

**The impact of pre-recorded video and closed
circuit television testimony by adult sexual
assault complainants on jury decision-making:
an experimental study**

**Natalie Taylor
Jacqueline Joudo**

Research and Public Policy Series

No. 68

Australian Institute of Criminology

Australian Institute of Criminology Research and Public Policy Series

- No. 46 *Homicide in Australia: 2001–2002 National Homicide Monitoring Program (NHMP) Annual Report*, Jenny Mouzos, 2003
- No. 47 *Drug Use Monitoring in Australia: 2002 Annual Report on Drug Use Among Police Detainees*, Toni Makkai and Kiah McGregor, 2003
- No. 48 *Serious Fraud in Australia and New Zealand*, 2003
- No. 49 *Sport, Physical Activity and Antisocial Behaviour in Youth*, Leesa Morris, Jo Sallybanks and Katie Willis, 2003
- No. 50 *Deaths in Custody in Australia: 2002 National Deaths in Custody Program (NDICP) Annual Report*, Lisa Collins and Muzammil Ali, 2003
- No. 51 *A Safe and Secure Environment for Older Australians*, Marianne James, Adam Graycar and Pat Mayhew, 2003
- No. 52 *Drugs and Crime: A study of Incarcerated Male Offenders*. Toni Makkai and Jason Payne, 2003
- No. 53 *Contract Killings in Australia*, Jenny Mouzos and John Venditto, 2004
- No. 54 *ACT Recidivist Offenders*, Toni Makkai, Jerry Ratcliffe, Keenan Veraar and Lisa Collins, 2004
- No. 55 *Homicide in Australia: 2002–2003 National Homicide Monitoring Program (NHMP) Annual Report*, Jenny Mouzos, 2004
- No. 56 *Women's Experiences of Male Violence: Findings from the Australian Component of the International Violence Against Women Survey*, Jenny Mouzos and Toni Makkai, 2004
- No. 57 *Regulation: Enforcement and Compliance*, Richard Johnstone and Rick Sarre, 2004
- No. 58 *Drug Use Monitoring in Australia: 2003 Annual Report on Drug Use Among Police Detainees*, Lee Milner, Jenny Mouzos and Toni Makkai, 2004
- No. 59 *Sentencing the Multiple Offender: Judicial Practice and Legal Principle*, Austin Lovegrove, 2004
- No. 60 *Online Credit Card Fraud against Small Businesses*, Kate Charlton and Natalie Taylor, 2004
- No. 61 *Bushfire Arson: A Review of the Literature*, Matthew Willis, 2004
- No. 62 *Armed Robbery in Australia: 2003 National Armed Robbery Monitoring Program Annual Report*, Maria Borzycki, Yuka Sakurai and Jenny Mouzos, 2004
- No. 63 *Drugs and Crime: A Study of Incarcerated Female Offenders*, Holly Johnson, 2004
- No. 64 *Crime Victimization in Australia: Key Results of the 2004 International Crime Victimization Survey*, Holly Johnson, 2005
- No. 65 *Drug Use Monitoring in Australia: 2004 Annual Report on Drug Use Among Police Detainees*, Carmen Schulte, Jenny Mouzos and Toni Makkai, 2005
- No. 66 *Homicide in Australia: 2003-2004 National Homicide Monitoring Program (NHMP) Annual Report*, Jenny Mouzos, 2005.
- No. 67 *Alcohol, Drugs and Crime: a Study of Juveniles in Detention*, Jeremy Prichard and Jason Payne, 2005.
- No. 68 *The Impact of Pre-recorded Video and Closed Circuit Television Testimony by Adult Sexual Assault Complainants on Jury Decision-making: An Experimental Study*, Natalie Taylor and Jacqueline Joudo, 2005.

A full list of publications in the Research and Public Policy Series can be found on the Australian Institute of Criminology web site at <http://www.aic.gov.au/>

The impact of pre-recorded video and closed circuit television testimony by adult sexual assault complainants on jury decision-making: an experimental study

Natalie Taylor
Jacqueline Joudo

Research and Public Policy Series

No. 68



Australian Government

Australian Institute of Criminology

© Australian Institute of Criminology 2005

ISSN 1326-6004
ISBN 0 642 53892 1

Project no. 0100
Ethics no. PO88
Data set no. 0092

Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted under the *Copyright Act 1968* (Cwlth), no part of this publication may in any form or by any means (electronic, mechanical, microcopying, photocopying, recording or otherwise), be reproduced, stored in a retrieval system or transmitted without prior written permission. Inquiries should be addressed to the publisher.

Please note: minor revisions are occasionally made to publications after release. The online versions available on this website will always include any revisions.

Published by the Australian Institute of Criminology
GPO Box 2944
Canberra ACT 2601
Tel: (02) 6260 9221
Fax: (02) 9260 9201
e-mail: front.desk@aic.gov.au
<http://www.aic.gov.au>

Edited and set by Helen Jackson
Australian Institute of Criminology

Funding

This project was funded by the NSW Attorney General's Department.

Disclaimer

This research report does not necessarily reflect the policy position of the Australian Government.

Foreword

Sexual assault is regarded as one of the most serious crimes in our society. Perpetrators can receive lengthy sentences if successfully convicted and victims are often left traumatised both physically and psychologically. In 2003 the Australian Institute of Criminology interviewed 6677 women of whom four percent reported being the victim of sexual violence in the last 12 months and 11 percent had been a victim in the past five years. Despite condemnation of this crime another Institute study of 141 sexual assault case files from five jurisdictions found that 38 per cent of all cases were withdrawn from prosecution, 33 per cent of all cases were finalised by way of a guilty plea, 29 per cent of all cases proceeded to trial, and 38 percent of cases that proceeded to trial resulted in a guilty verdict.

Increasing conviction rates is a key issue for the criminal justice system; so too is a genuine concern for the welfare of victims. The research that informs this report was commissioned by the New South Wales Attorney General's Department and resulted from a direct policy question: 'would the provision of evidence by an adult sexual assault victim, if given via a television monitor rather than face-to-face in the courtroom, influence the outcome that a jury would arrive at in determining guilt or innocence?'. The criminal justice system has come under criticism for re-victimising the victim through the means by which evidence is given and the lengthy appeal process that can occur from time to time. Others however have argued that the victim's face-to-face testimony is crucial to securing successful prosecutions. It is clearly a difficult research task to attempt to provide an objective and reliable evidence base on which to test this hypothesis.

A randomised experiment was designed which involved 210 people participating in 18 mock trials. These jurors were randomly assigned to a particular mode of victim testimony – face-to-face, CCTV or video – and two styles of victim presentation – neutral or emotional. The key outcome from the study was that the mode of testimony did not have a meaningful impact on the jury outcomes. Nor was there any consistent impact on the jurors' perceptions or decisions from the victim's presentation style. However the study did find that jurors' personal beliefs, the requirement to convict beyond reasonable doubt and the difficulty in understanding what 'consent' meant were factors that influenced the jurors' deliberations in determining an outcome. None of the jury panels returned a guilty verdict.

This work adds to the on-going research agenda on sexual assault that the Institute has been pursuing over the past three years. Funded by the Australian Government's Office for Women, continued funding into sexual assault research was renewed in the last budget. To date the Institute has published some key pieces of research that have focused on the *Non-reporting and hidden recording of sexual assault*, *Recidivism of sexual offenders: rates, risk factors and treatment efficacy*, *Prosecutorial decisions in adult sexual assault cases*, and most recently *No longer silent: women's help-seeking decisions and service responses to sexual assault*. This new study adds to our body of knowledge on understanding the causes and consequences of, and responses to, sexual assault.

Toni Makkai
Director
Australian Institute of Criminology

Acknowledgments

Many people contributed to the research in this report. The authors would like to thank:

- Lloyd Babb, Marianne Carey and Sally Traynor from the Criminal Law Review Division, NSW Attorney General's Department, for expert input into the transcript and valuable advice and feedback on general aspects of the project;
- Lynn Anamourlis, Manager of Jury Services in NSW, for providing information relating to juries in NSW;
- Rudy Monteleone, Juries Commissioner in Victoria, for providing information relating to jury pool composition in Victoria;
- the Canberra Rape Crisis Centre for providing a briefing session on sexual assault to the actors employed in this project, for providing the option of telephone debriefing to the actors and jurors and for providing expert feedback on the mock trials;
- David Tait from the University of Canberra Law School for providing expert feedback on the mock trials;
- the professional actors employed in this project;
- Catherine Mann, who went above and beyond the call of duty in directing the actors during rehearsals;
- Candice Taylor for assistance in the auditioning of actors;
- April Avril for advice and assistance with courtroom costuming;
- Professor John C Turner for expert advice on the methodology, questionnaire development and data analysis;
- members of the public who participated as "jurors", for whom the trials were enacted and without whom the findings would not have been possible;
- Andrew Warnes and the University of Canberra Law School for assisting with the use of the mock court and technical procedures during the trials;
- Tony Krone from the Australian Institute of Criminology for providing expert advice to the actors on prosecution, defence and court procedures;
- Cathy Kilford, Pauline Young and Katalina Bradley from the Australian Institute of Criminology for providing considerable administrative services related to contractual and procedural issues for the actors and jurors;
- Holly Johnson, Denise Lievore, Judy Putt, Toni Makkai and other AIC staff for valuable feedback on various aspects of the project; and
- Karen Collier and other staff of the JV Barry library for all their assistance in sourcing relevant literature.

Contents

| | |
|--|------|
| Acknowledgements | iv |
| List of Tables | vii |
| List of Figures | viii |
| Executive Summary | ix |
| 1. Introduction | 1 |
| 1.1 Background | 2 |
| 1.2 Why the need for this research? | 2 |
| 2. Use of CCTV and pre-recorded video in evidence | 7 |
| 2.1 Current legislative provisions across Australia relating to the use of CCTV and video | 8 |
| 3. Prior research on the manner in which testimony is presented in the courtroom | 11 |
| 4. Overview of the mock sexual assault video trials research project | 21 |
| 4.1 Aim of study | 22 |
| 4.2 Methodology | 22 |
| 4.3 Procedure | 24 |
| 5. Findings | 27 |
| 5.1 Demographic information | 29 |
| 5.2 Overall factors influencing juror perceptions | 32 |
| 5.3 Perceptions of jurors immediately following trial but before jury deliberation | 35 |
| 5.4 Jury verdicts and jury processes | 46 |
| 5.5 Perceptions of jurors after jury deliberation | 51 |
| 5.6 Factors which influenced beliefs about guilt of the accused | 56 |
| 5.7 Jurors' comments and feedback | 59 |

| | |
|--|-----|
| 6. Conclusions | 65 |
| Emotion | 66 |
| Mode of testimony | 66 |
| Juror deliberations | 66 |
| Practical implications | 67 |
| Caveats | 68 |
| Possible directions for future research | 68 |
| References | 71 |
| Appendix A – Methodology | 77 |
| Appendix B – Juror eligibility criteria | 93 |
| Appendix C – Scale items and reliabilities | 97 |
| Appendix D – Statistical tables | 103 |
| Appendix E – Layout of the mock courtroom | 107 |

List of tables

| | | |
|------------|--|-----|
| Table 1.1 | Proportions of adjudicated defendants in the NSW higher courts acquitted, by offence type | 3 |
| Table 2.1 | Legislative provisions relating to alternative arrangements for the evidence of adult complainants of sexual assault | 10 |
| Table 3.1 | Empirical studies investigating the impact of different modes of presentation | 13 |
| Table 3.2 | Evaluations/surveys investigating the impact of different modes of presentation | 16 |
| Table 3.3 | Studies investigating the impact of emotionality of testimony | 18 |
| Table 4.1 | Overview of research design | 23 |
| Table 5.1 | Demographics of jurors | 29 |
| Table 5.2 | Mean sex differences on primary dependent measures | 33 |
| Table 5.3 | Means and standard deviations for primary dependent measures by condition | 37 |
| Table 5.4. | Voting pattern for hung juries | 46 |
| Table 5.5 | Proportions within each jury in favour of a not guilty verdict | 47 |
| Table 5.6 | Characteristics associated with type of verdict preferred by jurors | 49 |
| Table 5.7 | Variables significantly associated with higher perceptions of guilt | 57 |
| Table 5.8 | Demographic variables significantly associated with attitudes toward rape victims scale | 57 |
| Table A1 | Summary of research design | 78 |
| Table A2 | Gender and age breakdown of prospective jurors attending the Melbourne jury pool in 2003-04 | 82 |
| Table A3 | Composition of juries in mock video trials | 83 |
| Table D1 | Linear hierarchical multiple regression analysis predicting pre-jury deliberation personal belief about guilt | 104 |
| Table D2 | Linear multiple regression analysis predicting attitudes to rape victims scale | 104 |
| Table D3 | Zero order correlations between all dependent measures | 105 |

List of figures

| | | |
|-------------|---|-----|
| Figure 5.1 | Mean ratings on emotionality of complainant testimony, by condition | 31 |
| Figure 5.2 | Mean ratings on personal belief about guilt of accused prior to jury deliberation and after jury deliberation | 33 |
| Figure 5.3 | Mean ratings of complainant credibility, by condition | 38 |
| Figure 5.4 | Mean ratings of empathy with complainant, by condition | 38 |
| Figure 5.5 | Mean ratings of overall impression of complainant, by condition | 39 |
| Figure 5.6 | Mean ratings of empathy with accused, by condition | 39 |
| Figure 5.7 | Mean ratings for overall impression of accused, by condition | 40 |
| Figure 5.8 | Mean ratings for personal belief about guilt of accused, by condition | 40 |
| Figure 5.9 | Mean ratings for perceived stress at court for complainant, by condition | 41 |
| Figure 5.10 | Mean ratings for fairness of courtroom procedures for complainant, by condition | 41 |
| Figure 5.11 | Mean ratings of fairness of courtroom procedures for accused, by condition | 42 |
| Figure 5.12 | Mean ratings of complainant's contribution to incident, by condition | 42 |
| Figure 5.13 | Jurors' "rationale for personal belief about guilt of accused" prior to jury deliberation | 44 |
| Figure 5.14 | Proportion of all jurors who favoured a guilty or not guilty verdict, by mode of presentation | 47 |
| Figure 5.15 | Mean rating of degree to which prosecution had proved case beyond reasonable doubt | 50 |
| Figure 5.16 | "Rationale for personal belief about guilt of the accused" prior to jury deliberation and after jury deliberation by mode of presentation | 52 |
| Figure 5.17 | "Rationale for personal belief about guilt of the accused" prior to jury deliberation and after jury deliberation across all jurors | 53 |
| Figure 5.18 | Mean degree of shift between pre and post jury deliberation beliefs about guilt (difference score) as a function of preferred verdict and direction in which jury leaning | 55 |
| Figure 5.19 | Hypothesised relationships between measured variables relating to personal belief about guilt | 58 |
| Figure E1 | Layout of the mock courtroom | 108 |

Executive summary

- This report presents the findings from a mock sexual assault jury trial research project conducted on behalf of the New South Wales Attorney General's Department. The aims of the project were to investigate whether the impact of adult sexual assault complainant testimony on juror perceptions and decisions differs if presented via closed circuit television, pre-recorded videotape or face-to-face in the courtroom. The study also investigated the impact of emotional versus neutral complainant testimony.
- The trials were conducted in a mock courtroom in the Law School at the University of Canberra during June and July 2005. Eighteen trials were held in which 210 jurors participated in 18 juries. Juries were comprised of members of the public who volunteered to participate in the trials. Each jury was composed of similar numbers of males, females, younger and older persons.
- Professional actors were recruited to play the roles of the complainant (aged 23), the accused (aged 30), the judge, the defence counsel, the prosecutor and the court attendant. The accused sat in the courtroom during all the trials but did not give evidence.
- The script was based on a transcript from an actual sexual assault court case, modified to ensure that it was representative of elements often involved in sexual assault cases and contained sufficient ambiguity to allow jurors to move toward guilt or innocence. The script was also shortened to the length of one and a quarter hours to accommodate the constraints of the experimental research. This meant that jurors watched part of a mock trial lasting one and a quarter hours in which only the complainant gave testimony.
- After watching the trial but before jury deliberation, jurors completed individual questionnaires which investigated their perceptions of complainant credibility, empathy with the complainant, overall impression of the complainant, empathy with the accused, overall impression of the accused and personal beliefs about guilt of the accused.
- Jurors then deliberated as a jury for up to one hour in an attempt to reach a unanimous verdict. After deliberation, jurors completed a questionnaire which asked again about their beliefs about guilt of the accused. Jurors also completed a questionnaire about their attitudes toward rape victims in general.

Key Findings

Post-trial and pre-jury deliberation

- Immediately following the trial but before jury deliberation, mode of presentation of testimony (face-to-face, CCTV or pre-recorded videotape) did not impact differentially on juror perceptions of the complainant or the accused, or guilt of the accused. There was a diverse spread of juror views within all juries relating to credibility, empathy and guilt in all conditions. No consistent pattern was observed on any of the key measures to indicate that juror perceptions were being systematically affected by whether the complainant presented her testimony face-to-face, by CCTV or by pre-recorded videotape.
- The degree to which the complainant was upset while giving her testimony (emotional) or calm (neutral) was not found to impact in any consistent pattern on juror perceptions or decisions, despite the fact that jurors rated the complainant's experience at court as being significantly more stressful for her when her testimony was emotional rather than neutral.
- Positive attitudes toward the complainant were reflected in positive and strong correlations between victim credibility, empathy with the victim, overall impression of the complainant and general attitudes toward rape victims. Positive attitudes toward the complainant were also associated with a stronger belief about guilt of the accused and low empathy with the accused.
- Positive attitudes toward the accused were correlated with a higher belief in his innocence, less favourable attitudes toward rape victims in general and a stronger belief that the complainant had contributed to the incident through providing encouragement.
- On average, females perceived the accused to be significantly more guilty and viewed the complainant as significantly more credible than males did.

Factors associated with pre-jury deliberation personal belief about guilt

- Personal beliefs about guilt prior to jury deliberation were found to be significantly related to:
 - higher levels of education;
 - personal knowledge of sexual assault victims;
 - more positive attitudes toward rape victims in general;

- higher perceptions of victim credibility; and
- low empathy with the accused.
- Positive attitudes toward rape victims in general were found to be significantly associated with:
 - being female;
 - having a higher income; and
 - holding a more liberal (less conservative) political persuasion.

Jury verdicts

- Out of 18 juries there were two unanimous not guilty verdicts and 16 hung juries. The majority of hung juries leaned toward a not guilty verdict – only two juries were leaning toward a guilty verdict.
- Seventy-four per cent of all jurors favoured a not guilty verdict compared with 26 per cent of jurors who favoured a guilty verdict. Verdict preference was not associated with mode of presentation, age or sex of jurors.
- Jurors who preferred a guilty verdict were more likely than those who preferred a not guilty verdict to:
 - hold favourable attitudes toward rape victims in general;
 - believe the complainant to be highly credible;
 - empathise more with the complainant;
 - empathise less with the accused;
 - personally believe that the accused was guilty both prior to and after jury deliberation; and
 - be more likely to be in a jury where there were other jurors favouring a guilty verdict.
- Of jurors who preferred a not guilty verdict, half personally believed the accused was probably guilty and half personally believed the accused was probably innocent. Those who thought the accused was probably guilty but favoured a not guilty verdict did so because they did not believe that the prosecution had proved the case beyond reasonable doubt.

Post-jury deliberation

- There was a slight shift overall toward a greater personal belief in the guilt of the accused after jury deliberation compared with before jury deliberation.
- The shift toward greater guilt, however, did not translate into a belief that the prosecution had proved the case beyond reasonable doubt. Rather, some jurors became more convinced that the accused was guilty but remained unable to convict him on the basis of the evidence presented.
- A shift in personal belief about guilt was also affected by the direction in which the jury was leaning and initial belief about guilt. On average, jurors who initially believed the accused was probably innocent shifted to a stronger belief in his innocence when the jury was leaning toward not guilty, and more toward a belief in guilt when the jury was leaning toward guilty. Jurors who initially believed the accused was guilty and favoured a guilty verdict shifted more toward guilt regardless of the direction in which the jury was leaning.

Insights obtained from juror comments and feedback

- One of the key insights obtained during this study was the high degree to which many jurors believed many of the “myths” which surround rape in general. Acceptance of these myths mean that many jurors have strong expectations about how a “real” victim would behave before, during and after an alleged sexual assault. These expectations impact on their perceptions of the complainant’s credibility.
- A key issue which recurred when juries were asked about the difficulties in trying to reach a unanimous verdict was how to define reasonable doubt. What is reasonable doubt and how do they know if they have it or not? Most jurors acknowledged that they had some degree of doubt about at least some element of the trial but had difficulty identifying whether their doubt was sufficient to be “reasonable” or not.
- Despite the definition of consent provided by the judge, many jurors had difficulty understanding what was meant by “consent”. What is the point at which consent is given? What defines whether consent has not been given? At what point does “yes” become “no” and to what degree should the accused reasonably be able or expected to distinguish between them?

Caveats

- While the mode of testimony (face-to-face, CCTV or pre-recorded video evidence) was not found in this study to impact meaningfully on jury outcomes it is important to note that a 42 inch plasma TV screen was used in the CCTV and video conditions

in this study. This meant that the image of the complainant was large, clearly visible and clearly audible to jurors who were seated about six metres from the screen. It would be inappropriate, inaccurate and inadvisable to assume that the same findings from this study would generalise to court situations where the audio/visual technology was different or of a lesser standard.

Possible directions for future research

- A second study, similar in design to this one but with additional amendments (for example, where the accused gives evidence or where the jury has a longer time to deliberate) would help to corroborate the findings in this study and provide a stronger foundation and evidence base for initiating changes to how complainants could give evidence.
- Identifying the pre-existing attitudes, biases and expectations which jurors bring into the courtroom and the types of myths surrounding sexual assault that some jurors adhere to would also greatly assist in understanding what types of attitudes lead to what types of outcomes in sexual assault trials. This would also allow avenues for changing beliefs based on myths and incorrect stereotypes through targeted education and awareness campaigns.

1 Introduction

1.1 Background

In January 2005 the Australian Institute of Criminology was commissioned by the New South Wales Attorney General's Department to conduct research investigating whether adult sexual assault complainant testimony delivered via pre-recorded videotape or closed circuit television (CCTV) impacts on jury deliberations and perceptions differently from when such evidence is presented face-to-face in the courtroom.

1.2 Why the need for this research?

Giving evidence in court for sexual assault victims can be a traumatic, stressful and intimidating experience. The need for victims to confront the person alleged to have assaulted them, the difficulties of talking about the circumstances surrounding the assault and the embarrassment of being questioned in public about sexual matters can make committals and trials highly traumatic experiences for victims. In the event that a mistrial occurs or the matter is referred for a further hearing at appeal, the trauma is exacerbated because the complainant is required to go through the entire process again. Such a prospect may not only discourage sexual assault victims from being willing to give testimony, but may also discourage victims from reporting the sexual assault to police in the first place.

Sexual assault is heavily under-reported to police and, of those cases which proceed to court, the conviction rates for sexual assault are lower than for most other types of crime (Lievore 2004). Low conviction rates reflect the difficulties which confront Crown prosecutors when trying to prosecute sexual assault cases – such offences are usually committed in private, there is often little or no corroborating evidence and it is usually one person's word against another's (ODPP & AFP 2005). Of adjudicated defendants (where a decision was made and finalised by the court) in the New South Wales higher courts, 36 per cent of defendants charged with sexual assault and related offences were acquitted in 2001-02 and 30 per cent were acquitted in 2002-03 (see Table 1.1). If one excludes the numbers of adjudicated defendants who pleaded guilty, this indicates that 60 per cent of adjudicated defendants (where there was an outcome by the court) who pleaded not guilty were acquitted in New South Wales higher courts in 2002-03¹. Trials involving sexual assault are also more likely to be aborted than other types of criminal trial² in the NSW District Courts (Baker, Allen & Weatherburn 2002).

¹ This does not include hung trials where no verdict was reached as hung trials are not adjudicated. Hung juries have been previously identified as occurring in about 9 per cent of sexual assault trials in New South Wales (Salmelainen et al 1997).

² Excluding fraud, property and violent offences.

