

WHAT DO WE KNOW
ABOUT RAPE MYTHS
AND JUROR DECISION
MAKING? AN
EVIDENCE REVIEW

Fiona Leverick
(University of Glasgow)

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Abstract

This review presents overwhelming evidence that prejudicial and false beliefs held by jurors about rape affect their evaluation of the evidence and their decision making in rape cases.¹ It examines the available evidence from both quantitative and qualitative studies. The quantitative research demonstrates that mock jurors' scores on so-called "rape myth scales" are significant predictors of their judgments about responsibility, blame and (most importantly) verdict. The qualitative research indicates that jurors frequently express problematic views about how 'real' rape victims would behave and what 'real' rape looks like during mock jury deliberations and that even those who score relatively low on abstract rape myth scales can express prejudicial beliefs when deliberating in a particular case. The studies vary in terms of their realism, but it is important to note that some of the studies reported here were highly realistic trial reconstructions, involving representative samples of jurors drawn from the community, live trial reconstructions, evidence in chief and cross-examination, accurate legal directions and deliberation in groups. The review concludes by examining the evidence on whether juror education – whether in the form of judicial directions or expert evidence – might be effective in addressing problematic attitudes.

This paper is the first in a series of working papers stemming from Scottish Government research into the Scottish jury system.² The research was the largest mock jury study to date in the UK and the first of its type in Scotland. It involved 64 mock juries (and almost 1,000 individual participants) who watched a highly realistic trial video and then deliberated in an attempt to reach a verdict. It focused on the effect of the three unique features of the Scottish jury system (three verdicts, 15 members and verdicts reached by a simple majority) on decision making and juror understanding of the not proven verdict. 32 of the juries watched a rape trial and 32 an assault trial. The second working paper in the Scottish Jury Research working paper series reports the results of the project relating to the content of jury deliberations in the rape case.³

¹ Thanks are due to James Chalmers and Vanessa Munro, who made useful comments on this review prior to publication.

² The research was led by Rachel Ormston (Ipsos MORI Scotland), and the other members of the research team were myself, James Chalmers (University of Glasgow), Vanessa Munro (University of Warwick) and Lorraine Murray (Ipsos MORI Scotland). The final project report has been published and can be downloaded at <https://www.gov.scot/publications/scottish-jury-research-fingings-large-mock-jury-study-2/>.

³ J Chalmers et al, The Provenance of What is Proven: Exploring (Mock) Jury Deliberation in Scottish Rape Trials (Scottish Jury Research Working Paper 2, 2019).

1. Introduction

The decision making of juries in rape and other sexual offence cases is an issue that has attracted a great deal of attention.⁴ The fear has been expressed that prejudicial beliefs and attitudes that jurors take into the deliberation room (sometimes referred to as rape myths) might impact their evaluation of evidence and determination of verdict. This concern has sometimes been dismissed, pointing to a lack of evidence of any problems of this nature. This review supplies the missing evidence. It draws together for the first time the findings of the relevant studies (many of which are not reported in law journals, but can be found instead in scientific outlets, most commonly those focusing on experimental psychology).

The focus of the review is not the extent to which the jury eligible population holds prejudicial attitudes towards rape victims (although this might become apparent as a side issue of the discussion). Rather it is to examine the way in which such attitudes might affect juror decision making. Two types of studies are relevant in this respect: quantitative and qualitative. Quantitative studies attempt to correlate participants' scores on a scale designed to measure their attitudes towards rape victims in the abstract (so-called rape myth attitude scales) with a dependent variable in a concrete case, such as verdict choice or witness credibility. Qualitative studies examine the way in which prejudicial attitudes towards rape victims arise in jury deliberations.

The finding of the review is that there is *overwhelming* evidence that rape myths affect the way in which jurors evaluate evidence in rape cases. The quantitative research demonstrates that jurors' scores on rape myth attitude scales designed to measure prejudicial attitudes towards rape victims are significantly related to judgments in individual cases, both in terms of the degree of blame attributed to a rape victim and – more importantly – views about what the verdict should be. The qualitative research shows that false and prejudicial beliefs about rape victims are commonly expressed during jury deliberations and that even jurors who do not score highly on scales that measure attitudes in the abstract can express highly problematic views when discussing a concrete case.

⁴ The remainder of the review will generally refer to “rape cases” but the findings are applicable to a far wider set of cases involving sexual offences.

Before proceeding, it needs to be noted that the focus of this review is limited to rape involving a female complainer⁵/victim and a male accused⁶/perpetrator. The literature on attitudes towards male rape victims is far less extensive.⁷ The research that does exist points in the same direction as the studies involving a female complainer/victim, but there is no doubt that this is an area that would benefit from further research.

In the remainder of the review, section 2 briefly examines the scales that have been designed to measure attitudes towards rape victims. Section 3 discusses the research methods that have been used in the studies presented here. Section 4 presents the findings of the quantitative studies and section 5 the findings of the qualitative studies. Section 6 reviews the limited body of research that has examined juror education (whether in the form of judicial direction or expert evidence) as a means of addressing false beliefs.

⁵ A complainer is the technical legal term used in Scotland for a person who, in criminal proceedings, claims to have been the victim of an offence. The equivalent term used in England and Wales is “complainant”. The two will be used inter-changeably but when referring to research undertaken in England and Wales (or other jurisdictions that would normally use the term) the term “complainant” will be preferred.

⁶ This is the technical legal term used in England and Wales (and most other common law countries, such as the US) for a person who is charged with a criminal offence. The Scottish equivalent is “the accused”. Once again, the two will be used inter-changeably but when referring to research undertaken in England and Wales (or other jurisdictions that would normally use the term) the term “defendant” will be preferred.

⁷ Only four studies in peer reviewed journals were identified that have examined the link between scores on rape myth attitude scales and judgments about responsibility where the victim/complainer is male: studies 3 and 4 in KR Klement et al, “Accusers lie and other myths: rape myth acceptance predicts judgments made about accusers and accused perpetrators in a rape case” (2019) 81 *Sex Roles: A Journal of Research* 16 (studies 1 and 2 involved female victims and are discussed below); E Sleath and R Bull, “Male rape victim and perpetrator blaming” (2010) 25 *Journal of Interpersonal Violence* 969; M Davies et al, “Examining the relationship between male rape myth acceptance, female rape myth acceptance, victim blame, homophobia, gender roles, and ambivalent sexism” (2012) 27 *Journal of Interpersonal Violence* 2807.

2. Attitudes towards rape victims and instruments to measure them

The focus of this review is on false and prejudicial beliefs about rape and rape victims and how these might impact upon the way in which jurors approach the evidence in rape cases. Such beliefs can broadly be divided into four categories:⁸

Beliefs that blame the victim/survivor (such as the belief that people who get voluntarily intoxicated are at least partly responsible for their rape, that if the complainer did not scream, fight or get injured, then it is not rape or that it is not rape if a complainer fails to sufficiently communicate her lack of consent to the accused).

Beliefs that cast doubt on allegations (such as the belief that false allegations due to revenge or regret are common or that any delay in reporting rape is suspicious).

Beliefs that excuse the accused (such as the belief that male sexuality is uncontrollable once 'ignited', or that women often send mixed signals about their willingness to engage in sexual activity).

Beliefs about what 'real rape' looks like (such as the belief that rape only occurs between strangers in public places, that it is always accompanied by violence or that male rape only occurs between gay men).

These types of belief are sometimes described as "rape myths", which Gerger et al define as:⁹

descriptive or prescriptive beliefs about rape (i.e., about its causes, context, consequences, perpetrators, victims, and their interaction) that serve to deny, downplay or justify sexual violence that men commit against women.

⁸ These are adapted from G Bohner et al, "Rape myth acceptance: cognitive, affective and behavioural effects of beliefs that blame the victim and exonerate the perpetrator", in MAH Horvath and J Brown (eds) *Rape: Challenging Contemporary Thinking* (2009) 17 at 19 and O Smith and T Skinner, "How rape myths are used and challenged in rape and sexual assault trials" (2017) 26 *Social and Legal Studies* 441 at 443. There is some overlap between the categories.

⁹ H Gerger et al, "The acceptance of modern myths about sexual aggression scale: development and validation in German and English" (2007) 33 *Aggressive Behaviour* 422 at 423.

Gerger avoids the language of falsity, which tended to be a feature of earlier definitions of rape myths,¹⁰ but that would seem unnecessary. The vast majority – if not all – beliefs that are described as rape myths *are* false if they are expressed as general statements *applicable to all rape cases*, even if they might be true in a smaller sub-set of cases.

Various instruments have been devised to measure the extent to which rape myths are believed. Some of the most notable early scales (used in some of the studies discussed later) were those developed by Burt,¹¹ Feild¹² and Costin.¹³ All of these are relatively unsophisticated and suffer from issues such as a lack of subtlety and overly complex wording.¹⁴ In an attempt to address this, alternative scales have been developed. The two that are most commonly utilised by the studies included in this review are the Illinois Rape Myth Acceptance Scale (IRMAS)¹⁵ and the Acceptance of Modern Myths About Sexual Aggression (AMMSA) scale.¹⁶ The IRMAS consists of 45 statements and participants are asked to indicate the extent to which they agree with each of them on a seven-point scale from “not at all agree” to “very much agree”. Examples of statements include “many so-called rape victims are actually women who had sex and changed their minds afterwards”, “a rape probably didn’t happen if the woman has no bruises or marks” and “men don’t usually intend to force sex on a woman, but sometimes they get too sexually carried away”. The AMMSA consists of 30 statements, on which respondents express their level of agreement on a seven-point scale from “completely agree” to “completely disagree”. Examples include “alcohol is often the culprit when a man rapes a woman”, “women often accuse their

¹⁰ See e.g. M Burt, “Cultural myths and supports for rape” (1980) 38 *Journal of Personality and Social Psychology* 217 at 217.

¹¹ M Burt, “Cultural myths and supports for rape” (1980) 38 *Journal of Personality and Social Psychology* 217.

¹² H Feild, “Attitudes toward rape: A comparative analysis of police, rapists, crisis counsellors, and citizens” (1978) 36 *Journal of Personality and Social Psychology* 156.

¹³ F Costin, “Beliefs about rape and women’s social roles” (1985) 14 *Archives of Sexual Behavior* 319. Costin sets out two scales in this paper – it is the “R” scale is used to measure rape myth supporting attitudes.

