

#MeToo Effects on Juror Decision Making

Michael Conklin*

Introduction	179
I. History of #MeToo	180
II. Effects of the #MeToo Movement	180
A. Positive effects	181
B. Negative effects	183
III. The Study	186
A. Methodology	186
B. Results	187
C. Discussion	187
Conclusion	190
Appendix A	191

INTRODUCTION

The modern #MeToo movement started in late 2017 and immediately had an impact on many aspects of society, bringing down over 200 powerful men in the first year¹ and sparking swift legal change regarding the use of nondisclosure agreements to silence victims.² But no research has been conducted into how the #MeToo movement has affected juror decision making in sexual assault cases. This article reports the findings of a groundbreaking study readministering a sexual assault case summary in 2019 that was originally conducted in 2010. The results show an unexpected *reduction* in willingness to convict in the post-

DOI: <https://doi.org/10.15779/Z38RF5KG3J>.

Copyright © 2020 Michael Conklin

* Powell Endowed Professor of Business Law, Angelo State University.

1. Audrey Carlesen et al., *#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women*, THE NEW YORK TIMES (Oct. 29, 2018), <https://www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html> [<https://perma.cc/8E52-FL5X>].

2. Jeff Daniels, *New State Laws: From Workplace Harassment Protections to Mandating Women on Boards*, CNBC (Dec 28, 2018), <https://www.cnbc.com/2018/12/28/new-state-laws-in-california-elsewhere-inspired-by-metoo-movement.html> [<https://perma.cc/9V96-JCYE>].

#MeToo era despite no difference in predictions of guilt. Furthermore, the present survey allows for political affiliation and views of the #MeToo movement to be analyzed as potential factors contributing to the drastic change in willingness to convict. The results of this study, along with the discussion of potential explanations for the findings, provide essential information for advocates that will enhance the efficacy of the movement.

I.

HISTORY OF #METOO

The phrase “Me Too” was originally coined by activist Tarana Burke in 2006 to promote awareness of sexual assault and sexual harassment.³ It did not receive widespread attention until October 2017 when actress Alyssa Milano tweeted, “If you’ve been sexually harassed or assaulted write ‘me too’ as a reply to this tweet.”⁴ In that first month alone, Kevin Spacey was accused of sexual assault, Ashley Judd accused Harvey Weinstein of sexual harassment, and Olympic gymnast doctor Larry Nassar was publicly accused of sexual assault.⁵ Just two months after Alyssa Milano’s tweet that sparked the modern #MeToo movement, Time Magazine’s 2017 person of the year were the “Silence Breakers,” people who came forward with allegations of sexual harassment and sexual assault.⁶ “#MeToo” was tweeted roughly 19 million times in the first year.⁷

II.

EFFECTS OF THE #METOO MOVEMENT

There have been many disparate claims made about the effects of the #MeToo movement. Proponents of the movement generally point to the positive changes that arise from increased awareness of sexual assault and sexual harassment. Those who are critical of the movement generally point to either a lack of positive change or the potential harms of going too far.⁸

3. *#MeToo: A Timeline of Events*, CHICAGO TRIBUNE (July 19, 2019), <https://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htm1story.html> [https://perma.cc/DA8T-3YEH].

4. *Id.*

5. *Id.*

6. Stephanie Zacharek et al., *The Silence Breakers*, TIME (last visited Aug. 25, 2019), <https://time.com/time-person-of-the-year-2017-silence-breakers/> [https://perma.cc/5CRP-ECZV].

7. *The #MeToo Hashtag Has Been Used Roughly 19 Million Times on Twitter in the Past Year, and Usage Often Surges Around News Events*, PEW RESEARCH CENTER (Oct. 11, 2018), https://www.pewresearch.org/fact-tank/2018/10/11/how-social-media-users-have-discussed-sexual-harassment-since-metoo-went-viral/ft_18-10-11_metoanniversary_hashtag-used-19m_times/ [https://perma.cc/93LP-WRP6].

8. Libby Emmons, *When Men Kill Themselves Over Unproven Allegations, Me Too Has Gone Too Far*, FEDERALIST (Sept. 24 2019), <https://thefederalist.com/2019/09/24/when-men-kill-themselves-over-unproven-allegations-me-too-has-gone-too-far/> [https://perma.cc/JCR5-UJKY].

