

# Assessing Sexual Orientation Bias in Witness Credibility Evaluations in a Sample of Student Mock Jurors



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## Abstract

This paper examines the role that sexual orientation plays in potential juror decision-making. This inquiry is approached through the lens of queer criminology, in an attempt to shed light on the gay and lesbian experience as witnesses within the courtroom setting. The sample included 413 undergraduate students at a mid-sized upper Midwestern university. Respondents read closing argument summaries and summaries of key witness testimony in a hypothetical trial. The summaries were written in such a way that, if the reader believed the key witness, the reader should vote to acquit. The summaries were manipulated so that the key witness for the defense varied in gender and/or sexual orientation. There was a significant main effect for witness gender, with female witnesses rated as significantly less credible than male witnesses. There was also a significant main effect for respondent gender; female respondents assigned higher credibility scores to the witnesses in comparison with male respondents. There was no

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significant main effect for witness sexual orientation, but there was a significant interaction effect between witness gender and sexual orientation, with lesbian witnesses being rated as less credible than gay male witnesses. There was no significant effect of witness sexual orientation on respondents' verdicts.

## Introduction

Research has consistently found sexual orientation bias among heterosexuals, manifested through negative opinions and perceptions, particularly toward gay men, in a variety of different contexts (Herek, 2002; Talley & Bettencourt, 2008; Hudepohl, Parrott, & Zeichner, 2010). For example, such bias has been documented through negative attitudes expressed towards gays and lesbians among college students (Chonody, Siebert, & Rutledge, 2009; Cramer, Miller, Amacker, & Burks, 2013). On-campus bias is not limited to bias toward students, however, as student respondents also demonstrated more negative attitudes toward faculty members who identified as gay or lesbian, believing that the professors were attempting to forward a political agenda and forcing their beliefs about their own sexuality onto students (Anderson & Kanner, 2011).

Studies of bias in the workplace have found sexual prejudice directed toward both job-seekers and current employees. Volunteers who requested job applications from shopping mall retail stores while wearing a hat that said "Gay and Proud" were treated differently than job-seekers who wore sexual orientation-neutral hats, experiencing more "standoffish, nervous, and hostile and less interested and helpful" attitudes from employers (Hebl, Foster, Mannix, & Dovidio, 2002, p. 822). Prospective employees who apply via a resume that lists membership in a gay or lesbian campus organization were less likely to receive interview invitations than those who listed sexual orientation-neutral memberships (Drydakis, 2009; Tilcsik, 2011). Respondents rated the job performance of an applicant lower when the applicant disclosed his status as a gay man (Nadler, Lowery, Grebinoski, & Jones, 2014). Discrimination has also been reported by gay men and lesbians as employees within the workplace (Ragins, Singh, & Cornwell, 2007; Herek, 2009).

The precise extent of sexual orientation bias in American society is not known, but prior studies suggest that it is widespread in a variety of contexts. The present study focuses on sexual orientation bias within the context of the courtroom. This exploratory research seeks to examine how juror sexual orientation bias may manifest when a juror holding such biases is presented with testimony from a witness who happens to be gay or lesbian. Mock jurors who are biased against gay

men and lesbians would be likely express negativity toward these witnesses by finding them less credible than heterosexual witnesses.

## **Bias within the criminal justice system**

Many negative effects of sexual orientation bias have been documented through empirical research. Within the criminal justice system, gay and lesbian citizens have been found to display a hesitancy to participate in criminal case processing when victimized by the unlawful acts of others (Guadalupe-Diaz, 2013), often due to a fear of negative treatment at the hands of criminal justice professionals (Herek, Cogan, & Gillis, 2002; Rumney, 2009). In the courtroom setting, jurors have been found to treat gay and lesbian victims of crime more negatively than similarly situated heterosexual victims (Davies, Pollard, & Archer, 2006; Davies, Rogers, & Whitelegg, 2009). These studies tend to suggest that juries may be making assessments of victim credibility partially based upon the sexual orientation of the victim.

Sexual orientation is an example of an extralegal factor, which should not, but often will come into play in a juror's credibility assessment of a witness (Wexler, 2013). Extralegal factors are factors that are beyond considerations recognized by criminal law; they do not speak to the harm done by the offense or the defendant's blameworthiness, and are not "factors relating to the classic coercive crime-control principles of deterrence or incapacitation" (Robinson, Jackowitz, & Bartels, 2012, p. 740). Simply put, extralegal factors should not affect juror decision-making, but research indicates that they often do.

Existing research on juror decision-making lends support to the proposition that jurors are improperly considering extralegal factors when making determinations of witness credibility. Juror bias has been identified with respect to race (Levinson, Smith, & Young, 2014; Minero & Espinoza, 2016), gender (Nunez, Kehn, & Wright, 2010; Hodell, Wasarhaley, Lynch, & Golding, 2014), age (Ross, Jurden, Lindsay, & Keeney, 2003), and ethnicity (Phillips, 2010; Minero & Espinoza, 2016). Each of these extralegal factors has the potential of generating strong feelings in jurors who either relate to a witness or not, because of the characteristic.

