REACTING TO RAPE

Exploring Mock Jurors’ Assessments of Complainant Credibility

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This article discusses the findings of a study in which volunteers observed one of nine mini rape trial reconstructions, and were asked to deliberate as a group towards a verdict. In a context in which research with ‘real’ jurors is prohibited, these deliberations were analysed to better understand what goes on behind the closed doors of the jury room in rape cases. While previous research has established that jurors are often influenced by extra-legal factors relating to the complainant’s behaviour before an alleged attack, this study explored the impact of complainant conduct during and post-assault on assessments of her credibility. More specifically, it examined the effects of (1) lack of physical resistance; (2) delayed reporting; and (3) calm emotional demeanour.

Introduction

Concern has long been expressed, in the United Kingdom and elsewhere, in regard to the legal processing of rape cases. The existence of institutionalized mythologies about the (in) credibility of a woman’s claim of rape has been highlighted and challenged, as has the high rate of attrition as cases ‘fall out’ of the formal criminal justice system (for England and Wales, see Gregory and Lees 1996; Harris and Grace 1999; Kelly et al. 2005). Indeed, despite the lack of evidence to suggest that false allegations are more common for rape than for other offences (Rumney 2006)—and the existence of substantial evidence that indicates that sexual assaults are, in fact, significantly under-reported (see, e.g. Koss 1988; Kilpatrick et al. 1992; Myhill and Allen 2002; Regan and Kelly 2003)—it is clear that in rape cases, ‘the veracity of the victim’s allegations is often on trial at the same time as the defendant’s culpability’ (Boeschen et al. 1998: 414). While suspicion and disbelief are evidenced at various stages in the prosecution process (HMCPSI/HMIC 2002; 2007), this article focuses specifically upon jury deliberation. This stage, though relatively under-researched to date, is crucial in the context of rape, since, in those cases that make it to court, the 2003 Sexual Offences Act dictates that it is largely a matter for the jury both to determine the absence of complainant consent and to assess the reasonableness of any belief in consent harboured by the defendant, which constitute the key grounds for criminal liability.

Previous research across law, sociology and psychology has suggested that jurors may be influenced in their deliberations by a number of extra-legal stereotypes about ‘appropriate’ socio-sexual behaviour (see, e.g. Feild and Bienen 1980; Burt and Albin 1981; Tetreault 1989; Lonsway and Fitzgerald 1994; Ward 1995; Finch and Munro 2005; 2006; Temkin and Krahe 2008). Factors such as the behaviour of the complainant in the lead-up to the incident (Lees 1996), her physical attractiveness (Calhoun et al. 1978; Jacobson and Popvich 1983), the level and fact of her intoxication (Finch and Munro

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203; Schuller and Stewart 2000; Norris and Cubbins 1992), the style of her dress (Abbey et al. 1987; Workman and Freeburg 1999; Whatley 2005), or the existence of any previous flirtation or intimacy with the defendant (Schult and Schneider 1991; Yescavage 1999) have all been shown to influence public (and thus, it has been extrapolated, juror) attributions of responsibility for a sexual assault. The prevalence of such attitudes was forcefully represented, for example, in a recent poll conducted in England and Wales, in which 34 per cent of respondents agreed that a woman who behaved flirtatiously was at least partially responsible for her subsequent rape, while 30 per cent felt this would be the case if the woman was drunk and 26 per cent reported that they would hold a woman who wore sexy or revealing clothing to account (Amnesty International 2005).

In addition, it has been suggested that a range of factors related to the complainant’s behaviour during, or after, an alleged sexual attack can influence jurors’ assessments of her credibility. Amongst the most commonly cited problems facing prosecutors in rape cases is the tendency of defence lawyers to portray the normal behaviour of women as ‘unusual’ or inconsistent with a genuine complaint (Ellison 2005; Jordan 2004; Freckleton 1998). Studies of rape trials have revealed, for example, that delay in reporting an assault is often presented by the defence as suspicious (Adler 1987; Bronitt 1998; Brereton 1997; Raitt 2004), as is a complainant’s lack of physical resistance or injury during an attack (Ehrlich 2001; Lees 1996; Temkin and Krahe 2008); and it has been suggested that complainants who appear calm, either immediately post-assault or in recounting events at trial, may fail to convince jurors of their victimization (Frazier and Borgida 1988; Buddie and Miller 2002; Taylor and Joudo 2005). But, to the extent that such case characteristics act as triggers for disbelief, they are problematic, not least as they are largely unsupported by the pre-existing evidence both on the sociology of rape and on psychological responses to trauma. The reality is that many sexual assault victims never report offences, and that many more will delay reporting, often for significant periods (Jordan 1998; Fisher et al. 2003; Clay-Warner and Burt 2005); many victims—for a number of reasons—offer no physical resistance and suffer no serious physical injury (Bowyer and Dalton 1997; Sugar et al. 2004; Du Mont and White 2007); and many will react by exhibiting extreme calm, often as a conscious—or unconscious—coping strategy (Burgess and Holmstrom 1974; Lees 1996; Petrak and Hedge 2002).

