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Responding to the challenge of rape myths in court. A guide for prosecutors.

By Dr Nina Burrowes

Foreword by Alison Saunders

Foreword

On 30 January 2012 I gave a presentation on the Prosecution of Rape and Serious Sexual Offences at London's City Hall. The audience consisted of prosecutors; representatives from organisations that support victims of sexual abuse; those that campaign on their behalf; and other interested parties. At the end of my talk I issued a direct challenge to the audience: How do we ensure that myths and stereotypes do not play any part in a jury's deliberations whether consciously or subconsciously?

I am delighted that the challenge was picked up and addressed so comprehensively by BPP, in their commissioning of a review of the research evidence into the impact of rape myths on juror decision-making. This review was carried out by Dr Nina Burrowes who then drew upon her findings to write this document, designed to help those who prosecute rape cases to recognise and deal effectively with rape myths in court.

The practical response to rape myths suggested by Dr Burrowes, and her emphasis of the importance of narrative in juror decision making, adds significantly to the body of guidance on this important topic, pulling together many myths and providing valuable insight into the jury's likely response to the workings of a rapist's mind. I welcome Dr Burrowes' examples of how prosecutors can shape narratives and draft case theories that effectively challenge the myths that arise in the course of the trial. All of this can usefully be referenced in the training the CPS delivers to its specialist prosecutors.

Alison Saunders
Chief Crown Prosecutor
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Note from the author

There is a story behind this report – a story about people, perspectives, and making sense of things. Last year I was commissioned by BBP to carry out a literature review on the impact of rape myths on juror decision making. I have spent my career carrying out research on sexual offending with perpetrators, victims and the public. The project for BBP was the first time I had looked at the prosecution of rape cases. Having completed the review I was inspired to produce this report. It was easy for me to be inspired. By their very nature rape cases often lack any physical evidence and come down to one person's word against another's. It is an area that is rich in psychology and as such, it is an area that may benefit from a psychological lens.

This report does a number of things. It presents the research evidence about rape myths and their impact on juror decision making. It explains why members of the public may hold rape myths. It also explains how and why victims of sexual offences are likely to respond to an attack. However, my key message to prosecutors is this: it is essential that juries are presented with a balanced narrative that explains the facts of the case. **Currently much of the evidence about a case is sewn into a narrative that supports the defence.** A typical narrative in a rape case may emphasise that the complainant was willing to go back to the defendant's home; that the complainant was drinking; that the complainant did not physically resist the alleged attack; that the defendant did not use force; and that the complainant failed to report the incident to the police immediately. This narrative mirrors current rape myths and is likely to confirm some of the attitudes that jurors may hold about rape. However, **with an understanding of how a sex offender who wishes to avoid being caught and punished for their offence will go about committing a rape, exactly the same evidence can be used to support prosecution.** What is needed then is an understanding of how an offender who wishes to avoid punishment will commit their offence. This is what this report provides. My hope is that this knowledge provides prosecutors with a wider range of narratives on which to base their case theory and a way of turning the tables on some rape myths – illustrating how the same material can be used to argue for prosecution rather than defence and providing juries with a balance of narratives to help them make sense of the evidence.

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'This will be one of those cases that stays with me. I really thought we had it. To be honest I'm shocked. Some cases you can understand it when a jury returns a not guilty verdict. But not this one. I just don't know what anyone working on the case could have done differently.'

A prosecutor in a rape case after a not-guilty verdict

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1 Introduction

1.1 The context for this document

On 30th January 2012 Alison Saunders, the Chief Crown Prosecutor for London, gave a speech in which she set a challenge to those of us who work in the criminal justice system. Having presented background information on ‘rape myths’ (common prejudicial attitudes about rape) and recent reforms within the Crown Prosecution Service in response to these issues Alison Saunders set the following challenge:

How do we ensure that myths and stereotypes do not play any part in a jury’s deliberations whether consciously or subconsciously?

In response to this challenge, BPP commissioned a systematic review of the research evidence into the impact of rape myths on juror decision making. For the first time this review was able to categorically conclude that juror attitudes towards rape do have an impact on their decision making. This review is currently being submitted for publication in an academic journal. The main findings from the review are summarised in this document.

Having established that rape myths do have an impact on juror decision making, I have written this report to help those prosecuting rape cases deal with the challenge of rape myths in court. The report defines the common rape myths, discusses the prevalence of these myths and their impact on juror decision making. The report goes on to explain why jurors may hold rape myths and explores how prosecutors may be able to challenge these myths at trial.

This report emphasises the importance of ‘narrative’ in juror decision making. Each juror will be trying to come to a plausible story of *what happened*. The report provides examples of how prosecutors can shape narratives and draft case theories in rape cases that challenge common rape myths.

1.2 What are rape myths?

A ‘rape myth’ is an inaccurate assumption about rape. For example, a commonly held rape myth is that most victims of rape will try to fight off their attacker, whereas in reality we know that most victims show little physical resistance to the attack. Table 1 presents commonly held myths about rape.

Table 1 Commonly held rape myths (adapted from Saunders, 2012)

Narratives based on myths about rape	Alternative narratives
Rape occurs between strangers in dark alleys	<ul style="list-style-type: none"> - The majority of rapes (66%¹) are committed by persons known to the victim - Victims are often raped in their homes
People provoke rape by the way they dress or act	<ul style="list-style-type: none"> - Dressing attractively and flirting can be an invitation for attention, admiration, or consensual sex. It is not an invitation for rape
People who drink alcohol or use drugs are asking to be raped	<ul style="list-style-type: none"> - Being vulnerable does not imply consent - If a person is unable to give consent because they are drunk, drugged or unconscious, it is rape
Rape is a crime of passion	<ul style="list-style-type: none"> - Forcing someone to have sex against their will is about power, control, and violence – not sexual desire, romance, or passion. - Many rapes are premeditated and planned - Many rapists fail to get an erection or ejaculate
If she didn't scream, fight or get injured, it wasn't rape	<ul style="list-style-type: none"> - Victims in rape situations are often legitimately afraid of being killed or seriously injured and so co-operate with the rapist to save their lives - The victim's perception of threat influences their behaviour often leading them to freeze or go limp - Rapists use many manipulative techniques to intimidate and coerce their victims - Non-consensual intercourse doesn't always leave visible signs on the body or the genitals.
You can tell if she's 'really' been raped by how she acts	<ul style="list-style-type: none"> - Reactions to rape are highly varied and individual - Many women experience a form of shock after a rape that leaves them emotionally numb or flat - and apparently calm.
Women cry rape when they regret having sex or want revenge	<ul style="list-style-type: none"> - Data from 2643 cases suggests that the level of false reporting is somewhere between 8% (a case recorded as a false allegation by the police) and 0.2% (cases where an individual is arrested for a false allegation) (Kelly, Lovett, & Regan, 2005).
Male rape is an offence that takes place between gay men	<ul style="list-style-type: none"> - Rape is not about sexual desire, consequently men who rape other men are often heterosexual. Their victims are often heterosexual too.
Prostitutes cannot be raped	<ul style="list-style-type: none"> - Prostitutes have the same rights with regards to consent as anyone else: the transactions they negotiate with clients are for consensual activities, not rape.
If the victim didn't complain immediately it wasn't rape	<ul style="list-style-type: none"> - The vast majority (estimated at 90%) of victims <i>never</i> report the rape to the police - Trauma, feelings of shame, confusion, or fear of the consequences can all delay reporting to the police.

