

MOCK JURY PERCEPTIONS OF VULNERABLE DEFENDANTS ASSISTED IN COURT BY INTERMEDIARIES – ARE JURORS' EXPECTATIONS VIOLATED?

Miss Alex Jane Smethurst
Dr Kimberly Collins
Teesside University, Middlesbrough, England

Non-registered intermediaries facilitate communication between the courts and vulnerable defendants. Although the role has generally been well received by practitioners, concerns have been raised regarding whether it jeopardises the fairness of legal proceedings. This study is the first to explore the influence of an intermediary on jurors' perceptions of a vulnerable defendant, in light of expectancy violation theory. This was achieved by mock jurors completing a questionnaire relating to their perceptions of a vulnerable defendant pre and post testimony. The juror's expectations were violated/exceeded when the intermediary accompanied the defendant. However, this had no negative implications for the outcome of the case. In fact, the defendant accompanied by an intermediary was perceived more positively than the defendant who was unassisted.

Key Words: Intermediary, Jury Decision Making, Defendant

Over the past twenty years many procedural innovations have been implemented to enable vulnerable people to give their best evidence (McAuliff & Kovera, 2002). The intermediary provision is one such innovation. Intermediaries are professionals who facilitate communication between vulnerable people and criminal justice practitioners (Ministry of Justice, 2011). Currently, intermediaries are being utilised in Northern Ireland, South Africa, Australia, England and Wales. Although, internationally the roles differ, the onus on facilitating communication remains. Overall, the work of intermediaries has been well received by professionals within the criminal justice system (see Cooper, 2014; Plotnikoff & Woolfson, 2007). That being said, very little is known about how jurors perceive the intermediaries' role and whether the intermediaries' presence jeopardises the fairness of legal proceedings (O'Mahoney, 2010), particularly when the vulnerable person, in question, is a defendant.

Registered Intermediaries

The Youth Justice and Criminal Evidence Act (YJCEA) was established in England and Wales in 1999. The Act introduced a number of special measures to enhance the

Corresponding author: Miss Alex Jane Smethurst, SSSHL, Teesside University, Tees Valley, Middlesbrough, England, TS1 3BA, Tel: 07710622269, Email: A.Smethurst@tees.ac.uk

Dr Kimberly Collins, SSSHL, Teesside University, Tees Valley, Middlesbrough, England, TS1 3BA, Tel: 01642 342332, Email: K.Collins@tees.ac.uk

testimony of vulnerable witnesses. The special measures introduced by the YJCEA included providing evidence via live link (CCTV), screening from the accused, video recorded evidence-in-chief, removal of wigs and gowns, communication aids and the assistance of an intermediary. Section 16 of the Act made intermediaries available for witnesses under the age of eighteen; or those who possesses a mental disorder, impairment of intelligence and social functioning; or have a physical disability that has the potential to impair the quality of their evidence.

In order to implement Section 16 of the YJCEA, the Witness Intermediary Scheme (WIS) was created. The scheme was first introduced as a pilot project in 2004. However, it is now available in all forty-three police forces and CPS areas across England and Wales (Ministry of Justice, 2015). Intermediaries appointed through the WIS are known as Registered Intermediaries (RIs). All RIs are specialists in communication who have been recruited, trained and accredited by the Ministry of Justice (Plotnikoff & Woolfson, 2007). Their role is impartial (O'Mahony, Smith, & Milne, 2011) and involves facilitating two-way communication between vulnerable witnesses and criminal justice practitioners, to ensure that communication is as complete, coherent and accurate as possible (Ministry of Justice, 2015).

RIs are required to carry out a range of duties. A RI is responsible for conducting an initial assessment of the vulnerable witness to establish their communication abilities. Based upon the assessment, the intermediary will formulate a report containing recommendations on how best to communicate with the witness during police interviews and in court. The RI can be present at the interview and court and may intervene in the questioning process if communication deviates from that recommended. Intermediaries can also be involved in pre-court familiarisation visits and memory refreshments of interviews (Judicial Studies Board, 2010).

A pilot project examining the efficacy of the WIS identified a number of benefits of the scheme (Plotnikoff & Woolfson, 2007). Feedback from witnesses and carers was wholly positive. Carers felt that intermediaries not only facilitated communication between the witness and advocates, but also offered support to witnesses in terms of coping with the stress of giving testimony. Criminal justice personnel largely shared the carers' enthusiasm and their appreciation of the role was almost unanimous. They believed that at least half of the trial cases would have failed to reach the trial stage without the involvement of the intermediary and that the scheme had the potential to increase access to justice for vulnerable victims. The scheme was also noted to be beneficial in assessing and identifying witnesses' needs and the subsequent formulation of appropriate interviewing and questioning techniques (Plotnikoff & Woolfson, 2007). Intermediaries have also received considerable praise in South Africa, where they are thought to have enhanced the fairness of legal proceedings (Matthias & Zaal, 2011).

To date only one study has explored the impact of RIs on the communication of vulnerable witnesses (Henry, Crane, & Wilcock, 2017). Henry, Crane, and Wilcock (2017) examined the impact of the intermediary provision on children's communication

during a mock investigative interview, accuracy during a mock identification parade and suggestibility during a mock cross-examination. The children were found to perform significantly better when accompanied in the interview by a RI. The children reported on average 23.9 more items of correct information than children who were unassisted. This increase in information was not found to jeopardise the children's accuracy. The children were also more accurate when identifying the perpetrator from an identification parade and were less likely to cede to a barristers' suggestions under cross-examination (Henry, Crane, & Wilcock 2017). The findings of Henry, Crane, and Wilcock (2017) suggest that RIs do improve the performance of Typically Developing (TD) children during legal proceedings. It is, however, unclear as to whether intermediaries improve the performance of other categories of vulnerable witness. In fact, the intermediary provision has been found to have no impact upon the interview performance of children with Autism Spectrum Disorder (ASD) (Henry, Crane, Nash, et al., 2017). Henry, Crane, Nash, et al. (2017) suggest that the intermediary provision may offer different benefits for children with ASD compared to TD children. If this is the case, it is plausible that the provision also offers different benefits for vulnerable adults, as opposed to children.

