

‘There is a problem with juries acting on myths rather than evidence’

Ella Rhodes speaks to Dominic Willmott, whose research on the role of inaccurate beliefs about rape have caught the attention of policy makers

So-called ‘rape myths’ – described as attitudes and beliefs that, while inaccurate, are often used to seemingly justify sexual aggression – are endorsed by a worrying amount of people, often emerging on social media in the aftermath of media coverage. There are also parallels with reaction to recent hearings of Supreme Court nominee Brett Kavanaugh, accused of sexual assault by Psychology Professor Dr Christine Blasey Ford. The University of Huddersfield’s Dr Dominic Willmott has been exploring whether rape myths – for example, that sex within a relationship is implicitly consensual, that rapists are usually strangers, that those who report rape are inherently less trustworthy than victims of other crimes, and that time between incident and reporting makes the complainant less believable – may affect the verdicts of juries in trials. His troubling findings have caught the attention of the Crown Prosecution Service, Ministry of Justice and New Scotland Yard in England.

Willmott’s interest started with research into jury decision making, and whether any particular traits or attitudes among jurors can predict guilty or not guilty verdicts. He explained that in most rape trials physical evidence is often of little value, and a victim’s word is put to the test against an assailant’s. After discussion with senior police officers, barristers and judges, Willmott decided to focus specifically on acquaintance rape cases – 90 per cent of rapes are committed by someone the victim knew.

‘A stereotypical scenario is two students who meet up on a night out having previously known each other in some way,’ Willmott said, ‘and following a sexual encounter, the male suggests this occurred with consent but the female states it was not. The legal practitioners I spoke to said these sorts of cases come up time and time again... police officers were telling me that these cases seem “nailed shut” in terms of clear culpability being established, but then ultimately it gets to trial and the jury return a not guilty verdict. The dismay around such verdict decisions led me to think this is where I need to focus.’

As it is illegal in the UK for former jurors to discuss their jury deliberations, much of the research in this area comes from North America. Willmott decided to take a more novel approach. ‘With assistance from barristers and a judge we were granted special permission to use a real crown court in one of our studies. Here, we could reconstruct with professional actors and legal personnel a genuine rape case that previously went to trial. This would allow us to test, in a more scientifically rigid and ecologically valid way, which factors, if any, had an effect on the verdicts that were returned.’

Willmott and his colleagues selected their mock jurors from the electoral register in the same way they are selected in real trials and were sent a form that was similar to a jury summons but was marked as a research invitation. ‘Quite a few members of the public who were selected in this way rang to say they had an operation or something important on the day of the study, but said “if I’m going to be prosecuted for failing to attend then I’ll come anyway”... in terms of ecological validity this was reassuring, as clearly participants perceived the process to be genuine, but meant I often had to explain that they were not legally bound to take part.’

In the most realistic study Willmott recreated the same scaled-down trial over the course of a full day on nine separate occasions. He was advised by barristers on the evidence that would be legally admissible in a real trial and a judge provided guidance on the content of conversations that would be had in the court in front of a jury.

The mock jurors were given psychometric tests to complete pre-trial, measuring a number of different constructs including egocentricity and interpersonal manipulation (potentially important factors given the group-deliberation aspect of juries), affective and cognitive empathy, and rape attitudes including rape-myth acceptance. Working with Huddersfield University colleague Professor Daniel Boduszek, a statistician and forensic psychologist, and Dr Agata Debowska (University of Sheffield), Willmott



examined the relationship between these factors and verdict decisions both pre- and post-jury deliberation.

The researchers determined that rape attitudes were the strongest and most consistent predictor of the verdict decisions that juries made across the nine mock trials. In fact, across two separate studies involving almost 450 mock jurors, rape-myth acceptance was the only consistent predictor of verdict outcomes. 'When we recreate a rape trial as close to the real thing as possible, we can see that the traits that people arrive with, in particular rape attitudes, are directly predictive of the individual verdict decisions jurors make, both pre- and post-deliberation in that we found this attitude held consistent even after group discussions.

Specifically those jurors who score high in rape-myth acceptance (established through one and two standard deviations above the mean), were significantly more likely to return a not guilty verdict, and those who score low were more likely to return a guilty verdict.' In the first of a series of papers to emerge from the work, publishing what he calls the Juror Decision Scale in the *Journal of Criminal Justice*, Willmott also found an association between rape-myth acceptance and not believing the complainant's testimony or rating the defendant as believable.