¹ Stanko, B. & Williams, E. (2009). Reviewing rape and rape allegations in London: what are the vulnerabilities of the victims who report to the police? In M. Horvath & J. Brown (Eds.) *Rape. Challenging contemporary thinking* (pp. 207-228). Cullompton: Willan Publishing.

2 Are juries affected by rape myths?

2.1 Why might we suspect that rape myths have an impact on jury decision making?

The conviction rate for rape cases that went to court in 2011/2012 was 62.5%. This figure is an improvement on earlier years (58% for 2007-2008) but is still low in comparison to the overall conviction rate of 83.5%. The highest conviction rate is 91.6% for drug offences; the lowest is 60.4% for all sex offences (Ministry of Justice, 2012).

In part, the comparatively low conviction rate for rape may be attributed to the particular characteristics of a rape case. Many rape cases lack physical or any other evidence independent of the complainant themselves. A lack of independent or other corroborative evidence means that the case inevitably turns wholly or predominantly on the evidence of the complainant alone. Research has demonstrated that this judgement of credibility is more likely to be based on personal biases and attitudes than what a witness says. In a study involving 210 members of the public who participated in 18 mock trials Taylor and Joudo (2005) found that despite watching the same testimony juror opinions about credibility varied greatly and was mostly influenced by demographics, beliefs, expectations and attitudes about how a 'real' victim of rape would behave.

With little in the way of hard evidence to guide jury decision making rape cases are exactly the kind of cases that are open to influences from stereotypes and attitudes. In part this is evidenced by the common trends in verdicts amongst different demographic groups. If judgements about rape cases were made purely on the grounds of evidence then there should not be any difference between different juror-participants. Instead research consistently shows that men are more likely to acquit defendants than women (Pollard, 1992; Schutte & Hosch, 1997).

Previous reviews of the literature on juror decision making in rape cases have found that levels of victim blame is influenced by victim clothing and victim character. In a meta-analysis reviewing data from 28 studies Whatley (1996) found that victims who wore revealing clothing or were judged to be less respectable were significantly more likely to be held responsible for instances of rape. In an earlier review Pollard (1992) found that men and individuals with traditional sex-role attitudes were more likely to hold negative attitudes towards victims of rape.

The research therefore suggests that in the case of rape trials there is likely to be a pre-trial prejudice that can have a significant influence on verdicts.

2.2 What is the prevalence of rape myths?

As juries are drawn from members of the public it is useful to have an understanding of the prevalence of rape myths in society. Rape myths reflect societal attitudes and as such researchers have found variations in the prevalence of rape myths between different countries. The prevalence of negative attitudes towards rape victims ranges from 18.3% (United Kingdom) to 29.5% (Canada) amongst western countries and 32.9 (Hong Kong) to 51.5% (Malaysia) in eastern countries (Ward, 1995).

In a recent study using telephone interviews with 3120 members of the public in Ireland McGee, O'Higgins, Garavan, and Conry (2011) found that 40.2% of participants felt that accusations of rape were often false, indicating that a large minority of potential jury members are pre-disposed to a not-guilty verdict in the case of rape. This figure highlights a large disparity between the 'myth' and 'reality'. Estimating levels of false reporting is both complex and controversial due to problems defining and proving a false allegation. Data from 2643 cases suggests that the level of false reporting is somewhere between 8% (a case recorded as a false allegation by the police) and 0.2% (cases where an individual is arrested for a false allegation) (Kelly, Lovett, & Regan, 2005).

As well as being aware of the general prevalence of attitudes that may pre-dispose jury members towards acquittal it is important to be aware of which specific rape myths people are more likely to subscribe to. McGee et al. found high levels of inaccurate assumptions relating to the motivation for rape. 40% of participants felt that rape happened as a result of overwhelming sexual desire and 34% disagreed that rape occurred out of a desire for control and domination. This data suggests that a large minority of members of the public are likely to have inaccurate assumptions about the nature of rape – seeing it as related to desire and attraction rather than violence, control, and humiliation.

Other commonly held false assumptions relate to male rape with 34% of participants believing that a perpetrator of male rape must be gay and 22.5% believing that the victim must have either been gay or acting 'in a gay manner'. This false assumption also reflects a misunderstanding that rape is about sexual desire (and therefore sexual orientation is relevant) rather than being an act of violence.

The final category of more commonly held beliefs identified in the McGee et al. study is that the victim holds some responsibility for the offence. 29.2% of the participants agreed that women wearing tight tops or short skirts are inviting rape, indicating that a significant minority of the public are likely to attribute responsibility for rape according to the behaviour and demeanour of the victim.

Summary

- * A significant minority of the public are likely to hold stereotypical beliefs that may pre-dispose them to acquittal in rape cases. Previous research has found that 18.3% of a UK sample held negative attitudes towards victims of rape and 40.2% of members of public in Ireland felt that accusations of rape were often false.
 - * Juror members may be particularly prone to misperceiving rape as a crime of passion and sexual desire rather than a crime of violence and control.
-

2.3 Who holds rape myths?

A great deal of research has been conducted that explores which groups in society are more likely to hold rape myths. In a recent comprehensive review of the literature Suarez and Gadalla (2010) found that men are more likely to hold rape myths than women. This finding is replicated in numerous studies and reviews (e.g. Anderson, Cooper and Okamura, 1997; Anderson, 2004; Earnshaw, Pitpitan, and Chadoir, 2011).

When looking at differences in rape myths across different age groups in general McGee et al (2011) found that older participants were more likely to agree with rape myths than younger participants. Again this is a finding that has been replicated in other studies (e.g. Anderson et al., 1997).

Other groups of people who have been found to be more accepting of rape myths include people with lower socio-economic status (Anderson et al., 1997) and individuals who held negative attitudes towards women and other groups such as people of different races, sexual orientation, class, and age (Anderson et al., 1997; Suarez & Gadalla, 2010).

A number of studies have found that many women who have experienced rape subscribe to rape myths and are likely to interpret their own behaviour in line with these myths (Peterson & Muehlenhard, 2011). As a consequence many victims feel guilty about their own behaviour leading up to the offence, may blame themselves for not resisting during the offence, or may not label their experience as rape (Peterson & Muehlenhard, 2011).

Summary

- * Men are more likely to hold rape myths than women
 - * People who hold rape myths are also likely to hold negative attitudes to other groups such as negative attitudes towards women, ethnic minorities, and homosexuals
 - * Victims of rape are also likely to hold rape myths which may lead them to feel guilty and responsible
-

2.4 What is the evidence that jury decision making is affected by rape myths?

This section summarises a recent systematic review of the literature, carried out by BPP that examined whether rape myths had an impact on jury decision making (Dinos, Burrowes, Hammond and Cunliffe, submitted).

