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## THE IMPACT OF A DEFENDANT NOT TESTIFYING IN A CHILD SEXUAL ASSAULT CASE

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*The present study examined the influence of the presence or absence of a defendant's testimony and the strength of the prosecution's evidence on mock juror perceptions of a defendant in a child sexual assault case. Community members (N = 311, 54.3% female) read a summary of a fictional trial in which a defendant allegedly sexually assaulted a child. The prosecution presented evidence from a detective in a weak case or a sexual assault nurse examiner (SANE) in a strong case, and defendants either testified or did not testify. When the defendant did not testify, participants were either instructed to not allow the lack of testimony to affect their decision or were not given instructions about the defendant's testimony. Judge's instruction did not affect verdict, and the two no-testimony conditions were collapsed. Participants were significantly more likely to render guilty verdicts when there was strong evidence and when the defendant did not testify. Anger toward the defendant mediated the relationship between the defendant's lack of testimony and guilty verdicts. When the defendant did not testify and jurors rendered guilty verdicts, cognitive network representations indicated that the defendant's lack of testimony was central to the jurors' perceptions of the case.*

In 2005, singer Michael Jackson was put on trial, charged with several counts of child molestation and related offenses (1). Despite the severity of these allegations, Jackson did not testify in his defense—he instead chose to remain silent. This apparently did not affect his case, however, as he was found not guilty. Regardless, the public was in an uproar, some to this day still not believing in his innocence (including some of the

jurors in his trial) (2). Although the exact numbers vary by jurisdiction, studies reveal that up to half of all criminal defendants elect not to testify, and this percentage has been increasing since at least the early 20th century (3).

Given that defendants often do not testify in court, is this a successful strategy? An examination of media coverage of high-profile cases in which the defendant did not testify indicates that the pattern of verdicts is equivocal. Some cases, such as Michael Jackson's and O.J. Simpson's, ended in acquittals (4). On the other hand, some cases, such as Scott Peterson's, have resulted in a guilty verdict (5).

As these examples show, one of the many decisions a defendant must make is whether or not to testify. The 5th Amendment of the U.S. Constitution states that a defendant does not have to testify and that jurors cannot hold not testifying against a defendant. The 5th Amendment was supported when the Supreme Court ruled in *Griffin v. California* (6) that a prosecutor is not allowed to make statements that would allow a jury to infer guilt from a defendant who chooses not to testify. However, the presumption of guilt from silence may be unavoidable and thus the assumption underlying *Griffin*—that forbidding adverse comment protects a defendant's 5th Amendment rights—loses its constitutional footing.

The *Griffin* controversy demonstrates that there is no clear answer as to whether or not a defendant should testify. A great deal has been written about this dilemma—most of it advice from defense attorneys. In general, attorneys emphasize that a defendant's decision to testify should be a function of the degree to which the story presented in court creates reasonable doubt without the defendant testifying (7). Following this logic, attorneys might encourage their clients to testify when the prosecution's case is strong but stay silent when the case is weak.

#### WHEN SHOULD A DEFENDANT NOT TESTIFY?

Even if reasonable doubt does not reach some unknown threshold, a number of reasons have been offered for why having a defendant testify can be problematic. Most importantly, once a defendant takes the stand, the right to remain silent is waived (8); questions may be far-reaching (e.g., past criminal behavior) (9); and other evidence can be introduced. Though the law states that when a defendant takes the stand his prior convictions can be used to demonstrate his character for untruthfulness as a witness but not for criminality (10), it is questionable whether jurors can separate these two ways of thinking (9).

Furthermore, there are other reasons for a defendant not to take the stand, such as the strength of the prosecution's case. Logically, the stronger the evidence introduced by the prosecution, the guiltier a defendant will seem (11). On the other hand, a case with weak evidence might be riddled with ambiguity, leaving jurors with more doubt as to the guilt of the defendant, thus working in the defendant's favor. However, if the defendant testifies and jurors find fault in the testimony, it might backfire and result in jurors becoming skeptical of the defendant or his case (12).

Finally, a trial might cause the defendant stress, which can impact demeanor (13), and may lead jurors to infer guilt (14). On a related point, there is the problem of how a defendant will handle cross-examination by the prosecution. As stated by Wigmore (15), cross-examination forces witnesses to respond to questions they might not want to answer, putting their credibility on the line. The problem with testifying is thus tied both to a defendant not being used to testifying in court (13), and to the defendant not knowing what to expect from the cross-examination questions. As a result, the cross-examination of a defendant might completely undermine his credibility. It is

also important to note that sometimes there might simply be no point in a defendant testifying (e.g., if credible witnesses have already attested to all relevant information) (16).