Table 1.1: Proportions of adjudicated defendants in the NSW Higher Courts acquitted, by offence type

| | 2001-02 | | 2002-03 | |
|-------------------------------------|---------|----|---------|----|
| | No. | % | No. | % |
| Sexual assault and related offences | 133 | 36 | 105 | 30 |
| Homicide | 52 | 27 | 28 | 19 |
| Acts intended to cause injury | 49 | 11 | 32 | 7 |
| Robbery and extortion | 62 | 8 | 33 | 5 |

Source: ABS 2003; 2004

Obtaining a conviction for sexual assault is therefore a difficult task at the best of times. If victims are unwilling or unable to testify at trials because of the enormous trauma associated with giving testimony, this will only exacerbate the problem because a case is considerably less likely to be prosecuted without a complainant who is willing to testify (Lievore 2005). Being able to give testimony outside the courtroom (via closed circuit television) or elsewhere at an earlier time (pre-recorded videotape) provides the possibility of reducing the trauma associated with giving evidence in court and may encourage more victims to report the incident to police and give evidence at trial.

This issue has received considerable media attention in recent months in several Australian jurisdictions. Examples of adult sexual assault trials in which victims felt unable to give evidence in front of the accused, or where retrials and appeals have resulted in victims being physically and emotionally unable to go through additional trials and give evidence for a second, third or fourth time have led to public and parliamentary debate about the need for reform in sexual assault testimony. Partly in response to one such case where a victim was unable to go through the trauma of giving evidence in a retrial, the New South Wales Parliament passed legislation in May 2005³ to allow a record of a complainant's evidence from an original trial to be admissible at a re-trial which has been ordered following a successful appeal against conviction (see s 306A-G *Criminal Procedure Act 1986* [NSW]).

There are potential benefits which may accrue to sexual assault victims if they were able to give their testimony via CCTV (where the victim is in another room and presenting evidence to the court through a live televised link-up) or through pre-recorded videotape (where testimony has been given at an earlier time and videotaped). These options are generally available to child victims in one form or another in many countries including Australia and have gained some degree of acceptance as an appropriate means of obtaining evidence from children. While the argument for extending the use of these alternative procedures to adult sexual assault victims has been made in several quarters, there are other considerations which must be taken into account when debating the merits of sexual assault reform with

³ Criminal Procedure Amendment (Evidence) Act 2005 No 15, assented to 12 May 2005.

adult victims. Primarily these considerations relate to how such changes might impact on the justice process through:

- changing how juries perceive the complainant and his/her testimony; and
- changing how juries perceive the accused and his/her guilt.

The aim of this research project is to investigate these considerations in relation to adult sexual assault complainants.

Jury perceptions of the complainant

While it makes intuitive sense that allowing a sexual assault victim to give evidence outside the courtroom (via CCTV or pre-recorded videotape) is likely to reduce stress and emotional trauma for the victim and encourage him/her to be more willing to give evidence than if s/he had to give evidence in open court, it is unknown whether such testimony will result in the same jury outcome compared with if the testimony were given in open court. Given that:

- (a) the onus is upon the Crown to prove the guilt of the accused; the accused does not have to prove his innocence;
- (b) the prosecution must prove its case beyond reasonable doubt in order to achieve a guilty verdict;
- (c) the accused can choose not to give evidence and therefore choose not to be cross-examined; and
- (d) it is often the word of one person against the other in sexual assault cases

the testimony of the complainant is crucial in sexual assault trials. In particular, the jury needs to be convinced that the testimony is credible and reliable. The importance of complainant credibility in a successful prosecution is well understood by prosecutors (Lievore 2004). If giving testimony via CCTV or pre-recorded video lessens the impact of complainant testimony or reduces the ability of the jury to sympathise with him/her due to increased social distance between jurors and the complainant, then there will clearly be disadvantages for the complainant and the prosecution if testimony is given outside the courtroom. Further, if giving testimony outside the courtroom reduces the emotional trauma on victims (one of the stated advantages to encourage a victim to give testimony) then this is likely to be reflected in less emotional testimony. Many prosecutors believe that the emotion expressed in open court is important in influencing juries to believe the complainant and increasing the likelihood of a conviction. Whether, and how, variations in adult sexual assault victim testimony affect jury perceptions remains to be investigated.

Jury perceptions of the accused

Face-to-face confrontation between an accused person and his/her accuser has traditionally been regarded as an important component in the justice system, as such confrontation is believed to encourage honesty as well as aid the jury to reach the truth (Orcutt et al. 2001). In Australia, an accused person is deemed innocent until proven guilty, hence the right of the accused to face the accuser in open court. When a complainant is allowed to give evidence outside of the courtroom (for example, using CCTV) this right is somewhat diminished. Defence lawyers appear divided in opinion as to the degree to which such procedures may impact detrimentally on defendants. Some have argued that the complainant receives an unfair advantage over the accused (see Cashmore & De Haas 1992), particularly in relation to the potential implication of guilt resulting from the perception that the complainant has concerns about being in the same room as the accused and needs to be protected from him/her (NSW Parliament Standing Committee on Law and Justice 2002). Other defence lawyers are more positive about the use of CCTV procedures, with some believing that increased social distance between the jury and the complainant benefits the accused (Eastwood & Patton 2002). Despite the fact that the judge in these situations explains to the jury that a complainant giving evidence outside the courtroom must not be taken to imply guilt on the part of the accused, it is unclear to what degree the removal of the victim from the open court may imply guilt in the minds of jurors. Similarly, it is unclear to what degree the removal of the complainant from the courtroom increases the social distance between jurors and the complainant and hence benefits the accused.

These considerations are not only important from the point of view of ensuring that justice for complainants and defendants is not adversely affected, but they also have implications for the probability of success in prosecutions of sexual assault cases. This latter point is important because both prospects of conviction (Lievore 2005) and perceived victim credibility (Lievore 2004) weigh heavily in judgements on whether to proceed with prosecution.

2 Use of CCTV and pre-recorded video in evidence

Modifications to standard open courtroom procedures were first suggested as a means of reducing the trauma experienced by children in court appearances. It was believed that this would protect child witnesses from further injury and increase the quality of their testimony. The idea of using a live link originated in the United States with David Libai's "child-courtroom". This involved having the child testify in a relaxed environment where the accused is not in sight but is able to hear the child's testimony and where the child can communicate with the defence counsel via appropriate electronic methods (Spencer & Flin 1990). The building of a room as suggested by Libai was considered too expensive and impractical given the inability to use such rooms for any other purpose, but the general principle behind it (minimising trauma to child witnesses) was adopted and numerous states in the US developed other methods of achieving this. Legal provisions for the use of closed circuit television were introduced in the US in 1983 (Spencer & Flin 1990). The "child courtroom" concept was adopted in one form or another in various countries, including Canada (Wilson 1990), England (Davies & Noon 1991; Spencer & Flin 1990), New Zealand (Davies & Seymour 1997), and Australia (Eastwood & Patton 2002; Warner 1990).

The use of videotaped testimony in courtrooms soon followed as it reduced the stress and trauma experienced by the child witness even further by curtailing the number of interviews a child had to go through and the time spent in court (Spencer & Flin 1990; Wilson 1990; Davies & Seymour 1997; Warner 1990; Australian Law Reform Commission 1996). In 1992, England and Wales began to allow videotaped evidence of child sexual assault victims taken from interviews with police and social workers to be used as evidence in chief. An evaluation of the first two years with the new system suggested no impact on conviction rates compared with the previous system (Davies 1999). While such alternatives have gained acceptance in many countries in relation to evidence given by children, the use of CCTV and pre-recorded video evidence by adults is currently sparse and in many cases yet to be pursued.

2.1 Current legislative provisions across Australia relating to the use of CCTV and video

All Australian jurisdictions currently have in place alternative provisions for vulnerable witnesses to give evidence in sexual assault cases. Primarily these provisions tend to apply to child witnesses, although legislative provisions usually exist for anyone defined as "vulnerable". Table 2.1 provides an overview of the legislative provisions in each Australian jurisdiction relating to alternative witness testimony arrangements. In all jurisdictions there is generally some provision for the use of CCTV by vulnerable witnesses. Only the degree to which it is readily accessible varies. For example, In New South Wales, Victoria and the Northern Territory complainants in sexual offence proceedings are entitled to testify via CCTV unless the court orders otherwise. In the Australian Capital Territory (the only jurisdiction in which this applies) it is mandatory for all sexual assault complainants to give evidence via CCTV. If a complainant wishes to give evidence in open court an application must be made

to and be approved by the judge beforehand. In all other jurisdictions the court or a party to the proceedings may make an order or request for the complainant to testify via CCTV where the complainant fulfils certain “special witness” criteria.

Although there are various provisions relating to the in-principle use of pre-recorded video evidence in court, this is generally (where used at all) limited to children and their initial evidence given to police. The child is usually required to be in court for purposes of cross-examination, although this may be in another room. The use of pre-recorded video evidence which includes evidence-in-chief and/or cross examination from, for example, an earlier trial and with adult complainants is not common practice in any Australian jurisdiction.

Table 2.1: Legislative provisions relating to alternative arrangements for adult complainants of sexual assault to give evidence

| State/ Terr. | Statutory provision for alternative arrangements? | Statutory provision for pre-trial recording of evidence-in-chief? | Statutory provision for recording the whole of evidence? | Statutory provision for evidence by CCTV? | Statutory provisions for the use of barriers/ screens? |
|-----------------|--|--|--|--|--|
| NSW | Yes <i>Criminal Procedure Act</i> 1986 s294B | No | No specific legislation exists but application may be made to judge who decides on a case-by-case basis (<i>Court Security Act</i> 2005) | Yes s294B | Yes s294B |
| Vic | Yes <i>Evidence Act 1958</i> s37C | Yes (only adults with impa- s37B ried mental functioning) | No | Yes s37C | Yes s37C |
| Qld | Yes <i>Evidence Act 1977</i> s21A | Yes s21A | Yes s21A | Yes s21A | Yes s21A |
| WA | Yes <i>Evidence Act 1906</i> s106R | Yes s106R | Yes s106RA | Yes s106R | Yes s106R |
| SA | Yes <i>Evidence Act 1929</i> s13 | No | No | Yes s13 | Yes s13 |
| Tas | Yes <i>Evidence (Children and Special Witnesses) Act</i> 2007 s8 | No | No | Yes s8 | No |
| NT | Yes <i>Evidence Act</i> s21A | Yes s21B – only a child or person who suffers from an intellectual disability | Yes s21B – only a child or person who suffers from an intellectual disability | Yes s21A | Yes s21A |
| ACT | Yes <i>Evidence (Miscellaneous Provisions) Act 1991</i> s43 | No | No | Yes s43 – mandatory for sexual assault complainants | No |

3 Prior research on the manner in which testimony is presented in the courtroom

Despite an accumulating body of research investigating the impact of CCTV and/or video on perceptions of jurors compared with face-to-face testimony (primarily conducted overseas), no research has been conducted into how jurors sitting in a courtroom watching an actual adult sexual assault trial might be affected by the format in which the same testimony is given. That is, no research has compared the impact of face-to-face open courtroom adult sexual assault testimony with CCTV or pre-recorded video on juror perceptions of victim credibility, empathy, perceptions of guilt and verdicts. Prior research has focused on individual elements of the testimony process only. For example, one line of research has focused on comparing one mode of testimony with another (e.g. open court versus CCTV) but usually with child victims and not in a courtroom. In some cases the open court testimony is presented on a video so that comparisons between format of testimony are all shown to respondents on video. The aim of that research is to determine how the mode of communication impacts on participants differently.

However, differences between studies in content (child victims versus adult victims, sexual assault versus other), context (live presentation versus video presentation), respondents (usually university students), location (not a courtroom) and analysis mean that the results are not uniform and not easily comparable between studies. While some experimental studies have found mode of presentation to impact on perceptions – sometimes guilt, sometimes credibility – others have found no differences (see Table 3.1). Further, qualitative interviews with child victims, defence and prosecution counsel suggest that, anecdotally, there is not strong support for favouring face-to-face testimony over CCTV or video evidence (see Table 3.2). Davies (1999; 249) in a review of the impact of televised testimony concluded that “Studies based on laboratory research and simulated trials provides little support for those who fear miscarriages of justice as a result of the availability of CCTV ... Juries may show a preference for live witnesses but do not appear to allow that preference to influence their decision-making”.

Another line of research has investigated how emotionality of the testimony (emotional or neutral) impacts on participants, but this is usually where participants read a transcript. “Jurors” in these studies are almost without exception university students, and almost without exception are treated as individual jurors only so that individual data are obtained but jury verdicts (where jurors discuss and reach a unanimous verdict) are not. Again, findings on emotionality are not uniform (see Table 3.3).

Table 3.1: Empirical studies investigating the impact of different modes of presentation

| Author | Year | Country | Method | Sample | Type of crime | Mode of presentation | Findings |
|---|------|-----------|--------|--|---|------------------------------|--|
| Significant differences found between conditions | | | | | | | |
| Empirical research | | | | | | | |
| Orcutt HK et al. | 2001 | USA | Live | Citizens drawn from voter registration lists; local newspaper advertisements | No crime – child questioned about whether on a previous occasion a male “babysitter” had placed stickers on their clothes or on exposed parts of the body, e.g. arms, toes and bellybutton. | Open court vs. CCTV | Jurors were significantly more likely to convict at pre-deliberation in live vs. CCTV condition. Children testifying via CCTV were considered significantly “less accurate, believable, consistent, confident, able to testify, based on fact not fantasy, attractive and intelligent.” Mode of presentation did not have a significant impact on verdict post-deliberation and Jurors were not found to reach the truth better in open court vs CCTV. |
| Eaton TE, Ball PJ & O’Callaghan MG. | 2001 | Australia | Video | University students and citizens | Sexual assault – child | Open court vs. video vs CCTV | Witness seen as significantly more credible in video or open court testimony than in CCTV condition. Defendant guilt was deemed to be significantly more certain in open court condition than in video or CCTV. |
| Doherty-Sneddon G & McAuley S. | 2000 | UK | Video | University staff and students | No crime – children questioned about a particular sequence of events. | Open court vs. CCTV | No difference between conditions for total correct information, and overall CCTV use did not result in less efficient interviewing. Children were more resistant to leading questions in CCTV condition with significantly more incorrect information being given during face-to-face interviews. |

Table 3.1 continued

| Author | Year | Country | Method | Sample | Type of crime | Mode of presentation | Findings |
|--------------------------|------|---------|--------|--|---|--|---|
| Goodman GS et al. | 1998 | USA | Live | Citizens drawn from voter registration lists; local newspaper advertisements | No crime – child questioned about whether on a previous occasion a male “babysitter” had placed stickers on their clothes or on exposed parts of the body, e.g. arms, toes and bellybutton. | Open court vs CCTV | Children using CCTV were considered significantly less believable, attractive, intelligent and more likely to be lying than those in the live condition. Interestingly, child witnesses were in fact less suggestible and anxious via CCTV than in open court. CCTV did not directly bias jurors against the defendant, no more likely to be convicted than in live condition. |
| Doherty-Sneddon G et al. | 1997 | UK | Live | University students | No crime – involved completing “map tasks” in pairs to investigate efficiency of communication across conditions. | Face-to-face vs video-mediated communication | Video-mediated communication was not found to deliver the same benefits as face-to-face interactions, in fact the “visual signals that VMC provided did not facilitate listener understanding in the same way as visual signals in face-to-face interaction.” |
| Ross DF et al. | 1994 | USA | Video | University students | Sexual assault – child | Open court vs shield vs CCTV | When only the child’s testimony was shown, the defendant was significantly more likely to be convicted in the open court condition than in the shield or CCTV conditions. The largest difference in conviction rates was recorded between the CCTV (60.8%) and live (76.6%) conditions. The use of CCTV or shields had no effect on jurors’ perceptions of witness credibility. In the first experiment where evidence was given from both sides, the mode of presentation had no impact on conviction rates. |

Table 3.1 continued

| Author | Year | Country | Method | Sample | Type of crime | Mode of presentation | Findings |
|---|------|-----------|--------|---|---|--|---|
| Non-significant differences found between conditions | | | | | | | |
| Experimental research | | | | | | | |
| Kemp R et al. | 1996 | UK | Live | University students | Minor mugging incident | Open court vs. video vs. audio vs transcript | No significant effects of mode of presentation on jurors' ability to recall information. |
| Swim JK, Borgida E & McCoy K. | 1993 | USA | Video | University students | Sexual assault – child | Open court vs. video | More guilty verdicts when the child testified in court, although this was only significant during pre-deliberation. Lack of statistical significance between effects of the two conditions suggests that the medium is not prejudicial. |
| Westcott H, Davies G & Clifford B. | 1991 | UK | Live | Adult technical college students | No crime – children were interviewed about a previous event | Face-to-face vs CCTV | No significant differences in witness credibility were found when children were questioned about a specific event across the two conditions. However, interviewers did indicate that the best method of eliciting information from child witnesses was CCTV rather than face-to-face. |
| Miller GR et al. | 1976 | USA | Live | Actual jurors called for jury duty not serving on other jury panels | Civil litigation | Open court vs video | No evidence to indicate that videotaped trials have a negative impact on juror verdicts when compared with live trials. |
| Jonas A. | 1994 | Australia | Live | University staff and students | Sexual assault – child | CCTV vs open court | CCTV did not have a positive or negative effect on jurors' perceptions of defendant guilt or innocence. Modality of testimony was also not found to impact on witness credibility or jurors' ability to retain information. |

Table 3.2: Evaluations/surveys investigating the impact of different modes of presentation

| Author | Year | Country/ State | Method | Type of crime | Mode of presentation | Findings |
|---|------|---|--|---|---|---|
| Findings from post-trial surveys and evaluations | | | | | | |
| Hamlyn B et al. | 2004 | England and Wales | Qualitative interviews | Violent and sexual assault, theft offences and criminal damage – child and vulnerable witnesses | CCTV, screens, video-recorded evidence-in-chief, and video-recorded pre-trial, cross- and re-examination | Results from the survey revealed that witnesses using the special measures were more satisfied with their court experience than those not using the measures and were less likely to feel anxious or distressed and to believe they had been able to give evidence accurately. |
| Eastwood C & Patton W. | 2002 | Western Australia, New South Wales and Queensland | Qualitative interviews | Sexual assault – child | CCTV and video | Defence lawyers in one of the three jurisdictions surveyed believed that use of CCTV had no effect on conviction rates and were not opposed to its use. Complainants were more satisfied with the process and their treatment when alternative measures were made available. |
| Wilson JC & Davies GM. | 1999 | England and Wales | Observation & questionnaires | Murder and sexual assault – child | CCTV and video evidence-in-chief | No significant differences were found for witness credibility across the two types of trials, nor was there a significant difference between verdicts for CCTV and video trials. However, children on videotape were rated as significantly less anxious than those using CCTV. |
| O'Grady C. | 1996 | Western Australia | Observation & interviews, written comment and mail surveys | Sexual assault – child | CCTV and screens | CCTV was well accepted by child witnesses who reported being less stressed. Most lawyers expressed either positive or mixed opinions, with very few holding strongly negative views regarding CCTV and most jurors did not believe that the use of CCTV or screens made it more difficult to reach a verdict. |
| Murray K. | 1995 | Scotland | Individual interviews, psychometric measures and observation | Sexual and physical assault – child | CCTV and open court | Evidence given via CCTV was significantly less detailed and complete and witnesses were less audible, less fluent, less effective and less credible. The lawyers surveyed in the evaluation were unanimous in believing it was better to have the child in the court room making it easier for the jury to observe the reactions and responses of the witness. Despite these findings, no significant differences between open court and CCTV trials on rates of conviction were found. |

Table 3.2 continued

| Author | Year | Country/ State | Method | Type of crime | Mode of presentation | Findings |
|-------------------------|-------------|------------------------------|--|--|---------------------------------|--|
| Cashmore J & De Haas N. | 1992 | Australian Capital Territory | Observation & qualitative interviews | Sexual assault and care and protection matters – child | CCTV and open court | Law officers, police officers and social workers expressed positive opinions regarding the use of CCTV. In comparing CCTV and open court, children using CCTV were rated as less anxious, magistrates were found to intervene more often during CCTV questioning and prosecution lawyers were significantly more supportive during CCTV questioning. |
| Davies G & Noon E. | 1991 | England and Wales | Data collected by observation & questionnaires | Physical and sexual assault – child | CCTV | Law officers (judges, barristers, court clerks) generally held very favourable opinions of the impact of CCTV on the English court system and considered it advantageous in reducing stress and anxiety in child witnesses. Loss of impact on the jury was most often cited as a perceived problem in using CCTV. |

Table 3.3: Studies investigating the impact of emotionality of testimony

| Authors | Method | No. jurors | Juror gender | How recruited | Mode of presentation | Emotional conditions | Jury deliberation | Tested for juror perceptions of guilt | Key findings on guilt |
|---------------------|---|------------|-----------------------|---------------------|------------------------------------|---|-------------------|---|--|
| Salekin et al. 1995 | Read transcript then watched witness testimony on video – murder case | 175 | 63 males; 112 females | University students | Open court – defendant emotion | Flat affect (no emotion) vs moderate affect (some emotion where appropriate) vs high affect (excessive emotion) | No | Yes | Female defendant more guilty when she displayed extreme affect (flat or high – no emotion/calm or excessive crying and emotional response to unrelated matters); and less guilty when she displayed moderate affect. |
| Kaufman et al. 2003 | Video; transcript | 169 | 48% male; 52% female | University students | Video/transcript – witness emotion | Congruent (expected emotion-crying etc) vs neutral (no emotion) vs incongruent (pleasant, positive) | No | Yes, but were more concerned with witness credibility | In comparing video with transcript, credibility was reduced when witness displayed neutral or incongruent emotions in video condition. |
| Golding et al. 2003 | Transcript; drawings | 133 | 65 males; 68 females | University students | Open court – witness emotion | Calm vs teary vs hysterical | No | Yes | Too little or too much emotion displayed from alleged victim led to fewer guilty verdicts than in the moderate crying condition. |
| Regan & Baker 1998 | Transcript | 31 | 11 males; 20 females | University students | Open court – witness emotion | Crying vs calm | No | Yes | Jurors were more likely to find defendant guilty if they read about a child who cried when confronting the defendant rather than one who remained calm. |

Table 3.3 continued

| Authors | Method | No. jurors | Juror gender | How recruited | Mode of presentation | Emotional conditions | Jury deliberation | Tested for juror perceptions of guilt | Key findings on guilt |
|--------------|--|------------|---------------------------------|---------------------|--|-----------------------------|-------------------|--|--|
| Tsoudis 2002 | Transcript – two cases, shooting and assault | 143 | Lists as half male, half female | University students | Open court – witness and defendant emotion | Sad vs unconcerned (victim) | No | No (defendant guilty – gave sentence instead of voting on guilt) | Found a significant relationship between emotion display and empathy for both the criminal and the victim. Victim's emotional display significantly influenced empathy for criminal – when jurors perceived victim as sad, they had less empathy for the criminal. |

4 Overview of mock sexual assault video trials research project

4.1 Aim of study

The aim of this study was to investigate whether the mode of testimony (face-to-face, CCTV or video) and degree of emotionality of testimony (neutral or emotional) differentially affect jurors' perceptions of the complainant and the accused in adult sexual assault testimony, specifically:

- complainant credibility;
- empathy with the complainant;
- overall impression of the complainant;
- empathy with the accused;
- overall impression of the accused; and
- guilt of the accused.

When mode of testimony and emotionality are fully crossed, the design results in six conditions, as shown in Table 4.1.

4.2 Methodology

The methodology was experimental so that jurors were randomly allocated (within sex: half male and half female) to each of the juries and each of the six conditions. All jurors were exposed to the same information and as much extraneous variability as possible was controlled (kept constant) to try to ensure that the only variations between conditions were the mode and emotionality of testimony. Using an experimental design helps ensure that any differences between conditions can be attributed with some confidence to the variables being manipulated rather than extraneous variables.⁴ Appendix A provides a detailed overview of the methodology.