2.4.1 Why is a systematic review necessary?

Whilst there has been a significant amount of research into the nature of decision making in rape cases, to date there has not been a systematic review of the influence of rape myths on jury decision making. Reviews have either been non-systematic (e.g. Pollard, 1992) or have focused on other factors such as gender differences in rape myth attitudes (Suarez & Gadalla, 2010) or factors such as victim clothing (Whatley, 1996). A systematic review of the literature is important as the methodology used to conduct the review is designed to eliminate bias. In a systematic review *all* the research evidence is assessed, a transparent process of searching for literature and appraising research studies is used, and the size and quality of the research evidence is objectively assessed before coming to a conclusion. In effect a systematic review does what we would hope a jury would do – it pays careful attention to all of the evidence and then comes to a systematic and replicable judgement based on that evidence. Details on the methodology used in the review can be found in the Appendix of this document.

2.4.2 What were the findings?

After searching over 20 years of research literature 21 studies were found that tested the impact of rape myths on jury decision making. The data from 14 studies fully supported the hypothesis that juror judgements are affected by rape myths. Data from 6 studies partially supported the hypothesis. 'Partial' support means that some but not all of the data analysis supported the hypothesis. One study did not find any relationship between rape myths and judgements.

First author and year	Sampling			Support of hypothesis that rape myths affects judgements?			Effect size	Quality score
	Country	Sample size	Student sample?	Fully	Partially*	No support		
Deitz, 1984	USA	190	✓		✓			17
Jenkins, 1987	USA	655	✓		✓		Medium	17
Krahe, 1988	UK	72		✓				19
Weiner, 1989	USA	58				✓	(No effect found)	18
Weir, 1990	USA	330	✓	✓			Small to medium	16
Kopper, 1996	USA	534	✓	✓				17
Schuller, 1998	Canada	136		✓			Medium	21
Vrij, 2001	UK	80	✓	✓				16
Mason, 2004	USA	157	✓		✓		Medium to large	16
Gray, 2006	UK	168	✓	✓			Large	16
Wenger, 2006	USA	106	✓		✓			14
Krahe, 2007	Germany	158-286	✓	✓			Small to medium	16
Clarke, 2009	Canada	173	✓		✓		Medium to large	14
Cohn, 2009	USA	250-274	✓		✓		Medium	15
Grubb, 2009	UK	156	✓	✓			Medium	15
Sleath, 2010	UK	116	✓	✓			Medium to large	15
Stewart, 2010	USA	229	✓	✓			Medium to large	17
Clarke, 2011	Canada	413		✓			Medium to large	21
Eysell, 2011	Germany	170-160	✓	✓			Small to large	17
Hammond, 2011	USA	172	✓	✓			Medium to large	18
Sussenback, 2012	Germany	60	✓	✓				14
TOTALS			17	14	6	1		

*The data from these studies did not 100% support the hypothesis that rape myths have an impact on decision making. At least one aspect of the data analysis would have supported the hypothesis and at least one aspect of the data would have recorded a nil result in relation to the hypothesis.

Was this finding affected by the quality of the studies?

As expected the studies showed minimal variation in quality. The highest score achieved by a study was 21, the lowest was 14, and the average was 16.6. The two studies that achieved a score of 21 both fully supported the hypothesis. The average quality score for studies that fully supported the hypothesis was 17 (n=14), partially supported the hypothesis was 15.5 (n=6), and did not support the hypothesis was 18 (n=1).

What do studies that do not rely on student populations tell us?

Four studies recruited members of the public as participants. The sample sizes for these studies ranged from 58 to 413. The quality scores for these studies ranged from 18 to 21 with an average of 19.75. Three of these studies fully supported the hypothesis and one did not provide any support for the hypothesis. The number of studies using members of the public as participants is small and hence it is difficult to form any firm conclusions. However, based on the data in this review it appears that studies

that use members of the public as participants do support the hypothesis that the more an individual accepts rape myths the more lenient they are towards defendants. Only one study did not support this hypothesis, this study had the smallest sample size out of all 21 studies in this review (N=58) and the lowest quality score out of the four studies that used members of the public as participants.

What do studies in the UK tell us?

Five studies were conducted in the United Kingdom. Four of these studies used students as participants; one study used members of the public. The sample sizes for these studies ranged from 72 to 168 and quality scores from 15 to 19. All 5 studies fully supported the hypothesis that rape myths had an impact on decision making with effect sizes ranging from medium to large.

Summary

This review systematically explored all of the published research on the impact of rape myths on judgements. Whilst the studies have their methodological weaknesses, the overwhelming conclusion from this review is that rape myths do appear to have an impact on judgements. Individuals who hold stereotypical attitudes towards rape are more likely to judge complainants in rape cases harshly and defendants leniently. This finding is consistent regardless of the quality of the individual research studies or whether studies used members of the public or students as participants. This finding is corroborated by qualitative research that has identified the impact of rape myths on juror deliberations (e.g. Ellison and Munro, 2009).

3 Why do people have rape myths?

Sections 3 and 4 of this document are intended to provide prosecutors with some guidance to help them understand why people may hold rape myths and how to challenge them in court. Whilst the content of these sections are written with an appreciation of the research literature the main source for this material is my opinion as a psychologist who works in the criminal justice sector. The content is therefore not purely evidence-based, but based on professional opinion. My hope is that by having a better understanding of the psychological aspects of rape myths, along with a better understanding of the psychological aspects of sexual offending, prosecutors will be in a better position to challenge the influence of rape myths in court.

3.1 Forming a narrative

In order to convict in rape cases jurors are required to reach a verdict based upon the evidence presented in the trial. According to the Story Model (Pennington & Hastie, 1992) jurors make sense of the material presented in court by incorporating it into a narrative structure that creates a plausible, coherent and complete account of the events. This narrative will be based on a number of different factors:



Facts of the case - When the level of available evidence is sufficient juror narratives are likely to be heavily influenced by the facts of the case. In these circumstances even individuals who may hold very prejudicial rape myth attitudes are likely to make a judgement based on the evidence (perhaps seeing this case as an exception to the rule). However, in rape cases the evidence is commonly incomplete or ambiguous, often boiling down to one person's word against another's. In these cases factors beyond the evidence presented are likely to be influential.

Myths about lawyers and court – For most jurors this will be the first time they have been in court. Just as they are likely to have a stereotypical understanding of rape they are also likely to have a stereotypical understanding of the criminal justice process. This is likely to include the perception that the prosecuting barrister is the 'victims' lawyer' and the perception that the defending barrister would not have taken the case if they did not believe that their client was innocent.

Narratives from advocates – As juror members search for a narrative that can help them make sense of the facts of the case they may well adopt the narratives provided by the barristers should this narrative be conducive to their world view.

Own understanding of what rape is and why it happens – Different jurors will have a different understanding of what rape is and why it happens. Individuals who have some first or second hand experience of rape (for example, close contact with a previous victim of rape or experience gathered as part of their profession) are likely to have a more informed and accurate understanding. Anyone who has no previous connection to the issue is likely to rely on society/cultural narratives about rape and may also use their own personal experience of adult sexual relations to help inform their understanding. The recent research finding that the most common misperception about rape is that rape is about sexual desire (McGee et al., 2011) suggests that jurors may be heavily relying on their own personal experience of adult sexual relations in order to understand rape.

