

2014-05-14

Bad Laws or Bad Attitudes? Assessing the Impact of Societal Attitudes upon the Conviction Rate for Rape in Ireland

Susan Leahy
University of Limerick

Recommended Citation

Leahy, Susan (2014) "Bad Laws or Bad Attitudes? Assessing the Impact of Societal Attitudes upon the Conviction Rate for Rape in Ireland," *Irish Journal of Applied Social Studies*: Vol. 14: Iss. 1, Article 3.
Available at: <http://arrow.dit.ie/ijass/vol14/iss1/3>

Bad laws or bad attitudes? Assessing the impact of societal attitudes upon the conviction rate for rape in Ireland

Susan Leahy
University of Limerick
Susan.Leahy@ul.ie

© Copyright Irish Journal of Applied Social Studies ISSN 1393-7022
Vol. 14(1), 2014, 18-29.

Abstract

The low conviction rate for rape is often highlighted as a cause for concern. The typical response is to call for reform of Irish rape law. Although reform is necessary, this article argues that the low conviction rate for rape is caused not simply by 'bad' or inadequate laws but also by 'bad' or prejudicial attitudes about rape which persist in Irish society. These attitudes are at odds with the reality of rape and therefore create unrealistic expectations as to what, for example, constitutes a 'real rape' or a 'real victim'. Jurors who are influenced by these attitudes are likely to be unduly sceptical about allegations which do not match their stereotypical perceptions of rape. These prejudicial attitudes are usually referred to as 'rape myths'. In this article, the most common 'rape myths' will be outlined. The effect of rape myth acceptance (RMA) on juror deliberations will then be discussed. It is suggested that non-legal initiatives are necessary to ensure that in future jurors will not be influenced by RMA. The article concludes by recommending the introduction of model jury directions which would tackle the ill-effects of rape myths upon juror deliberations at trial, as well as wider public awareness initiatives to educate the public generally about the reality of rape.

Keywords: rape; conviction rates; societal attitudes

Introduction

The low conviction rate for sexual offences is a perennial source of controversy. Statistics show that for the period 2005-2007, the conviction rate for rape in Ireland was eight per cent of reports (Corr et al., 2009, p. 3). The typical response to such statistics is to call for law reform. The need for such reform has repeatedly been emphasised by the Rape Crisis Network of Ireland (RCNI) (2005, 2008, 2009), as well as academic commentators (Leane et al., 2001; Bacik et al., 1998; Hanly et al., 2009). There is no doubt that reform of Irish rape law is necessary. The current legislation (i.e. the Criminal Law (Rape) Act 1981 and the Criminal Law (Rape) (Amendment) Act 1990) has not been substantially overhauled since its introduction. There are certainly shortcomings in the current legislative regime which could be ameliorated in a bid to improve the conviction rate for rape. For example, the introduction of a statutory definition of consent could provide clarity regarding what is necessary for a legally valid consent to sexual activity and thereby minimise the difficulty of proving that the complainant did not consent. However, whilst legislative reform is necessary, it cannot provide a panacea for the persistently low conviction rate for rape. The

persistence of rape myths in society must also be tackled. These myths may create unrealistic perceptions about rape on the part of some jurors and thereby serve to unfairly prejudice rape complainants' accounts of non-consensual sexual activity at trial.

This article will discuss the most prevalent rape myths and examine the influence which they exert upon the conviction rate for rape. Empirical research is used to demonstrate both the extent to which these myths are at odds with the reality of rape in Ireland and the level of adherence to these myths in Irish society. Results of empirical research from England are then used to demonstrate how rape myth acceptance (RMA) can influence juror deliberations. The article concludes by identifying ways in which these societal attitudes can be tackled both within the courtroom and in society more generally in order to offset the potential for 'bad' attitudes to contribute to the low conviction rate for rape.

Rape myths

The existence of stereotypical attitudes about rape was first identified by feminist theorists (MacKinnon, 1982, 1983; Estrich, 1987; Lees, 2002). According to these theorists, individuals who are influenced by rape myths hold unrealistic expectations of what constitutes a genuine rape. Thus, when these individuals find themselves on juries, they may assess a rape allegation not on its merits but rather according to these stereotyped views. Three of the most common rape myths are the 'real rape' stereotype, the 'real victim' stereotype and the false allegations myth.