However, there is little research into juror perception of gay and lesbian witnesses and how those perceptions may affect a juror's confidence in a witness's testimony. As an emerging field, continued research from a queer criminology perspective within all levels of the criminal justice experiences is necessary, but studies related to the experiences of queer witnesses is particularly lacking. We can draw some inferences on the experiences of LGB witnesses based upon data obtained through surveys administered by state court systems.

Two state court systems have undertaken studies to examine sexual orientation bias within their own systems to assess whether bias exists and to what extent, and to develop recommendations to ensure the fair treatment of all court users (The Judicial Council of California, 2001; The New Jersey Judiciary, 2001). The California study targeted court users, which included jurors, witnesses, litigants, attorneys, and court employees who shared their experiences in regards to perceptions of bias while in the courthouse. Survey respondents included 1,225 gay and lesbian court users. The survey itself actually generated hostility among some respondent, who felt that such a survey was a waste of court resources. Most survey respondents (56%) reported seeing or hearing negative words or treatment directed towards gay men or lesbians and 22% reported feeling threatened in the courthouse environment due to their sexual orientation.

This survey also supplies some information regarding the treatment of gay witnesses. Two survey respondents specifically indicated that a witness's sexual orientation was used to discredit his testimony. One of the respondents was a former juror who indicated that a fellow juror felt that a witness's status as a gay man equated to untrustworthiness. The second respondent was a witness in a case who commented that "[T]hey said I was probably 'out at a club or something' before I witnessed the accident," in what he felt was an attempt to devalue his credibility based upon his sexual orientation (The Judicial Council of California, 2001, p. 33).

The findings of the New Jersey Judiciary (2001) study suggested that gay and lesbian respondents were more likely to experience or observe biased behavior while in the court setting. Approximately 10% of the 135 LGB survey respondents felt that sexual orientation had some type of effect on the outcome of a case. One drawback in the New Jersey study findings is that court users are not separated by their roles, so it is unknown whether the bias was coming from professionals in the courtroom setting, such as attorneys, judges, or clerks, or from others such as jurors or witnesses.

Sexual orientation may be relevant in a court case, depending upon the specific details of the case (Young, 2012). For example, in a case of domestic violence between same-sex intimates, the basic facts of the case would reveal the sexual orientation of both the defendant and victim. In such a case, the jury would know that the couple is a gay couple and would be responsible for assessing the credibility of the victim-witness's testimony regarding the domestic violence. Young (2012) notes that while the most blatant instances of sexual orientation discrimination by jurors are likely directed at the parties to a case, more subtle bias can also be directed towards others within the courtroom, including witnesses.

It is important to remember that jurors' evaluations of witnesses and their testimony are often key to the outcome of a case (Dahl et al., 2007; Wessel et al., 2012). The jury is tasked with assessing the credibility of each witness who testifies in a case and then must make a determination as to the weight that should be afforded to the testimony (e.g., New York, n.d.). The entirety of a witness's testimony may be completely discounted when deemed appropriate (e.g., New York, n.d.). Therefore, a juror can theoretically discount the entirety of the gay or lesbian witness's testimony based upon nothing more than sexual prejudice. Such decisions by jurors have the potential to alter trial outcomes. If a gay witness is not found credible by a juror when a heterosexual witness giving the same testimony would be, there can be an impact on the outcome of a trial.

Though this is not an area that has been explored in existing studies, there is a substantial body of research that supports the existence in American society of sexual orientation prejudice. There are also a number of empirical studies documenting juror bias due to immutable characteristics. Therefore, it is possible that sexual orientation is a characteristic that jurors may be improperly considering and perceiving negatively when making credibility determinations. An understanding of sexual orientation bias and the way that it functions within the court system, particularly within the realm of juror decision-making, is an essential step toward ensuring justice for all parties involved in the criminal system.

## **Theoretical Framework**

This study seeks to examine the treatment of gay and lesbian witnesses by a group of student mock jurors through credibility assessments. These credibility assessments will be evaluated within the framework of queer criminology, which seeks to bring visibility to the queer experience within the criminal justice system (Ball, 2016). Though there have been many studies that explore juror perceptions, the queer experience has largely been ignored within existing literature. Juror studies have rarely considered the sexual orientation of witnesses or examined how gay and lesbian witnesses are perceived differently than their heterosexual counterparts.

Criminology has historically problematized homosexuality, often categorizing same-sex relations as criminal deviance (Groombridge, 1999). This view has been perpetuated through the "homosexual deviancy thesis" which suggests that the field of criminology's only interest in members of the LGBTIQ community is as subjects through which to study deviance (Ball, 2016). Criminological research continues to assume that participants in the criminal system are involved in

heterosexual relationships and maintain traditional family structures while often ignoring sexual orientation and gender altogether (Woods, 2014a). Queer theories challenge the “inferiority of different gender identities and sexual orientation established in the historical process of naturalization of the heterosexual ideal” (de Carvalho, 2014, p. 3), taking a critical approach that pushes back against the orthodox ways of thinking about criminal offending, gender, and sexuality (Woods, 2014b). Queer criminology has grown out of a need to explore LGBT perspectives, concepts, and theories within the larger field of criminology (Woods, 2014c).