¹⁴ DL Payne et al, “Rape myth acceptance: exploration of its structure and its measurement using the Illinois Rape Myth Acceptance Scale” (1999) 33 *Journal of Research in Personality* 27 at 33.

¹⁵ DL Payne et al, “Rape myth acceptance: exploration of its structure and its measurement using the Illinois Rape Myth Acceptance Scale” (1999) 33 *Journal of Research in Personality* 27.

¹⁶ H Gerger et al, “The Acceptance of Modern Myths about Sexual Aggression Scale: development and validation in German and English” (2007) 33 *Aggressive Behaviour* 422. The full scale is available at <http://www.midss.org/sites/default/files/ammsaenglish.pdf>

husbands of marital rape just to retaliate for a failed relationship” and “it is a biological necessity for men to release sexual pressure from time to time”.

Both scales have been criticised for their use of complex language.¹⁷ This is especially true of the AMMSA, which includes statements such as “a lot of women strongly complain about sexual infringements for no real reason, just to appear emancipated” and “when defining marital rape, there is no clear-cut distinction between normal conjugal intercourse and rape”.¹⁸ McMahon and Farmer attempt to address this issue in their Subtle Rape Myth Acceptance Scale (SRMAS),¹⁹ a scale based on the IRMAS, but which uses simplified language. Typical statements include “a lot of times, girls who say they were raped often led the guy on and then had regrets” and “if a girl doesn’t physically fight back, you can’t really say it was rape”.

All of these scales might be criticised for a lack of subtlety. Many of the statements have too obvious a socially acceptable answer and therefore participants might not give honest responses. This is a point that can be made even of those scales that purport to address this issue, such as the SRMAS. However, this is mitigated to an extent by the use of seven-point scales, rather than binary responses, as scales of this nature are able to capture relatively low levels of support for the beliefs in question. And, as the studies reported here show, the scales do succeed in picking up differences of sufficient magnitude to enable meaningful statistical analysis to be conducted.

Various studies have explored (in the abstract) the prevalence of rape myths among the population – both in the UK and further afield.²⁰ Studies have consistently found that men are more likely to endorse rape myths than women²¹ as are those with

¹⁷ S McMahon and GL Farmer, “An updated measure for assessing subtle rape myths” (2011) 35 *Social Work Research* 71 at 71.

¹⁸ This may be due in part to the fact that the scale was originally developed in German and has been translated into English. The German version of the question on marital rape uses “ehelichen” which could simply be translated as “marital” – the choice of “conjugal” probably makes the question seem more complex than it is. However, the same point cannot be made about the other question, where the original German of “emancipated” is “emanzipiert”. Thanks are due to James Chalmers’ German language skills for this point.

¹⁹ S McMahon and GL Farmer, “An updated measure for assessing subtle rape myths” (2011) 35 *Social Work Research* 71 at 77.

²⁰ For a review of this literature, see S Dinos et al, “A systematic review of juries’ assessment of rape victims: do rape myths impact on juror decision-making?” (2015) 43 *International Journal of Law, Crime and Justice* 36 at 37-38.

²¹ For a review of this literature, see JM Hockett et al, “Rape myth consistency and gender differences in perceiving rape victims: a meta-analysis” (2016) 22 *Violence Against Women*

lower educational levels.²² Studies have also found that there is a significant relationship between scores on rape myth scales and scores on other instruments. Particularly notable here is the relationship between rape myth scales and scores on scales measuring the extent to which people hold what have been termed “just world beliefs”,²³ as this might explain why some people – women in particular – believe rape myths. Just world beliefs are beliefs that “the world is a just place where good things happen to good people and bad things happen only to those who deserve them”.²⁴ It is the latter of these two concepts (measured by a section of the just world belief scale called “JWB-other”) that is especially closely related to holding rape myth beliefs.²⁵ It may be that this is because some rape myths (such as the belief that intoxicated victims are partly to blame if they are raped) perform the function of reassuring people that it is not going to happen to them, as they would not engage in the behaviour that is perceived as risky.

3. Study research methods

Before examining the relevant studies, it is necessary to say a little about the research methods that have been used. Because of the legal restrictions on (and practical difficulties of) asking jurors about real cases,²⁶ all of the studies included in this review involved mock jurors. Mock juror studies simulate the experience of sitting on a jury by asking participants to read, listen to, or watch trial materials. The trial

139 at 155; E Suarez and TM Gadalla, “Stop blaming the victim: A meta-analysis on rape myths” (2010) 25 *Journal of Interpersonal Violence* 2010 at 2019.

²² E Suarez and TM Gadalla, “Stop blaming the victim: A meta-analysis on rape myths” (2010) 25 *Journal of Interpersonal Violence* 2010 at 2019. Convicted rapists also more likely to score highly: LG Johnson and A Beech, “Rape myth acceptance in convicted rapists: a systematic review of the literature” (2017) 34 *Aggression and Violent Behavior* 20 at 28.

²³ The terminology stems from MJ Lerner, *The Belief in a Just World: A Fundamental Delusion* (1980).

²⁴ KA Lonsway and LF Fitzgerald, “Rape myths: in review” (1994) 18 *Psychology of Women Quarterly* 133 at 136.

²⁵ RM Hayes et al, “Victim blaming others: rape myth acceptance and the just world belief” (2013) 8 *Feminist Criminology* 202 at 211; KJ Russell and CJ Hand, “Rape myth acceptance, victim blame attribution and Just World Beliefs: a rapid evidence assessment” (2017) 37 *Aggression and Violent Behavior* 153.

²⁶ Restrictions under section 8 of the Contempt of Court Act 1981 in Scotland (and section 20D of the Juries Act 1974 in England and Wales) specifically preclude asking jurors about “statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations”. This would clearly prohibit asking them about their verdict choices, or about attitudes towards the complainant or accused that they had expressed during deliberations.

materials used are generally fictional and significantly abbreviated in comparison with a real criminal trial. Studies vary greatly in terms of the extent of their realism and this in turn affects generalisability – that is, in how far their findings are likely to apply to real juries, deliberating in actual criminal trials. In assessing realism, four issues in particular require consideration.

3.1 How representative was the sample of mock jurors?

Academic mock jury studies sometimes use a convenience sample of students. This inevitably means that the profile of their ‘mock jurors’ is different to that of real jurors in terms of characteristics like age and education. Researchers have debated how much this matters in terms of the wider generalisability of the findings.²⁷ In the present context, as scores on scales measuring rape-myth supporting attitudes tend to be lower among those with higher educational levels, the use of a student sample is likely – if anything – to under-estimate the extent to which rape myths might affect juror decision making.

3.2 How realistic were the trial stimulus materials?

To create as realistic an experience as possible, some mock jury studies show participants an audio-visual enactment of a trial (either a video or a live re-enactment). However, other studies have used written trial transcripts, study packs, or short vignettes instead. Even where jurors are shown a video or live re-enactment of a trial, it is important to assess how closely this reflects the reality of a criminal trial (for example, in terms of the accuracy of any legal instructions provided).

3.3 Did mock jurors deliberate?

Real juries are required to deliberate as a group before returning a collective verdict. However, most mock jury studies do not include this element, which may be problematic as research has shown that jurors’ initial views may shift during deliberation.²⁸ The views that an individual juror holds might be affected by what

²⁷ Cf BH Bornstein and others, “Mock juror sampling issues in jury simulation research: a meta-analysis” (2017) 41 *Law and Human Behavior* 13 at 25 and RL Wiener et al, “Mock jury research: where do we go from here?” (2011) 29 *Behavioral Sciences and the Law* 467 at 472.

²⁸ M Sandys and RC Dillehay, “First-ballot votes, pre-deliberation dispositions, and final verdicts in jury trials” (1995) 19 *Law and Human Behavior* 175; R Ormston et al, *Scottish Jury Research: Findings from a Large Scale Mock Jury Study* (Scottish Government, 2019) chapter 3.

other jurors say, and this is a shift that might happen in either direction. Discussion may well ameliorate problematic attitudes if jurors are challenged by other jurors, or harden them if other jurors share the same views (or persuade jurors who did not initially hold such views to adopt them). Even in studies where deliberation is included, the time allowed for this is sometimes very short and the size of mock juries can be much smaller than they would be in both Scotland and in most other English language jurisdictions. This is important as research has shown that the size of the group – and the rules under which it deliberates – can affect juror verdict preferences.²⁹

3.4 How seriously did mock jurors engage with their ‘role’?

Mock jurors are obviously aware that they are role-playing and that, as such, their decisions will not have ‘real’ consequences. That said, there is evidence from some studies that mock jurors engage very conscientiously with their role.³⁰ To increase the likelihood of mock jurors taking their task seriously, studies will ideally take as many steps as possible to maximise the solemnity of proceedings, such as using appropriate venues and directing mock jurors about their role in a similar way to real jurors.

4. Quantitative studies

4.1 The link between juror attitudes and judgments about blame in a particular scenario

A substantial body of research has examined whether juror attitudes towards rape and rape victims held in the abstract predict the extent to which a particular victim

²⁹ More specifically, jury size and the majority required to return a verdict affect the likelihood that jurors will change their initial view of what the verdict should be: see R Ormston et al, *Scottish Jury Research: Findings from a Large Scale Mock Jury Study* (Scottish Government, 2019) chapter 3.

³⁰ E Finch and V Munro, “Lifting the veil: the use of focus groups and trial simulations in legal research” (2008) 35 *Journal of Law and Society* 30 at 45; L Ellison and V Munro, “Getting to (not) guilty: examining jurors’ deliberative processes in, and beyond, the context of a mock rape trial” (2010) 30 *Legal Studies* 74 at 84; P Ellsworth, “Are twelve heads better than one?” (1989) 52 *Law and Contemporary Problems* 205 at 223; R Ormston et al, *Scottish Jury Research: Findings from a Large Scale Mock Jury Study* (Scottish Government, 2019) at 21.

and/or perpetrator are thought to be ‘responsible’ or ‘at fault’ for an incident.³¹ These studies present participants with a scenario in which it is stated or made clear that a non-consensual sexual encounter took place and ask them about the extent to which the perpetrator and/or victim were to blame for what happened. This measure is then correlated with participants’ scores on one of the scales designed to measure rape myth supporting attitudes (which, for brevity, will subsequently be referred to as RMA scales and/or RMA scores).