According to the 'real rape' stereotype, a genuine rape allegation involves an unknown attacker in an isolated, but public, location and the victim sustains serious physical injury, either as a result of the violence of the perpetrator or as a consequence of her efforts to resist the attack (Ellison and Munro, 2010, p. 783). When judged according to this stereotype, rape allegations involving a defendant who was known to the complainant, which occur in a private location and/or which do not involve significant physical injury appear inherently suspicious. As explained below, the 'real rape' stereotype is fundamentally at odds with the reality of many rapes and has the potential to raise suspicion about rape allegations precisely in the situations where rape is most likely to occur, that is, between individuals who were known to one another, in private locations and involving little, if any, physical injury.

Similar to the manner in which the 'real rape' stereotype creates a perception of what constitutes a genuine allegation of rape, the 'real victim' stereotype generates an image of a genuine or worthy victim, that is, a chaste individual who has not engaged in 'risky' behaviour (e.g. consuming alcohol or illegal drugs or dressing in what is viewed as an inappropriate or 'provocative' manner). If a rape complainant does not conform to the standardized image of a 'real victim', the prosecution may find it difficult to convince jurors who adhere to this imagery that a rape has occurred. Any evidence which indicates that the complainant has deviated from the standard of the ideal victim may be seen by jurors as signalling that the sexual activity was consensual. For example, where a complainant was intoxicated at the time of the alleged incident, jurors influenced by victim imagery may see such an allegation merely as an instance of 'post-coital regret'

(McGregor, 2005, p. 5). Alternatively, this behaviour may lead jurors to conclude that the complainant had precipitated or 'asked for' the attack by behaving inappropriately and therefore is not worthy of the law's protection. The reasoning inherent in this type of victim-blaming attitude appears to be that 'women who put themselves in compromising positions shouldn't complain when they are compromised' (Estrich, 1992, p. 10). The danger of 'real victim' imagery is clear. Many rape complainants will have deviated from the 'real victim' standard which has been identified by feminist theorists. For these complainants, stereotypes of appropriate victim behaviour could prejudice jurors' assessment of their allegation.

The final myth which must be addressed is the false allegations myth which suggests that rape complaints are often untrue. This myth has its roots in the historic distrust of rape complainants, as exemplified in the words of eighteenth century jurist Sir Matthew Hale who famously asserted that rape was an allegation that 'was easily to be made and once made, hard to be proved, and harder to be defended by the party accused, tho (*sic*) never so innocent' (reproduced in Charleton et al., 1999, p. 621). Similar sentiments were expressed by other notable jurists such as Wigmore (1970, p. 736) and Williams (1978). This suspicion of sexual offence complainants formed the basis for the development of 'special rules of evidence that [were] conspicuously absent from evidentiary rules governing other kinds of violent crime' (Brownmiller, 1975, p. 370). For example, the corroboration warning required the trial judge to warn the jury that it was dangerous to convict on the uncorroborated evidence of a complainant. In modern times, the entrenched suspicion which historically surrounded rape accusations has abated and related amendments have been made to the previously discriminatory rules of evidence which applied in rape trials (e.g. curtailing the provision of corroboration warnings). However, whilst endemic suspicion of rape complainants is no longer a feature of present-day criminal justice systems, feminist theorists have suggested that rape allegations still attract greater levels of scepticism than allegations of other criminal offences (Estrich, 1992; Torrey, 1990; Lees, 2002; MacKinnon, 1983). This higher level of suspicion can influence juror perceptions of allegations of rape. A juror who believes that false allegations of rape are common and must be guarded against will be highly circumspect about the complainant's account of non-consensual sexual activity.