In some jurisdictions, most notably the United States, prosecutors have sought to overcome these potential credibility barriers by introducing evidence to ‘educate’ jurors on the impact of rape and the complex, disparate reactions of its victims during and post assault (Massaro 1985; Fischer 1989; Boeschen et al. 1998). In 2006, the Office for Criminal Justice Reform produced proposals that could see the introduction of something similar in England and Wales (Home Office 2006; Ellison 2007). The fate of these proposals is still being debated, but clearly this evidentiary initiative is based on two key assumptions: (1) that certain behavioural cues on the part of the complainant (including her failure to physically resist, delayed reporting, and calm appearance) adversely impact upon jurors’ perceptions of credibility; and (2) that expert testimony is a useful vehicle for addressing these inferential shortcomings in jurors’ understandings.

The aim of the present study was to subject each of these assertions to sustained empirical evaluation. Within the confines of this article, however, we focus exclusively on findings in relation to the first claim—that is, we explore the influence upon juror deliberations of key behavioural cues involving lack of resistance, delayed reporting and calm complainant demeanour. This discussion provides a vital precursor to any
examination of the effectiveness of educational initiatives, since the extent and operation of juror misconceptions and stereotypes (about rape, rapists and rape victims) must be established, rather than hypothesized or extrapolated from more general attitudinal surveys. It is only by better understanding how jurors faced with particular fact patterns translate their immersion within broader societal norms into concrete attributions of responsibility, and ultimately into verdicts, that we can hope to more effectively redress the influence of extra-legal biases and anachronistic assumptions on deliberations. To address this issue, we will divide our discussion here into four parts. In the first part, we will outline the methods employed in this study and will illustrate the extent to which the approach used, though not without its own difficulties, offers an improvement upon much previous research in this area. Having done so, we will move on to examine in turn the ways in which these during and post-assault complainant behaviours did, or did not, adversely impact upon jurors’ assessments of her credibility. We conclude by suggesting that, while our findings indicate that these variables did have an impact upon the tone and direction of jury discussions—supporting the suggestion that there is a dearth of juror understanding in regard to the spectrum of possible (and credible) victim reactions to rape—the influence in question was often neither linear nor predictable, which itself raises questions about the potential value and limitations of educative efforts both within and outwith the courtroom environment.

Getting into the Jury Room

The previous research discussed above certainly supports the basic hypothesis that lay members of the public lack an appreciation of the diverse reactions that experiences of sexual victimization might elicit (see also Frazer and Borgida 1988). At the same time, though, the extent to which this lack of awareness impacts upon assessments of credibility, and thus ultimately upon verdict outcome, within jury deliberation remains the subject of considerable conjecture. Previous research in regard to rape jury deliberation has demonstrated that the more categorical and intuitive positions provided by members of the public in response to abstract and depersonalized stimuli are not necessarily replicated in the more formal, individualized, and involved context of the criminal (mock) trial (Finch and Munro 2008). While this problematizes the simplistic transferral of attitudinal surveys or focus group findings to the specifics of jury deliberation, it remains the case that, in England and Wales, prohibitions under the 1981 Contempt of Court Act curtail researchers’ ability to get behind the closed doors of the jury room. In an effort to bridge this knowledge gap in the context of complainant behavioural cues and juror credibility assessment in rape cases, the authors scripted a series of mini-trial scenarios. These mini-trials were then reconstructed in real time in front of an audience of mock jurors, with key roles played by actors and barristers.

In total, nine different scenarios were presented. To isolate the key variables under review, core facts and role-playing personnel remained constant. Efforts were also made to reduce the influence upon jurors of extraneous factors relating to the socio-economic profile of the victim and/or defendant by recruiting actors of the same race (white), who were of roughly equivalent age, class background and physical attractiveness. Over the course of the reconstructions, variables were, however, introduced upon two axes—one substantive and the other procedural. In three of the trials, the complainant reported the assault immediately and was visibly upset during testimony but displayed
no signs of physical injury, and sought to explain her lack of resistance on the basis that she had ‘frozen’ during the attack. In another three of the trials, the complainant displayed signs of bruising and scratching post assault and was visibly upset during testimony but waited three days after the incident before reporting it to the police. In the final set of three trials, the complainant again displayed signs of bruising and scratching—this time, she reported the attack immediately, but was emotionally ‘flat’ and calm during testimony. Alongside these substantive variables, procedural variables were introduced so that in each sub-set of three scenarios, the extent to which jurors were provided with additional educational guidance differed. Thus, in some trials, an extended judicial instruction was given to inform jurors about the feasibility of a complainant freezing during an attack, the frequency with which complainants delay reporting, or the different emotional reactions that victimization might elicit. In others, this information was provided by an expert called by the prosecution and cross-examined by the defence. In the remaining trials, no additional guidance was provided.