At the time of writing, 29 studies in peer reviewed journals were identified (table 1). All the studies were conducted in the US unless otherwise specified. In tables 1 and 2, “written vignette” is used to mean a short (usually single paragraph and no more than one page) summary of events. “Trial summary” means a longer written stimulus (although still in summary form). “Trial transcript” means a written document that sets out the evidence in script form.

Table 1: Studies examining RMA scores and victim/perpetrator blame

Study	Sample	Process	Rape myth scale	Measure of blame	Significant ³² relationship?
1. Ayala et al ³³	221 students	Written vignette. No deliberation.	IRMAS	Extent to which victim/perpetrator was “to blame” (7-point scale).	Yes
2. Basow and Minieri ³⁴	188 students	Written vignette. No deliberation.	IRMAS	Victim/perpetrator responsibility (6-point scale).	Yes

³¹ Studies that involved victims under 16 have not been included here but see e.g. SJ Tabak and B Klettke, “Mock jury attitudes towards credibility, age, and guilt in a fictional child sexual assault scenario” (2014) 66 *Australian Journal of Psychology* 47.

³² Significance here refers to statistical significance: that is, that differences reported in the experiment produced so-called p-values of at least ≤ 0.05 , indicating that the probability of such a difference occurring in the experiment when there is no actual difference in reality is less than 5%.

³³ EE Ayala et al, “Blame attributions of victims and perpetrators: effects of victim gender, perpetrator gender and relationship” (2015) 33 *Journal of Interpersonal Violence* 94 at 107.

³⁴ SA Basow and A Minieri, “‘You owe me’: effects of date cost, who pays, participant gender, and rape myth beliefs on perceptions of rape” (2011) 26 *Journal of Interpersonal Violence* 479 at 491.

3. Cohn et al study 1 ³⁵	250 students	Video recreation of an incident. No deliberation.	IRAMS	Victim/perpetrator responsibility (scale unspecified).	Yes
4. Cohn et al study 2 ³⁶	274 students	Video recreation of an incident. No deliberation.	IRAMS	Victim/perpetrator responsibility (scale unspecified).	Yes
5. Dawtry et al study 1 ³⁷	255 community participants	Written vignette. No deliberation.	IRAMS	Extent to which female victim was “to blame” (7-point scale).	Yes
6. Dawtry et al study 2 ³⁸	255 community participants	Written vignette. No deliberation.	IRAMS	Extent to which female victim was “to blame” (7-point scale).	Yes
7. Deitz et al study 2 ³⁹	376 (186 students, 190 community participants)	Written vignette. No deliberation.	Rape Empathy Scale (RES) ⁴⁰	Victim/perpetrator responsibility (7-point scale).	Yes
8. Frese et al ⁴¹	182 Spanish students	Three written vignettes (stranger, acquaintance, marital). No deliberation.	Burt’s	Victim responsibility (7-point scale).	Yes ⁴²

³⁵ ES Cohn et al, “In the eye of the beholder: do behavior and character affect victim and perpetrator responsibility for acquaintance rape?” (2009) 39 *Journal of Applied Social Psychology* 1513 at 1521.

³⁶ ES Cohn et al, “In the eye of the beholder: do behavior and character affect victim and perpetrator responsibility for acquaintance rape?” (2009) 39 *Journal of Applied Social Psychology* 1513 at 1527.

³⁷ RJ Dawtry et al, “I blame therefore it was: rape myth acceptance, victim blaming, and memory reconstruction” (2019) 45 *Personality and Social Psychology Bulletin* 1269 at 1272.

³⁸ RJ Dawtry et al, “I blame therefore it was: rape myth acceptance, victim blaming, and memory reconstruction” (2019) 45 *Personality and Social Psychology Bulletin* 1269 at 1274.

³⁹ SR Deitz et al, “Attribution of responsibility for rape: the influence of observer empathy, victim resistance, and victim attractiveness” (1984) 10 *Sex Roles* 261 at 380. Study 1 is not relevant to this review.

⁴⁰ A scale developed by the researchers.

⁴¹ B Frese et al, “Social perception of rape: how rape myth acceptance modulates the influence of situational factors” (2004) 19 *Journal of Interpersonal Violence* 143 at 151.

⁴² For stranger and acquaintance rape only.

9. Hine and Murphy ⁴³	808 English police officers	Written vignette. No deliberation.	AMMSA	Victim/perpetrator responsibility (scale of 0-100).	Yes
10. Klement et al study 1 ⁴⁴	97 students	Written vignette. No deliberation.	IRMAS	Victim/perpetrator culpability (range of questions combined into single score).	Yes
11. Klement et al study 2 ⁴⁵	90 students	Written vignette. No deliberation.	IRMAS	Victim/perpetrator culpability (range of questions combined into single score).	Yes
12. Krahé et al study 1 ⁴⁶	286 German students	Written vignette. No deliberation.	Perceived Causes of Rape Scale (PCRS) ⁴⁷	Composite blame measures for victim/perpetrator.	Yes
13. Krahé et al study 2 ⁴⁸	158 German students	Written vignette. No deliberation.	PCRS	Composite blame measures for victim/perpetrator.	Yes
14. Kopper ⁴⁹	534 students	Written vignette. No deliberation.	Burt's	Victim/perpetrator responsibility (% from 1-100).	Yes

⁴³ B Hine and A Murphy, "The influence of 'High' vs 'Low' rape myth acceptance on police officers' judgements of victim and perpetrator responsibility, and rape authenticity" (2019) 60 *Journal of Criminal Justice* 100 at 103.

⁴⁴ KR Klement et al, "Accusers lie and other myths: rape myth acceptance predicts judgments made about accusers and accused perpetrators in a rape case" (2019) 81 *Sex Roles: A Journal of Research* 16 at 20.

⁴⁵ KR Klement et al, "Accusers lie and other myths: rape myth acceptance predicts judgments made about accusers and accused perpetrators in a rape case" (2019) 81 *Sex Roles: A Journal of Research* 16 at 22.

⁴⁶ B Krahé et al, "Schema-driven information processing in judgements about rape" (2007) 21 *Applied Cognitive Psychology* 602 at 606.

⁴⁷ An RMA scale that only covers myths about the cases of rape: G Cowan and WJ Quinton, "Cognitive style and attitudinal correlates of the perceived causes of rape scale" (1997) 21 *Psychology of Women Quarterly* 227.

⁴⁸ B Krahé et al, "Schema-driven information processing in judgements about rape" (2007) 21 *Applied Cognitive Psychology* 602 at 613-614.

⁴⁹ BA Kopper, "Gender, gender identity, rape myth acceptance, and time of initial resistance on the perception of acquaintance rape blame and avoidability" (1996) 34 *Sex Roles* 81 at 88.

15. Mason et al ⁵⁰	157 students	Written vignette. No deliberation.	Burt's	Victim/perpetrator responsibility (scale of 1-100).	Yes ⁵¹
16. Masser et al ⁵²	120 Australian students	Written vignette. No deliberation.	Costin's R	Composite measure of victim blame.	Yes
17. Milesi et al ⁵³	612 students 188 German 157 Italian 208 Spanish	Written vignette. No deliberation.	AMMSA	Extent to which victim "to blame" or "responsible" (7-point scale)	Yes
18. Newcombe et al ⁵⁴	102 students	Four written vignettes (stranger, acquaintance, date, marital). No deliberation.	IRMAS	Victim/perpetrator responsibility (11-point scale).	Yes ⁵⁵
19. Persson et al ⁵⁶	81 nursing staff & students (England & Sweden)	Two written vignettes (stranger, acquaintance). No deliberation.	AMMSA	Extent to which victim/perpetrator "to blame" (7-point scale).	Yes ⁵⁷
20. Rollero and Tartaglia ⁵⁸	264 Italian students	Written vignette. No deliberation.	IRMAS	Victim/perpetrator responsibility (5-point scale).	Yes

⁵⁰ GE Mason et al, "The impact of past sexual experiences on attributions of responsibility for rape" (2004) 19 *Journal of Interpersonal Violence* 1157 at 1164.

⁵¹ For victim responsibility only.

⁵² B Masser et al, "Bad woman, bad victim? Disentangling the effects of victim stereotypicality, gender stereotypicality and benevolent sexism on acquaintance rape victim blame" (2010) 62 *Sex Roles* 494 at 500.

⁵³ P Milesi et al, "The interplay of modern myths about sexual aggression and moral foundations in the blaming of rape victims" (2019) *European Journal of Social Psychology*, advance online publication, at 7.

⁵⁴ PA Newcombe et al, "Attributions of responsibility for rape: differences across familiarity of situation, gender, and acceptance of rape myths" (2008) 38 *Journal of Applied Social Psychology* 1736 at 1745 (victim blame) and 1746 (perpetrator blame).

⁵⁵ Victim responsibility only in date rape scenario.

⁵⁶ S Persson et al, "Attributions of victim blame in stranger and acquaintance rape: a quantitative study" (2018) 27 *Journal of Clinical Nursing* 2640 at 2645.

⁵⁷ For acquaintance rape only.

⁵⁸ C Rollero and S Tartaglia, "The effect of sexism and rape myths on victim blame" (2019) 32 *Sexuality and Culture: An Interdisciplinary Quarterly* 209 at 215.

21. Romero-Sanchez et al study 1 ⁵⁹	92 Spanish students	Two written vignettes (alcohol, physical force). No deliberation.	AMMSA	Extent to which victim should "blame herself" (7-point scale).	Yes
22. Romero-Sanchez et al study 2 ⁶⁰	164 Spanish students	Two written vignettes (alcohol, physical force). No deliberation.	AMMSA	Extent to which victim should "blame herself" (7-point scale).	Yes
23. Schuller and Hastings ⁶¹	169 students	Audio-recorded 45-minute sexual assault trial, including judicial directions. No deliberation.	Ward's ⁶²	Extent to which victim and perpetrator "blameworthy" (7-point scale). Victim and perpetrator credibility (7-point scale).	Yes.
24. Starfelt et al ⁶³	219 Australian students	Written vignette. No deliberation.	IRMAS	Composite measure of victim/perpetrator blame.	Yes
25. Stewart and Jacquin ⁶⁴	2329 students	Abbreviated trial transcript (6-page). No deliberation.	Burt's	Blameworthiness of victim/perpetrator (6-point scale).	Yes
26. Stormo et al ⁶⁵	742 students	Written vignette. No deliberation.	Burt's	Blameworthiness of victim/perpetrator (5-point scale).	Yes

⁵⁹ M Romero-Sanchez et al "The role of alcohol and victim sexual interest in Spanish students' perceptions of sexual assault" (2012) 27 *Journal of Interpersonal Violence* 2230 at 2238.