Rape in Ireland

The increasing availability of empirical research on rape in Ireland (Bacik et al., 1998; Leane et al., 2001; McGee et al., 2002; Corr et al., 2009; Hanly et al., 2009) has made it possible to uncover the reality of rape and thereby to demonstrate the fallacious nature of rape myths. The discussion here is informed by two of the most recent and comprehensive studies on rape in this jurisdiction, namely, *Different Systems, Similar Outcomes?* (Corr et al., 2009) (*Different Systems*) and *Rape & Justice in Ireland* (Hanly et al., 2009) (*R&JI*). The methodology adopted for *Different Systems* was a case-tracking exercise which entailed a quantitative content analysis of one hundred rape case files. *R&JI* comprised of three strands. The first strand involved a national survey of one hundred women who experienced rape since 2002. The second strand involved a quantitative analysis of five hundred and ninety-seven reported rape case files received by the Office of the Director of

Public Prosecutions (DPP) from the beginning of 2001 to the end of 2004. The final strand involved a review of one hundred and seventy-three rape case files received by the Central Criminal Court between 2000 and 2005, as well as an analysis of thirty-five trial transcripts. Together, these studies allow for the creation of a reasonably comprehensive and accurate profile of rape in Ireland which thereby facilitates an illumination of the extent to which rape myths are at odds with the reality of rape in this jurisdiction.

The research on rape in Ireland shows that the real ‘real rape’ is somewhat removed from the stereotype. First, contrary to the myth which contends that the attacker in a ‘real rape’ will be a stranger, statistics suggest that the majority of rapes involve a complainant and a defendant who were known to one another prior to the alleged attack. In *Different Systems*, the defendant was a stranger in just twenty per cent of cases (Corr et al., 2009). *R&JI* reveals similar results. Thirty-four per cent of complainants who were interviewed for the first strand of the research were raped by a stranger, the remainder having been raped by someone they knew, the largest categories involving friends (fourteen per cent) and acquaintances (twenty-five per cent) (Hanly et al., 2009). In the DPP files surveyed, 58.2 per cent of defendants were classified as a friend or acquaintance of the complainant. Strangers accounted for 10.9 per cent of suspects (p. 220). In the Central Criminal Court files analysed, nearly three-quarters of the complainants reported being raped by someone with whom they had had a prior relationship of some description. The largest single category was that of ‘acquaintance’ (i.e. someone the complainant had known prior to the incident) (25.82 per cent), followed by ‘just met’ (i.e. within the twenty-four hour period prior to the incident) (21.43 per cent). The defendant was a stranger in 17.58 per cent of cases.

It is also evident that most rapes are committed in private locations. In *Different Systems*, over half of the alleged rapes had occurred in a private setting, with the complainant’s and defendant’s homes representing the most likely locations (twenty-four per cent and twenty per cent, respectively) (Corr et al., 2009). Similar findings were reported in *R&JI*. In strand one, over two-thirds of the complainants who were questioned about the location of their attack listed a house as the location (Hanly et al., 2009, p. xxv). Within this group, the complainant’s home was the most common location (thirty-two per cent of cases) (p. 132). In the study of DPP files, most of the rapes had occurred in the complainant’s home (30.1 per cent), followed by the suspect’s home (22.4 per cent) or in another private setting such as a hotel room or the home of a friend (16.5 per cent) (p. 220). Of the Central Criminal Court files studied, nearly three-quarters of the incidents in which the location was specified occurred in a private place or vehicle (p. 269).

One aspect of rape in Ireland which does appear to fit with the ‘real rape’ stereotype is the presence of force. In the first strand of *R&JI*, seventy-one per cent of the complainants reported that the defendant used physical force against them (Hanly et al., 2009). In the DPP files, physical force was present in 66.7 per cent of cases. In the Central Criminal Court files studied, of the complainants for whom medical reports were prepared, seventy per cent reported sustaining physical injuries. However, while force is present in many cases, the physical injuries sustained by complainants are usually not severe. Forty-four

per cent of complainants interviewed reported that the physical injury incurred was relatively minor (e.g. bruises, cuts or scratches). Fifteen per cent reported experiencing more serious injuries. In the survey of DPP files, complainants experienced physical injury as a result of the rape or related violence in 25.8 per cent of cases. There is no indication of the extent of the injuries suffered. However, the analysis of Central Criminal Court files revealed similar findings to the victim surveys, that is, usually where physical injuries were reported, they tended to be relatively minor (Hanly et al., p. 274). Only a small minority of complainants reported serious injuries such as broken bones (3.7 per cent), strangulation marks (2.78 per cent) and knife wounds (2.78 per cent). Thus, the severe injuries which are a feature of the ‘real rape’ stereotype do not conform to the reality of rape in Ireland.