Each reconstruction lasted approximately 75 minutes and was observed simultaneously by 24 participants, who—after receiving instructions crafted from the Judicial Studies Board Specimen Direction—were streamed into three different juries to undertake verdict deliberations. These deliberations, which lasted up to 90 minutes, were recorded and transcribed, coded and analysed. Participants were members of the public, selected on the basis of jury service eligibility and recruited by a market research company. Given the random membership of ‘real’ juries, and the existence of research that suggests that individual juror characteristics are rarely determinative of verdict (Sealy and Cornish 1973; Hepburn 1980; Bonazzoli 1998), no steps were taken to engineer demographic representation across socio-economic or racial groups (although such information was matched to anonymized juror numbers for analysis—see Ellison and Munro, forthcoming a; forthcoming b). In regard to gender, however, a broadly even distribution of men and women in each jury was ensured, reflecting the insights of previous research on rape deliberation, which indicates that gender is one juror characteristic that—particularly when mediated through attitudinal lenses of rape myth acceptance and self-defensive commitment to belief in a just world (Lerner 1965; Shaver 1970; Kleinke and Meyer 1990; Foley and Pigott 2000)—can interact meaningfully with case-specific aspects (Feild 1978; Ugwuegbu 1979; Fischer 1991; 1997; Taylor and Joudo 2005).

The real-time re-enactment utilized in this research represents a significantly more detailed and engaging stimulus than that often offered in previous trial simulation or social attitude studies (Finch and Munro 2008). The researchers were careful to take advice on the scripting throughout from barristers, prosecutors and other experts familiar with the realities of rape trials. At the same time, though, in order to reconstruct the trial in the time available, the sheer volume (though not necessarily substantive content) of evidence presented to jurors was streamlined and the usual periods of disruption and delay that typify ‘real’ court proceedings were absent. While restrictions in deliberation time and jury size, which were necessary to ensure the practicality of the study, may also have had an impact, there is ample evidence that ‘real’ jurors may not

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1There is stronger evidence of a correlation between gender and ‘rape myth acceptance’ (see, e.g. Hinck and Thomas 1999; Morry and Winkler 2001; Lonsway and Fitzgerald 1994; Anderson et al. 1997) but this is mediated by differential personal attitudes towards gender roles (Temkin and Krahe 2008). At the same time, the extent to which such abstract attitudinal measures translate predictably into differential deliberative processes or verdict outcomes in response to a specific trial stimulus (and in the context of a collective discursive forum) is much less certain (see, e.g. Finch and Munro 2008).
have needed much longer (Zander and Henderson 1993; Kalven and Zeisel 1966). Moreover, the exact significance of group size in jury simulation research remains contested (Kerr and MacCoun 1985; Saks and Marti 1997), with some research even suggesting that groups of eight participants are in fact optimal (Latane et al. 1979).

Perhaps more worthy of being kept in mind when considering the findings of this study, though, is the fact that the participants involved knew from the outset that they were not involved in a real trial and so appreciated that, ultimately, nobody’s fate held in the balance. It is true that this ‘role-playing’ aspect of mock jury deliberation creates an inevitable lack of verisimilitude, and makes any uncritical generalization of experimental findings to ‘real’ courtrooms problematic. That said, it is important to emphasize that previous studies that have specifically tested for the existence of a verdict impact from role-playing have produced inconclusive results (Kerr et al. 1979). Moreover, there was considerable evidence in the present study that suggested that participants genuinely engaged with the task in hand, taking their deliberations seriously, commenting at times upon the implications of their verdict for the defendant or complainant, and remarking at the close of discussions on the stress the deliberations had caused them.

In addition, alternative methods that have been used to research juries, including the use of shadow groups, also suffer from similar problems, without offering the advantage of being able to isolate and manipulate variables for internal cross-comparison. Whilst not seeking to trivialize the inherent limitations of the method used in this study, then, as we turn our attention to its substantive findings, we submit that the research has nonetheless yielded some valuable insights into what may well be influencing the decision-making processes of real jurors in real rape cases.

**Resistance/Injury**

Despite the fact that, at the level of doctrine, the use of force has not been a formal requirement of the English law on rape since the mid-nineteenth century, both the experimental research literature (Krulewitz and Nash 1979; Ong and Ward 1999; Taylor and Joudo 2005) and studies examining conviction patterns in sexual assault cases in England and Wales (Harris and Grace 1999; Kelly et al. 2005; Brown et al. 2007) have indicated that claims of non-consensual intercourse that are not accompanied by evidence of physical force and attendant resistance are significantly less likely to be accredited as rape. The deliberations of mock jurors in the present study strongly supported this suggestion of the tenacity of the force requirement—if not to constitute the offence of rape then certainly to act as a necessary corroboration of the complainant’s account, without which it was often felt that conviction would be unsafe.