It was deemed very important that the jurors in this study should be as representative as possible of jurors who serve on actual juries, because this study is investigating questions about jury processes with the intention of being able to generalise the findings from the juries in this study to those which actually do preside in the criminal justice system. Juries are meant to be representative of the population at large and are therefore diverse in age, occupation, socioeconomic status, culture and background. To have this diversity within juries means that the variance within juries will, by definition, be high. High variance within juries means

⁴ An experimental approach is therefore superior to a field survey approach (where jurors are surveyed after different trials) because, in the latter, differences between perceptions of jurors and jury outcomes may be attributable to the mode of presentation OR other characteristics specific to the trial they saw but which differ from other trials. Differences found in an experimental design can be directly attributed to the mode of presentation.

that there will generally be a wide range of opinions, attitudes and perceptions which may be far more affected by what jurors bring with them into the courtroom than what they see in the courtroom. Some jurors may also have more in common with jurors in other juries than they do with jurors in their own jury (take, for example, differing pre-existing attitudes toward rape victims or cultural or religious differences). It is therefore important that any attempt to identify whether mode of presentation of testimony affects jurors is done in a way which reflects the diversity of jurors who sit on actual juries. Artificially reducing the diversity and making jurors in a study more homogeneous (for example, through using a subset of the population such as students) may result in a greater likelihood of finding a significant impact of mode of presentation in the study, but the generalisability of the findings to actual juries would be highly questionable because the diverse nature of the jury has been distorted.

To ensure that the jurors in this study were as representative as possible of jurors who generally serve on juries, members of the general public were recruited through advertising to participate as jurors. Payment of \$40 was provided to jurors, similar to the amount paid to jurors in New South Wales for half a day's attendance. The same jury exclusion criteria which apply in New South Wales were applied to jurors in this study with an additional criterion relating to personal experience of sexual assault (see Appendix B). This recruitment procedure resulted in the jury sample being diverse in sex, age, occupation and other demographics. A total of 210⁵ people participated as jurors in 18 mock trials.

Table 4.1 Overview of research design

| Victim emotionality | Mode of victim testimony | | |
|---|--------------------------|--------------------|--------------------|
| | Face-to-face | CCTV | Video |
| <i>Neutral (calm all the way through testimony)</i> | <i>Condition 1</i> | <i>Condition 2</i> | <i>Condition 3</i> |
| | Jury 1 = 11 | Jury 1 = 12 | Jury 1 = 12 |
| | Jury 2 = 11 | Jury 2 = 12 | Jury 2 = 12 |
| | Jury 3 = 11 | Jury 3 = 11 | Jury 3 = 12 |
| <i>Emotional (visibly upset and teary during testimony)</i> | <i>Condition 4</i> | <i>Condition 5</i> | <i>Condition 6</i> |
| | Jury 1 = 12 | Jury 1 = 12 | Jury 1 = 12 |
| | Jury 2 = 12 | Jury 2 = 12 | Jury 2 = 12 |
| | Jury 3 = 12 | Jury 3 = 12 | Jury 3 = 10 |

⁵ While 210 people participated as actual "jurors" and sat in the jury box, 240 people participated in the research in total (22 participated in pilot trials and an additional eight people attended the trials but sat in the audience section, see Appendix A).

4.3 Procedure

The mock trial was based on part of an actual transcript from a sexual assault case, adjusted to ensure that it covered representative issues in sexual assault cases and was sufficiently ambiguous in content to prevent a floor or ceiling effect in jury perceptions and decisions (i.e. it was not obvious that the accused was either guilty or innocent, allowing jurors to move in either direction and therefore allowing any potential effects of mode of presentation to occur). The scenario was limited to one and a quarter hours in duration which meant that only the complainant gave evidence in court. Professional actors were employed to play the roles of the complainant, the accused, the judge, the defence counsel, the Crown prosecutor and the court attendant. In all conditions, the accused was present in the courtroom but did not speak.

Overview of courtroom scenario

In July 2004 both the accused and the complainant worked for an accountancy firm; the accused as an accountant and the complainant as his clerk. They were both present at an end-of-financial year work party held by their employer on the evening of Friday 9 July 2004. The party was held at a function centre in Sydney. During the course of the evening, when both were affected by alcohol, there was some jocular conversation between them about sexual matters in the presence of other people. The complainant also danced with the accused several times during the course of the evening. At about 10.00 pm, as the complainant was leaving a toilet some distance from where the party was, she encountered the accused in a corridor. She called out to him, he stopped in the corridor, waited for her to catch him up, and they continued to walk down the corridor together (in the opposite direction from the party) into a seminar room. The complainant claimed that the accused had told her in the corridor that he wanted to show her something in the seminar room. She claimed that, once in the seminar room, the accused locked the door, tried to kiss her, and attempted unsuccessfully to persuade her to engage in an act of fellatio. According to the complainant, the accused then forced her to have sexual intercourse with him, despite her resistance and protests. During cross-examination it was established that she did not shout for help during the incident. It was made clear at the beginning of the trial that there was no dispute between the two parties that sexual intercourse occurred in the seminar room – the question was whether the complainant had consented or not. The accused had pleaded not guilty to the charge.

After the alleged incident, the complainant claimed that she went to a bathroom to clean herself up. She met another work colleague in the bathroom but said nothing to her about the alleged incident. The complainant then went back to the party for another hour before leaving and gave no indication to anyone about what had allegedly happened. When questioned, she claimed she did not want anyone to know about what had happened

because she felt embarrassed and ashamed. She continued to work with the accused for another two weeks. Two weeks after the party the complainant first reported the alleged assault to a work colleague who persuaded her to report it to the police that same day.

The issue at trial was not whether sexual intercourse between the accused and the complainant had occurred, but whether the complainant was a consenting party.

The mock trials were conducted at a mock court in the Law School at the University of Canberra. This courtroom is set up like a real courtroom and has state-of-the-art visual and technological capabilities. A CCTV link-up is available and the visual image of the complainant was presented on a 42-inch plasma television screen. The jury was seated approximately six metres from the screen and jurors were able to clearly see and hear the complainant on the screen.

Upon arrival at the designated meeting location, jurors were taken to a room where they were given preliminary information about the study, asked to sign a consent form and completed a demographics questionnaire which asked about:

- age;
- sex;
- employment status;
- highest level of education achieved;
- annual income;
- marital status;
- knowledge of sexual assault victims;
- political persuasion;
- degree to which jurors perceived themselves as religious; and
- whether they had ever been a juror.

They were then led to the mock courtroom where the court attendant (an actor) escorted them to the jury box. Jurors watched the mock trial which took about one and a quarter hours. After the trial had finished jurors were led out of the courtroom and into the jury deliberation room where they completed a pre-jury deliberation questionnaire about what they had seen (see Appendix C for specific questionnaire items). The questionnaire was aimed at investigating perceptions of jurors relating to:

-
- complainant credibility;
 - empathy with complainant;
 - overall impression of complainant;
 - empathy with accused;
 - overall impression of accused;
 - personal belief about guilt of accused; and
 - degree to which the prosecution had proved the case.

They were then left alone to deliberate as a jury and were given up to one hour to reach a verdict. Once a verdict had been reached (or the one hour was up in the case of hung juries) post-jury deliberation questionnaires were completed which asked about the jury process and individual verdict preferences. Jurors also completed a questionnaire relating to their personal perceptions of the guilt of the accused (same measure as earlier) and an attitudes toward rape victims scale questionnaire (see Appendix C). This was followed by a general discussion with the jury about what they had seen and their perceptions of the process they had been through. The entire procedure took about four hours per jury.

The AIC Research Ethics Committee approved the conduct of the project on 9 February 2005.

5 Findings

The findings are broken down into seven sections:

1. basic demographics and descriptive information;
2. overall factors affecting juror perceptions;
3. perceptions of jurors immediately following trial but before jury deliberation;
4. jury verdicts and jury processes;
5. perceptions of jurors following jury deliberation;
6. factors which influence judgements about guilt of the accused; and
7. juror comments and feedback.

The findings presented in this report relate only to the 210 people who comprised the actual “jurors” in the 18 mock trials in the study and do not include the results from the two pilot juries (see Appendix A).

For the purposes of analysis in this study the unit of measurement is each juror. The pre-jury deliberation measures were taken prior to interaction with other jurors and are regarded as independent measurements (cf. Orcutt et al. 2001). Independence in the pre-jury deliberation measures is further justified by the fact that jurors were randomly assigned to juries, and jurors within each jury had had no prior contact with or knowledge of other jurors.⁶

Post-jury deliberation data are, by definition, not independent (responses of jurors after deliberation are potentially influenced by the responses of other jurors within the same jury). A strict statistical approach would be to use the jury rather than individual jurors as the unit of analysis when analysing post-deliberation data. Given that there are only three juries per condition, however, it is not a practical option to make the jury the unit of analysis since this would yield low statistical power. Following more traditional research which uses individual data even when individuals are in groups (see Hoyle, Georgesen & Webster 2001), post-jury deliberation data were analysed at the level of individual jurors. To take account of the fact that different jury verdicts would have affected post-jury deliberations, post-jury deliberation data were analysed in a way which also investigated the direction in which the jury was leaning.

Where analyses were conducted between conditions (for example, to compare perceptions between the face-to-face, CCTV and video conditions) univariate analyses of variance were conducted. This type of analysis assesses whether the amount of variation in juror ratings

⁶ As there were three juries per condition, however, it was desirable to confirm that the three juries within each condition did not differ from each other at the pre-deliberation stage. Separate analyses of variance conducted within each condition on pre-jury deliberation perceptions of guilt revealed no significant differences between each of the three juries in five of the conditions on this measure. A significant difference was found in one specific condition where the complainant gave her testimony via pre-recorded videotape and her testimony was emotional, however this was due to the fact that one of the juries in this condition differed from the other two due to low variance within this jury on perceived guilt of the accused. This difference in variance in this one condition was assumed to be, and treated as, random.

between conditions is statistically greater than the amount of variation in juror ratings *within* conditions.

5.1 Demographic information

A range of demographic information was collected about the 210 jurors who participated in the study. Table 5.1 shows the overall breakdown of age, sex, level of education achieved, marital status, employment status and level of income. It shows that jurors reflected a wide spread of the community. The median age of jurors was 50 years, meaning that half of all jurors in the study were aged 50 years and less, while half were aged more than 50 years. The youngest juror was aged 18 years and the oldest juror was 75. The sample of jurors in this study was, on average, slightly older than the jury pool in Victoria (see Appendix A) in which 68 per cent of jurors were aged under 50. Almost half of all jurors were married and one in five jurors was employed full-time. Seventeen jurors had previously served on a jury and about one third knew of someone who had been subject to rape or attempted rape.

Table 5.1: Demographics of jurors

| | No. | Per cent |
|---|-----|----------|
| Age | | |
| 18-24 | 33 | 16 |
| 25-39 | 44 | 21 |
| 40-54 | 41 | 20 |
| 55-59 | 28 | 13 |
| 60 and over | 64 | 30 |
| Sex | | |
| Female | 108 | 51 |
| Male | 102 | 49 |
| Highest level of education | | |
| Primary school | 3 | 1 |
| Year 10 | 18 | 9 |
| Year 12 | 46 | 22 |
| TAFE or similar | 32 | 15 |
| University (completed undergraduate degree) | 63 | 30 |
| University (completed postgraduate degree) | 48 | 23 |
| Marital status | | |
| Single | 56 | 27 |
| Married | 101 | 48 |
| Defacto | 16 | 8 |
| Divorced | 27 | 13 |
| Widowed | 9 | 4 |

Table 5.1 continued

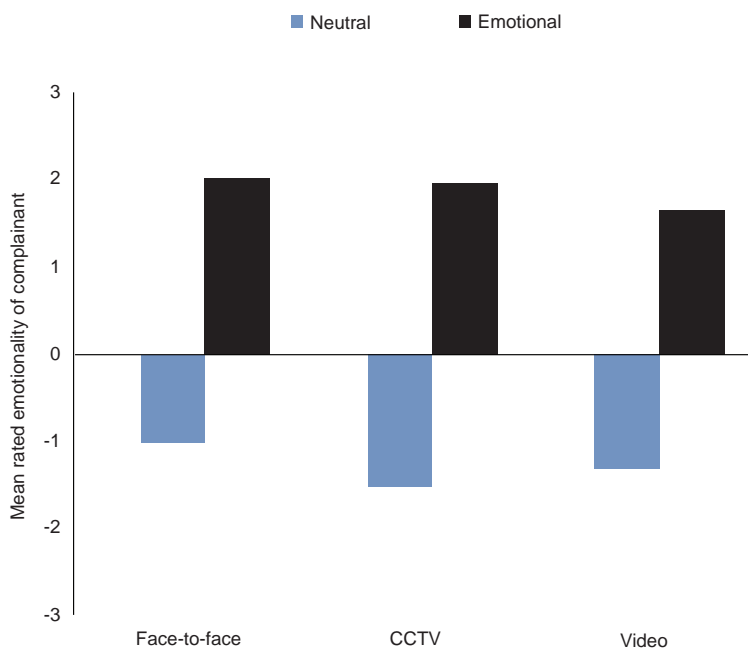
| | No. | Per cent |
|---|------------|-----------------|
| Employment status | | |
| Employed full-time | 46 | 22 |
| Employed part-time/casual | 36 | 17 |
| Full time student | 38 | 18 |
| Full time homemaker | 10 | 5 |
| Unemployed/pensioner | 12 | 6 |
| Retired | 68 | 32 |
| Annual income | | |
| Less than or equal to \$15,000 | 63 | 30 |
| \$15,001 to \$30,000 | 38 | 18 |
| \$30,001 to \$45,000 | 36 | 17 |
| \$45,001 to \$60,000 | 34 | 16 |
| \$60,001 to \$75,000 | 23 | 11 |
| Greater than \$75,000 | 15 | 8 |
| Ever served on a jury before? | | |
| Yes | 17 | 8 |
| No | 193 | 92 |
| Ever personally known of someone who had experienced rape or attempted rape? | | |
| Yes | 72 | 34 |
| No | 138 | 66 |
| Total | 210 | 100 |

Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file]

Establishing emotionality and mode of testimony

Figure 5.1 shows that jurors did perceive the testimony of the complainant to be significantly more emotional in the emotional conditions than the neutral conditions, and this pattern was consistent.

Figure 5.1: Mean ratings on emotionality of complainant testimony, by condition



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file]

Note: A univariate analysis of variance revealed that the complainant was perceived overall as more emotional in the emotional conditions than the neutral conditions, $F(1, 204) = 335.98, p < .01$. There were no significant differences between mode of presentation nor any significant interactions.

5.2 Overall factors influencing juror perceptions

Sex differences

Studies investigating sex differences in sexual assault cases have commonly found that female jurors are, on average, more likely than male jurors to believe the defendant guilty (Clark & Nightingale 1997; Fischer 1991, 1997; McNamara, Vattano & Viney 1993). Vrij and Fisher (1997) found that males attribute more responsibility to sexual assault victims than females, and as a result find the victim more blameworthy.

In an early study of sex effects on verdicts in a mock rape trial Fischer (1991) found that more females than males returned a guilty verdict in mock jury trials. The effect of these findings on a 12-person jury was investigated further in a second study (Fischer 1997) where it was hypothesised that as the number of females on a jury increased, so too would the number of guilty verdicts. This was proved to be the case only where the jury was made up entirely of females, or where females formed a large majority of jurors (i.e. 10 or more).

Partly to try to control for any potential sex differences in this study the design was such that juries were, where possible, comprised of equal numbers of males and females. This reduced the likelihood that differences in perceptions between juries may be due to sex differences, as the sex differences were randomly and evenly spread across juries and conditions. However, it is useful to see how perceptions differed overall between males and females on the primary dependent measures (Table 5.2).

On average:

- males were significantly more likely to perceive the complainant as less credible than females;
- males tended to hold less favourable attitudes toward rape victims in general than females – consistent with previous research on attitudes toward rape victims (e.g. Ward 1988); and
- although not significant by conventional standards, females also tended to perceive the accused as more guilty than males prior to jury deliberation – this difference became significant after jury deliberation (see Figure 5.2).

Table 5.2: Mean sex differences on primary dependent measures

| | Males | | Females | |
|---|--------|-------|---------|-------|
| | Mean | SD | Mean | SD |
| 1. Complainant credibility* | 0.53 | 1.46 | 0.91 | 1.29 |
| 2. Empathy with complainant | 3.94 | 1.22 | 3.98 | 1.34 |
| 3. Overall impression of complainant | 0.53 | 1.40 | 0.62 | 1.38 |
| 4. Empathy with accused | 3.07 | 1.32 | 2.87 | 1.17 |
| 5. Overall impression of accused | -0.24 | 1.00 | -0.15 | 0.78 |
| 6. Pre-deliberation belief about guilt of accused** | 0.33 | 1.83 | 0.75 | 1.60 |
| 7. Post-deliberation belief about guilt of accused* | 0.49 | 1.76 | 1.12 | 1.53 |
| 8. Attitudes toward rape victims scale* | -37.93 | 15.67 | -49.53 | 13.91 |

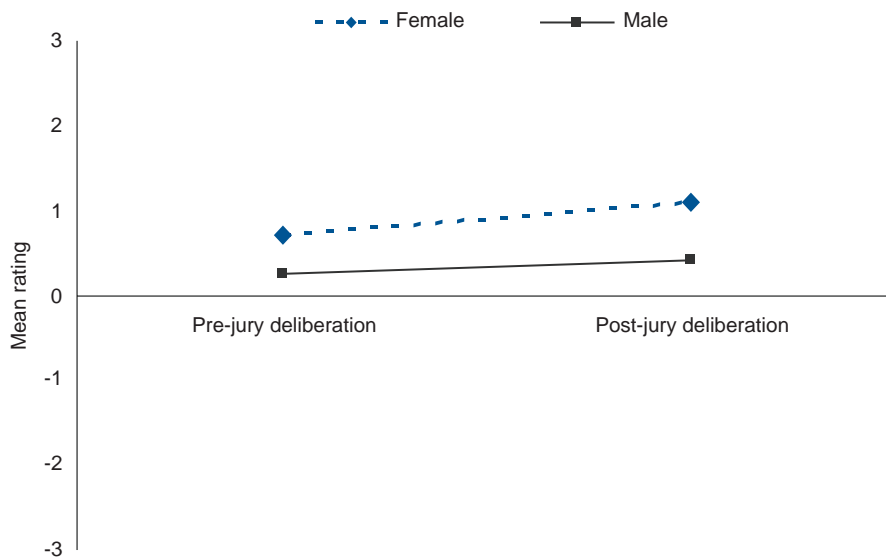
Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: Items 1, 3, 5, 6 and 7 were measured on -3 to +3 scales. Items 2 and 4 were measured on 1 to 7 scales. Higher scores on the Attitudes Toward Rape Victims Scale reflected more unfavourable attitudes toward rape victims.

* differences significant to $p < .05$

** differences significant to $p < .10$

Figure 5.2: Mean ratings on personal belief about guilt of accused prior to jury deliberation and after jury deliberation



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: Higher scores reflect greater personal beliefs of guilt.

Correlations between variables

Positive attitudes toward the complainant were reflected in positive and strong correlations between:

- victim credibility;
- empathy with the victim;
- overall impression of the complainant;
- positive attitudes toward rape victims in general;
- a stronger personal belief about guilt of the accused; and
- low empathy with the accused.

Positive attitudes toward the accused were reflected in positive correlations between:

- empathy with the accused;
- a lesser belief in his guilt; and
- a higher perception that the complainant had contributed to the incident.

Correlations between all variables are presented in Appendix D.

5.3 Perceptions of jurors immediately following trial but before jury deliberation

How did the form of testimony affect juror perceptions?

Table 5.3 gives the means and standard deviations (measure of variance) for the main dependent measures in the six testimony conditions. It shows that the mean scores for each dependent measure were similar across conditions and sat close to the mid-range of the scales. The amount of deviation around each mean, however, indicates that there was a high degree of variance, implying that the means do not reflect the range of scores within each condition. Examination of the frequencies of each measure within the six conditions revealed that scores ranged across the scales in all conditions. Hence, rather than most scores in each condition sitting around the middle of the scales, there were both low and high scores – the mean reflects the averaging of these which masks the variation within each condition.

Figures 5.3 to 5.12 show the mean ratings on each of the primary dependent measures, by condition. To determine whether the patterns of ratings were affected significantly by the mode in which testimony was presented (different and systematic patterns in ratings between conditions are what should occur if mode of testimony does impact on perceptions), separate univariate analyses of variance were conducted. This type of analysis assesses whether the amount of variation in ratings *between* conditions is greater than the amount of variation in ratings *within* conditions. Separate two (emotional or neutral testimony) by three (face-to-face, CCTV, videotape) by two (female or male) analyses of variance (ANOVAs) were conducted to determine whether any of the main dependent measures differed significantly between testimony conditions.⁷ It was found that, on average:

- the complainant was generally perceived as credible and credibility did not vary significantly between conditions. Females on average perceived the complainant to be significantly more credible than males;
- empathy with the complainant was moderate and this did not vary significantly between conditions;
- the complainant was perceived favourably and this did not vary significantly between conditions;

⁷ Analyses of covariance, controlling for attitudes toward rape in general, were also conducted to determine whether, statistically, differences between conditions may become apparent when attitudes toward rape victims in general were held constant between jurors. While this reduced the error variance and attitudes toward rape victims were significantly associated with the majority of the dependent variables, no additional significant effects were found as a function of mode of presentation or emotion.

-
- empathy with the accused was low and this did not vary significantly between conditions;
 - overall perceptions of the accused were neither favourable nor unfavourable and this did not vary significantly between conditions;
 - personal beliefs about guilt of the accused prior to jury deliberation tended toward guilty and these did not vary significantly between conditions;
 - females were marginally more likely than males to personally believe that the accused was guilty;
 - the complainant's experience at court was perceived to be significantly more stressful for her when her testimony was emotional than neutral;
 - the fairness of courtroom procedures for the complainant was rated as higher in the CCTV condition when her testimony was neutral rather than emotional. This difference did not exist in the other two conditions; and
 - although not significant by conventional standards ($p < .10$) there was a tendency for the courtroom procedures to be perceived as less fair to the accused in the video condition compared with the face-to-face condition.

In sum, the impacts of mode of testimony and emotionality of testimony on juror perceptions and beliefs about guilt prior to jury deliberation appeared to be negligible. The amount of variation in ratings between conditions was similar to the amount of variation in ratings within conditions.

