



Some methodological issues in evaluating the significance of rape myths in trial outcomes

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Rape myths in court

- Clear evidence of use of RMs in court
 - e.g. Adler (1987); Lees (1996; 2002)
- Used to undermine and discredit victims
- Kelly, Temkin & Griffiths (2006) - sexual history evidence still being used, often without application to the judge.
 - Other myths still being used.

Rape myths and the verdict

- Experimental research has demonstrated an association between the use of various rape myths and verdict (e.g. Grubb & Harrower, 2008; Maurer & Robinson, 2008; Schuller & Hastings, 2002; Vrij & Fischer, 1997).
- Rape myths are often used to activate negative attitudes to rape complainants, which can affect the verdict (Gray, 2006).

Next steps

- Quantitative research, based in court, to demonstrate whether there is a measurable effect of rape myths on verdict.
- Need to control for the strength of evidence (irrespective of rape myths).
- Gray & Temkin pilot study to establish a methodology for assessing the strength of evidence in a rape trial.

Method

- Observation of 7 full trials.
- Interviews with 9 barristers from the trials.
- Detailed notes taken throughout the trials, allowing for identification of use of rape myths.
- Barristers asked for their assessment of the strength of the evidence, and also to comment on any use of rape myths during the trial.

Strong prosecution cases

- These were seen to be relatively uncommon.
- Some evidential features identified as strengthening a case:
 - independent, sober witnesses
 - Contemporaneous 999 calls
 - Forensic evidence
 - 'Recent complaint'
 - Consistent accounts between witnesses

A strong case

- Stranger attack
- Independent witnesses and 999 calls:
‘... the 999 calls in this case, both calls were made while the incident was going on, and so it gives you a flavour of what was happening, particularly [witness 1]’s 999 call because of course you can hear [complainant] in the background crying out, so it gives you an impression of what it was really like. And also it is supportive of her account to the jury.
‘ (Prosecution Barrister)

A strong case

- ‘... when you have a witness like [witness 1], who had not been drinking, was a pilot, very articulate, nice-looking and I don’t mean in terms of she was pretty or she was ugly.
- I: Well-presented?
- Bar: Yes, well-presented and looked professional and looked credible. When you have a witness like that who is immovable in her description of what she saw, and completely unwilling to entertain a possibility that she might have been mistaken, then I think that’s very difficult.’ (Defence barrister)

Weaker cases

- Very weak cases unlikely to come to court due to CPS screening.
- No independent witnesses
- Circumstances where it would be hard to persuade a jury that there was no consent, as in following example.

A weak case

- ‘It was weak because she allowed him in her bed, wearing no underwear. It’s as simple as that.’ (Prosecution barrister)
- ‘I think if she’d allowed him to stay in her flat and he’d slept on the sofa, or they were fully dressed, I think it would have made a difference. But I think that once she’d allowed him to stay and in her bed, in the state of undress that she was in, that made our case weak’ (Prosecution barrister)
- Prior relationship seen as irrelevant.

A weak case

- ‘Well, what I think the Crown Prosecution Service failed completely to take into account when they did their charging decision is the obvious moral judgements that the 12 ordinary members of the public are going to make. That’s not 12 bigots, or 12 people with loose morals: that’s just 12 ordinary people. In this case, the fact that she invited him to spend the night in her bed and got in herself wearing very little clothing, ... and then spent the night right next to him: ludicrous scenario!’ (Defence barrister)

Majority of cases

- In most cases in this study, the barristers were not able to say they were particularly strong or weak.
- This was characterised as the most common type of case.
- The characteristics of the extreme cases are mostly absent.

The Majority of cases

- These cases rely on:
 - Consistency, reliability and demeanour of the complainant, defendant and witnesses.
 - Their ability to withstand cross examination.
 - Reasonableness of behaviour when judged against everyday standards.

Conclusions

- Barristers can identify very strong and very weak cases.
- However, they cannot clearly differentiate between most cases in terms of how strong they are.
- For future research it seems that the achievable level of distinction is strong, average and weak.
- This distinction could be made by an experienced researcher.

Conclusions continued

- Possible to obtain very detailed trial notes.
- These are detailed enough for quantitative and some types of qualitative analysis.
- Future research to utilise this methodology in a large scale study to map the use of rape myths in court and link this to verdict.