3.2 How might a juror respond to a typical rape trial?

In order to tackle rape myths in the court room it is important to understand what jurors may be thinking and what types of messages they would find easy to accept. The table below illustrates how different jurors may react to a typical rape trial and how as a prosecutor you may be able to work with them.

	JUROR 1 IT JUST SEEMS LIKE NORMAL DATING	JUROR 2 WHAT A FOOLISH GIRL	JUROR 3 CONSERVATISM AND SEXISM
How is this juror likely to see the case?	<p>Real rape is a violent offence by a stranger.</p> <p>It seems to me that this event was about overwhelming sexual desire.</p> <p>I think that things just got a bit out of hand – but that can happen. It’s unfortunate that the victim feels this was rape.</p>	<p>Real rape is a violent unprovoked attack by a stranger and is very rare.</p> <p>In this case the victim was foolish. What did she expect?</p>	<p>Real rape is a violent offence by a stranger and should not be tolerated.</p> <p>This event was clearly not rape as it does not fit into my image of real rape.</p> <p>The victim is either devious, regrets what happened, or is confused.</p> <p>What the defendant is going through is not fair – these cases should not come to court.</p>
Why does the juror see it like this?	<p>The only frame of reference that I have for rape is my own experience of adult sexual relations. There are many aspects of normal dating that I can find psychologically uncomfortable:</p> <ul style="list-style-type: none"> • My own sexual desire • Flirtation/teasing • Pursuing someone • Alcohol/drugs and inhibition • Behaviour/sex I regret • Fear of rejection/shame/ actual rejection 	<p>I am terrified by the prospect of being raped. I am unable to live with the idea that one day I might become a victim of rape.</p> <p>As part of this fear I cannot believe that the victim is innocent and the rape was unprovoked. I need to believe that the victim was in control and somehow brought it upon herself.</p> <p>I protect myself from the idea of being a victim of rape by</p>	<p>I like the status quo and I want to protect it. I am generally inflexible in the way I see the world. I like it to be stable and predictable. I do not want to look at the ambiguous, murky side of life.</p> <p>My view of the world is largely informed by society. My views of rape are largely informed by attitudes towards women.</p> <p>It is important to me that I can fit the circumstances of this case</p>

	<p>I don't want to link my own behaviour to rape:</p> <ul style="list-style-type: none"> • Have I been coercive when I have pursued someone? • Have I used alcohol and drugs to lower my and their inhibitions? • Have I reacted angrily to rejection? • Do I expect sex? • Am I too forceful? <p>If I see this case as a real rape does that mean I also need to condemn my own behaviour?</p>	<p>emphasising how much control the victim has over events. If I can believe that she was in control of the situation then I can believe that I can be in control of my own life – which means I won't get raped in the future.</p>	<p>into the way I understand the world works.</p>
<p>The juror's main response to rape is</p>	<p>I NEED TO EXONERATE MY OWN BEHAVIOUR</p>	<p>I NEED IT TO BE THE VICTIM'S FAULT</p>	<p>I NEED THINGS TO STAY THE SAME</p>
<p>How is the juror's narrative useful to them?</p>	<p>I can exonerate and normalise my own behaviour.</p> <p>This helps me reassure myself that my own behaviour has no relation to rape or sexual assault.</p>	<p>I can make myself feel safe</p> <p>I can distance myself from the thought that I could be a victim of rape.</p>	<p>Everything feels safe and predictable.</p> <p>I do not have to look at complexity.</p> <p>I do not have to consider change</p>
<p>What tactics does the juror use to maintain their view?</p>	<p>I will minimise and normalise what happened.</p> <p>It was not rape - it was a case of miscommunication, things getting out of hand, or it was overwhelming sexual desire.</p> <p>These things happen – they are a normal part of dating.</p>	<p>I will focus on what the victim did leading up to the rape and I will hold her accountable for her actions and the consequences of those actions.</p> <p>I am likely to paint her as 'foolish'.</p> <p>I will rely on the power of hindsight a lot.</p>	<p>I will make up my mind about the case very early on (if not before the case even starts). I will be rigid and dogmatic in my decision making.</p> <p>I will not like any information that contradicts the way I see things.</p>
<p>What would be the impact on the juror if they did not have rape myths?</p>	<p>I would be relieved to hear that rape has little to do with normal adult sexual relations. My narrative is based on my misperception that normal adult relations and rape are very similar to one another.</p>	<p>In many ways you would be helping me as my current ideas of rape give me a false sense of control and stop me from focusing on the real risk factors that are associated with rape.</p> <p>However, giving me an accurate picture of rape would require me to realise that I could become a victim of rape and</p>	<p>This could potentially be very threatening for me as ultimately it might require me to rethink everything.</p> <p>My ideas about rape are based on my ideas about gender, power, and sex – these are likely to be core beliefs for me and so the prospect of changing any of these may be very costly.</p>

		<p>that I do not have total control over the situation. This may cause me to be fearful.</p>	
<p>What's the best way to work with this juror?</p>	<p>I will happily listen to a narrative that distances rape from normal adult sexual relations.</p> <p>Help me see that rape is about having intercourse with someone who is either unable to consent (e.g. they are unconscious) or they are frozen with fear.</p> <p>Help me see that rape has everything to do with taking choice away from a victim and nothing to do with desire.</p> <p>Help me see how 'abnormal' the offender's motivation and behaviour was.</p>	<p>Challenge my use of hindsight – help me see that 1000s of women would have engaged in exactly the same behaviour on the same night. Help me see that the victim did not know how events were going to proceed.</p> <p>One of my main stumbling blocks is that I have not given any thought to the defendant's behaviour. Help me focus on what the defendant did/did not do, help me see his control over events.</p> <p>Help me move from blaming the victim for her vulnerabilities and recognising that through no fault of her own she was chosen because of her vulnerabilities by a sex offender who did not want to get caught. Show me that I may even approve of her behaviour as she was probably trying to keep herself safe by making sure she was with someone she trusted rather than a stranger.</p> <p>You may be able to work with my need for justice by helping me ensure that a guilty offender gets what they deserve – therefore making me feel safe.</p> <p>It may be useful to emphasise how brave the complainant is to bring the case to court – present them as a positive role model of how I might hope I might behave if I was attacked.</p>	<p>I am likely to be a rigid thinker because I cannot cope with the consequences of flexible thinking. Your best tactic is to provide me with new information rather than rely on me to change any of my existing views. Rather than trying to change my attitudes towards women give me a narrative about sex offenders that I can understand and 'add' to my existing view of the world without having to change anything else.</p> <p>The narrative you provide needs to be clear and non-ambiguous. Give me a way of understanding the case that I can easily make sense of and does not threaten a view of the world that is important to me.</p> <p>I am more likely to accept that this case 'was an exception to the rule' rather than to change all of my views on rape.</p>

4 Narratives that turn the tables on rape myths

As mentioned above, one of the key elements of the juror's understanding of the case is the 'narrative' that they form. This will be the story that they construct to help them understand 'what happened'. Prosecutors have an opportunity to provide a narrative of events through speeches and their line of questioning. This section provides some guidance on how prosecutors may provide narratives that challenge rape myths in court.