Table 5.3: Means and standard deviations for primary dependent measures, by condition

| | Neutral | | | | | | Emotional | | | | | | | | |
|---|--------------|------|--|-------|------|--|--------------|------|--|-------|------|--|-------|------|--|
| | Face to face | | | CCTV | | | Face to face | | | CCTV | | | Video | | |
| | Mean | SD | | Mean | SD | | Mean | SD | | Mean | SD | | Mean | SD | |
| Complainant credibility ^a | 0.88 | 1.34 | | 0.48 | 1.43 | | 0.72 | 1.24 | | 0.95 | 1.44 | | 0.75 | 1.50 | |
| Empathy with complainant ^b | 4.15 | 1.13 | | 3.68 | 1.14 | | 4.26 | 1.29 | | 3.94 | 1.25 | | 3.88 | 1.47 | |
| Overall impression of complainant ^a | 0.82 | 1.36 | | 0.40 | 1.48 | | 0.72 | 1.32 | | 0.46 | 1.50 | | 0.62 | 1.44 | |
| Empathy with accused ^b | 2.76 | 1.28 | | 2.97 | 1.30 | | 2.96 | 1.02 | | 2.72 | 1.24 | | 3.05 | 1.40 | |
| Overall impression of accused ^a | -0.12 | 1.05 | | -0.17 | 1.10 | | -0.17 | 0.74 | | -0.39 | 0.96 | | -0.15 | 0.74 | |
| Personal belief about guilt of accused ^b | 0.84 | 1.72 | | 0.41 | 1.71 | | 0.40 | 1.74 | | 0.74 | 1.64 | | 0.52 | 1.85 | |
| Stress at court for complainant ^b | 4.22 | 1.54 | | 3.48 | 1.55 | | 5.36 | 1.10 | | 5.57 | 1.08 | | 5.49 | 1.02 | |
| Fairness of procedures for complainant ^a | 1.45 | 1.35 | | 2.51 | 0.61 | | 1.94 | 1.09 | | 1.71 | 1.34 | | 1.88 | 1.12 | |
| Fairness of procedures for accused ^a | 1.45 | 1.18 | | 1.74 | 1.62 | | 1.67 | 1.22 | | 1.24 | 1.37 | | 1.09 | 1.78 | |
| Complainant's contribution to incident ^a | -0.30 | 1.55 | | 0.44 | 1.30 | | 0.19 | 1.73 | | 0.33 | 1.60 | | -0.10 | 1.69 | |

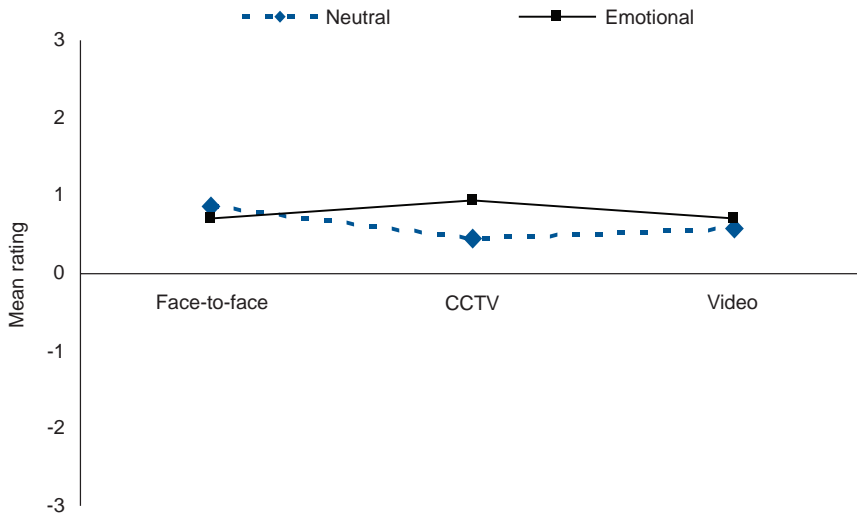
Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

^a Scores range from -3 to +3

^b Scores range from 1 to 7

Note: See Appendix C for scale items and reliabilities

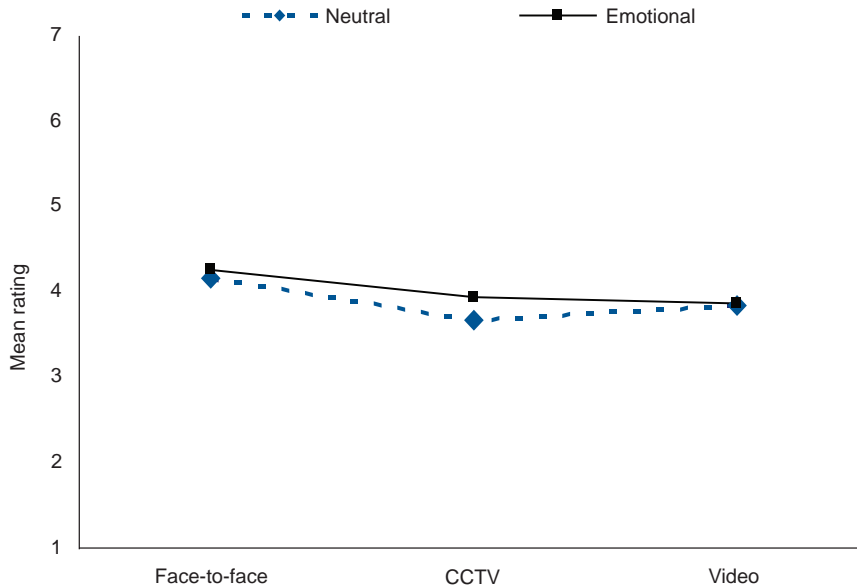
Figure 5.3: Mean ratings of complainant credibility, by condition



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: Females on average perceived the complainant to be significantly more credible than males, $p < .05$. There were no significant main effects of or interactions with mode of presentation or emotion.

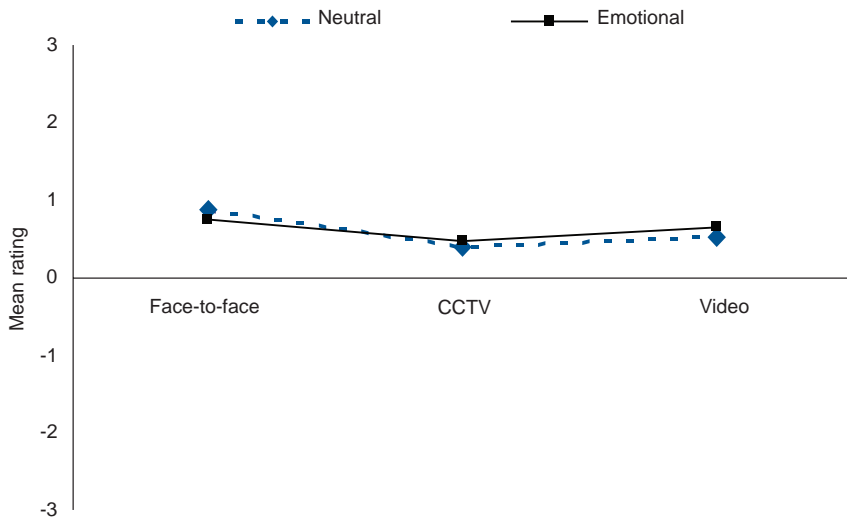
Figure 5.4: Mean ratings of empathy with complainant, by condition



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

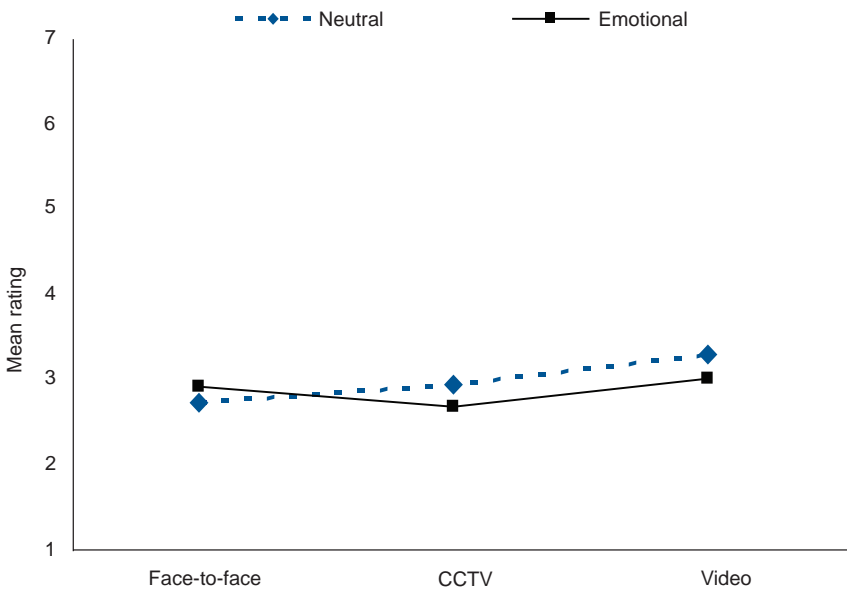
Note: There were no significant main effects of or interactions with mode of presentation or emotion.

Figure 5.5: Mean ratings for overall impression of complainant, by condition



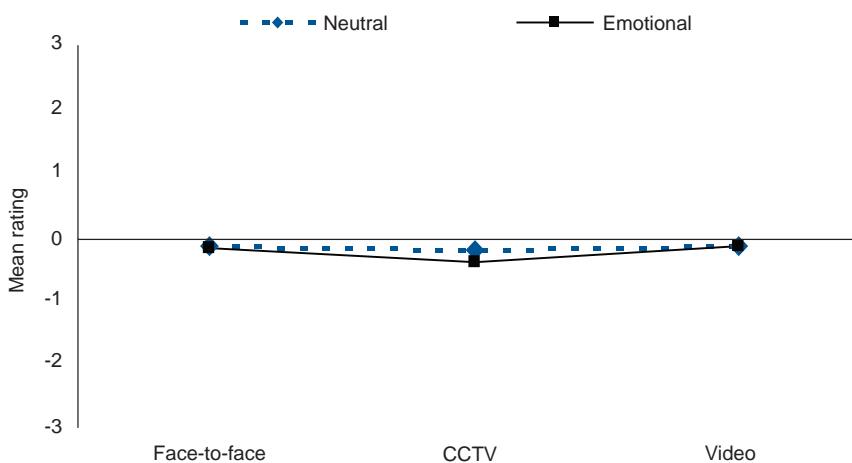
Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].
 Note: There were no significant main effects of or interactions with mode of presentation or emotion.

Figure 5.6: Mean ratings of empathy with accused, by condition



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].
 Note: There were no significant main effects of or interactions with mode of presentation or emotion.

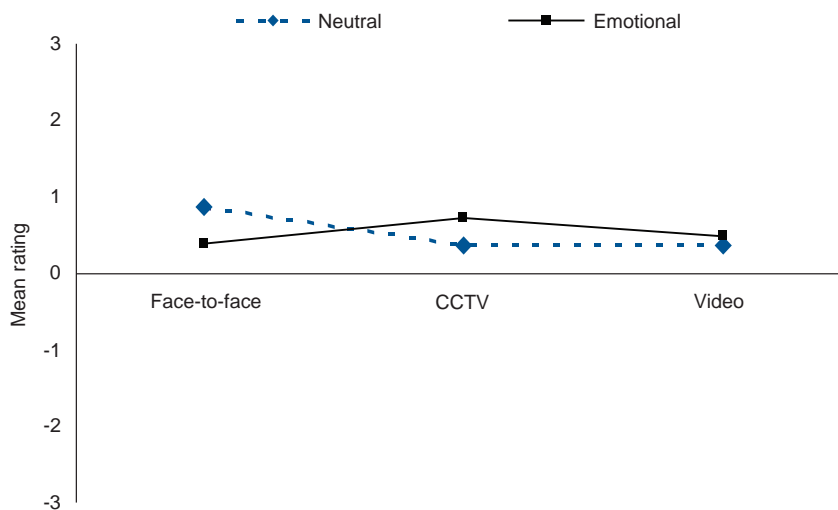
Figure 5.7: Mean ratings for overall impression of accused, by condition



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: There were no significant main effects of or interactions with mode of presentation or emotion.

Figure 5.8: Mean ratings for personal belief about guilt of accused,^a by condition

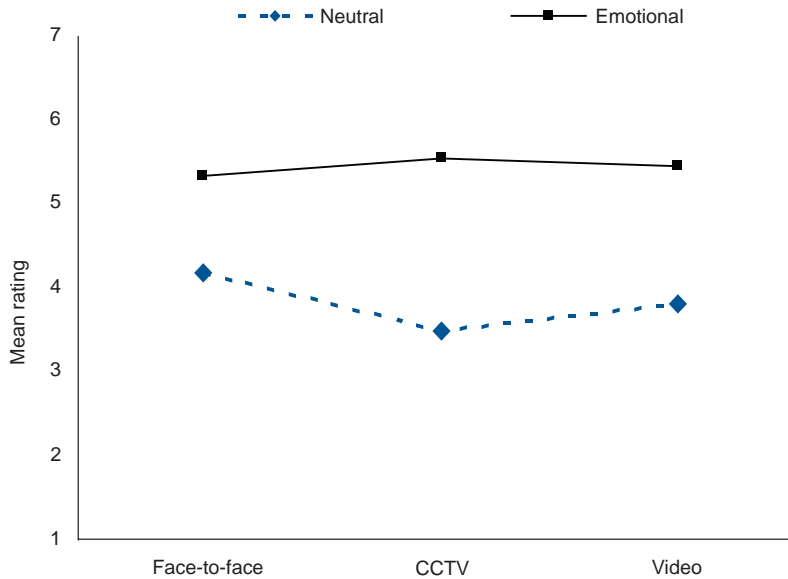


Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: Females were, on average, marginally more likely to personally believe the accused was guilty than males, $p < .10$. There were no significant main effects of or interactions with mode of presentation or emotion.

^a Refers to "personal belief about guilt of the accused" scale, refer Appendix C.

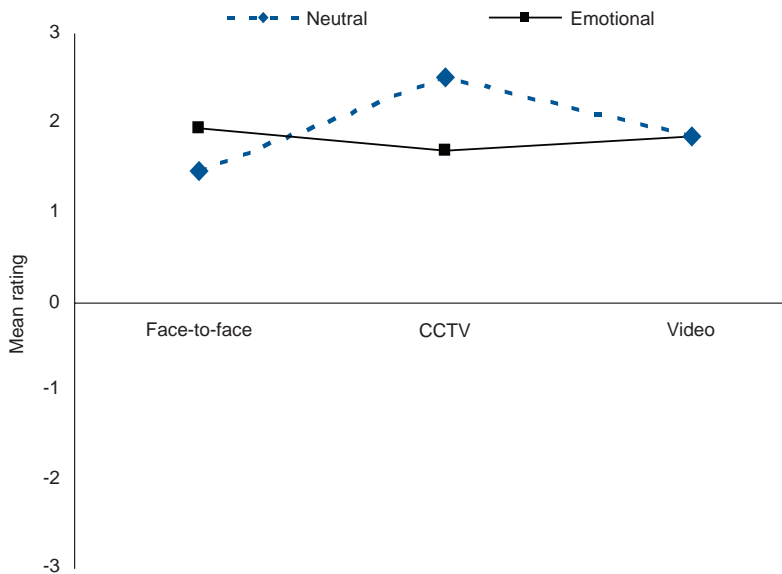
Figure 5.9: Mean ratings for perceived stress at court for complainant, by condition



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: A significant main effect was found for emotion $p < .01$, indicating that, on average, jurors perceived the complainant's experience at court to be more stressful when her testimony was emotional than neutral. The interaction between mode of presentation and emotion was not significant.

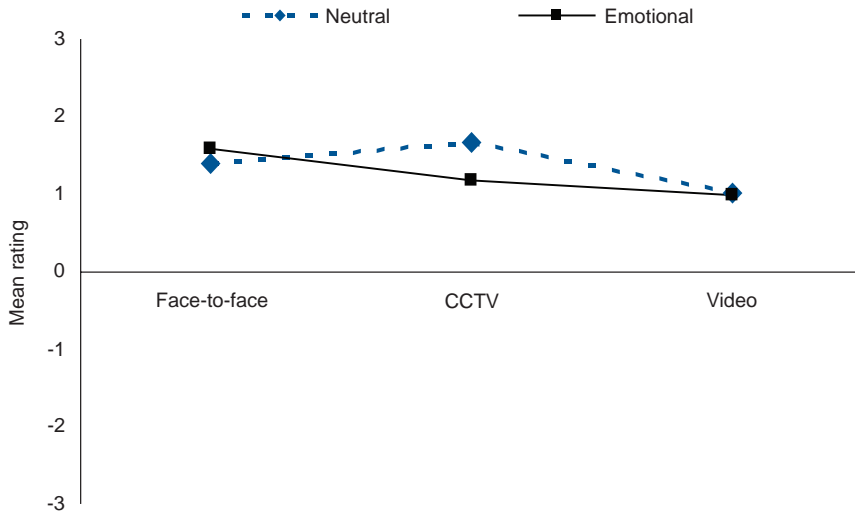
Figure 5.10: Mean ratings for fairness of courtroom procedures for complainant, by condition



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: A significant interaction was found between condition and emotion $p < .01$ such that greater fairness for the complainant was perceived in the CCTV condition when her testimony was neutral rather than emotional. This difference did not exist in the other two conditions. The main effect for mode of testimony was not significant.

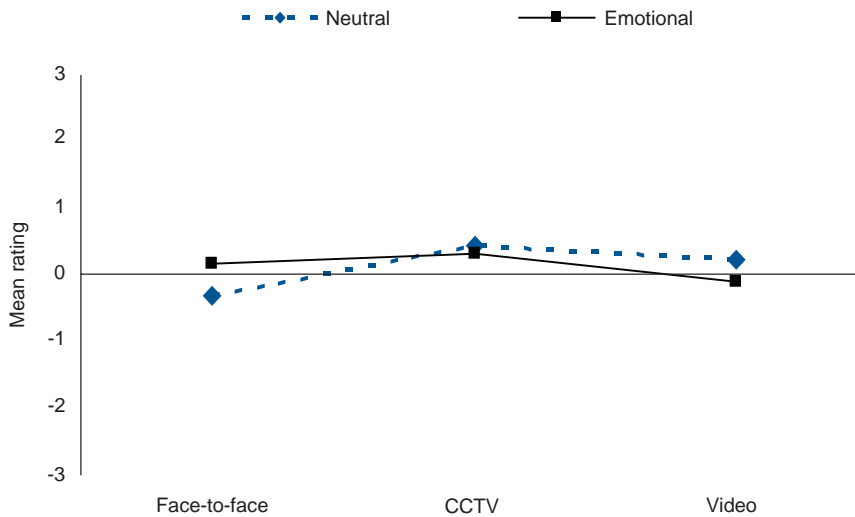
Figure 5.11: Mean ratings of fairness of courtroom procedures for accused, by condition



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: Although not significant by conventional standards there was a trend toward a main effect for mode of presentation, $p < .10$ such that courtroom procedures tended to be perceived as slightly less fair to the accused in the video than face-to-face conditions.

Figure 5.12: Mean ratings of complainant's contribution to incident, by condition



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: There were no significant main effects of or interactions with mode of presentation or emotion.

Personal beliefs about the guilt of the accused

Personal beliefs about the guilt or innocence of the accused (referred to in Figure 5.8) were measured with reference to four questionnaire items which were combined into a single scale (see Appendix C). The four items were:

1. In your opinion, what is the likelihood that the complainant was actually sexually assaulted by the accused?
2. To what degree do you believe the complainant did or did not consent to the sexual intercourse which occurred?
3. In your opinion what is the likelihood that the accused did sexually assault the complainant, knowing that she had not consented?
4. Based on what you saw and heard in the trial, to what degree do you personally believe that the accused is guilty of the charge against him?

This **personal belief about guilt of the accused** scale reflects jurors' personal beliefs about the guilt of the accused, with a higher score reflecting a higher personal belief in the guilt of the accused.

Personal beliefs about the guilt or innocence of the accused, however, may not necessarily translate into a belief that the accused should be found guilty since a guilty verdict would require the prosecution to have proved the case beyond reasonable doubt. For example, it is possible for a juror to hold a personal belief that the accused is probably guilty but believe that his guilt was not proved in court beyond a reasonable doubt. To investigate what jurors thought and why in relation to guilt, six statements were provided to jurors and they were asked to indicate which *one* of these statements came closest to reflecting their beliefs at that time. The six statements, combined into a **rationale for personal belief about guilt of the accused** scale, were:

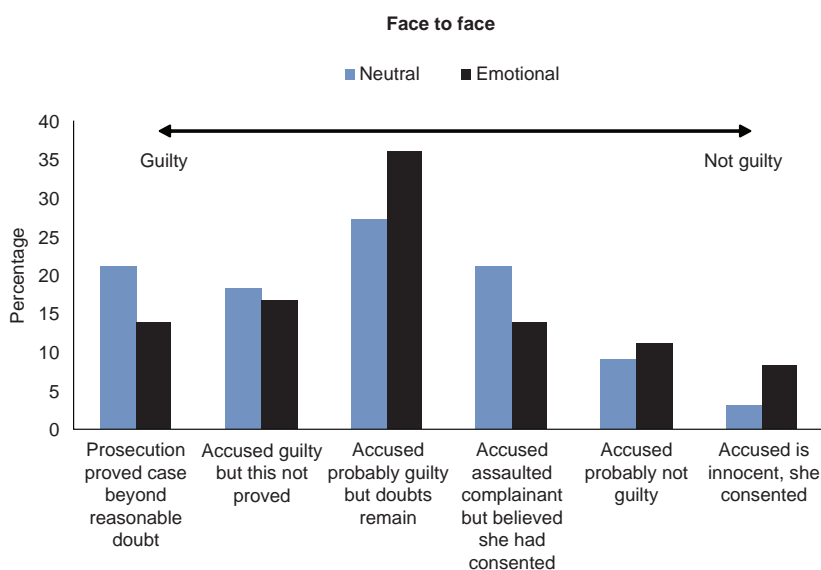
I believe that...

- a. the accused did have sexual intercourse with the complainant without her consent, knowing that she had not consented, and the prosecution proved this beyond reasonable doubt.
- b. the accused did have sexual intercourse with the complainant without her consent, knowing that she had not consented, but the prosecution did not prove this beyond reasonable doubt.
- c. the accused probably did have sexual intercourse with the complainant without her consent, knowing that she had not consented, but considerable doubts remain.

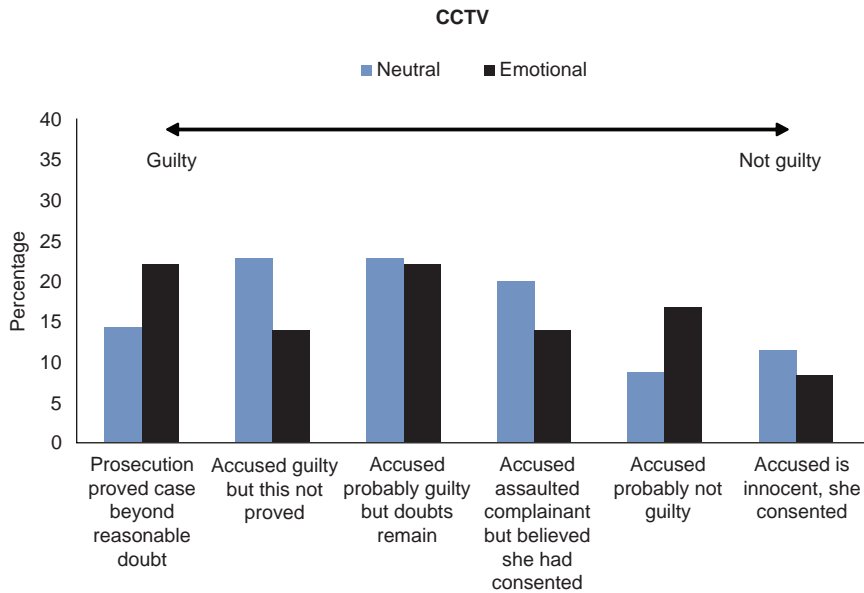
- d. the accused did have sexual intercourse with the complainant without her consent, but I think he truly believed that she had consented.
- e. it is unlikely that the accused had sexual intercourse with the complainant without her consent, but I cannot be sure.
- f. the accused is innocent, he did not have sexual intercourse with the complainant without her consent. She consented.

Figure 5.13 shows graphically that “rationale for personal belief about guilt of the accused” prior to jury deliberation varied widely within all conditions. It can be seen that there was no consistent pattern found within conditions – if rationale for personal beliefs about guilt of the accused were significantly affected by the mode of testimony, then a consistent pattern in juror perceptions would be expected to appear between conditions. The figures below illustrate that this was not the case.

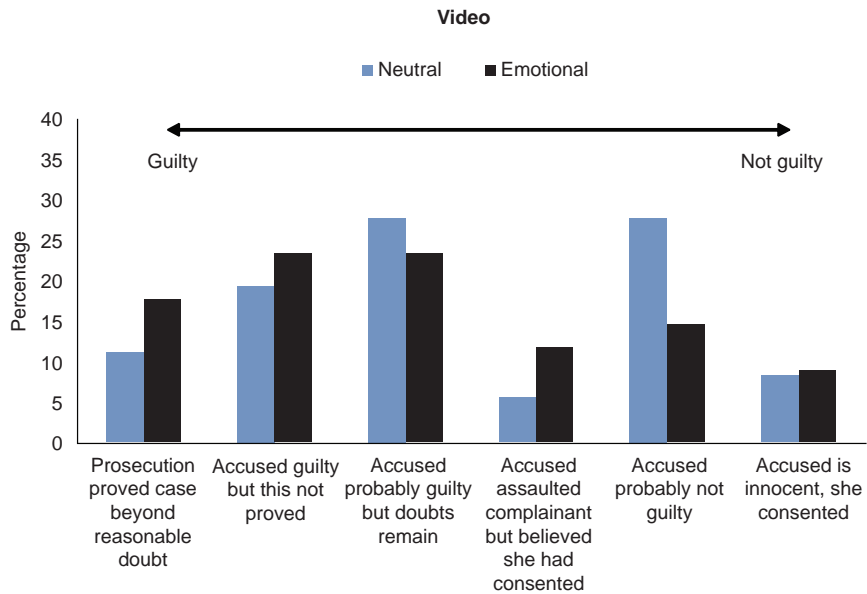
Figure 5.13: Jurors’ “rationale for personal belief about guilt of accused” prior to jury deliberation



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file], n=69.



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file], n=71.



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file], n=70.