Table 1: ‘Real Rape’ in Ireland: Available Statistics

Study	Corr et al., 2009	Hanly et al., 2009 Strand 1	Hanly et al., 2009 Strand 2	Hanly et al., 2009 Strand 3
Nature of relationship				
Stranger	20%	34%	10.9%	17.58%
Friend/Acquaintance	44%	39%	58.2%	31.87%
Location of rape				
Complainant’s home	24%	32%	30.1%	19.89%
Defendant’s home	20%	24%	22.4%	19.89%
Public/Outdoor place	14%	21%	22.2%	22.65%
Injuries sustained				
Minor	N/A*	44%	N/A*	N/A*
Serious	N/A*	15%	N/A*	9.26%

*Data not available in this study

From the foregoing it would appear that the circumstances of the typical rape in Ireland do not fit the ‘real rape’ stereotype. Most cases involve individuals who were known to one another prior to the incident and occur in private locations. In addition, whilst complainants may incur injuries, they are usually relatively minor.

It is also apparent that there is an additional element to sexual offending which does not feature in stereotypical assumptions about sexual offences, that is, the consumption of alcohol by complainants at the time of the alleged incident. In *Different Systems*, seventy-eight per cent of complainants had consumed alcohol around the time of the alleged incident (Corr et al., 2009). In *R&JI*, alcohol featured across all three strands of the study. In strand one, over two-thirds of those surveyed reported that they had been drinking at the

time of the alleged rape, with the majority having consumed three or more drinks (Hanly et al., 2009). The DPP files showed that eighty per cent of complainants had consumed alcohol around the time of the offence, with 45.4 per cent of these complainants being described as severely intoxicated. Finally, in strand 3, nearly two-thirds of the complainants had engaged in what is officially medically classified as ‘binge-drinking’ prior to the incident in question (p. 272). ‘Binge-drinking’ is defined as the consumption of seven or more units of alcohol on a single occasion (Health Service Executive, 2008, p. 3). Virtually all complainants had consumed more alcohol in a single sitting than would be advisable medically (Hanly et al., 2009, p. 272).

The proportion of complainants who are intoxicated at the time of their attack is significant not just because it deviates from the ‘real rape’ stereotype but because of its contribution to jurors’ capacity for victim-blaming. As explained above, complainant intoxication is a significant trigger for victim-blaming reactions. Given the high number of complaints which involve a complainant who was consuming alcohol when they were attacked, ‘real victim’ imagery could potentially prejudice jury deliberations in a large number of rape trials. Of course, complainant intoxication may generate difficulties of proof if the complainant’s recollection of the incident is compromised as a result. Also, given the role of alcohol as a social lubricant, it is frequently an element of consensual sexual encounters. Consequently, complainant intoxication may make it difficult to determine whether consent was present or not. However, although alcohol might influence juror deliberations in the foregoing ways, it is clear that far from being an indicator of falsehood or that the complainant is not a ‘deserving’ victim, intoxication is simply a common feature of rape incidents which should be assessed on the same basis as any **other** fact at trial.

The final myth which may be challenged on the basis of available empirical data is the false allegations myth. In *Different Systems*, nine per cent of the allegations of rape in the case-tracking sample were designated as false by the gardaí (Corr et al., 2009). In *R&JI*, DPP files revealed that either the gardaí or the DPP indicated that the complaint may have been false in approximately six per cent of cases (Hanly et al., p. 249). This suggests that the rate of false allegations is low. Indeed, the number of false reports may be even lower than reports like this reveal. It is difficult to identify a false report with certainty (Rumney, 2006, p. 128). In *R&JI*, in some cases the assessment that a rape allegation was false was only a ‘hunch’ and was not backed by corroborating evidence, while in other cases, more serious consideration was given to prosecuting the complainant for making a false complaint (Hanly et al., 2009, p. 249). Thus, it appears that the rate of false allegations of rape is not at such a level that any heightened suspicion of rape complainants is warranted.