4.1 Reframing narratives about victims

4.1.1 *Victim vulnerability*

Many of the myths around rape focus on blaming the victim for the vulnerable state in which they allowed themselves to get in. These myths rely on the power of hindsight and ignore the influence that the offender had on events. An alternative narrative will emphasise that one of the most important tactics that a sex offender can use to avoid punishment is to select an appropriate person as a target for their offence. An offender can increase their chances of being able to carry out the offence and reduce their chances of being punished for the offence through the careful selection of a victim.

An alternative to the 'foolish girl' narrative in relation to victim vulnerabilities is therefore the 'offender who did not want to get caught' narrative. In effect, the offender will choose a victim and a context which enhances their chances of committing the offence and avoiding punishment.

The table below illustrates the kind of choices an offender can make to reduce the chances of a victim resisting the attack, reporting the offence, or being believed by a jury:

	←—————→		
	Unlikely to be punished for the offence		Likely to be punished for the offence
Getting access to a victim	<p>Current partner</p> <p>Part of your close network</p> <ul style="list-style-type: none"> • Family • Friend • Flat mate 	<p>Part of your wider network</p> <ul style="list-style-type: none"> • Friend of a friend • Colleague • Someone you have responsibility for (e.g. pupil, patient) <p>Stranger who is isolated or alone</p> <p>Sex worker</p>	<p>A stranger who is with their friends/family/partner</p>
Getting the victim to trust you	<p>They already trust you</p> <ul style="list-style-type: none"> • Current partner • Family • Friend 	<p>It is easy to get them to trust you because they are</p> <ul style="list-style-type: none"> • Emotionally vulnerable <ul style="list-style-type: none"> ○ Young ○ Socially isolated ○ Have mental health issues ○ Compromised by a recent event (e.g. argument with boyfriend) • Compromised by alcohol or drugs <p>It is easy to get them to trust you because you are in a position of power</p> <ul style="list-style-type: none"> • Employer, care worker, authority figure 	<p>People who are unlikely to trust you</p> <ul style="list-style-type: none"> • They do not know you • They are not vulnerable (e.g. they are not drunk, isolated, or emotionally compromised)
Location	<p>Own home</p> <p>Private residence</p>	<p>Institution</p> <p>Vehicle</p>	<p>Public area</p>
Level of violence	<p>Non violent</p>		<p>Violent</p>
Likely consequences	<p>Victim is unlikely to report:</p> <ul style="list-style-type: none"> • They blame themselves • They have tried reporting before • They have mental health problems • They are a sex worker • They have no memory • They have poor access to police (e.g. they live in an institution) • They are emotionally attached to you • They are scared of you 	<p>The victim may report but they are unlikely to be believed</p> <ul style="list-style-type: none"> • You have a position of authority • They are young • They were using drugs or alcohol • They have mental health problems • They have reported rape before • They have a poor memory of the event • They are a sex worker 	<p>The victim is likely to report and they are likely to be believed</p> <ul style="list-style-type: none"> • Sufficient confidence and support network to report • Likely to be believed by police, prosecutors and jury

Research data supports the idea that sex offenders are careful to select individuals and contexts which limit the chances of them being punished for their offence. The data below is from a review of 667 allegations of rape made to the London Metropolitan Police (Stanko & Williams, 2009) and illustrates that victims of rape tend to be young women who are likely to be known to the offender and attacked in a private residence.

How old are complainants?	<ul style="list-style-type: none"> ○ 23% - Under 15 ○ 35% - 16-25 ○ 30% - 26-40 ○ 12% - 41+
What gender are complainants?	<ul style="list-style-type: none"> ○ 92% women ○ 8% men
Where did the rape occur?	<ul style="list-style-type: none"> ○ 66% in victim's or suspect's residence ○ 20% in an open public space
What was the relationship between the complainant and the defendant?	<ul style="list-style-type: none"> ○ 66% of victims knew their attacker ○ 24% was a present or previous intimate relationship ○ 39% were acquaintances ○ 26% were strangers
What vulnerabilities did the complainant have?	<ul style="list-style-type: none"> ○ 18.3% had a mental health problem ○ 34.7% had consumed alcohol ○ 32.5% were under 18

4.1.2 Hindsight bias

As well as emphasising the control and motives of the defendant it is also important to tackle the issue of hindsight. Research suggests that some jurors are likely to have a hindsight bias whereby they blame the complainant for their actions because they feel they 'should have known' what was going to happen (Fischhoff, 2002).

It is important to emphasise that at the time the complainant had no idea how events were going to proceed. If an offender has chosen a low-risk target their victim is likely to have felt safe – until it was too late. The victim would also not have known how events were going to proceed when they were being attacked. They would not have known how long the attack was going to last, how violent the offender was going to get, or whether they were going to survive. It is therefore important to help jurors see how the victim would have felt at the time – rather than analysing her actions with the benefit of hindsight. It may also be useful to highlight that hundreds, if not thousands of other people went out that same evening, behaving in the same fashion but they did not become the victim of a rape.

4.1.3 Victim resistance

All of us probably like to think that if we were attacked we would put up a good fight and maybe successfully defend ourselves from our attacker. Anecdotally, Judges acknowledge that this is the rape myth that jurors seem to cling to most doggedly. The reason from a psychological point of view that this myth persists is because it makes us feel safe and gives us a sense of control. In the case of sexual assault the data tells us unequivocally that we are wrong. In reality we know that very few victims physically resist the attack. There is a considerable literature on the physiological and psychological

responses of victims to rape that explain the reasons for this². This document is only able to provide space for a very brief overview of this material. For much more information I recommend that you consult the work of experts such as Zoe Lodrick³.

During an attack victims are likely to respond in one of three ways:

- Fight – physically resist and attack the perpetrator. In reality few victims use this response as they are likely to go into shock and be physiologically unable to attack or flee (see below). In addition, the perpetrator may well be stronger than them, or armed, and so they may rightly feel that attacking or attempting to flee may cause them more injury.
- Freeze or flop – the brain's response to a life threatening situation can be to paralyse the body – going into a rigid freeze or a relaxed flop. This primitive response is what our brains calculate to be our best hope for surviving the experience. At this point the victim is physically unable to resist their attacker.
- Friend – in the moments leading up to the attack the victim, fearing what might be about to happen, may attempt to 'befriend' their attacker in the hope that they can talk their way out of the situation.

A lack of physical resistance is therefore normal and often out of the victim's conscious control (as their primitive brain takes control in life threatening situations). It is worth emphasising that at the time the victim is simply trying to survive – they are not thinking about how their behaviour will look to anyone after the event or when they give evidence in court. Like us, the victim may also have thought that if they were ever attacked they would fight off their attacker. After the offence they may therefore feel confused or ashamed because of their lack of physical resistance. They are likely to experience a combination of shock, trauma, guilt, shame and fear after the offence – all of which may lead to different types of responses and a lack of willingness to report the offence. Rather than wondering why a victim may have delayed reporting the offence, it is important to draw attention to how unusually brave they are for reporting the offence at all.

