to her “rebelliousness” (consent) or the child victim is lying about the sexual abuse to rebel against her guardians (credibility).

State v Wilkins (2013): Defense counsel suggested the victim fabricated the allegations because she was upset her parents were putting a lot of rules on her.

State v Garcia-Reyes (2012): The defense attorney argued the victim lied about being sexually assaulted by her father so that she could prevent him from ruining her social life.

Methodology and Analysis

This study utilizes a mixed methods approach, employing ethnographic observational research, secondary data from court monitoring forms, and archival data from Consolidated Court Automation Programs (CCAP).

The ethnographic observational research took place in Milwaukee, Wisconsin at the Milwaukee County Courthouse between May and June 2013. Observations occurred in three branches of the courthouse. I spent approximately seventy hours over a seven-week period, examining two phases of the sexual assault adjudication process: jury trials and plea/sentencing hearings. These distinct stages suit the purpose of this study because defense attorneys have the opportunity to use themes that serve to blame and discredit sexual assault victims.

Secondary data came from court monitoring documents collected by student monitors between September 2011 and May 2012. Monitoring forms included case data on sexual assault trials and plea/sentencing hearings including case number, defendant and attorney names, and case characteristics such as types of offense, review of case details, state and defense recommendations, and judge ruling and associated explanations.

Archival data came from CCAP online tracking system, which provides records of cases in the Wisconsin Circuit Courts.

Findings were analyzed using an inductive analysis approach. Open coding was used to develop the four categories outlined in the findings: Narratives of consent, the question of credibility, the role of corroborating evidence, and the rebellious kid narrative.

Summary and Discussion

Findings show similarities and differences of victim blaming strategies used by defense attorneys in sexual assault cases with children and adults. Even though it is irrelevant for child cases given Wisconsin Age of Consent Laws, defense counsel for both children and adults mentioned a lack of resistance as a sign of consent.

While the narratives surrounding adult credibility involved drugs, alcohol, and prior criminal records, the narratives pertaining to child cases focused on her memory, delayed disclosure, and young age, implying the victim could not possibly have known about certain types of sexual activity.

Defense counsel for both child and adult cases reiterated the lack of corroborating physical evidence. However, it appeared to be more crucial in child cases because it could not be explained by consensual behavior.

Lastly, the rebellious kid narrative shows how the above themes function to create a narrative that solely blames child victims for “acting out” against authority figures.

If the system continues to perpetuate rape myths by invoking particular cultural narratives of who is a “real rape” victim and who is not, formal rape reporting will remain the lowest reported violent crime in the United States. Victims will not seek justice, and offenders will not be held accountable. The conversation about sexual assault must change. Instead of focusing on the victim’s actions before, during, and after the assault, society should turn their attention towards the actions of the assailant.

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