#### **WHEN SHOULD A DEFENDANT TESTIFY?**

It might still be important to jurors to see a defendant testify, regardless of the information the testimony provides. Specifically, a defendant might need to testify if there is any possibility that not testifying will lead to alienating the judge or angering the jury (13). Brown (7, p. 109) stated that “the jury wants to watch and listen to a defendant proclaim innocence.” Simply put, people are likely to attribute a lack of testimony to the defendant having something to hide (12, 17). Why, they might wonder, would an innocent person not take the opportunity to take the stand? If the jury does not hear the defendant in court, their resulting anger and negative attributional assumptions might lead to a guilty verdict.

Some additional reasons for the defendant to testify are related to creating reasonable doubt. For example, the defendant might have to testify if the prosecution’s evidence is strong. In such a case, the evidence does not create reasonable doubt, so the defendant’s testimony might be required in order to explain his side of the story and give the jury access to important information (13, 18). Without the defendant’s testimony, the defense’s strategy generally devolves into an effort to discredit any and all aspects of the prosecution’s case, asserting that the prosecution has not carried its burden of proof. Thus, if the defendant is able to convey an image of honesty, showing that image to the jury might be worth the testimony even if it adds nothing to the facts of the case.

#### **PRIOR RESEARCH**

Although the issue of whether a defendant should testify in court or not has stimulated interest in the legal literature, there

is a lack of research demonstrating the effect of a defendant's testimony on jurors' perceptions. A study conducted by Shaffer and Case (17) appears to be the first empirical investigation on this issue. In this study, undergraduates were presented with an armed robbery/murder case in which a storekeeper and his five-year-old granddaughter were killed. Most important to the present study, Shaffer and Case (17) manipulated whether the defendant declined to take the stand, took the stand but declined to testify, or chose to testify. Participants read the case and deliberated in six-member juries to render a verdict. Only after discussing the case did each mock juror offer individual judgments. The primary results were 1) during deliberations, the number of pre-conviction statements were greater when the defendant did not testify than when he testified; 2) the mock juries only rendered guilty verdicts when a defendant did not testify, but only not-guilty verdicts when a defendant testified; and 3) individual guilt ratings were higher when the defendant did not testify than when he did testify. Shaffer and Case (17, p. 336) stated that participants presumed an innocent person would have "nothing to hide" and would therefore testify. However, Givelber and Farrell (19) examined National Center for State Courts (NCSC) data on non-capital felony trials and found that, while jurors did acquit more often when a defendant testified than when he did not, the presence of a witness in general was the most important factor. That is, any witness (not just the defendant) allowed jurors to corroborate the defense's story.

A later study on the presence or absence of defendants' testimony was conducted by Antonio and Arone (12). They presented a descriptive account of how jurors perceive defendants based on the Capital Jury Project, a collection of in-depth interviews with real jurors who had served in capital jury trials. Similar to Shaffer and Case (17), when defendants chose

not to testify, jurors expressed curiosity as to why, making assumptions that the lack of testimony implied guilt or that the defendant had something to hide. Even when jurors admitted that there could have been legitimate reasons for the defendant to not testify, jurors expressed difficulty in keeping this from affecting their decisions. Furthermore, the defendant was still perceived negatively when he or she testified. Overall, jurors reported that they wanted the defendant to testify and expressed confusion as to why the defendant would choose not to.

#### **THE PRESENT STUDY**

The aforementioned studies present important background concerning how jurors perceive defendants who do not testify in court. However, understanding the impact of a defendant testifying requires additional research for three primary reasons. First, it is important to replicate the two earlier studies. This replication should: 1) include a crime other than murder to ensure that the effect of testimony is not limited to one specific crime; 2) include community members as a more representative sample; and 3) include a manipulation-check question to ensure that participants remembered whether the defendant testified or not. Second, there are a number of factors that have not been measured that may be impacted by the absence of testimony. For example, earlier research did not measure perceptions of the victim, strength of the prosecution and defense cases, or affect related to the defendant (e.g., anger). These additional variables allow for investigating the role of mediation in explaining the results; neither earlier study hypothesized mediation. Third, prior research allowed for some examination of how jurors conceptualized a case when a defendant did or did not testify. However, more sophisticated analyses now allow for a psychometrically established data scaling technique (Pathfinder analysis) (20) that maps participants' mental

representation of a case. Finally, there are a number of other factors that may impact jurors when a defendant does not testify. One of these is often mentioned by attorneys when advising their clients: the strength of the evidence.