⁶⁰ M Romero-Sanchez et al, "The role of alcohol and victim sexual interest in Spanish students' perceptions of sexual assault" (2012) 27 *Journal of Interpersonal Violence* 2230 at 2246.

⁶¹ RA Schuller and PA Hastings, "Complainant sexual history evidence: its impact on mock jurors' decisions" (2002) 26 *Psychology of Women Quarterly* 252 at 257.

⁶² Ward's Attitudes Towards Rape Victims scale: See C Ward, "The Attitudes Toward Rape Victims Scale: construction, validation, and cross-cultural applicability" (1988) 12 *Psychology of Women Quarterly* 127.

⁶³ LC Starfelt et al, "Explicating the role of sexual coercion and vulnerability alcohol expectancies in rape attributions" (2015) 30 *Journal of Interpersonal Violence* 1965 at 1975.

⁶⁴ DN Stewart and KM Jacquin, "Juror perceptions in a rape trial: examining the complainant's ingestion of chemical substances prior to sexual assault" (2010) 19 *Journal of Aggression, Maltreatment and Trauma* 853 at 866.

⁶⁵ KJ Stormo et al, "Attributions about acquaintance rape: the role of alcohol and individual differences" (1997) 27 *Journal of Applied Social Psychology* 279 at 292.

27. Wiener et al ⁶⁶	58 community participants	Abbreviated trial transcript (length not specified). No deliberation.	RES	Responsibility of perpetrator (11-point scale).	No
28. Workman and Orr ⁶⁷	632 students	Photograph of victim and written vignette. No deliberation.	Burt's	Responsibility of victim/perpetrator (8-point scale).	Yes
29. Zidenberg et al ⁶⁸	86 students and 82 community participants (Canadian).	Written police report (one page). No deliberation.	SRMAS	Extent to which victim "at fault", "to blame", "responsible" (7-point scale).	Yes

These studies are near unanimous in finding a significant relationship between scores on RMA scales and judgments about victim/perpetrator blame in a specific scenario. The only study that did not find a significant relationship between these two constructs was that of Weiner et al, where there were only 58 participants.⁶⁹

That RMA scores correlate with judgments about blame is perhaps not surprising. Rape myth scales measure attitudes relating to rape in the abstract and the studies in table 1 demonstrate that these attitudes correlate with attitudes towards rape victims and perpetrators in concrete cases. Lonsway and Fitzgerald describe this as "simple common sense, as well as a certain circularity".⁷⁰ It does also have to be noted that the realism of these studies is not generally high. None of them used trial videos or live trial re-enactments and none included an element of group deliberation.⁷¹ That said, the finding that abstract attitudes do translate into differences in views about a particular case in an important one. In other words, two

⁶⁶ RL Wiener et al, "Empathy and biased assimilation of testimonies in cases of alleged rape" (1989) 13 Law and Human Behavior 343 at 349.

⁶⁷ JE Workman and RL Orr, "Clothing, sex of subject, and rape myth acceptance as factors affecting attributions about an incident of acquaintance rape" (1996) 14 Clothing and Textiles Research Journal 276 at 279.

⁶⁸ AM Zidenberg et al, "Tipping the scales: effects of gender, rape myth acceptance, and anti-fat attitudes on judgments of sexual coercion scenarios" (2019) Journal of Interpersonal Violence, advance online publication, at 12.

⁶⁹ This study is discussed further below as it also did not demonstrate a significant relationship between RMA scores and judgments about guilt.

⁷⁰ KA Lonsway and LF Fitzgerald, "Rape myths: in review" (1994) 18 Psychology of Women Quarterly 133 at 148.

⁷¹ Many used a student sample, although if anything this is likely to under-estimate the scale of the problem, as those with higher levels of education are less likely to score highly on RMS scales.

people can be presented with the exact same information and – depending on their score on an abstract rape myth scale – will have different views on the extent to which a victim or perpetrator of rape was to blame for what happened. Of more importance, however, is the manner in which those views might translate into verdict preferences and it is to that the review now turns.

4.2 The link between juror attitudes and judgments about guilt

A second body of research exists that has examined the relationship between RMA scores and decisions about guilt in a specific rape case or scenario.⁷² A meta-analysis undertaken in 2015 identified nine such studies, eight of which reported a significant relationship between these two concepts.⁷³ There were, however, a substantial number of relevant studies that were not included in that analysis – either because they were not identified by the researchers or because they have been published subsequently. This analysis identified 28 relevant studies published in peer-reviewed journals⁷⁴ (table 2).

Table 2: Studies examining RMA scores and verdict

Study	Sample	Process	Scale	Verdict measure	Significant relationship?
1. Deitz et al study 2 ⁷⁵	376 (186 students, 190 community participants)	Written vignette. No deliberation.	RES	Certainty of guilt (11-point scale from “not at all sure” to “very sure”).	Yes

⁷² There is some overlap between this and the body of research that has linked RMA scores with responsibility, as some of the studies investigated both issues.

⁷³ S Dinos et al, “A systematic review of juries’ assessment of rape victims: do rape myths impact on juror decision-making?” (2015) 43 *International Journal of Law, Crime and Justice* 36 at 44.

⁷⁴ The exception to this is experiment 2 in Willmott’s thesis (item 27 in the table) which, at the time of writing, had not been reported in a peer reviewed journal. However, his first experiment, which has been reported in a peer-reviewed journal, uses similar methods and analytical techniques.

⁷⁵ SR Deitz et al, “Attribution of responsibility for rape: the influence of observer empathy, victim resistance, and victim attractiveness” (1984) 10 *Sex Roles* 261 at 380. Study 1 is not relevant for our purposes.

2. Eyssel and Bohner study 1 ⁷⁶	170 German students	Written vignette. No deliberation.	AMMSA	Verdict (G/NG)	Yes
3. Eyssel and Bohner Study 2 ⁷⁷	160 German students	Written vignette. No deliberation.	AMMSA	Verdict (G/NG)	Yes
4. Gray ⁷⁸	180 British students	Written vignette. No deliberation.	Burt's	Verdict (G/NG)	Yes
5. Hammond et al ⁷⁹	172 students	Written vignette. No deliberation.	Burt's	Confidence in guilt (on 5-point scale from "not at all" to "completely").	Yes
6. Hine and Murphy ⁸⁰	88 English police officers	16 written vignettes (varied according to stranger, partner, timing of resistance). No deliberation.	AMMSA	Was this an "authentic rape"? (on 100-point scale from "not at all" to "absolutely").	Yes
7. Klement et al study 1 ⁸¹	97 students	Written vignette. No deliberation.	IRMAS	"How guilty do you think D is?" (11-point scale from "not at all" to "very much").	Yes

⁷⁶ F Eyssel and G Bohner, "Schema affects of rape myth acceptance on judgments of guilt and blame in rape cases: the role of perceived entitlement to judge" (2011) 26 *Journal of Interpersonal Violence* 1579 at 1591.

⁷⁷ F Eyssel and G Bohner, "Schema affects of rape myth acceptance on judgments of guilt and blame in rape cases: the role of perceived entitlement to judge" (2011) 26 *Journal of Interpersonal Violence* 1579 at 1596.

⁷⁸ JM Gray, "Rape myth beliefs and prejudiced decision guidance: effects on decisions of guilt in a case of date rape" (2006) 11 *Legal and Criminological Psychology* 75 at 78.

⁷⁹ EM Hammond et al, "The influence of rape myth acceptance, sexual attitudes, and belief in a just world on attributions of responsibility in a date rape scenario" (2011) 16 *Legal and Criminological Psychology* 242 at 248.

⁸⁰ B Hine and A Murphy, "The influence of 'High' vs 'Low' rape myth acceptance on police officers' judgements of victim and perpetrator responsibility, and rape authenticity" (2019) 60 *Journal of Criminal Justice* 100 at 103.

⁸¹ KR Klement et al, "Accusers lie and other myths: rape myth acceptance predicts judgments made about accusers and accused perpetrators in a rape case" (2019) 81 *Sex Roles: A Journal of Research* 16 at 20.

8. Klement et al study 2 ⁸²	90 students	Written vignette. No deliberation.	IRMAS	"How guilty do you think D is?" (11-point scale from "not at all" to "very much")	Yes
9. Lee et al ⁸³	236 Korean police officers	Three written vignettes (dating, acquaintance, marriage). No deliberation.	Bespoke scale based on IRMAS	"How certain are you that this incident would be considered rape?" (5-point scale).	Yes ⁸⁴
10. Mason et al ⁸⁵	157 students	Written vignette. No deliberation.	Burt's	"Should D be held legally responsible?" (5-point scale from "strongly agree" to "strongly disagree").	Yes ⁸⁶
11. McKimmie et al ⁸⁷	420 community jurors	Two written trial summaries (500 words) (stranger, acquaintance). No deliberation.	Costin's R	Verdict (G/NG) and likelihood of guilt (on 7-point scale from "not at all" to "very much").	Yes
12. Osborn et al experiment 1 ⁸⁸	218 students	Written vignette. No deliberation.	IRMAS	Verdict (N/NG) and sentence length.	Yes
13. Osborn et al experiment 2 ⁸⁹	1084 community jurors	Written vignette. No deliberation.	IRMAS	Verdict (N/NG) and sentence length.	Yes

⁸² KR Klement et al, "Accusers lie and other myths: rape myth acceptance predicts judgments made about accusers and accused perpetrators in a rape case" (2019) 81 Sex Roles: A Journal of Research 16 at 22.

⁸³ J Lee et al, "Attitudes toward women, rape myths, and rape perceptions among male police officers in South Korea" (2012) 36(3) Psychology of Women Quarterly 365 at 371.

⁸⁴ But only for "rape survivor myths" part of scale.

⁸⁵ GE Mason et al, "The impact of past sexual experiences on attributions of responsibility for rape" (2004) 19 Journal of Interpersonal Violence 1157 at 1167.

⁸⁶ Relationship only with one part of Burt's scale – the adversarial sex beliefs part.

⁸⁷ BM McKimmie et al, "What counts as rape? The effect of offense prototypes, victim stereotypes, and participant gender on how the complainant and defendant are perceived" (2014) Journal of Interpersonal Violence 2273 at 223.

