FOREWORD

DAVID GOLDIE'S TWO PART DOCUMENTARY, *WITHOUT CONSENT*, RAISED the issue of rape, once again, before the public in Australia. He was aware that this would be the case and approached the Australian Institute of Criminology months in advance of the program's broadcast with a suggestion that the Institute follow up where the documentary left off with a conference on the subject of sexual assault. It was hoped that the public's (and the government's) attention and agendas would therefore remain focused on the issues which *Without Consent* had highlighted. Rape, like other violent crimes against women, flourish within a context of secrecy. Discussion, therefore, serves more than an educative or informative function; it also keeps the subject in the light and hopefully breaks down some of the walls of silence.

Over the three days of the conference, workers in the field of sexual assault, academics, lawyers, politicians, and most importantly, survivors of rape, met, listened to research papers, attended workshops and heard about the experiences of those who have either worked in the field or who have lived through the violence of assault. Given the heterogeneity of the participants, it was predictably inevitable that some left the meeting with ambivalent feelings; what they had hoped would happen had not occurred. The lawyer academic may have wanted more of a focus on specific substantive law reform issues; the survivor may have wanted less academic prose and more sharing and caring amongst those who had been victimised. And, some may have wished that answers would have been more forthcoming.

None, or just little vignettes, of the above took place. What did occur was what David Goldie had wanted—rape was placed in the spotlight. We did learn about the background to rape (Part 1) and a lot about its effects upon the survivors (Part 2), less about its perpetrators (Part 3) and, finally, some suggestions concerning prevention and what needs to be changed were made (Part 4).

It is a start—not the finished product that some may have hoped for—and possibly even a catalyst for those who attended the conference to take some sort of action, from a state legislator who initiated a senate inquiry into sexual assault to an individual who stopped denying her own victimisation. At a macro scale, the media attention might have been a springboard for intensive journalistic scrutiny of judges' comments during the months following the conference. At the time of this writing, that coverage has yielded a veritable tidal wave of opinion from the public, politicians, and even some judges concerning the need for the judiciary to receive training in gender-based issues such as rape.

Patricia Weiser Easteal
May 1993

INTRODUCTORY ADDRESS

Sally Brown
Chief Magistrate
Magistrate's Court of Victoria

IT IS A PRIVILEGE TO HAVE BEEN ASKED TO WELCOME YOU TO THIS conference, and to chair the first session. I speak as a woman, a lawyer and a Magistrate, and I accept that membership of the last two categories—the two I have voluntarily chosen—renders me automatically suspect to many of you. To some of the people with whom I deal, the first—being a woman—is equally uncompelling and no doubt some share the views of the anonymous correspondent who concluded a recent letter to me by saying:

> No wonder law and order is on the decline when the biggest Court in the State is headed by a radical, feminist, separatist, lesbian, man-hating shrew. You should do the decent thing and resign, but people like you never do.

Perhaps because the legal system cannot escape unscathed in any discussion of the problems confronting victims of sexual violence, a number of people have expressed surprise at and criticism of my involvement in any way with this conference. When Dylan Thomas was asked why he wrote poetry he said this:

> I read somewhere of a shepherd who, when asked why he made, from within fairy rings, ritual observances to the moon to protect his flocks, replied: 'I'd be a damn fool if I didn't.' These poems, with all their crudities, doubts and confusions, are written for the love of Man and in praise of God, and I'd be a damn fool if they weren't (Thomas 1966).

Having been taught at Law School, and regularly (and often patronisingly) reminded since that the masculine includes the feminine, may I paraphrase the poet and say to those critics that I am here for the love of Woman and in praise of Survivors, and I would be a damn fool if I were not.

The Australian Institute of Criminology is a joint organiser of this conference with the ABC. The Institute is at the forefront of research into violence; it is pleased to be associated with David Goldie's documentaries because they place the issues of adult sexual violence firmly on the national agenda, and focus the minds of many who may have been insulated from these issues on the high levels of sexual violence in Australia and the appalling price survivors of sexual assault pay. We can, and no doubt will, debate the pros and cons of the two-part ABC documentary *Without Consent*; some will applaud it and some deplore it,

but in the course of the debate we will have to confront and consider issues which have been too often and for too long ignored by many in the community.

The conference is entitled *Without Consent: Confronting Adult Sexual Violence*. Topics discussed include public responsibility for and social perceptions of sexual assault, the effect of rape on survivors, rape legislation and treatment of offenders. The main aim is to examine the issue of sexual assault and to tackle the subject of prevention. In the course of this it is inevitable that more than the issues will be confronted; there will also be confrontations between people, disagreements about the past and the future, because we are not only talking about abstract ideas but about personal experience and fears and hopes. It is my hope that we can all keep in mind our obligations to improve on what we have now, so that the deliberations and discussions here can generate real hope for change and reform. It is said an English Judge asked to join a committee to consider criminal law reform once said: 'Reform? Good God, no. Things are bad enough as they are.' That is a luxury none of us can afford.