² Mason, F & Lodrick, Z. (in press). Psychological consequences of sexual assault. *Best Practice & Research Clinical Obstetrics and Gynaecology*.

³ Lodrick, Z. (2007) Psychological trauma – what every trauma worker should know. *The British Journal of Psychotherapy Integration*, 4(2), 1-19.

4.2 Providing a narrative about offenders

Previous research has highlighted that the most common type of rape myths are based on a misunderstanding of why sex offences are committed. In general people think that rape is a result of overwhelming sexual desire, rather than an offence based on violence or control (McGee et al., 2011). Prosecutors need to help jurors understand the potential motives of an offender in a way that emphasises that rape has little to do with sexual desire. The sections below provide examples of different types of rapists and narratives that can be used to understand why and how they offend.

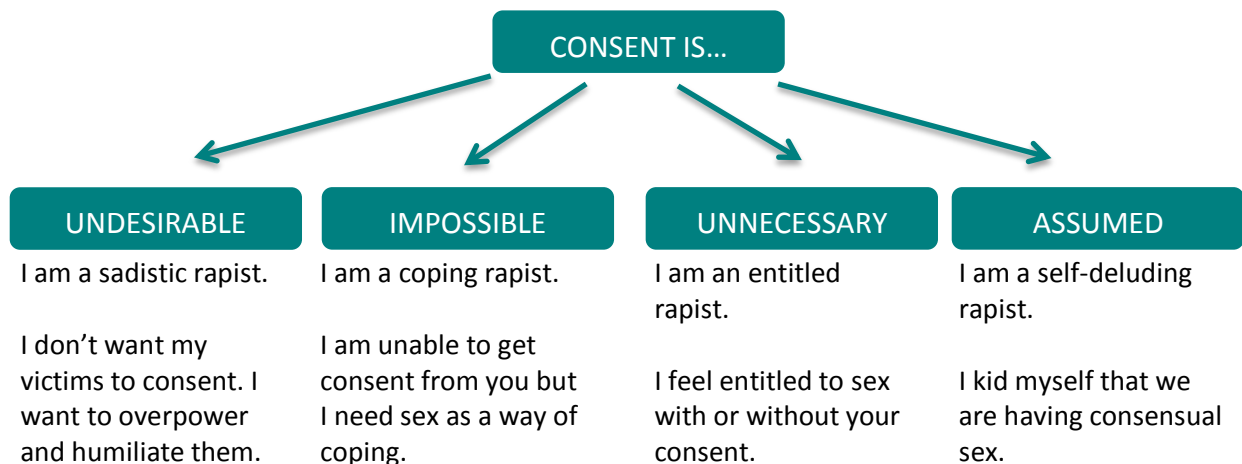
4.2.1 How do you differentiate a rapist from a non-rapist?

Whilst violence and control are common features of rape they are not its defining characteristics. The defining characteristic of rape is consent. Consent is about choice.

In our society the law states that every individual should always be able to make choices about sex. This means that an individual may consent to sex with one person on one occasion, but not another. Or an individual may consent to one type of sex (e.g. vaginal) but not another (e.g. anal). In the case of rape a person is either not given the opportunity to make that choice (because they are unconscious, intoxicated, or otherwise do not have the capacity to choose) or they are forced to live through an experience that goes against their choice.

The section below illustrates 'types' of rapists and their attitudes towards consent. In reality any one offender could exhibit a variety of these characteristics, however; these basic types can be useful tools for spotting common characteristics in the modus operandi of offenders which can provide prosecutors with an alternative case theory that explains the facts of the case.

In contrast to a non-offending adult who would consider consent to be an essential component of sex (even when having impersonal sex) by definition a rapist will not think that consent is essential. Instead different types of rapists will have different attitudes towards consent:



4.2.2 Why and how do rapists offend?

Different types of rapists will have different reasons for committing their offence, different ways of carrying out the offence, and different reactions to the offence once it is completed.

SADISTIC RAPIST	COPING RAPIST	ENTITLED RAPIST	SELF-DELUDING RAPIST
<p>I offend because I enjoy it.</p> <p>My offences are likely to be planned. I feel in control of the situation.</p>	<p>I use rape as a way of coping. I may specifically need to use non-consensual sex to cope, or I may need consensual sex but feel unable to get it.</p> <p>I have an inner battle with myself. I try to control myself but eventually I give up. I feel out of control.</p>	<p>I do not see rape as a bad thing.</p> <p>I have very negative attitudes towards women. I think that women are there to fulfil my sexual needs.</p> <p>I am opportunistic but I may plan my offences.</p>	<p>I do not think that I am offending.</p> <p>I work hard to kid myself that my behaviour is normal. I tell myself that normal sex is often adversarial. I tell myself that this is how all men behave.</p> <p>I may subconsciously plan my offences but I will kid myself that things happened spontaneously.</p>

In the build-up to the offence and during the offence the offender has three tactics: force, coercion, and incapacitation. Different types of offenders may prefer different types of tactics.

	SADISTIC RAPIST	COPING RAPIST	ENTITLED RAPIST	SELF DELUDING RAPIST
Force (Physical violence and aggression)	This may be my preferred tactic as I want to feel powerful and I want my victim to know I am in control	I may use force, it may be an important aspect of my way of coping or it may be a feature of me losing control.	I am comfortable using force – sex is inherently aggressive.	If I use force I may not admit to myself that this is what I am doing. I am likely to think that we are just having rough sex and that my victim is enjoying it.
Coercion (Psychological manipulation)	I may use coercion to get my victim to the location for the offence.	I may use coercion but I may be too out of control to use it effectively. My coercion may lack control and seem a bit frantic and desperate.	I may use coercion to get my victim to the location for the offence but in general I am entitled to sex and I do not need to talk my victim into it	This is likely to be my most preferred tactic as I want to pretend that my victim is consenting to what I am doing.

Incapacitation (The use of drugs or alcohol)	I may be less likely to use this as a tactic as I want my victim to be fully aware of what I am doing to them.	This may be my most preferred tactic as I do not want my victim to trigger my own inner struggle. I may use incapacitation on myself so that I can get overcome my inhibitions	I may use incapacitation – it just makes my life easier.	I am likely to use incapacitation both on the victim and on myself so that I can shut out, minimise or block my inner doubts
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The possible victim responses of fight, freeze or friend have been discussed in section 4.1.3. This section illustrates how different rapists may respond to the various reactions of their victim in different ways.

	SADISTIC RAPIST	COPING RAPIST	ENTITLED RAPIST	SELF DELUDING RAPIST
Fight	I may enjoy seeing how much my victim does not want me to do what I'm doing.	Unless resistance is part of my coping mechanism I would rather that my victim did not fight – I am struggling enough with my internal turmoil.	Sex is adversarial. Women often pretend they don't want sex when they do.	I will interpret this as a desire for rough sex or teasing as part of sex.
Freeze or flop	This will be evidence of my complete control over my victim.	This will be a relief to me. I can now get on and do what I need to do.	I will take this as evidence that she knows her job is to give me what I want	I will take their lack of movement as consent
Friend	I may enjoy seeing the victim's attempts to save themselves – but they will not be successful.	This is not helpful for me as I may be wrestling with my own inhibitions.	Women are devious. She is trying to trick me.	I use this as evidence that she is enjoying herself and consenting.

