Simulated jury decision making in online focus groups

The Authors

Samantha J. Tabak, School of Psychology, Deakin University, Melbourne, Australia

Bianca Klettke, School of Psychology, Deakin University, Melbourne, Australia

Tess Knight, School of Psychology, Deakin University, Melbourne, Australia

Abstract

Purpose – A significant issue in jury research has been the use of individual jurors to analyse jury decision-making. This paper aimed to examine the applicability of computer-mediated communication to a mock jury deliberation study.

Design/methodology/approach – Groups of three to five Australian residents anonymously attended a secure chat room and participated in a semi-structured discussion about a simulated child sexual assault scenario. Deliberation transcripts were analysed thematically using NVivo. A hermeneutic framework was used to analyse the deliberation transcripts.

Findings – Five interrelated themes were revealed, each reflecting the tools online juries used to communicate, create meaning, and arrive at a verdict. Electronic jury deliberation promoted an understanding of how people make sense of child sexual assault cases in Australia today.

Originality/value – This study advanced the understanding of online decision making in a child sexual assault scenario. It demonstrated that knowledge of how juries deliberate and create meaning could improve our understanding of how verdicts are achieved. Electronic mock juries are a valuable adjunct to traditional jury deliberation studies because they are cost effective, time efficient, and offer wider recruitment opportunities.

Introduction

Child sexual assault (CSA) is a pervasive, yet largely hidden, crime in Australia and has substantial short- and long-term consequences to victims and society. The experience of CSA has been linked to a number of negative physical, psychological, developmental, and economic outcomes. For example, studies have linked CSA to mental health issues such as suicide and self-harm (Evans et al., 2005), personality disorders (Spataro et al., 2004), and PTSD (Browne and Finkelhor, 1986). In addition, abused young people are particularly vulnerable to substance use (Day et al., 2003), risky behaviours (Schraufnagel et al., 2010), and poverty in adulthood (Zielinski, 2009).

Given these significant concerns for young people, it is expected that our legal system should protect and seek justice for child victims of sexual assault. One difficulty faced by the legal system is a lack of corroborating evidence (Cossins, 2002). CSA is often perpetrated in a shroud of secrecy and the child often knows the alleged offender. As a result, there is frequently a lack of physical evidence and a legal case which is based on the child's word against the offender (Herman, 2010). Literature has demonstrated that in the absence of corroborating evidence, jurors attribute fault based on their own attitudes and beliefs that have been cultivated within a society that perpetuates this shroud of secrecy (Taylor, 2007).

One issue regarding research on jury decision making in CSA research is the observation that the majority of research utilises jurors, yet, extrapolates the findings to juries. There are several reasons as to why this is the case. For example, the ability to group 12 people together at the same time and place is difficult for most researchers with problems such as non-attendance and expense hindering progress. In addition, studies based on jurors are able to be completed much more quickly and individual decision making is markedly different to group decision making (Kerwin and Shaffer, 1994).

While much research on CSA is based on jurors, research has indicated that findings based on juror decision making may not always apply to juries (Diamond, 1997; Klettke and Powell, 2011). As such, it would be of advantage to identify other ways of conducting research with mock juries that can be more
easily administered. For example, focus groups have been employed as one method to determine how a jury might deliver a verdict. A focus group can be characterised as a “carefully planned discussion designed to obtain perceptions on a defined area of interest in a permissive, non-threatening environment” (Krueger, 1994, p. 6). A common purpose of the focus group is to uncover people’s attitudes and points of view about a particular phenomenon, as well as to explore social norms, verbal communication and other aspects of group interaction (Massey, 2011). They are particularly effective when data are problematic to acquire, such as with difficult populations or sensitive social issues. For example, focus groups have been used to develop an understanding of AIDS (Hoppe et al., 2004), nursing in Northern Ireland (Jordan et al., 2007), and child sexual abuse prevention (Charlesworth and Rodwell, 1997). Given that focus group research for sensitive issues has been shown to be effective, this paper extends this method by investigating focus groups in the context of computer-mediated communication (CMC).