Indeed, in trial scenarios in which the complainant displayed no signs of injury, jurors routinely emphasized the significance of this lack of bruising to their not guilty verdicts. The fact that the complainant had offered verbal resistance and had, in her frozen state, failed to do anything to indicate a positive consent to intercourse was rarely sufficient in jurors’ minds to make the defendant liable for rape. Their commitment to the belief that a ‘normal’ response to sexual attack would be to struggle physically was, in many cases, unshakeable. As one juror put it, ‘even in a paralysed state, isn’t it the body’s natural reaction to put up some kind of defence?’ Often, in these discussions, it was the female jurors who took a prominent role, asserting that had they been in the complainant’s situation they would have resisted more forcefully—and where such views were not
spontaneously offered, male members of the jury specifically sought out this ‘female perspective’ on the issue. Such comments were often accompanied, moreover, by somewhat unrealistic expectations regarding a woman’s capacity to struggle or to inflict defensive injury upon her assailant. Thus, jurors variously asserted that ‘a woman can be strong when she is being pinned down’, that ‘the smallest and quietest of people, when you’re in a situation you don’t want to be in, you find something within you to give him a damn good kicking’ and that ‘no matter how big the guy, even if she’s 8 stone and he’s 16 stone, at some point she can scratch, she can hit, she can knee’.

To be fair, there were some jurors who were more receptive, in principle at least, to the idea that a woman might freeze in the midst of a sexual attack, and so be unable to offer ongoing resistance. But, for many, the credibility of this hypothesis only held up in cases in which the perpetrator was not previously known to the victim. As one put it, if it was ‘someone she didn’t know that would be (different), you can believe someone could be paralysed by fear because you don’t know what they’re capable of’. While this presumption was frequently and enthusiastically supported by many jurors, it in fact sits largely at odds from the research literature, which indicates that there are no reliable differences, in terms of their use and strategies for resistance, between the reactions of women raped by strangers and those raped by acquaintances (Koss et al. 1988). It also belies the reality both that rapes by ‘intimately’ known perpetrators are significantly more likely to involve the use of a weapon than rapes by strangers and that the rate and seriousness of victim injury are broadly comparable, regardless of the existence (or not) of a previous relationship with the assailant (Lees 1996: 225–6).

Allied to this juror insistence on ‘hierarchies’ of fear associated with different rape scenarios, moreover, a number of jurors also suggested that the location of the attack—and specifically the fact it had occurred in the complainant’s flat—was significant, since, as one juror put it, ‘when you’re on your home territory, you’ve got a strength … she’s not in an alleyway, she’s not in a street, she’s not in his car, so psychologically she’s strong: she’s in her own home, she should have fought’. Such comments resonate, of course, with previous research that suggests that third parties may hold victims partially accountable in situations in which they invite the assailant into their home. But where previous literature indicates that this correlates with attributions of responsibility for engaging in ‘risky’ behaviour or for sending coded signals of sexual interest, the jurors in this study relied upon location to counter-pose the complainant’s alleged experience to more prototypical ‘real rape’ scenarios (which are perpetrated by strangers in unfamiliar—and usually public—settings), in which non-resistance on account of fear was perceived to be a more understandable response.

Moreover, for those remaining jurors who were willing not only to accept in principle the suggestion that a woman might freeze during a sexual assault, but were also willing to consider the possibility that she might do so, even where the perpetrator was a previous acquaintance, the upshot of this in many cases was simply that expectations transferred from physical injury to signs of internal or vaginal trauma. As one juror put it, for example, ‘if she really froze, there would have been physical damage down there’. Such comments—which were frequent across the deliberations—were often accompanied by strong, but unfounded, convictions that vaginal tissues are easily torn, that pelvic muscles can be rigidified at will and that intercourse without trauma only occurs where a woman is aroused, which, in the jurors’ minds, was wholly inconsistent with rape. Although such convictions were occasionally challenged—for
example, one female juror argued ‘look at all the women who have babies and don’t have physical damage’—in the main, such interjections had a limited impact on the deliberations.

