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# Effectiveness of Juries

## In Rape Trials

**Jake Bowman** (2021) SSLJ 2, 11-19

**Stage Three LLB Student, University of Sunderland**

### **Abstract**

This journal article outlines key issues surrounding the use of juries in rape cases. It looks into some of the reasons why juries are failing, supported by relevant sources. Other aspects are also evaluated such as alternate reasons for why conviction rates are low in rape cases, looking at areas such as the CPS and funding. The journal alludes to alternate uses of juries and concludes that juries are fundamental in rape cases and in the British legal system, with suggestions to possible solutions and advancements to the use of using juries in trials overall.

### **Keywords**

Jury; Rape; Trials; Crime

Juries have been used in trials throughout history, dating back to 1215 in Article 39 of the Magna Carta, signed by King John stating. 'No free man shall be imprisoned or deprived of his standing in any other way except by the lawful judgement of his equals or by the law of the land.'<sup>1</sup> It has become the norm that your peers decide whether you are guilty or not guilty but with the guidance of a judge. There have been several instances of trials without juries over the years and they have all come to a demise over time.<sup>2</sup>

Such as the Court of Star Chamber, where the court would consist of privy councillors and judges of common law courts in the time. They were responsible for dealing out justice directly in absence of juries which was abolished in 1614 due to Charles the first using the court for political gain which made the court a symbol of oppression.<sup>3</sup> Diplock courts are another form of trial without jury, which were used in Northern Ireland since 1973 to deal with jury intimidation. These were abolished by the Justice and Security Act 2007 (Northern Ireland).<sup>4</sup> Finally the Criminal Justice Act 2003 provides that where there is fear or danger or jury tampering whereby a jury may be at risk of harm or threats a trial without jury can take place.<sup>5</sup>

In 2018, a Labour MP Ann Coffey for Stockport submitted a freedom of information request to the Crown Prosecution Service (CPS) in relation to conviction rates for rape. She spoke about this in the House of Commons raising issues surrounding rape myths and juries being the main cause of decline in convictions. Due to the response from the CPS bringing to her attention that there are very few men, especially those from a younger demographic such as; men aged 18 to 24 that are rarely convicted and that the most convictions are found in older age groups ranging from 25 to 59.<sup>6</sup> This raises the question of what is causing there to be

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<sup>1</sup> Magna Carta 1215, Article 39.

<sup>2</sup> The Guardian, 'Reviewing the Case for Trials Without a Jury' (The Guardian, 19 June 2021) accessed 30 March 2021.

<sup>3</sup> The Editors of Encyclopaedia Britannica, 'Star Chamber English Law' (*Britannica*) <<https://www.britannica.com/topic/Star-Chamber>> accessed 14 April 2020.

<sup>4</sup> Joshua Rozenberg, 'The right to a jury trial in Northern Ireland' (*The Law Society Gazette*, 1 October 2018) <<https://www.lawgazette.co.uk/commentary-and-opinion/the-right-to-a-jury-trial-in-northern-ireland/5067717.article>> accessed 14 April 2020.

<sup>5</sup> Criminal Justice Act 2003 s.44 to s.55.

<sup>6</sup> Cps, 'Annual Violence against Women and Girls report published' (*CPS*, 12 September 2019) <<https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf>> accessed 14 April 2020.

record high numbers of reports of rape and date rape cases, a 150% increase over 5 years.<sup>7</sup> But the charge rate is at its lowest falling by 23% in one year.<sup>8</sup>

These figures show that there could be a reluctance to convict young men, due to the attitudes in society surrounding women being blamed for their own rape. Also, society not wanting to tarnish a young man's reputation at a young age. Natalie Taylor supports this in a Criminology journal article.<sup>9</sup> As her results found that jurors judgements rely heavily on their own beliefs and attitudes opposed to that of the facts presented to them. As jurors are from the community, they bring with them the stereotypical beliefs that exists within the community. Conviction rates will not increase until there is clearer information on the belief structure and how this is impacting juries' decisions. According to the Office for National Statistics only 17% of people who have experienced sexual assault report it to the police.<sup>10</sup> The ongoing decrease in convictions will not only raise concerns relating to juries in rape cases but the vitalness for people to be believed is an important principle which could be seriously harmed.<sup>11</sup>