The use of CMC in deliberation and jury decision-making research is an exciting development in qualitative research. Virtual focus groups are quickly becoming a valuable tool for investigating attitudes towards social issues, where individuals tend to be less likely to participate in person. One such topic is CSA. As a result, online focus groups may provide a way to overcome this resistance to research with sensitive issues. Thus, focus groups in a CMC context may improve the feasibility of jury deliberation research for CSA, particularly over face-to-face groups. Utilising this methodology may provide benefits such as enhanced anonymity, convenience, and cost-effectiveness.

The study

Purpose

The aim of this study was to generate a deeper understanding of the communication used by people participating in an online jury decision-making group about a CSA case. The data on which the current paper is based are a subset of a larger mixed-methods study, which explored the attitudes of the Australian public towards younger and older victims of CSA. Specifically, the larger project investigated how individuals ascribe blame, responsibility, and culpability in addition to how they perceive victim credibility in a fictional vignette of CSA. In an effort to develop “thick descriptions” of communication, this paper focuses on how people used the technology to reflect “being in the world” and how they, as a group, produced an understanding of the case alongside their own social and cultural experiences. It is our view that this understanding of how mock jurors communicate with each other in an online environment will extend our current knowledge of the way groups create meaning in a CSA case and engage in jury deliberations.

Theoretical framework

Hermeneutics is an epistemological framework that can be used in an effort to understand language and thought, or the grammatical and psychological (Bowie, 1998). Philosopher Friedrich Schleiermacher (1768-1834) postulated that how we understand the world is reliant not just on rule-governed language (i.e. grammar, vocabulary), but also on how we “make sense of an ever-changing world” (Bowie, 1998, p. xi). This hermeneutic view enables the qualitative researcher to deconstruct a text and develop a deeper understanding of how human behaviour reflects culture and provides the reader with a way to share the experience (Bem and Looren de Jong, 2002). This method fits with an interpretive approach in qualitative research and aims to create “a way of knowing” the phenomena under consideration.

As an extension of this, legal hermeneutics focuses on the understanding of law and legal texts in the context of power, culture, gender, and social relations (Mootz, 2010, p. 30). Legal hermeneutics was used in order to analyse and understand the social and cultural context that influenced the development of the deliberation transcripts and to develop a thick description of the phenomena (Geertz, 1973). The hermeneutic circle model reflects the idea that to understand a certain behaviour, we need to incorporate the surrounding influences on that behaviour (Taylor, 1971 in Bem and Looren de Jong, 2002, p. 63). In this study, hermeneutics was applied both at the level of the jurors’ perception of the case and at the level of the researcher’s perception of the transcripts. The use of this method is a fitting one, as it is interpreting the language of the text within the context of the current social, political, and legal climate in Australia, particularly in how the community perceives and discusses CSA.

Methodological approach

The purposive sample consisted of members of the general population who were eligible to sit on an Australian jury. The sample comprised 34 participants, with ages ranging from 20 years to 56 years.
Meaningful data were obtained from 12 males and 22 females across all focus groups. The Australian states represented in the data included Victoria (55.9 per cent), New South Wales (20.6 per cent), Queensland (5.9 per cent), Western Australia (8.8 per cent), South Australia (2.9 per cent), and 5.9 per cent were unknown.

Case study

The case study used in the mock jury deliberations were adapted from previous CSA studies by Back and Lips (1998) and Maynard and Wiederman (1997). The victim statement describes a situation in which an older male initiated sexual activity with a child. The female victim is depicted as a five, 10-, or 15-year old. The offender was depicted as either a 36- or 50-year-old male and was either the child's father or her neighbour. The defendant statement gave a brief summary of the charges and a plea of not guilty.