I am consciously in control of what I am doing.

I am experiencing an inner turmoil that I am conscious of and have surrendered to.

I am consciously in control of what I am doing.

I am trying very hard to block any inner turmoil that I may be experiencing.

4.2.3 Offender responses after the offence

SADISTIC RAPIST	COPING RAPIST	ENTITLED RAPIST	SELF DELUDING RAPIST
<p>I feel good about myself. I have no care for my victim at all. The offence was all about me fulfilling my needs and fantasies.</p>	<p>I have met my needs but I may feel defective, guilty, and shameful – as with any other maladaptive coping strategy.</p> <p>This guilt and shame may place me at higher risk of reoffending as I may need to use sex again to cope with how I feel about myself.</p>	<p>I feel good about myself. I got what I was entitled to and the victim got what she deserved.</p>	<p>My primary purpose after the offence will be to paint myself in a good light to everyone involved – most of all myself. I may seek reassurance from the victim as a way of normalising what happened and assuring myself that I am a good person. I may be overly friendly to my victim after the offence.</p> <p>I will reframe the offence in a way that makes it seem normal. I am likely to convince myself that I did not plan anything, that things happened spontaneously, that my victim invited me to do what I did, and that no violence or coercion was involved.</p> <p>In my story of events I may paint myself in a wholly honourable light and may not be willing to admit <i>any</i> aspect of responsibility as this will be too threatening for me.</p> <p>I am likely to be shocked that the victim has accused me of rape. I may find their behaviour baffling.</p> <p>As my story is not based on fact I am likely to have a patchy recollection of events. My story may be inconsistent.</p>

I see rape as a demonstration of my power over another person. I am likely to be comfortable with the idea that I am a rapist.

I may have a complicated relationship with rape – I need it to cope but I may struggle with my use of it. I may not want to label myself as a rapist. I am unlikely to recognise that I choose to rape and may blame external events such as my past.

I challenge the very notion of rape. Men are entitled to sex whenever they want it. Women are always 'up for it'

Rape is something other people do. I would find the idea that I am a rapist very threatening. I will be shocked if I am convicted of rape.

If there are no consequences for my actions it will reinforce all of my attitudes and behaviours around rape and I am more likely to offend again.

In order to help jurors form a narrative that focuses on the defendant's behaviour it is necessary to have some understanding of the types of patterns of behaviour that different sex offenders may display. The material above is brief and based on stereotypes about offenders – however it provides a starting place for prosecutors to begin to sew a narrative. The material emphasises how 'struggle' may form a large part of the offender's experience; it also emphasises that many rapists may not label their behaviour as rape; and that certain behaviours after the offence (such as being overly friendly towards the victim) may be a way of coping with the turmoil that they experience when they offend. All of this information can be used by prosecutors to create a narrative that focuses on the defendant's motives and behaviours and counteracts any narratives that use common rape myths to hold the complainant responsible.

5 Conclusion

The aim of this report was to present the research evidence about rape myths and their impact on juror decision making; explain why members of the public may hold rape myths; explain how and why victims of sexual offences are likely to respond to an attack; and provide prosecutors with an understanding of how a sex offender who wishes to avoid punishment may carry out a rape.

My hope is that this report has emphasised how important it is to provide a jury with a clear narrative. I also hope that by reading the report prosecutors are able to draw on a much wider range of narratives when writing their case theory in a way that challenges the current use of rape myths by the defence and provides an alternative way of explaining the facts of the case.

The report is necessarily brief and can really only be seen as an 'introduction' to these areas. However, having been inspired myself to write the report I hope that it inspires prosecutors to take a fresh look at the evidence in their cases and consider some of the psychological aspects that are at play in the court room.

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7 Appendix 1: A summary of general advice on challenging rape myths in court

Advice	Detail
Present your “sex offender who does not want to get caught” case theory in your opening speech	Research shows that jurors formulate their narratives about cases early in proceedings and are likely to interpret all subsequent information in line with that narrative (Carlson & Russo 2001; Clifford 2003). A strong, clear case theory which addresses the rape myths likely to be present on the facts of the case and which reframes the narrative in terms of the defendant’s choices in an opening speech is therefore crucial.
Challenge hindsight	Rape myths are supported by the use of hindsight bias. It is easy to attribute responsibility to the victim when you know that an assault takes place. Remind the jury that the complainant had no idea what was going to happen, both before and during the attack and that many 1000s of others did what she did that night without incident or attack.
Move the focus from the victim to the defendant	Most rape myths focus on what the victim did/did not do. Invite jurors to question the defendant’s behaviour by exploring his behaviours and motives throughout. Invite them to question his motives, choices, and behaviour rather than solely focusing on the complainant.
Reframing acquaintance rape	<p>Offenders need easy access to a trusting victim who is unlikely to report the offence and unlikely to be believed if they do. An existing partner or other acquaintance is likely to meet all of these requirements. Such a person is likely to already trust the perpetrator, be easily accessible to them, and resist reporting to the police as they may blame themselves for the offence or fear that they may not be believed. Evidence for this modus operandi amongst offenders is reflected in crime data – two thirds of victims know their attacker. Having an existing relationship with the perpetrator needs to be re-framed as appropriate ‘target selection’ by a risk limiting offender. Rapists are able to access people easily through their social network and are unlikely to take the risk of attacking a stranger or invest the effort in befriending someone unknown to them when they have easier and less risky options.</p> <p>As an illustration of this point, imagine being approached by two different people in a bar. One is a stranger; the other is a friend of a friend. Although you may only know the second person marginally more – the degree of trust that you show to them is likely to be significantly greater. A victim is likely to feel that they are ‘keeping themselves safe’ by successfully avoiding strangers, whereas in reality an effective rapist is easily able to groom people with whom they have a loose connection. This process is made much easier by social network sites as they provide useful information about events such as recent relationship break up and plans to go out that night.</p>
Reframing alcohol and drugs	Intoxicants are useful tools for sex offenders. They increase levels of trust on the part of victims, they reduce the victim’s ability to detect danger, they reduce the victim’s ability to physically resist an attack, they reduce the chances of the victim remembering the offence, and they reduce the chances of the victim reporting the offence to the police. Intoxicants also help to lower offender inhibitions so that they are able to talk themselves into committing the offence and blame their behaviour on the intoxicant afterwards. The use of intoxicants also significantly reduces the chances of being convicted by a jury. As alcohol and drugs are widely available and widely consumed it allows a rapist to increase the vulnerability of their victim without using more high-risk strategies such as date rape drugs. It also provides a socially acceptable narrative of a ‘drunken fling’ to explain the

