

Institution: University of Nottingham
Unit of Assessment: 20
Title of case study: Informing Judicial Challenge to Jurors' Stereotypes in Rape Trials
<p>1. Summary of the impact</p> <p>Research conducted at the University of Nottingham has played a key role in developing new guidance for judges giving directions to juries in rape trials in England and Wales. The research explored the influence of providing (mock) jurors with education to counter 'rape stereotypes'. Its findings fed into the work of an Expert Panel, convened by the Solicitor-General, and played a key role in supporting the inclusion of 'myth-busting' directions in the Crown Court Benchbook. These may alter the ways in which jurors deliberate and ensure greater justice. Beneficiaries include the CPS, judges, jurors, rape complainants, criminal justice practitioners and policy-makers, and the general public.</p>
<p>2. Underpinning research</p> <p>Amongst the most commonly cited problems facing rape prosecutors is the tendency of defence lawyers to portray the not-uncommon behaviour of women who delay reporting, fail to physically resist, or appear calm whilst recounting an attack as 'unusual' or inconsistent with a genuine complaint. In some jurisdictions where the jury play a central role in determining liability, prosecutors have introduced evidence to 'educate' jurors on the reactions of rape victims. In 2006, the Office for Criminal Justice Reform proposed something similar in England and Wales. This was based on two assumptions: (i) that certain complainant behaviours (including courtroom demeanour, delayed reporting and failure to resist) adversely impact upon jurors' perceptions; and (ii) that expert testimony could educate jurors' understandings.</p> <p>An ESRC funded project, conducted jointly by Louise Ellison (Leeds) and Vanessa Munro (since September 2007, Professor of Socio-Legal Studies at the University of Nottingham), sought to test these assumptions, and to consider whether providing guidance via judicial instruction rather than expert testimony would offer an equally – if not more – effective alternative. The research used a method that Munro had developed in a previous study exploring the impact on jurors of a rape complainant's intoxication. Both investigators had published extensively on sexual violence and rape prosecution: Munro specialising on social attitudes and critique of consent, and Ellison specialising on evidential and prosecutorial dimensions. Several articles have resulted, but articles (a) and (b) below are the most relevant to its impact.</p> <p>Article (a) examines the extent to which the jury-service eligible members of the public, recruited to participate in the study, were influenced by the complainant behaviours noted above. Our findings supported concerns regarding the limits of current public understanding as to what constitutes a 'normal' reaction to sexual attack, and its implications on jury deliberation. Many participants were adamant that a complainant would immediately report her assault, be visibly distressed whilst giving testimony and struggle against an attacker such that additional injuries would have been sustained (either against the victim or the attacker – or, optimally, against both).</p> <p>Article (b) explores the extent to which guidance (whether provided by an expert witness or by judicial instruction) shifted these expectations. Participants who received guidance were more likely to question the significance that could be attached to the timing of a rape complaint and were more willing to accept that a 'genuine' victim could exhibit few signs of distress whilst testifying. Most continued, however, to expect the complainant to physically resist, and to have sustained injury. It is possible that expectations of force and resistance are so deeply ingrained that attempts to disavow jurors of them through education in the rape trial are unlikely to be successful. But it is also possible that guidance which specifically addressed the feasibility of freezing in acquaintance as well as stranger rapes could have been more effective. We found that jurors responded in broadly similar ways regardless of whether guidance was presented by an expert near the start of the trial or by the judge at the end.</p>

3. References to the research

- a) Ellison & Munro, 'Reacting to Rape: Exploring Mock Jurors' Assessments of Complainant Credibility' (2009) 49 (2) *British Journal of Criminology* 202 – 219 [DOI: 10.1093/bjc/azn077]
- b) Ellison & Munro, 'Turning Mirrors into Windows? Assessing the Impact of (Mock) Juror Education in Rape Trials' (2009) 49 (3) *British Journal of Criminology* 363 – 383 [listed in REF2]
- c) Ellison & Munro, 'Of 'Normal Sex' and 'Real Rape': Exploring the Use of Socio-Sexual Scripts in (Mock) Jury Deliberation' (2009) 18 (3) *Social & Legal Studies* 1 – 22 [DOI: 10.1177/0964663909339083]
- d) Ellison & Munro, 'A Stranger in the Bushes or an Elephant in the Room?: Critical Reflections on Received Rape Myth Wisdom in the Context of a Mock Jury Study' (2010) 13(4) *New Criminal Law Review* 781 – 801 [DOI: 10.1525/nclr.2010.13.4.781]
- e) Ellison & Munro 'Getting to (Not) Guilty: Examining Jurors' Deliberative Processes in, and Beyond, the Context of a Mock Rape Trial' (2009) 30(1) *Legal Studies* 74 – 97 [listed in REF2]
- f) Ellison & Munro, 'Complainant Credibility and General Expert Witness Testimony in Rape Trials: Exploring and Influencing Mock Juror Perceptions', ESRC End of Award Report and Briefing Report, both available at <http://www.esrc.ac.uk/my-esrc/grants/RES-000-22-2374/read>

All of the journals listed here are highly regarded and internationally peer-reviewed. The research has been cited widely by academics across a range of disciplines, including law, criminology, psychology, sociology, and gender studies. At the end of the project, its output and impact were rated by independent ESRC peer-reviewers as 'outstanding'.