⁸⁸ K Osborn et al, "Juror decision making in acquaintance and marital rape: the influence of clothing, alcohol, and preexisting stereotypical attitudes" (2018) Journal of Interpersonal Violence, advance online publication, at 13.

⁸⁹ K Osborn et al, "Juror decision making in acquaintance and marital rape: the influence of clothing, alcohol, and preexisting stereotypical attitudes" (2018) Journal of Interpersonal Violence, advance online publication, at 13.

14. Romero-Sanchez et al study 2 ⁹⁰	164 Spanish students	Two written vignettes (alcohol, physical force). No deliberation.	AMMSA	"Do you think this is a sexual assault?" (7-point scale, "strongly agree" to "strongly disagree").	Yes
15. Schuller and Hastings ⁹¹	169 students	Audio-recorded 45-minute sexual assault trial, including judicial directions. No deliberation.	Ward's	Verdict (G/NG) and likelihood of guilt (on 7-point scale from "not at all likely" to "completely likely").	Yes
16. Schuller and Wall ⁹²	152 community jurors	4-page trial summary, plus judicial directions. No deliberation.	Ward's	Verdict (G/NG) and likelihood of guilt (on 7-point scale from "not at all likely" to "completely likely").	Yes
17. Stewart and Jacquin ⁹³	2329 students	6-page case summary (condensed version of trial transcript). No deliberation.	Burt's	Verdict (G/NG) and likelihood of guilt (on 4-point scale from "definitely guilty" to "definitely not guilty").	Yes
18. Stichman et al ⁹⁴	294 students	1-hour mock trial – some saw live re-enactment, some saw video. No deliberation.	PCRS	Verdict (G/NG)	No

⁹⁰ M Romero-Sanchez et al, "The role of alcohol and victim sexual interest in Spanish students' perceptions of sexual assault" (2012) 27 *Journal of Interpersonal Violence* 2230 at 2244.

⁹¹ RA Schuller and PA Hastings, "Complainant sexual history evidence: its impact on mock jurors' decisions" (2002) 26 *Psychology of Women Quarterly* 252 at 257.

⁹² RA Schuller and AM Wall, "The effects of defendant and complainant intoxication on mock jurors' judgments of sexual assault" (1998) 22 *Psychology of Women Quarterly* 555 at 563.

⁹³ DN Stewart and KM Jacquin, "Juror perceptions in a rape trial: examining the complainant's ingestion of chemical substances prior to sexual assault" (2010) 19 *Journal of Aggression, Maltreatment and Trauma* 853 at 867.

⁹⁴ AJ Stichman et al, "Assessing student attitudes toward sexual assault by using a mock trial" (2019) 30 *Journal of Criminal Justice Education* 1 at 13.

19. Süssenbach, Albrecht and Bohner ⁹⁵	240 participants from German University	Two written vignettes (stranger, met at party) No deliberation.	AMMSA	"Is D guilty of a crime?" (7-point scale from "not at all" to "very much").	Yes
20. Süssenbach, Eysel, Rees and Bohner study 1 ⁹⁶	90 participants from German University	Written vignette. No deliberation.	AMMSA	Likelihood of guilt on 7-point scale ("not at all probable" to "very probable").	Yes
21. Süssenbach, Eysel, Rees and Bohner study 2 ⁹⁷	41 German students	Written vignette. No deliberation.	AMMSA	Likelihood of guilt on 7-point scale ("not at all probable" to "very probable").	Yes
22. Weir and Wrightsman ⁹⁸	338 students.	12-page trial transcript based on real rape case (complainant's testimony only, no directions). No deliberation.	RES	Verdict (G/NG) and likelihood of guilt (on 8-point scale from "not at all confident" to "extremely confident").	Yes
23. Wenger and Bornstein ⁹⁹	152 students	3-page trial summary. No deliberation.	Burt's	Verdict (G/NG)	No

⁹⁵ P Süssenbach et al, "Implicit judgments of rape cases: an experiment on the determinants and consequences of implicit evaluations in a rape case" (2016) 23 *Psychology, Crime and Law* 291 at 298.

⁹⁶ P Süssenbach et al, "Looking for blame: rape myth acceptance and attention to victim and perpetrator" (2017) 32 *Journal of Interpersonal Violence* 2323 at 2330.

⁹⁷ P Süssenbach et al, "Looking for blame: rape myth acceptance and attention to victim and perpetrator" (2017) 32 *Journal of Interpersonal Violence* 2323 at 2336.

⁹⁸ JA Weir and LS Wrightsman, "The determinants of mock jurors' verdicts in a rape case" (1990) 20 *Journal of Applied Social Psychology* 901 at 909.

⁹⁹ AA Wenger and BH Bornstein, "The effects of victim's substance use and relationship closeness on mock jurors' judgments in an acquaintance rape case" (2006) 54 *Sex Roles* 547 at 552.

24. Westera et al ¹⁰⁰	96 Australian community participants.	Audio recording of complainant's testimony plus written summary of prosecution and defence case. No deliberation.	Costin's R	Likelihood of guilt (7-point scale).	Yes
25. Wiener et al ¹⁰¹	58 community participants	Abbreviated trial transcript (length not specified). No deliberation.	RES	Verdict (G/NG)	No
26. Willmott experiment 1 ¹⁰²	324 English students	25-minute trial video, including legal directions. Deliberation for up to 90 minutes in groups of 12.	AMMSA	Verdict (G/NG) pre- and post-deliberation.	Yes
27. Willmott experiment 2 ¹⁰³	100 English community jurors	Live trial re-enactment, including judicial directions (3.5 hours). Deliberation for up to 2 hours in groups of 10-12.	AMMSA	Verdict (G/NG) pre- and post-deliberation.	Yes
28. Workman and Orr ¹⁰⁴	632 students	Photograph of complainant and written vignette. No deliberation.	Burt's	Likelihood that complainant was raped (8-point scale).	Yes

¹⁰⁰ NJ Westera et al, "Does the narrative style of video evidence influence judgements about rape complainant testimony?" (2015) 29 Applied Cognitive Psychology 637 at 641.

¹⁰¹ RL Wiener et al, "Empathy and biased assimilation of testimonies in cases of alleged rape" (1989) 13 Law and Human Behavior 343 at 348.

¹⁰² D Willmott, An Examination of the Relationship between Juror Attitudes, Psychological Constructs, and Verdict Decisions within Rape Trials (Doctoral thesis, 2018). University of Huddersfield at 150 (pre-deliberation) and 152 (post-deliberation). This study is also reported at D Willmott et al, "Introduction and validation of the Juror Decision Scale (JDS): An empirical investigation of the Story Model" (2018) 57 Journal of Criminal Justice 26 at 33.

¹⁰³ D Willmott, An Examination of the Relationship between Juror Attitudes, Psychological Constructs, and Verdict Decisions within Rape Trials (Doctoral thesis, 2018). University of Huddersfield at 156 (pre-deliberation) and 158 (post-deliberation).

¹⁰⁴ JE Workman and RL Orr, "Clothing, sex of subject, and rape myth acceptance as factors affecting attributions about an incident of acquaintance rape" (1996) 14 Clothing and Textiles Research

All but three of the 28 studies identified found a significant relationship between RMA scores and decisions about guilt. In other words, people presented with exactly the same information were significantly more or less likely to find an accused person guilty of rape or sexual assault depending on their score on an RMA scale.

There was more variation in the research methods used in the studies in table 2 than in table 1. Some were relatively realistic representations of the trial process, but others had methodological issues that limit the reliance that can be placed on their findings. This was true of all three of the studies where no significant relationship was found (Weiner et al, Wenger and Bornstein and Stichman et al). Weiner et al's study is 30 years old. It involved only 58 participants, the smallest sample of all of the studies identified, and used a relatively outdated RMA scale (the RES). The Wenger and Bornstein study also involved a small sample (152 participants) and it used a three-page written summary of a sexual assault trial and, like Weiner et al, used an outdated RMA scale (Burt's).¹⁰⁵

Stichman et al's study was more realistic. It used a shortened version of a trial that was based on a real case, in which criminal justice professionals played the legal roles, with a police officer as the defendant and a rape crisis counsellor as the complainant. The mock trial was performed live to 69 of the 294 participants and was played as a video to the remainder.¹⁰⁶ It involved testimony from the complainant and defendant and written sworn statements from other witnesses. Participants were given written definitions of legal terms, including beyond reasonable doubt, before being asked to indicate whether the defendant was guilty. However, aside from its use of a wholly student sample (criminal justice and sociology students), the main difficulty with the study lies in its use of the Perceived Causes of Rape Scale (PCRS). The PCRS covers five possible causes of rape: victim precipitation (e.g. women who tease men); male dominance (e.g. a need to put women in their place); male sexuality (e.g. men who can't control their sex drives); societal causes (e.g. violence towards women in the movies) and male pathology (for example men's feelings of inferiority, inadequacy, and low self-esteem). It is one of the less subtle RMA scales and is relatively narrow in the range of rape myths it includes. Average scores on the scale were low, as was the standard deviation (indicating little variation in participant

Journal 276 at 282.

¹⁰⁵ Despite these methodological issues it did still find that RMA score was significantly related to judgments about the complainant's credibility (measured by asking participants to rate the likelihood that the complainant was lying on a 7-point scale from "very likely" to "very unlikely").

¹⁰⁶ The mode of delivery made no difference to the results – Stichman et al, at 13.

scores).¹⁰⁷ It is worth noting that the researchers also recorded the students' explanations for their verdicts and these did indicate some belief in rape myths (e.g. comments that it was partly the complainant's fault as she willingly let the defendant into her apartment).¹⁰⁸

It is not just the studies that failed to show a significant relationship that have methodological issues. For example, a lot of the other studies where a relationship was found used short written vignettes (with no legal directions) or (what are now regarded as) outdated RMA scales. Some of the studies used measures of guilt far removed from the binary decision that jurors make in reality – particularly notable are Klement et al (who asked participants to rate “how guilty do you think the defendant is” on an 11-point scale) and Süssenbach et al (who asked “is the defendant guilty of a crime?” on a 7-point scale from “not at all” to “very much”).