Defendant or Non-Registered Intermediaries

Despite preliminary evidence that the WIS is an effective and successful intervention for improving the testimony of vulnerable witnesses, the development of similar provisions for defendants has been slow. There is currently no statutory framework, in England and Wales, for allowing the appointment of an intermediary for a vulnerable defendant. As the YJCEA specifically excludes defendants, the provision is beyond the WIS's remit (Cooper & Wurtzel, 2013). Yet, research has revealed that approximately 60% of defendants have speech, language and communication needs; 40% mental health disorders; and 60% some form of learning disability (Talbot, 2010). Failure to allocate these defendants an intermediary is argued by some to be a breach of their human rights, as they are not afforded the opportunity to provide their best evidence in court (Cooper & Wurtzel, 2013).

Section 104 of the Coroners and Justice Bill (2008-09) is attempting to amend this situation. Section 104 extends the intermediary special measure to vulnerable defendants. When it is implemented the Act will be inserted into the YJCEA. Until its implementation, it remains at the judge's discretion as to whether or not the defendant is permitted an intermediary; the judge may use their inherent power to grant this request. The Sevenoaks Case is the current authority for appointing an intermediary for a vulnerable defendant in England and Wales (Cooper & Wurtzel, 2013). Intermediaries working with defendants are called Non-Registered Intermediaries (NRIs). NRIs receive no formal training from the Ministry of Justice. However, they do receive in house training from their employer. Triangle (www.triangle.org.uk) is an example of one UK based employer of NRIs. All NRIs working for Triangle have to undergo and pass a one-week intensive training course prior to commencing employment and have previous experience in working with vulnerable people.

Legal practitioners and the courts in the UK are now more aware of the difficulties experienced by vulnerable defendants and have generally responded positively to the

suggestion that vulnerable defendants require additional support (O'Mahoney, 2010; Wurtzel, 2008 as cited in Cooper & Wurtzel, 2013). That being said, the appointment of NRIs for vulnerable defendants has, in England and Wales, sparked considerable debate. This has centred on the necessity of having a NRI in attendance for the duration of a trial (some agencies will have this as a requisite of their assistance), and the costs associated with this (Geddes, 2016). Due to rising costs incurred by the criminal justice system, the Criminal Procedure Rules Committee recently redrafted the Criminal Practice Directions 2015 for England and Wales. The Directions state that the appointment of an intermediary for a defendant's evidence will "be rare, but for the entire trial extremely rare" (3F.13). In Northern Ireland, where the scheme covers defendants, the intermediary is only in attendance during the defendant's evidence. This is argued to protect the neutrality of the role. For those defendants who require support for the duration of the trial, Northern Ireland have introduced the new role of defendant supporter (Department of Justice, 2015; Department of Justice, 2016).

Despite, intermediaries having received a lot of positive feedback for their work both with witnesses and defendants (e.g. Department of Justice, 2016), there are concerns surrounding juror perceptions of the relationship between the intermediary and defendant (O'Mahoney, 2010). In England and Wales, the jury will often see the intermediary sitting next to the defendant during the trial and assisting their communication during testimony. As very few studies have explored the intermediary special measure, further research is essential, to fully understand how this impartial relationship could potentially impact upon jury decision-making (O'Mahoney, 2010). There is currently only one study that has examined the influence of RIs on juror decision making. None have looked at the influence of the NRI. Given the paucity of research in this area, studies that have examined the influence of other accommodations on jury decision-making are considered below.

Juror Perceptions of Vulnerable Witnesses

Procedural innovations have been designed to enhance the quality of testimony provided by vulnerable witnesses, yet this evidence may potentially be of limited value if it is not perceived by jurors as credible (Cashmore & Bussey, 1996). A study by Goodman et al. (1998) randomly assigned children to testify either live in court or outside the court via live link. The children testified about an earlier play session with a male confederate. By asking children to testify about a task in which they had previously engaged, Goodman and colleagues (1998) were able to observe to what extent accommodations alter behaviour and testimony, and the subsequent effect of these possible changes on the jury. Overall, children who testified via live link were more accurate, less suggestible and less anxious than the children who provided testimony in court. This is consistent with other research that has found children to be more resistant to suggestion when questioned via live link (Doherty-Sneddon & McAuley, 2000).

Nevertheless, children who provided testimony via live link were perceived by jurors as less believable despite the production of more accurate responses (Goodman et al., 1998). They were also viewed as less attractive, less intelligent and more likely to be fabricating, compared to the children who testified live in court. Another study

examining juror perceptions of children testifying via live link revealed similar findings. Jurors rated the accommodated children as being less detailed, less forthcoming and less confident in their testimony than those providing traditional testimony (Landström & Granhag, 2010). There is also evidence that jurors are less likely to convict the defendant when the child provides testimony via live link rather than live in court (Eaton, Ball, & O'Callaghan, 2001).

Although the aforementioned research has demonstrated that children who utilise special measures can be viewed negatively on a number of trial related dimensions (Goodman et al., 1998; Landström & Granhag, 2010), this has not been found to be the case for the intermediary provision. Collins, Harker, and Antonopoulos (2017) asked one hundred potential jurors to view a mock cross examination of a child witness, either with or without an intermediary present. The children's behaviour and the quality of the cross-examination were both rated more highly when the intermediary was involved in the process. More specifically, the children accompanied by an intermediary were perceived as more truthful, credible, believable, cooperative, responsive, comfortable, confident, consistent and accurate; and less vulnerable and suggestible. The findings of Collins et al. (2017) suggest that the intermediary provision does not have a negative impact upon jurors' perceptions of child witnesses.

The disparity in findings of the aforementioned studies could potentially be explained by a vividness effect. The vividness effect asserts that testimony which is emotionally stimulating, imagery provoking, concrete and proximate will be evaluated by jurors more positively and be better remembered than testimony that lacks these features (Nisbitt & Ross, 1980). This could explain why some jurors have a more positive appraisal of face-to-face testimony, as it is in many ways more vivid than testimony provided via live link. If the vividness effect is in fact responsible for jurors' negative perceptions of children's testimony then not all accommodated children should be perceived negatively, only those providing evidence via live link. This could account for the disparate findings of Collins et al. (2017) as they manipulate intermediary presence, as opposed to the medium of the children's testimony. In all conditions the children gave evidence via live link. It is unclear whether the jurors' ratings would have been even higher had this not been the case. That being said, an alternative theory has been proposed to account for jurors' negative perceptions of accommodated witnesses, of which the intermediary provision would not be exempt. This is known as Expectancy Violation Theory (EVT).