Method

We attempted to contact potential jurors through the use of online social networking sites, parenting web sites, and an Australia-wide classifieds web site. The advertisement outlined the purpose of the study as “research to find out how the Australian public perceives child sexual abuse”. E-live, which is a secure online Deakin University chat room, was used to conduct the focus groups. Participants were able to contribute by typing their responses in real time. This method was utilised in order to enhance anonymity of participants and to produce a representative sample of the Australian population. Each focus group depended on the availability of people. Individuals surrendered their e-mail addresses to the primary researcher but this was not visible during the focus group. Groups ran for approximately one hour and following each focus group, notes were written that reflected the researcher’s initial thoughts about participant interaction and possible themes. Group members were debriefed, and counselling telephone numbers and web sites were given at the end of the focus group.

In this study, online mock juries deliberated a case of CSA to reach a decision of guilt. The process by which an ultimate verdict was reached depended upon group processes, the use of language representative of an online environment, negotiating and understanding each other's experience of the case, and of being online and absorbing or reflecting each other's attitudes and beliefs.

Analysis procedure

All of the focus groups were transcribed and entered into NVivo (version 8), a qualitative software program that is used for organising and manipulating qualitative data. The focus group questions were collapsed and transformed into initial codes. Each transcript was read individually to produce introductory ideas about each participant's responses during the discussion and become familiar with the data. Following this, the transcripts were systematically re-read in order to generate initial codes that may later become themes.

Privacy and confidentiality

The secure online chat room was accessible via an e-mail invitation only, which enabled the moderator to monitor who was accessing the group and restrict the possibility of invisible participants, which is a concern for some online research (Clarke, 2000). This procedure was used in order to verify the participants while still maintaining their anonymity. The researchers were aware that online participants could have created pseudonyms and that there was potential for people with sexual interests in children to access the study. The careful monitoring of participant responses during the discussions mitigated the potential for this occurrence. The moderator was able to remotely remove any person from the group due to inappropriate behaviour. This did not occur during the duration of the study.

Findings

Through the analysis of the online discussions, it emerged that decision making in the CSA case was dependent upon four main aspects of communication: forms of communication, persuasion, rapport building, and the creation of meaning. These overarching themes facilitated the rational discussion of this complex social issue and will be discussed below. All responses reflect the original transcripts (i.e. grammar and spelling have not been altered).

Forms of communication
Online vocabulary

Mock jurors used a number of different ways to communicate with each other during the decision-making process. These modes of communication reflected non-verbal cues, phonetics, emotion, and conversational language. Given the electronic nature of these focus groups, transcripts of the deliberations reflected the responses of the participants verbatim, thus creating accurate representations of the discussions. Spelling mistakes, multiple posts, and incorrect grammar were considered important for analysis. For example, when asked how the age of the defendant impacted their perception of the case, participants did not write in a rule-based manner and they were not contingent on grammar or syntax. Rather, participants wrote in incomplete sentences and posted quick replies to simulate spoken conversation. Participants transcended our rule-governed vocabulary in order to project their understanding of the conversation and reflect the electronic language that is in the constant process of being ingrained into our current discourse:

**ME3150WA**: generally younger kids are less likely to make things up to this sort of details [...].

**ME3150WA**: unless they truly experienced it.

**he6714da**: because every 15 year old has issues and normally hate their parents, they know about things of a sexual nature that 6 year old just dont.

**BE3190AN**: probably have a greater awareness of the inappropriateness of the alleged act.

This example demonstrates the use of short, sharp responses to indicate participants’ knowledge about how age can affect the perception of responsibility in CSA. How we write is as important as how we speak. Much of our communication in contemporary society is written, and the online environment in society has substantially changed the landscape of our language and interaction with each other. In this study, communication forms were reflective of the way people conversed with each other during deliberations. The online nature of the conversations required participants to utilise text-based forms of speech, language, and interaction. For example, turn taking in face-to-face conversation was assisted by visual and behavioural cues; however, online participants posted quick responses in succession and acknowledged each other by using code names in an effort to simulate rapid conversation.