In addition, in those trial scenarios in which there was some evidence of bruising and scratching upon the complainant (which a medical expert testified was consistent with the application of considerable physical force), it was clear that a large number of jurors continued to expect higher levels of injury in order to be compelled. While some accepted that bruising and scratching was inconsistent with what they perceived to be ‘normal’ intercourse, and sought to emphasize the significance of this to their peers, several maintained that they would only be swayed by injuries that were more serious in nature—as one put it, ‘everything was just bruises wasn’t it’. At the same time, while some accepted that bruising may, in principle, be sufficiently convincing, they went on to lament the fact that there were not more bruises on this particular complainant in order to support her version of events—for example, as one put it, ‘if he pushed her to the floor, why hasn’t she got bruising on her head … he must have pushed her and she should have fallen and hurt herself a lot more than what she’s saying’.2

Allied, perhaps, to this sense of dissatisfaction with the nature and level of injuries exhibited, a number of jurors also went to considerable lengths to provide alternative explanations for how such bruising might have been inflicted. Thus, several accounted for the bruising to the complainant’s chest by suggesting that she might have ‘had a necklace on that was hard … that could have imprinted on her’, while others suggested that the injuries could have been accidentally sustained in other ways—for example, one hypothesized that she could have ‘gone in the bathroom and fallen on the bath’ whilst another argued that ‘she might have been doing some sailing … or could have been going to aerobics’ and another proposed that she may have gone on a roller-coaster ride the day after the intercourse. At the same time, others insisted that the complainant’s bruising may have been the consequence of perfectly consensual sexual activity, either with the defendant or with someone else—as one put it, ‘she could have had sex the night before with somebody and he might have been handcuffing her to the bed and been rough with her’. Alongside these competing accounts, moreover, a number of jurors also intimated that the possibility could, and should, not be ruled out that the complainant’s bruises were deliberately self-inflicted in order to support her fabricated allegation of rape. While it may well have been appropriate for jurors to consider these alternative explanations—particularly in a context in which the injuries sustained were deliberately ambiguous as to their origin—the persuasive sway that these accounts (grounded in conjecture) held in several of the juries suggests that there were at least some participants who, to be convinced of the complainant’s counter-narrative, would (rather unrealistically) require her to exhibit injuries that were not only severe, but unambiguously attributable to the deliberate infliction of unwanted violence.

2This reluctance might be attributable to the fact that the injuries were described at trial, rather than presented to jurors via photographic submissions (Bright and Goodman-Delahunty 2006). Certainly, jurors lamented this lack of photographic evidence in the jury room. But, at the same time, it is not clear that the imagery of the bruising and scratching at issue would have been sufficiently ‘gruesome’ to counter these tenacious expectations of more extensive use of force, and the requests made for photographic evidence often seemed to reflect a desire to better appreciate the location of the injury as much as its severity.
Delayed Reporting

Our findings also suggest that jurors have their own views about ‘appropriate’ or plausible victim behaviour post-assault, and that this extends to the timeliness of reports. In 2007, the Government announced that it would abandon the existing requirement in England and Wales that a complaint be made ‘as soon as could reasonably be expected’, rendering admissible evidence of rape reports made weeks, months or years after the alleged assault (Office for Criminal Justice Reform 2007). This initiative officially recognized the complex internal and external pressures that may discourage immediate reporting in sexual offence cases. But the tone of deliberations in this study indicates that such recognition has yet to be uniformly achieved by prospective jury members—and, to this extent, these findings confirm the conclusions of other studies that have suggested that conviction may be less likely in rape cases in which the complainant has delayed reporting to the police (LaFree 1980; Feild and Bienen 1980; Taylor and Joudo 2005). Indeed, the three-day delay presented in our trial scenarios proved to be a significant stumbling block for many of the jurors, who were quick to state that it had, in their view, seriously weakened the prosecution case. As one put it, ‘it’s no good, it swings against her favour the fact that it’s taken three days to report’. It is worth noting, moreover, that female jurors were just as likely as their male counterparts to express this view. Indeed, those who attempted to put themselves in the shoes of the complainant were frequently adamant that their instinctive reaction would have been to telephone the police immediately and they were unwilling to countenance any other response. As one put it, ‘I think you’d do something straight away …. You’d think he’s not gonna get away with this’. Follow-up comments also indicated that the perceived need for early evidence collection in rape investigations was an influencing factor, with jurors observing that women were ‘more savvy’ about police procedures nowadays and so appreciated the need to act quickly to preserve forensic evidence. In this way, the complainant attracted criticism for not doing ‘more to help’.

In addition, observations from trials involving an immediate police report reinforced the significance attached to timing, as this information was evidently deployed positively by the jurors when evaluating the veracity of the complainant’s account. In the words of one juror, ‘she phoned the police straight away so she’d been raped’, while another referred to the prompt complaint as ‘supporting evidence’. Female jurors in these deliberations were again vocal in insisting that their own reaction would have mirrored that of the complainant, with one juror simply stating ‘I wouldn’t know what else to do’. Importantly, moreover, comments here indicated a strong belief that it would have taken the complainant some time to fabricate an allegation and that the speed of her reaction therefore undermined a key element of the defence case. The defence assertion that the complainant was ‘out for revenge’, having had her affections spurned by the accused, only served to reinforce this belief, since jurors expected a build-up of resentment over time rather than a snap or knee-jerk decision. As one juror remarked, ‘for you to sit down and plan that you are going to get revenge on somebody, it needs to be thought out and she immediately phoned the police, she didn’t have any time to think right I’m going to get you back, it was immediate that she phoned the police’.