To investigate the impact of whether a defendant testifies or not we presented a child sexual assault (CSA) trial. CSA is a fitting example because real-life cases involving this crime show that defendants may or may not testify, the evidence against the defendant can vary from weak to strong, and there is often a lack of physical evidence or outside witnesses, resulting in ambiguity (21). Most CSA cases simply come down to the defendant's word against the victim's, and thus potentially irrelevant issues such as whether the defendant testifies or not may impact the jury's decision. Further, existing literature on CSA court cases (21) provides a suitable background for understanding participants' perceptions in this specific case. Additionally, many studies have shown that participant gender shows consistent effects such that women are generally more punitive than men in cases of CSA (for a review, see Schutte and Hosch [22]).

We designed the following study to investigate the effect of a defendant's testimony on judgments in a CSA case. Mock jurors read a trial summary in which an adult man was accused of (and pled not guilty to) raping his neighbor, a six-year-old girl. We examined participant gender as a quasi-independent variable and manipulated whether the defendant testified, and the strength of the evidence against him. In the cases in which the defendant did not testify, we also manipulated whether or not the judge instructed the jury to not consider the lack of testimony in their guilt judgments.

#### **HYPOTHESES**



Based on prior research and anecdotal evidence, we propose several hypotheses. First, we propose three competing hypotheses with regard to the strength of the evidence against the defendant and the presence of the defendant's testimony. It is possible that we might find only a main effect of strength of evidence *or* defendant testifying (H1a). Based on the legal interpretation of how juries *should* make their decision, we might simply find a main effect of strength of evidence such that there should be more guilty verdicts in a strong case than in a weak case, regardless of whether or not a defendant testifies. The law instructs juries not to take a defendant's lack of testimony into account when making their verdict, so ideally the only variable driving this decision should be the facts of the case (i.e., the strength of the evidence presented). Furthermore, past research indicates that prosecution evidence strength has a large impact on verdict (11).

Alternatively, there might be only a main effect of defendant testimony such that participants will render more guilty verdicts when a defendant does not testify than when they do, regardless of case strength. This rests on the logic that juries cannot suppress their emotional reaction to a defendant not testifying, despite the law's insistence that they do so. If they attribute a lack of testimony to the defendant trying to hide something, jurors might assume guilt rather than considering other reasons the defendant might not want to testify (12, 14, 17). Thus, they would be focusing too much on the presence or absence of a testimony to take the strength of the evidence into account.

Further, both main effects could show up simultaneously, such that participants render more guilty verdicts when the defendant does not testify (versus when they do) *and* when the evidence is strong (versus weak; H1b). This result would imply that, while a strong case will always provide reason for jurors to

doubt the defendant, not testifying still always puts the defendant at a disadvantage in this case.

Finally, the results might yield a case strength by defendant testimony interaction. In a strong case there would be more guilty verdicts when the defendant does not testify than when they do, while in a weak case there would be more guilty verdicts when the defendant *does* testify than when they do not (H1c). This prediction is consistent with how lawyers often advise their clients: in a strong case, defendants should testify, but in a weak case they should not (7, 13). The doubt a defendant's testimony might raise in a strong case could work in his or her favor by causing skepticism where there originally was none. However, in a weak case this doubt could work against the defendant by giving jurors a chance to question his or her credibility rather than simply considering the holes in the prosecution's case.

Beyond the impact of the independent variables, we propose that if the defendant's testimony impacts verdict, this relationship will be mediated by emotions relevant to the defendant (H2). When a defendant does not testify, participants will feel angry, leading to more guilty verdicts (7, 12, 13, 17). This anger is the result of attributing the defendant's lack of testimony to being dishonest and having something to hide, even though they should not take this into account in their verdict.

Finally, to better understand how the presence or absence of defendant testimony influenced mock jurors' conceptualizations of the case, we extracted mental representations from open-ended responses concerning mock jurors' reasons for verdict (23). We derived networks for the no testimony condition using Pathfinder analysis, a psychometrically established data scaling technique (20). Pathfinder analysis creates a network representation of the data by measuring the relative degree of

association between concepts in semantic memory. We are interested in the extent to which the defendant's decision to not testify will influence mock jurors' mental representation of major case themes and, hence, their verdicts. We predict that if the lack of defendant testimony drives guilty verdicts, then concepts concerning the defendant not testifying will be centrally located within networks of mock jurors who rendered a guilty verdict (H3). Otherwise these concepts will be located on the network fringe and connected to more minor case aspects.