However, not all of the studies suffered from methodological weaknesses. The best of the studies in terms of realism were the two experiments undertaken by Willmott. The first involved showing a 25-minute trial video to 324 students. The trial was based on a real rape case, it included pre-trial instructions and post-trial directions taken from the Judicial Studies Board Crown Court Benchbook.¹⁰⁹ It was recorded in a real courtroom, with professional actors playing the complainant and defendant and an experienced barrister as a judge. Advice on realism was provided by an expert panel that included the barrister, a CPS lawyer and three senior detectives from police forces' specialist sexual offence units. After watching the video, the mock jurors deliberated in groups of 12 (as would be the case in a real jury in England) for up to 90 minutes, before returning a verdict. Participants completed the AMMSA, one of the most up-to-date RMA scales.

One important limitation of experiment 1 is that it did not involve cross-examination – rather the complainant and defendant gave an unprompted account and the mock jurors were also given a summary of the case for the prosecution and defence. However, Willmott's second experiment rectified this. It used a 3-hour 30-minute live trial re-enactment, which included examination and cross-examination, closing speeches and the same legal directions as before. It also utilised a community

¹⁰⁷ At 12.

¹⁰⁸ At 16. This echoes the finding of Ellison and Munro, who also reported that jurors sometimes expressed rape myth supporting attitudes in deliberations even when they had not indicted that they held these views in an abstract questionnaire – see section 5.

¹⁰⁹ This was, at the time of the research, the standard guide for judges to refer to in crafting jury directions. It has since been replaced by the Judicial College's Crown Court Compendium, which serves the same purpose.

sample drawn from the electoral register. The 100 mock jurors deliberated in nine groups of between 10 and 12 for up to two hours. Both studies took substantial steps to maximise realism and both found a significant relationship between individual verdict preferences and scores on the AMMSA both pre-deliberation¹¹⁰ and post-deliberation.¹¹¹

5. Qualitative studies

The studies discussed so far have been exclusively quantitative. However, further insights into the way in which prejudicial attitudes might influence jury decision making can be gained from another body of literature, which has looked at the extent to, and manner in which, false assumptions about what rape looks like, and what genuine victims would do, arise during mock jury deliberations.¹¹² All of the studies involved a female complainant – no studies that have looked at mock juror deliberations in a case where the complainant is male were identified.

Batchelder et al undertook research with 151 community jurors, who read a trial transcript of a rape case (the length of which is not specified, but it did include legal directions) in which a female complainant and male defendant, who were both students, met in a bar before going back to her room, where the incident took place.¹¹³ The mock jurors then deliberated in groups of 12 (bar two smaller juries of eight and seven) and deliberations were recorded and transcribed. Although the study was not aimed at investigating rape myths,¹¹⁴ the researchers noted that they arose regularly during deliberations, including the view that a woman who has been raped would always show distress after the incident and the view that false allegations of rape are often made by women who regretted having sexual intercourse.¹¹⁵

¹¹⁰ Which was significant at $p < 0.01$.

¹¹¹ Which was significant at $p < 0.05$.

¹¹² See also the focus group study undertaken by C Gunby et al, "Regretting it after? Focus group perspectives on alcohol consumption, nonconsensual sex and false allegations of rape" (2012) 22 *Social and Legal Studies* 87.

¹¹³ JS Batchelder et al, "Women's hostility toward women in rape trials: testing the intra-female gender hostility thesis" (2004) 28 *American Journal of Criminal Justice* 181 at 188.

¹¹⁴ Its primary focus was to examine whether gender influences verdict choices – and the researchers found that it did.

¹¹⁵ At 191.

Taylor and Joudo carried out research with 210 jury eligible members of the public.¹¹⁶ Participants watched an 85 minute live trial re-enactment based on a transcript from a real sexual assault case, using professional actors (although for brevity only the complainant gave evidence).¹¹⁷ The scenario involved a male and female work colleague who both attended an office party and drank and danced, before going to another room and having sexual intercourse, which the complainant claimed happened without her consent (a claim the defendant disputed). Mock jurors then deliberated in groups of between 10 and 12 for up to an hour. The researchers did not record the deliberations. Rather, after the juries had reached their verdicts, they held group discussions with the participants to ask them what they had spoken about. This was far from an ideal research method – participants may not have been able to recall accurately what went on during the deliberations or might have been reluctant to report it. Nonetheless, Taylor and Joudo found that:¹¹⁸

One of the key insights obtained during this study was the high degree to which many jurors believed many of the myths which surround rape in general. Acceptance of these myths mean that jurors have strong expectations about how a 'real' victim would behave before, during and after an alleged sexual assault and these expectations impact on their perceptions of the complainant's credibility.

The researchers pointed to a number of examples which arose regularly and, as they put it, "worked against the complainant".¹¹⁹ These included the complainant's admissions that she did not scream or shout for help; that there was no evidence of injury; that she continued to work with the defendant after the incident; that she delayed reporting the incident for two weeks; and that she was not visibly upset when recounting the incident in court. Some of the mock jurors volunteered that they had advanced these arguments as a rationale for a not guilty verdict, although others reported that they disagreed and did not believe they were relevant in reaching a verdict.¹²⁰

¹¹⁶ N Taylor and J Joudo, *The Impact of Pre-recorded Video and Closed Circuit Television Testimony by Adult Sexual Assault Complainants on Jury Decision-Making: An Experimental Study* (2005) at 23.

¹¹⁷ The main purpose of the study was to investigate the impact of the complainant giving evidence in person compared to a live TV link – so the conditions were varied in accordance with this.

¹¹⁸ At 59.

¹¹⁹ At 59.

¹²⁰ At 60.

The most significant studies of rape myths and jury deliberations, however, are the three studies undertaken by Vanessa Munro, the first with Emily Finch and the second and third with Louise Ellison.

The first study (study A)¹²¹ involved a scripted 75-minute mock rape trial (including legal directions crafted from the Judicial Studies Board Crown Court Benchbook) performed live in front of 168 mock jurors, who were recruited from the general public. The study aimed to examine the way in which an intoxicated rape complainant was viewed, so the scenario involved a complainant who was conscious and able to communicate but had trouble walking, and whose words were slurred. The defendant admitted she was largely unresponsive as he undressed her. The jurors watched the trial reconstruction and then deliberated in 21 groups of eight for up to 90 minutes, without the presence of the researchers.¹²² The deliberations were video recorded. Each jury returned a verdict, and jurors also gave their individual views on what the verdict should be, both pre- and post-deliberation.

The second (study B)¹²³ utilised similar research methods to the first. This time it involved a 75-minute mock rape trial performed live in front of 233 mock jurors, who again were recruited from the general public. The scenario involved two colleagues who attended a work event before the defendant gave the complainant a lift home. The two spent a few hours together drinking a glass of wine and some coffee, before kissing. After that, their accounts diverged, with the complainant reporting that she was raped and the defendant claiming they engaged in consensual intercourse. The roles were played by a mixture of actors and barristers and experienced legal professionals advised on the realism of the trial script.¹²⁴ The mock jurors then

¹²¹ E Finch and V Munro, "Breaking boundaries? Sexual consent in the jury room" (2006) 26 *Legal Studies* 303 ("Breaking boundaries").

¹²² The means by which the complainant came to be intoxicated were varied across the trials – see "Breaking boundaries" at 313.

¹²³ The study is reported in a number of articles – the most pertinent for our purposes are L Ellison and V Munro, "Reacting to rape: exploring mock jurors assessments of complainant credibility" (2009) 49 *British Journal of Criminology* 202 ("Reacting to rape"); L Ellison and V Munro, "Of 'normal sex' and 'real rape': exploring the use of socio-sexual scripts in (mock) jury deliberation" (2009) 18 *Social and Legal Studies* 291 ("Of normal sex"); L Ellison and V Munro, "Turning mirrors into windows: assessing the impact of (mock) juror education in rape trials" (2009) 49 *British Journal of Criminology* 363 ("Turning mirrors into windows"); L Ellison and V Munro, "A stranger in the bushes or an elephant in the room? Critical reflections upon received rape myth wisdom in the context of a mock jury study" (2010) 13 *New Criminal Law Review* 781 ("A stranger in the bushes").

¹²⁴ The legal directions they heard included – in some of the groups – directions designed to counter various rape myths. This aspect of the study is discussed in section 5.

deliberated in groups of eight or nine (27 mock juries in total) for up to 90 minutes. Each jury returned a verdict, and jurors gave their individual views on what the verdict should be, both pre- and post-deliberation, but this time the jurors also completed a RMA questionnaire.¹²⁵

The third study (study C)¹²⁶ utilised the same research methods as studies A and B, but this time the 75-minute mock trial involved the complainant and defendant having been in a relationship that had broken down. The alleged rape occurred in the complainant's flat, that they used to share together, when the defendant called round to collect his television. A forensic examiner testified to the complainant having bruises and scratches of a sort consistent with the application of considerable force, but no internal bruising (although he also stated that this is not uncommon in rape cases). The study involved 216 mock jurors recruited from the general public who deliberated in 27 groups of eight for up to 90 minutes.

All three studies found that rape myth supportive attitudes arose frequently during deliberations. Space precludes an extensive discussion, but to give three examples:

Lack of physical resistance. Many jurors expressed the belief that a genuine victim of rape would have fought back to the extent that she would have suffered substantial defensive injuries, including internal trauma. Not guilty verdicts were frequently justified with reference to the absence of more serious or more extensive injuries.¹²⁷ Often female jurors expressed these views, asserting that if they had been in the complainant's situation, they would have struggled more forcefully,¹²⁸ insisting that their instinctive reaction would be to lash out aggressively and inflict injury on the defendant and expressing a confidence that they would be able to do this even where the assailant was stronger than themselves.¹²⁹ For example, one female juror observed "I think it's instinct, if you've got a hand free you'd grab for his eyes or his face or anything" and another stated that "I just can't understand why she wouldn't

¹²⁵ The questionnaire was a tailored one designed specifically for the project, including questions relevant to the particular trial scenario that was utilised.

¹²⁶ This is also reported in a number of papers – the most relevant for our purposes being L Ellison and V Munro, "Better the devil you know: real rape stereotypes and the relevance of a previous relationship in (mock) juror deliberations" (2013) 17 *International Journal of Evidence and Proof* 299 ("Better the devil you know"); L Ellison and V Munro, "Telling tales: exploring narratives of life and law within the (mock) jury room" (2015) 35 *Legal Studies* 201 ("Telling tales").

¹²⁷ See e.g. "Breaking boundaries" at 314; "Reacting to rape" at 207; "A special delivery" at 12.