Online jargon

The use of emoticons, “textese”, internet slang, and a lack of grammar revealed the mock jurors’ understanding and reflections of the case, along with the deliberation process through “shortcuts” and visual representations. For example, when asked how responsible the child was in the assault, one participant stated: “not at all, she did what she could think of to not let it happen, she trusted her father, & she told her mother str8 away”. In addition, when asked whether CSA was a private or public issue, a mock juror responded to another by stating, “very true – and to drag a child thru a horrible court battle is bad enuf (italics inserted)”.

Many participants used faces as symbols (e.g. Graphic 1) and “textese” (e.g. lol to indicate “laugh out loud”) to express emotion and relate to the other mock jurors. For example, when asked whether their belief in the assault would be more or less if the fictional child was older, one juror wrote: “less Graphic 2” to indicate that he/she recognised that age can change the perception of the child and that while this assertion may be erroneous, it is reflective of his/her implicit attitude towards older and younger victims.

The examples above demonstrate that in an online discussion group, participants were required to utilise text-based forms of speech and interaction. These shortcuts and emphasising techniques increased the collaboration between participants and assisted in building connectedness and grounding (Clark and Brennan, 1991) required for successful group decision making. Together, the forms of communication used in online groups assisted in the sharing of individual opinions, facilitated the development of a shared understanding of the issue, and helped the participants to reach a group consensus. This phenomenon is replayed in face-to-face communication in our current culture, as represented by the use of computer-mediated words and phrases present in our vernacular.

Group influence
To understand the CSA case they were presented with, mock jurors needed to place it within their experience of each other, the world, and relate it to the wider context of societal attitudes and laws. People may not be able to cognitively access the relevant knowledge about an event (such as child abuse) and may not be able to place it in the proper context, so they use misperceptions and biases to fill in the gaps, i.e. jurors related the case to what they already knew (a familiar context). As participants reflected preconceived ideas and beliefs, some jurors voted “not guilty” and believed that either there was not enough evidence or that as the child’s age increased, factors such as prior history, sexual knowledge, relationship to defendant, and trustworthiness made believability of the victim more difficult to attain.

This understanding of the text is consistent with the psychological concepts of heuristics and schemas in which a new piece of information are integrated with existing information (Greene and Ellis, 2007; Hogg, 2001). However, as the CSA case used in this study would have been a novel event for many, it can transform a person's existing perception of what CSA means and during deliberations, can alter a previously held belief by the development of a group identity (Cooper et al., 2001). For example, when asked how much blame can be attributed to the mother, the group discussed the level of blame they would give in a number value and developed a group understanding of the mother’s role in the case:

- pixx: some for carelessness even though I can’t relate to leaving my daughter alone with any man.
- aus07d: 1% ??
- aus07d: not much, a little bit for leaving the child there by herself.
- pixx: mm maybe10%.
- CO: some blame, yes for carelessness.
- aus07d: yeah actually maybe a bit more than 1%, say 10%.

This example shows the development of the group perspective of what it means to them to be a protective parent. Modern parenting is part of social life that is often open to intense judgement by many parts of our culture (e.g. legal system, child welfare, parents, and non-parents alike). The example illuminates the negotiated understanding between participants of this mother’s failure as a protective parent and the resulted attribution of blame for the child’s sexual assault.

**Rapport building**

The deliberation of a CSA case in a jury situation is highly context specific and jurors can be influenced by the social worlds of each other and the culture in which the case is heard. As a result, rapport building was a critical feature of group dynamics. Moreover, if rapport was compromised, it has varying consequences: for example, when members were late attending the group and did not participate in the exploratory questions before the case was presented. These general questions about CSA allowed participants to engage in broad discussion, reach group consensus, and form a simulated jury. When participants joined in half way through the discussions, the group dynamics appeared to shift and the impact manifested in several ways. In one group, the latecomer assimilated with the social relations of the group and interacted in a similar manner to the other group members. This resulted in a minimal level of discussion and resulted in enhanced interaction, frustration, and acquiescence.