## METHOD

### Participants

Participants included 338 jury-eligible community members (i.e., at least 18 years old, U.S. citizens) who were recruited online via Mechanical Turk, a participant-recruiting website hosted by Amazon.com ([www.mturk.com](http://www.mturk.com)) (24). Twenty-seven participants were excluded for incorrectly answering a manipulation check about whether or not the defendant testified. Thus, the final sample consisted of 311 mock jurors (54.3% female, M age = 36).

### Design

We employed a 2 (participant gender) x 3 (defendant testimony: yes, no with judge's instructions, or no without judge's instructions) x 2 (case strength: strong or weak) between-subjects design.

### Materials

*Criminal Trial Summary.* The fictional trial summary involved a 35-year-old male defendant charged with first-degree rape (10) of a six-year-old girl. The summary included a fictional description of the trial, the prosecution's case, and the defense's case. Each condition included the same general description along with the judge's initial charge—~~is this~~

~~correct~~instructions?, information about when and where the incident allegedly occurred, and what charges were filed. Modified versions of this trial have been used in several previous studies (e.g., 25). Additionally, simulation studies have been widely used in jury decision-making research, and generally reveal similar results to comparable studies of real jurors (26).

In the trial summary, the prosecution's case began with the six-year-old female alleged victim's testimony. She testified that on the day of the alleged assault she was walking home from school in the rain when her neighbor, a 35-year-old male, offered her a ride home. Instead of driving her home, she testified that the defendant took her to an isolated wooded area, held her down, and forced her to have sexual intercourse in his car. The prosecution's case included an additional witness, which was manipulated for the strength of the case evidence. For the weak case, the additional witness was the detective who was assigned to the alleged victim's case. He testified that the alleged victim stayed close to her mother and told her she was afraid, though he admitted that he did not know why. For the strong case, the additional witness was a sexual assault nurse examiner (SANE). The SANE's testimony was considered strong evidence for the prosecution because, as Golding and colleagues (27) demonstrated, mock jurors render more guilty verdicts and report more pro-victim and anti-defendant judgments when considering a SANE's testimony as compared to a testimony that did not include medical evidence. The SANE testified that the alleged victim had cuts and bruises on her hips, inner thighs, and vaginal region. She added that the bruises were consistent with the alleged victim's story, but they could have been caused by something else. The defense's case included testimony from either the defendant or from the defendant's co-worker (thus manipulating whether or not the

defendant chose to testify). In both cases, the witness (the defendant or his co-worker) asserted that the defendant was a responsible citizen and the charges were a grave mistake. The only difference between the two testimonies was when the defendant testified on his own behalf, he added a denial of any sexual contact at any time with the alleged victim. In all cases, the defense also included a statement from an additional witness, a friend of the defendant's. This additional witness was included to balance the number of witnesses for the prosecution and defense. All witnesses received direct- and cross-examination.

After reading the trial summary, participants read the judge's instructions (28), which included a description of the elements that the case must satisfy before jurors could render a verdict of guilty of first-degree rape. When the defendant did not testify, however, there was an added manipulation of whether or not the judge addressed this issue. For half the participants, the judge gave instructions that the defendant has every right not to testify and that it has nothing to do with whether or not he is guilty and thus the jury should not take it into consideration when making judgments. For the other half of participants for which the defendant did not testify, the judge did not give instructions about how to deal with the lack of testimony.

*Trial Questionnaire.* The trial questionnaire included multiple types of questions all presented in a fixed order, as there was no reason to expect different results based on presentation order. Participants provided a verdict (guilty or not guilty) along with the reason(s) for that verdict. Next, participants rated the credibility and the honesty of the alleged victim (1 = not at all to 10 = completely) and indicated their sympathy for the alleged victim (1 = none at all to 10 = a lot). Participants then indicated their beliefs about the strength of the prosecution's case (1 = not strong at all to 10 = extremely strong). As for the defense's

case, participants indicated their anger toward the defendant (1 = none at all to 10 = a lot) and a rating of the defense's case strength (1 = not strong at all to 10 = extremely strong).

#### **Procedure**

Participants read and signed an online informed consent form, which explained that they would assume the role of a juror in a CSA case. Participants received the materials online via Mechanical Turk and proceeded through the trial summary and questionnaire at their own pace. They were unable to go back to refer to the summary when completing the questionnaire. Also, participants were given a comprehension-check question after every witness testified to make sure that they attended to the summary. This included a manipulation check question about whether or not the defendant testified. If they answered any question incorrectly (which was rare), they were instructed to pay better attention to subsequent text (e.g., 29). All participants received a debriefing and were given contact information for any further questions. The experiment took approximately 20 minutes to complete.