¹²⁸ See e.g. "Better the devil you know" at 314.

¹²⁹ See e.g. "Reacting to rape" at 206; "Turning mirrors into windows" at 371.

push him off or do anything, I cannot get my head around that”.¹³⁰ This is despite the jurors having been directed that “it is not a requirement for establishing the offence of rape that any force has been used” and neither is it “necessary to show evidence of any kind of struggle in order to establish non-consent”.¹³¹ In study A, some jurors insisted that even a heavily intoxicated complainant would be expected to offer physical resistance. As one juror put it, “a woman’s got to cooperate with a man to be able to do it, to have intercourse, unless he thumps her or what, and he didn’t – there was no bruising on her body anywhere. I would say she was probably drunk but at the same time she more or less consented”.¹³²

Although some jurors occasionally challenged those views by arguing that women facing sexual assault may freeze and be too fearful or shocked to fight back physically, this rarely caused others to revise their opinion.¹³³ While jurors seemed prepared to believe this might happen in a “stranger-rape” context, they were far less willing to accept it in the context of an acquaintance rape.¹³⁴ 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?”¹³⁵

False allegations. Jurors often expressed views about the prevalence of false allegations of rape, stating that they are routinely made.¹³⁶ Some jurors constructed a narrative whereby the complainant was angry that the defendant did not wish to start (in study B) or resume (in study C) a relationship and made a false rape allegation out of a desire for revenge. As one juror put it, ““a woman scorned is so true, no disrespect girls, it is though isn’t it?”¹³⁷ Whilst there were jurors who questioned how realistic it was that a woman would put herself through the challenges of a criminal investigation and trial merely to “get one over on someone, or to get back at someone”, these comments were often countered by jurors who insisted that “it does happen” and that “love makes people do crazy things”.¹³⁸

Uncontrollable male sexual urges. The male defendant was at times regarded as being at the mercy of his sexual drives, which may have led to him having a genuine

¹³⁰ “Turning mirrors into windows”, at 371.

¹³¹ “Telling tales”, at 218.

¹³² “Breaking boundaries” at 316.

¹³³ “Telling tales” at 218.

¹³⁴ “A stranger in the bushes”, at 790.

¹³⁵ “Reacting to rape”, at 206.

¹³⁶ See e.g. “A stranger in the bushes”, at 795; “Better the devil you know”, at 314.

¹³⁷ “A stranger in the bushes”, at 797.

¹³⁸ “Better the devil you know”, at 314.

(and reasonable) belief in consent.¹³⁹ The belief that the defendant might have been “so passionate and into it” or “so transfixed” that he would not be able to “register what she was actually doing” was regularly expressed by mock jurors.¹⁴⁰ One, for example, stated that “a woman can stop right up to the last second ... a man cannot, he’s just got to keep going, he’s like a train, he’s just got to keep going”.¹⁴¹

It is worth noting that all of these attitudes were more evident in the deliberations (where jurors were discussing the specific mock trial) than in the questionnaires they completed (when they were asked about their attitudes in the abstract).¹⁴² This is an important finding. Even jurors who were found to have relatively low levels of ‘rape myth acceptance’ when they completed the questionnaire sometimes relied on problematic views, grounded in those same stereotypes, in the process of engaging in their deliberations about the trial they had just watched.

To date, the studies reported here are the only studies identified by the review to have analysed the content of juror deliberations in a (mock) rape trial. Another study will, however, shortly add to this research base, the findings of which are reported in a separate working paper.¹⁴³

6. Addressing juror attitudes

There is a small body of research that has examined whether prejudicial attitudes can be countered by juror education – either in the form of directions from the trial judge or evidence given by an expert witness. Four studies in peer reviewed journals have examined this issue. The first of these, although the most recent, is the least realistic in terms of its simulation of the trial process. Klement et al undertook an experiment with 97 US psychology students, in which they read a short written scenario, followed by either no expert testimony, written expert testimony stating that 50-90% of rape allegations are false, or written expert testimony stating that false allegations are rare, at around 2-10% of all rape allegations.¹⁴⁴ The presence or

¹³⁹ See e.g. “Of normal sex and real rape”, at 297; “A stranger in the bushes”, at 793.

¹⁴⁰ “A stranger in the bushes”, at 793.

¹⁴¹ “A stranger in the bushes”, at 793.

¹⁴² “A stranger in the bushes”, at 790-791, 793.

¹⁴³ See J Chalmers et al, *The Provenance of What is Proven: Exploring (Mock) Jury Deliberation in Scottish Rape Trials* (Scottish Jury Research Working Paper 2, 2019).

¹⁴⁴ KR Klement et al, “Accusers lie and other myths: rape myth acceptance predicts judgments made about accusers and accused perpetrators in a rape case” (2019) 81 *Sex Roles: A Journal of Research* 16 at 19 (study 1).

absence of the testimony had no effect on decisions about guilt.¹⁴⁵ However, the experiment lacked realism in a number of respects, limiting the weight that can be attached to it.¹⁴⁶

The other three studies were more realistic in that they all involved a mock trial and juries who deliberated. Brekke and Borgida undertook two experiments, both involving US psychology students.¹⁴⁷ In the first, 208 students listened to an audiotaped mock rape trial, based on a real trial (which varied in length from 65 to 102 minutes, depending on the experimental condition). They then gave individual verdicts, before deliberating in groups of between four and six for up to 30 minutes.¹⁴⁸ Conditions were varied so that there was either no expert testimony, an expert who testified in general terms (that few women falsely accuse men of rape, rape is an under-reported crime, a large proportion of rapes involve acquaintances and it can be better for a women to submit rather than risk additional violence), or an expert who gave similar testimony but related it to the facts of the case and used a hypothetical example.¹⁴⁹ Jurors exposed to the case-related testimony were significantly more likely to favour a guilty verdict pre- and post-deliberation than either those who heard no expert testimony¹⁵⁰ or those who heard the standard testimony.¹⁵¹ There was no significant difference in the proportion of jurors who favoured a guilty verdict between the standard testimony and no testimony groups.¹⁵² Their second study involved 144 students and was identical to the first, except that all groups heard some form of expert testimony, either standard expert testimony or case-specific testimony. The case-specific testimony resulted in a significant increase in the number of guilty verdicts pre-deliberation. The relationship post-

¹⁴⁵ At 20.

¹⁴⁶ A second experiment in which the same information was provided by the prosecution or defence also found that it had no effect – at 13. The researchers also conducted two experiments involving a trial scenario with a male complainant and a female defendant, and here they did find some limited evidence that the testimony (which was adapted for a male rape scenario) had a positive effect (at 24 and 26).

¹⁴⁷ N Brekke and E Borgida, "Expert psychological testimony in rape trials: a social-cognitive analysis" (1988) 55 *Journal of Personality and Social Psychology* 372.

¹⁴⁸ There were 20 groups of six and 10 groups of four.

¹⁴⁹ At 374.

¹⁵⁰ At 377.

¹⁵¹ At 375. The researchers do not report results relating to the jury level verdicts.

¹⁵² At 377.

deliberation was not significant, but participants who had heard the case-related testimony were significantly more likely to find the complainant a credible witness.¹⁵³

Brekke and Borgida recorded the deliberations of their mock juries, although the analysis they undertook was quantitative only. They found that there was limited discussion of the expert testimony during the deliberations of those juries who heard it (an average of two minutes discussion of the 30 minutes total deliberation time).¹⁵⁴ However, they also found that in the groups who had not heard the expert testimony, complainant resistance was a dominant theme during more than 15 per cent of the deliberation and discussion tended to be favourable to the defence. The juries who heard the case-specific testimony devoted, on average, less than two per cent of their time to discussing resistance and the discussion was generally favourable towards the complainant.¹⁵⁵

Spanos et al undertook a mock jury experiment with 219 US students, who were randomly assigned to one of 36 juries, ranging in size from four to eight.¹⁵⁶ They listened to an audiotaped mock trial (involving an alleged rape in the complainant's flat after a date), followed by either no expert witness testimony, expert witness testimony or expert witness testimony and cross-examination.¹⁵⁷ The expert witness gave evidence aimed at countering a number of different possible false beliefs (e.g. date rape is rare, women provoke rape by their appearance, false allegations are common). In the cross-examination, he agreed that there are documented cases of false allegations (as well as making a number of other concessions).¹⁵⁸ At the jury level, juries were significantly more likely to return guilty verdicts when they heard the expert testimony, but only in the condition with no cross-examination.¹⁵⁹ The same effect was found in relation to jurors' individual verdicts (although only post-

¹⁵³ See table 4, at 379. The fact that the relationship between the expert testimony and verdict choices was not significant in the second experiment may simply be due to the smaller number of participants (only 144, compared to 208 in their first experiment).

¹⁵⁴ At 380.

¹⁵⁵ At 382.

¹⁵⁶ NP Spanos et al, "The effects of expert testimony concerning rape on the verdicts and beliefs of mock jurors" (1991) 11 *Imagination, Cognition and Personality* 37.

¹⁵⁷ At 39.

¹⁵⁸ For instance, during cross-examination the expert was forced to acknowledge that rape fantasies are not uncommon, some women derive sexual gratification from being tied up, some women develop unrealistic expectations of a relationship following an initial sexual encounter, and some such women may become distraught, angry and vindictive when they are rebuffed (at 41).

¹⁵⁹ At 43.

deliberation).¹⁶⁰ The fact that the directions were ineffective when the expert was cross-examined might lead to the conclusion that in real life – where cross-examination would always form part of an adversarial trial – expert evidence is unlikely to be effective. However, as Ellison and Munro point out, the nature of the cross-examination in Spanos et al's study went beyond what would normally be acceptable in a real trial.¹⁶¹ Studies undertaken in other contexts have demonstrated that expert testimony can have a positive impact even with cross-examination.¹⁶²

It does also have to be said that, although both studies did involve an element of deliberation, there are other elements of the research methods – such as their use of audiotaped mock trials – that limits the reliance that can be placed on them.