There are several theories relating to juries and how they decide a guilty or not guilty verdict. The American Psychological Association found that human behaviour plays a significant role. They found that a person's personal characteristics such as attractiveness and sexual promiscuity had a significant effect on the decision made.<sup>12</sup> This could be argued as standard human behaviour as we are programmed to make assumptions within seconds of meeting a stranger and longer exposure to that person does not necessarily change the first

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<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> Natalie Taylor, 'Juror Attitudes and Biases in Sexual Assault Cases: Trends & Issues in Crime and Criminal Justice' (2007) AIC 344.

<sup>10</sup> OFNS, 'Sexual offences in England and Wales: year ending March 2017' (*Office for National Statistics*, 8 February.2018)

<<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017>> accessed 14 April 2020.

<sup>11</sup> *ibid*

<sup>12</sup> Henry Field, 'Rape Trials and Jurors' Decisions: A Psycholegal Analysis of the Effects of Victim, Defendant, and Case Characteristics' (1979) LHB 3(4), 261–284.

impression.<sup>13</sup> If it is standard human behaviour to act in this way an alternate to juries could be unlikely.

Another theory is that the Jurors view on rape has the ultimate deciding factor in rape cases.<sup>14</sup> Instead of removing juries from rape cases, it could be that the use of rape attitudes be part of a selection criteria when excluding jurors. The British Journal of Criminology suggests that individual factors of the rape and its motivations has an impact on jurors and the attribution of blame and stereotyping.<sup>15</sup> Such as the use of drugs and intoxicants, this creates a stereotypical view on consent and creates a blame factor. *R v Bree 2007* is a significant case in relation to intoxication and consent as this brought the phrase 'drunken consent is still consent'.<sup>16</sup> This case was quashed because it was unsafe due to the lack of direction from a judge in the case. The significance of this case not only shows that myths and assumptions could prove an issue but that lack of proper directions from a judge could be a significant factor in jury decisions. As there is a grey area between losing capacity to consent which would result in rape, and then voluntarily being intoxicated but being capable of consenting to having intercourse.<sup>17</sup>

The suggestion that juries and rape myths are the key reason for lack of convictions is a broad and dangerous suggestion. There is evidence to show that this is not the sole issue.<sup>18</sup> The reports referred to above also include cases where there have been false allegations made and those on trial have been acquitted.<sup>19</sup> This gives an inaccurate representation of unprosecuted cases and these types of cases that are acquitted are amongst the reports. Max

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<sup>13</sup> Monica Harris & Christopher Garris, *You Never Get a Second Chance to Make a First Impression: Behavioral Consequences of First Impressions* in Nalini Ambady & John Skowronski, *First impressions* (Guilford Press 2008) 147–168.

<sup>14</sup> *ibid*

<sup>15</sup> Emily Finch & Vanessa Munro, 'Juror Stereotypes and Blame Attribution in Rape Cases Involving Intoxicants: The Findings of a Pilot Study' (2005) *BJC* 45(1), 25-38.

<sup>16</sup> *R v Bree* [2007] EWCA Crim 256; [2007] 2 All ER 676.

<sup>17</sup> *ibid*

<sup>18</sup> Hannah Quirk, 'Scrapping Juries in Rape Trials Risks Rise in Miscarriages of Justice' (*The Guardian*, 22 November 2018) <<https://www.theguardian.com/commentisfree/2018/nov/22/scrapping-juries-rape-trials-miscarriages-justice>> accessed 14 April 2020.

<sup>19</sup> BBC, 'Student Liam Allan 'Betrayed' After Rape Trial Collapse' (*BBC News*, 15 December 2017) <<https://www.bbc.co.uk/news/uk-england-london-42366629>> accessed 14 April 2020.

