Jury decision-making strategies in child sexual abuse cases

Dr. Bianca Klettke
Deakin University

Persons with selected offences finalised in the Higher Courts by trial; offence by outcome of charges at trial for that offence, 2004

<table>
<thead>
<tr>
<th>Offence defendant charged with</th>
<th>Sex offence against a child</th>
<th>Any sexual offence</th>
<th>Assault offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outcome (%) Proceeded to trial</td>
<td>Sex offence NOT against a child</td>
<td>Sex offence against a child</td>
<td>Any sexual offence</td>
</tr>
<tr>
<td>Acquitted of all charges</td>
<td>61.2</td>
<td>73.7</td>
<td>67.2</td>
</tr>
<tr>
<td>Guilty of at least one charge</td>
<td>37.6</td>
<td>24.6</td>
<td>31.1</td>
</tr>
<tr>
<td>Acquitted, had other guilty plea</td>
<td>1.2</td>
<td>1.7</td>
<td>1.7</td>
</tr>
<tr>
<td>Total (%)</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Total (number)</td>
<td>85</td>
<td>118</td>
<td>180</td>
</tr>
</tbody>
</table>

Background

Sex offences against a child have one of the highest acquittal rates if proceeding to trial

- 32.7% of offences finalised in the Higher Courts proceeded to trial in NSW
- Why?
- Is there something about the jury deliberations that may provide an answer?
Background – Stages of Jury-decision making

- Orientation
- Open conflict
- Reconciliation (Constanzo, 2003; Stasser, 1992)

Orientation
- Jurors choose foreperson, discuss procedures, raise trial issues
- Effect of gender composition on jury outcomes in CSA cases (Golding et al., 2007)
  - Mock female majority juries (1 M, 5 F) rendered more guilty verdicts (40%) than male majority juries (1 F, 5 M) (7%)
  - More not guilty verdicts (93%) in male majority juries than female majority juries (60%).
  - Both females and males more likely to switch from guilty to not guilty verdicts (than not guilty to guilty); females more likely to switch than males
- Analysis of actual court records showed that 89% of forepersons are male, while comprising 56% of juries (Dillehay & Nietzel, 1985)

Open conflict
- Jurors try to persuade other jurors in order to reach a verdict
- What kind of strategies do jurors use to achieve this?
Reconciliation

- Juries attempt to ensure that jury members are satisfied with final verdict

Research Question

- What type of decision-making strategies do juries in child sexual assault cases employ?

Predictions

- Explanation building by jurors attending to and discussing all proposals, will help jurors to reach a consensus.
- However, conflicts, domination and other non-constructive strategies will arise.
Method

• Materials
  • Mock juries consisting of 12 people were presented with CSA cases and asked to reach a verdict
  • 60 mock jury deliberations were transcribed from audio cassette or compact disc. The complete transcription of those cases amounted to 121,681 words.
  • These mock juries were based on the paradigm used in Klettke, Graesser & Powell (2010) and Klettke & Powell (under review).

• Procedure
  • A discourse analysis, based upon Braun and Clarke's (2006) 6-phases of thematic analysis (data familiarisation, generating initial codes, searching for themes, reviewing themes, defining and naming themes, producing the report)

Results

• FJ: Mmmm, I've made my mind up
• FJ: Yeah
• FJ: But now you're influencing everyone else
• FJ: You are
• FJ: You are influencing

Results II

• FJ1: I tell you what if I'm ever up on court I'm not going to have any of youse up on the...on my jury
• MJ: Yeah, you're going to be in trouble then mate
• FFP: The majority rules, you can sit there and debate it
• FJ1: You find everybody guilty
**Results III**

- **FJ:** Can I say why? Only what did I just say, like 4 months ago I went away with my friends and their 4 year old daughter. She knows me but I’m not her aunty. I’m not there all the time.
- **MJ:** Daughter… this is a son.
- **FJ:** So but we’re looking at women abusing boys and girls and vice versa right.
- **MJ3:** Nah I don’t think it’s the same thing.
- **FJ:** And when we were away and she goes I want to go have a shower with Mel, I want to go have a shower with Mel and…
- **MJ3:** No sorry darl, it’s irrelevant. Sorry. Sarah, Nina, Tony. Boys, girls, boys, girls.
- **FJ:** I don’t care. We’re talking about boys abusing boys and girls abusing girls.
- (a few lines down)
- **MJ:** It’s not the same (juror’s name)’s right.

**Results IV**

- **MFP:** Did you the jury find the defendant guilty or not guilty?
- **FJ:** Half and half
- **MFP:** Guilty
- **FJ:** Guilty
- **FJ:** How did that happen?

**Results V**

- **MJ:** No you didn’t vote guilty last time, you voted not guilty.
- **FJ:** I did I did.
- **MJ:** Yeh she did.
- **MJ3:** She’s gone blonde on us.
Summary

- Conflicts and dissention amongst jurors in reaching a consensus were observed.
- Jurors who did not go along with the majority were insulted or in some instances overruled by the foreperson, suggesting that the verdict may be dictated by either the majority through intimidation or domination by the foreperson or a juror.
- “Decisions were frequently made on a totally irrational basis”
- “They were bullied by stronger personalities into a decision they did not believe correct” (Sun Herald, 5/2/1989)

Legal Implications

- In order to test whether these strategies are more frequently used in CSA cases and are causally linked to the low conviction rates, they will have to be compared to non-CSA cases.
- Gender structure may play a critical role in CSA cases.
- Every juror should have the right to have his/her opinion heard (in a safe manner) when serving on a jury.

Thank you!

- For questions, feedback, comments, etc. please e-mail me at:
  
  biancak@deakin.edu.au