Irish attitudes to rape

Having established the fallacious nature of rape myths, it is necessary to examine the extent to which these attitudes prevail in Irish society. Information on Irish attitudes to rape may be found in *The SAVI Report: Sexual Abuse and Victimisation in Ireland* (McGee et al., 2002) (*SAVI*) and an attitude survey conducted by the *Irish Examiner* newspaper (Ryan, 2008). *SAVI* involved anonymous telephone interviews with three thousand randomly selected adults from the general population in Ireland. Although the primary aim of this

study was to estimate the prevalence of various forms of sexual violence among Irish women and men, there was also some assessment of public perceptions and beliefs about sexual violence. In the *Irish Examiner* study, 1,002 adults were questioned about their attitudes and beliefs about rape. These studies show that there is a significant level of RMA in Irish society.

In *SAVI*, 37.9 per cent of women and 42.3 per cent of men thought that rape accusations are often false (McGee et al., 2002). Stereotypes about ‘real victims’ also appear to hold some influence in the Irish consciousness. In the *Irish Examiner* study, forty-one per cent of respondents felt that a woman who had consumed alcohol or taken illicit drugs is partially responsible if she is raped. In addition, thirty-seven per cent of respondents in the *Irish Examiner* study felt that flirting extensively with the defendant made a woman in some way responsible for any subsequent attack (Ryan, 2008). A victim’s mode of dress at the time of the incident also attracts attention. In *SAVI*, twenty-nine per cent of respondents thought that women who wear short skirts or tight tops are inviting rape (McGee et al., 2002). Similarly, in the *Irish Examiner* study, twenty-six per cent of respondents felt that a woman who was raped while wearing sexy or revealing clothing was in some way responsible for rape (Ryan, 2008). Thus, it seems that victims may be blamed for rape if they have not adhered to certain standards of behaviour.

The findings of these studies suggest a notable level of RMA in Irish society. Indeed, Ellison and Munro advise that attitude surveys may not reveal the full extent of RMA in society. In their view (2010, p. 799):

‘Participants who respond to questionnaires may be well-versed in the socially “appropriate” attitudes to be voiced at this abstract level, and so may present a more progressive profile to the researcher than they in fact endorse.’

Consequently, it is necessary to appreciate that the levels of RMA in society could be even higher than the surveys indicate. In any event, the levels of RMA revealed by *SAVI* and the *Irish Examiner* study show a significant proportion of Irish society are influenced by prejudicial and fallacious views about rape. Thus, there is significant potential for juries in rape trials to include individuals who are influenced by rape myths.

The effect of RMA on juror deliberations in rape trials

Research with real juries is prohibited in Ireland (*O’Callaghan v Attorney General* [1993] 2 I.R. 17). The only way of gathering information about the effect of RMA upon juror deliberations is mock jury studies where the participants are asked to put themselves in the role of jurors and to make judgements about hypothetical cases which are presented to them in various forms (Temkin & Krahe, 2008, p. 48). There have been no mock jury studies relating to rape trials in Ireland. However, a number of such studies have been carried out in England where attitude surveys have revealed similar levels of RMA to that which is seen in the Irish studies (Amnesty International UK, 2005 and 2008; The Havens (Sexual Assault Referral Centres), 2010). These studies demonstrate that RMA can impact on juror decision-making in rape trials.

A study conducted by Temkin and Krahé found that jurors were more convinced that a defendant should be held liable and blamed the complainant less in stranger rapes than in rapes by acquaintances, and in particular, rapes by ex-partners (2008, p. 120). Research by Ellison and Munro also strongly suggested that claims of non-consensual sex that are not accompanied by evidence of physical force and attendant resistance are far less likely to be accredited as rape by jurors (2009a, p. 206). Jurors also appear to be critical of complainants who were intoxicated at the time of an alleged rape. A study by Finch and Munro found that women who consume alcohol in the presence of a male drinker will be perceived to be more sexually available than a non-drinking counter-part. Even in situations in which the complainant's intoxication was not wholly voluntary (i.e. where her drink was spiked with additional alcohol or the defendant coerced her into drinking greater quantities than she intended) the complainant was frequently viewed as being partially responsible (2007, p. 599).

Of course, it is not safe to simply assume that the results of English mock jury studies would apply equally in an Irish context. Nevertheless, the English research is important as it demonstrates how the types of attitudes which have been shown to exist in Irish society may influence juror deliberations.