#### **RESULTS**

We created a victim credibility subscale that was comprised of the average of two rating variables: victim credibility and victim honesty (Cronbach's  $\alpha = .91$ ). The other rating variables included in the analyses were: sympathy toward the victim, anger toward the defendant, perceived strength of the prosecution's case, and perceived strength of the defense's case. Data were analyzed using logistic regression with verdict as the dependent variable and linear regression for all other analyses involving ratings.

Preliminary regression analyses compared the two no-testify conditions (judge instruction and no instruction) on verdict, credibility of the victim, sympathy toward the victim, strength of

the prosecution's case, anger toward the defendant, and strength of the defense's case. Five of these variables showed no difference between these two no-testify conditions. Only one variable, anger toward the defendant, was a significant predictor; when the judge gave instructions, participants felt less anger toward the defendant. However, it is important to note that despite the lowering of anger toward the defendant, the critical outcome variable of verdict and the other rating variables were not impacted by the judge's instructions. Because of these results, we collapsed the two no-testify conditions and analyzed both no testimony conditions together.

To test that our manipulation of prosecution case strength was effective, we compared the strength condition (strong versus weak) with participants' ratings of the strength of the prosecution's and the defense's cases, respectively. Indeed, participants in the "strong" condition ( $M = 7.45$ ,  $SD = 2.60$ ) rated the strength of the prosecution's case as significantly higher than those in the "weak" condition ( $M = 6.15$ ,  $SD = 3.00$ ),  $t(309) = 4.10$ ,  $p < .001$ ,  $d = .47$ . Moreover, participants in the "strong" condition ( $M = 3.59$ ,  $SD = 2.66$ ) rated the defense's case as significantly weaker than those in the "weak" condition ( $M = 4.82$ ,  $SD = 2.70$ ),  $t(306) = -4.02$ ,  $p < .001$ ,  $d = .46$ .

For all reported regression analyses, step 1 of the hierarchical models included participant gender and age, step 2 included the prosecution case strength and defendant testimony condition variables, and step 3 included the two-way interactions between participant gender and prosecution case strength, between participant gender and defendant testimony, and between defendant testimony and prosecution case strength. Means and standard deviations across all witness conditions for each of the primary dependent variables are presented in Table 1. Correlations among the primary

dependent variables are presented in Table 2. All results were significant at  $p < .05$ , unless otherwise noted.

Furthermore, the analyses yielded significant effects of participant gender for all dependent measures, replicating past results (22). For verdict, the logistic regression model reached significance at step 1,  $\chi^2(2) = 12.49$ ,  $p = .002$ , such that men were less likely than women to render guilty verdicts ( $OR = .555$ ,  $p = .014$ ). Men also had significantly higher pro-prosecution/anti-defendant ratings than women (all  $R^2s \geq .026$ , all  $ps \leq .019$ ).

**Hypothesis 1: Effects of Strength and Testimony**

The analyses indicated strong support for Hypothesis 1b—main effects of strength and of testimony. For verdict, the logistic regression

Table 1



model reached significance at step 2,  $\chi^2(4) = 54.91$ ,  $p < .001$ . For strength ( $OR = .215$ ,  $p < .001$ ), participants were less likely to render a guilty verdict when the evidence was weak versus strong. For testimony ( $OR = .502$ ,  $p = .012$ ), participants were less likely to render a guilty verdict when the defendant testified than when he did not.

**Table 2. Correlation Matrix of Primary Dependent Variables**

|                                | 1      | 2      | 3      | 4      | 5      |
|--------------------------------|--------|--------|--------|--------|--------|
| 1. Guilty verdict              |        |        |        |        |        |
| 2. Victim credibility subscale | .68**  |        |        |        |        |
| 3. Victim sympathy             | .30**  | .42**  |        |        |        |
| 4. Prosecution case strength   | .68**  | .56**  | .25**  |        |        |
| 5. Defendant anger             | .53**  | .52**  | .42**  | .44**  |        |
| 6. Defense case strength       | -.56** | -.52** | -.22** | -.43** | -.41** |