Hill the director of public prosecutions referred to the 23% drop in prosecutions saying it is due to the prosecution trying to improve the quality of cases brought to trial.<sup>20</sup>

Although this gives support that it is not solely rape myths causing the decline in convictions it raises the concern that the CPS are screening cases and that the most vulnerable and unsuitable victim are not being considered.<sup>21</sup> A report from the Ministry of Justice found that juries are fair, effective and efficient.<sup>22</sup> It shows that juries tended to convict opposed to acquit which shows that juries are not the only primary source for low convictions rates. The argument made by Coffey that juries do not convict young men is only based on the smaller conviction rate, however this could be equally argued that the younger generation are more inclined to be intoxicated creating poor recollections.<sup>23</sup> Making it harder to prove beyond reasonable doubt to a jury.

Contrary to this, a report from The European Journal of Psychology Applied to Legal Context shows that the rape myths issue is prolific, the myths mentioned are that jurors believe that rapes cause serious vaginal injury and that strangulation and weapons are used, that these attacks take place outdoors and at night. This is called the 'real rape' myth.<sup>24</sup> When this ideology is compared with 400 different cases that were reported to UK police not one of them had all of these characteristics that juries believe are present in rapes. In contrast to these myths the same article states that 70.7% of cases were actually indoors, resulted in no injury and were by people known to the victim.<sup>25</sup> Although there is strong evidence to support both arguments, It cannot be denied that a greater education of rape myths could only be of

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<sup>20</sup> ibid

<sup>21</sup> Women's Equality, 'Survivors of Sexual Violence Should Be Believed' (*Women's Equality Party*, No Date) <[https://www.womensequality.org.uk/survivors\\_of\\_sexual\\_violence\\_should\\_be\\_believed](https://www.womensequality.org.uk/survivors_of_sexual_violence_should_be_believed)>accessed 14 April 2020.

<sup>22</sup> Cheryl Thomas, 'Are Juries Fair?' (*Ministry of Justice*, February 2010) <<https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/are-juries-fair-research.pdf>>accessed 14 April 2020.

<sup>23</sup> Nidirect, 'Young People and Risks of Alcohol' (*Nidirect government services*) <<https://www.nidirect.gov.uk/articles/young-people-and-risks-alcohol>> accessed 14 April 2020.

<sup>24</sup> Genevieve Waterhouse, 'Myths and legends: The Reality of Rape Offences Reported to a UK Police Force (2016) EJPALC 8(1), 1-10.

<sup>25</sup> Ibid

benefit to not only juries but the wider society to alleviate the inaccurate perception of what a 'real rape' is.<sup>26</sup>

The criticism of how effective juries are and whether the directions they receive have any real effect on them raises the issue of what the alternate is or what can be done. The report by Prof Thomas also analysed the topic of judges' directions on several levels across 68,000 verdicts. Overall, it concluded that juries are unable to recall accurately the information provided by the judge and they actively looked for information online when directed not to by the judge.<sup>27</sup> This poses serious concerns as the judge of a case is responsible for informing the jury on all aspects of law. Along with making sure they fully understand the case and how each aspect of the law should be considered, to avoid a miscarriage of justice and so they can ultimately understand what consent is.

A suggestion in the report was from Prof Thomas it was that written direction cards be used, and more visual information be readily available to support the jury. In 2008 the Lord Chief Justice also suggested that more visual material ought to be used in court. The Chief Justice did summarise that trial by jury is fundamental to administer justice and that the judiciary is a particular interest.<sup>28</sup> Based on these findings it raises more concern with the judiciary than the jury, how can a jury perform properly if the directions they are receiving are not sufficient. Although judges already give directions.<sup>29</sup> an alternate could be that technology have a more prominent role in the jury system, the legal system has become more and more technologically advanced, the use of a programmed tablet with all of the material uploaded to it for the jury could prove beneficial.<sup>30</sup> By having the information and directions more readily available, then it can be controlled what the jury has access to opposed to relying on them taking notes and taking all of the information in.<sup>31</sup>

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<sup>26</sup> Olivia Smith, *Rape Trials in England and Wales: Observing Justice and Rethinking Rape Myths* (Palgrave 2018).