Attributing prospective effects to the #MeToo movement is challenging because there are numerous concurrent variables that could also contribute to the recent changes. The rise in popularity of cloud-based ethics and HR management software have likely “made the cost of ineffective discipline more salient for employers [and therefore] the continued misconduct of a documented harasser becomes foreseeable, [which] makes the employer’s inaction less reasonable [under a *Faragher* defense].”⁹ Another change that may affect the outcomes of the #MeToo movement as it pertains to workplace sexual harassment is the makeup of the National Labor Relations Board (NLRB) members.¹⁰ The Board of the NLRB is appointed by the President and serves five-year terms.¹¹ If President Trump’s appointees share his skepticism of the #MeToo movement,¹² this could have a significant effect on workplace sexual harassment adjudications (or the lack thereof).¹³ For example, the Board makes determinations such as whether an employee’s #MeToo social media post describing workplace sexual harassment is protected under Section 7 of the National Labor Relations Act (NLRA).¹⁴

A. Positive effects

While it is debatable whether the #MeToo movement has prompted some of the recent changes, one unequivocal effect is that of the over 200 men who lost their jobs in the first year of the movement, almost half were replaced by women.¹⁵ Prior to the #MeToo movement, employers viewed sexual harassment claims as largely a transactional cost of doing business, the risk of which could be mitigated through Employment Practices Liability Insurance.¹⁶ Therefore, employers were less willing to limit sexual harassment lawsuits because insurance was available.¹⁷ Now, employers must consider the potentially far more harmful—and difficult-to-manage—reputational costs of such claims.¹⁸

9. Elizabeth C. Tippet, *The Legal Implications of the MeToo Movement*, 103 MINNESOTA L. REV. 229, 248 (2018) (The *Faragher* defense “relates to the reasonableness of the employer’s efforts to prevent and address discrimination.”).

10. *Id.* at 251-252.

11. *The Board*, NAT’L LAB. REL. BOARD (last visited Aug. 29, 2019), <https://www.nlr.gov/about-nlr/who-we-are/board> [<https://perma.cc/C6G8-2P49>].

12. See, e.g., Betsy Klein et al., *Trump Mocks the #MeToo Movement at a Rally, Again*, CNN (Oct. 10, 2018), <https://www.cnn.com/2018/10/10/politics/trump-rally-mocks-me-too/index.html> [<https://perma.cc/YG9Y-JLA4>]; John Fritze, *‘It’s a Damn Sad Situation’: Trump Takes on #Metoo Movement, Mocks Kavanaugh Accuser*, USA TODAY (Oct. 3, 2018), <https://www.usatoday.com/story/news/politics/2018/10/02/donald-trump-mocks-christine-ford-appears-lament-metoo/1500306002/> [<https://perma.cc/YMG2-A7H7>].

13. Tippet, *supra* note 9, at 251-252.

14. *Id.*

15. Carlesen, *supra* note 1.

16. Tippet, *supra* note 9, at 272.

17. *Id.*

18. *Id.*

In February of 2018, less than six months into the modern #MeToo movement, the American Bar Association (ABA) passed a resolution encouraging employers to adopt and enforce policies to “prohibit, prevent and promptly redress harassment and retaliation based on sex, gender, gender identity, sexual orientation and the intersectionality of sex with race and/or ethnicity.”¹⁹

The #MeToo movement has shed light on the harms of using Nondisclosure Agreements (NDAs) to silence sexual assault and sexual harassment victims. The Harvey Weinstein scandal provided an excellent example of the dangers of using an NDA. For at least twenty years Weinstein used NDAs to silence his victims and keep his behavior secret.²⁰ This practice likely led to more sexual assaults because it prevented future acquaintances from being warned about his behavior.²¹ The increased attention to the harms of NDAs have led to a surge in state legislation restricting their use.²²

The #MeToo movement has likely made employers less hesitant to terminate those accused of sexual harassment.²³ The success of the #MeToo movement may also cause related issues to receive more attention. These issues may include pay equality, paid leave, mentorship opportunities for women, and disparities in caregiving responsibilities, which are disproportionately shouldered by women.²⁴

Some claim that the #MeToo movement is able to accomplish what the law has not.²⁵ This is because the subjective, “he said, she said” nature of sexual assault and sexual harassment can render the entire reporting process futile if a victim’s claims are summarily dismissed.²⁶ For example, if a victim knows that her claim of sexual assault will be summarily dismissed due to the subjective nature of the accusation, she will be much less likely to report the behavior. This mindset renders the entire reporting process futile. It can also have a chilling effect on future sexual assault reporting as the culture of inaction becomes understood. #MeToo movement advocates point to how these accusations are

19. Stephanie Francis Ward, *Time’s Up: As the MeToo Movement Continues to Shed Light on Sexual Harassment and Assault, Sparking Changes in Various Industries, the Legal and Judicial Systems Have Been Slow to Adapt*, 104 ABA J. 46, ¶ 13 (June 2018) (“Perhaps tellingly, this is the first ABA resolution to deal with sexual harassment since 1992—the year after Justice Clarence Thomas was appointed to the U.S. Supreme Court despite Senate confirmation hearings where Anita Hill testified that he harassed her . . .”).