In face-to-face jury research, the addition of latecomers would not occur. In online research, on the other hand, technical difficulties or slow internet speeds can dramatically impact the development of group dynamics. Participant dropout in electronic research is a difficulty that is shared with face-to-face jury research. However, it is less costly to repeat an online group study than in person. In this study, the decision to include these latecomers in the groups was made specifically to analyse the outcome of this occurrence. In future research, when content is more important, it may be worth considering the negative impact on group dynamics latecomers could potentially bring.

**Creating meaning**
Jurors had to relate the representative object of verdict (i.e. beyond reasonable doubt) to the concept of CSA and the case presented. That is, jurors had to evaluate the evidence, discuss the case, and decide the degree to which the case fitted the available verdict categories. Given the deliberate lack of evidence, it was more difficult for jurors to create meaning and modify this into a discrete category. There is also a significant moral burden of evidence and justice that jurors have to incorporate into their understanding of the case. In this study, a number of jurors reflected on this dilemma, which influenced their ultimate verdict. For example, when asked if they would find the defendant guilty, participants discussed the issues of proving guilt, providing evidence, and the impact of a trial on the child:

**CO4161DA:** Yeah I would.

**MA3465DA:** if he could not provide evidence of being 100 percent innocent then yes.

**ch6211ro:** in court you're innocent until proven guilty not the other way round [...] so he doesn't have to prove he didn't do it.

**MA3465DA:** yes but i wouldn't want to have to put the child on trial to prove his guilt.

In this example, one mock juror attempted to influence the group with the legal meaning of the burden of proof. Generally, the dominant opinion was that the defendant was guilty and that the victim should not be put on trial. While one mock juror attempted to provide a legal interpretation and restrict judgement based on emotion, the final outcome was a verdict of guilty; however, this was based on the evaluation of evidence. Meaning was created through the exploration of legal standards, determination of evidence, the perceived impact of trial on the victim, the influence of other mock jury members, and individual preconceived attitudes.

**Reflexivity**

As a postgraduate student, reflective processes throughout the study were vital for connecting theory with practice, improving the methodology, building a deep understanding of the phenomena, recognising personal assumptions and biases, and for fostering a novice qualitative researcher (Renganathan, 2009). In an effort to further comprehend the development of focus groups and resulting text, I kept a research journal in which memos, notes, reflections, ideas, and questions were recorded in each part of the study (Watt, 2007). The topic of CSA in the criminal justice system was important for me to investigate because of my clinical work with victims. It is important to understand how potential jurors perceive cases in order to provide justice to victims. A literature review demonstrated that given the current online nature of our social world and the fallibility of juror decision-making research that an examination of the Australian community’s attitudes would help in understanding and furthering jury research today.

The data were reviewed after each focus group to ensure that the semi-structured method was allowing participants to express their opinions and engage in meaningful discussion. As a new researcher, it was important that I recognise my own position within the research and appreciate my biases and underlying attitudes. As a clinician in child and youth mental health services, I am trained to interpret the language used by young people and determine levels of risk/harm over the phone, sans visual cues. I have also worked with child sex offenders, which has given me a layered understanding of the domain of CSA. During the focus groups, assessments of risk of harm were continually managed by consistently interpreting the language used by individuals and using clinical judgement to determine whether distress being reflected in responses. Debriefing and counselling contact numbers were also given to individuals. This rounded training in CSA research and in clinical applications has helped me to develop an enlightened perspective on a complex social issue.

There were a number of difficulties throughout the study, particularly with focus group attendance and electronic dropout. It was a frustrating process when individuals committed to attending and then did not log on to the group at the organised time. This led to an inconsistent number of individuals in each group, sometimes affecting data analysis (i.e. changing the impact of interaction in some groups). Overall, my experience as a novice qualitative researcher helped me to develop a deeper understanding and appreciation of its value in psychology. In particular, reflexivity as part of the ongoing process was essential in developing my ability as a researcher and refining this mixed-methods study as it progressed.