The heteronormative assumption claims that people are assumed to be heterosexual unless otherwise identified, and once identified as nonheterosexual, members of the LGBT community are viewed differently, problematized, and treated as other (Herek, 2007). These assumptions are pervasive throughout criminological literature, where the concept of “otherness” is often marked by a belief that the individual is vulnerable, weak, or a victim (Panfil, 2014) or that the individual is a sexual pervert (Groombridge, 1999). The subordinate status of those who are not heterosexual has been reinforced within hetero-patriarchal societal institutions, including the law (Herek, 2007).

Numerous pieces of legislation designed to reinforce heteronormativity through the criminalization of homosexual behaviors has been enacted throughout the history of the United States (Buist & Stone, 2014). For example, same-sex relations, particularly those between males, have at some point been criminalized in nearly every state, with penalties spanning the range of possible punishments, up to and including death (Gledhill, 2014). Within the courtroom, violence, even fatal violence, against members of the LGBT community has been normalized, accepted, and condoned through mechanisms such as the gay panic and trans\* panic defenses (Wodda & Panfil, 2015). For example, in the case of the murder of Chanelle Pickett, the defense framed the victim as a deceitful person who brought about her own demise through an “unexpected bedroom revelation that she was trans,” resulting in a two-year sentence for assault and battery rather than a murder or manslaughter conviction for her killer (Allen, 2015) in an oft-cited example of one of the most successful uses of gay/trans panic (Wodda & Panfil, 2015).

Queer criminology challenges the heteronormative view of criminology by providing a critical perspective of the LGBT experience within the criminal justice system (Walker & Panfil, 2017). It goes beyond simply adding LGBTQ populations into the existing mix of criminological research (Woods, 2014b). Within existing studies, this is accomplished in two primary ways related to the use of the word “queer” (Ball, 2013). First, “queer” is used as a noun that describes an identity category as a means of including the perspectives of LGBT persons (Ball, 2013).

This approach focuses on the experiences of queer persons interacting with the criminal system (Ball, 2013). Second, “queer” can be used as a position that challenges normative views of crime and criminology (Woods, 2014c). Used in such a manner, queer criminological theory “can be used to assist in understanding particular groups of people and their lived experiences, representing them effectively within research and policy” (Ball, 2013, p. 6). Woods (2014c) argues that both perspectives are valuable and can provide important insight regarding LGBT experiences while also challenging the way that LGBT persons are currently treated within criminological research. Queering criminological theory can allow for appropriate and effective responses to the injustices often experienced by members of the LGBT community (Ball, 2013).

This study attempts to contribute to the existing body of queer criminological research by exploring how gay and lesbian witnesses are perceived when jurors have knowledge of their sexual orientation. The heteronormative assumption suggests that jurors will assume that all witnesses are heterosexual unless otherwise informed. This study explores how jurors react once they are informed that a witness is gay or lesbian. If a witness is viewed as “other” by the juror, this distinction may be marked by a belief that the witness is a sexual deviant and untrustworthy. A juror who views a witness as a deviant and untrustworthy would likely not find the witness credible.

Two research questions will be explored in this study: 1) whether there are differences in the ways that respondents rate the credibility of gay and lesbian witnesses in comparison to heterosexual witnesses, and 2) if such differences exist, whether there is an effect on verdict decisions.

## **Method**

Data were collected through written surveys administered to 413 undergraduate students at a medium-sized upper Midwestern university, using a nonrandom convenience sample of students who were included by virtue of their attendance in selected introductory-level general education classes and classes within the criminal justice curriculum. Some respondents were given partial course credit for participating in the survey.

A survey packet was distributed to individuals who agreed to participate. The packet included summaries of prosecution and defense closing arguments in a hypothetical homicide case and a summary of the testimony of the defense witness (See Table 1). The homicide case concerns the murder of a woman, allegedly by her ex-boyfriend. The defense’s primary witness’s gender and sexual orientation was

manipulated to evaluate any differences in how the witnesses were perceived by the mock juror respondents.

Mock trials are commonly presented to respondents in jury studies in a number of ways, including by videotaped mini trials (Lynch & Haney, 2011), through vignettes (Ragatz & Russell, 2010), summaries (Carson, 2008), or a combination of methods (Larson & Brodsky, 2010). In the present study, respondents were given summaries of closing arguments and the testimony of the manipulated witness, which highlighted the relevant facts that should be considered when making a decision about the case. These summaries were designed to mirror closing statements in actual criminal trials, which generally are a summation of the evidence in the light most favorable to the presenting side. Bulleted lists rather than more detailed narratives were utilized due to a limited amount of time to administer the surveys (approximately 20-25 minutes per class).