20. Ronan Farrow, *Harvey Weinstein’s Secret Settlements*, THE NEW YORKER (Nov. 21, 2017), <https://www.newyorker.com/news/news-desk/harvey-weinsteins-secret-settlements> [<https://perma.cc/6XFP-GJWA>].

21. *Id.*

22. Daniels, *supra* note 2.

23. Tippet, *supra* note 9, at 278.

24. *Id.* at 298.

25. Catherine MacKinnon, *#MeToo Has Done What the Law Could Not*, THE NEW YORK TIMES (Feb. 4, 2018), <https://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html> [<https://perma.cc/5AVK-82TC>].

26. *Id.*

now being taken more seriously and, therefore, that sexual assault laws now have the enforcement mechanism that they were previously lacking.²⁷

Systemic legal changes are often slower to materialize than social changes. Some legal commentators predict that the #MeToo movement will lead to more gradual legal changes. For example, hostile work environment sexual harassment claims must meet the sufficiently “severe or persuasive” standard.²⁸ #MeToo advocates are hopeful that this standard will be easier to meet in the #MeToo era due to an increased number of victims going public.²⁹ In another example, Title VII of the Civil Rights Act of 1964 requires that the harassment be made “because of sex.”³⁰ Generally, this requirement is satisfied based on the theory that sexual advances by men to women are the result of sexual desire.³¹ The #MeToo movement may result in a paradigm shift regarding the motivations behind sexual harassment, from “misunderstanding suitors” to serial harassers.³² This shift would likely result in increased sanctions for sexual harassment behaviors.³³ Finally, the #MeToo movement may alter employer liability for sexual harassment by reducing the employer’s ability to avoid liability based on the affirmative defense that the supervisory harassment did not result in a tangible job action.³⁴ This is because the #MeToo movement may cause an increased awareness of the reasons women do not promptly report conduct, including legitimate fears of retaliation.³⁵

B. Negative effects

Modern polls show there is significant concern regarding the potential downsides of the #MeToo movement and skepticism regarding the movement’s benefits. Over 70% of people surveyed by the Pew Research Center say the increased focus on sexual harassment and sexual assault will lead to either fewer opportunities or no difference in opportunities for women.³⁶ Over 50% say the increased focus on sexual harassment and assault has made it harder for men to know how to interact with women in the workplace.³⁷ After just the first year of the #MeToo movement, the number of male managers who stated they are uncomfortable participating in work activities with a woman, such as mentoring,

27. *Id.*

28. L. Camille Hevert, *Is “MeToo” Only A Social Movement or a Legal Movement Too?*, 22 EMP. RTS. & EMP. POL’Y J. 321, 329 (2018).

29. *Id.*

30. 42 U.S.C. §§ 2000e to 2000e-17 (2012).

31. Hevert, *supra* note 28, at 327.

32. *Id.*

33. *Id.* at 327-328.

34. *Id.* at 332.

35. *Id.*

36. Nikki Graf, *Sexual Harassment at Work in the Era of #MeToo*, PEW RESEARCH CENTER (April 4, 2018), <https://www.pewsocialtrends.org/2018/04/04/sexual-harassment-at-work-in-the-era-of-metoo/> [https://perma.cc/3U9K-YTJ6].