We can build bridges or we can widen the abyss. Let's throw a rope across and start building.

Reference

Thomas, D. 1966, 'Note' (dated 1952) to the *Collected Poems 1934–1952*, Everyman's Library Series, J.M. Dent & Sons Ltd, London.

INTRODUCTION TO PART 1: OVERVIEW

IT IS FITTING THAT THE FIRST PAPER OF THE PROCEEDINGS IS BY DAVID Goldie, since it was his television program that initiated the conference and a lot of the interest in it. He describes how his motivation for doing the documentary increased with the research and the discovery of how under-reported and secret the crime of rape is. He also explains why he included rapists—so that their motivation to control, humiliate and degrade would be clear.

Spangaro provides an overview of the research (and its difficulties) that has been conducted to assess the incidence of sexual assault. She suggests that sexual assault may end up affecting nearly half of Australian women. Yet, she points out that there is a great reluctance for people to accept the depths of the crime and that, by generating a concept of 'real' rape (stranger, weapon), we are able to keep the figures down. Another consequence of a narrow definition is the extremely low reporting rates of sexual assault with an even lower imprisonment rate.

Easteal's paper reports on the findings of the Australian Institute of Criminology's national questionnaire concerning beliefs about rape. The results of almost 7,000 surveys are described as very tentative and should be treated only as suggestive. The study found that there continues to be an adherence among some Australians to fallacious myths which see rapists as mentally ill, rape as involving a weapon and being about sex and not about power, and beliefs that attribute at least part of the responsibility for sexual assault upon the victim. Males were generally less enlightened in their attitudes than the female respondents.

Moran's overview is focused upon rape offences that were reported to the Queensland Police Service. She found that a small proportion involved a weapon, that almost two-thirds took place in a residential dwelling, and three-quarters at night time. Slightly more than half of the offences had ended in arrest. More than two-thirds of offenders were known to the victim in some way; and almost one-quarter of rapes were committed by a family member. The latter fact was significantly higher than found in other similar research in South Australia and Victoria.

From Moran's police data, we turn to the sexual assault workers. Byrnes and Kendall report on findings from the Victoria phone-in for survivors which found that a high proportion did not report their rape because they did not believe that the police would believe them or that reporting would do any good. Most who had dealt with either the police or the courts had found the people unsupportive at best and a nightmare at the worst. Byrnes and Kendall report that similar findings in New South Wales contributed to the formation of a group—SCARS (Social Conscience Against Rape and Sexual Assault)—to push for change within the legal system.

WITHOUT CONSENT: THE AIMS, THE INSIGHTS, THE AFTERMATH

David Goldie
Producer/Director
ABC TV Documentaries

ABOUT EIGHT YEARS AGO I WAS ON THE OUTSKIRTS OF SYDNEY RESEARCHING a documentary I was about to make. I had spent most of the day moving from location to location and conducting interviews. It was now early evening and my research had brought me to a pretty soulless pub for the last interview of the day. The person I was expecting was running late and had requested that I wait.

As a documentary maker, I tend not to have any real 'down-time' when alone—I find myself observing people and listening to conversations that happen to come within earshot. The pub was crowded and noisy, so it was difficult to hear much at all. Nearby though, there was a small group of four or five men. They all seemed pretty close friends and although none of them seemed to be drunk, it was clear that they had all been consuming alcohol for an hour or so.

It was not long before the energy and noise level of their conversation had dropped a notch or two; and it was clear by their lower volume level that they were talking about issues of a more serious nature. As it happened, the general noise level had dropped as well and, as they were quite close, it was not too difficult to pick up parts of their conversation.

It was then that I heard a member of the group say, 'I had to give the missus a bit of a hiding last night'.

There was a long uncomfortable pause as his mates either shook their heads in sympathy or looked towards the floor. It was then that I heard one of them say, 'I'm sorry mate, I didn't realise that you were copping such a hard time'.

For me this conversation was a stark reminder of how deeply ingrained sexual violence is in our culture. It was then that I made a decision to some day make a major documentary on sexual violence and its impact on the lives of women.

Well, it is now eight years later and the documentary has been made. Called *Without Consent*, it went to air in September 1992, and it is the making of this documentary that brings me here today.

Without Consent certainly has had an impact. Beatrice Faust of *The Australian* said that: '*Without Consen*t is making people think, by first making them feel' ('Opinion', *The Australian*, 25 September 1992).

