

WOMEN ON JURIES

W. G. MORROW*

In (1970) 8 Alta. L. Rev. at 50, Mr. Justice W. G. Morrow made a study of the behavior patterns in juries in the Northwest Territories covering the years 1955-1968. In this article, the writer develops this study further, concentrating upon the effect, if any, which women jurors have had upon these behavioral patterns. The article reproduces part of the original study, and is followed by the present study covering the years 1968-1973. For the convenience of the readers, the editors have converted all of the charges into the numbering system presently in effect in the current Criminal Code.

In 1970, I made a survey of jury verdicts for the full history of the Territorial Court of the Northwest Territories.¹ My survey went to 1968. Women first began serving on juries in the Territories in 1966,² therefore not enough time had elapsed, by 1968, to tell whether or not the inclusion of both sexes in our juries was causing any change in the pattern of decisions. The present short analysis is to cover the period from the date when the Court had its first jury trial in 1955, up to the end of 1973.³ From the end of 1966, women have been called for jury duty equally with men.

I should observe that counsel, particularly defence counsel, had originally indicated reservations about women being included on jury panels, particularly in rape cases. My answer was that they should be called upon to take an equal share in all aspects of the administration of justice; furthermore, I felt counsel would be pleasantly surprised at the result; and finally, for a practical reason, including women would spread the burden of jury duty in our small settlements more equally.

Looking at rape cases for the full period of the study, in seven cases where no women served as jurors, three convictions are recorded, as well as two convictions of attempted rape, and two dismissals. In nine cases, with women on the jury, but outnumbered by the men, there were two convictions of rape, one of attempted rape, one of common assault, and five dismissals. It is interesting to note that in the two cases where women formed one-half the jurors, there were acquittals and in the all-female jury, the verdict was common assault. I would observe that in the three all native juries, each of which had one woman on it, and where there were acquittals, I would have convicted. It is my assessment, in respect to these three, that the native approach to this offence is different to that of the white juror. In respect to the all female jury, I would have reached the same conclusion, although the evidence would have sustained a conviction of rape.

Women have served on each attempted rape case, and out of four such cases, we find two convictions as charged, one indecent assault, and one common assault. In the two cases that came before the Court involving intercourse under 14 years, the one with women on it convicted of attempt, while the all male jury brought in a guilty verdict.

* The Honourable W. G. Morrow, Justice of the Supreme Court of the Northwest Territories.

¹ Morrow, *A Survey of Jury Verdicts in the Northwest Territories*, (1970) 8 Alta. L. Rev. 50.

² Miss D. M. Koenig, in the case of *R. v. Shooyook et al.* (unreported).

³ See Appendix A.

Guilty verdicts were brought in by all male juries in the one charge of illegally breaking into a dwelling house with intent to commit rape, and in one of the two indecent assault cases. The one indecent assault case with women on the jury resulted in a not guilty verdict.

When cases, which for convenience, will be called crimes of violence, other than non-capital murder are examined, in ten cases, the only guilty as charged verdict was from an all male jury; the remaining juries with one or more women bringing in five not guilty verdicts with respect to some of the accused, and guilty of lesser charges in respect of the others.

There have been seven non-capital murder trials, and one trial for attempted murder. Only three of the trials had no women on the juries. There have been no guilty as charged verdicts. The only not guilty verdicts have been juries having one to four women on them. One of the acquittals was of a female accused who killed her husband. In those cases where the deceased was female, it did not seem to affect the verdict.

In the one arson case that came before the Court, there were two women on the jury. Of the four men, two of them were Eskimo and the accused was an Eskimo woman. The verdict was not guilty. The interesting thing about this case is that, through the grapevine, I found out later that the Eskimos wanted to convict on the rather clear-cut circumstantial evidence, but it was the two women who reminded them of the judge's explanation of the difference between direct and circumstantial evidence and how careful they should be. They apparently swung the verdict.

Of the thirteen different charges affecting property, theft and related offences, there were only two not guilty verdicts—one by an all male jury and one by a jury with a woman on it. There was at least one woman on each of the convictions.

Admittedly, there are too few cases, as yet, to make any firm assessment. It would appear, however, that defence counsel need have no worry about having women on the jury in sex cases, and there is nothing in the above results to suggest that there is any tendency for female jurors to overreact to charges involving crimes of violence.

My own personal observation is that, on the juries before me, the women have shown extreme interest in the cases and have never hesitated to question the Court on points of law. In two cases recently tried in Frobisher Bay, it was the female Eskimo jurors who interjected and pointed out that, in two instances, the interpreter was using one word when, in fact, there were two possible words or meanings. These interruptions were most helpful.

Finally, a general observation. In recent years the northern communities have had television programmes with the usual admixture of "F.B.I.", "Ironsides", etc. I have noticed that my juries, on the average, seem to be out for a longer period of deliberation now. They are also more prone to ask questions—some of them very technical and not of the type we, in the past, received. I suspect our jurymen and women are, to some extent, becoming more "Perry Mason" oriented. It remains to be seen if the overall effect may lead to a tendency to lean more to the defence than before.