Tackling rape myths in the courtroom and beyond

It is clear that societal attitudes to rape must be tackled if the conviction rate for rape is to be improved. Certainly, law reform can have a role to play. For example, a statutory definition of consent could send a clear message regarding what is necessary for a legally valid consent to sexual activity and encourage jurors to focus on the facts of the scenario in order to determine whether they presented the complainant with a genuine opportunity to consent. In this way, the tendency to focus on extraneous influences such as rape myths would be offset. Similarly, the rules of evidence should ensure that the jury is appropriately directed on the significance of the facts before them and that the evidence is not presented in a way which may serve to tap into stereotypical thinking. However, it is also necessary to use extra-legal strategies which will seek to more directly tackle attitudes to rape by educating jurors at trial about the dangers of stereotypical thinking. In addition, the public more generally must be educated about rape in order to decrease the number of potential jurors who adhere to rape myths in the first place.

Model jury directions provide an important tool for educating jurors at trial about the reality of rape and thereby limiting the potential for RMA to affect juror deliberations. Jury directions are instructions which the judge gives the jury to explain a point of law or the procedure which they should follow during their deliberations. Model jury directions can be provided to judges in a bench book which is essentially a handbook which judges may refer to during a trial. The use of such directions is not mandatory and judges are free to adapt and use model directions whenever they are appropriate. A good template for the creation of model jury directions may be found in the English *Crown Court Bench Book* (2010) (the *Bench Book*) which includes a chapter that shows trial judges how to guide juries so that they do not rely on stereotypical assumptions when deliberating in rape trials. The *Bench Book* observes that stereotypes about appropriate victim behaviour or 'real rape' do not

accord with judges' experience and provides that where a judge feels that such stereotypes may affect the jury's deliberations, s/he may caution the jury regarding the dangers of relying on unwarranted assumptions. While the *Bench Book* does not set out any precise format which a judge must use if s/he wishes to warn the jury of the danger of relying on assumptions, it does provide nine 'illustrations' which in essence amount to sample directions which judges may adapt for use in relevant cases.

Examples of the illustrations provided for in the *Bench Book* include guidance on: the avoidance of assumptions when the complainant and defendant are known to one another; the effect of trauma and demeanour in evidence; late reporting; absence of force or threat thereof and; the avoidance of assumptions which are based on what is perceived to be inappropriate victim behaviour. In order to demonstrate the format of these illustrations, it is worth citing in full the general illustration regarding the avoidance of judgements based on stereotypes (2010, p. 357):

'It would be understandable if one or more of you came to this trial with assumptions as to what constitutes rape, what kind of person may be a victim of rape, what kind of person may be a rapist, or what a person who is being, or who has been, raped will do or say... Please approach the case dispassionately, putting aside any view as to what you might or might not have expected to hear, and make your judgement strictly on the evidence you have heard from the witnesses'.

Guidance like this offers a useful means for judges to warn the jury about the danger of assumptions without being controversial or biased. The direction advises jurors that assumptions may affect their deliberations whilst avoiding prejudice in the form of suggesting alternative 'correct' assumptions which should guide their reasoning. For example, the direction does not try to educate juries about the 'reality' of rape (e.g. that it is more likely to be committed by individuals who are known to the complainant or that alcohol is a common feature of these cases). This avoids a situation whereby the old myths are simply replaced by new myths (2009). To illustrate his point, Kibble uses the myth that women 'cry rape' when they regret having sex or want revenge. As Kibble argues, a bald assertion that a woman would *never* cry rape as a result of regret or in order to exact revenge would be equally untrue. For a judge to make such a statement would merely serve to create a counter-myth to replace the original myth. Such an outcome would be undesirable and merely shift the unfairness from complainants to defendants. Thus, it is very important that jury directions are carefully worded and sufficiently nuanced to avoid the creation of further bias in jurors.

The introduction of a bench book which outlines model jury directions for trial judges in Irish rape trials would provide an excellent mechanism for off-setting the potential for RMA to prejudice jurors' deliberations. It would ensure that information can be provided in a balanced and informative manner, whilst avoiding the creation of counter-myths or unfairly prejudicing the defence. Admittedly, since model jury directions are not mandatory, there is a risk that their impact may be limited if judges do not make use of them. However, with appropriate training, judges should see the benefit of such directions

and be more willing to adopt them to aid them in summing up in rape trials, a task which is often fraught with difficulty as judges seek to achieve a fair balance between the complainant and the defendant.