I have been making documentaries for more than a decade now and in that time, I cannot remember producing anything that has created as much debate or division. Issues and subject areas that have been presented in what I feel is a straightforward and unambiguous way are being questioned or rejected out of hand; where other important issues in the documentary that were begging to be publicly discussed, have been totally overlooked. The style and approach of the documentary have also come under close scrutiny.

It is a little bewildering on one level and satisfying on another, because one of the principal aims of the documentary was to set an agenda for the discussion of sexual violence in Australia. It has now been more than five weeks since *Without Consent* went to air, and it continues to stimulate discussion. This conference, as we know, was prompted by the series. On this level the documentary has been successful in the way that *Out of Sight, Out of Mind* and *Nobody's Children* created debate, a new public awareness and the potential for political action.

Today, I would like to give you an idea of what prompted the making of *Without Consent*; to reveal some of the insights gained along the way; and to respond to some of the criticisms that *Without Consent* has attracted.

There is usually an interconnecting thread running through the subject areas of most of my documentaries—while shooting one, the next film is usually taking shape in my mind's eye. In 1986, I spent eighteen months researching and filming inside maximum security prisons across this country. Out of it came a three-hour documentary screened over two nights that examined the punishment of crime in Australia; it was called *Out of Sight, Out of Mind.*

Aberrant behaviour of adults led me initially to researching the aberrant behaviour of juveniles. But in the months of research, *Nobody's Children* evolved into much more than simply a documentary on juvenile justice and its implications. The idea developed into another three-hour two-part documentary on youth homelessness and a growing Australian youth underclass. The young victims of sexual assault who appeared in *Nobody's Children* finally prompted me to start work on a major documentary examining the impact of sexual assault on the lives of Australian women. *Without Consent* was to be perhaps my most challenging project.

Research began with a fruit box full of relevant literature from the Australian Institute of Criminology; all to be read and re-read—and then the research phone calls began.

Without Consent was similar to *Out of Sight, Out of Mind* and *Nobody's Children* in that no filming took place until more than six-months' intensive research had taken place. My associate producer, Amanda Groom, executive producer, Pamela Williams, and myself talked to literally hundreds and hundreds of organisations, institutions, groups and individuals across six Australian states and territories.

A very broad view is needed initially because it is vital that the subject area be allowed to evolve and be coloured by the accounts and opinions of the survivors of sexual violence; by research data; and the views of academics, psychologists, working professionals, and rapists.

When it comes to the participation of survivors who appeared in *Without Consent*, I am indebted to Dannye Moloney of the Victoria Police Rape Squad, the Rape Squad in South Australia, Victim of Crime Associations in South Australia, Queensland and Victoria, and the Centre Against Sexual Assault in Carlton, Victoria, for helping us to make first contact with these courageous women.

In the research phase, what disturbed me most was the appalling reportage rates for women who had been raped—it is estimated that for every ten rapes committed in this country, only one will be reported. I realised that this issue had to be examined in this documentary.

One of the most important insights for me came about four months into our research in 1991. I was listening to a survivor of rape talk about the long-term impact of the sexual assault she suffered a few years before and how it was still intruding emotionally on her daily life and, more specifically, on her personal relationships. She felt that the victims' story had never been fully and accurately told on television and agreed to appear in *Without Consent*.

We were discussing the logistical details of potential filming dates for a few months further down the track when she asked me if I knew when it might go to air. I told her that I thought it would not be scheduled for transmission before August or September of the following year. She replied, 'Oh good, that will give me time to tell my mum about the rape'.

This stunned me, and I was concerned that she did not fully understand the implications of what she was committing herself to do. I said to her, 'Do you realise that you will be appearing on national television?' She said, 'Yes, I do'. 'And do you understand that your face will not be covered, you will be easily recognisable?', I asked. 'Oh yes, you have made that very clear', she said.

'But if you haven't been able to bring yourself to tell your mother, why have you agreed to speak to me, a virtual stranger, on national television?' She replied, 'Well, if I make a commitment now to talk to you, then that will force me to go and tell my mum, and I really think she should know'.

I was greatly disturbed by this conversation because it revealed just how difficult it is for a person to talk to anyone, even a close family member, about their sexual assault.

The making of *Without Consent* became even more important to me when a counsellor who works with survivors of rape succinctly described sexual assaults on women as 'this country's best kept secret'. Almost without exception, each 'survivor' who spoke to me of their experience on camera told me or my associate producer that, after the interview, she felt more positive, more in control of her life than before. I asked why and was told that (for the first time for some of them) they were allowed to speak of their experience without constant interruptions from someone criticising them, or telling them that they had been stupid. I was told, by the 'survivors' themselves, that I allowed them to say as much or as little as they wanted—and unlike the police, friends or family, I was not judgmental.