**Table 1.** Summary of Prosecution’s and Defense’s Closing Arguments and Witness Testimony

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Important points in the Prosecution’s case:
<ul style="list-style-type: none"><li>• Amanda Gregory and Jack Joseph were formerly in a romantic relationship</li><li>• Jack ended their relationship on January 15 and Amanda had a hard time getting over him</li><li>• Amanda frequently texted, emailed, and called Jack following the breakup, up until the time of her death on October 10</li><li>• Jack told at least two co-workers that he wished Amanda would “just go away”</li><li>• Amanda was shot and killed in her apartment on October 10 at approximately 8:15 p.m.</li><li>• The murder weapon was a firearm registered to Jack Joseph</li><li>• Mary Peters, who lives in the building next to Amanda’s building, heard the gunshot and looked outside of her window to see what had happened. She saw a man running out of Amanda’s building within 1-2 minutes of hearing the gunshot. She described the man’s clothing as being a gray sweatshirt and faded jeans. She described the man as being “a white man, close to 6 feet tall with dark hair.”</li><li>• Mary Peters testified that Jack Joseph looks like the person that she saw but that she was not 100% certain that it was him</li><li>• Jack Joseph is a white man, 6’ 1”, with brown hair</li><li>• A gray sweatshirt and faded jeans similar to the ones seen by the witness were located in Jack Joseph’s apartment and the clothing had been recently washed</li><li>• Jack Joseph has no alibi for the time of the murder – he claims to have been at home alone. There are no witnesses who support Jack’s claim that he was at home at 8:15 p.m. on October 10.</li></ul>
Important points in the Defense’s case:
<ul style="list-style-type: none"><li>• Following their breakup, Amanda harassed Jack, sometimes calling and texting him up to 200 times a day and emailing several times a day</li></ul>

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**Table 1. (cont.)** Summary of Prosecution's and Defense's Closing Arguments and Witness Testimony
 

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- Jack changed his telephone number nine times between January 15 and October 10 and set up four new email accounts during that time
- Jack told co-workers that he wanted Amanda to go away because he was so frustrated with her harassment and the way she kept getting his new phone numbers and email addresses by tricking his friends and family members
- Jack's apartment was burglarized on September 17 and one of the items that was stolen was the handgun that turned out to be the murder weapon
- Amanda was the primary suspect in the burglary but there were never any charges filed in the case
- Jack was home alone at the time of the murder, which occurred at 8:15 p.m. on a weekday. A neighbor saw him picking up his mail in the building lobby at about 6:30 p.m. and they rode upstairs in the elevator together. Jack told the neighbor that he had brought home a lot of paperwork to do that evening. Jack seemed to be his regular self during the conversation and did not seem agitated or upset.
- There was no physical evidence located at the murder scene or at Jack's apartment that connected Jack to the murder

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 Summary of defense witness [Joshua/Linda] Murphy's testimony:
 

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- [Joshua/Linda] moved into Amanda's building about 6 weeks before the murder and lives in the apartment directly below Amanda's apartment
  - [Joshua's/Linda's] apartment door faces the stairs so anyone coming down the stairs would pass directly in front of [his/her] door. There is an elevator in the building, located at the opposite end of the building from [Joshua's/Linda's] apartment
  - [Joshua/Linda] was walking [his/her] [boyfriend/girlfriend] out when they heard a loud popping sound and then a thud, which they thought was something falling and breaking upstairs
  - [Joshua/Linda] hugged and kissed [his/her] [boyfriend/girlfriend] in the doorway with the door open
  - [Joshua/Linda] saw a man in a gray sweatshirt run down the stairs
  - The man was approximately 6' tall and had sandy brown hair.
  - [Joshua/Linda] does not think the man in the gray sweatshirt saw them because the man seemed to be in a rush
  - [Joshua/Linda] testified that [he/she] does not know Jack Joseph
  - [Joshua/Linda] did not pick Jack Joseph out of a photo lineup
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The prosecution's summary is designed to suggest the defendant's guilt to the reader. The defense's summary explains some, but not all, of the evidence against the defendant. Testimony from two witnesses is presented. The prosecution (control) witness implicates the defendant with a fairly generic description of the presumed killer (white male, close to 6' tall, dark hair) who was seen running from the scene, and his clothing (faded jeans and a gray sweatshirt), but is unable to identify the defendant with certainty. The defense witness saw the presumed killer

running down the stairs in front of the witness's doorway, and negates the identification of the defendant as the killer. The witnesses did not know the victim or the defendant and neither had any stake in the outcome of the case.

The strength of the defense witness's testimony should sway the respondents to render a verdict of not guilty if the respondents believe the defense witness. The defense witness's gender and sexual orientation were manipulated so that the witness would be a gay man (n=103), a heterosexual man (n=99), a lesbian woman (n=107), or a heterosexual woman (n=104). The witness's gender was suggested through his or her first name (Joshua or Linda) and through either masculine or feminine pronouns (he/she, his/her). The witness's sexual orientation was suggested through a description of the witness walking a boyfriend or girlfriend to the door and hugging and kissing him or her. Manipulation checks ensured that respondents understood the witness's gender and suggested sexual orientation based upon the information presented in the scenario.

Respondents were asked three questions regarding the credibility of the witness statements. These measures were each scored on a 7-point Likert scale, with 1 representing the lowest credibility determination and 7 representing the highest. Respondents were asked to rate the witness's trustworthiness, believability, and overall credibility. The total score was calculated for each witness based upon the respondent's ratings of believability, trustworthiness, and overall credibility, which was then used to conduct the analyses, hereinafter referred to as the aggregate credibility score. The Cronbach alpha coefficient was .84 for the three items. Analysis of the aggregate credibility score as applied to the control witness yielded similar internal consistency with a Cronbach alpha coefficient of .85. Such high alpha values indicate strong interdimensional indices.