Expectancy Violation Theory

According to EVT when approaching social interactions individuals expect others to engage in certain verbal and nonverbal behaviours (Burgoon & Hale, 1988). Expectations are based upon past experiences and social norms. Individuals expect behaviours that they deem to be feasible and typical for a particular participant, setting or purpose. When these expectations are violated this can result in an interpretation/evaluation process. The process involves assessing the meaning of the expectancy violation, giving it either a positive or negative valence, and then responding appropriately. Expectancy violations can affect decision-making processes in legal settings. McAuliff and Kovera (2012) proposed two

EVT based explanations that could potentially account for jurors' negative perceptions of children who provide testimony via live link. The first explanation posits that the testimony provided by the vulnerable witness may exceed expectations. Jurors may expect the witness to be anxious, tearful and nervous during their testimony. However, this behaviour should be reduced if the accommodation serves its intended purpose, resulting in the jurors' expectations being violated. Expectancy violations may lead jurors to become skeptical of the testimony. The witness's more composed demeanour may be mistakenly attributed to other sources (McAuliff & Kovera, 2012).

An alternative explanation is that jurors' expectations are not met. Thus, expectations are violated in the opposite direction. The ability of special measures to enhance a witness's testimony may be overestimated by jurors. They may expect accommodated children to be less anxious, stressed and nervous. Certain accommodations have been found to reduce stress in comparison to traditional testimony (Goodman et al., 1998). Yet this relationship is relative. Stress levels remain high in accommodated children (Landström & Granhag, 2010). Hence, jurors' expectations are violated, resulting in the witness again being perceived negatively. This second outcome could be even more problematic. With no plausible situational explanation to account for the witness's behaviour, jurors may make negative inferences regarding the witness's behaviour. A possible and highly problematic inference may be that the witness is lying (McAuliff & Kovera, 2012).

Research has found that accommodations may modify juror's expectations of children's verbal and nonverbal behaviour. The modification is dependent upon the type of accommodation (McAuliff & Kovera, 2012). McAuliff and Kovera (2012) found that jurors expected children providing traditional live in court testimony to be less co-operative, less confident and more nervous than children afforded special measures. Jurors also expected the children to provide shorter responses, be less fluent and maintain less eye contact when giving traditional versus accommodated testimony. Children testifying either via live link or with a support person were expected by jurors to be the most confident and least nervous. Despite jurors adapting their expectations regarding children's behaviour, studies have shown that children's behaviour changes very little as a function of special measures (Landström & Granhag, 2010), with no differences found, in terms of cooperativeness and confidence, for children providing traditional testimony versus testimony via live link (Murray, 1995). Even where behavioural changes have been observed, children's stress levels remain high (Goodman et al., 1998).

McAuliff and Kovera's (2012) research suggests that as a result of expectancy violations special measures could place vulnerable witnesses at a further disadvantage. However, this conclusion may be overreaching as at no point did the authors specifically examine expectancy violations. They measured jurors' expectations and beliefs regarding accommodated children, not their perceptions having observed the accommodations in practice. The assumptions are theoretical rather than based upon robust empirical evidence. Furthermore, their conclusions are not in-line with the findings of Collins et al. (2017), who found no evidence to support EVT. Collins et al. (2017) attributed this lack of effect to the immediacy of the intermediary accommodation. In their study, the mock judge explained

to the participants that the purpose of the intermediary was to assist the vulnerable witness with their communication, as is considered best practice. As the role of the intermediary was made very explicit to the jurors, the jurors were able to attribute the improvement in communication to the involvement of the intermediary as opposed to other sources (Collins et al., 2017). Given the paucity of research in this area and the implications for practice, the impact of the intermediary provision warrants further exploration, particularly how it may affect vulnerable defendants - an area which remains largely under researched.

Juror Perceptions of Vulnerable Defendants and Expectancy Violations

Prior research suggests that being perceived by the jury as vulnerable could be far more advantageous for defendants than witnesses. Jurors often use disability or vulnerability as a mitigating factor, giving more lenient judgements to disabled than non-disabled defendants (Najdowski, Bottoms, & Vargas, 2009). Garvey (1998) found that mock jurors are less likely to vote for the death penalty if the defendant is reported to have a mental disorder. This is consistent with the patronization effect (Gibbons, Sawin, & Gibbons, 1979). The effect asserts that people are more likely to attribute the behaviour of vulnerable individuals to external rather than internal factors, believing them to be less responsible for their actions. These beliefs may be driven by the inaccurate preconception that vulnerable individuals are incompetent and lack control over their own lives (Najdowski et al., 2009).

Research suggests that some jurors believe intellectually disabled individuals less capable of serious, violent or complex offences than non-disabled individuals (Gibbons, Gibbons, & Kassin, 1981). This may lead to jurors' searching for external explanations that could account for criminal behaviour. Failure to discover an explanation could result in the juror discounting the disability completely, believing it implausible that the defendant is truly disabled (Levine, Williams, Sixt, & Valenti, 2001). It is feared that this could be exacerbated if the defendant does not exhibit stereotypical behaviours associated with intellectual disabilities (Keyes, Edwards, & Dering, 1998 as cited in Najdowski et al., 2009). Accommodations, if fulfilling their intended purpose, should improve communication and comprehension, resulting in an expectancy violation and thus potentially creating doubts amongst the jury relating to the defendant's disability. This effect could be more pertinent when defendants are allocated an intermediary. Intermediaries facilitate communication and safeguard against inappropriate questioning potentially impacting upon the content, quality and coherence of the defendant's testimony. If the jurors fail to recognise the role of the intermediary in the defendant's improved communication, the credibility of the defendant could potentially be compromised.