Whilst Willmott notes that he's not the first to find an association between rape myths and verdict outcomes, many of the UK studies into this link have

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been criticised by policy makers and legal experts for being too far removed from the real trial process. Thanks to this new approach, Willmott said they are beginning to take such findings more seriously. Recently he was asked to speak at the Ministry of Justice (MoJ) HQ and to the National Rape Working Group, chaired by the Police Lead for Adult Sexual Offences and Assistant Police Commissioner Martin Hewitt, about his findings.

He's understandably proud of 'our success in ensuring rigour in the research methods and analytic procedures. Matching the process in the level of detail we did, from participant recruitment, to scrutinising evidence according to UK admissibility law and conducting an experiment with members of the public over an entire day – all without research funding, I hasten to add – involved a significant amount of careful work over a period of almost four years. As a consequence, a growing number of influential people in a range of justice organisations are very on board with the findings and recognise the need for policy reform.'

There's a but. 'Will the government, judges and others working in the criminal justice system ever accept that there is a problem with juries acting on myths rather than evidence? The fear is that there will be an element of institutional resistance to the difficult questions posed by the research. It suggests there are fundamental problems in the way the jury justice system operates, which serves to disadvantage rape complainants' right to justice, and thus requires radical changes to fix those problems.'

While the government has now commissioned research to examine the influence of rape-myth bias upon verdict outcomes, Willmott said he was concerned this appeared to have been done with no involvement or consultation of psychologists. 'The lead researcher commissioned to carry out the research has a background in politics and law and is a well-known advocate of the jury system in its current form. I therefore cannot help but feel that at best psychology as a discipline is being undervalued and underutilised; or perhaps, more troublingly, that the MoJ and Judicial College may be deliberately excluding psychologists from the debate for fear of what we may find.'

As well as England's Lead Jury Policy Advisor at the MoJ Willmott has spoken at New Scotland Yard and to members of the House of Commons and Lords about these findings. In his work with policy makers Willmott has also come across resistance from a surprising source – learned members of the legal profession confusing psychology with psychic mediums. 'Despite psychology being a rigid, accepted science now, there's been a lot of resistance from barristers and members of the bar. A comment that I've received on more than one occasion when presenting the research is that this is "psycho-gobbledygook".

There's been fairly senior people in the legal profession who when I've spoken to them about this work have remarked, "this all sounds very good and it's a nice story but essentially there's no role for psychics in the courts", and I've then had to explain the difference between the role of a psychologist and a psychic...'

However, on the whole, Willmott says, the Crown Prosecution Service and certain members of the MoJ have been open-minded and appear to recognise the importance of this issue. 'The CPS seem very on board in terms of recognising there's some degree of problem within acquaintance rape cases, they accept psychology is a science and that it has a role to play in helping fix this.'

Willmott has ideas for a potential solution to the role of rape myths on jury decision making, and it is certainly more radical than some. Other researchers have suggested juries should not be used in rape cases at all, or that juries should simply be educated out of their rape-myth bias pre-trial.

'Coming from a psychological standpoint my argument is always that existing knowledge and our recent research would suggest rape myths function very implicitly and that these attitudes are often held below conscious awareness. They function very similarly to racist attitudes in that they're often developed from family and peer relationships over a long period of time, and so the idea that a

short pre-trial or in-trial briefing would prevent a racist juror from relying on stereotypical views in a case that involved some element of ethnicity is highly implausible.

'Often people in government organisations agree with this logic, but strangely they still advocate the rape-myth training solution. We've now shown in our research that greater rape-myth acceptance is predictive of not guilty verdict decisions. Surely we need to remove those that endorse such myths from a decision-making process specifically designed to be fair and impartial?' Willmott has suggested using validated psychometric measures and removing jurors who score two standard deviations above the mean on rape-myth acceptance. He is clear that jurors need not be told about their scores on this measure but would be simply reassigned to non-rape cases, where such attitudes have no effect.

Despite the occasional frustration, Willmott maintains that psychological research is vital in addressing problems within the legal system. 'While experiments conducted by legal scholars and academics from other disciplines are useful, they often miss some of the methodological strengths and controls we utilise in psychology, as well as advanced analytical procedures. I honestly feel psychology can offer a lot in this important debate and it seems, at least currently, some policy makers are interested in listening to us.'

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