Without Consent prompted John Mangan, of *The Age*, to say:

> The victims describe the act and, more important, the impact rape has had on their lives. They are strikingly composed as they carefully, patiently describe the violence and, more significant, the humiliations of their experience ('*Age* Green Guide', *The Age*, 10 September 1992).

It was most important for me to communicate to those viewing the appalling human impact of this brutal and violent crime and also that a broad range of 'survivors' be gathered together, not just simply to enable us to touch on a variety of issues but to confront the victim stereotype as well.

But why is it that such a high percentage of women do not come forward to report rape? Why is it that so many women prefer to remain isolated and not attempt to seek justice? Kate Gilmore described the main reason to me as a 'crisis of confidence in the criminal justice system'.

Research also tells us that women list 'personal reasons' to explain their non-reportage. From our own research interviews, these 'personal reasons' included a good deal of residual shame and guilt.

Claire, who appears in *Without Consent*, is a survivor of acquaintance rape. She was subjected to a brutal attack that lasted several hours and was also badly physically assaulted. The police officer who discovered Claire immediately after the rape could see injuries to her face and body, and blood on the floor and walls. He was naturally 'concerned about her physical well-being' and inquired, 'How are you feeling?'. 'Stupid,' Claire replied.

Why is it that in forty years of television in this country, *Without Consent* is the *first* major examination of the impact of sexual violence on the lives of Australian women? Because sadly, we as a society are not genuinely interested in the victim. The subject, up to now, has been discussed within short four-minute sequences in current affairs and news programs. Often these 'interviews' have been driven by curiosity and arguably voyeurism, rather than a genuine concern to examine the broad social issues. There has also been a tendency for them to imply that the victims somehow brought the rape on themselves or consented in some way . . . or if this has not been implied, the short treatment makes it easier for the viewer to infer this.

A cloud of doubt is never too far away from a survivor of rape in this country—and we wonder why they are so critical of themselves.

In more than a year of research and filming, we did not meet one 'survivor' who did not express, in some way, shades of personal guilt or shame for what happened to them. The brutality, the violence and the degradation of the act of rape is something that we wanted to represent clearly and unambiguously in our documentary.

I might say that this was also an expectation on the part of the courageous 'survivors' who with great dignity told their story. It was vital that they be allowed to say as much or as little as they wished, with little intrusion from me. Television critic Debi Enker of *The Age* comments:

> Goldie adopts an approach that is the antithesis of the screaming, spruiker style of tabloid television. His work is quietly penetrating and shockingly revealing. He deals with potentially sensational subjects, but eschews sensation, knowing that these topics—when they are handled with intelligence and sensitivity—can be

> invested with a power and substance that transcends shock value (*Sunday Age*, 13 September 1992).

The decision to allow rapists to appear in *Without Consent* was made to attack the stereotypical view of 'the rapist' and to gain an insight into the motivation of the rapist; also, the rapist was included to add understanding and another dimension to the survivor's horror by humanising it. This was the most controversial decision of all.

> the message is further compromised by interviews with rapists who talk about the power trip of rape; the buzz, the high. So whose benefit is the graphic detail? (Barbara Hooks, TV critic, *The Age*, 16 September 1992).

Barbara Hooks is not alone. Others join her when it comes to criticism of the inclusion of rapists in *Without Consent*. I was disappointed that, in their haste to condemn and narrowly focus on this aspect of the documentary, they missed other important issues. The first was a golden opportunity to acknowledge something that women's groups have been saying for years: that rape is about power and not sex; that it is driven by a desire to humiliate and degrade and has little to do with a desire for sexual release.

The rapists I presented in my documentary made their motives quite clear. One stated, 'I just felt this big urge of power'; another said that, as he was about to commit his rape, 'It was just a total feeling of power, of the total domination of somebody else'. A third said that 'in the suffering there was power, in the suffering there was dominance'. And so it went on.

Every rapist, without exception, made reference to the 'power trip'. Sexual desire as a motivation was never mentioned in the documentary. At no stage did the rapists suggest that they were seduced, or wantonly led on, or forced beyond their sexual control by a temptress who should know better. They did not present excuses. They simply gave us an insight into why they committed their violent crime.

The rapists stated clearly and categorically that their motivation for the rape was the control, the humiliation and the degradation of a woman. I could not have made this point more obvious in *Without Consent* and yet no-one that I am aware of has further discussed this vital issue.

I first became aware of this aspect of rape while making *Out of Sight, Out of Mind.* In the documentary's research period, I spoke to hundreds of prisoners, some of them were rapists. Others had not been gaoled for rape, but had raped other men while in gaol, while others who spoke to me had been the victims of rape in gaol.