Note: \*\*  $p < .01$

With regard to the linear regression analyses, the model was significant at step 2 for victim credibility,  $R^2 = .094$ ,  $F(4, 305) = 7.87$ ,  $p < .001$ , prosecution case strength,  $R^2 = .102$ ,  $F(4, 306) = 8.65$ ,  $p < .001$ , anger toward the defendant,  $R^2 = .072$ ,  $F(4, 306) = 5.97$ ,  $p < .001$ , and perceived defense case strength,  $R^2 = .095$ ,  $F(4, 303) = 7.91$ ,  $p < .001$ . In a weak (versus strong) case, participants believed the victim was less credible,  $\beta = -.24$ ,  $p < .001$ , believed the prosecution's case was weaker,  $\beta = -.24$ ,  $p < .001$ , were less angry with the defendant,  $\beta = -.14$ ,  $p = .014$ , and perceived the defense's case as strong,  $\beta = .23$ ,  $p < .001$ . Defendant testimony revealed identical patterns such that when the defendant chose to testify (versus when he did not testify), participants believed the victim was less credible,  $\beta = -.14$ ,  $p =$

.011, believed the prosecution's case was weaker,  $\beta = -.14$ ,  $p = .010$ , and were less angry with the defendant,  $\beta = -.17$ ,  $p = .002$ . Further, there were no significant interactions, indicating a lack of support for Hypothesis 1c (an interaction of strength and testimony).

#### **Hypothesis 2: Mediation**

We examined anger toward the defendant as a potential mediator of the relationship between testimony and verdict. Using a bootstrapping procedure, we tested whether or not the indirect pathway from testimony, to the mediator, to verdict, was significantly different from zero (30). Significant mediation occurs when the upper and lower limits of the 95% confidence interval (CI) do not cross zero. The analysis revealed that anger toward the defendant was a significant mediator (95% CI: -.75 to -.15) of the relationship between testimony and verdict. Participants in the testify condition were less angry at the defendant,  $\beta = -.17$ ,  $p = .002$ , which decreased their likelihood of rendering guilty verdicts.

#### **Hypothesis 3: Cognitive Networks**

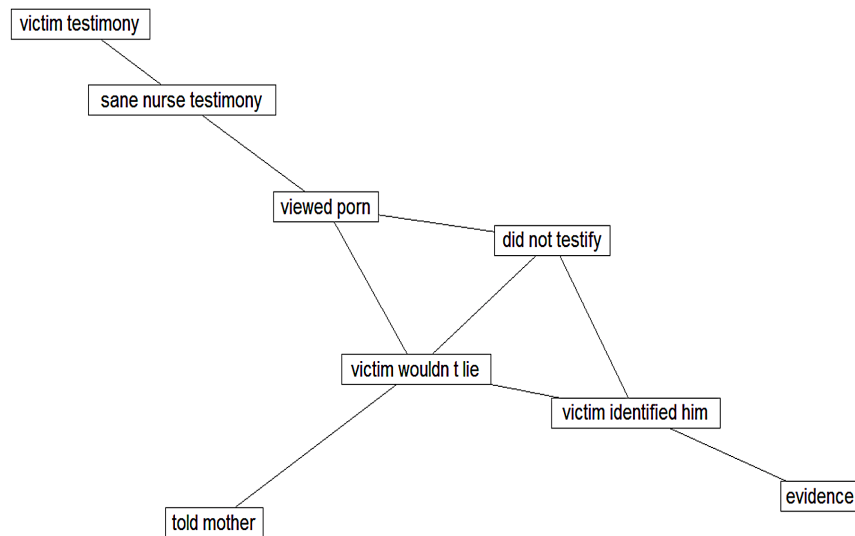
We used Pathfinder analysis (20) to derive and represent networks from the open-ended data of participants' reason for their verdict decisions. A pathfinder network (PF-NET) is made up of a set of nodes, which in this case represents meaningful concepts used by mock jurors in their reason(s) for verdict, and links, which indicate the strength of association between nodes. PF-NETs have an advantage over other text-based network derivation methods (e.g., co-occurrence networks, nearest neighbor networks, cutoff networks) in that they reveal psychologically salient relations in the link structure (20).

Figure 1 shows the averaged schematic network for mock jurors who rendered a guilty verdict in the no-testimony condition. We hypothesized that if the defendant's lack of

testimony drove guilty verdicts, the network derived from mock jurors' reason for verdict would be centered around the fact the defendant did not testify.

The *degree* of a node is the number of nodes to which it is directly linked (e.g. "viewed porn" has degree three) and gives a measure of its importance within the network (31). Nodes that have high degree in each network represent concepts that were most important to mock jurors' decisions. For the no testimony/guilty network, the failure of the defendant to testify clearly impacted juror decision making. The node "did not testify" was second highest in degree and was directly linked to the node "viewed porn." This indicates that mock jurors associated negative judgments of the defendant such as "viewed porn" with his decision to not testify. In contrast, the nodes "victim testimony" and "evidence" have a degree of one and are located on the fringe of the network, indicating mock jurors considered these factors less important. In this way, mock jurors perceived the defendant's decision to not testify as a major component in the case and a primary reason to find him guilty.