<sup>27</sup> *ibid*

<sup>28</sup> Matt Dickinson, 'Jurors Don't Understand Judge's Directions, Study Finds' (*The Independent*, 17 February 2010) <<https://www.independent.co.uk/news/uk/crime/jurors-dont-understand-judges-directions-study-finds-1901927.html>> accessed 14 April 2020.

<sup>29</sup> *R v Miller* [2010] EWCA Crim 1578

<sup>30</sup> Laura W McDonald and Others, 'Digital Evidence in the Jury Room: The Impact of Mobile Technology on the Jury' (2015) CICJ 27 179-194.

<sup>31</sup> Peter Grieves-Smith, 'Trial Evolution?' (*Counsel Magazine*, December 2015) <<https://www.counselmagazine.co.uk/articles/trial-evolution>> accessed 14 April 2020.

< <https://www.counselmagazine.co.uk/articles/trial-evolution>> accessed 14 April 2020.

On the contrary to this there have been several other suggestions on alternates to juries. A PhD candidate from the University of Aberdeen has presented an idea of using quantitative methodology in trials. This is a none proven hypothesis but raises the idea that a probability on innocent and guilty can be calculated.<sup>32</sup> This research raised the proposal that Judges could hear rape trials alone to remove the bias factor from cases. David Lorimer concluded from his research that both judges and juries could be replaced by a tribunal style system using experts in the field. Harriet Wistrich a campaigning feminist solicitor who set up Centre for Women's justice also supports the notation to scrap juries. She suggested that a discrimination panel with a judge and two specialists could be used in placed of juries.<sup>33</sup> She went onto to repeat that it would be fairer as juries just don't convict young men and that their own views are used too much.<sup>34</sup>

This raises the argument of would that really be fairer for those on trial. Article 6 of the Human Rights Act 1998 protects your right to a fair trial. In summary the article grants you right to a fair and public trial or hearing if you are charged with a criminal offence and have to go to court, which is heard by an independent and impartial decision maker and is followed by a public decision. Currently it is engraved in UK legislation and is a right, therefore removing juries would be a big decision which would have to be decided by parliament. In a bill briefing regarding removing juries from fraud trials the House of Lords briefly stated that public confidence will decline, judges will become case hardened, and may believe that defendants in fraud cases should not have safeguards, they also went on to say that removing juries would not necessarily fix the problem and that other measure should be given the chance to take effect. Ultimately it stated that it was oppose to the bill in its entirety.<sup>35</sup> An article written by a criminal law partner, Jonathan Grimes, in The Law Society Gazette went on to say that polls routinely find that people think jurors are much fairer than judges. He went on to point out

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<sup>32</sup> David Lotimer, 'Academic Suggests Abolishing Juries in Rape Trials' (*University of Aberdeen School of Law Blog*, 30 September 2018) <<https://www.abdn.ac.uk/law/blog/academic-suggests-abolishing-juries-in-rape-trials/>> accessed 14 April 2020.

<sup>33</sup> Catherine Baksi, 'Championing Women's Justice' (*Centre for Women's Justice*, 26 July 2019) <<https://www.lag.org.uk/?id=206977>> accessed 14 April 2020.

<sup>34</sup> Nic Mainwood, 'Press Release: Should Juries Be Abolished in Rape Trials? - "My Jury is out"' (*Centre for Women's Justice*, 8 October 2019) <<https://www.centreforwomensjustice.org.uk/news/2019/10/8/press-release-should-juries-be-abolished-in-rape-trials-my-jury-is-out>> accessed 14 April 2020.