What I found interesting was that most of the male rapes that occurred in gaol were committed by heterosexuals against other heterosexuals. 'Getting their rocks off,' as they told me, was not the purpose of the attack. Rapists inside gaol use the violation of a sexual assault to exert power over another individual in the same way that male rapists do when they attack a woman in the general community.

In a recent paper, Dr Jocelynne Scutt was critical of me for allowing the rapist to cast 'responsibility for their crime elsewhere', and of 'disassociating themselves from the criminality of their own actions' (Scutt 1992, p. 4). She also said that 'Victims of rape, and all women, know that a rape is a rape is a rape. That there are no two sides to rape' (Scutt 1992, p. 1). I agree with this last part—rape is serious, rape is real, rape is devastating—that is at the heart of the documentary. What is more, I agree with Dr Scutt that there are no 'two sides' to rape. It was never my intention to show 'two sides', and I do not. The only

'side' presented was the victim's. The rapists conveyed an attitude, they stated an opinion, described a motivation, but never at any stage did they present a 'side'.

Some women found *Without Consent* terrifying, confronting and shocking. But rape is terrifying, confronting and shocking. This documentary could be nothing less. Others felt that I did not go far enough, that my interviewing style was too low key. They criticised me for allowing the rapists the opportunity to 'speak with impunity'; for 'allowing their stories to go unchallenged' and for 'not questioning their aberrant thinking'. I feel that what some of these critics wanted was not simply a documentary but an extended current affairs piece—complete with the active involvement of an on-camera interviewer. Judgmental stuff is easier to write, but that would have made this documentary shallow. The rapists who appear in *Without Consent* are condemned out of the mouths of the 'survivors'—but most of all, they are condemned out of their own mouths. I do not believe that a television audience needs to be publicly lectured for an effective point to be made.

After *Without Consent* went to air, a psychologist contacted my executive producer, Pamela Williams. He commented that *Without Consent* reminded him of an acclaimed Swiss/French documentary made in 1985 called *Shoah*. For nearly ten hours, survivors, bystanders and German Nazis talked about the sending of fellow townsfolk, neighbours and friends to the gas chambers. It was devastating material: the participants simply told their stories and, like *Without Consent*, there was little intrusion from the interviewer. The Nazis were not confronted by questions of morality. There was no critical examination of their motives—out of their mouths they condemned themselves.

Closer to home there was an excellent documentary on a mass murderer in Melbourne. It was called *Hoddle Street*. The producer only had access to a video of the police interview and the video of the police re-enactment involving Julian Knight, as this mass murderer coldly described his crime. There was no opportunity of confronting him with questions of morality, no critical examination of his motives—and even if he had been interviewed, what do you think they would have got from him? Probably some limp excuse for his appalling crime. And 'limp excuses' is another reason I did not cross-examine the rapists on camera. In research, of course, I confronted all of them with questions regarding issues related to their rape. What I got, without exception, was a litany of excuses to distance themselves from responsibility for their action. An ugly truth about Australian men is that some of them do not have a concept of consent.

What about *Without Consent*'s impact on those males who viewed it? Peter Jenson from Men Against Sexual Assault comments:

> Power seemed to come through quite strongly . . . Why do we as men need to feel so powerful and dominant—surely it's because we have been taught that power and dominance are good masculine traits. That if we aren't dominant and powerful, then we aren't really masculine.
>
> Those sorts of attitudes and ideas start young—very, very young (*Life Matters*, ABC Radio National, 19 October 1992).

Another interested quote comes from Barbara Hooks:

> A recent survey showed one in three boys believe it is reasonable to rape a girl under some circumstances, which indicates there is an urgent need for programs about the sexual violation of women (*The Age*, 16 September 1992).

A group of fifteen-year-olds in a boys' high school were asked to view *Without Consent* and to talk about how it affected their attitude towards women. These boys were from around the same age group as the boys who felt that it was reasonable to rape a girl under some circumstances. The comments made by the boys were broadcast on the ABC Radio National program *Life Matters* on 19 October 1992 and some of the things they said are detailed:

> It's good that it has been shown because it will allow women to talk more freely if they have been raped and tell the police and not think they are in the wrong; because people will now know the standing of the aggressor and the non-aggressor.
>
> If it is brought up through school now things could change.
>
> They [people] will now know how traumatic it is to the woman.

Maria Prerauer, of *The Bulletin* wrote:

> *Without Consent* . . . had an impact way beyond its initial audience, those who saw it are still talking about it, while those who missed one segment or even both would dearly like to get hold of it, some even think that it should be compulsory viewing in high schools (*The Bulletin*, 20 October 1992).