## Results

Respondents were almost evenly split by gender (male: 52.5%, n= 217; female: 47.5%; n=196). Respondent ages ranged from 18 to 51, with 91.8% (n=379) of respondents being age 18-22. Most respondents were first or second year students (39.7%, n=164 and 29.3%, n=121, respectively). Juniors comprised 17.7% of the sample (n=73) and seniors comprised 13.1% of respondents (n=54). One student indicated being a transfer student but did not indicate year in school. The respondents were primarily white (89.3%, n=369), which was expected given the demographic of the institution as a whole. Most respondents (97.1%, n=401) reported a heterosexual orientation. Of the respondents who did not identify as heterosexual, 75% were male (n=9) and 25% were female (n=3).

### Credibility Scores

The overall mean aggregate credibility score assigned to the manipulated witness in the hypothetical case for the full sample was 15.73 (SD = 3.19). The scores ranged from a low score of 3.0 to a high score of 21.0. The overall mean aggregate credibility score assigned to the control witness was slightly lower at 14.92 (SD = 3.38). Scores for this witness ranged from a low score of 5.0 to a high score of 21.0.

A 2 (witness gender: male/female) by 2 (witness sexual orientation: heterosexual/ homosexual) by 2 (respondent gender: male/female) ANOVA was performed, with aggregate credibility scores as the dependent variable. Means are shown in Table 2. This model was statistically significant at the  $p = .10$  level ( $F(7, 406) = 1.80, p = .09$ ). There was a statistically significant main effect for both witness gender,  $F(1, 412) = 5.36, p = .02, \eta^2 = .013$ , and for respondent gender,  $F(1, 412) = 3.79, p = .05, \eta^2 = .009$ , but not for witness sexual orientation,  $F(1, 412) = .003, p = .96, \eta^2 = .001$ . Male witnesses were found to be more credible witnesses and female respondents rated witnesses as more credible overall.

**Table 2.** Credibility Scores by Witness Sexual Orientation and Gender and Respondent Gender

Respondent Gender	Witness Sexual Orientation	Witness Gender	n	ACS	SD
Male	Homosexual	Male	59	15.98	3.05
		Female	55	14.98	3.32
	Heterosexual	Male	48	15.48	3.71
		Female	55	15.36	3.54
Total Male Respondents			217	15.46	3.39
Female	Homosexual	Male	44	16.82	2.52
		Female	52	15.21	3.57
	Heterosexual	Male	51	16.20	2.73
		Female	49	16.02	2.57
Total Female Respondents			196	16.03	2.93
Total			413	15.73	3.19

Note. ACS = Aggregate Credibility Score. SD = Standard Deviation

Male witnesses were rated as more credible ( $M = 16.10$ ,  $SD = 3.05$ ) than female witnesses ( $M = 15.38$ ,  $SD = 3.29$ ). Female respondents assigned higher credibility ratings for all witnesses ( $M = 16.03$ ,  $SD = 2.93$ ) in comparison to male respondents ( $M = 15.46$ ,  $SD = 3.39$ ).

The interaction effect between witness gender and witness sexual orientation was significant at the  $p = .10$  level;  $F(1, 412) = 3.42$ ,  $p = .07$ ,  $\eta^2 = .008$ . Simple effects analyses were conducted on witness sexual orientation at each level of witness gender to investigate this interaction. These analyses revealed that there was a significant difference between the scores assigned to the gay male witness and the lesbian female witness,  $F(1, 412) = 8.78$ ,  $p = .003$ ,  $\eta^2 = .021$ , with the lesbian female witness rated as less credible.

## Sexual Orientation and Verdict

Respondents were asked to deliver a forced choice verdict of guilty or not guilty in the hypothetical case. Most respondents ( $n=338$ ; 81.8%) voted to acquit the defendant. Seventy-four respondents (17.9%) voted to convict the defendant. One respondent did not indicate a verdict.

A second outcome measure, private belief, was also used to gauge respondents' attitudes regarding the defendant's guilt. Some respondents may have felt that the defendant was guilty, but that there was not sufficient evidence to warrant a guilty verdict. Respondents' private belief ratings scores spanned the full range of possible scores, with the minimum assigned score being a -5 (defendant killed the victim) and the maximum a +5 (defendant did not kill the victim). Just over half of the respondents ( $n=207$ ; 50.1%) indicated that they believed the defendant to be innocent of the offense while 39.7% ( $n=164$ ) of respondents indicated that they believed the defendant to be guilty. The remaining respondents ( $n=42$ ; 10.2%) indicated a neutral response. The distribution of private belief ratings appears in Figure 1.

A chi-square test of independence was utilized to determine whether there was any significant relationship between respondents' private belief in defendant's guilt or innocence and the witness's sexual orientation. Respondents were grouped into three groups: those who believed the defendant guilty, those who believed the defendant innocent, and those who were neutral. The results were not statistically significant ( $\chi^2(2, 386) = .54$ ,  $p = .77$ ,  $\phi = .036$ ).