The final – and most realistic – study was undertaken by Ellison and Munro.¹⁶³ The study involved 216 jurors recruited from the general public who deliberated in 27 groups of eight. The main features of the research methods used have already been outlined,¹⁶⁴ but it is pertinent to add at this point that there were nine experimental conditions. The main substance of the trial remained the same, but (a) the level of the complainant's physical resistance; (b) the delay between the incident and its report to the police by the complainant; and (c) the level of observable distress in the complainant's courtroom demeanour were varied. In addition, in one third of the trials a direction from the judge informed jurors about the feasibility of a complainant freezing during an attack, the frequency with which complainants delay reporting, or the different emotional reactions that victimisation might elicit. In another one third of the trials, the same information was provided by an expert called by the prosecution and cross-examined by the defence. In the remaining trials, no such guidance was provided.¹⁶⁵

The researchers used a primarily qualitative research methodology, examining the way in which the content of the deliberations differed between the groups who had received the educational guidance and those who had not, but they supplemented this with analysis of questionnaires completed by individual jurors post-deliberation.

¹⁶⁰ At 44.

¹⁶¹ L Ellison and V Munro, "Turning mirrors into windows: assessing the impact of (mock) juror education in rape trials" (2009) 49 *British Journal of Criminology* 363 at 376.

¹⁶² See e.g. B Cutler et al, "Expert testimony and jury decision making: an empirical analysis" (1989) 7 *Behavioral Sciences and the Law* 215.

¹⁶³ L Ellison and V Munro, "Turning mirrors into windows: assessing the impact of (mock) juror education in rape trials" (2009) 49 *British Journal of Criminology* 363.

¹⁶⁴ See section 5 (Ellison and Munro's study B).

¹⁶⁵ At 366.

They found that the educational guidance on complainant demeanour and delayed reporting had a noticeable effect on the deliberations, but the guidance on lack of resistance did not.

In respect of complainant demeanour, the jurors who had been exposed to the educational guidance were less likely to make reference to the complainant's demeanour when giving evidence and – when the issue was raised – were more likely to offer explanations for what might account for the complainant's lack of emotionality and more inclined to comment that it was “normal” that a victim of rape could respond in such a calm manner.¹⁶⁶ This was supplemented by the post-deliberation questionnaires, where jurors in the expert testimony and judicial instruction conditions were less likely to say that it would have influenced their decision if the complainant had been more obviously distressed when giving her testimony.¹⁶⁷

In respect of delayed reporting, the jurors who had been exposed to the educational guidance were more likely to state that they were untroubled by the three-day delay in reporting the alleged rape. Jurors in the no-education condition were more likely to express the view that the complainant's response had undermined her credibility and described the delayed reporting as, variously, “odd”, “strange” and “disturbing”.¹⁶⁸ This was also supported by the questionnaire data, where jurors in the non-guidance condition were more likely to agree that it would have made a difference to their deliberations if the complainant had reported the alleged assault to the police sooner.¹⁶⁹

In relation to lack of resistance, there was no discernible difference in either the deliberations or the questionnaire data between the way jurors responded to the complainant's claim to have frozen in shock after initially attempting to push the

¹⁶⁶ At 369.

¹⁶⁷ At 369. The authors did not test for statistical significance but the numbers were 60 per cent of jurors (n=15) in the non-education condition said that it would have influenced their decision, compared to 24 per cent (n=6) who received judicial instruction and 35 per cent (n=8) who were exposed to expert testimony.

¹⁶⁸ At 370.

¹⁶⁹ At 371. 58 per cent of jurors (n=15) in the non-guidance condition agreed that it would have made a difference to their deliberations if the complainant had reported the alleged assault to the police sooner, compared to 23 per cent (n=6) of jurors who received judicial instruction and 28 per cent (n=7) of those who were exposed to general expert testimony.

defendant away and telling him to leave her alone.¹⁷⁰ The researchers offer a number of possible explanations for the different findings in relation to the different types of rape myth. It may simply be that some beliefs – including those about injury and resistance – are so deeply entrenched that attempts to influence them through juror education will have limited effect.¹⁷¹

It may, however, be the case that the particular directions on lack of resistance utilised in the study were ineffective.¹⁷² In line with judicial guidance, the directions were general in nature – they did not use hypothetical examples and were not linked to the facts of the particular case. This explanation would be consistent with Brekke and Borgida’s study, where expert testimony was only effective when it was case-related and used a hypothetical example. It may also be the case that Brekke and Borgida’s case-related testimony was more effective than the abstract testimony because it explained *why* some rape victims might react in a particular way (for example that freezing is a natural physiological response to danger or that there may be good reasons for not reporting a sexual offence immediately). This would also be consistent with experimental research into the effectiveness of judicial directions more generally, which suggests that jurors are more likely to follow instructions if it is explained why they are being given.¹⁷³ It is also important that judicial directions are simple and comprehensible. This is not to suggest that the direction in Ellison and Munro’s study was not¹⁷⁴ – but experimental research has shown that juror comprehension of judicial directions is low and that it can be considerably improved by using plain language and other methods of simplification.¹⁷⁵ The direction also

¹⁷⁰ At 372-373. When asked whether it would have made any difference to their deliberations if the complainant had shown signs of physical injury after the alleged assault, 88 per cent of jurors (n=22) in the no-education condition said that it would have made a difference, compared to 80 per cent (n=20) who received judicial instruction and 92 per cent (n=24) who were exposed to expert testimony.

¹⁷¹ At 376. On this, see also S Cowan, “Sense and sensibilities: a feminist critique of legal interventions against sexual violence” (2019) 23 *Edinburgh Law Review* 22 at 38; J Temkin, “‘And always keep a-hold of nurse, for fear of finding something worse’: challenging rape myths in the courtroom” (2011) 4 *New Criminal Law Review* 710 at 724.

¹⁷² At 376.

¹⁷³ See the survey of the relevant evidence in F Leverick, “Jury instructions on eyewitness identification evidence: a re-evaluation” (2016) 49 *Creighton Law Review* 555 at 581.

¹⁷⁴ The authors reflect on this issue in “Telling tales” at 224-225.

¹⁷⁵ See the summary of the relevant studies in J Chalmers and F Leverick, *Methods of Conveying Information to Jurors: An Evidence Review* (2018) at 23-27. See also Temkin’s criticism of some of the directions aimed at targeting rape myths in (what was then) the Judicial Studies Board Crown Court Benchbook: J Temkin, “‘And always keep a-hold of

needs to be recalled by jurors and here written directions can play an important role.¹⁷⁶

Finally, it is possible that timing was an issue and that the introduction of expert testimony or judicial directions on the issue of non-resistance (as well, potentially, as on demeanour and delay) would have had a greater influence if it had preceded the complainant's testimony.¹⁷⁷ There are two possible reasons for this. The first is that there is considerable research evidence that suggests that jurors, rather than passively absorbing all the evidence as it is presented to them, instead settle on a 'story' that makes sense to them relatively early in the proceedings and then attempt to fit the remainder of the evidence into that narrative rather than evaluating it independently.¹⁷⁸ Hearing the guidance before the complainant's testimony would mean that it would be salient in jurors' minds before they form their opinions about the complainant's credibility based on their own preconceptions and beliefs. The second is that directions given at the end of the trial might get lost as they will simply be one part of a lengthy summing up and detailed instruction on the relevant law which, in a real trial, will be given after several days of evidence.¹⁷⁹ The point is strengthened by the research evidence on jury directions more generally, which has found that pre-instruction improves juror memory for and comprehension of jury directions.¹⁸⁰ This might also point to one advantage of expert testimony over judicial directions given at the end of a trial – expert testimony might be more memorable as the expert will only be testifying about a single issue and jurors will be less likely to switch off and miss important information.

7. Conclusion

To summarise, there is overwhelming evidence that jurors take into the deliberation room false and prejudicial beliefs about what rape looks like and what genuine rape

nurse, for fear of finding something worse': challenging rape myths in the courtroom" (2011) 4 New Criminal Law Review 710 at 724.

¹⁷⁶ See J Chalmers and F Leverick, *Methods of Conveying Information to Jurors: An Evidence Review* (2018) at 32-36.

¹⁷⁷ At 377. On this, see also L Ellison, "Credibility in context: jury education and intimate partner rape" (2019) 23 *International Journal of Evidence and Proof* 263 at 275.

¹⁷⁸ N Pennington and R Hastie, "Explaining the evidence: tests of the story model for juror decision making" (1992) 62 *Journal of Personality and Social Psychology* 189.

¹⁷⁹ J Temkin, "And always keep a hold of nurse, for fear of finding something worse': challenging rape myths in the courtroom" (2011) 4 *New Criminal Law Review* 710 at 731.

¹⁸⁰ See the summary of the relevant studies in J Chalmers and F Leverick, *Methods of Conveying Information to Jurors: An Evidence Review* (2018) at 27-31.

victims would do and that these beliefs affect attitudes and verdict choices in concrete cases. This evidence is both quantitative and qualitative.

The most important quantitative studies are those that have examined the link between scales designed to measure rape myth supporting attitudes and judgments about guilt. A total of 28 such studies were identified and all but three found a significant relationship between jurors' scores on RMA scales and their judgments about guilt in a specific rape case or scenario. All three of the studies that did not report a statistically significant relationship had methodological weaknesses that limit the reliance that can be placed on them. The 25 studies that did demonstrate a link varied in terms of the realism of their research methods. Many used students as their experimental participants, although that in itself is likely to under-estimate the scale of the problem, given that higher scores on RMA scales are correlated with lower educational levels. Only two studies included an element of deliberation in the research design. However, those two studies both demonstrated that the link between juror attitudes and verdict choices persisted even after deliberation, suggesting that the deliberation process is not a 'magic bullet' in terms of curing problematic attitudes. These two studies were also the most realistic experiments and the fact that they both found a significant relationship between RMA scores and verdict choices is notable.

The qualitative studies that had reported at the time of writing paint a similar picture. They demonstrate that jurors regularly express in deliberation false beliefs about matters such as an absence of extensive injury or resistance indicating consent and rape allegations often being unfounded and easy to make. These beliefs have been expressed in highly realistic studies that have replicated real rape trials as closely as is possible in the experimental setting. Importantly, these beliefs were sometimes expressed by those who had not indicated that they held such beliefs when asked about them in the abstract, via a questionnaire.

All of this raises the question of whether problematic attitudes can be addressed via juror education, such as a trial judge direction or expert evidence. The studies reported here give some limited cause for optimism in this respect, with some evidence that juror education can have an impact. It is clearly not as simplistic, however, as simply telling jurors that they are wrong and expecting them automatically to change their views. Some views may be more difficult to shift than others and consideration also needs to be given to the timing of any intervention and to its content.