Expectancy violations in the opposite direction may not prove as problematic for defendants as for witnesses. The defendant's vulnerability and fragility could be potentially advantageous, reinforcing the bias that vulnerable individuals are incapable of violent, malicious crimes. The defendant would fulfil their stereotype and this would make it difficult for the jury to convict. Najdowski et al., (2009) suggest that under certain circumstances jurors' may be willing to nullify the law, even if they believe the vulnerable defendant to be guilty. Thus, it is of utmost importance, in the interests of justice, that research examines the influence of accommodations on jurors' perceptions of vulnerable

defendants. According to previous research and theory, accommodations could serve to either extenuate the mitigating effects of vulnerability or eliminate the effects entirely.

The Current Study

Previous research has found that accommodations can bias jurors. However, this research has not examined juror perceptions of defendants when accompanied by an intermediary in court. In addition, much of the previous research has failed to provide robust theoretical explanations for this phenomenon. The current study attempts to address this by examining juror perceptions of vulnerable defendants when they are supported by an intermediary in court, and whether or not these perceptions can be explained by EVT. Jurors were asked to read an outline of a mock court case in which a defendant provided testimony either with or without an intermediary. Prior to reading the case they completed a questionnaire relating to their expectations about the defendant's testimony (anxiety, coherence, cooperativeness, confidence and believability). A week later, participants read this information again, watched a video of the defendant's testimony and then completed a second questionnaire relating to their perceptions of the testimony. The two questionnaires were used in order to explore whether initial expectations were violated. It was hypothesised that:

- There would be a difference between mock jurors' expectations prior to observing the testimony and their perceptions having witnessed the testimony.
- Based on the findings of Collins et al. (2017), the defendant accompanied in court by a NRI will be rated more positively than the unaccompanied defendant.
- It was hypothesised that there would be an interaction between intermediary presence and time with the jurors' ratings of the accommodated defendant being higher post compared to pre-testimony.
- Given both the positive and negative perceptions of accommodated persons in the literature, no predictions were made regarding whether the presence of a NRI would influence juror verdicts.

METHOD

Design

The study was an experimental multivariate mixed measures design. The study included two independent variables. The repeated measures variable was time. Time had two levels: before and after watching the defendant's testimony. The independent measures variable was the implementation of the intermediary measure. This variable had two levels: intermediary present and intermediary not present. Participants were randomly allocated to one of the conditions. The study had six dependent variables that were rated by the participants on a questionnaire. Three of the dependent variables related to the defendant's demeanour (level of anxiety, confidence and cooperativeness) and two dependent variables

related to the defendant's testimony (believability and coherence). These five dependent variables were measured prior to and following the defendant's testimony. The final dependent variable was the verdict reached by the potential jurors (guilty/not guilty). This dependent variable was only measured after watching the defendant's testimony.

Participants

Sixty participants took part in the research and comprised of nineteen males and forty-one females. Participants consisted of students from a university in the North East of England recruited through the university's online experiment recruitment system and members of the local community. Participants ranged in age from eighteen to seventy. All participants were eligible for jury service in the UK. To be eligible for jury service participants fulfilled the following criteria: aged eighteen to seventy, have lived in the UK for a minimum of five years, free from mental illness, listed on the electoral register, not served a prison sentence that exceeds five years, not been to prison for any length of time in the past ten years and not currently on bail. Twenty-seven participants were in the intermediary present condition, while 33 were in the intermediary not present condition.

Materials

Case outline. The case involved the crime of child abuse in which a vulnerable 17 year-old male allegedly sexually abused a 5 year-old girl. The defendant's mother was a registered childminder and the defendant was accused of inappropriately touching the girl when she was in his mother's care. The case outline included all of the information with the exception of the defendant's testimony. It contained background information regarding the alleged incident along with information regarding the communicative capabilities of the defendant. The defendant had been diagnosed with a mild form of autism and had below average intelligence. It also contained a brief outline of the trial proceedings in which the victim, a medical professional who had examined the child, a forensic expert and the defendant's mother took the stand. The child told of the defendant touching her 'private parts' but, under cross examination, could not recall in which room the alleged incident took place. The doctor said that there was bruising consistent with being grabbed but that no other signs of abuse were visible. The forensic expert reported that traces of the victim's hair had been found in the defendant's room. The defendant's mother countered this portraying her son as a caring and loving boy that often played with the children. The evidence provided by the four witnesses was designed to be insufficient, ambiguous and inconsistent. A pilot study was conducted to ensure that participants were not swayed more strongly towards a particular verdict. During the pilot study participants were asked to decide on a verdict based entirely upon the case outline. There were an equal number of 'guilty' and 'not guilty' verdicts indicating that the case was ambiguous.

Juror questionnaires. There were two juror questionnaires. One questionnaire was completed prior to viewing the defendant's testimony (expectation questionnaire) and one following it (perception questionnaire). The questionnaires included five questions. Three questions related to the defendant's demeanour and two questions related to the quality of the defendant's testimony. All five questions were scored on a five-point Likert scale with 1= Not at all, 2=Slightly, 3=Not sure, 4=Quite and 5=Extremely. The *expectation*

questionnaire for the two conditions, intermediary present/not present differed. In the intermediary present condition the questionnaire stated that an intermediary accompanied the defendant and gave a brief outline of the role. The outline attempted to mirror the instructions that would be provided by a judge in court (Judicial Studies Board, 2010). This information was omitted for the condition where the intermediary was not present during the defendant's testimony. The *perception* (after) questionnaires did not vary across conditions. However, the perception questionnaire included an additional question relating to the defendant's guilt, with the options being 'guilty' or 'not guilty'. Comparing the two questionnaires provided an insight into whether expectancy violations did occur.

Video of defendant's testimony. The video with the intermediary present lasted 195 seconds and the video without the intermediary lasted 185 seconds. Both videos depicted the seventeen-year-old defendant giving testimony in court. Actors played the roles of the defendant, intermediary, judge and barristers. The video included the defendant's evidence in chief and cross-examination. The same actor played the defendant in both conditions. In one video an intermediary accompanied the defendant. The intermediary regularly intervened when questioning became inappropriate and the judge acted accordingly, instructing the barrister to rephrase the question. In the other video the defendant was unsupported and thus no objections or rephrasing of questions occurred. The videos were filmed in the mock courtroom at a university in the North of England. The testimony was entirely scripted. The content of the scripts was reviewed by a NRI to ensure ecological validity. All interruptions were related to the questioning, there were six interruptions in total.