5.4 Jury verdicts and jury processes

After completing the pre-deliberation questionnaire, juries were given up to one hour to deliberate and attempt to reach a unanimous verdict:

- of the 18 juries, there were two unanimous verdicts of not guilty⁸ and 16 hung juries in which a unanimous verdict was unable to be reached within the one-hour deliberation process;
- of the two juries reaching a consensual and unanimous not guilty verdict, one was in the CCTV neutral condition, the other was in the video emotional condition; and
- of the 16 hung juries, only two juries were hung by one juror (see Table 5.4). Three juries were hung by two jurors and four juries were hung by three jurors. Similar to the findings by Salmelainen, Bonney & Weatherburn (1997) these findings suggest that hung juries are not caused by just one or two jurors. In this case, moving to a majority verdict of 10-2 would have resolved only five out of 16 of these verdicts.

Table 5.4: Voting pattern for hung juries

| Vote | No. of juries |
|------|---------------|
| n-1 | 2 |
| n-2 | 3 |
| n-3 | 4 |
| n-4 | 2 |
| n-5 | 3 |
| n-7 | 2 |

Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file], n=16.

Note: n = number of jurors in jury in favour of a not guilty verdict

Given the high number of hung juries, a more sensitive measure of the jury decision by condition is the degree to which individual jury members were in favour of a not guilty verdict (as opposed to a guilty verdict) at the end of the jury deliberation process. Table 5.5 shows that the proportions of juries in favour of a not guilty verdict varied between juries. Overall, juries were generally leaning toward favouring a not guilty verdict, with only two juries where the majority of jurors were favouring a guilty verdict over a not guilty verdict (face-to-face neutral and video emotional conditions). Figure 5.14 shows that the proportion of all jurors favouring a not guilty verdict did not vary by mode of presentation.

⁸ In two other juries (face-to-face emotional and CCTV emotional) a verdict of not guilty was pronounced by the foreperson but two jurors and one juror respectively in each of these juries indicated in their questionnaire immediately afterward that they had not agreed with the verdict and had not supported it. For the purposes of analysis these two juries were not classified here as having reached a unanimous and consensual verdict.

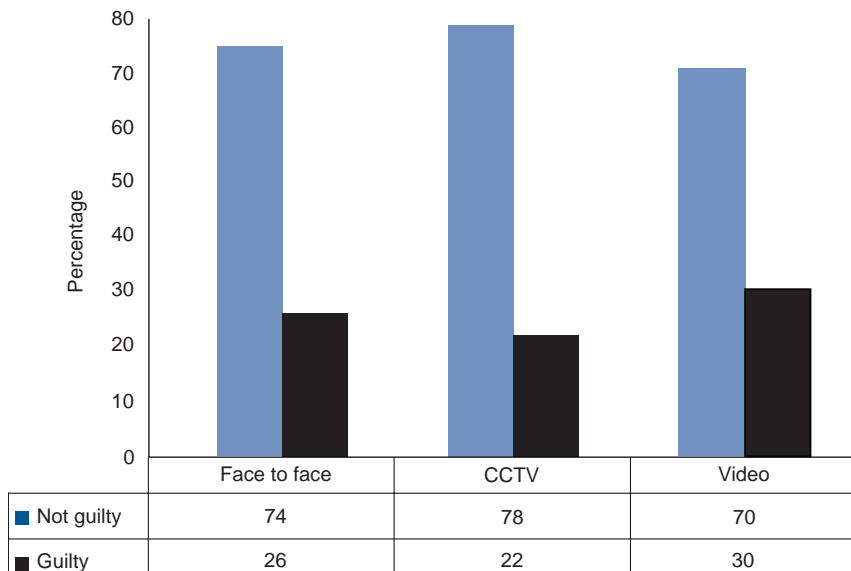
Table 5.5: Proportions within each jury in favour of a not guilty verdict*

| | Face-to-face | | CCTV | | Video | |
|--|--------------|---------|-----------|---------|-----------|---------|
| | Emotional | Neutral | Emotional | Neutral | Emotional | Neutral |
| Proportion in favour of a not guilty verdict | | | | | | |
| Jury 1 | .67 | .36 | .58 | .75 | .42 | .67 |
| Jury 2 | .83 | .73 | .58 | .75 | .58 | .75 |
| Jury 3 | .92 | .82 | .92 | 1.00 | 1.00 | .83 |
| Total | .81 | .64 | .69 | .83 | .67 | .75 |

Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

* This was established through a questionnaire administered immediately after the jury deliberation process, in which jurors were individually asked to indicate which verdict they had been in favour of.

Figure 5.14: Proportion of all jurors who favoured a guilty or not guilty verdict, by mode of presentation



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Across all jurors, 155⁹ (74%) favoured a not guilty verdict, compared with 55 (26%) favouring a guilty verdict. Table 5.6 shows the characteristics associated with jurors who preferred a not guilty or guilty verdict. In general, age and sex of jurors was not associated with preferred

⁹ Four jurors indicated that they did not know which verdict they favoured when questioned after jury deliberation. These were categorised as not guilty for the purposes of this analysis since, by definition, these jurors were in doubt.

verdict. However, compared with those who favoured a not guilty verdict, those who preferred a guilty verdict were significantly more likely to:

- hold favourable attitudes toward rape victims in general;
- believe the complainant to be highly credible;
- empathise more with the complainant;
- empathise less with the accused;
- personally believe that the accused was guilty both prior to and after jury deliberation; and
- be in a jury where there were other jurors favouring a guilty verdict.

These findings imply that those who are willing to convict the accused (and hang a jury because of their beliefs) believe strongly in his guilt and have firm and favourable attitudes toward the complainant. This is in contrast to those jurors who favoured a not guilty verdict, where there was considerably more variation on the attitudinal measures. The high variability amongst those in favour of a not guilty verdict reflects the fact that a not guilty verdict can either mean that a juror believes the accused to be innocent or that a juror believes the accused is probably guilty but is unable to convict him beyond reasonable doubt. Of those jurors favouring a not guilty verdict, half personally believed that he was probably guilty of the crime and half personally believed that he probably was not.

Figure 5.15 shows that, when jurors who favoured a not guilty verdict are categorised according to their initial personal belief about the guilt of the accused, it is clear that those jurors who personally believed the accused was probably guilty felt unable to convict him because they believed that the prosecution had not proved the case beyond reasonable doubt.

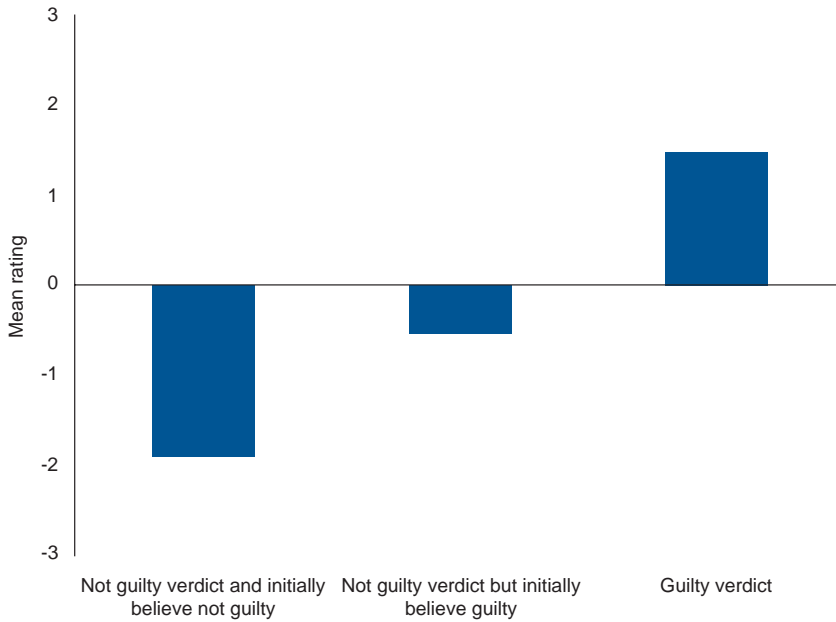
**Table 5.6: Characteristics associated with type of verdict preferred by jurors
(column percentages)**

| | Preferred verdict | |
|--|-----------------------|------------------|
| | Not guilty (n=155) | Guilty (n=55) |
| Sex | | |
| Female | 50 | 55 |
| Male | 50 | 45 |
| Age | | |
| Less than or equal to 49 years | 50 | 49 |
| Older than 49 years | 50 | 51 |
| Attitudes toward rape victims* | | |
| Unfavourable attitudes | 54 | 35 |
| Favourable attitudes | 46 | 65 |
| Perceived credibility of complainant* | | |
| Low credibility | 43 | 4 |
| High credibility | 57 | 96 |
| Empathy with complainant* | | |
| Low empathy | 64 | 40 |
| High empathy | 36 | 60 |
| Empathy with accused* | | |
| Low empathy | 49 | 76 |
| High empathy | 51 | 24 |
| Pre-jury deliberation belief about guilt of accused* | | |
| Not guilty | 58 | 6 |
| Guilty | 42 | 94 |
| Post-jury deliberation belief about guilt of accused* | | |
| Not guilty | 49 | 2 |
| Guilty | 51 | 98 |
| Direction jury leaning in* | | |
| Strong leaning toward not guilty | 64 | 31 |
| Weak leaning toward not guilty | 36 | 69 |

Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

* Chi square analyses significant to $p < .01$

Figure 5.15: Mean rating of degree to which prosecution had proved case beyond reasonable doubt



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].
Note: Higher scores indicate higher belief that prosecution proved the case.

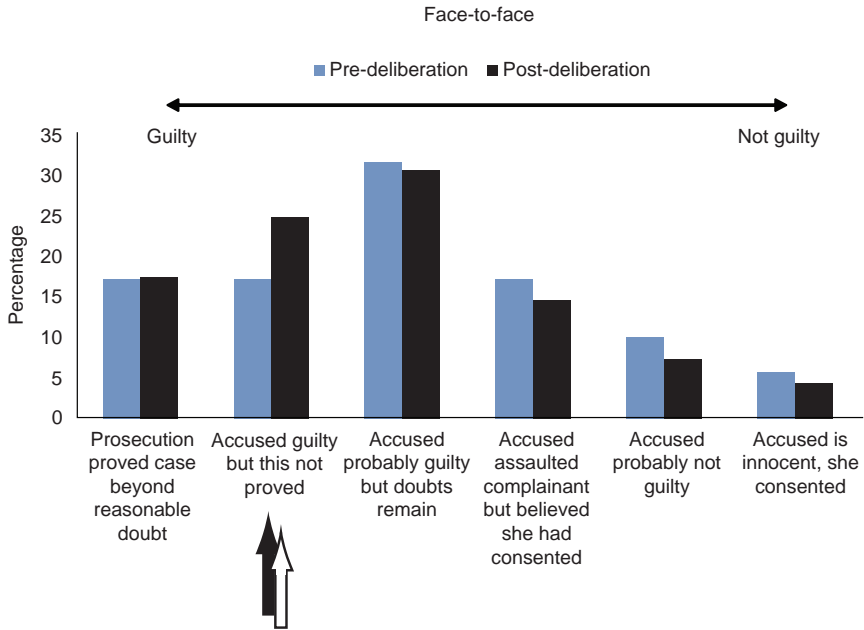
5.5 Perceptions of jurors after jury deliberation

How does the process of being in a jury and jury deliberation change jurors' initial perceptions? Obviously what jurors think and believe when they enter the jury deliberation room is important as these perceptions will be the platform from which discussions will take place and will largely impact upon the jury verdict. But the jury deliberation process is an active one, requiring all jurors to reveal their hand and, if there is disagreement, to justify and argue their point of view. It is likely that some degree of influence occurs, so what impact does the deliberation process have on jurors' perceptions of guilt and how does it influence their initial judgements?

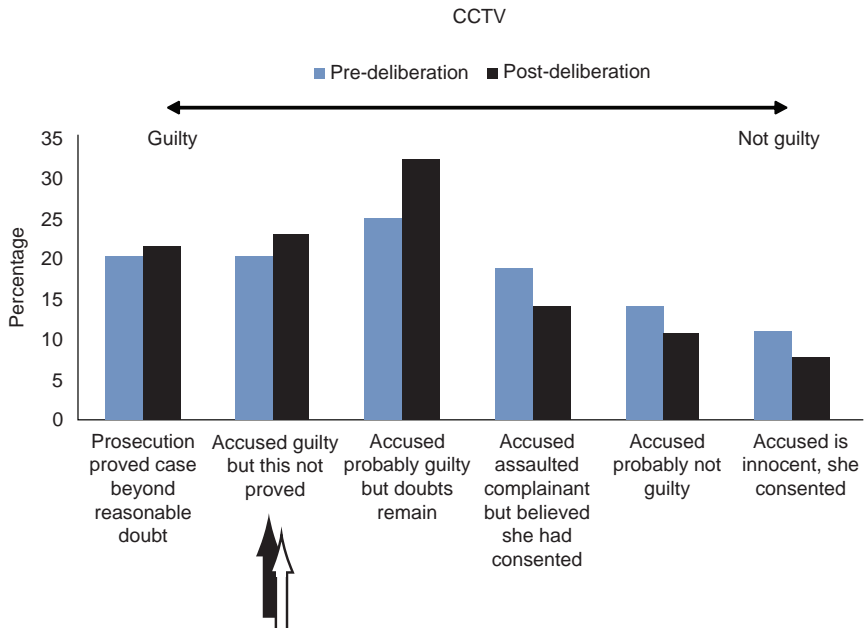
A mixed analysis of variance, comparing pre-jury deliberation personal beliefs about guilt with post-jury deliberation personal beliefs found that there was, on average, a slight shift toward a stronger personal belief in the guilt of the accused across conditions, $F(1,198)=15.38$, $p<.01$ after jury deliberation.

Importantly, however, Figure 5.16 illustrates that this shift toward greater personal belief about guilt of the accused after jury deliberation did not translate into a belief that the prosecution had proved the case beyond reasonable doubt. Rather, some jurors became more personally convinced that the accused was guilty but remained unable to convict him on the basis of the evidence presented. This indicates that while many jurors (25 per cent after jury deliberation, see Figure 5.17) personally believed the accused was guilty they were forced to favour a not guilty verdict (this point was referred to earlier, and was reinforced during the debriefing session. It is discussed further in Section 5.7).

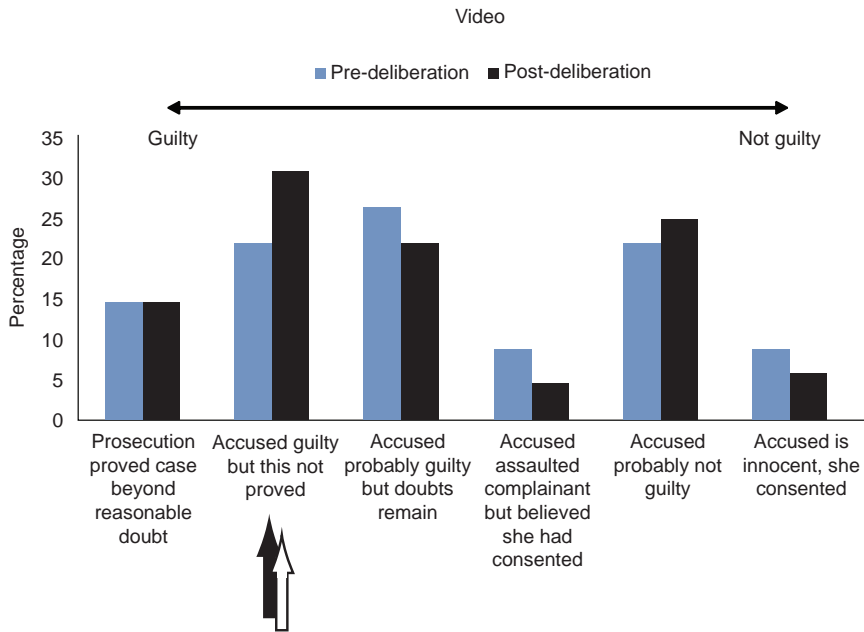
Figure 5.16: “Rationale for personal belief about guilt of the accused” prior to jury deliberation and after jury deliberation, by mode of presentation



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file], n=69.

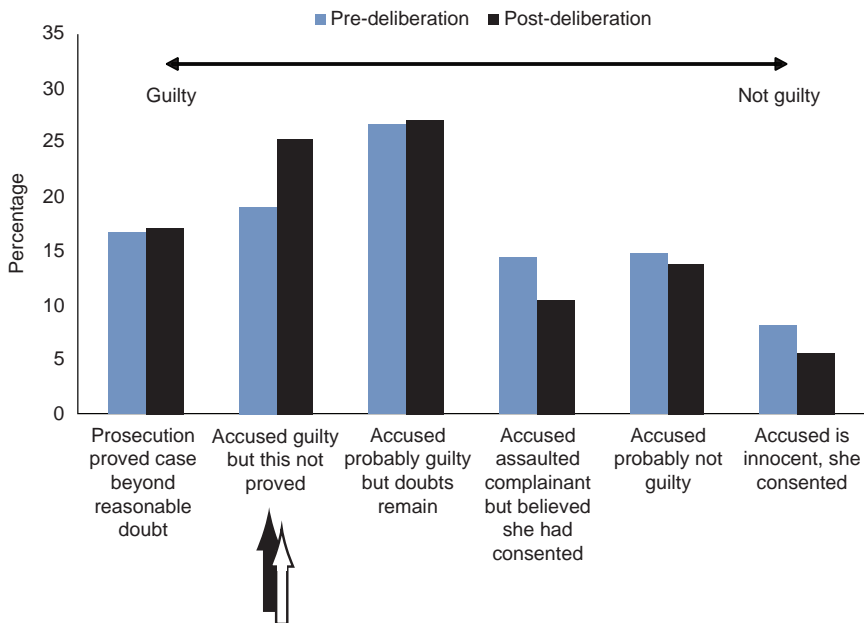


Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file], n=71.



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file], n=70.

Figure 5.17: “Rationale for personal belief about guilt of the accused” prior to jury deliberation and after jury deliberation across all jurors



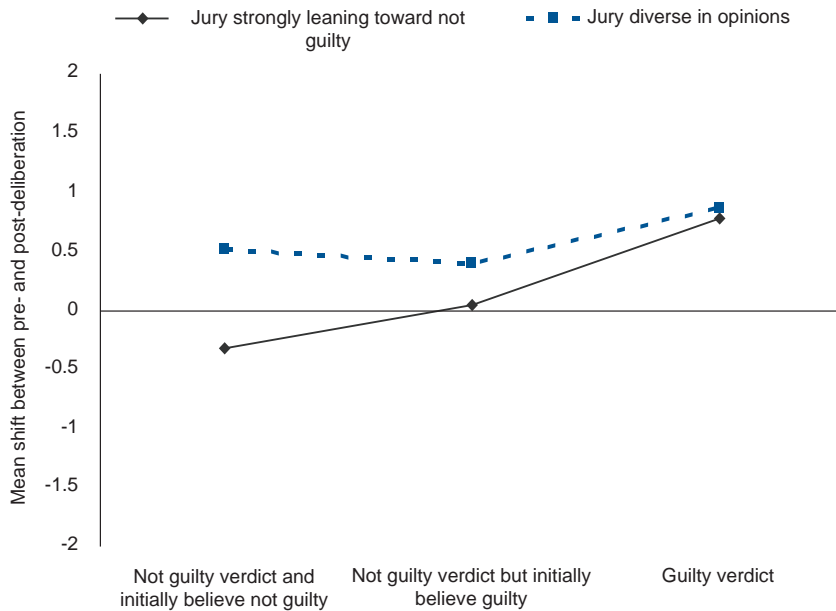
Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file], n=210.

The degree of shift between pre- and post-jury deliberation in “personal belief about guilt of the accused” was also influenced by the direction in which the jury was leaning, the verdict personally favoured by jurors and their initial personal beliefs about guilt. Figure 5.18 shows that, on average:

- jurors who favoured a not guilty verdict and initially personally believed the accused was not guilty (dichotomised scale) shifted more toward believing the accused was not guilty when the jury as a whole was leaning toward not guilty, and shifted more toward believing the accused was guilty when opinions within the jury were diverse;
- jurors who favoured a not guilty verdict but initially personally believed the accused was guilty (dichotomised scale) shifted more toward believing the accused was guilty when opinions within the jury were diverse, but tended not to shift when the jury was leaning toward not guilty; and
- jurors who favoured a guilty verdict shifted more toward believing the accused was guilty, regardless of the direction in which the jury was leaning.

In other words, jurors who initially personally believed the accused was not guilty tended to be swayed more in their personal beliefs by the direction in which the jury was leaning than those jurors who initially personally believed the accused was guilty. Those who believed the accused was guilty and favoured a guilty verdict were, on average, not swayed by the jury and tended to polarise in the direction of their prior beliefs. Again, this indicates that jurors who favour a guilty verdict believe strongly in the guilt of the accused and in general are likely to become more convinced in their beliefs after jury deliberation.

Figure 5.18: Mean degree of shift between pre- and post-jury deliberation beliefs about guilt (difference score) as a function of preferred verdict and direction in which jury leaning



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: Refers to "personal beliefs about guilt of the accused" scale. Positive difference scores indicate shift toward greater perceptions of guilt. Controls for pre-deliberation beliefs about guilt. The interaction between direction in which jury was leaning and verdict preferred by jurors was significant, $F(2,203) = 3.06, p < .05$.

5.6 Factors which influenced beliefs about guilt of the accused

What factors influenced personal judgements about guilt of the accused prior to jury deliberation?

Given that:

- mode of presentation and emotionality of testimony did not appear to impact in a consistent way on juror perceptions;
- the beliefs and perceptions which jurors have after watching a trial are the platform from which jury deliberations commence and in many ways will constrain the nature and direction of group discussions and the verdict; and
- pre-jury deliberation beliefs about guilt are strongly correlated with post-jury deliberation beliefs about guilt ($r = 0.83$);

understanding which factors influence personal judgements about guilt after jurors have watched the trial is an important step in understanding how jurors might interpret the information they are presented with and how they reach their judgements.

Linear multiple regression analyses were conducted to try to identify which variables contributed significantly to pre-jury deliberation personal beliefs about guilt of the accused (Table 5.7), after controlling for the effect of other variables. Variables entered into the models were those which were logically and theoretically deemed to be potentially more causal than correlational. Detailed regression tables are presented in Appendix D. It was found that higher personal beliefs about guilt were significantly associated with:

- higher levels of education;
- personal knowledge of sexual assault victims;
- more positive attitudes toward rape victims in general;
- higher perceptions of victim credibility; and
- low empathy with the accused.

To identify what factors might contribute to more unfavourable attitudes toward rape victims in general (one of the variables associated with higher personal beliefs about guilt), a separate linear multiple regression analysis was conducted which included only demographic variables (Table 5.8). More unfavourable attitudes toward rape victims were found to be significantly associated with:

- being male;
- having a lower income; and
- holding a more conservative political persuasion.

Table 5.7: Variables significantly associated with higher perceptions of guilt

| Variables | β | Significance level |
|--|---------|--------------------|
| Demographics | | |
| Level of education | .10 | <.05 |
| Personal knowledge of sexual assault victims | .06 | <.10 |
| Attitudes toward rape victims scale | -.09 | <.05 |
| Perception variables | | |
| Victim credibility | .74 | <.01 |
| Low empathy with accused | -.14 | <.01 |
| Adjusted R ² for full model | .74 | |

Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: The modes of testimony presentation were included in the analysis but were not significantly associated with perceptions of guilt and did not contribute significantly to variance in perceptions of guilt – this finding is consistent with the earlier results and indicates that factors *other than* mode of presentation are important in how jurors interpret testimony.