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4. Details of the impact

In January 2008, Munro was invited to join an 'expert panel' created by the Solicitor-General. It was tasked with reviewing the Office for Criminal Justice Reform proposals and creating a template from which educational guidance designed for dissemination to jurors in rape trials could be developed. Whilst this work was ongoing, the Court of Appeal approved an expansive judicial direction that sought to dispel juror myths in relation to – amongst other things - the relevance of delayed rape reporting. In light of this, and in a context in which the Office for Criminal Justice Reform's proposals to make greater use of expert evidence had been met with reluctance by some legal professionals, the Solicitor-General raised the question of whether judicial instructions would provide a more appropriate medium. The emerging (and subsequently published) findings of our ESRC study confirmed that judicial instruction could have a positive impact, and were influential in the Solicitor-General's decision to support their development by judges. As the Solicitor-General notes:

"The panel and I benefitted from the findings of this research as it unfolded, which not only highlighted the existence of misconceptions about rape amongst the public, but also, crucially, confirmed the positive corrective influence of educational guidance on juror decision-making. This in turn played a key role in framing the recommendations of the panel to introduce a form of educational guidance to counter juror stereotypes..... [T]he research by Professors Munro and Ellison, in indicating that well-crafted extended guidance provided by the judge could have a productive effect on juror decision-making, directly influenced my decision in 2009 to support the introduction of judicial instructions in rape cases" (Source A).

On the completion of the research, we produced a briefing report outlining key findings (see (f) above), which was distributed widely to criminal justice policy-makers and practitioners in the UK and overseas. In 2009, we were invited to present these findings at a series of Judicial Studies

Board (JSB) Annual Training Seminars for judges who preside over serious sexual assault cases. It is extremely rare for academics to be invited to present on their own research in this forum. In 2010, the JSB issued revised guidance to judges, which now includes a series of extended directions designed to counter dubious myths and expectations on the part of jurors in rape cases. Our research is directly cited in support of the appropriateness of this approach in the Crown Court Benchbook (Source C). Moreover, the influence and value of our research in this regard has been confirmed by the Solicitor-General [“The research has subsequently also influenced the development of dedicated judicial directions that judges are encouraged (and frequently do now) use in rape cases, which were issued by the Judicial Studies Board” – Source A] and Judge Peter Rook, QC, Senior Circuit Judge at the Old Bailey who, from 2006-2011, was responsible for organising compulsory Judicial Studies Board Training on Serious Sexual Offences, and played a key role in developing the judicial directions [“I started to provide judges with draft directions. It was important for those of us developing such directions to know their likely impact. In this task, we were greatly assisted by the research carried out by Louise Ellison and Vanessa Munro” – Source B].

The directions contained in the Crown Court Benchbook provide a model for use by trial judges when directing juries in sexual offence cases. Their use remains optional, but the recognition that they afford to the need for, and value of, ‘myth-busting’ guidance is of considerable importance, and members of the senior judiciary have confirmed that they are frequently utilised. These directions may change the overall tenor of the rape trial, alter the ways in which jurors go about their deliberative task, and ultimately ensure greater justice. As such, they have significant consequences for criminal justice practitioners, individual complainants and the general public. The Contempt of Court Act 1981 currently prevents us from knowing about the substantive content and processes of ‘real’ jury deliberations, but the experience of those most closely involved in the administration of justice in rape cases suggests a marked and positive impact:

“[T]his important research...played a significant part in bringing about jury trials that are fairer to sex case complainants. In particular, there has been a revolution in judicial directions in the trial of non-consensual sexual offences...Judges are trained to give [the directions in the Crown Court Benchbook]. They have changed sex case trials...They have led to a reduction, if not the complete elimination, of fallacious reasoning” (Source B).

Internationally, the research has been used by those advocating for similar reform in other jurisdictions, such as New Zealand (Source E), and has been cited with approval in the United States by the Minnesota Supreme Court (Source D).

5. Sources to corroborate the impact

Source A: Statement by Vera Baird, QC - Police and Crime Commissioner for Northumbria, but formerly Member of Parliament and Solicitor-General during the relevant period

Source B: Statement by Judge Peter Rook, QC – Senior Circuit Judge at the Old Bailey who, from 2006-2011, was responsible for organising compulsory Judicial Studies Board Training on Serious Sexual Offences, and played a key role in developing the judicial directions

Source C: Crown Court Bench Book, 2010 Edition. Available at: http://www.judiciary.gov.uk/Resources/JCO/Documents/Training/benchbook_criminal_2010.pdf (p. 356)

Source D: State of Minnesota v Nathan Obeta, 24th March 2011, No. A10-1349, Minnesota Supreme Court. Decision available at: <http://caselaw.findlaw.com/mn-supreme-court/1561561.html>

Source E: E. McDonald & Y. Tinsely, *From Real Rape to Real Justice: Prosecuting Rape in New Zealand* (2011), Victoria University Press, Wellington.