<sup>35</sup> Fraud (Trials without a Jury) Bill Briefing for House of Lords Second Reading HL Bill (2007-07) 49.



that complex trials don't rarely collapse due to juries but due to prosecutors and mistakes due to lack of resources which then caused a failure to investigate the cases properly.<sup>36</sup> This would likely be the same argument if the proposal of removing juries from rape trials was brought.

Upon further research, juries are more than likely not the problem and have been used for 800 years in the legal system and have now been cemented into British society and into its rule of law. Not only would it be a massive legislative change it would currently underwrite a human right which is still in force in the UK. Even if juries were ineffective, due to these points parliament would be unlikely to enforce any changes and alternates to juries. However as outlined above, it could be argued that better funding into the CPS and the criminal legal sector would be beneficial. As this would lead to more resources and better investigative powers. This in turn would mean more rape cases would be better investigated when they would have normally been passed aside and in cases that do get taken to court, the CPS could be able to build stronger cases which would see an increase in conviction rates.

Attorney General Geoffrey Cox QC stated that the organisation cannot handle further spending cuts and admitted that they had suffered a 30% cut in funding and significant reduction in staff.<sup>37</sup> Finally a study by HM Crown Prosecution Service Inspectorate, which was commissioned by Criminal Justice Board, reinforces this as it's clearest conclusion to the decline in rape convictions was due to the police and prosecutors being deprived of funding. The report also found no evidence to prove that the CPS was cherry picking cases and only taking forward easy cases.<sup>38</sup>

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<sup>36</sup> Jonathan Grimes, 'Remove Juries from Fraud Trials? Bad Idea' (*The Law Society Gazette*, 5 August 2014) <<https://www.lawgazette.co.uk/legal-updates/remove-juries-from-fraud-trials-bad-idea/5042541.article>> accessed 14 April 2020.

<sup>37</sup> John Hyde, 'CPS Can Take No More Cuts - Attorney General' (*The Law Society Gazette*, 23 January 2019) <<https://www.lawgazette.co.uk/news/cps-can-take-no-more-cuts-attorney-general-/5068981.article>> accessed 14 April 2020.

<sup>38</sup> Owen Bowcott, 'Fall in Rape Convictions Due to Justice System at Breaking Point' (*The Guardian*, 17 December 2019) <<https://www.theguardian.com/law/2019/dec/17/fall-in-convictions-due-to-justice-system-at-breaking-point>> accessed 14 April 2020.

In the mist of all of this the current government under Boris Johnson has already awarded a further 85million pounds funding to the CPS to help combat all of the issues outlined above, alongside other problems they naturally have due to lack of funding. And has begun the recruitment of 20,000 more police officers which will naturally provide further resources and lift some pressure on the system. In response to this the CPS has begun its own campaign hiring 390 new prosecutors by the end of June 2020 and to also recruit 100 paralegals and administrators. Therefore, although there had been a decline, the current state has investigated and reviewed the problems raised in juries and a possible solution has been implemented.

In conclusion, with reference to the effectiveness of juries in rape cases and in relation to the question of ignoring judges' directions. It is human nature to judge and use personal views to make assumptions. The ideology of the jury is to be judged by your peers and they are used to represent societies views. Therefore, they are doing exactly what they are intended to do by bringing outside views that are present in society with them, to make decisions. The jury is a representative proportion of society and using its beliefs to make these decisions. Effectiveness cannot solely be judged by statistics of conviction rates and surveys on juries' views. It must be accepted that human nature will be present in any form of judgement and that directions on stereotyped thinking are not the reason juries are ineffective.

The reasons juries are ineffective seams to stem from poor directions and an overwhelming amount of information. The advancement of using technology in trials such as an iPad, would improve cases management for juries and make information more accessible and less overwhelming decreasing the risk of seeking outside information and googling outside of the trial. If juries were directed in a different way it could alleviate some of the issues that have been suggested. An impartial none biased information folder could be used on the iPad to educate juries in rape matters before they are exposed to the facts. This poses fair for all involved, that way the victim has a fairer possibly non-bias none stereotypical trial and the information would be factual, and none bias therefore not damaging the case for the defendant in any way.