Whilst the importance of a prompt complaint was thus repeatedly emphasized, it would be misleading to suggest that delayed reporting uniformly raised suspicion. Indeed, some jurors challenged the implicit criticism directed at the complainant,
maintaining that it was impossible to predict how someone (including oneself) might respond in the wake of a traumatic event such as rape. More specific comments indicated a broader awareness of factors that might contribute to delay, including self-blame and fear of others’ judgment or disbelief. The impact of shock and embarrassment was also mentioned, as was the possibility that the complainant may have made a concerted effort to ‘block out’ the memory of the assault, which ultimately proved unsuccessful. Having rationalized the complainant’s reaction in these terms, some jurors were, therefore, willing to accept that it would have taken the complainant some time to ‘weigh up all her options’ and decide on the best course to take. As one female juror put it, ‘I think if you’ve been raped, my, I look at it that you would need time to think about what you were going to do. I don’t think you would rush off to the police and report it straightaway. I think that you would sit back and think well, because I’m sure a lot of cases don’t get reported, do they?’. Thus, it would seem that, on balance, jurors did display a greater understanding of the impact of rape in the context of delayed reporting than they did in relation to the absence of physical resistance—although, as discussed above, this varied markedly from juror to juror. Moreover, and mirroring the findings of previous research conducted by Frazier and Borgida (1988), it was clear in the present study that the mere fact that some of the (mock) jurors did appreciate that a genuine victim might delay reporting did not in itself preclude the presence of delay from igniting suspicions in regard to the veracity of this particular rape allegation.

It also became apparent from the deliberations that the issue of timing could, and would, be viewed differently, depending on the circumstances of the case. In those trials in which the complainant offered no physical resistance, claiming to have ‘frozen’ as a result of shock and fear, her action in immediately contacting the police often prompted consternation as jurors struggled to see how the complainant could have been ‘paralysed’ one minute and sufficiently ‘compos mentis’ the next to make the call. As one juror commented, ‘I’m just not convinced that someone who’s been through the ordeal that was suggested is so switched on as to be virtually phoning the police straight away, you know’. In addition, jurors here also questioned whether a woman in this position would turn to the police as a first point of contact or would be more likely instead to seek comfort and reassurance from a family member of friend, which had not previously been a focus of discussion. In this particular context, it seems, then, that one set of normative assumptions simply replaced another, suggesting, in turn, that rape complainants could in fact be unfairly discredit for making an immediate report where this conflicted with jurors’ narrow views of conceivable post-assault behaviour.

**Calm Complainant Demeanour**

There is substantial empirical evidence to suggest that people’s perceptions of witness credibility are influenced not only by the content of testimony, but also by the manner in which it is presented (Vrij 1998; Tsoudis and Smith-Lovin 1998; Wessel et al. 2006). Such findings were confirmed in the present study: the narrowness of many jurors’ views regarding conceivable post-assault behaviour were further exemplified here in relation to the complainant’s demeanour during her testimony, with participants making a number of inferences about veracity from the level of distress she displayed.

Psychological literature has drawn attention to the different emotional styles displayed by rape victims when communicating their experiences (ranging from being outwardly
distraught and/or crying to being composed and/or ‘emotionally numb’) and has emphasized that such effects can persist until, and beyond, the point at which the complainant is called upon to testify in court (Wessel et al. 2006). Personality and individual coping strategies are commonly said to account for these differing reactions, as well as the complex, often conflicting emotions victims typically experience in the aftermath of an assault (Frazier and Burnett 1994; Littleton and Radecki Breitkopf 2006). In addition, it has been demonstrated that different styles of self-presentation in court may be a product of complainants seeking to manage their emotions (Konradi 1999; 2007). To perform the witness role, some women engage—understandably—in deliberate strategies that enable them to stay in command of their feelings, often by emotionally detaching from the rape experience and narrowly focusing on the task in hand.

