

Institution: University of Sussex

Unit of Assessment: UoA 20 Law

Title of case study: Challenging rape myths and re-directing juries

1. Summary of the impact

The research of Prof Jennifer Temkin on rape myths and stereotypes has influenced the way in which rape trials are conducted and drawn the attention of participants in the criminal trial process to the dangers of stereotyping victims and defendants.

The effects of Temkin's research include:

- bringing about change to the instructions given by judges to juries in rape trials; see the revised guidance introduced by the Crown Court Benchbook used universally by the relevant judges;
- training prosecutors, advocates and judges in rape myths and the risks of stereotyping;
- raising public awareness about rape myths and stimulating media debate around rape, sexual stereotyping and the assumptions made about victims and alleged perpetrators of sexual offences; and
- informing government policy on measures relating to rape investigations.

2. Underpinning research

The research underpinning this case study was an empirical study carried out by Temkin in 2006–08 in conjunction with Prof B Krahe, Professor of Psychology at Potsdam University and supported by a competitive funding award from the German Science Foundation. The context for the research was the persistently low conviction rate for sexual offences, despite various legislative changes. The key legal questions in relation to non-consensual sexual offences are whether the complainant in fact consented or whether the defendant had reasonable grounds to believe that there had been consent. The Temkin study investigated the possibility that it is attitudes, rather than law, that need to change before conviction rates might increase. In other words, myths about 'real' rapes could be central to answering the crucial legal question of whether consent existed in a particular case.

The research therefore addressed the extent to which stereotypes of what 'real' rape looks like can influence all stages of the criminal process, from whether a rape is reported in the first place right through to whether a conviction ensues after a jury trial. Police treatment of the victim may be influenced by notions of what constitutes rape, as might be the decision of the Crown Prosecution Service, since the further away from the 'real' stereotype the case seems to be, then the less likely may be the decision to prosecute. In court, barristers and judges may also have their own reliance on stereotypes and the members of the jury may form negative views of victims from stereotyping myths and, as a result, not find the defendant guilty. There is accordingly a potential 'justice gap' between the number of reported rapes and the number of convictions that might be explicable by the effects of stereotypical perceptions of 'real' rape (e.g. that rape only occurs by a stranger, outdoors, threatening or using violence upon a victim screaming and struggling to escape and who reports the attack immediately, or that there is no rape where the woman has been drinking, flirtatious or wears revealing clothing). Temkin's and Krahe's empirical work was thus designed to test the prevalence and effect of rape myths and stereotypes.

The research consisted of a number of studies:

- Law students (and thus part of the likely pool of lawyers for the future) were asked to react to a number of written sexual-assault scenarios. The results showed adherence to the 'real rape'

Impact case study (REF3b)

stereotyping in which, for example, the defendant was seen as less blameworthy when the parties knew each other.

- A similar study was conducted with more than 2,000 members of the public eligible for jury service. Again there was conformity with the stereotyping thesis.
- The research also tested the effectiveness of a Home Office poster campaign aimed at highlighting questions of consent. Temkin's research found that it made no difference to attitudes whether the sample group had seen or not seen the allegedly hard-hitting posters. The poster campaign, accordingly, was seen by the research as ineffective in combating stereotypical attitudes.
- The final study consisted of qualitative interviews in which 17 judges and 7 barristers were asked to detail their own experiences of criminal trials and stereotyping. These interviews confirmed the prevalence of stereotypical views held by jurors – e.g. by being over-sceptical about women who allowed men they had just met to see them home or who had inconsistent recall about events or who had taken time to complain.

On the basis of this project, Temkin and Krahe made a number of recommendations relating to law reform and changes in trial processes, and called for more training of judges and barristers together with a media campaign starting at school level, to educate the public about rape myths.

3. References to the research

- R1** Temkin, J. and Krahe, B. (2008) *Sexual Assault and the Justice Gap: A Question of Attitude*. Portland: Hart Publishing.
- R2** Krahe, B. and Temkin, J. (2009) 'Addressing the attitude problem in rape trials: some proposals and methodological considerations', in Horvath, M.A.H. and Brown, J.M. (eds) *Rape: Challenging Contemporary Thinking*. Willan Publishing, 301–24.
- R3** Krahe, B., Temkin, J., Bieneck, S. and Berger, A. (2008) 'Prospective lawyers' rape stereotypes and schematic decision making about rape cases', *Psychology, Crime and Law*, 14(5): 461–79.
- R4** Temkin, J. (2010) 'And always keep a hold of nurse, for fear of finding something worse': challenging rape myths in the courtroom', *New Criminal Law Review*, 13(4): 710–34.

Outputs can be supplied by the HEI on request

4. Details of the impact

Temkin's work on the prevalence of rape myths in the legal process has effected change in a number of ways that mitigate the risks of stereotyping. In the court itself, juries are now instructed differently in ways which recognise Temkin's research. Her work is sought-after in training judges and barristers and informs Ministry of Justice policy. She has generated debate around 'real rape' stereotyping across disciplines and among practitioners in jurisdictions outside the UK, and has generated a general public debate by her television, radio and newspaper interviews (this is all more particularly detailed as follows):

- **Impact on trial process rules**

The *Crown Court Benchbook* (the manual for trial judges) was amended to include warnings to the jury about the issue of stereotyping. In Chapter 17 of the 2010 edition, Section 1, 'Alerting the jury to the danger of assumptions', contains illustrative directions to juries that take account of research findings, including those of Temkin. Chapter 17 explicitly refers to 'Research by those who are expert in the subject' and, on p. 356, footnote 646 cites the '*Justice Gap*' book [see Section 5, C1].