Procedure

Upon arrival at an allocated room at the University, participants were randomly allocated to either the intermediary present or the intermediary not present condition. Participants were then asked to complete a demographic questionnaire and read the case outline. Afterwards participants completed an expectation questionnaire about the defendant's testimony. Participants returned a week later to watch the video of the defendant's testimony and complete a perception questionnaire. Prior to watching the video clip, participants got the opportunity to re-read the case outline. A delay between completing the questionnaire was required to ensure that participants were not unduly influenced by previous responses.

RESULTS

A mixed MANOVA was conducted to examine whether participants expectations and perceptions of a vulnerable defendant differed depending upon whether or not the defendant was assisted in court by an intermediary. Following the MANOVA separate univariate ANOVAS on the outcome variables were conducted, along with independent and paired t-tests for simple effects analyses.

Juror Expectations and Perceptions

The MANOVA, using Wilks Lambda, found a significant effect of time ($\lambda=0.35$, $F(5,54)=20.05$, $p<0.001$, $np^2=0.65$). Thus, jurors' expectations of the vulnerable defendant's

testimony were found to be significantly different from their perceptions having observed the testimony. The univariate ANOVAs revealed significant effects of time on jurors' ratings of the defendant's anxiety ($F(1,58)=74.93, p<0.001, np^2=0.56$), confidence ($F(1,58)=36.05, p<0.001, np^2=0.38$), cooperativeness ($F(1,58)=20.39, p<0.001, np^2=0.26$), coherence ($F(1,58)=30.23, p<0.001, np^2=0.34$) and believability ($F(1,58)=6.34, p=0.015, np^2=0.10$). After observing the testimony jurors perceived the defendant to be less anxious and more confident, cooperative, coherent and believable than expected prior to the testimony. Means and standard deviations are presented in Table 1.

Intermediary Presence

The MANOVA, using Wilks Lambda, found a significant effect of intermediary presence ($\lambda=0.73, F(5,54)=4.05, p=0.003, np^2=0.27$). The univariate ANOVAs revealed significant effects of intermediary presence on jurors' ratings of the defendant's anxiety ($F(1,58)=5.56, p=0.022, np^2=0.09$), confidence ($F(1,58)=11.45, p=0.001, np^2=0.17$) and coherence ($F(1,58)=8.82, p=0.004, np^2=0.13$). The defendant accompanied by an intermediary was viewed as less anxious and more confident and coherent. No significant effects were found for cooperativeness ($F(1,58)=0.184, p=0.669, np^2=0.00$) or believability ($F(1,58)=1.68, p=0.20, np^2=0.03$) (See Table 1).

Interaction between Intermediary Presence and Time

The MANOVA, using Wilks Lambda, found a significant interaction effect between time and the presence of an intermediary ($\lambda=0.69, F(5,54)=4.96, p=0.001, np^2=0.32$). The univariate ANOVAs revealed a significant interaction effect, between time and intermediary presence, on jurors' ratings of the defendant's anxiety ($F(1,58)=6.66, p=0.012, np^2=0.10$), confidence ($F(1,58)=17.66, p<0.001, np^2=0.23$), cooperativeness ($F(1,58)=7.34, p=0.009, np^2=0.11$) and coherence ($F(1,58)=8.79, p=0.004, np^2=0.13$). No significant interaction effect was found for believability ($F(1,58)=1.42, p=0.24, np^2=0.02$).

Therefore, t-tests were carried out to further examine the interaction effect by testing the effect of intermediary presence prior to and following the defendant's testimony separately, and then the effects of time for intermediary present and intermediary absent separately. An independent samples t-test found no significant difference ($t(58)=0.487, p=0.628$) between jurors' expectations of the defendant's anxiety when an intermediary was present ($M=4.33, SD=0.62$) and when an intermediary was absent from the court ($M=4.24, SD=0.79$). No significant difference ($t(58)=-0.641, p=0.524$) was found between jurors' expectations of the defendant's confidence when an intermediary was present ($M=1.70, SD=0.87$) and when an intermediary was absent from the court ($M=1.85, SD=0.87$). No significant difference ($t(58)=-1.57, p=0.123$) was found between jurors' expectations of the defendant's cooperativeness when an intermediary was present ($M=2.81, SD=1.04$) and when an intermediary was absent from the court ($M=3.24, SD=1.06$). No significant difference ($t(58)=0.21, p=0.51$) was found between jurors' expectations of the defendant's coherence when an intermediary was present ($M=2.44, SD=0.93$) and when an intermediary was absent from the court ($M=2.39, SD=0.93$). No significant difference ($t(58)=0.39, p=0.10$) was found between jurors' expectations of the defendant's believability when an

intermediary was present ($M=2.89$, $SD=1.09$) and when an intermediary was absent from the court ($M=2.79$, $SD=0.93$).

When an intermediary was present jurors perceived the defendant, after observing the testimony, as being less anxious ($M=2.25$, $SD=1.13$) than when an intermediary was absent from the court ($M=3.12$, $SD=1.14$). This difference, -0.87 was statistically significant ($t(58)=-2.93$, $p=0.005$). When an intermediary was present jurors perceived the defendant, after observing the testimony, as being more confident ($M=3.59$, $SD=1.12$) than when an intermediary was absent from the court ($M=2.18$, $SD=1.16$). This difference, 1.41 was statistically significant ($t(58)=4.77$, $p<0.001$). When the intermediary was present jurors perceived the defendant, after observing the testimony, as being more cooperative ($M=4.15$, $SD=0.82$) than when an intermediary was absent from the court ($M=3.58$, $SD=0.90$). This difference, 0.57 was statistically significant ($t(58)=0.255$, $p=0.014$). When an intermediary was present jurors perceived the defendant, after observing the testimony, as being more coherent ($M=3.96$, $SD=0.94$) than when an intermediary was absent from the court ($M=2.85$, $SD=1.23$). This difference, 1.11 was statistically significant ($t(58)=3.98$, $p<0.001$). No significant difference ($t(58)=1.66$, $p=0.103$) was found between jurors' perceptions of the defendant's believability when an intermediary was present ($M=3.48$, $SD=1.22$) and when an intermediary was absent from the court ($M=3.00$, $SD=1.03$).