	<p>offence. The increased prevalence of binge drinking ensures that it is easy to find a very vulnerable victim should the rapist prefer that the victim is unconscious during the offence.</p>
<p>Reframing victim resistance</p>	<p>An offender who does not want to get caught will have done everything they can to ensure that their victim is unlikely to physically resist the attack. If they have chosen their victim well they will manage to take their target to a safe location to carry out the offence without the intervention of a third party. In contrast, the victim is likely to feel that they were spending time with someone that they trusted and now find themselves in a situation where they are alone and feel very threatened by the offender and shocked at their change of behaviour. Depending on the type of offender their behaviour may be very erratic and uncontrolled, or controlled but sadistic. In either case the victim is likely to fear that they will not survive the attack and is consequently unlikely to physically resist. A lack of resistance may be the only physical or sensible option for the victim. At the time they were trying to survive the attack. Whilst all of us like to think that we would resist any attack the reality is that most people freeze or flop during a rape.</p>
<p>Do not expect inadmissible evidence to be ignored by jurors</p>	<p>Despite instruction research suggests that jurors are affected by evidence that is presented and then judged to be inadmissible (Stebly, Hosch, Culhane, & McWethy, 2006).</p>
<p>Tackle the perception of the low conviction rates</p>	<p>Studies show that people are influenced by not-guilty verdicts and will report higher levels of rape myths having read about an acquittal in a similar case (Sinclair & Bourne, 1998). Jurors may be aware of the relatively low conviction rate for rape trials (they may even be misinformed and believe it is 6%). Whilst this cannot be addressed explicitly in a speech, it reinforces the importance of the need for a strong case theory throughout.</p>

8 Appendix 2: Method used in the systematic review

How do researchers test the impact of rape myths on decision making?

As with all social research, researchers exploring the impact of rape myths on jury decision making are required to make a trade-off between accurately testing a specific aspect of the decision making process and producing results that can be generalised to real-world settings. In order to accurately test a specific aspect of the decision making process researchers need to isolate and manipulate one variable with a sufficient sample size to detect an effect. As this review has a specific research question (Is juror decision making influenced by rape myths?) it focuses on these types of research studies.

Limitations of research studies

As well as assessing the specific strengths and weaknesses of individual research studies it is also important to be aware of the general strengths and weaknesses of research conducted in this field. This enables us to come to an informed judgement regarding the potential impact of rape myths. The main weakness of any research design that attempts to control and manipulate individual variables is that they can lack real world validity – in other words you may produce findings in the laboratory that cannot be replicated in the real world. In this case of research into rape myths the main weaknesses are the participants that are used in the studies, the way in which the material is presented, and the way in which participants are asked to come to a judgement.

The studies tend to primarily use university students as research participants. Whilst this enables the researchers to generate larger sample sizes than might be possible if they were to recruit participants from the general public it inevitably opens the research design up to criticism. Previous research that compares data from students with data from the general public has found that there can be differences between the two groups. Field and Barnett (1978) found that students were significantly more lenient than members of the public. Consequently a finding that rape myths impacts on verdict or sentencing amongst a student population may be less likely amongst members of the public as students may be more inclined to deliver a 'not-guilty' verdict. In a more recent study Keller and Weiner (2011) found that student populations were less likely to provide verdicts that were influenced by a general juror bias, but in the case of rape myths male student participants were more likely to demonstrate a relationship between rape myths and verdict than male members of the public. In contrast, Carlson and Russo (2001) found that the verdicts of prospective jurors were more influenced by their general pro-complainant or pro-defendant attitudes than students with the magnitude of these distortions being twice as large amongst prospective jurors rather than students. Researchers are continuing to debate the validity of using students as participants in mock jury research. For the purposes of this review studies that only use students as participants will be identified so that we can explore whether a different conclusion is reached when looking a 'student-only' studies in comparison to studies that use participants drawn from the general public.

Studies also differ in the way they present case material to participants. Some studies use a live mock trial with actors playing the roles of barristers, witnesses, and defendants. Other studies use videos of actors who are recreating aspects of a trial. However, the majority of studies use written vignettes which participants read individually before answering a series of questions. In a study testing the relative difference of providing case material in written format or on video Slead et al., (2002) found that for one of the three conditions (where the level of alcohol consumed was manipulated) the use of written vignettes was associated with more evidence of rape-myth supporting responses. Participants were more likely to blame the victim and less likely to define the situation as rape if they were presented with this scenario via a written vignette rather than a video recording. This finding needs to be interpreted with the caveat that for the other two conditions (where the defendant had paid for dinner or where the complainant had been provocative) there was no difference between written and video presentation. Whilst researchers are also still debating the validity of these 'written vignette' studies for the purposes of this review the way in which the case material was presented to participants will be recorded and when individual articles are marked for quality those studies using more realistic measures (such as actors presenting real case material) will gain a higher quality mark.

Finally, it is important to assess how rape myths are measured. A number of scales that have been developed and tested over time and are generally accepted as reliable and valid measures of rape myths including *Rape Myth Acceptance Scale* (RMAS, Burt 1980), *Rape Empathy Scale* (RES, Deitz, Blackwell, Daley, & Bentley, 1982), and *Illinois Rape Myth Acceptance Scale* (IRMAS, Payne, Lonsway & Fitzgerald, 1999). Some of the challenges of using these scales can be continuously updating the language used in the questionnaires so that the social references used in the scales remain relevant to contemporary participants (McMahon & Farmer, 2011); and counteracting floor effects whereby the scales fail to differentiate between low scoring participants (Gerger, Kley, Bohner, & Siebler, 2007). However, in general the scales appear to be an appropriate way of detecting the presence of rape myth attitudes.

Having highlighted some limitations with some of the research in this field it is important to also recognise the strengths of the methodology that is used. In general researchers manage to conduct studies using large sample sizes and demonstrate good control over the research design. Both of these factors help us to have confidence in the results of the study – in other words if the results suggest that rape myths did influence judgements we can be confident that this really was the case and that the result was not down to chance. In addition this ‘laboratory’ based research is complemented by more naturalistic qualitative studies (such as Ellison and Munro, 2009) that use realistic court settings, present real case material, and carefully explore the process of deliberation and the influence of rape myths on decision making.

How was the literature reviewed?

This review was a comprehensive search of the literature. The literature between 1980 and 2012 was searched using five literature databases. In addition 17 authors were contacted to see if they had any unpublished papers that could be included in the review. Eventually 21 articles were found that met the criteria for the review. All of these articles were then assessed for their quality. Each study was given a quality score based on sample size, the representativeness of the sample (students of members of the public), the nature of the case material (from a real case or bespoke material), the presentation of case material (a re-enactment of the case or a written vignette), the reliability and validity of measures used, and efforts made by the researchers to control confounding variables (other factors that could influence the results).

A potential criticism of the research in this field is the potential for publication bias. This bias refers to the fact that only ‘positive’ results may be published in peer-reviewed academic journals. There are methods for testing the literature to examine whether a publication bias is likely to exist (based on the spread of results found in the literature). In this case a funnel plot graph was created in order to visually test for publication bias amongst the studies. The funnel plot graph for this review was normally distributed indicating that review is not affected by publication bias.