Of course, as Ellison and Munro point out, educating jurors at trial by means of jury directions does not and should not preclude wider educational initiatives designed to target social attitudes in society more generally (2009b). Hence, public awareness campaigns can contribute to ensuring that members of the public who may end up being jurors in rape trials are not influenced by rape mythology in the first place. This is an important goal which may, in time, lessen the need for jury directions.

As regards the form which such a campaign should take, it is submitted that a number of different approaches should be used. First, a general public awareness campaign should involve the use of public service announcements (on radio and television) and advertising campaigns using posters, print media and the internet (Temkin & Krahé, 2008). The campaign should resemble public health or road safety campaigns and should seek to educate the public about the reality of rape and the erroneous nature of rape myths. Such a campaign should be targeted at specific relevant age-groups by careful timing of public service announcements and appropriate placement of posters and internet advertisements. In this respect, the campaign should resemble the English Home Office 'Consent Campaign' which ran in 2006 and was aimed at educating men aged between eighteen and twenty-four years of age on the need to obtain a proper consent to sexual activity. The campaign involved the use of posters and radio and magazine advertisements. Of course, the campaign proposed here would involve a wider target audience and a broader aim of educating the public generally about the reality of rape but the methodology of the English campaign would provide a useful starting point for designing an Irish campaign. It is suggested that an Irish campaign should also incorporate university and school-based interventions which inform young people about rape and thereby minimise the likelihood that these young people will accept rape mythology (Temkin & Krahé, 2008). Any such campaigns should run for a prolonged period of time to ensure that they are subsumed into the public consciousness. Given the significant investment required for such a broad-based campaign, it would need to be government-sponsored. Such a campaign would also need to be regularly evaluated in order to measure their effectiveness and ascertain whether they need to be updated.

Conclusion

There are many reasons for the difficulties of proving that a rape has occurred. Part of the problem owes to inadequacies in Irish law. Difficulties of proof are also the result of the complex nature of such cases where it is often the complainant's word against the defendant's in circumstances where there is no corroborating evidence and the defendant must be proved guilty beyond reasonable doubt. However, societal attitudes towards rape have a significant role to play in the persistently low conviction rate for this crime. Available empirical research has demonstrated both the erroneous nature of these myths and the level of RMA in Irish society. Where these myths persist in society, it is inevitable that they will influence juror deliberations to some degree. As Temkin and Krahé assert,

jurors do not leave their long-held beliefs behind in the cloakroom when they enter a court of law (2008). Thus, as the English mock jury research has shown, when those members of society who adhere to stereotypical thinking about sexual offences find themselves on a jury, they will be influenced by this thinking when deliberating about the defendant's guilt. It is clear then that although law reform in this area is necessary, educating the public about the reality of rape and thereby minimising levels of RMA is equally important. Model jury directions and public awareness initiatives like those proposed here represent effective methods of tackling negative societal attitudes. If properly implemented, these initiatives should significantly offset the negative effects of RMA and thereby contribute to an improvement in the unsatisfactory statistics that are currently associated with rape trials in this jurisdiction.

Acknowledgements

The author would like to thank Professor Shane Kilcommins, School of Law, University of Limerick and Dr Mary Donnelly, Law Department, University College Cork for comments on earlier drafts of the material contained in this article. The views expressed and any errors are the sole responsibility of the author.

Biographical Note

Susan Leahy, BCL, LLM, PhD. is a lecturer in the School of Law, University of Limerick.