The data was then split into intermediary present and intermediary not present so that a paired samples t-test could be conducted to test the effects of time. The paired samples t-test found that on average, when an intermediary was present, jurors' ratings of expected anxiety ($M=4.33$, $SD=0.62$) were higher than jurors' ratings of perceived anxiety having observed the testimony ($M=2.25$, $SD=1.13$). This difference, 2.08 was statistically significant ($t(26)=7.49$, $p<0.001$). It was found that when an intermediary was present, jurors' ratings of expected confidence ($M=1.70$, $SD=0.87$) were lower than jurors' ratings of perceived confidence having observed the testimony ($M=3.59$, $SD=1.12$). This difference, -1.89 was statistically significant ($t(26)=-7.66$, $p<0.001$). When an intermediary was present, jurors' ratings of expected cooperativeness ($M=2.81$, $SD=1.04$) were lower than jurors' ratings of perceived cooperativeness having observed the testimony ($M=4.15$, $SD=0.82$). This difference, -1.34 was statistically significant ($t(26)=-5.45$, $p<0.001$). When an intermediary was present, jurors' ratings of expected coherence ($M=2.44$, $SD=0.93$) were lower than jurors' ratings of perceived coherence having observed the testimony ($M=3.96$, $SD=0.94$). This difference, -1.52 was statistically significant ($t(26)=-7.03$, $p<0.001$). When an intermediary was present, jurors' ratings of expected believability ($M=2.89$, $SD=1.09$) were lower than jurors' ratings of perceived believability having observed the testimony ($M=3.48$, $SD=1.22$). This difference, -0.59 was statistically significant ($t(26)=-2.94$, $p=0.007$).

In contrast, when an intermediary was not present a significant difference between jurors' expectations and perceptions was only found in relation to anxiety ($t(32)=4.57$, $p<0.001$), the difference was 1.12 . When an intermediary was absent, jurors' ratings of expected anxiety, ($M=4.24$, $SD=0.79$), were found to be higher than juror's ratings of perceived anxiety having observed the testimony ($M=3.12$, $SD=1.14$). No significant

difference ($t(32)=-1.25, p=0.221$) was found when an intermediary was absent from the court between jurors' ratings of expected confidence ($M=1.84, SD=0.87$) and perceived confidence ($M=2.18, SD=1.16$). No significant difference ($t(32)=-1.25, p=0.221$) was found when an intermediary was absent from the court between juror's ratings of expected cooperativeness ($M=3.24, SD=1.06$) and perceived cooperativeness ($M=3.58, SD=0.90$). No significant difference ($t(32)=-1.67, p=0.105$) was found when an intermediary was absent from the court between jurors' ratings of expected coherence ($M=2.39, SD=0.93$) and perceived coherence ($M=2.85, SD=1.23$). No significant difference ($t(32)=-0.894, p=0.378$) was found when an intermediary was absent from the court between juror's ratings of expected believability ($M=2.79, SD=0.93$) and perceived believability ($M=3.00, SD=1.03$).

Table 1: Mean and Standard Deviation of Juror's Expectations and Perceptions of the Characteristics of the Defendant's Testimony across Intermediary Presence

	Intermediary	Mean	Std. Deviation
Expected Anxiety	Present	4.33	0.62
	Not Present	4.24	0.79
Perceived Anxiety	Present	2.25	1.13
	Not Present	3.12	1.14
Expected Confidence	Present	1.70	0.87
	Not Present	1.84	0.87
Perceived Confidence	Present	3.59	1.12
	Not Present	2.18	1.16
Expected Cooperativeness	Present	2.81	1.04
	Not Present	3.24	1.06
Perceived Cooperativeness	Present	4.15	0.82
	Not Present	3.58	0.90
Expected Coherence	Present	2.44	0.93
	Not Present	2.39	0.93
Perceived Coherence	Present	3.96	0.94
	Not Present	2.85	1.23
Expected Believability	Present	2.89	1.09
	Not Present	2.79	0.93
Perceived Believability	Present	3.48	1.22
	Not Present	3.00	1.03

The Effect of Intermediary Presence on Juror Verdicts

An exact chi-square analysis was conducted in order to examine whether the presence of an intermediary impacted upon juror verdicts. The analysis revealed that the

presence of an intermediary did not significantly affect verdict: $\chi^2(1, N=60)=0.14, p=0.71$ (see Table 2)

Table 2: The Percentage of ‘Guilty’ and ‘Not Guilty’ Verdicts when an Intermediary was Present, Absent and Combined Total

	Intermediary Present	Intermediary not Present	Total
Percentage of ‘Guilty’ Verdicts	26%	30%	28%
Percentage of ‘Not Guilty’ Verdicts	74%	70%	72%

DISCUSSION

This is the first study that has attempted to address concerns regarding jurors’ perceptions of defendants accompanied in court by NRIs. Unlike previous research involving accommodated persons, the current study examined EVT. It looked at whether expectancy violations offer an explanation for how jurors respond to accommodated defendants. This was achieved through jurors scoring the defendant’s demeanour and quality of testimony prior to and following the defendant’s evidence. The score given prior to the testimony referred to jurors’ expectations whilst the score following the testimony referred to jurors’ perceptions. Some researchers have suggested that EVT could account for jurors’ negative perceptions of those individuals who opt to use special measures within the courtroom (McAuliff & Kovera, 2012).

It was hypothesised that jurors’ expectations would differ dependent upon whether or not a defendant was accompanied in court by a NRI. The analysis found that whether an intermediary was present or absent had no impact upon jurors’ expectations of the defendant’s levels of anxiety, confidence, cooperativeness, coherence and believability. Jurors failed to modify their expectations, despite having been made aware of the role of an intermediary prior to providing their expectations of the defendant’s testimony. This result conflicts with previous research that has found that jurors tend to alter their expectations dependent upon the form of accommodation (McAuliff & Kovera, 2012). Failure to modify expectations may suggest that jurors are less familiar with the intermediary accommodation than with other special measures, e.g. the live link. This demonstrates a lack of knowledge, on the part of jurors, indicating that more extensive, detailed instructions may be required from the judge regarding the role of an intermediary.

