

# JUROR BIAS IN SEXUAL ASSAULT CASES

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# JUROR BIAS IN SEXUAL ASSAULT CASES

- GENERAL TYPES OF JUROR BIAS
- JUROR BIAS IN SEXUAL ASSAULT CASES
- STEREOTYPES/ MYTHS
- OVERCOMING JUROR BIAS
  - WITNESS PREPARATION
  - VOIR DIRE
- CIVIL REMEDIES

# WHAT IS JUROR BIAS?

Emotional and Personal Values

Stereotypes/ Myths

Prior Experiences and Beliefs

“Experiences”

Manipulated by TV, Mass Media

Difficult to Abandon Any Previous Biases

# RESPONSIBILITY TO THE VICTIM

- Advocate's Role To Understand Biases
- Advocate's Role to Prepare the Witness
- Advocate's Role to Persuade the Jury
- Eliminate as Many of the Biases as Possible

# GENERAL TYPES OF JUROR BIAS

- Accountability
- Responsibility
- Defensive Attribution
- Availability Bias
- Norm Bias

# ACCOUNTABILITY & RESPONSIBILITY

- Belief that Individuals Should be Responsible For Themselves
- Belief that Individuals Should be Personally Accountable for Their Lives
- Look to See if the Victim is a Responsible Person
- Look to See if the Victim is Responsible for the Crime Occurring to Them

# ACCOUNTABILITY & RESPONSIBILITY

- Create Picture of the Victim as Responsible Member of Society
- Emphasize the Victim's Role, as mother, employee, daughter, etc.
- Defendant Trying to Avoid Responsibility

# DEFENSIVE ATTRIBUTION

- Jurors will Try and Deflect
- Own Sense of Invulnerability
- Personally Threatened
- “Couldn’t Happen to Me”
- “If it was me, I wouldn’t have ...”



# AVAILABILITY BIAS

- Jurors Attribute Cause To Facts Known to Them
- Must Relay Facts from Defendant's Misconduct, not Victim's View
- Show Defendant's Actions, not the Victims
- Tell the Victim's Damages

# NORM BIAS

- Jurors Try to Attribute Cause to Events that Are Abnormal
- Jurors hold Victim to Higher Standard Than Themselves
- Focus Groups for Standards
- Portray the Victim's Actions as Normal
- and Defendant's Actions as Abnormal

# JUROR BIAS IN SEXUAL ASSAULT CASES

- Rape is the only felony that places the onus on the survivor. If an assailant held you at knifepoint, asked for your wallet and you complied, there is no question that a crime was committed. You would not be asked if you had consented. You would not be asked if you had tried to resist.

# STEREOTYPES/ MYTHS

- CONSENT / BLAME THE VICTIM
- REPORTING
- LACK OF WITNESSES
- PRIOR RELATIONSHIP
- LYING/ FALSE MEMORY
- NOT INJURED

# CONSENT/ BLAME THE VICTIM

- Assume the Risk by Engaging in Behavior
- Woman's Job to Enforce the Limits on Men's Sexual Behavior
- Victim Precipitated the Rape
- “She shouldn't have ...”
  - Been wearing that outfit
  - Been out alone at night
  - Opened her door

# RELATIONSHIP WITH THE PERP

- Product of the Relationship
- If She Knew Him, She Must Have Consented
- False Accusations
- Airing Dirty Laundry
- Family Business – Domestic Violence

# FALSE ACCUSATIONS

- Rape Victims Lie
- Less Credibility in Court than other Crime Victims
- False Memory Foundation
- Children Easily Manipulated
- Twice as Many False Reports for Stolen Vehicles

# REPORTING

- “True” Victim of Rape Would Go Immediately to Authorities
  - 42 % Never Tell Anyone
  - 5% Go to Police or Rape Crisis Centers
    - Denial
    - Fear of Retaliation or Disbelief
    - Fear of Loss of Privacy



# LACK OF WITNESSES

- Jurors Doubt Credibility of the Victim
- Most Victims Do Not Speak to Anyone About Rape
- Most Perpetrators Commit Acts in Private