Table 5.8: Demographic variables significantly associated with attitudes toward rape victims scale

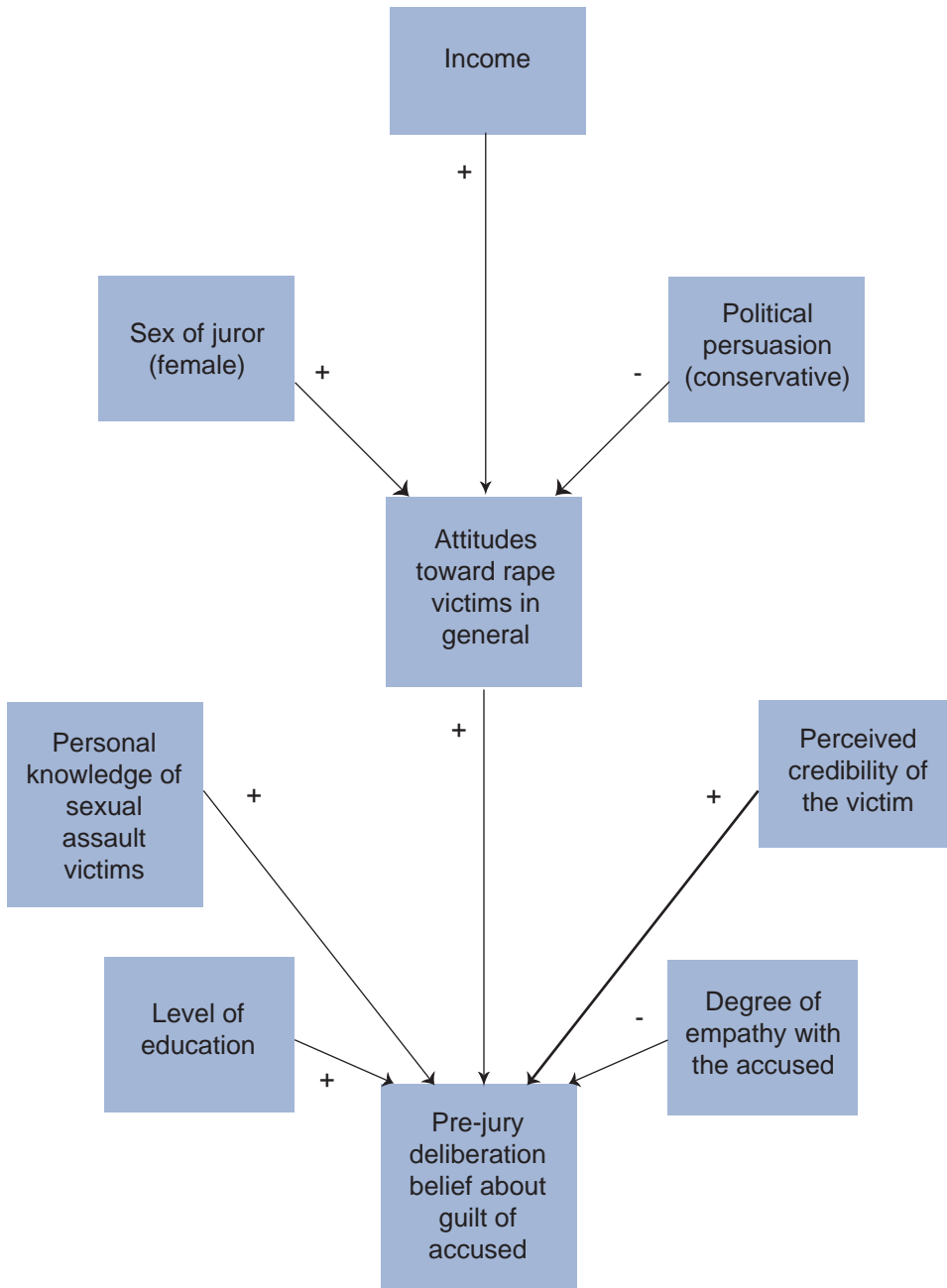
| Variables | β | Significance level |
|--|---------|--------------------|
| Sex of jurors | .36 | <.01 |
| Annual income | -.20 | <.01 |
| Political conservatism | .27 | <.01 |
| Adjusted R ² for full model | .23 | |

Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: Higher scores on the Attitudes Toward Rape Victims Scale reflect more unfavourable attitudes toward rape victims.

Based on these findings, Figure 5.19 presents a graphical representation of the hypothesised pattern of relationships between the measured variables which were believed to ultimately influence pre-deliberation personal beliefs about guilt. Obviously, there are many potential influences on judgements about guilt which were not able to be measured in this study. Figure 5.19 is only able to provide an indication of the hypothesised pattern of relationships based on variables which were measured. Even with these limitations, it can be seen that personal beliefs about guilt in this study were an outcome of many influences, including those which are external to the trial and unique to jurors themselves (see also Finch & Munro 2005 for a discussion of the impact of extra-legal factors on juror decision-making in rape cases). Attitudes which jurors bring with them into the courtroom (stemming from personal experience, knowledge and pre-existing biases) as well as differences in demographics can influence their interpretation of what they see and the judgements they make, irrespective of the same information being presented to all jurors.

Figure 5.19: Hypothesised relationships between measured variables relating to personal belief about guilt



Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

5.7 Jurors' comments and feedback

Pre-existing beliefs about rape and rape myth acceptance

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

- the complainant went willingly with the accused to the seminar room (why would she do this? The seminar room was away from the party, no reason to go in there);
- the complainant flirted and danced with the accused during the evening (some degree of encouragement);
- the complainant did not scream or shout for help (a rape victim would scream and shout);
- the complainant went back to the party afterwards, she did not leave immediately (a rape victim would leave immediately);
- there was no evidence of injury and no medical supporting evidence (surely there would be evidence of injury and surely she would want to have DNA evidence collected);
- the complainant composed herself and pretended nothing had happened (why would she pretend nothing had happened if she had been raped?);
- the complainant continued to work with the accused for two weeks afterwards (a rape victim could not continue to work with the person who had raped her);
- the complainant did not immediately tell anyone what had allegedly happened (she would surely tell her female colleague whom she saw in the bathroom);
- the complainant did not report the incident to police for two weeks (why did she delay in reporting the rape?); and
- a complainant would be visibly upset at having to recount the incident in court (expectations about how a rape victim would behave and feel in court).

During discussions with jurors it became clear that these types of issues had been discussed during jury deliberations as part of the process of weighing up the evidence. Some jurors volunteered that they had advanced these arguments as a rationale for a not guilty verdict

while other jurors volunteered that they did not adhere to these views and did not believe they were relevant in reaching a verdict. Discussions with the Canberra Rape Crisis Centre confirmed that the types of situations above occur regularly in sexual assault cases and that victims can behave and react in a wide variety of ways for a range of reasons. The following extract from a letter received from one of the jurors after the trial illustrates this point:

I have experience with trauma response and am aware it is not possible to predict or pontificate on how people should or should not act when something horrible has happened to them – as appeared to be the case with the female complainant. The victim may go into denial or dissociation because they cannot accept or deal with what has happened. I had no trouble with the complainant’s testimony and saw the defence [argument] as being nothing short of an attempt to throw the jury off the track by tossing out red herrings in matters where they [the jury] were likely to have no understanding, in particular, in relation to trauma response. And this came through in that the jury questioned very strongly the woman’s response – e.g. the two week delay in her reporting the incident.

The importance of this finding is that jurors’ beliefs about sexual assault and the expectations that they have *prior to entering the courtroom* about how rape victims behave or should behave impact on how they perceive and interpret a complainant and her testimony. This is extremely important because, as was shown in this study, perceived credibility of the complainant is strongly associated with perceptions of guilt. Further, (a) since many sexual assault trials essentially boil down to one person’s word against the other and (b) it is not uncommon to have trials where the accused does not give evidence so that it is only the complainant’s testimony being presented to jurors, complainant credibility will by definition often be the key factor on which jurors will make their decisions about guilt or innocence of the accused. Educating jurors (and potential jurors) about the types of situations in which sexual assault commonly occurs, how victims commonly behave and react and why they behave and react the way they do would help to dispel some of the myths which exist in the public domain and which are brought into the courtroom by jurors.

Reasonable doubt

One of the key issues which kept recurring when juries were asked about the difficulties in trying to reach a unanimous verdict was how to define reasonable doubt. What is reasonable doubt and how do they know if they have it or not? Most jurors acknowledged that they had some degree of doubt about at least some element of the trial but had difficulty identifying whether their doubt was sufficient to be “reasonable” or not. In addition to defining reasonable doubt at an individual juror level, however, they then had to define and reach consensus about what it was at a jury level. For some jurors a particular doubt was defined as reasonable, whereas it was not for other jurors. This difficulty of defining and reaching

consensus about reasonable doubt was raised by many jurors as a considerable obstacle in trying to reach a verdict.

Consent

Despite the definition of consent provided by the judge¹⁰, many jurors had difficulty understanding what was meant by “consent”. What is the point at which consent is given? What defines whether consent has not been given? At what point does “yes” become “no” and to what degree should the accused reasonably be able or expected to distinguish between them? The question of consent was a central one in the trial, made more ambiguous for some jurors who believed that the complainant had arranged to meet the accused in the seminar room for sex but had changed her mind at the last moment (this was an interpretation placed on the complainant’s testimony by some jurors – this was not the evidence given by the complainant). In one jury in which this scenario was raised and debated, an argument had developed as to whether the complainant’s implicit consent to sex (by supposedly arranging to meet the accused for sex in the seminar room and perhaps engaging in kissing and petting in the seminar room) was the point at which consent had been given and therefore justified the accused having sex with her. Others argued that, regardless of whether the complainant had agreed to meet the accused for sex and encouraged him to believe she was consenting, if she said no at the last moment this established non-consent. Other discussions centred around whether she had said no adequately, whether she had established non-consent and whether the accused knew that she had not consented.

Inferring beyond the evidence given (filling in the gaps)

It was clear from the discussions with jurors that they wanted more evidence than was given to them in the trial. In particular, jurors expressed a strong wish to have been given the opportunity to see the accused give evidence in response to the testimony of the complainant. In other words, many jurors felt that they had only seen one side of the story (the complainant’s side) and wanted to see the complete picture in order to make an informed judgement about whether the accused was guilty or not. For many jurors (by definition, not those who favoured a guilty verdict) many of their questions remained unanswered and they tried to fill in the gaps as they attempted to piece together what actually happened on the night in question. Quite naturally, these jurors wanted to make sense of the information they had been given. In order to reach a decision about guilt, however, these jurors needed more information than they had been given and so tried to fill in the gaps by drawing inferences about what may or may not have happened.

¹⁰ Consent involves conscious and voluntary permission to engage in sexual intercourse. It can be given verbally, or expressed by actions. Similarly, absence of consent does not have to be in words; it also may be communicated in other ways. However, the law specifically provides that a person who does not offer actual physical resistance to sexual intercourse is not, by reason only of that fact, to be regarded as consenting to the sexual intercourse.

Further, despite being given directions by the judge that the lack of evidence from the accused must not be used against him, that there may be many reasons why the accused may not give evidence and that they must not draw inferences adverse to the accused because he did not give evidence, some jurors referred to his not giving evidence as “his choice” which led them to infer guilt on his part. Why would an innocent person not want to give his side of the story?

What does a verdict of “not guilty” mean?

Many jurors were keen to state that, although they favoured a not guilty verdict, this did not mean that they believed that the accused was innocent. Rather, for many, this meant that they were not able to favour a guilty verdict because the prosecution had not proved the case beyond reasonable doubt, despite the fact that they personally believed the accused was probably guilty. For some jurors, this caused a degree of internal discomfort and this motivated them to want to explain the discrepancy to make it clear that a not guilty verdict for them did not mean that they believed the accused was innocent. One juror asked why the system could not be changed to allow three verdicts to be possible in jury trials:

- guilty;
- not guilty because the accused was innocent; and
- not guilty because the case was not proved beyond reasonable doubt.

Face-to-face versus not face-to-face

Although no systematic differences were found in pre-deliberation perceptions or propensity for jury verdict between face-to-face, CCTV and video conditions, some jurors in the CCTV condition expressed the view that they would have preferred the complainant to be physically in the courtroom. These jurors stated that they felt unable to make an accurate assessment of her character, demeanour and truthfulness on the screen and that they would have liked her to be in the courtroom so that they could watch her non-verbal actions and whether she looked at the accused in giving her testimony. This argument is consistent with the view often circulated by those who oppose the use of CCTV and video; that jurors are more able to detect the truth when they can see non-verbal cues in witnesses. However, despite the fact that some jurors felt this to be so in this study, research consistently suggests that untrained adult observers are no more likely to detect truth or deception when presented with non-verbal behaviour (Davies 1999), or when presented with evidence via CCTV compared with face-to-face testimony (Orcutt et al. 2001; Tobey et al. 1995). The fact that no systematic differences were found in verdict preferences also supports the argument of Davies (1999) that, while jurors may have a preference for live witnesses, this does not appear to influence their decision-making.

When questioned about this, other jurors stated that this was not an issue for them and they did not feel the need for the complainant to be in the courtroom in order to make an assessment of her credibility. Interestingly, this issue was not raised in the pre-recorded video conditions.

Attention to the accused

Jurors paid close attention to the accused in the courtroom and there was a spread of opinions about his demeanour in court, despite the fact that his behaviour did not waiver between juries or conditions. In the absence of his giving testimony, jurors were looking for additional evidence of his guilt or innocence and the only information they had was his appearance and demeanour in court. Some jurors interpreted his demeanour as arrogant, reflecting that of a guilty person. Others felt that he seemed nervous and anxious and attributed this to the stressful situation of being in court accused of a serious crime. The former interpretation tended to imply guilt, the latter interpretation less so.

Selection of the jury foreperson

As is the practice in actual juries, each jury was required to select a foreperson who would facilitate the group discussion and announce the verdict. During questioning at the end of the study, it became clear that many jury forepersons had been largely self-nominated, indicating that those with greater confidence/more dominant personalities may have been more likely to end up as the jury foreperson. A letter received from one of the jurors by the researchers after the study had concluded had this to say about the jury foreperson selection process:

The elected foreperson needs to be able to speak up and guide the other jury members and keep the discussion on track. That calls for a strong and confident person, but carries with it the risk of bullying weaker jurors into falling in line with the trend/majority or perhaps the foreperson's own bias. We did experience this.

Lack of knowledge about jury processes

There is a considerable lack of understanding amongst the general public about what is involved in being on a jury. Jurors in this study had numerous questions about the jury process in general, specifically:

- how are jurors selected?
- is selection a random process?
- how does the challenge process work?

-
- can jurors ask questions of witnesses?
 - how long does a jury have to deliberate?
 - what happens if a jury can't reach a unanimous verdict?

Further questions in relation to sexual assault trials related to:

- can the accused be mandated by the prosecution to give evidence? If not, why not?
- why might the accused choose not to give evidence?
- what is the legal definition of the moment at which consent occurs?
- if it must be proved that the accused *knew* the complainant had not consented, can alcohol consumption by the accused be used as an excuse for not knowing? If so, how often is this excuse used in sexual assault trials?
- how is it fair [to the accused] for the complainant to give her evidence from outside the courtroom?
- how can the prosecution *prove* that the accused knew the complainant was not consenting?

6 Conclusions

The primary aim of this study was to investigate whether the format in which sexual assault victim testimony is presented (face-to-face, CCTV or pre-recorded videotape) and the degree of emotion expressed by the victim during her testimony affects juror perceptions and jury decisions in a meaningful and systematic manner. That is, are jurors more likely to find a defendant guilty when the complainant gives her testimony face-to-face compared with if she gives her testimony via CCTV or pre-recorded video? Are jurors more likely to convict if her testimony is emotional rather than neutral? Based on the findings from this study, the answers to these questions appear to be no.

Emotion

Emotionality of testimony did not impact in any consistent or systematic way on jurors' perceptions of the complainant or the accused (other than perceiving her to be more stressed when emotional than neutral). This is likely to be explained by individual differences in preferences for victim testimony. Some jurors indicated that they found her testimony more plausible because she was not emotional; other jurors indicated they would have found her more plausible if she had been emotional. Across diverse juries (and actual juries are diverse) it is likely that these individual differences in preferences cancel each other out; there was no consistent pattern found where emotion resulted in more favourable attitudes toward the complainant or less favourable attitudes toward the accused.

Mode of testimony

Perceptions and ratings of guilt immediately after watching the trial and prior to jury deliberation were generally not affected by mode of testimony (face-to-face, CCTV or pre-recorded video). Juror perceptions varied widely within all three conditions and no consistent pattern emerged to suggest that mode of presentation was systematically affecting jurors.

The findings in this study do not suggest that mode of presentation *per se* impacts detrimentally in any meaningful or consistent way on jury outcomes for either the complainant or the accused. Rather, the findings suggest that what may be much more important than the manner in which testimony is presented are the pre-existing attitudes, biases and expectations that jurors bring with them into the courtroom.

Juror deliberation

Overall, jury deliberation seemed to produce a slight shift toward a greater personal belief in the guilt of the accused. However, the shift in personal belief about guilt of the accused did not seem to translate into the belief that the prosecution had proved the case beyond reasonable doubt. Rather, some jurors seemed to become more personally convinced that the accused was guilty but were unable to convict him because of reasonable doubt. This means that, while jury deliberation appeared to result in an overall shift in personal

beliefs about guilt (presumably due to the different arguments being put forward during the deliberation process and the reflection that goes with exposure to different viewpoints), juror preferences for jury verdicts (guilty or not guilty) remained relatively unchanged. If jurors entered the jury deliberation room believing that the prosecution had not proved the case beyond reasonable doubt, they tended to stick with this view regardless of any shift in their personal beliefs about the guilt of the accused.

Practical implications

The degree to which jurors believed the prosecution had proved the case beyond reasonable doubt prior to entering the jury deliberation room appeared to be crucially important in terms of the verdict. Even becoming more persuaded that the accused was probably guilty during jury deliberations was unlikely to affect a juror's belief about what the verdict should be. This implies that overcoming reasonable doubt and providing sufficient proof in court to eliminate reasonable doubt is crucial for the successful prosecution of sexual assault cases.

Juror feedback highlighted the difficulties that many jurors experienced in trying to grasp the meaning of “consent”. Defining consent as being “conscious and voluntary permission to engage in sexual intercourse”, whether given verbally or in actions, appears to be insufficient for the purposes of conferring a clear understanding of what is meant by consent. Without a clear *and consensual* understanding of what is meant by consent, juries may face stumbling blocks when trying to reach a verdict as a large part of the jury discussions will, of necessity, revolve around trying to reach consensus on what consent means. Providing juries with a much clearer definition of consent may assist in reducing the amount of time spent trying to work out what consent means, and allow more time to focus on whether in fact it occurred.

Understanding how jurors interpret the information they see and hear in the courtroom and identifying the factors which might affect the way they interpret information is crucial to understanding why a sexual assault case may or may not be successfully prosecuted. Victim credibility was positively associated with a belief about guilt, but victim credibility is not an objectively defined phenomenon – whether a juror perceives a complainant as credible is not simply about the clothes she wears or the consistency of her story, or the manner in which she presents her testimony. If it were, we would have expected all jurors to have the same opinions about her credibility in each of the conditions in this study (since these were being kept constant across jurors). This was not the case – jurors had different opinions about her credibility which were unrelated to these issues. Jurors are not passive recipients of information. They actively interpret what they see and hear based on their own knowledge, experience, attitudes, biases and expectations. These beliefs and expectations drive the way they interpret information and the subsequent judgements they make. Understanding what these beliefs and expectations might be and how they impact on judgements relating to credibility and guilt is essential to understanding whether and how a sexual assault case

might be successfully prosecuted, and how successful prosecutions might be achieved in the future.

Caveats

While no systematic differences were found in this study between face-to-face, CCTV and pre-recorded video evidence on jury outcomes, it is important to note that a 42-inch plasma TV screen was used in the CCTV and video conditions in this study. This meant that the image of the complainant was large, clearly visible and audible to jurors who were seated about six metres from the screen. It would be inappropriate, inaccurate and inadvisable to assume that the same findings from this study would generalise to court situations where the audio/visual technology was different or of a lesser standard. It is important that jurors are able to see the complainant clearly and hear her clearly¹¹ if audio/visual technology is to be used.

Despite the great lengths we went to in our attempt to replicate what actually happens in a courtroom and in a jury, it is a truism that this was not an actual court case and these were not actual jurors who had been summonsed for jury duty. The jurors in our study (while members of the general public, eligible for jury duty and diverse) were self-selected and, by definition, interested in being on a jury. Hence, despite our best attempts to make it so, the findings from this study do not mean that the same findings would necessarily or always occur in real juries, or that there may never be situations in which mode of testimony or emotionality of the complainant may impact on jurors in a way which did not occur here. However, it was never the intention of this study to make such a claim; rather, the value of this study was in its ability to hold mode of presentation constant across jurors while controlling as many other sources of variance as possible to try to isolate an effect if it existed under such conditions. Without an experimental study such as this one it would be an extremely difficult, if not impossible, task to try to isolate the effect of mode of presentation in an actual courtroom in the presence of so many other naturally occurring confounding influences.

Possible directions for future research

This is the first time, to our knowledge, that an experimental study of this nature and magnitude has been conducted to investigate the impact of mode of presentation of adult complainant sexual assault testimony on juror perceptions and jury outcomes. A strong attempt was made to try to replicate, as far as possible, a real court case in a real court setting with members of the public who are representative of actual jurors in order to be able to generalise the findings to actual juries in adult sexual assault cases. Hence, we would argue that the study's

¹¹ The importance of the adequacy of audio/visual technology in courts is discussed in some detail in *Responding to sexual assault* (ODPP & AFP 2005).

ecological validity is high and considerably higher than anything yet attempted in this area. However, this is one study only and while we have considerable confidence in the importance and validity of the findings it is always reassuring to build an evidence base in which the findings can be replicated and corroborated. A second study, building on this one but perhaps with some additional amendments (for example, where the accused might give evidence, a longer trial and a longer time for jury deliberation) would provide a stronger foundation and evidence base for initiating changes to how complainants could give evidence.

Identifying the pre-existing attitudes, biases and expectations which jurors bring into the courtroom and the types of myths surrounding sexual assault that some jurors adhere to would also greatly assist in understanding what types of attitudes lead to what types of outcomes in sexual assault trials. This would also allow avenues for changing beliefs which are based on myths and incorrect stereotypes through targeted education and awareness campaigns.

References

-
- Australian Bureau of Statistics 2003. *Criminal Courts Australia, 2001-02*. Cat No. 4513.0.
- Australian Bureau of Statistics 2004. *Criminal Courts Australia, 2002-03*. Cat No. 4513.0.
- Australian Law Reform Commission 1996. *Speaking for ourselves: children and the legal process*. Sydney: Australian Law Reform Commission. Issues paper no. 18.
- Baker J, Allen A and Weatherburn D 2002. Hung juries and aborted trials: An analysis of their prevalence, predictors and effects. *Crime and justice bulletin* no. 66. Sydney: New South Wales Bureau of Crime Statistics and Research.
- Cashmore J and DeHaas N 1992. *The use of closed-circuit television: child witnesses in the ACT*. Sydney: Australian Law Reform Commission. Children's evidence research paper no. 1.
- Clark HL and Nightingale NN 1997. When jurors consider recovered memory cases: effects of victim and juror gender. *Journal of offender rehabilitation* 25(3-4): 87-104.
- Davies G 1999. The impact of television on the presentation and reception of children's testimony. *International journal of law and psychiatry* 22(3-4): 241-256.
- Davies G and Noon E 1991. *An evaluation of the live link for child witnesses*. London: Home Office.
- Davies E and Seymour FW 1997. Child witnesses in the criminal courts: furthering New Zealand's commitment to the United Nations Convention on the Rights of the Child. *Psychiatry, psychology and law* 4(1): 13-24.
- Doherty-Sneddon G, Anderson A, O'Malley C, Langton S, Garrod S, and Bruce V 1997. Face-to-face and video-mediated communication: a comparison of dialogue structure and task performance. *Journal of experimental psychology: applied* 3(2): 105-125
- Doherty-Sneddon G and McAuley S 2000. Influence of video-mediation on adult-child interviews: implications for the use of the live link with child witnesses. *Applied cognitive psychology* 14: 379-392.
- Eastwood CJ and Patton W 2002. *The experiences of child complainants of sexual abuse in the criminal justice system*. Criminology Research Council Grant report.
- Eaton TE, Ball PJ and O'Callaghan MG 2001. Child-witness and defendant credibility: child evidence presentation mode and judicial instructions. *Journal of applied social psychology* 31(9): 1845-1858.
- Findlay M 1994. *Jury management in New South Wales*. Victoria: Australian Institute of Judicial Administration.

Finch E and Munro VE 2005. Juror stereotypes and blame attribution in rape cases involving intoxicants: the findings of a pilot study. *British journal of criminology* 45: 25-38.

Finney A 2004. *Alcohol and sexual violence: key findings from the research*. London: Home Office. Findings no. 215.

Fischer GJ 1991. Cognitive predictors of not-guilty verdicts in a simulated acquaintance rape trial. *Psychological reports* 68: 1199-1206.

Fischer GJ 1997. Gender effects on individual verdicts and on mock jury verdicts in a simulated acquaintance rape trial. *Sex roles* 36(7-8): 491-501.