References

- Amnesty International UK. (2005). *Sexual assault research summary report*. London: Amnesty International.
- Amnesty International UK. (2008). *Violence against women: The perspective of students in Northern Ireland*. London: Amnesty International.
- Bacik, I., Maunsell, C. & Gogan, S. (1998). *The legal process and victims of rape in the fifteen member states of the European Union*. Dublin: The Dublin Rape Crisis Centre.
- Brownmiller, S. (1975). *Against our will: Men, women and rape*. New York: Fawcett Books.
- Charleton, P., McDermott, P.A. & Bolger, M. (1999). *Criminal law*. Dublin: Butterworths.
- Corr, M., O'Mahony, P., Lovett, J. & Kelly, L. (2009). *Different systems, similar outcomes? Tracking attrition in reported rape cases in eleven countries (country briefing: Ireland)*. London: Child and Woman Abuse Studies Unit.
- Ellison, L. & Munro, V.E. (2009a). Reacting to rape: Exploring mock jurors' assessments of complainant credibility. *British Journal of Criminology*, 49(2), 202-219.
- Ellison, L. & Munro, V.E. (2009b). Turning mirrors into windows? Assessing the impact of (mock) juror education in rape trials. *British Journal of Criminology*, 49(3), 363-383.
- Ellison, L. & Munro, V.E. (2010). 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. *New Criminal Law Review*, 13(4), 781-801.
- Estrich, S. (1987). *Real rape: How the legal system victimizes women who say no*. Cambridge, Massachusetts: Harvard University Press.
- Estrich, S. (1992). Palm Beach stories. *Law and Philosophy*, 11(1/2), 5-33.
- Finch, E. & Munro, V.E. (2007). The demon drink and the demonized woman: Socio-sexual stereotypes and responsibility attribution in rape trials involving intoxicants. *Social & Legal Studies*, 16(4), 591-614.
- Hanly, C., Healy, D. & Scriver, S. (2009). *Rape & justice in Ireland: A national study of survivor, prosecutor and court responses to Rape*. Dublin: The Liffey Press.
- Health Service Executive. (2008). *Less alcohol is more money, energy and control*. Dublin: Department of Health.
- Judicial Studies Board. (2010). *Crown Court bench book: Directing the jury*. London: Judicial Studies Board.
- Kibble, N. (2009). 'Case comment'. *Criminal Law Review*, 8, 591-597.
- Leane, M., Ryan, S., Fennell, C. & Egan, E. (2001). *Attrition in sexual assault offence cases in Ireland: A qualitative analysis*. Dublin: Department of Justice, Equality and Law Reform.

- Lees, S. (2002). *Carnal knowledge: Rape on trial* (2nd ed). London: The Women's Press Ltd.
- Lyons, M. (2011). *National Rape Crisis statistics and annual report 2010*. Galway: Rape Crisis Network of Ireland.
- MacKinnon, C.A. (1982). Feminism, marxism, method and the state: An agenda for theory. *Signs*, 7(3), 515-544.
- MacKinnon, C.A. (1983). Feminism, marxism, method and the state: Toward feminist jurisprudence. *Signs*, 8(4), 635-658.
- McGee H., Garavan R., de Barra M., Byrne J. & Conroy R. (2002). *The SAVI report: Sexual abuse and victimization in Ireland*. Dublin: The Liffey Press.
- McGregor, J. (2005). *Is it rape? On acquaintance rape and taking women's consent seriously*. Aldershot: Ashgate.
- Rape Crisis Network of Ireland. (2005). *Agenda for justice: Towards ending injustice for survivors of sexual violence*. Galway: Rape Crisis Network of Ireland.
- Rape Crisis Network of Ireland. (2008). *Consent on sexual contact: RCNI discussion document*. Galway: Rape Crisis Network of Ireland.
- Rape Crisis Network of Ireland. (2009). *RCNI agenda for justice: Discussion document*. Galway: Rape Crisis Network of Ireland.
- Rumney, P.N.S. (2006). False allegations of rape. *Cambridge Law Journal*, 65(1), 128- 158.
- Ryan, C. (2008). Rape: Our blame culture. *Irish Examiner*. 26th March 2008.
- Temkin, J. & Krahé, B. (2008). *Sexual assault and the justice gap: A question of attitude*. Oxford: Hart Publishing.
- The Havens (Sexual Assault Referral Centres). (2010). *Wake up to rape report*. London: The Havens (Sexual Assault Referral Centres).
- Torrey, M. (1990). When will we be believed? Rape myths and the idea of a fair trial in rape prosecutions. *University of Chicago David Law Review*, 24(1), 1013-1068.
- Wigmore, J.H. (1970). *Evidence in trials at common law*. Revised Edition by Chadbourn, J.H. Boston: Little Brown.
- Williams, G.L. (1978). *Textbook of criminal law*. London: Stevens.