**Figure 1. PF-NET for Mock Jurors Who Rendered a Guilty Verdict in the No Testimony Condition**



## DISCUSSION

The present study sought to discover the impact of prosecution case strength and defendant testimony on participants' verdict and perceptions in a CSA case. We found support for the hypothesis that there are two main effects. Specifically, participants were less likely to render a guilty verdict and reported more anti-victim/pro-defendant ratings in a weak (versus strong) case as well as in a case in which a defendant testified (versus when he did not testify). The latter result replicates (using community members who followed the experimental manipulations) prior research involving murder cases (12, 17). Further, we found that anger toward the defendant mediated the relationship between the defendant's testimony and verdict such that a defendant's lack of testimony caused participants to feel angrier toward him, thus leading to more guilty verdicts. The relationship between defendant testimony and verdict was further supported by participants' open-ended responses, indicating that the mental

representations of those who voted guilty in a case about a defendant who did not testify had the lack of testimony as the central node of these networks.

These results thus support the idea that, while strong prosecution evidence will always be disadvantageous to defendants, not testifying can be just as damaging. Contrary to how lawyers advise their clients—to testify if the evidence against them is strong but not to testify if the evidence is weak—our results suggest that defendants should consider testifying in a CSA case, regardless of case strength. Despite the legal right to decline to testify, the jury expects the defendant to proclaim his innocence (7, 12, 17). If this expectation is not met, jurors are more likely to let their emotions, namely anger, rule their judgments. More importantly, the impact of the resulting anger does not simply stop at that internal reaction, but drives jurors to render guilty verdicts. We see this not only in the action of stating “guilty,” but also in the cognitive reasoning behind choosing that verdict.

The PF-NET analysis demonstrated how mock jurors used the case details to influence their decisions by bringing attention to the differences in how they cognitively organize that information. Though PF-NET analyses are rare, they offer important corroborating data. The few psychological studies comparing PF-NETs with other data reduction techniques, such as multidimensional scaling, have found that PF-NETs better represent and predict the structure of semantic memory in humans (e.g., 32). PF-NETs have been recently used to characterize mental aspects of mock jury decisions of stalking (23) and CSA (27).

Importantly, the PF-NETs indicated that when the defendant did not testify and participants found him guilty, his lack of testimony was a focal point in the participants’ networks (see also Shaffer and Case[17]). Though, in general, mock jurors

focus on the lack of testimony, some do in fact disregard this detail and choose instead to focus on the case facts. As Wegener and Petty (33) theorized in their Flexible Correction Model, both individual and situational factors can influence how motivated a person is to seek out and remove potential sources of bias. The situational factor of a defendant's lack of testimony seems to take precedence for most people, but others might be more motivated to check for potential sources of bias against the defendant and correct them before deciding on a verdict. Similarly, some jurors might underestimate the extent to which factors such as the defendant's lack of testimony affect them, leaving them unable to correct for these biases (34). Future research should investigate what individual factors motivate jurors to disregard a defendant's lack of testimony.

Furthermore, it is interesting to note that verdict was unaffected by the presence or absence of judge's instructions. This finding is consistent with past research indicating that instructions to disregard information is, at best, ineffective and, at worst, might actually backfire and call more attention to that information (35, 36). Though jurors do try to follow direction, many are unable to do so (12, 17). In this case, we can see that jurors did indeed attempt to follow the instructions, as the only rating that was affected by the judge's instructions was lessened anger toward the defendant. However, jurors who are motivated to make the right decision are likely to disregard instructions about what information they should use, and will instead use all information to reach a verdict (34). Thus, despite the judge's instruction decreasing anger toward the defendant, participants were ultimately not swayed by the instructions. It is clear that current jury instructions were not preserving defendants' 5th Amendment rights (17). So is it even possible to revise jury instructions to address this problem? Perhaps the solution is not to focus on the legality and instead appeal to

jurors' empathy. The judge could, for example, ask jurors to picture themselves in the defendant's shoes. In that case, they would hope for a fair trial regardless of what the jurors thought of their decision not to testify, thus bringing the focus back to why it is so important for jurors to respect the defendant's right to not testify.

Despite the knowledge gained from the present study about the impact of a defendant's testimony, we acknowledge that the study has several limitations. First, we chose to administer the materials online, which could potentially lead to participants taking the study less seriously. However, research indicates that online studies are comparable to in-person studies (37). Furthermore, attention checks were included throughout to ensure participants were paying attention and reading carefully. Additionally, the present study did not include jury deliberations. While deliberations might allow jurors to clear up confusion about case evidence, Diamond (38) remarked that individual juror responses generally predict final jury outcomes, indicating that deliberation is not necessary for accurate results. Moreover, our results were consistent with Shaffer and Case's (17) study, which did include deliberations. Nevertheless, future research should use an in-person paradigm including deliberation to ensure that our results hold up in the context of a realistic jury.