This response is encouraging, but there is so much to do; so much to get right. How can we encourage more women to come forward and report their sexual assault? How can we make the first contact with the police less confronting, and the experience of the courts less traumatic?

Sentencing, the 'battered woman syndrome', the stereotype of the rapist, the stereotype of the 'survivor' . . . the list goes on. We are gathered here today to confront these problems. Let us hope we can.

References

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RAPE AND 'REAL RAPE'

Joanne Spangaro
Women's Health and Sexual Assault Education and Resource Unit
Rozelle
New South Wales

THE PRIMARY ROLE OF THE NEW SOUTH WALES SEXUAL ASSAULT EDUCATION Unit is to train health workers who respond to sexual assault. When we are running a course, one of the first things we do with a group is look at the dimensions of the problem of sexual assault. When this is done, the reaction of the group—or a large proportion of the group—is surprise. One of the reasons this is done in training is because it is important for participants to understand that sexual assault is not something which occurs to people 'out there' and in places remote from us.

Not all the participants are surprised at the results of this discussion as there are always at least four or five people who have been sexually assaulted out of a group of about fifteen participants. Often an anonymous tally of the range of abuses people have experienced is done, in order to make this point and to ensure that participants are sensitive in the way they treat the topic of sexual assault. The language used when talking about the impact of sexual assault is important as language can be used to minimise and isolate people's experiences. One could argue that the use of the word 'victim', for example, operates to distance ourselves from the problem, as if it happens exclusively to some sub-group. When one becomes a 'victim'—and not a person who has experienced sexual assault—the rest of one's identity is obscured. Sexual assault is not something that happens to people somewhere else; it is something that has happened to a significant number of people in any group, community or setting.

So what are the dimensions that allow such generalisations? Sexual assault is an area in which it is notoriously difficult to gather statistics, as reporting rates to police do not reflect the real incidence. Some of the best research to date has been done in the USA. The studies undertaken by Russell (1984) and Koss (1988) have provided important data because large, random groups of people were asked focussed, detailed questions about their experiences of sexual assault—in Russell's study (1984), 930 women participated and in Koss's study (1988) over 3,000 students participated.

Other crime surveys have been undertaken which have yielded lower figures. However, a number of studies—such as those studies undertaken by the Australian Bureau of Statistics

(1986) and the US Bureau of Justice (1989), through their methodology—could have compromised a higher disclosure rate. The reasons for this expected lowered rate of disclosure are that some of these studies involved joint household surveys. The household can be an environment in which women do not speak freely, especially if the offender is a part of their household. Other studies asked interviewees whether they had been sexually assaulted. This is a question that some respondents would be unable or unwilling to say 'yes' to, even if they had experienced sexual assault. Both the US studies described the behaviours that can constitute sexual assault and simply asked interviewees to say whether or not this had happened to them.

In Russell's study, 44 per cent of the women reported at least one experience of rape or attempted rape, 24 per cent reported at least one completed rape, and 31 per cent reported at least one attempted rape. These figures relate to respondents' experiences as adults and did not include childhood experiences of assault (Russell 1984). According to Koss, 15 per cent of college students have experienced rape, and a further 12 per cent have experienced attempted rape. Therefore, 27 per cent of twenty-one-year-old women have experienced rape or attempted rape since the age of fourteen. The equivalent figure for men was 13 per cent (Koss 1988). If we look at incidence, Russell (1984) suggests that 3 per cent of women are raped or experience attempted rape each year. The risks seem to be higher for younger women, as Koss (1988) suggests that 7.6 per cent of college students are raped each year.

It seems we are a society in which nearly half of all women experience some serious sexual violence. Yet this fact, which must certainly have significant repercussions, is not widely known—although it is not deliberately hidden. Sexual assault is not reflected in public policy, government platforms, the preoccupations of the media, school curricula or any of the fora in which issues of social concern are discussed.

The fact that there *are* significant repercussions from this level of sexual violence is being documented by research emerging from psychiatric institutions and drug and alcohol recovery programs (*see* Beck & Van der Kolk 1987; Steiner-Crane et al. 1988; Bifulco, Brown & Adler 1991; Jacobson & Herald 1990; Rohsenow, Corbett & Devine 1988; Cohen & Densen-Gerber 1982; Yandow 1989). These studies suggest that the majority of people in such programs have experienced sexual assault as children; in fact, the study by Rohsenow, Corbett & Devine (1988) suggests that this figure is 90 per cent. Drug and alcohol workers have assured the researcher that, once workers have become aware of the issue of sexual assault, they discover that it is the exception amongst their clients *not* to have been sexually assaulted. It is clear that most people who experience sexual violence do not become psychiatrically ill or develop addictions—if that were the case, mental hospitals and rehabilitation programs would be the size of suburbs—but for a minority of victims this is a consequence.