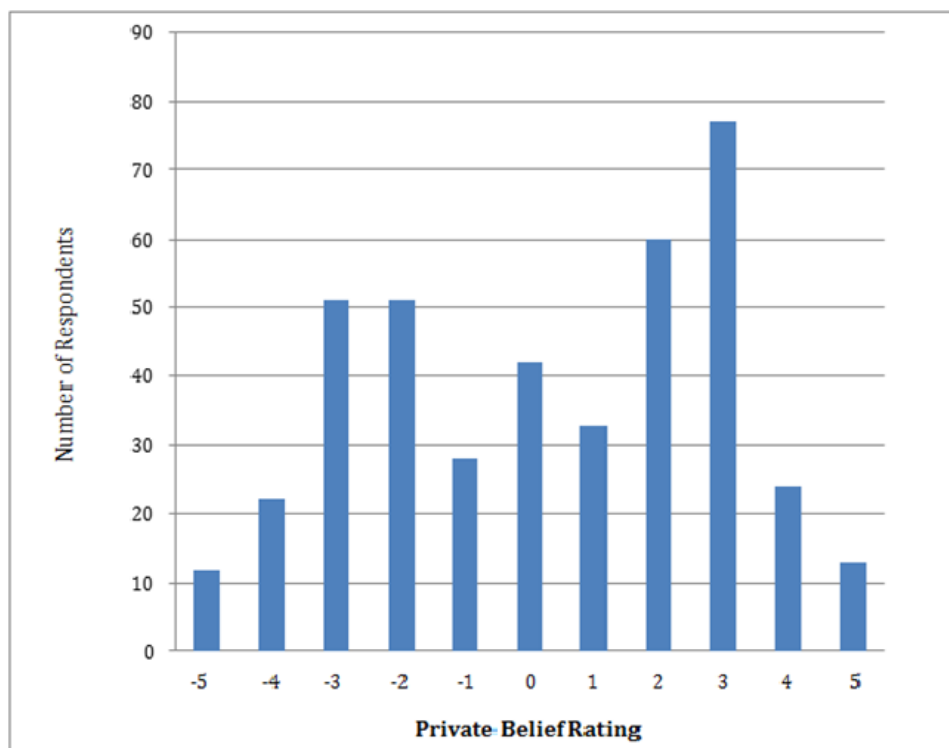
Belief in guilt was nearly evenly split regardless of the witness's sexual orientation. Of the 164 respondents who believed that the defendant was guilty,

53% (n=87) evaluated a gay or lesbian witness and 47% (n=77) evaluated a heterosexual witness. Where the respondent believed in the defendant's innocence (n=207), 49.3% (n=105) evaluated a gay or lesbian witness and 50.7% (n=105) evaluated a heterosexual witness.

Respondents' verdicts were then evaluated. A chi-square test of independence was conducted to determine whether the actual verdicts (guilty/not guilty) varied significantly based upon which witness they were evaluating (gay male, heterosexual male, lesbian female, heterosexual female). No significant association between the witness and the verdict was found,  $\chi^2(3, 409) = 2.49, p = .48, \phi = .078$ .

A chi-square test of independence was then utilized to examine sexual orientation more broadly, to determine whether the conviction rates varied when the witness was heterosexual versus homosexual. This analysis was again not significant,  $\chi^2(1, 412) = .14, p = .71, \phi = .018$ , with nearly identical conviction rates regardless of witness sexual orientation (homosexual witness: 18.7% conviction rate; heterosexual witness: 17.2% conviction rate).

**Figure 1.** Distribution of Respondent Private Belief Ratings



To determine the respondent characteristics that best predicted witness credibility scores, a multiple regression was conducted using respondent gender (male/female), age (18-22/23+), race (white/other), year in school (first or second year/third or fourth year), and sexual orientation (heterosexual/other). See Table 3. None of the identified characteristics were significant for predicting credibility scores for heterosexual witnesses. Gender, race, and sexual orientation were also not significant predictors of credibility scores for either the gay or lesbian witnesses. Female gender and higher age were significant predictors at the  $p = .10$  level for assigning higher credibility scores to the gay witness. Year in school was a significant predictor at the  $p = .10$  level for assigning higher credibility scores to the lesbian witness. No other variables were significant in predicting credibility scores.

**Table 3.** Standardized Regression Coefficients Predicting Witness Credibility Scores

Variables	Male				Female			
	Gay		Heterosexual		Lesbian		Heterosexual	
	$\beta$	$p$	$\beta$	$p$	$\beta$	$p$	$\beta$	$p$
Resp. Gender	-.17	.09*	-.12	.24	-.06	.55	-.06	.58
Age	.20	.07*	-.12	.28	.04	.73	-.05	.68
Race	.04	.71	-.08	.48	-.03	.73	-.01	.93
Year in School	.03	.81	.08	.50	.19	.06*	-.09	.42
Resp. Sexual Orient.	.003	.98	.13	.23	-.05	.65	.11	.33

Note. \* $p < .10$

Gender: 0 = female respondent; 1 = male respondent

Age: 0 = age 18-22; 1 = 23+

Race: 0 = Nonwhite; 1 = White

Year in School: 0 = first/second year; 1 = third/fourth year

Respondent Sexual Orientation: 0 = not heterosexual; 1 = heterosexual

## Discussion

The purpose of this study was to examine whether the sample of student mock jurors rated witnesses differently based upon the witness's sexual orientation and to determine whether differences in witness credibility ratings could potentially sway verdicts. While differences were found based upon both gender and sexual orientation, it does not appear that these differences had any effect on case outcomes.