37. *Id.*

increased 32%.³⁸ This second statistic is particularly troubling given the vital role mentoring plays in upward mobility for women in the workplace and also in reducing workplace gender inequality. One expert on workplace diversity points out that “mentoring is one of the main strategies used by women who have made their way to the top. . . . Mentoring relationships are the chisels that help women break through the glass ceiling.”³⁹

A male supervisor’s increased concern about inappropriate behavior may be altruistic, but if it leads to avoidance behaviors toward female employees it can be detrimental to their career advancement. This is similar to the controversial Mike Pence Rule, where he refuses to eat alone with any woman other than his wife and does not allow his female staffers to stay late at the office.⁴⁰ These avoidance behaviors are not only harmful to women,⁴¹ but also potentially illegal under Title VII.⁴² A recent survey found that 60% of women are “very” or “somewhat” concerned “about the #MeToo movement causing women to be denied professional opportunities because men are reluctant to work with them.”⁴³

Unfortunately, the legal profession is not immune to these same avoidance behaviors. Young female associates are reporting that “men don’t want to take women on the road with them, go out to dinner or have one-on-one meetings with the door closed because they are fearful their actions can be misconstrued.”⁴⁴

The awareness that the #MeToo movement has brought to the harms of NDAs has led to state-law restrictions on their use.⁴⁵ However, these new laws

38. *Working Relationships in the #MeToo Era*, LEAN IN (last visited Aug. 29, 2019), <https://leanin.org/sexual-harassment-backlash-survey-results> [<https://perma.cc/3MA2-RY4F>].

39. Stephanie Thomson, *#MeToo is Having Unexpected Consequences for Working Women*, WORLD ECONOMIC FORUM (March 7, 2018), <https://www.weforum.org/agenda/2018/03/metoo-campaign-women-isolated-at-work/> [<https://perma.cc/NF4B-6FJH>].

40. Roger Dooley, *From the Pence Rule to the Biden Effect*, FORBES (April 17, 2019), <https://www.forbes.com/sites/rogerdooley/2019/04/17/biden-effect/#a89dd4239100> [<https://perma.cc/SY9A-BPKS>].

41. Allen Smith, *Men’s Mentorship of Women at Odds with ‘Pence Rule,’* SOCIETY FOR HUMAN RESOURCE MANAGEMENT (March 15, 2018), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/male-mentorship-women-pence-rule.aspx> [<https://perma.cc/27WS-Q4AN>].

42. Joanna L. Grossman, *Vice President Pence’s “Never Dine Alone with a Woman” Rule Isn’t Honorable. It’s Probably Illegal*, VOX (Dec. 4, 2017), <https://www.vox.com/the-big-idea/2017/3/31/15132730/pence-women-alone-rule-graham-discrimination> [<https://perma.cc/VX2G-9R5J>] (“Title VII . . . does not allow employers to treat people differently on the basis of certain protected characteristics, one of which is sex. This means that an employer cannot set the terms and conditions of employment differently for one gender than for the other. This includes any aspect of the relationship between employer and employees—extending to benefits like equal access to the employer.”).

43. Only 7% of women were “not at all” concerned about this. Anna North, *Why Women are Worried About #MeToo*, VOX (April 5, 2018), <https://www.vox.com/2018/4/5/17157240/me-too-movement-sexual-harassment-aziz-ansari-accusation> [<https://perma.cc/E6Y5-5CTL>].

44. Ward, *supra* note 19, at ¶ 50.

45. Daniels, *supra* note 2.

will likely result in lower payouts for victims of sexual assault. This is because the secrecy of a settlement can be of great value to a company. When that benefit is removed from the negotiation, settlement becomes less attractive to the company. The publicity of sexual assaults—the result of reduced use of NDAs—may be beneficial to society overall, yet some victims may prefer to remain silent and thereby obtain greater compensation. These victims may also view anti-NDA legislation as a second imposition on their autonomy.⁴⁶ In extreme instances, a company's inability to negotiate for secrecy may result in the decision to not offer a settlement at all. In these instances, the only avenue for the victim to seek compensation is a trial where intimate details will be recalled and made public.⁴⁷

Over a year after the #MeToo movement began, the number of women who say they “frequently” or “occasionally” worry about being a victim of sexual assault has increased.⁴⁸ This coincides with an increase in reported sexual assaults in the same time period.⁴⁹ A potential positive explanation for these increases is that it is the result of increased awareness and willingness to report harassment, and not necessarily an increase in acts of sexual assault. Unfortunately, the evidence contradicts this explanation. Anonymous surveys show either no decrease or an increase in sexual assaults and sexual harassment since the #MeToo movement began.⁵⁰ The claim that the #MeToo movement has had a positive effect on awareness is also called into question by modern surveys. The number of adults who say workplace sexual harassment is a “major

46. Tippet, *supra* note 9, at 267. Furthermore, this plays into the mindset that the victims of sexual assault should be tasked with the burden of speaking out to end the practice as opposed to where the burden should lie—with the perpetrators of the assault. This is similar to past accusations that attempted to shift the blame of sexual assault to women based on their perceived flirtatiousness or the manner in which they dressed. Olabisi Adurasola Alabi, *Sexual Violence Laws Redefined in the “MeToo” Era: Affirmative Consent & Statutes of Limitations*, 25 WIDENER L. REV. 69, 76 (2019).