# VICTIM'S LACK OF INJURIES

- Victim Didn't Fight or Resist Abuse
- Victim Didn't Scream or Cry for Help
- Victim Did Not Flee
- Victim Didn't Go the Hospital
- Victim was Not Hurt
- Most Children that are Sexually Abused Suffer Injuries

# DEFENDANT DOESN'T LOOK LIKE A RAPIST

- He Doesn't Look like a Child Molester
- He Is Well Dressed, Well Mannered
- He is Too Intelligent

# THE ADVOCATE'S ROLE

- Helping Victims Through System
- Providing Complete, Accurate Information
- Help Weigh Options
- Explain Consequences of Each
- Preparing the Victim for Court Appearance

# WITNESS PREPARATION

- Verbal and Nonverbal Behavior
- Someone Who “Deserves” Verdict
- Trustworthiness
  - Nervousness Creates Impression of Untruthfulness
- Failure to Show Emotion
  - Lacks Credibility

# WITNESS PREPARATION

- Jurors Expect a Fully Prepped Witness
- If Witness Unprepared, Jurors think Attorney is Trying to “Fool” Jury
- Have “Dry Run” With Victim
- Create Environment
- Have Witness Answer Questions

# WITNESS PREPARATION

- Truthfulness
- Clarity
- Bring out Victim's Emotion
- Have Witness Speak in the Present Tense
- Provide Details of the Victim's Life
- Provide Details of the Events

# VOIR DIRE

- Most Effective Way to Deal With Juror Bias
- Educate the Jury
  - Most know little about rape and sexual assault
  - Most know little about “normal” reactions to rape
- Jury De-selection v. Selection
- Written Questionnaires



# VOIR DIRE – DELAYED REPORTING

- How would a person act if they were faking a claim?
  - Bring out that a person would quickly report it
  - A person would have injuries
  - A person would scream, demand an ambulance

# VOIR DIRE – DELAYED REPORTING

- During your childhood, how many of you were ever picked on by a bully?  
How many reported it?
  - Bring out feelings of fear and embarrassment which kept them from seeking protection from a childhood bully

# VOIR DIRE – CHILDREN

- Have you ever been lied to? Have you been lied to more than once? Do you find that people lie for the fun of it or because they have a reason? Is this true of children as well as adults?
- Children usually don't lie about things of grave importance

# VOIR DIRE - DEMEANOR

- Have you ever testified in Court? How did you feel? Were you nervous? Why?
- Based on your experience, do you believe most people are uncomfortable speaking in public about their sexual history?
- The first time you spoke of the event, was it difficult to speak without displaying emotion? Was it easier or more difficult to speak of the event without emotion the more times you had to speak of it?

# VOIR DIRE – Stereotypes of Accused

- Jurors Believe Abusers Act and Look the Part of a “dirty old man”
- Do you have a stereotypical view as to the kind of person who would molest children/rape women?
- Do you think you can spot a rapist/child molester simply by looking at him?

# VOIR DIRE – LACK OF WITNESSES

- Generally speaking, do you believe sexual assaults occur in public or private?
- Would you be surprised if a victim or perpetrator did not speak openly about the abuse?
- In order to convict someone of abuse/rape, would you require something more than eyewitness testimony?

# CIVIL JUSTICE

- Road to Recovery and Empowerment
- Other Avenues of Redress for Victims
  - Georgia Crime Victim Compensation Board
  - Civil Justice through civil litigation
    - DA's Determination Not Conclusive for Victim

# POTENTIALLY RESPONSIBLE

- Perpetrator
- Property owners and managers
- Employers
- Security Companies
- Social and Business Hosts
- Parents/Guardians for minors
- Others



# REMEDIES AVAILABLE

- Financial Compensation
  - Private Psychiatric Counseling
  - Secure Home
  - Lost Earnings or Earning Capacity
  - Medical Expenses
- Changes in Security and Safety Measures

# BENEFITS OF CIVIL JUSTICE FOR THE VICTIM

- Privacy and Anonymity
- Victim's Case
- Victim Directs Decisions
- Attorney Client Privilege
- Empowers the Victim

# BENEFITS OF CIVIL JUSTICE FOR SOCIETY

- Perpetrator Doesn't "Get Away with It"
- Hold Others Accountable for Their Responsibility in Safety Measures
- Changes Conduct of Property Owners
- Makes Communities Safer