Whilst rape complainants’ observable emotional reactions may range within extremes, commentators have questioned how far this is understood by jurors and have worried that a stoic courtroom performance may be damaging to a complainant’s perceived credibility. Previous research has suggested that members of the public typically consider anger and sadness to be the most common reactions to having been raped and has raised the concern that this might lead jurors to doubt victims who do not display these emotions (Frazier and Borgida 1988; Vrij and Fischer 1997; Rose et al. 2006). Certainly, studies that have examined mock jurors’ reactions to rape complainants who exhibit calm in the immediate aftermath of the incident indicate that popular expectations of distress and/or anger can militate against their credibility (Calhoun et al. 1981; Krulewitz 1982). Indeed, Kaufmann et al. (2003) conclude that ‘the perceived credibility of a female rape victim is strongly influenced by social stereotypes regarding the appropriate emotional expression of such victims’, with around 19 per cent of the variability in participants’ credibility ratings of rape complainants attributable to variable forms of emotional expression (Wessel et al. 2006: 222 and 227; see also Bollingmo et al. 2008). At the same time, research indicates that complainants who do display visible emotional upset will be regarded by third parties both as more cautious and as less responsible for the rape than their calm counterparts (Winkel and Koppelaar 1991). Building on these studies by, amongst other things, including a deliberative jury dimension and recruiting participants from outwith the University community (cf. Kaufmann et al. 2003; Tsoudis 2002; see also Dahl et al. 2007), this study sought to examine a ‘relatively unexplored type of rape myth’, which—going beyond demeanour in the immediate aftermath—suggests that ‘a jury may be less likely to convict in a rape case if the victim is not crying during her testimony’ (Buddie and Miller 2002: 153). In line with pre-existing research, our findings suggest that concerns regarding juror (mis)evaluation of complainant post-assault demeanour in this context are merited.

When the complainant testified in what may be best described as an emotionally flat manner, this drew extensive comment, with jurors apparently struck, and to some degree perplexed, by her ‘very, very calm’, ‘extremely calm’ or ‘unemotional’ appearance. It was obvious that most jurors expected a more visible display of emotion and for the defendant’s presence in the courtroom, in particular, to provoke a more pronounced reaction. A female juror expressed surprise, for example, that the complainant could face the defendant ‘no problem’, while another wondered why the complainant had not been more obviously unnerved by giving evidence ‘in the courtroom with the man she was alleging had raped her’. Whilst ‘calm’ was the adjective most commonly
employed, some jurors used descriptors with more negative connotations, referring to the complainant as ‘cool’ and ‘cold’, implying a lack of feeling, and ‘calculating’, suggesting deliberate connivance and a lack of honesty. This latter observation appeared to be based, moreover, not only on the complainant’s emotionality—or lack of it—but to relate, in part, to the complainant’s style of delivery, which was measured in terms of pace and rather ‘flat’ in terms of intonation. A number of jurors referred to the complainant’s responses as being ‘too precise’, again implying a lack of sincerity, while their deliberate quality denoted careful pre-trial planning to others, with one stating that ‘she seemed to have it pretty much worked out’ and another asserting that ‘it was as though she’d got all the answered planned anyway and she knew exactly what she was going to say’. Significantly, the complainant gave the same basic account of the alleged rape in each of the trial scenarios, describing events in the same level of detail, but such comments were generally confined to those trials in which her demeanour was deliberately manipulated in order to appear less tearful or visibly distressed. The impression of exactitude that aroused jurors’ suspicion and the mode of presentation thus appear to be connected—albeit that this sits somewhat uncomfortably with other psychological research that indicates that confidence, which may be communicated through precision, usually enhances a speaker’s believability (Bell and Loftus 1989; Potter and Brewer 1999; Larcombe 2002; Brewer and Burke 2002).

It is also noteworthy that in two of the three juries in which this trial variable was operative without the introduction of additional instruction or expert evidence, members failed to offer any explanation to account for the complainant’s outwardly calm appearance. Only in the third jury panel was the significance of the complainant’s demeanour queried, with one female juror observing that some people are naturally emotional while others are ‘just very blank’, and suggesting that it would therefore be unfair to hold that against them. As an alternative explanation, a male juror observed that the complainant could have been advised by either the police or ‘her solicitor’ to remain composed, to avoid being ‘too emotional’ or ‘flustered’. As he put it, ‘I’m sure they rehearse these things before they go into the courts else I can imagine some people falling to pieces’. This incorrect assertion that witnesses rehearse their evidence under the instruction of lawyers in advance of trial was made several times across the study and was notably one that never evoked challenge. On this occasion, the suggestion sparked a mixed reaction, with one male juror simply observing that if some sort of ‘coaching’ had taken place, then, it had strategically backfired, as it had resulted in the complainant coming across as cold and calculating. Another juror, by contrast, was more receptive and cited the recent high-profile case of Kate McCann in support, suggesting that the mother of missing child, Madeleine McCann, had been unfairly vilified in the press for not breaking down during public appearances when she had reportedly been advised to show little emotion by the police. Strikingly, only one juror in this discussion offered an explanation that related in any way to the trauma of rape, suggesting that the complainant may have tried to remain detached as a way of dealing with the situation, aiming instead to recount events in a ‘factual way’. In sum, then, the mock jurors appeared to have little understanding of the psychological effects and external pressures that could influence a rape complainant’s demeanour in court.