Golding JM, Fryman HM, Marsil DF and Yozwiak JA 2003. Big girls don't cry: the effect of child witness demeanour on juror decisions in a child sexual abuse trial. *Child abuse and neglect* 27: 1311-1321

Goodman GS, Tobey AE, Batterman-Faunce JM, Orcutt H, Thomas S, Shapiro C and Sachsenmaier T 1998. Face-to-face confrontation: effects of closed-circuit technology on children's eyewitness testimony and jurors' decisions. *Law and human behavior* 22(2): 165-203.

Hamlyn B, Phelps A, Turtle J and Sattar G 2004. *Are special measures working? Evidence from surveys of vulnerable and intimidated witnesses*. London: Home Office Research Study 283.

Hoyle RH, Georgesen JC and Webster JM 2001. Analyzing data from individuals in groups: the past, the present and the future. *Group dynamics: theory, research and practice* 5(1): 41-47.

Jonas A 1994. The effect of closed circuit television on jurors' rating of the credibility of the child witness, on jurors' ability to recall trial-related information, and on the outcome of the trial. Unpublished Master's thesis. Monash University Department of Psychology.

Kaufmann G, Drevland GCB, Wessel E, Overskeid G and Magnussen S 2003. The importance of being earnest: displayed emotions and witness credibility. *Applied cognitive psychology* 17: 21-34

Kemp R, Towell N, Pearson C, Wright D, Donnelly P, Woods J and Milner D 1996. Sex, lies and videotape. In Davies G, Lloyd-Bostock S, McMurrin M and Wilson C (eds). *Psychology, law and criminal justice: international developments in research and practice*. Oxford: Walter de Gruyter.

Lievore D 2004. Victim credibility in adult sexual assault cases. *Trends and issues in crime and criminal justice* no. 288. Canberra: Australian Institute of Criminology.

Lievore D 2005. Prosecutorial decisions in adult sexual assault cases. *Trends and issues in crime and criminal justice* no. 291. Canberra: Australian Institute of Criminology.

McNamara K, Vattano F and Viney W 1993. Verdict, sentencing, and certainty as a function of sex of juror and amount of evidence in a simulated rape trial. *Psychological reports* 72: 575-583.

Miller GR 1976. The effects of videotaped trial materials on juror response. In Bermant G, Nemeth C and Vidmar N (eds). *Psychology and the law: research frontiers*. Lexington MA: Lexington Books.

Murray K 1995. *Live television link: an evaluation of its use by child witnesses in Scottish criminal trials*. Edinburgh: Scottish Law Commission.

New South Wales Parliament Standing Committee on Law and Justice 2002. *Report on child sexual assault prosecutions*. Sydney: New South Wales Parliament. Parliamentary paper no. 208, report 22.

O'Grady C 1996. *Child witnesses and jury trials: an evaluation of the use of closed circuit television and removable screens in Western Australia*. Report prepared for the Ministry of Justice, Western Australia.

Office of the Director of Public Prosecutions (ACT) (ODPP) and Australian Federal Police (AFP) 2005. *Responding to sexual assault: the challenge of change*. Canberra: Office of the Director of Public Prosecutions.

Orcutt HK, Goodman GS, Tobey AE, Batterman-Faunce JM and Thomas S 2001. Detecting deception in children's testimony: factfinders' abilities to reach the truth in open court and closed-circuit trials. *Law and human behavior* 25(4): 339-372.

Regan PC and Baker SJ 1998. The impact of child witness demeanour on perceived credibility and trial outcome in sexual abuse cases. *Journal of family violence* 13(2): 187-195.

Ross DF, Hopkins S, Hanson E, Lindsay RCL, Hazen K and Eslinger T 1994. The impact of protective shields and videotape testimony on conviction rates in a simulated trial of child sexual abuse. *Law and human behaviour* 18(5): 553-566.

Salekin RT, Ogloff JRP, McFarland C and Rogers R 1995. Influencing jurors' perceptions of guilt: expression of emotionality during testimony. *Behavioral sciences and the law* 13: 293-305.

Salmelainen P, Bonney R and Weatherburn D 1997. Hung juries and majority verdicts. *Crime and justice bulletin* no. 36. Sydney: New South Wales Bureau of Crime Statistics and Research.

Spencer JR and Flin RH 1990. *The evidence of children: the law and the psychology*. London: Blackstone Press.

Swim JK, Borgida E and McCoy K 1993. Videotaped versus in-court witness testimony: does protecting the child witness jeopardize due process? *Journal of applied social psychology* 23(8): 603-631.

Tobey AE, Goodman GS, Batterman-Faunce JM, Orcutt HK and Sachsenmaier T 1995. Balancing the rights of children and defendants: effects of closed-circuit television on children's accuracy and jurors' perceptions. In Zaragoza MS, Graham JR, Hall GCN, Hirschman RD and Ben-Porath YS (eds.), *Memory and testimony in the child witness*. Thousand Oaks, CA: Sage: 214-239.

Tsoudis O 2002. The influence of empathy in mock jury criminal cases: adding to the affect control model. *Western criminology review* 4(1): 55-67.

Vrij A and Fischer A 1997. The role of displays of emotions and ethnicity in judgments of rape victims. *International review of victimology* 4: 255-265.

Ward C 1988. The attitudes toward rape victims scale: construction, validation and cross-cultural applicability. *Psychology of women quarterly* 12: 127-146.

Warner K 1990. Child witness: developments in Australia and New Zealand. In Spencer JR, Nicholson G, Flin R and Bull R (eds). *Children's evidence in legal proceedings: an international perspective. Papers from an international conference*, Selwyn College Cambridge 26-28 June 1989. Cambridge: University of Cambridge, Faculty of Law.

Wescott H, Davies G and Clifford B 1991. The credibility of child witnesses seen on closed-circuit television. *Adoption and fostering* 15(1): 14-19.

Wilson J 1990. A perspective on the Canadian position. In Spencer JR, Nicholson G, Flin R and Bull R (eds). *Children's evidence in legal proceedings: an international perspective. Papers from an international conference*, Selwyn College Cambridge 26-28 June 1989. Cambridge: University of Cambridge, Faculty of Law.

Wilson JC and Davies GM 1999. An evaluation of the use of videotaped evidence for juvenile witnesses in criminal courts in England and Wales. *European journal on criminal policy and research* 7: 81-96.

Appendix A – Methodology

Overview of research design

The research design comprised a three (face-to-face, CCTV, video) by two (neutral or emotional victim behaviour) between subjects design. This meant there were six experimental conditions. Individual jurors were randomly allocated to juries and conditions. Three juries participated in each condition. While a strong attempt was made to ensure that 12 jurors participated in every jury, four juries had 11 jurors and one jury had 10. A total of 210 jurors participated in the mock trials. The overall design is shown in Table A1.

Table A1: Summary of research design (n=210 jurors)

| Victim emotionality | Mode of victim testimony | | |
|---------------------|--------------------------|--------------------|--------------------|
| | Face-to-face | CCTV | Video |
| <i>Neutral</i> | <i>Condition 1</i> | <i>Condition 2</i> | <i>Condition 3</i> |
| | Jury 1 = 11 | Jury 1 = 12 | Jury 1 = 12 |
| | Jury 2 = 11 | Jury 2 = 12 | Jury 2 = 12 |
| <i>Emotional</i> | Jury 3 = 11 | Jury 3 = 11 | Jury 3 = 12 |
| | <i>Condition 4</i> | <i>Condition 5</i> | <i>Condition 6</i> |
| | Jury 1 = 12 | Jury 1 = 12 | Jury 1 = 12 |
| | Jury 2 = 12 | Jury 2 = 12 | Jury 2 = 12 |
| | Jury 3 = 12 | Jury 3 = 12 | Jury 3 = 10 |

Scenario and transcript

The transcript for the trial was based on an actual transcript taken from an adult sexual assault trial in New South Wales. This particular transcript was selected by the Criminal Law Review Division (CLRD) of the New South Wales Attorney General's Department and provided (de-identified) to the AIC. A section of the transcript was then extracted and modified to ensure that it incorporated elements deemed as representative by CLRD of adult sexual assault cases generally. CLRD requested that in the trial scenario:¹²

- (a) alcohol had been consumed by both the complainant and the accused;¹³
- (b) the complainant knew the accused prior to the incident;
- (c) the complainant should continue to work with/see the accused after the alleged

¹² These elements of the scenario were confirmed by the Canberra Rape Crisis Centre as common in sexual assault cases.

¹³ Finney (2004) notes that there is a well-established association between sexual assault and alcohol consumption by both victims and offenders. In the original transcript (unedited) alcohol had been consumed by both the complainant and the accused.

incident and prior to making a complaint;

- (d) the complainant should not be obviously externally distressed after the alleged incident and her distress should not be witnessed by anyone;
- (e) there should be no physical injury or forensic evidence;
- (f) there should be a delay before the complainant reported the incident to anyone, and she should report it to a friend before reporting to police. It was deemed that a two week delay was appropriate; and
- (g) there should be the occasional discrepancy in her testimony.

The research design dictated that the length of the scenario to be watched by jurors in the courtroom would be about one and a quarter hours. This meant that the length and content of the transcript was constrained by the length of time it would take to be acted out in the courtroom. Due to the time constraint on the trial it was decided that the focus of the transcript would be on examination and cross-examination of the complainant. The accused would be present in the courtroom in all conditions but would not give evidence (not uncommon in sexual assault trials). The fact that only the complainant would be giving evidence in the trials and that there was no other corroborating evidence to support her testimony meant that it boiled down to one person's word against the other. While "word against word" cases are the most problematic they are also the most common (Lievore 2004).

To attempt to determine if there was adequate ambiguity in the scenario (so that jurors could feasibly be swayed one way or another in deciding about guilt of the accused during the trials) the transcript was pre-tested with eight staff members at the AIC who were unaware of the purpose of the trials or the content of the script itself. These staff members were asked to read the transcript and indicate the degree to which they believed the accused was guilty of raping the complainant without her consent, knowing that she had not consented. On the basis of this feedback some minor amendments were made to the script to try and increase the level of ambiguity so that floor and ceiling effects could be avoided.

Overview of courtroom scenario

In July 2004 both the accused and the complainant worked for an accountancy firm; the accused as an accountant and the complainant as his clerk. They were both present at an end-of-financial year work party held by their employer on the evening of Friday 9 July 2004. The party was held at a function centre in Sydney. During the course of the evening, when both were affected by alcohol, there was some jocular conversation between them about sexual matters in the presence of other people. The complainant also danced with the accused several times during the course of the evening. At about 10.00 pm, as the complainant was leaving a toilet some distance from where the party was, she encountered the accused in a corridor. She called out to him, he stopped in the corridor, waited for her to catch him up, and they continued to walk down the corridor together (in the opposite direction from the party) into a seminar room. The complainant claimed that the accused had told her in the corridor that he wanted to show her something in the seminar room. She claimed that, once in the seminar room, the accused locked the door, tried to kiss her, and attempted unsuccessfully to persuade her to engage in an act of fellatio. According to the complainant, the accused then forced her to have sexual intercourse with him, despite her resistance and protests. During cross-examination it was established that she did not shout for help during the incident. It was made clear at the beginning of the trial that there was no dispute between the two parties that sexual intercourse occurred in the seminar room – the question was whether the complainant had consented or not. The accused had pleaded not guilty to the charge.

After the alleged incident, the complainant claimed that she went to a bathroom to clean herself up. She met another work colleague in the bathroom but said nothing to her about the alleged incident. The complainant then went back to the party for another hour before leaving and gave no indication to anyone about what had allegedly happened. When questioned, she claimed she did not want anyone to know about what had happened because she felt embarrassed and ashamed. She continued to work with the accused for another two weeks. The complainant first reported the alleged assault to a work colleague two weeks after the party who persuaded her to report it to the police that same day.

The issue at trial was not whether sexual intercourse between the accused and the complainant had occurred, but whether the complainant was a consenting party.

Selection of professional actors

Six professional actors played the roles of:

- the complainant (a 23 year old female);
- the accused¹⁴ (aged early thirties);
- the judge;
- the Crown prosecutor;
- the defence counsel; and
- a court attendant.

In addition to the actors, a theatre director was employed for the duration of the rehearsals (two weeks) to ensure that the actors knew what they had to do and how they had to do it. This was deemed very important as it was essential that the actors behaved in exactly the same way for each trial.

Actors (other than the “accused” and court attendant) were recruited through advertisements placed in *The Canberra Times* newspaper, local theatre newsletters and on a national arts and entertainment internet website. Advertisements specified the roles required and that Actors Equity rates of pay would apply for professional actors. Applicants were asked to attach to their applications a biography and a photograph, and a closing date for applications was given. A large number of applications were received and auditions were scheduled and held at the AIC premises over three full days. Applicants came from the ACT, Victoria and New South Wales to audition. For all those auditioning, a relevant short extract of the script (relevant to the role being applied for) was sent out to the actors about two weeks beforehand and actors were asked to familiarise themselves with the lines prior to the audition. Successful actors for the roles were those who had learned their lines, were able to show a range of emotional states during the audition, accepted direction well and seemed to fit the roles well. Selection of actors was made by the authors and the theatre director. Each successful actor was advised that they would be employed full-time for five full weeks and that they would need to be available for the entire five-week period of engagement. It was necessary to employ actors for the five-week period to ensure that, if any trials needed to be re-run, the actors would be available for this purpose. It was crucial in the trials that exactly the same actors were involved in each trial. Two weeks of full-time rehearsals were followed by three weeks of trials.

¹⁴ The “accused” was recruited through a professional modelling agency and the court attendant was recruited through a local drama school.

Selection of mock jurors

The design specified in Table A-1 required 18 juries, each comprising 12 jurors. This meant that 216 jurors were required. In order to try to emulate as closely as possible the jury process that occurs in New South Wales, as well as jury breakdown on age and gender, information about age and gender of actual juries was sought. This information was not able to be obtained in relation to New South Wales jury demographics, but age and gender breakdown of jury pools in Melbourne was able to be provided by the Victorian Juries Office for 2003-04 (see Table A-2). It can be seen that:

- 43 per cent of these jurors were aged between 18 and 39 years, and 57 per cent were aged 45 and over; and
- 51 per cent of these jurors were male and 49 per cent were female.

Table A-2: Gender and age breakdown of prospective jurors attending the Melbourne jury pool in 2003-04

| Age range | 2003-04 | | |
|--------------|--------------|--------------|----------------|
| | % Males | % Females | % Total jurors |
| 18-19 | 1.74 | 1.92 | 1.83 |
| 20-24 | 8.47 | 10.40 | 9.41 |
| 25-29 | 10.40 | 10.94 | 10.66 |
| 30-34 | 12.02 | 10.16 | 11.11 |
| 35-39 | 11.55 | 8.23 | 9.93 |
| 40-44 | 13.01 | 11.72 | 12.38 |
| 45-49 | 11.59 | 13.71 | 12.63 |
| 50-54 | 10.34 | 12.12 | 11.21 |
| 55-59 | 8.57 | 10.14 | 9.34 |
| 60-64 | 5.79 | 5.93 | 5.86 |
| 65-69 | 3.85 | 3.24 | 3.55 |
| 70-74 | 1.63 | 1.01 | 1.33 |
| 75-79 | 0.89 | 0.34 | 0.62 |
| 80+ | 0.15 | 0.15 | 0.15 |
| Total | 51.13 | 48.87 | 100.00 |

Note: Persons attending this pool may be empanelled as jurors on Supreme or County Court criminal or civil trials. Data do not include jurors attending regional courts.

Source: Office of the Juries Commissioner of Victoria (unpublished data)

While it was clearly not possible in this research project to provide an exact match on juror age breakdown (given that actual jury selection is random and mandatory while the current research had to rely on members of the public volunteering to participate), it was decided

that each jury in this research project would aim to be comprised of jurors who were half male, half female, half aged 18 to 39 and half aged over 40 (see Table A-3).¹⁵ Quotas for each age/sex group were constructed and had to be met for juror inclusion. Lists of numbers within each quota group were generated and these numbers were randomly allocated to juries. This meant that when eligible jurors rang in to participate they were automatically randomly allocated to a jury when their name was placed against the next available slot in their age/sex quota list. To allow for the possibility that one or two jurors may not turn up on the day of their allocated trial, 14 jurors where possible were randomly allocated per jury (see procedure below).

Table A-3: Composition of juries in mock video trials

| Sex | Age group | |
|--------|-----------------------------|---------------------------|
| | 18 – 39 years | 40 years and over |
| Female | One quarter younger females | One quarter older females |
| Male | One quarter younger males | One quarter older males |

Note: While every attempt was made to ensure the above age breakdown in each jury, occasionally a juror who may have been outside the specified age range was included in a jury. These numbers however were small.

Advertisements for jurors for the mock trials were placed in *The Canberra Times*, local community papers in the ACT (including Queanbeyan in New South Wales), local gyms, the Canberra Institute of Technology and the University of Canberra. The advertisements stated that the Australian Institute of Criminology was seeking males and females of all ages (aged 18 years and over) to participate as jurors in mock sexual assault trials, and that the trials formed part of research investigating how jurors respond to adult sexual assault testimony. It was stated that participants would be required for four hours and would be paid \$40 to cover travel and ancillary costs (the same amount paid to actual New South Wales jurors for half a day). Jurors received the payment at the conclusion of each trial.

Overall, there was a strong response to the advertisements. When members of the general public called in, the same juror eligibility criteria as used in New South Wales were applied (see Appendix B). In addition, respondents were asked if they had ever been the victim of a sexual assault. Those who answered in the affirmative were excluded from participation in the trials. This was to reduce any potential distress which might arise as a result of watching the trial. Respondents who were eligible to participate were then given further information about the trials and what their participation would involve. Name and address details were collected and respondents were then asked to indicate which age group they were in. If the quota for their age group was not yet full they were randomly allocated to a jury and details of the date and time of their mock trial were provided to them. If the quota for their age

¹⁵ Findlay (1994) in a survey of jurors in New South Wales found that about one third of juries were comprised of equal numbers of males and females. In 70 per cent of juries the ratio was 5:7.

group was full they were advised of this and placed on a waiting list. It is noteworthy that the older female age group filled up first while the younger male age group filled up last. Confirmation letters were then sent out to jurors with details of their mock trial and a map of the University of Canberra showing where they would be met. A phone call was also made to jurors a few days prior to their scheduled trial to remind them of the date and time of the trial, and to ensure that they were still able to participate.

A total of 373 people contacted the AIC in response to the advertising (68 of these were ineligible to participate). Of the total number who called the AIC:

- 62 per cent of these had seen the advertisement in *The Canberra Times*;
- 27 per cent had seen the advertisement in the local community paper;
- four per cent had seen flyers at the University of Canberra;
- three per cent had seen flyers at the Canberra Institute of Technology; and
- four per cent had seen the flyer elsewhere or heard about the project through word of mouth.

Dependent measures

The information required for purposes of informing this research project were obtained from the jurors in each condition. Questionnaires were constructed with items designed to measure:

- complainant credibility;
- empathy with complainant;
- overall impression of complainant;
- personal belief about guilt of the accused;
- degree to which the Crown had proved its case;
- empathy with the accused;
- overall impression of the accused;
- perceived stress at court for the complainant;
- perceived fairness in courtroom procedures; and
- individual attitudes toward rape victims (in general).

The individual questions for each of the above and scale reliabilities are presented in Appendix C.

The dependent measures comprised:

- demographic information for each juror;
- a questionnaire administered to jurors individually immediately following the trial but before jury deliberation;
- a jury verdict;
- a questionnaire administered to jurors individually following the jury deliberation process and verdict; and
- an attitudes toward rape victims questionnaire.

Piloting

In the second week of rehearsals (the week prior to commencement of the mock trials) the trials were piloted with two juries. One jury watched the face-to-face emotional testimony while the other jury watched the face-to-face neutral testimony. The purpose of the piloting was to identify whether the questions in the questionnaire were able to be understood and answered without difficulty by jurors, to determine the timing of the trials, to assess how the jury deliberation process would go, and to identify any other unexpected problems or issues which may have arisen during the trials.

Procedure

Jurors for each trial were met at a pre-determined location at the University of Canberra and escorted to a room close to the mock court room where they were briefly advised again that they were going to watch a mock sexual assault trial. Each juror was then given a unique codenumber. They were advised that by using this codenumber they could not be individually or personally identified with their responses. Jurors were advised that the purpose of the codenumber was to allow the researchers to link responses for each juror so that the research could be conducted properly but in a way which did not identify individual jurors with their responses. Jurors then completed a consent form and a short demographics questionnaire. They were then escorted into the mock court room where the actors were already in position, and were led to the jury box by the court attendant where they were seated. In the courtroom in all conditions, there were present the judge, the courtroom attendant, the defence counsel, the prosecutor and the defendant (who sat behind the defence counsel). The judge, defence counsel and prosecutor were attired in robes, jabots and wigs. Once the jurors were seated, the trial commenced. The trial lasted for about one and a quarter hours.

Face-to-face condition

The judge opened with his remarks to the jury, advising them of their role as opposed to his. The Crown prosecutor then embarked upon the case, outlining the scenario of the case and highlighting that the burden of proof lay upon the Crown to prove the guilt of the accused beyond a reasonable doubt. The Crown then called the complainant to the witness stand. The complainant entered the courtroom, was led to the witness box and was sworn in by the court attendant. The prosecution then questioned the complainant about the alleged incident. This was followed by the defence counsel's cross-examination of the complainant, and a short re-examination by the prosecutor. At the completion of the examination the judge thanked the complainant and advised her that she could step down from the witness box. She was escorted out of the courtroom by the court attendant. The prosecution then summed up the prosecution's case to the jury. This was followed by the defence counsel's summing up to the jury. The judge then summed up the case for the jury, directed them that the accused's silence could not be used against him or taken to imply guilt, and gave them directions as to what they were required to do in reaching their verdict.

CCTV condition

As in the face-to-face condition, except that when the complainant was called to the witness box the judge stated to the jury:

Members of the jury, the testimony you are about to hear will be presented to you via closed circuit television. This means that the witness is in another room and she will be presenting her evidence from that room. You can watch the witness on the TV monitor that is facing you. The monitor before you will allow you to watch the witness and hear her testimony without her being present in this courtroom. It is standard procedure for complainants' evidence in such cases to be given by these means. You should consider the testimony that will be presented now in the same way you would if the witness were in the courtroom before you. I must caution you against drawing any inference adverse to the accused or giving the evidence any greater or lesser weight because it is given by these means. The use of closed circuit television for evidence is standard practice and is not to be used or interpreted in any way against the accused. Its use does not imply that the accused is guilty and you must not interpret it that way. It is important that you understand this and keep it in mind during the testimony that is about to be given.

A 42-inch plasma TV screen facing the jury was turned on and the complainant could be clearly seen. The screen showed her head, upper body and hands, and that she was seated. Her face could be clearly seen. The court attendant left the courtroom and was seen a few moments later on the screen entering the room with the complainant and swearing

her in. Everything said to and by the complainant was transmitted loudly and clearly by a microphone into the courtroom. The questioning by the prosecutor and defence counsel and the answers given by the complainant were exactly as they were in the face-to-face condition. At the completion of the examination the judge thanked the complainant and advised her that she was free to step down. The screen in front of the jury then went blank and the court attendant returned to the courtroom.

The prosecutor summed up the prosecution's case to the jury, followed by the defence counsel's summation. The judge then summed up the case to the jury as he did in the face-to-face condition, but added the following:

Members of the Jury you will note that Ms ... has given her evidence via closed circuit television. It is standard procedure for complainants' evidence in such cases to be given by these means. You must not draw any inference adverse to the accused or give the complainant's evidence any greater or lesser weight because it is given by those means.

The judge then gave the jury directions as to what they were required to do in reaching their verdict.

Pre-recorded videotape condition

When the complainant was called to give evidence, the judge stated to the jury:

Members of the jury, the testimony you are about to hear has been recorded at an earlier date and will be presented via videotape. You can watch the witness' testimony on the monitor before you. The monitor will allow you to watch the witness as she testified at an earlier date without her being present in this courtroom. It is standard procedure for complainants' evidence in such cases to be given by these means. You should consider the testimony that will be presented now in the same way you would if the witness were in the courtroom before you. I must caution you against drawing any inference adverse to the accused or giving the evidence any greater or lesser weight because it is given by these means. The use of pre-recorded videotape for evidence is standard practice and is not to be used or interpreted in any way against the accused. Its use does not imply that the accused is guilty and you must not interpret it that way. It is important that you understand this and keep it in mind during the evidence that is about to be given.