It was also predicted that after having read the case information, and witnessed the intermediary in practice, jurors’ perceptions would change whereby perceptions of the defendant’s behaviour and communication would improve. The results show that the defendant, accompanied by a NRI, was perceived as being less anxious, more confident, coherent, cooperative and believable than was expected by jurors prior to having seen the defendant’s testimony. In contrast, when the intermediary was absent, differences between

expectations and perceptions only occurred with regards to anxiety. Jurors perceived the defendant as being less anxious than expected. The findings indicate that expectancy violations or discrepancies between jurors' expectations and perceptions are more likely to occur when an intermediary accompanies the defendant in court. It appears that the defendant's testimony, when assisted by an intermediary, exceeds jurors' expectations.

Furthermore, the results show that jurors perceived the defendant, after observing the testimony, as being less anxious and more confident, cooperative and coherent when an intermediary was present, compared to when the defendant was unsupported. This indicates that jurors do recognise the benefits of the intermediary special measure in terms of improving the defendant's communication abilities and reducing the anxiety that is associated with giving testimony. This supports the findings of Collins et al. (2017).

Despite recognition of these potential improvements, jurors did not rate the defendant accompanied by an intermediary as being any more believable than the defendant unaccompanied in court. This finding has positive implications for the work of intermediaries with defendants. Intermediary work in England and Wales was implemented to assist the communication of vulnerable people. However, there has been concern that the use of an intermediary may serve to bias jury perceptions (O'Mahoney, 2010). The findings in this study demonstrate that whilst perceptions of the communication of the defendant were improved, this had no bearing on whether or not the jury members believed the defendant therefore maintaining the perceived neutral role of the intermediary.

This interpretation is further supported by the finding that intermediary presence had no effect on the verdict provided by the mock jurors. Therefore, the findings of the current study are wholly positive for intermediary work with defendants. The fact that intermediary presence was found to have no impact upon jurors' perceptions of the defendant's believability or guilt, illustrates that the presence of an intermediary does not bias jurors against vulnerable defendants. Thus, dispelling concerns that jurors may misinterpret, misunderstand and subsequently perceive negatively the relationship between the intermediary and defendant (O'Mahoney, 2010).

However, the omission of an effect on verdict is surprising given that jurors' expectations were violated when an intermediary accompanied the defendant. According to EVT (Burgoon & Hale, 1988), if the witness's behaviour differs from the expected behaviour then this will have a negative impact upon perceptions of the witness's testimony and the possible outcome of the case. The jurors should have been suspicious about the perceived improvements in the defendant's communication, therefore doubting the defendant's truthfulness and credibility. The current findings suggest that expectancy violations were not particularly influential in the jurors' decisions, as changes in perceptions ultimately did not alter juror verdicts regarding the case.

It is important to consider the findings of the current study in light of the previous research regarding accommodated persons. Accommodated witnesses have, in previous research, been viewed negatively by the jury (McAuliff & Kovera, 2012). Witnesses who have provided evidence via the live link have been rated as being less believable, less

detailed and less forthcoming than witnesses providing traditional testimony (e.g. Goodman et al., 1998; Landström & Granhag, 2010). This is reportedly due to jurors' expectations being violated (McAuliff & Kovera, 2012). Yet, in the current study expectancy violations were found to have no negative implications for the vulnerable defendant. This may be due to the immediacy of the intermediary provision (Collins et al., 2017). The reason for the improvement in communication may be clearer to the jury than with the live link. Therefore, negating the effects of expectancy violations.

As with any experimental study that attempts to emulate a complex real-life setting, it is important to acknowledge the limitations of the current study when interpreting the findings. As jury deliberations take place in secret researchers are unable to examine the decision-making process of juries in actual criminal trials. Thus, researchers often rely upon artificial decision-making tasks. However, this can prove problematic when attempting to generalise the findings to real criminal trials (Smith, Bull, & Holliday, 2011). This is exacerbated through the use of individual rather than group verdicts. By examining individual juror decisions, the social component of the deliberation process is lost. It has also been proposed that individuals and groups adopt different decision-making processes or models (Kuhn, Weinstock, & Flaton, 1994), indicating that the verdict of individual jurors and a collaborative jury may vary.

All of the case information was written with the exception of the defendant's testimony. The defendant's testimony and cross-examination were played by actors and video recorded to allow the jurors to view the work of the intermediary in practice and its impact on the defendant's testimony. In future, it would be preferable for the entire trial to be played by actors, and video recorded, for mock jurors to view and deliberate on.

In conclusion, the purpose of the current study was to examine whether intermediary presence had an effect on juror perceptions of a vulnerable defendant's testimony and behaviour and whether these perceptions could be explained by EVT. Legal and psychological professionals have expressed concern that jurors could potentially see the relationship between the defendant and intermediary negatively, as a result of the defendant's testimony violating the jurors' expectations. Contrary to these concerns, the current study found that despite jurors' expectations having been violated, the presence of an intermediary had no impact upon jurors' ratings of a defendant's believability and guilt. Thus, indicating that no bias exists, amongst jurors, regarding the impact of intermediary presence on a defendant's testimony. In fact, the defendant accompanied by an intermediary was perceived more positively than the defendant unaccompanied in court, in terms of anxiety, cooperativeness, coherence and confidence. This suggests that intermediaries are an appropriate procedural aid for vulnerable defendants in court and provide an adequate explanation for the improvement in communication of accommodated vulnerable defendants.

REFERENCES

- Burgoon, J.K., & Hale, J.L. (1988). Nonverbal expectancy violations: Model elaboration and application to immediacy behaviours. *Communication Monographs*, 55(1), 58-79.