47. Tippet, *supra* note 9, at 267.

48. Justin McCarthy, *In Year Two of #MeToo, Fears About Sexual Assault Remain*, GALLUP NEWS SERVICE (Nov. 12, 2018), <https://news.gallup.com/poll/244724/year-two-metoo-fears-sexual-assault-remain.aspx> [<https://perma.cc/AV2X-A2JG>].

49. *Preliminary Semiannual Crime Statistics for 2018 Released*, FBI (Feb. 25, 2019), <https://www.fbi.gov/news/stories/2018-preliminary-semiannual-uniform-crime-report-released-022519> [<https://perma.cc/98AZ-SNC6>] (While most crimes showed significant decreases in the first half of 2018, rape increased.). Reported rapes in New York City increased 22.4% from 2017 to 2018, following a national trend. Ashley Southall, *As the Number of Reported Rapes Climb, Mayor Points to #MeToo*, THE NEW YORK TIMES (Jan. 6, 2019), <https://www.nytimes.com/2019/01/06/nyregion/rape-reports-nyc-me-too.html> [<https://perma.cc/BXE4-EQPV>].

50. *After #MeToo, Survey Finds Women Still Face Sexual Harassment in the Workplace*, CBS NEWS (Oct. 24, 2018), <https://www.cbsnews.com/news/women-still-face-sexual-harassment-at-work-lean-in-study/> [<https://perma.cc/3CET-YHHK>]; Luis Martinez, *Sexual Assaults in Military Rise to More Than 20,000, Pentagon Survey Says*, ABC NEWS (May 2, 2019), <https://abcnews.go.com/Politics/military-sexual-assault-numbers-increase-young-female-service/story?id=62762858> [<https://perma.cc/NY4S-XH4D>].

problem” has decreased during the #MeToo movement.⁵¹ And the number of adults who say people are “too sensitive” to the problem of sexual harassment has increased.⁵² These two recent trends are reflected among both male and female respondents, although there is a more pronounced change from the male respondents.⁵³ These surveys also found that adults with “no opinion” on the two questions decreased during the #MeToo movement,⁵⁴ which strengthens the claim that these recent changes are the result of the #MeToo movement.

Although beyond the scope of this essay, it is important to note that the two main accusations against the #MeToo movement are somewhat contradictory. Namely, if the movement has led to men avoiding women out of fear of being accused of inappropriate behavior, how have sexual assaults concurrently increased? Put another way, it is counterintuitive that increasing the potential costs of a behavior (here, sexual assault and sexual harassment) would lead to an increase in that behavior.

III. THE STUDY

A. Methodology

As demonstrated, there are conflicting claims as to the effects that the #MeToo movement has had on society in general, and specifically on the legal system. This study is designed to measure how jury decision making in sexual assault cases has changed since the #MeToo movement. In 2010, psychology researchers conducted a survey that asked mock jurors to respond to a sexual assault case summary (hereinafter, “2010 Wright study”).⁵⁵ By readministering this same case summary in 2019, changes in the decision-making of jurors can be measured.⁵⁶

The present survey consisted of background questions regarding age, political affiliation, and opinion of the #MeToo movement. Then, the case summary was provided, followed by a question of whether the survey-taker would render a guilty or not guilty verdict. Finally, participants were asked to provide a percentage level of certainty for the guilt of the defendant on a 0-100 Likert scale.⁵⁷ Two different versions of the case summary were administered in this 2019 survey. One version utilized the case summary of an alleged female

51. Megan Brenan, *U.S. Men Less Concerned Than in 2017 About Sexual Harassment*, GALLUP (March 18, 2019), <https://news.gallup.com/poll/247823/men-less-concerned-2017-sexual-harassment.aspx> [<https://perma.cc/28VT-6JBW>].

52. *Id.*

53. *Id.*

54. *Id.*

55. Daniel B. Wright et al., *Turning a Blind Eye to Double Blind Line-Ups*, 24 APPLIED COGNITIVE PSYCHOL. 849 (2010).

56. See Appendix A for the full case summary.

57. The scale allowed participants to enter any whole number from zero to one hundred.

sexual assault victim (the same from the 2010 Wright study). The other version changed the names and pronouns of the alleged victim to be male, with everything else remaining the same. The survey was conducted in the spring of 2019 and completed by 158 participants.