Why are we so reluctant to name and acknowledge the extent of sexual violence that occurs? We are able to express outrage about the crime of sexual assault and unconditionally support those it happens to in only a very small number of cases. Burt (1991), an American researcher, argues that most people have an idea of 'real rape' that is a good deal narrower than any legal definition and excludes many types of rape which happen more frequently than the classic 'real rape'. When people hear of a specific incident in which a woman says she was raped, they look at the incident, compare it to their idea of a 'real rape' and, all too often, decide that the woman was not 'really' raped.

The classic 'real rape' for many people is rape by a stranger who uses a weapon, an assault done at night, outside (in a dark alley) with a lot of violence, resistance by the woman (it is always a woman in 'real rape') and, therefore, severe wounds and signs of struggle (Burt 1991). In fact, in every respect except one—the time of day—every element of this scenario is missing in most rapes. More than half of all rapes are committed by someone known to the person, most do not involve a weapon or severe injury, most occur indoors in either the victim's or the offender's home. These are the assaults which are dismissed or minimised, although acquaintance rapes are just as likely as stranger rapes to involve choking, beating, and the offender twisting the victim's arm or holding her down (Koss 1988).

The idea of 'real rape' protects us from the need to address the extent of the crime. It protects us from having to address the fact that not only do many people experience serious sexual violence each year but that many men must be guilty of committing such acts. The research suggests that many of us support sexual violence.

According to Giarusso et al., 50 per cent of high school boys believed it was acceptable:

> for a guy to hold a girl down and force her to have sexual intercourse in instances such as when she gets him sexually excited or changes her mind (1979 cited in Lottes 1988, p. 211).

In Koss's study (1988), 25 per cent of the men revealed involvement in some form of sexual aggression, and Malamuth (1981) found that 35 per cent of male college students would admit that there was some likelihood of committing a violent rape it they were assured of getting away with it.

Unfortunately, they *do* get away with it. Sexual assault could be thought of as the perfect crime. Perhaps one in twenty sexual assaults are reported to the police (Koss 1988). In New South Wales in 1989 and 1990, there were in both years almost exactly 3,500 cases of sexual assault accepted by police. In 1990 there were about 500 convictions through the lower and higher courts for sexual assaults (New South Wales. Bureau of Crime Statistics and Research 1991; 1992). Even though direct correlation is not possible, a comparison suggests that only about one in seven cases accepted by police results in a conviction. It could also be suggested that this figure is an over-estimate because in 1990, of all the sexual assault charges that went to trial, only 17 per cent were found guilty by verdict. Statistics that related to actual offenders—as there is often more than one charge—could not be located. Of those persons found guilty of sexual assault charges, less than half received prison sentences (New South Wales Sexual Assault Committee 1992).

There is little scope for comfort in the idea that the situation is at least improving. Although the number of cases proceeding to trial seems to be increasing each year, since 1988 the conviction rate in New South Wales seems to have fallen from 20.7 per cent to 16.8 per cent in 1990. The imprisonment rate has also dropped from 51.94 per cent to 44.27 per cent in 1990. The increase has been in periodic detention, 5.7 per cent to 11.47 per cent in 1990 and bonds, 31.34 per cent to 36.24 per cent in 1990 (New South Wales. Bureau of Crime Statistics and Research 1991).

Three years is not really long enough to claim as a trend. It is salutary to take for a moment at least, the very long view. In 1990, 32 per cent of all sexual assault charges were

upheld in the courts. In 1890, four of the fourteen rape cases tried in New South Wales led to convictions (Mukherjee, Scandia, Dagger & Matthews 1989).

Sexual assault is not only widespread but, given that so few offenders are imprisoned for it, the deterrence against committing the crime is clearly extremely low. The notion of 'real rape' plays a distinct role in this. Regarding certain rapes as not being 'real rapes' make assailants' actions less risky because women are less likely to report them to police. Prosecution is made more difficult because actual events appear improbable or not serious; for example, being dragged into a front garden and raped at sunset, or being dropped off at home after the rape. The notion of 'real rape' is built into legislation and rules of evidence which are still based on outdated assumptions such as 'rape victims resist and call out' and 'rape victims report the assault straight away'.

The other consequence of the notion of 'real rape' is that it makes the victim's recovery more difficult. In my experience, women whose assaults do not fit the criteria are more likely to blame themselves, less likely to tell anyone and get support, more likely to be disbelieved or blamed for what happened. Almost half of the women (42 per cent) who admitted to having been sexually assaulted in Koss's study (1988) had never told anybody about the assault. Perhaps their silence is a reflection of the denial that perpetrators display. In the same study, 88 per cent of the men who reported perpetrating an assault that met legal definitions of rape were adamant that their behaviour was definitely not rape (Koss 1988).