Given what has been said above, one might reasonably expect jurors to be more favourably disposed towards a complainant who exhibited a more emotional style of self-presentation. But the picture that emerged from the deliberations was in fact
somewhat more complex, bearing out within the confines of the jury room Sue Lees’ hypothesis that ‘paradoxically, the complainant’s distress is not seen as corroborative, but absence of distress can be used against her’ (Lees 1996: 119). The complainant’s distress as she described being overpowered and raped by the defendant was clearly an influencing factor in some cases, with one male juror stating ‘I can’t imagine someone that’s actually lying through her teeth would actually be that emotional at that point’. Where the complainant’s demeanour was remarked upon, however, others were often quick to caution that this could have been part of a ‘performance’. The possibility that the complainant was simply a ‘good actress’ was advanced by a number of jurors, who, for example, drew attention to her ‘dowdy’ dress in court as further evidence that appearance was open to deliberate and strategic manipulation. As one female juror noted, ‘she’s got no make-up on, her hair’s tied back, she looks like a frightened little woman. Who knows in the office she could have black stockings on, four and half inch heels, wearing loads of make-up’. Others also observed that non-verbal behaviour could be misleading, noting the ability of some people to lie and ‘keep a straight face’. Thus, it seems that opinion on the significance of an emotional complainant demeanour was essentially divided. For some, the complainant’s visible distress was a sign that she was recounting the details of an experienced traumatic event. But the value of demeanour was more sceptically appraised by others who appeared concerned that witnesses, who had a vested interest in the outcome of the trial, may manage both their emotions and their overall appearance as a means of eliciting sympathy and/or shoring up their credibility. To this extent, while the findings of this study suggest that the demeanour of the complainant can and does have an influence on juror assessments of her credibility, it supports the conclusion of the New South Wales mock jury study, which asserted that the degree to which the complainant was upset whilst giving testimony did not necessarily impact on juror perceptions in any consistent way (Taylor and Joudo 2005).

Concluding Comments

Amongst other things, in terms of research method, the present study may be said to confirm the value of having participant (mock) jurors discuss a rape incident rather than simply evaluate it by way of an attitudinal questionnaire (Anderson et al. 2001). This questionnaire method, which is heavily favoured by previous social psychology research, has been criticized on the basis that it does ‘not allow participants to display their sense-making practices in relation to rape beyond marking a mark on a scale using categories predefined by the researcher’ (Anderson and Doherty 2008: 30). Neither does it allow for the examination of the emergence and resolution of disputes within social interaction. Jurors in this study were not only drawn from a broader constituency than is the case in much previous mock juror/attitudinal research, but were also provided with an extended, more realistic and more engaging stimulus than the brief vignettes or video excerpts that are often relied upon. In addition, and equally as importantly, they were far less constrained during the deliberation process—they were thus able to offer explanations and justifications for their judgments, and to contest the judgments of others in negotiation towards a shared consensus, as they would do in actual cases. The exchanges thereby yielded provide a rich data source within which the impact of various behavioural cues on the part of the complainant can be examined, as—crucially—can the interrelation of these variables and other case-specific aspects.

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Unlike alternative methods for capturing attitudinal information, which rely upon instantaneous ‘snapshots’, the present study has the advantage of taking us one step further (within the experimental constraints imposed upon all juror research) towards reflecting the inevitably non-static and responsive nature of jury deliberation.

In substantive terms, the findings of the study also have considerable relevance for current and ongoing debates regarding the need for—and most appropriate methods of—educating prospective and/or actual jurors in regard to the realities of sexual assault. The 2006 Office for Criminal Justice Reform proposals to introduce expert evidence in order to disavow jurors of misperceptions regarding rape have faced strong criticism from many quarters. The Council of Circuit Judges have, for example, argued against amendment of the law on the grounds that the use of expert testimony could cause delays and prove expensive, unnecessary and inappropriate in many cases (Council of HM Circuit Judges 2006). While there may indeed be good reason to be circumspect about the benefits of these reforms—paramount amongst them, perhaps, being the question of whether such evidence would, in fact, have any educative impact on deeply engrained social attitudes—the research presented in this article clearly testifies to the falsity of any suggestion that jurors in rape cases can be entrusted to leave their personal prejudices and stereotypical preconceptions behind them when they enter the courtroom. Indeed, the findings of this study illustrate that concerns regarding the limits of current public understanding as to what constitutes a ‘normal’ reaction to sexual attack, and its possible implications in terms of juror assessments of complainant credibility in rape cases, are well founded. While considerable lip-service was paid by our participants to the notion that ‘different people will react differently’ to frightening or traumatic experiences, the reality was that there were a number of assumptions regarding the instinct to fight back, the compulsion to report immediately and the inability to control one’s attendant emotions—and these assumptions clearly influenced the deliberations, and ultimately the verdict outcomes, of many of the juries.

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