B. Results

When compared to the pre-#MeToo, 2010 Wright study, the results of this study are similar in respect to predictions of guilt and yet drastically different in respect to conviction rates. The average result from the 2010 Wright study was a 74.41% prediction of guilt compared to a similar 71.38% from the 2019 survey. However, the 2010 Wright study resulted in a 71.4% conviction rate while the current survey produced only a 36.6% conviction rate. The concurrent similarity in prediction of guilt and disparity in conviction rate between the pre- and post-#MeToo movement surveys remained constant when controlling for the participant's gender.

Proponents and opponents of the #MeToo movement predicted guilt at similar levels but convicted at disparate rates. Participants who support the #MeToo movement⁵⁸ averaged 70.86% certainty of guilt and a 57.1% conviction rate. Participants who do not support the #MeToo movement⁵⁹ averaged a similar 76.46% certainty of guilt but only a 27.3% conviction rate.

Analyzing the data in the current survey based on whether the participant received the case summary with the female alleged victim or the male alleged victim resulted in vastly different results. Namely, despite similar predictions of guilt in the two groups, the participants that read the alleged female victim case summary were over 70% more likely to convict than those that read about the alleged male victim.

C. Discussion

The primary result of comparing the pre- and post-#MeToo surveys is the drastic reduction in willingness to convict, despite similar predictions of guilt. This finding evokes several potential explanations, some more problematic than others. Perhaps the increased media coverage of sexual assault and sexual harassment has had the unintended consequence of normalizing the behavior, thus desensitizing the population. This then results in jurors having less of an emotional repulsion to the act, and therefore less willingness to convict. The post-#MeToo decreased conviction rates could also be the result of people viewing the #MeToo movement as having gone too far, and concluding that the movement should be reined in by exerting increased skepticism toward claims

58. Defined as participants who state they either "strongly agree" or "somewhat agree" with the MeToo movement.

59. Defined as participants who state they either "strongly disagree" or "somewhat disagree" with the MeToo movement.

of sexual assault. This is a particularly troubling explanation because the often-secretive nature of sexual assault produces an already low conviction rate against defendants.⁶⁰ Another possible explanation is that the recent increased social stigma of a sexual assault conviction has increased caution among the general public, who seek a higher level of certainty before imposing this greater punishment on someone.

It is important to note that the drastic decrease in conviction rates from the pre- and post-#MeToo surveys is not per se a movement in the wrong direction. The case summary used in these two surveys⁶¹ includes ample reasonable doubt. While the victim identified the defendant, and somewhat identified his license plate number and items in his car which would have been visible from the outside, this information would have also been available to people who were not sexually assaulted by the defendant. The strongest piece of evidence presented in the case summary that a sexual assault occurred is likely the failed lie detector test by the defendant. But this information is immediately followed by the explanation that “[t]his can occur for a number of reasons, including the person telling the truth but being nervous.” Furthermore, the case summary explicitly states that telephone records support the defendant’s alibi that he was at a friend’s house and that, given the distance between his parent’s house where he left from and his friend’s house, “it would have been unlikely that he could have committed the rape.”

In fact, the researchers from the 2010 Wright study adapted the case summary from the real-life case of Steve Titus, who was wrongfully convicted and then exonerated.⁶² Therefore, the result that this particular case summary led to more hesitancy to convict with post-#MeToo mock jurors when compared to pre-#MeToo mock jurors should not be interpreted as a finding that the #MeToo movement will result in more hesitancy to convict in *all* sexual assault cases. Perhaps the #MeToo movement has led to a more polarizing shift on both ends of the spectrum, meaning jurors may be both less likely to convict when reasonable doubt is present and more likely to convict when it is not.

The fact that liberals and #MeToo supporters produced similar results as did conservatives and #MeToo opponents is not surprising. While 62% of Democrats say that men getting away with sexual assault and sexual harassment

60. *The Criminal Justice System: Statistics, RAPE, ABUSE & INCEST NATIONAL NETWORK [RAINN]* (last visited August 29, 2019), <https://www.rainn.org/statistics/criminal-justice-system> [<https://perma.cc/Q3D8-BU5C>].