There was no significant main effect found for witness sexual orientation. However, a significant main effect of witness gender was found. Male witnesses were found to be more credible overall than the female witnesses, regardless of sexual orientation. This outcome is consistent with prior research on perceptions of gender credibility that show higher confidence ratings assigned to males (Weibel, Wissmath, & Groner, 2008; Nagle, Brodsky, & Weeter, 2014). When witnesses in actual trials are assessed, jurors tend to assign higher credibility ratings to male witnesses than female witnesses (Nagle et al., 2014).

There was also a significant interaction effect between witness gender and witness sexual orientation where lesbian witnesses were found to be less credible than gay male witnesses. Jury studies that have examined victim-blaming based upon sexual orientation suggest a lower level of confidence placed in victim-witnesses who are gay or lesbian (Burt & Demello, 2003; Davies et al., 2006; Davies et al., 2009). One possible explanation for the lesbian witness being found least credible may be that the results found in this study are a function of negative stereotypes of some lesbians. In studies of lesbian stereotypes that ask respondents to list and rate characteristics of lesbians, respondents identified "butch" as a characteristic and rated it in more negatively than other identified traits (Geiger, Harwood, & Hummert, 2006; Brambilla, Carnaghi, & Ravenna, 2011). The respondents here may have adopted a negative stereotypical view of the lesbian witness, which could have resulted in a negative perception of the witness and lower credibility ratings of that witness. Finding the lesbian witness less credible than the other witnesses is consistent with viewing her as "other," a perspective that could lead respondents to believe that this witness is a deviant and therefore, less credible than others.

Female respondents assigned significantly higher credibility scores to witnesses than did male respondents, with a higher mean score assigned to every witness. Female jurors have been found in previous studies to assign higher credibility ratings in comparison to male jurors in cases of sexual assault, which are the most frequently studied cases regarding witness credibility (Davies & Rogers, 2009; Bottoms, Peter-Hagene, Stevenson, Wiley, Mitchell, & Goodman, 2014). The results of this study are consistent with prior research comparing female and male credibility assessments of witnesses.

Female gender was also found to predict a significantly higher credibility score assigned to the gay male witness. Male gender is a predictor of higher levels of sexual prejudice, especially toward gay men (Ahrold & Meston, 2010). Males tend to be more uncomfortable with sexual minorities in general in comparison to females (Herek, 2002), which could lead them to disbelieve the testimony given by

the gay witnesses. Because females tend to be less prejudiced toward sexual minorities, and particularly toward gay men, they would be expected to place more confidence in the testimony of the gay male witness than would the male respondents.

Year in school was a significant predictor of higher scores toward lesbian witnesses; respondents in their third and fourth year of school rated the lesbian witness as more credible than respondents in their first or second year of school. A higher year in school has previously been found to reduce feelings of prejudice in students as students tend to have experiences that mediate prejudices during their college years (Ventura, Lambert, Bryant, & Pasupuleti, 2004; Jayakumar, 2009). It is possible that the respondents in this study who have been in school longer have had more exposure to experiences that would mediate prejudices, such as making friends who are lesbian and these experiences translated to more positive views of the lesbian witness.

Higher age was a significant predictor of higher credibility scores assigned to the gay male witness, with respondents aged 23+ assigning higher scores than those aged 18-22. This may also relate to the experiences that older students have which can potentially mediate prejudice. Prior research suggests that individuals in their adolescent years display higher levels of sexual prejudice than adults in their 20s (Hooghe & Meeusen, 2012). Jenkins, Lambert, & Baker (2009) found that as age increased among white college students, there was also a more positive view of gays and lesbians, an increased level of support for gay rights, and a greater willingness to socialize with sexual minorities. The findings in this study are consistent with the suggestion that aging mediates prejudice amongst young persons.

The role of the manipulated witness is an important consideration when evaluating the results of this study. This witness had no relationship with the defendant and the witness's testimony was solely to provide an account of relevant eyewitness information. The defense witness did not know either the victim or the defendant and the verdict would not have a direct impact, positive or negative, on his or her life. Prior research on the evaluation of witnesses based upon their relationship to the defendant suggests that jurors find this type of witness to be most credible (Hosch, Culhane, Jolly, Chavez, & Shaw, 2011; Dahl & Price, 2012). The fact of this witness's lack of personal interest in the outcome of the case may have mediated sexual orientation prejudices held by the respondents. It is possible that sexual orientation will not be a consideration for jurors when there is a witness of this nature.



Another possible explanation may be found in the study design, which asked respondents to read scenarios, and then make assessments rather than actually being in the same room with the testifying witness. Previous research has found that males who hold sexual prejudices tend to be more uncomfortable in situations where they are required to interact with gay males, possibly resulting from a fear of a negative reaction from peers, including being labeled gay (Talley & Bettencourt, 2008). As the respondents in this study were not required to interact with the witnesses, but merely rate their perceived credibility as witnesses, they may have displayed a less negative reaction than would otherwise be expected.

In regards to the outcomes in the hypothetical case, there were no significant differences found between trials where the witness was gay/lesbian in comparison to where the witness was heterosexual. Respondents were not more likely to vote to convict the defendant when the witness was gay or lesbian. No significant association between sexual orientation and verdict was found. There also was no significant association between private belief in the defendant's guilt and the sexual orientation of the witness.