**The hermeneutic circle**
The hermeneutic circle can be applied to a jury situation in which individual jurors try to make sense of the story that is presented to them, and understand it under the umbrella of a group process, with the many different created meanings and experiences of the same story (see Figure 1). People come to the jury with their own understanding of the world and when they enter the deliberation space, they form an interpretation and explanation of the subject within a cultural, social, legal, and political context. As a result, a revised understanding of the phenomena is made, which then influences personal beliefs. The jury must attempt to make sense of the assault on a child in the context of approved social practices and law, the appellant and defendant's experiences of the event, the social world, and the intentions and meanings of the language and power in the criminal justice system. Every juror comes with his or her own preconceived beliefs, attitudes, and ways of communicating which make the qualitative analysis of jury decision making so relevant. The exploration of a jury's social experience and understanding of the case can assist us in improving jury research and conviction rates by acknowledging the development of our beliefs and attitudes in culture and within a particular political agenda. By understanding the social experience of juries, predictions of case outcomes may be improved.

**Summary and impact of findings**

We have endeavoured to present an account of group decision making and interaction in an online mock jury study. In particular, we have offered an understanding of how members of the Australian public talk about a case of CSA while in an electronic environment. Mock juries were empowered by the online atmosphere, which gave them an opportunity to communicate their opinions in a number of ways. The themes that emerged from the hermeneutic analysis included the use of online vocabulary and jargon, group influence, rapport building, and the creation of meaning. In addition, the online discussion groups encouraged people to expand their own knowledge of what it means to be in a jury and examine a sensitive issue within the context of their pre-existing attitudes.

Advantages of using CMC investigating jury decision making could be observed in the detached nature of the electronic environment. This environment appeared to encourage truthfulness and reciprocity with others and circumvented judgement based on social and cultural indicators such as appearance, social economic status, or body language. Moreover, the way in which people typed their responses did expose some insight into how they use language to communicate with others online. In some instances, the use of emoticons reflected the current social and cultural way of expressing emotion in the written word, rather than the dense description of how something made them feel. The online nature of jury deliberation facilitated an understanding of how people make sense of CSA cases in Australia today. Given that attitudes and beliefs impacted how mock jurors experienced the fictional case and each other, it is still likely that real trials will be affected in the same manner. This should lead to the improvement of researching group processes in the deliberation of sensitive social issues and improving justice outcomes.

Disadvantages of using CMC in the exploration of jury decision making were technical and recruitment related. This research method is dependent upon technology working effectively for both the researcher and the participants. It is noted that there were technical difficulties during the study but as this technology advances, so too does its reliability. In addition, non-attendance and dropout can occur in online studies. However, individuals who can participate in their own location and at a suitable time will be more likely to commit and electronic reminders can assist in reducing potential dropout.

Overall, online mock juries provided a valuable supplement to traditional face-to-face focus groups in qualitative deliberation research. This study advanced the understanding of online decision making in a CSA scenario. It demonstrated that knowledge of how juries deliberate and create meaning could improve our understanding of how verdicts are achieved. Overall, CMC may prove useful in the deliberation of other sensitive social issues in qualitative research.
Figure 1 Hermeneutic circle representing electronic jury decision making

References


Taylor, N. (2007), Juror Attitudes and Biases in Sexual Assault Cases, Australian Institute of Criminology, Canberra, .


About the authors

Samantha J. Tabak is completing a Doctorate of Clinical Psychology at Deakin University in Melbourne, Australia. She is also a clinician at Eastern Health Child and Youth Mental Health Service.

Bianca Klettke is a lecturer in the School of Psychology at Deakin University in Melbourne, Australia and an active member in the Forensic College of the APS. Her research focuses on legal decision-making, primarily in the areas of sexual assault victims and jury decision-making. Bianca Klettke is the corresponding author and can be contacted at: Bianca.klettke@deakin.edu.au

Tess Knight is a senior lecturer in the School of Psychology at Deakin University in Melbourne, Australia and a registered psychologist. Her teaching and research are primarily in the area of developmental psychology and health.