61. See Appendix A.

62. Meghan Barrett Cousino, *Steve Titus*, THE NATIONAL REGISTRY OF EXONERATIONS (last visited August 29, 2019), <https://www.law.umich.edu/special/exoneration/Pages/casedetailpre1989.aspx?caseid=331> [<https://perma.cc/VUB6-539P>]. (The Seattle Times author who exposed Titus’s innocence was awarded the Pulitzer Prize. Unfortunately, the damage to Titus’s reputation was irreversible. He lost his fiancée, his job, and his family’s savings. He died of a heart attack at the age of thirty-five while trying to sue the police for misconduct related to his conviction.)

is a “major problem,” only 33% of Republicans do.⁶³ The surprising result in the present survey is that liberals and #MeToo supporters are significantly more likely to vote not guilty than conservatives and #MeToo opponents. This may be a function of liberal skepticism of the criminal justice system (and, conversely, conservative trust in it) outweighing views on the #MeToo movement. Another possible explanation is that #MeToo supporters might be erring on the side of caution because of the harms to the movement that could be incurred by a false sexual assault conviction. Certain recent high-profile, false sexual assault allegations such as the Duke Lacrosse case⁶⁴ and Rolling Stones University of Virginia case⁶⁵ have not helped to advance the #MeToo movement. Recent research supports this notion that the general population, especially women, are very concerned with the harms to the movement caused by false accusations. 31% of women surveyed said false accusations of sexual assault and sexual harassment by women is a “major problem.”⁶⁶ Another recent survey found that 63% of women were “somewhat” or “very” concerned about men being falsely accused of sexual assault.⁶⁷ And this concern is likely well-founded, as some anti-#MeToo activists have exploited high-profile false accusations of sexual assault in an attempt to diminish the validity of the #MeToo movement. “#HimToo” was originally used to raise awareness of males who were sexually assaulted and sexually harassed.⁶⁸ But anti-#MeToo activists co-opted the hashtag, using it to refer to males falsely accused of sexual assault in an effort to belittle the #MeToo movement.⁶⁹

One of the strongest predictors of opinions on the #MeToo movement is political party affiliation.⁷⁰ When asked to judge the claim that false accusations of sexual assault are common, 77% of Republicans and only 37% of Democrats agreed with the statement.⁷¹ That gap is four times the gender gap from the same question.⁷² The same survey found that while 75% of Republicans think the

63. Graf, *supra* note 36.

64. William D. Cohan, *Remembering (and Misremembering) the Duke Lacrosse Case*, VANITY FAIR (March 10, 2016), <https://www.vanityfair.com/news/2016/03/duke-lacrosse-case-fantastic-lies-documentary> [<https://perma.cc/GLX3-AM3M>].

65. Sydney Ember, *Rolling Stone to Pay \$1.65 Million to Fraternity Over Discredited Rape Story*, THE NEW YORK TIMES (June 13, 2017), <https://www.nytimes.com/2017/06/13/business/media/rape-uva-rolling-stone-frat.html> [<https://perma.cc/9VJ4-Q5A2>].

66. Graf, *supra* note 36.

67. North, *supra* note 43.

68. Aleeza Kazmi, *#HimToo is the #AllLivesMatter of #MeToo*, THE STATESMAN (Dec. 2, 2018), <https://www.sbstatesman.com/2018/12/02/himtoo-is-the-alllivesmatter-of-metoo/> [<https://perma.cc/4828-TDSH>].

69. *Id.*

70. Chris Jackson, Mallory Newall, & Emily Chen, *Ipsos/NPR Examine Views on Sexual Harassment and Assault*, IPSOS (Oct 31, 2018), <https://www.ipsos.com/en-us/news-polls/NPR-Sexual-Harassment-and-Assault> [<https://perma.cc/FLF3-VY6E>].

71. *Id.*

72. *Id.*

#MeToo movement has gone too far, only 21% of Democrats do.⁷³ Despite these differences based on political party affiliation, my current study found conservatives were significantly more likely to convict the defendant, despite similar predictions of guilt. This may be because “law and order” conservatives were more likely to convict a defendant in almost any type of trial compared to liberals who were generally more skeptical of the justice system.⁷⁴

This current study’s use of two different case summaries found a significant difference in conviction rates between those who read about an alleged female victim (46.2% conviction rate) and those who read about an alleged male victim (27.0% conviction rate). It is tempting to attribute this disparity to an increased willingness to believe women in light of the #MeToo movement.