The respondents in this study did not appear to treat the gay and lesbian witnesses differently by finding these witnesses less credible in aggregate than the heterosexual witness. However, the lesbian witness was found to be less credible than all other witnesses, suggesting an interaction effect between gender and sexual orientation that was unique to the lesbian witness. However, the sexual orientation of the witness bore no relationship to the verdict.

The results found in this study provide insight into the treatment of gay and lesbian witnesses by jurors, which can provide a starting point for future studies that seek to investigate the LGB experience within the courtroom. There are many contexts by which a member of the LGBTQ community may be a participant in the court process; this study explores just one. Building upon the results found here, a more complete picture can arise of the queer experience within the courtroom.

## **Policy Implications**

This study raises important concerns regarding gender and the way that jurors determine credibility. Mock jurors rated female witnesses as less credible than male witnesses though the testimony given was identical, suggesting a bias against the female witnesses. Such biases can be incredibly damaging to a case where the testimony of a female witness, such as a rape victim, is germane to the case (Tetlow, 2012). Female witnesses who are victims of violence are often put on trial themselves when the jury considers their behavior rather than evaluating the

defendant's blameworthiness (Tetlow, 2012). Where victim witnesses are disbelieved, there is a danger of discriminatory acquittals, where a defendant is acquitted based upon jury discrimination against the victim (Tetlow, 2009).

During the voir dire process, there are questions asked of venirepersons that have the potential of getting to and screening out bias; for example, jurors can be asked about racial prejudice if it is clear that race will be relevant to the issues at hand (Tetlow, 2009). Asking questions meant to uncover general biases during voir dire as a matter of course is one method by which the courts can protect the rights of participants in the court process. Tetlow (2009) advises requiring judges to allow questions during voir dire that can potentially reveal gender-related biases held by jurors, as a means of protecting victims. Though there is great concern for the rights of criminal defendants because they are the ones whose liberty is at stake in a criminal case, juror decision-making based upon biases have the potential of subverting justice, such as when the jury returns a discriminatory acquittal.

One step toward eliminating juror bias could be for judges and attorneys to bring the biases out in the open. Encouraging jurors to be aware of characteristics such as race, gender, sexual orientation, etc., and to process how such characteristics may impact decision-making process can help jurors to identify when they are making impermissible judgments (Lee, 2008; Shay, 2014). Role switching, which asks jurors to imagine that the case involves a straight man rather than a gay man, or a female rather than a male, or a white defendant instead of a black defendant, is another technique that can be used during voir dire to mediate prejudice (Lee, 2008).

Juror education programs have also shown to have positive results on juror decision-making (Ellison & Munro, 2009). Mandating education programs for venirepersons who arrive at the courthouse for jury duty could go a long way in reducing juror bias. Such programs could aim to educate jurors on permissible and non-permissible factors when determining witness credibility. The implementation of a program that lets jurors know that their biases must be put aside during the court process could be effective in ensuring that jurors are not considering extralegal factors in their determinations of credibility. The charge to the jury, read to the jury in open court by the judge, can also be used to put jurors on notice of the impermissibility of considering extralegal factors (Lee, 2008).

Though sexual orientation bias was not found in this study, the fact that the female witnesses and particularly the lesbian witness received the lowest credibility scores deserves mention. The limited existing research on juror sexual orientation bias does provide evidence that such bias has found a place in the jury box (Davies et al., 2006; Davies et al., 2009). Pointed questions by attorneys conducting voir

dire, juror education programs, and judicial instructions can be used in much the same way for both gender and sexual orientation as a means of screening out biases in jurors. Such policies would be fairly simple to implement, would not be unduly time-consuming, and have the potential to provide protections for everyone involved in the court process.

It is important that additional research grounded in queer criminology focus on the queer experience within the courtroom. Members of the LGBTQ community may be involved in court proceedings in any number of different ways beyond just being criminal defendants or victims, where is where much research is concentrated. Further research should explore the varied roles that may be played by LGBTQ employees, attorneys, and users of court services in order to build a complete picture of how LGBTQ persons experience the court system. Such research will help to build inclusive policies that can potentially neutralize the negative effects of sexual orientation bias within the court environment.

## **Limitations**

The generalizability of this research is limited as the sample was a convenience sample of students from one university, which cannot be said to represent the population as a whole. In addition, the sample was a homogenous sample comprised of young, white respondents. The format of the study, though designed to mimic the closing arguments in a criminal trial, was very different from what an actual juror in a real criminal trial would experience in a courtroom. An actual juror would have the benefit of a wide array of evidence that would include viewing and evaluating each witness as they testified. It is also possible that some respondents detected the true purpose of the study and intentionally selected responses that they believed were politically correct rather than revealing their true inclinations.

## **Conclusion**

Previous studies have firmly established that juror biases do exist and that jurors may be wrongfully considering factors that should not come into play in a case. However, this study represents a unique scenario where jurors are evaluating a witness who has no stake in the outcome of the case. This study suggests that sexual orientation may not be an important consideration in such a scenario. It is vital that further research, particularly research centered in queer criminology, be conducted in this little explored area. Previous studies have supported the supposition that jurors are likely bringing their prejudices into the jury box with

them, and further study will provide a better understanding of the dynamics between sexual orientation prejudice and juror perceptions and how these factors play out in the courtroom and also shed further light on the queer experience within the courtroom.

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