Additionally, these results might only generalize to CSA and murder cases; the latter investigated in prior research (12, 17). We strategically chose CSA because these cases tend to rely on he-said-she-said arguments, inevitably resulting in ambiguity. In order to examine how our manipulations impacted verdict, we could not have a case too black-and-white, resulting in a ceiling effect of all guilty verdicts. While we saw similar patterns in research by Antonio and Arone (12) and Shaffer and Case (17) examining murder trials, it is possible that other types

of crime could result in different findings (e.g., perhaps participants would not care if a defendant testified in a white collar crime). Further, there may be other factors that would make it more risky to testify. For example, if a defendant has a history of sexual crime, testifying might reveal this past and jurors are likely to take that as evidence against him (9). Future experiments should vary the crime for which the defendant is on trial (e.g., assault, white-collar crimes, different types of abuse) as well as other factors (e.g., prior criminal record, relationship between victim and defendant) to better assess the generalizability of the present findings.

In conclusion, the present study indicates that, despite their 5th Amendment rights, defendants should consider testifying in a CSA case, regardless of the strength of the case against them. While there are certainly instances where it is better not to testify, attorneys might want to reconsider simply advising their clients to testify when the case against them is strong and stay silent when it is weak. Furthermore, a revision of current jury instructions would be advisable. Clearly, simply telling jurors not to be affected by their emotions does not protect defendants from the anger resulting from refusing to testify. What good is the legal right to decline testimony if jurors take that lack of testimony as evidence against the defendant?

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Table 1

*Descriptive data for primary dependent variables for complete design (standard deviations in parentheses)*

|                           | Female       |            |            |            | Male         |            |            |            |
|---------------------------|--------------|------------|------------|------------|--------------|------------|------------|------------|
|                           | No Testimony |            | Testimony  |            | No Testimony |            | Testimony  |            |
|                           | Strong       | Weak       | Strong     | Weak       | Strong       | Weak       | Strong     | Weak       |
| Guilty verdict            | .90(.31)     | .68(.48)   | .80(.40)   | .47(.50)   | .81(.40)     | .44(.51)   | .66(.48)   | .35(.48)   |
| Victim credibility        | 8.5(1.60)    | 8.02(1.74) | 8.01(1.98) | 7.14(2.34) | 8.19(1.71)   | 6.90(2.32) | 7.68(1.98) | 6.33(2.13) |
| Victim sympathy           | 9.34(1.85)   | 9.35(1.20) | 9.42(1.16) | 9.05(1.64) | 8.78(2.14)   | 9.20(1.47) | 8.55(1.94) | 8.02(2.46) |
| Prosecution case strength | 8.07(2.33)   | 7.35(2.65) | 7.52(2.78) | 6.09(2.83) | 7.72(2.62)   | 6.53(2.83) | 7.37(2.65) | 6.44(3.03) |
| Defendant anger           | 8.69(1.89)   | 7.42(2.84) | 7.33(3.10) | 6.16(3.20) | 7.81(2.80)   | 6.60(3.12) | 6.78(3.19) | 7.00(3.10) |
| Defense case strength     | 3.38(2.61)   | 4.23(2.74) | 2.75(2.44) | 4.50(2.64) | 2.98(2.50)   | 4.41(2.67) | 3.59(2.52) | 5.00(2.81) |

Note: The rating variables comprising the alleged victim credibility subscale were measured from 1 (not at all) to 10 (completely) with only the end points labeled.



Table 1

*Descriptive data for primary dependent variables for complete design (standard deviations in parentheses)*

|                           | Female       |            |            |            | Male         |            |            |            |
|---------------------------|--------------|------------|------------|------------|--------------|------------|------------|------------|
|                           | No Testimony |            | Testimony  |            | No Testimony |            | Testimony  |            |
|                           | Strong       | Weak       | Strong     | Weak       | Strong       | Weak       | Strong     | Weak       |
| Guilty verdict            | .90(.31)     | .68(.48)   | .80(.40)   | .47(.50)   | .81(.40)     | .44(.51)   | .66(.48)   | .35(.48)   |
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Note: The rating variables comprising the alleged victim credibility subscale were measured from 1 (not at all) to 10 (completely) with only the end points labeled.