- Cashmore, J., & Bussey, K. (1996). Judicial perceptions of child witness competence. *Law and Human Behaviour, 20*(3), 313-334.
- Collins, K., Harker, N., & Antonopoulos, G. A. (2017). The impact of the registered intermediary on adults' perceptions of child witnesses: Evidence from a mock cross examination. *European Journal on Criminal Policy and Research, 23*(2), 211-225.
- Cooper, P. (2014). *Highs and lows: The 4th Intermediary Survey*. London: Kingston University.
- Cooper, P., & Wurtzel, D. (2013). A Day Late and a Dollar Short: In Search of an Intermediary Scheme for Vulnerable Defendants in England and Wales. *Criminal Law Review, 1*, 4-22.
- Department of Justice. (2015). *Northern Ireland Registered Intermediaries Schemes Pilot Project: Post-Project Review*. Northern Ireland: Author.
- Department of Justice. (2016). *Northern Ireland Registered Intermediaries Schemes Pilot Project: Phase II Review*. Northern Ireland: Author.
- Doherty-Sneddon, G. M. & McAuley, S. (2000). Influence of video-mediation on adult-child interviews: Implications for the use of live link with child witnesses. *Applied Cognitive Psychology, 14*(4), 379-392.
- Eaton, T. E., Ball, P. J., & O'Callaghan, M. G. (2001). Child-Witness and defendant credibility: Child evidence presentation mode and judicial instructions. *Journal of Applied Social Psychology, 31*(9), 1845-1858.
- Garvey, S.P. (1998). Aggravation and mitigation in capital cases: What do jurors think? *Columbia Law, 98*(6), 1538-1576.
- Geddes, G. (2016). The price of justice: can you hear me at the back? *Family law, 46*(7), 833-840.
- Gibbons, F. X., Gibbons, B. N., & Kassin, S. M. (1981). Reactions to the criminal behavior of mentally retarded and nonretarded offenders. *American Journal of Mental Deficiency, 86*(3), 235-242.
- Gibbons, F. X., Sawin, L. L. C., & Gibbons, B. N. (1979). Evaluations of mentally retarded persons: Sympathy or patronization? *American Journal of Mental Deficiency, 84*(2), 124-131.
- Goodman, G.S., Tobey, A.E., Batterman-Faunce, J.M., Orcutt, H., Thomas, S., Shapiro, C., & Sachsenmaier, T. (1998). Face-to-face confrontation: Effects of closed circuit-technology on children's eyewitness testimony and jurors' decisions. *Law and Human Behaviour, 22*(2), 165-203.
- Henry, L., Crane, L., & Wilcock, R. (2017, June). *Do intermediaries help children give better evidence?* Paper presented at the IFJ 3rd Annual Conference. Retrieved from <http://www.intermediaries-for-justice.org/wp-content/uploads/2017/06/Do-Intermediaries-help-children-give-better-evidence-Lucy-Henry.pdf>
- Henry, L. A., Crane, L., Nash, G., Hobson, Z., Kirke-Smith, M., & Wilcock, R. (2017). Verbal, visual, and intermediary support for child witnesses with autism during investigative interviews. *Journal of Autism and Developmental Disorders, 47*(8), 2348-2362
- Judicial Studies Board. (2010). *Crown Court Bench Book: Directing the Jury*. London: Author.
- Kuhn, D., Weinstock, M., & Flaton, R. (1994). How well do jurors reason? Competence dimensions of individual variation in a juror reasoning task. *Psychological Science, 5*(5), 289-296.
- Landström, S., & Granhag, P.A. (2010). In-court versus out-of-court testimonies: Children's experiences and adults' assessments. *Applied Cognitive Psychology, 24*(7), 941-955.
- Levine, M., Williams, A., Sixt, A., & Valenti, R. (2001). Is it inherently prejudicial to try a juvenile as an adult? *Behavioral Sciences and the Law, 19*(1), 23-31.
- Matthias, C. R., & Zaal, F. N. (2011). Intermediaries for child witnesses: Old problems, new solutions and judicial differences in South Africa. *The International Journal of Children's Rights, 19*(2), 251-269.
- McAuliff, B.D., & Kovera, M.B. (2002). The status of evidentiary and procedural innovations in child abuse proceedings. In B.L. Bottoms, M.B. Kovera, & B.D. McAuliff (Eds.), *Children, social science, and the law* (pp. 412-445). New York, NY: Cambridge University Press.
- McAuliff, B. D., & Kovera, M. B. (2012). Do jurors get what they expect? Traditional versus alternative forms of children's testimony. *Psychology, Crime and Law, 18*(1), 27-47.
- Ministry of Justice. (2011). *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures*. London: Author.
- Ministry of Justice. (2015). *The Registered Intermediary Procedural Guidance Manual*. London: Author.

- Murray, K. (1995). *Live television link: An evaluation of its use by child witnesses in Scottish criminal trials*. Edinburgh: Scottish Office, Central Research Unit.
- Najdowski, C. J., Bottoms, B. L., & Vargas, M. C. (2009). Jurors' perceptions of juvenile defendants: the influence of intellectual disability, abuse history, and confession evidence. *Behavioural sciences & the law*, 27(3), 401-430.
- Nisbett, R.E., & Ross, L. (1980). *Human inference: Strategies and shortcomings of social judgment*. Englewood Cliffs, NJ: Prentice Hall.
- O'Mahoney, B. M. (2010). The emerging role of the Registered Intermediary with the vulnerable witness and offender: facilitating communication with the police and members of the judiciary. *British Journal of Learning Disabilities*, 38(3), 232-237.
- O'Mahony, B. M., Smith, K., & Milne, B. (2011). The early identification of vulnerable witnesses prior to an investigative interview. *British Journal of Forensic Practice*, 13(2), 114-123.
- Plotnikoff, J., & Woolfson, R. (2007). *An evaluation of child witness support*. Edinburgh: Scottish Executive Central Research Unit.
- Smith, L. L., Bull, R., & Holliday, R. (2011). Understanding juror perceptions of forensic evidence: Investigating the impact of case context on perceptions of forensic evidence strength. *Journal of Forensic Science*, 56(2), 409-414.
- Talbot, J. (2010). *Seen and Heard: Supporting Vulnerable Children in the Youth Justice System*. London, United Kingdom: Prison Reform Trust.

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