APPENDIX A
JURY TRIALS—NORTHWEST TERRITORIES (1966-1973)

MAKE UP OF JURY											
Charge	Year	Place of Trial	Accused	Male	Female	Eskimo	Indian	Metis	Other	Verdict	Remarks
S. 148	1966	Yellowknife	Indian	6					6	Guilty	
S. 149	1966	Yellowknife	White	6					6	Not Guilty	
S. 149	1966	Yellowknife	White	6					6	Guilty	
S. 144	1966	Tuktoyaktuk	Eskimo	6		4			2	Not Guilty	
S. 144	1966	Inuvik	Eskimo	6					6	Attempted Rape	
S. 228	1967	Ft. Smith	White	6					6	Not Guilty	
S. 203	1967	Hay River	White	5	1				6	Dangerous Driving	
S. 146	1967	Rankin Inlet	Eskimo	6		4			2	Guilty	
S. 149	1967	Yellowknife	Indian	4	2				6	Not Guilty	
S. 144	1967	Yellowknife	Indian	4	2				6	Not Guilty	
S. 146	1967	Yellowknife	White	3	3				6	Attempted Rape	
S. 144	1967	Aklavik	Indian	5	1	3	2	1		Not Guilty	(a) First all Native Jury
S. 389	1967	Frobisher Bay	Eskimo	4	2	2			4	Not Guilty	Female Accused
S. 144	1967	Inuvik	Eskimo	4	2	1		1	4	Guilty	
S. 144	1968	Yellowknife	Metis	6		1			5	Guilty	

APPENDIX A (Continued)

Charge	Year	Place of Trial	Accused	MAKE UP OF JURY						Verdict	Remarks	
				Male	Female	Eskimo	Indian	Metis	Other			
S. 144	1968	Yellowknife	Indian	6						6	Attempted Rape	
S. 312	1968	Pine Point	White	4	2					6	Guilty	
S. 145	1968	Hay River	White	4	2				2	4	Common Assault	
S. 307(1)	1968	Yellowknife	Indian	6			1			5	Guilty	Break & Enter with intent to commit rape
S. 228	1968	Yellowknife	Indian	6						6	Guilty	
S. 144	1968	Snowdrift	Indian	5	1		6				Not Guilty	First all Indian Jury (a)
S. 228(a)	1968	Yellowknife	White	4	2					6	Assault	(b)
S. 228(a)	1968	Yellowknife	White	4	2					6	Assault	(b)
S. 228(a)	1968	Yellowknife	White	4	2					6	Wounding	(b)
S. 387(4)	1968	Yellowknife	White	4	2					6	Not Guilty	(b)
S. 218	1969	Frobisher Bay	Eskimo	6						6	Manslaughter	
S. 144	1969	Hay River	Indian	6						6	Guilty	(c)
S. 144	1969	Hay River	Indian	6						6	Guilty	(c)
S. 144	1969	Ft. Resolution	Indian	3	3				6		Not Guilty	
S. 145	1969	Yellowknife	Eskimo	3	3					6	Guilty—Attempted Rape	

S. 144	1970	Ft. Smith	Indian	4	2		6	Guilty	
S. 145	1970	Ft. Smith	Metis	5	1		6	Indecent Assault	
S. 203	1970	Hay River	Metis	5	1		6	Not Guilty	
S. 144	1970	Ft. Resolution	Indian	4	2		5	1	Common Assault
S. 218	1970	Inuvik	Eskimo	2	4	2	4	Not Guilty	
S. 218	1970	Yellowknife	Eskimo	3	3		6	Manslaughter	(d)
S. 144	1970	Ft. Smith	Metis	5	1	2	4	Guilty	
S. 218	1971	Ft. Smith	Indian	5	1		6	Not Guilty	Court would have found guilty of manslaughter
S. 144	1971	Frobisher Bay	Eskimo	5	1	1	5	Attempted Rape	
S. 219	1971	Ft. Smith	Metis	3	3		1	5	Not Guilty
S. 144	1971	Rankin Inlet	Eskimo	5	1	6		Not Guilty	First all Eskimo Jury (a)
S. 222	1971	Tuktoyaktuk	Eskimo	6		4	2	Assault causing bodily harm	
S. 218	1971	Tuktoyaktuk	Eskimo	6		5	1	Manslaughter	
S. 320(1)(a)	1971	Yellowknife	White	5	1		6	Guilty	(e)
S. 358(1)(a)	1971	Yellowknife	White	5	1		6	Guilty as to one	(e)
S. 339	1971	Yellowknife	White	5	1		6	Guilty as to one	(e)
S. 421(b)	1971	Yellowknife	White	5	1		6	Guilty	(e)
S. 228(a)	1972	Inuvik	Eskimo	4	2	1	5	Not Guilty	
S. 144	1972	Frobisher Bay	Eskimo	6		1	5	Not Guilty	

APPENDIX A (Continued)

Charge	Year	Place of Trial	Accused	MAKE UP OF JURY						Verdict	Remarks	
				Male	Female	Eskimo	Indian	Metis	Other			
S. 144	1972	Cambridge Bay	Eskimo		6	5				1	Common Assault	First all female jury
S. 145	1973	Frobisher Bay	Eskimo	4	2					6	Guilty	
S. 218	1973	Ft. Smith	Metis	4	2					6	Manslaughter	
S. 218	1973	Frobisher Bay	Eskimo	3	3	4				2	Manslaughter	
S. 144	1973	Frobisher Bay	Eskimo	3	3	2				4	Not Guilty	

NOTES: R.S.C. 1970, c. C-34.

- (a) Judge would have found guilty.
- (b) One accused, four charges, same jury.
- (c) One accused, two charges, same jury.
- (d) Tried at Yellowknife due to hostile feeling in home community.
- (e) Two men tried jointly with six charges before same jury.