- **Policy impact**

The 'Justice Gap' book led to a request from the Scottish Parliament to submit evidence to the passage of the Sexual Offences Bill 2008 (26 September 2008).

The Ministry of Justice appointed Temkin as peer reviewer for the Ministry of Justice (2010) Research Report *Providing Anonymity to Rape Defendants: An Assessment of Evidence*. Temkin provided a detailed analysis which demonstrated that key areas of research had been omitted from the draft report. Temkin also set out the arguments for retaining the present law, which does not grant anonymity to defendants. Most of these arguments had been missed in the draft. She also set out the historical and psychological evidence. [C2]

The final report concluded that there was not enough evidence to support a change in the law in accordance with Temkin's research findings; the consequence of this has been that the law has remained unchanged.

- **Reshaping practitioners' attitudes**

The primary end-users for Temkin's research are practice professionals involved in the criminal trial process for non-consensual sexual offences. These include judges, barristers, solicitors and a range of expert witnesses drawn from medical, psychological, social work and police professions. Temkin has undertaken training programmes for judges, prosecutors and other relevant professionals to highlight rape myths, as indicated below. The training examined the key role of attitudes to rape in the processing of rape cases by the criminal justice system. In particular it analyses rape myths, what they are and how they work. The purpose of this is, first, to encourage those involved in the processing of rape cases to examine their own attitudes, which may influence the way they handle rape cases. Second, the purpose is to encourage the challenging of rape myths when these are utilised by the defence in rape cases. Members of the public who sit on juries may well harbour stereotypical ideas about rape and, if these stereotypes are encouraged in rape trials, this may affect their outcome. This type of education is therefore geared towards achieving fairer results in rape cases.

Training programmes have included:

- 'Rape Myths and their Implications', Sexuality and Sexual Health Section, Royal Society of Medicine, 14 March 2008.
- 'Sexual Offences and the Law', Royal College of Obstetricians and Gynaecologists, Forensic Gynaecology Training Conference 2009.
- 'Attitudes and the "Justice Gap": The Perennial Challenge of Effective Change', Canadian National Judicial Institute Seminar 'Women and Girls and the Justice System', Ottawa, 3 November 2009.
- 'The Myths and Stereotypes of Rape', Crown Prosecution Service, Rape and Serious Sexual Offences Training Courses, March, May, June, September and December 2009, December 2010.
- 'Tackling Rape Stereotypes within the Criminal Justice System', keynote address, Division of Forensic Psychology Annual Conference, University of Kent, 2010.

Since 2010, Temkin has been a Member of the Board of the Diploma in the Forensic and Clinical Aspects of Sexual Assault (DFCASA), Society of Apothecaries of London. The Diploma is concerned with the training of the forensic medical examiners (FMEs) who are responsible for the medical examination of male and female sexual assault complainants who report to the police. These examinations are necessarily crucial to the legal process. There has been growing evidence that FMEs were inadequately trained and therefore failing at this task.

Impact case study (REF3b)

Therefore the setting up of the Diploma to educate FMEs and raise the standards of medical examinations in this area was a very welcome development. The Board's task was to assist in the setting up of the Diploma by proffering advice and support. The Diploma is research-based so that the best treatment for victims can be given. Jennifer Temkin's research and advice have assisted the creation of this Diploma along with that of other members of the Board.

- ***Challenging the public perception of 'real rape' (and thereby correcting misperceptions about rape in the public mind and shaping the on-going debate about sexual assault)***

Temkin discussed her research and urged reform and changes in public attitude to rape in a range of radio and television interviews. Examples include *BBC*, *ITN* and *Channel 4 News*, *Sky News*, *Panorama*, *Dispatches*, BBC Radio 4 *World at One*, *Law in Action*, *Woman's Hour*, *The Moral Maze*, *File on Four*, *Radio 5 Live*.

Temkin has also explained and canvassed her research online: 'Rape Myths: Why We Still Believe Women "Ask for It"', *The Times* online, 11 September 2008 (with B. Krahe). The 'Justice Gap' book received a detailed review in *The Guardian*, 1 April 2008.

Web blogs and other fora that discuss rape issues have used Temkin's research in support of arguments in favour of reform [C4].

5. Sources to corroborate the impact

- C1** The *Crown Court Benchbook* (as referred to). In *Rook and Ward: Sexual Offences, Law and Practice*, HH Judge Ward states that these changes are attributable to Temkin's research.
- C2** Director of Analytical Services, Ministry of Justice (see also letter of 12 November 2010 and Ministry of Justice report Providing Anonymity to Rape Defendants: An Assessment of Evidence. <http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/anonymity-rape-research-report.pdf>)
- C3** Temkin cited in Court of Appeal decisions: *R v Bree* [2007] 2 All ER 676, *R v Jheeta* [2008] 1 WLR 2582.
- C4** <http://suite101.com/article/the-slutwalk-a-focus-on-womens-rights-and-freedom-of-choice-a387308>