A 42-inch plasma TV screen facing the jury was turned on and the complainant could be seen on the screen. The screen showed her head, upper body and hands, and that she was seated. Her face could be clearly seen. The videotape showed the court attendant swearing the complainant in and the jury could clearly hear everything said to and by the

complainant. The questioning by the prosecutor and defence counsel and the answers given by the complainant were exactly as they were in the face-to-face condition. On the screen, however, the camera was focused solely on the complainant so that while the questions from the prosecutor and defence counsel could be clearly heard in the background on the tape, only the complainant could be seen on the screen. While the tape was playing the judge, prosecutor and defence counsel in the courtroom were seated and watching the videotape. At the completion of the examination the judge in the videotape thanked the complainant and advised her that she was free to step down from the witness box. The screen in front of the jury then went blank.

The prosecutor summed up the prosecution's case to the jury, followed by the defence counsel's summation. The judge then summed up the case to the jury as he did in the face-to-face condition, but added the following:

Members of the jury you will note that Ms ... has given her evidence by means of a video recording made prior to today. It is standard procedure for complainants' evidence in such cases to be given by these means. You must not draw any inference adverse to the accused or give the complainant's evidence any greater or lesser weight because it is given by those means.

The judge then gave the jury directions as to what they were required to do in reaching their verdict.

Members of the jury, the accused stands before you upon an indictment, that he did have sexual intercourse with Ms ... without consent, knowing she did not consent. To that charge the accused has pleaded not guilty. It becomes your duty and responsibility, to consider whether the accused is guilty or not guilty of the charge and to return your verdict according to the evidence which you have heard.

The facts of the case and the verdicts you give are for you, and you alone, because you alone are the judges of the facts. It is for you to assess the evidence. Your ultimate decision as to what evidence you accept and what evidence you reject may be based on all manner of things, including what the witness has had to say; the manner in which the witness said it; and your general impression about the evidence given.

You are not obliged to accept the whole of the evidence of any one witness. You may, if you think fit, accept part and reject part of the same witness' evidence. The fact that you do not accept a portion of the evidence of a witness does not mean that you must necessarily reject the whole of the witness' evidence.

In undertaking this task you are expected to use your individual qualities of reasoning; experience; and understanding of people and human affairs. You have very important

matters to decide in this case. The privilege of sitting in judgment upon your fellow citizens is one which carries with it corresponding duties and obligations. You must act impartially, dispassionately and fearlessly. You must not let sympathy or emotion sway your judgment. Your decision must be unanimous.

Let me now say something to you about the onus of proof. This is, as you have already been told more than once, a criminal trial of a most serious nature and the burden of proof of the guilt of the accused is placed on the Crown. That onus rests upon the Crown in respect of every element of the charge.

The accused has not given evidence in response to the Crown's case. There is no obligation for him to do so. There are a number of important directions of law I must now give you. I must warn you that there may be reasons unknown to you why an accused person, even if otherwise in a position to contradict or explain evidence, remains silent. As I have already pointed out, the Crown bears the onus of satisfying you beyond reasonable doubt that the accused is guilty of the offence charged. The accused bears no onus. The accused is presumed to be innocent until you have been satisfied beyond reasonable doubt by the Crown that the accused is guilty.

I direct you, as a matter of law, that the accused's silence cannot be used against him. It does not constitute an admission by the accused and no adverse inference must be drawn from that fact. You must not fill gaps in the evidence tendered by the Crown and the fact the accused has not given evidence may not be used in assessing whether the Crown has proved its case beyond reasonable doubt.

You must not speculate about what might have been said if the accused had given evidence. It is not for the accused to prove his innocence but for the Crown to prove his guilt and to prove it beyond reasonable doubt. The Crown does not have to prove, however, every single fact in the case beyond reasonable doubt. The onus is upon the Crown to prove the elements of the charge beyond reasonable doubt.

The elements of the charge that the Crown must prove beyond a reasonable doubt for you to return a verdict of guilty are that:

- firstly, there was sexual intercourse;*
- secondly, the sexual intercourse was without the consent of Ms ...; and*
- thirdly, the accused knew Ms ... was not consenting or was reckless as to whether she was consenting or not.*

It is common ground in this case that sexual intercourse took place between the accused and Ms ... and you would be satisfied beyond a reasonable doubt that this element of

the charge has been made out.

You must then consider whether the Crown has proved beyond reasonable doubt that Ms ... did not consent. It should be noted, at the outset, that the accused does not have to prove that Ms ... consented; it is for the Crown to prove beyond reasonable doubt that she did not. What then, is meant by consent?

Consent involves conscious and voluntary permission to engage in sexual intercourse. It can be given verbally, or expressed by actions. Similarly, absence of consent does not have to be in words; it also may be communicated in other ways. However, the law specifically provides that a person who does not offer actual physical resistance to sexual intercourse is not, by reason only of that fact, to be regarded as consenting to the sexual intercourse.

*The Crown must prove beyond reasonable doubt that Ms ... did not consent. If the Crown fails to do so, then the accused is not guilty of this charge. If you are satisfied Ms ... did not consent, then you must go on to consider the third element, namely, whether the accused **knew** that she was not consenting.*

The Crown must prove, beyond reasonable doubt, that the accused knew Ms ... did not consent. This is a subjective, and not an objective test. You might ask how, in the absence of an admission by the accused, the Crown can prove he was aware that Ms ... did not consent. The Crown asks you to infer from the other facts which it has set out to prove, that the accused must have known and indeed did know Ms ... was not consenting. For example, the Crown relies on the complainant's words and conduct, "Don't", "Stop it", "Let me go"; her testimony that she pulled away from him; and resisted him. If the Crown satisfies you beyond reasonable doubt that the accused's state of mind at the time of the act of intercourse was that he actually knew Ms ... was not consenting, then the third element of the charge has been made out.

On the other hand, the accused's state of mind might be that he honestly, though wrongly, believed that Ms ... was consenting to intercourse. That is not a guilty state of mind. If the Crown fails to prove that, at the time of intercourse, the accused did not honestly believe Ms ... was consenting, then you would have to say that this third element of the offence is not made out, and return a verdict of "not guilty" of this charge. In this regard you should consider all the evidence of the conduct of the complainant and the accused in the seminar room.

When looking at all the evidence you should also have regard to the evidence of Ms ... that she complained to her colleague Melissa within two weeks of the alleged incident. If you accept that the complaint was made to Melissa, then you may take it into consideration as some evidence of the fact that the sexual assault alleged actually

took place. The fact that the complaint was made may also assist you in determining the weight to be given to Ms ...'s evidence here in court.

Mr Thomas [Defence] has argued that Ms ...'s lack of complaint to Alison outside the toilet on the night of the alleged sexual assault and the delay in making the complaint to Melissa is inconsistent with the conduct of a truthful person who has been sexually assaulted. Mr Thomas says that you should, therefore, regard Ms ...'s evidence that she was sexually assaulted as false.

This is necessarily a matter which you should consider, but I must warn you that the delay in making a complaint does not necessarily indicate that the evidence of the complaint is false. It may indicate fabrication on the part of Ms ... but it does not necessarily do so. There may be good reasons why a person who has been sexually assaulted hesitates in making a complaint. It is important, however, you take into account the delay in the making of the complaint in evaluating the evidence of the complainant, and in determining whether to believe her.

In this case, Ms ... is the only person who has given evidence asserting the commission of the offence. The evidence of Ms ... is to be scrutinised with great care before determining whether you return a verdict of guilty or not guilty.

I now ask you to retire to consider your verdict. I remind you that your decision must be unanimous and voluntarily agreed by each and every one of you. It is not enough to go along with the decision of others or to take a majority vote. The jury verdict must be unanimous and agreed to consciously and voluntarily by all of you. You may now retire to consider your verdict.

When each trial had finished and the judge had finished his summing up and directions to the jury, the jurors were led out of the mock courtroom and into the jury deliberation room. Jurors were seated around a table and given a questionnaire (pre-jury deliberation questionnaire) to complete individually. The completed questionnaires were collected by the researcher and jurors were instructed to deliberate together as a jury and reach a verdict in line with the directions given by the judge.¹⁶ They were advised to select a foreperson who would facilitate the discussion and would read the verdict. When a verdict had been reached, the foreperson should open the door and alert the researcher. Jurors were left alone in the room to deliberate with the door shut. Each jury was given up to one hour for deliberation.

¹⁶ In those trials where there were more than 12 jurors, excess jurors (a maximum of two) sat in the audience section of the mock court room and watched the trial, and then discussed what they had seen with one of the researchers in another room while the jury retired to the deliberation room. After the jury had deliberated and completed questionnaires all participants were reunited for debriefing.

Upon being notified that the jury had reached a verdict by the foreperson, the researcher entered the room and asked the foreperson to deliver the verdict. In the event of a hung jury the researcher entered the room after one hour had elapsed. The post-deliberation questionnaire was then given to jurors and they were asked to complete it individually. The attitudes toward rape questionnaire was given to jurors last. Upon completion of the questionnaires, jurors were further questioned about their experience and general perceptions in the courtroom and during the jury process. Jurors had many questions about the court and legal system in general and about the case in particular. A general discussion ensued in which many issues and questions were raised. Jurors were then advised that an information session would be held once all the trials were completed, that the research project would be discussed at that session in some detail and that some findings from the research would also be presented.¹⁷ Finally, jurors were thanked for their participation, asked not to discuss the research with anyone else until the information session, and paid \$40.

¹⁷ The information session for all jurors who participated in the research was held in early October 2005.

Appendix B – Juror eligibility criteria

Each person who called in wishing to participate as a “juror” in the mock trials was asked the following eligibility questions:

Are you registered to vote in State and Federal elections in Australia?

Yes No

If unsure - **Are you an Australian Citizen?**

Yes No

If answer No then ineligible

Are you aged 18 years or older?

Yes No

If answer No then ineligible

In the last 10 years have you been found guilty of an offence and served any part of a prison sentence?

(Not imprisonment for failure to pay fine)

Yes No

If answer Yes then ineligible

In the last 5 years have you been found guilty of an offence and been detained in a detention centre or juvenile detention centre?

(Not imprisonment for failure to pay fine)

Yes No

If answer Yes then ineligible

Are you currently, or have you ever been ...?

A judicial officer

Yes No

A coroner

Yes No

A staff member of either or both Houses of Parliament

Yes No

A legal practitioner

Yes No

A police officer

Yes No

| | | |
|---|-----|----|
| A Crown prosecutor | Yes | No |
| A public defender | Yes | No |
| A director or deputy director of public prosecutions | Yes | No |
| A solicitor for public prosecutions | Yes | No |
| Employed in the public sector in the administration of justice or penal administration | Yes | No |

If answer Yes to any of the above then ineligible

Are you able to read and understand English? Yes No

If answer No then ineligible

Are you unable, because of sickness, infirmity or disability, to fulfil the duties as a juror? Yes No

If answer Yes then ineligible

In this study an additional eligibility question was asked:

Have you ever been a victim of sexual assault? Yes No

If answer Yes then ineligible

Appendix C – Scale items and reliabilities

Manipulation check

1. *Perceived emotion of victim (-3 very unemotional to +3 very emotional)*

1. How emotional did you think the complainant was during the trial?
2. How upset did you think the complainant was during the trial?
3. How distressed did you think the complainant was during the trial?

Cronbach's alpha = 0.96

Dependent measures

All questions were responded to on seven-point Likert scales (some scales were unipolar and some were bipolar).

2. *Victim credibility scale (-3 not credible to +3 very credible)*

1. How credible did you find the complainant's testimony?
2. How reliable did you think the complainant's testimony was?
3. How truthful did you think the complainant's testimony was?
4. How honest did you think the complainant was during the trial?
5. How accurate did you think the complainant's testimony was?
6. How convincing did you think the complainant's testimony was?

All six items loaded onto one factor, accounting for 83 per cent of the variance. All items loaded at .89 or higher. Cronbach's alpha = 0.96.

3. *Empathy with victim scale (1 no empathy to 7 high empathy)*

1. How would you rate the degree of compassion you felt toward the complainant?
2. How sympathetic did you feel toward the complainant?
3. How would you rate the degree to which you felt sorry for the complainant during the trial?

All three items loaded onto one factor, accounting for 83 per cent of the variance. All items loaded at .88 or higher. Cronbach's alpha = 0.90.

4. Overall impression of victim (one item only) (-3 negative to +3 positive)

1. Overall, how would you rate your general impression of the complainant?

5. Empathy with accused (1 no empathy to 7 high empathy)

1. How would you rate the degree of compassion you felt toward the accused?
2. How sympathetic did you feel toward the accused?
3. How would you rate the degree to which you felt sorry for the accused during the trial?

All three items loaded onto one factor, accounting for 84 per cent of the variance. All items loaded at .90 or higher. Cronbach's alpha = .90.

6. Overall impression of accused (one item only) (-3 negative to +3 positive)

1. Overall, how would you rate your general impression of the accused?

7. Personal belief about guilt of accused scale (-3 innocent to +3 guilty)

(Note that this was measured both prior to and after jury deliberation)

1. In your opinion, what is the likelihood that the complainant was actually sexually assaulted by the accused?
2. To what degree do you believe the complainant did or did not consent to the sexual intercourse which occurred?
3. In your opinion what is the likelihood that the accused did sexually assault the complainant, knowing that she had not consented?
4. Based on what you saw and heard in the trial, to what degree do you personally believe that the accused is guilty of the charge against him?

All four items loaded onto one factor, accounting for 87 per cent of the variance. All items loaded at .93 or higher. Cronbach's alpha = 0.95.

8. Belief about whether prosecution proved its case (1 strongly disagree to 7 strongly agree)

1. I believe that the prosecution proved its case beyond reasonable doubt.

9. Rationale for personal belief about guilt of the accused (separate item)

(Note that this was measured both prior to and after jury deliberation)

1. I believe that...
 - a. The accused did have sexual intercourse with the complainant without her consent, knowing that she had not consented, and the prosecution proved this beyond reasonable doubt.
 - b. The accused did have sexual intercourse with the complainant without her consent, knowing that she had not consented, but the prosecution did not prove this beyond reasonable doubt.
 - c. The accused probably did have sexual intercourse with the complainant without her consent, knowing that she had not consented, but considerable doubts remain.
 - d. The accused did have sexual intercourse with the complainant without her consent, but I think he truly believed that she had consented.
 - e. It is unlikely that the accused had sexual intercourse with the complainant without her consent, but I cannot be sure.
 - f. The accused is innocent, he did not have sexual intercourse with the complainant without her consent. She consented.

10. Stress at court for victim (1 not at all stressful to 7 very stressful)

1. How stressful would you say the complainant's experience in giving testimony was?
2. How difficult do you think it was for the complainant to give her testimony?
3. How traumatic did you think it was for the complainant when she was giving testimony?

All three items loaded onto one factor, accounting for 83 per cent of the variance. All items loaded at .91 or higher. Cronbach's alpha = 0.90.

11. Victim's contribution to incident (-3 low to +3 high)

1. How justified do you think the accused would have been in believing that consent had been given by the complainant to the sexual intercourse?

-
2. To what degree do you believe the complainant's behaviour encouraged the accused to believe she was consenting to sexual intercourse?

Cronbach's alpha = 0.81.

12. Fairness of courtroom procedures for victim (one item only) (-3 unfair to +3 fair)

1. I believe that the courtroom procedures relating to the way in which the complainant gave her testimony were fair to her.

13. Fairness of courtroom procedures for accused (one item only) (-3 unfair to +3 fair)

1. I believe that the courtroom procedures relating to the way in which the complainant gave her testimony were fair to the accused.

14. Attitudes toward rape victims (ATRV) scale – Ward 1988

This scale contains 25 statements about rape victims, eight worded positively and 17 worded negatively. It encompasses issues of blame, denigration, credibility, responsibility, deservingness and trivialization. The items are scored on seven-point Likert scales, anchored by *totally disagree* (-3) to *neutral* (0) to *totally agree* (+3). The eight positive items are reverse scored so that higher scores on an item reflect more unfavourable attitudes toward rape victims. Individual scores are summed to provide an ATRV score which can range between -75 and +75.

- 1*. A raped woman is usually an innocent victim.
2. The extent of the woman's resistance should be a major factor in determining if a rape has occurred.
3. A raped woman is a less desirable woman.
4. Women often claim rape to protect their reputations.
- 5*. "Good" girls are as likely to be raped as "bad" girls.
6. Women who have had prior sexual relationships should not complain about rape.
- 7*. Women do not provoke rape by their appearance or behaviour.
8. Intoxicated women are usually willing to have sexual relations.

-
9. It would do some women good to be raped.
 - 10*. Even women who feel guilty about engaging in premarital sex are not likely to falsely claim rape.
 11. Most women secretly desire to be raped.
 - 12*. Rape is something that can happen to any woman.
 13. Women who are raped while accepting rides from strangers get what they deserve.
 14. Many women invent rape stories if they learn they are pregnant.
 - 15*. Men, not women, are responsible for rape.
 16. A woman who goes out alone at night puts herself in a position to be raped.
 17. Many women claim rape if they have consented to sexual relations but have changed their minds afterwards.
 18. Accusations of rape by bar girls, dance hostesses and prostitutes should be viewed with suspicion.
 - 19*. A woman should not blame herself for rape.
 20. A healthy woman can successfully resist a rape if she really tries.
 21. Many women who report rape are lying because they are angry or want revenge on the accused.
 - 22*. Women who wear short skirts or tight blouses are not inviting rape.
 23. Women put themselves in situations in which they are likely to be sexually assaulted because they have an unconscious wish to be raped.
 24. Sexually experienced women are not really damaged by rape.
 25. In most cases when a women was raped, she deserved it.

Ward (1988) found good internal reliability for the scale (Cronbach's alpha = 0.83). This level of internal reliability was also found in the present study (Cronbach's alpha = 0.83).

* Items reverse scored.

Note: Item 12 was reworded slightly from Ward's 1988 original item "Any female may be raped" to reduce ambiguity in this item.

Appendix D – Statistical tables

Table D1: Linear hierarchical multiple regression analysis predicting pre-jury deliberation personal belief about guilt (standardised coefficients)

| | β | Std error | t | sig | R ² _{adj} |
|-------------------------------------|---------|-----------|-------|-----|-------------------------------|
| Mode of presentation | | | | | |
| CCTV (vs face to face) | -.01 | .08 | -0.17 | .86 | .00 |
| Video (vs face to face) | -.05 | .08 | -0.58 | .56 | |
| Neutral (vs emotional) | .00 | .07 | 0.01 | .99 | |
| Demographics | | | | | |
| Age | .00 | .04 | 0.16 | .87 | .74 |
| Sex (0=female, 1=male) | .03 | .04 | 0.87 | .39 | |
| Education | .10 | .04 | 2.45 | .02 | |
| Annual income | .01 | .04 | 0.29 | .77 | |
| Knowledge of sexual assault victims | .06 | .04 | 1.73 | .09 | |
| Attitudes toward rape victims scale | -.09 | .04 | -2.24 | .03 | |
| Perception variables | | | | | |
| Victim credibility | .75 | .05 | 16.25 | .00 | |
| Empathy with victim | .03 | .04 | 0.71 | .48 | |
| Empathy with accused | -.14 | .04 | -3.41 | .00 | |

Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Table D2: Linear multiple regression analysis predicting attitudes toward rape victims scale (standardised coefficients)

| | β | Std error | t | sig | R ² _{adj} |
|-------------------------------------|---------|-----------|-------|-----|-------------------------------|
| Demographics | | | | | |
| Age | -.04 | .06 | -0.60 | .55 | .23 |
| Sex (0=female, 1=male) | .36 | .06 | 5.90 | .00 | |
| Education | .07 | .07 | 1.07 | .29 | |
| Annual income | -.20 | .07 | -3.09 | .01 | |
| Political conservatism | .27 | .07 | 4.25 | .00 | |
| Degree to which religious | .09 | .06 | 1.35 | .18 | |
| Knowledge of sexual assault victims | .00 | .06 | 0.06 | .95 | |

Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

Note: Higher scores on attitudes toward rape victims scale reflect more unfavourable attitudes.

Table D3: Zero order correlations between all dependent measures

| | Victim credibility | Empathy with victim | Overall impression of victim | Empathy with accused | Overall impression of accused | Attitude toward rape victims | How emotional was victim? | Belief about guilt of accused (pre) | Whether prosecution proved its case | Victim's contribution to incident | Stress at court for victim |
|---|--------------------|---------------------|------------------------------|----------------------|-------------------------------|------------------------------|---------------------------|-------------------------------------|-------------------------------------|-----------------------------------|----------------------------|
| Empathy with victim | .51* | | | | | | | | | | |
| Overall impression of victim | .81* | .52* | | | | | | | | | |
| Empathy with accused | -.39* | -.09 | -.25* | | | | | | | | |
| Overall impression of accused | -.26* | -.24* | -.18* | .37* | | | | | | | |
| Attitude toward rape victims scale | -.30* | -.17* | -.21* | .23* | .10 | | | | | | |
| How emotional was victim? | .19* | .17* | .15* | -.10 | -.13 | .07 | | | | | |
| Personal belief about guilt of accused (pre) | .84* | .44* | .71* | -.45* | -.32* | -.35* | .16* | | | | |
| Whether prosecution proved its case | .58* | .27* | .51* | -.43* | -.36* | -.13* | .14 | .68* | | | |
| Victim's contribution to incident | -.62* | -.30* | -.51* | .40* | .32* | .44* | -.06 | -.70* | -.51* | | |
| Perceived stress at court for victim | .41* | .45* | .33* | -.19* | -.21* | -.12 | .61* | .41* | .28* | -.30* | |
| Personal belief about guilt of accused (post) | .72* | .41* | .63* | -.40* | -.23* | -.39* | .10 | .83* | .57* | -.66* | .39* |

Source: Australian Institute of Criminology, Mock Sexual Assault Trials [computer file].

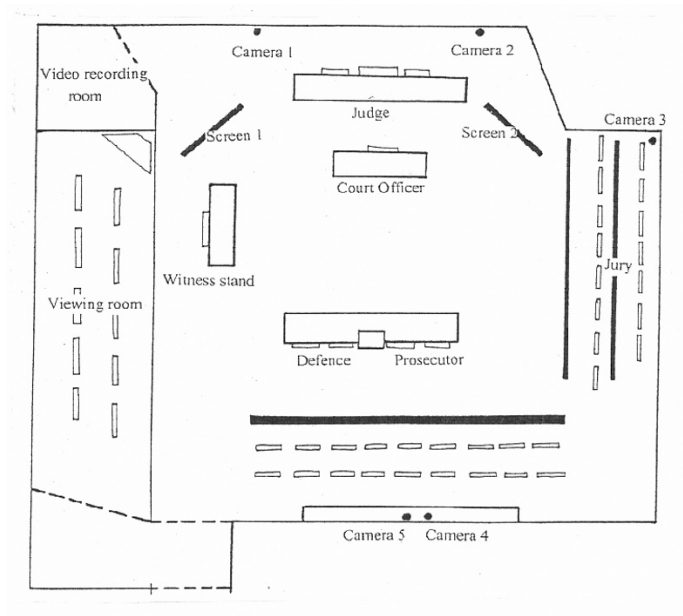
Note: Scale ratings range from low to high on each dimension except for attitudes toward rape victim scale (where higher scores reflect more unfavourable attitudes toward rape victims in general)

* Significant to p<.05

Appendix E – Layout of the mock courtroom

University of Canberra mock courtroom

Figure E1: Layout of the mock courtroom



Photograph 1: The mock courtroom from behind the bar table





Australian Government

Australian Institute of Criminology

Research and Public Policy Series

No. 68

This report presents the findings from a mock sexual assault jury trial research project conducted on behalf of the New South Wales Attorney General's Department in 2005. The project aimed to investigate whether the impact of adult sexual assault complainant testimony on juror perceptions and decisions differs if presented via closed circuit television (CCTV), pre-recorded videotape or face-to-face in the courtroom. The study also investigated the impact of emotional versus neutral complainant testimony. Eighteen mock trials were held in a mock courtroom in which 210 members of the public participated as jurors. The report outlines the methodology used, the key findings, issues arising from juror feedback and the difficulties encountered by jurors in trying to reach unanimous verdicts.

ISBN 064253892-1



9 780642 1538925