However, the predictions of guilt between the participants who read about the male vs. female alleged victim were similar. Therefore, participants were no more likely to believe the female alleged victim than the male alleged victim. There are many potential explanations for why participants were significantly more likely to convict a defendant accused of sexually assaulting a female than one accused of sexually assaulting a male, despite a similar likelihood of guilt. Perhaps participants, subconsciously or otherwise, viewed the female alleged victim as more sympathetic. This could have caused the participants in the female alleged victim group to err on the side of caution by convicting her attacker, therefore incapacitating him from future sexual assaults on other females. Maybe participants were more likely to know of a female acquaintance who was sexually assaulted than a male one and therefore more likely to associate the harms of sexual assault with female victims. This would be consistent with research showing that women are not only sexually harassed at higher rates than men, but they also experience more negative psychological effects from sexual harassment.⁷⁵

CONCLUSION

In a relatively short time, the #MeToo movement has had significant effects on attitudes toward sexual assault and sexual harassment. The results of comparing mock juror responses to a sexual assault case summary before and after the #MeToo movement provide evidence of the movement’s effects on juror decision making. Namely, people are significantly less likely to convict a defendant of sexual assault in the post-#MeToo era. This finding, and the potential explanations discussed, invite further research and discussion into how #MeToo has affected the public consciousness and how those changes can have drastic effects on the legal system. #MeToo advocates are encouraged to

73. *Id.*

74. John W. Clark & Kenneth Wink, *The Relationship Between Political Ideology and Punishment: What do Jury Panel Members Say?*, 8 *APPLIED PSYCHOL. IN CRIM. JUST.* 130, 130.

75. Ksenia Keplinger et al., *Women at Work: Changes in Sexual Harassment Between September 2016 and September 2018*, 14 *PLOS ONE* 1, 2 (July 17, 2019).

consider these potentially negative aspects of the movement. Doing so will likely lead to an enhanced ability to mobilize supporters and, perhaps more importantly, limit the ability of #MeToo opponents to cast the movement in a negative light, thereby creating more effective advocacy on both fronts.

APPENDIX A

Seventeen-year-old Nancy Von Roper was hitch-hiking at about 6:30 pm on the 12th of October, 1980. A light-blue compact car, driven by a bearded man, stopped and she was offered a ride. After a few minutes he exited the motorway, before he should have for the location she thought that she was being taken. When she looked confused he said “I have to stop and see my sister,” he drove some more and turned down a dirt road. He pulled to the side of the road. She felt an object at her throat. He said, “Do as I say or I’ll hurt you.” He had her undress and then raped her. He then had her get out of the car and he drove off.

She called the police at 7:22 pm. She described the rapist as 25–30 years old, six foot, medium build, full beard and wearing a three-piece cream-colored suit. The car was described as blue with temporary license plates displayed on the rear window. She remembered something hanging from the rearview mirror and a brown folder on the backseat. She showed police where the rape occurred. Tire tracks were photographed. At 1:20 am, police spotted a light-blue 1979 Chevette (small, two-door car) with temporary plates parked near to where the rape occurred. Tom Hoyle was in a restaurant with his fiancée, Gretchen Abraham. Hoyle was a manager of a restaurant chain, and drove the light-blue Chevette. Hoyle also fit the basic description given by Nancy Von Roper, except for being only 5’8” (the victim never saw the person standing).

The police asked Hoyle where he had been in the afternoon and evening. He explained he had been at his parents’ house—it was his father’s birthday—until 6:10 pm. He went to his best friend’s to watch TV at about 6:50 pm and made some phone calls. Telephone records verified that there was a call made at 7:00 pm from the house. Given the distance between his parents and his friend’s, it would have been unlikely that he could have committed the rape in this time. He left his friend’s house to pick up Gretchen at 9:20 pm. He gave police permission to search his car. He also gave them permission to take his photograph.

Tom Hoyle failed a lie detector test when asked if he had raped Nancy Von Roper. This can occur for a number of reasons, including the person telling the truth but being nervous. The victim stated that the number of the temporary license plate was either 667 or 776. The number on the license in Hoyle’s car was six digits, 661–677. It is unlikely that there would be another automobile fitting the description with such a similar, temporary license number. The police also reported that there was a folder like the one the victim described in the back of Hoyle’s car.

A police officer took pictures of five other men, all with beards, between 25 and 30, and about the same build as Hoyle. On the 13th, a police officer not involved in the case showed these pictures with the one of Tom Hoyle to Nancy Von Roper. The officer, who did not know which photograph was of Hoyle, showed all six photographs at the same time. Nancy Von Roper identified Tom Hoyle's photograph as the person who raped her.