There is a clear public responsibility then to disabuse ourselves of the notion of 'real rape', of the myths that shift responsibility away from offenders and thus enable us to believe that rape is a rare occurrence, that it does not happen to people like ourselves, and that it is acceptable in certain circumstances. Until changes in the perception of rape occur, rape will continue to be the perfect crime—under-reported, rarely convicted and resulting in isolation and reprobation for those to whom it happens.

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BELIEFS ABOUT RAPE: A NATIONAL SURVEY

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THE PRINCIPAL AIMS OF THE NATIONAL SURVEY ON BELIEFS ABOUT RAPE were twofold: firstly, assessment of the Australian public's adherence to certain fallacious myths about rape; and secondly, examination of the public's degree of satisfaction or dissatisfaction with the courts and legal approach to rape. Given the methodological constraints described below, the results should be regarded with caution and seen as suggestive, rather than definitive, in nature.

The Methods and Their Limitations

Time limits precluded a pilot testing of an instrument. Therefore, the questions used in the survey were integrated from several overseas research instruments which had been tested for reliability and validity. Unfortunately, two of the queries were found to be ambiguous by numerous respondents—these two questions were dropped from the analysis. The large number of 'unknowns' for several questions were a by-product of one newspaper's failure to print the entire survey.

Data collection involved printing the survey on Sunday, 20 September, in the Murdoch chain of newspapers. Surveys were also mailed out to people who requested them by calling the 008 number advertised at the end of the

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documentary *Without Consent*, which was aired on ABC–TV on 17 and 24 September 1992.

The physical size of the survey (that is, the number of questions) was limited by its distribution through newspapers. Also, due to the method of distribution, it must be stressed that, aside from the fact that the respondents were self-selected and not drawn from a random sample, the findings may also be biased by the large number of survivors who filled out this survey in addition to another survey targeted at survivors which was published one week earlier. Since a large proportion of the respondents had also recently watched *Without Consent*, respondents may have had their opinions jolted to a degree. Therefore, the following data cannot be described as a representative sample of the opinions of the Australian public. One might expect that the respondents' beliefs were less traditionalist or conservative than would be found from a random sample. (Chi square tests were performed where appropriate using the SPSS–X computer package.)

Findings

Background traits

Six thousand five hundred and eighty-eight (6,588) surveys on beliefs about rape were received prior to the cut-off date of 12 October 1992. As expected by the coupling of the two surveys, the overwhelming majority of 'Beliefs About Rape' survey respondents were female: 5,303 of the 6,588 respondents were female. The age distribution of respondents was equal as evidenced by the Kolmogorov-Smirnov test of normality of distribution which produced a Z of 5.961 (two-tailed probability = 0.000):

- 14.2 per cent were aged under 24;
- 40.8 per cent were aged 25–39;
- 21.1 per cent were aged 40–49;
- 21.8 per cent were aged 50+; and
- in 2.1 per cent age of respondent was unknown.

Slightly more than half of those who sent in the 'Beliefs About Rape' survey were married, the remainder were primarily single (27.9 per cent) or divorced, separated or widowed.

Who is the rapist?

All kinds of men, many of them normal and respectable in other ways, are rapists: Table 1 reveals the responses to the only question on the survey which specifically looked at people's beliefs about what type of person rapes. The majority of males and females agreed that rape is not restricted to psychopaths and that 'all kinds of men' can rape. *There was a significant difference by gender, with close to half the male respondents either disagreeing or undecided on the issue, in contrast to one-third of female respondents.* Female respondents' attitudes differed significantly by age: females aged 50+ were less likely to agree with the statement than were females aged under 50 ($X^2_{[4]} = 55.3$, $p = 0.0000$). Thus, it would appear that although the majority of respondents do not subscribe to the myth

which delineates rape as perpetrated by psychopathic individuals, a significant number, particularly males, remain reluctant to see the rapist as 'just an ordinary bloke'.

Table 1

All kinds of men, many of them normal and respectable in other ways, are rapists, by gender

	Male n = 1,123	Female n = 5,303	Total n = 6,426
	%	%	%
Strongly agree	21.1	34.8	32.4
Agree	33.1	33.9	33.7
Undecided	9.7	9.4	9.4
Disagree	17.9	13.6	14.3
Strongly disagree	18.2	8.4	10.1
Total	100.0	100.0	100.0

Note: Significant variation by gender: $X^2_{[4]} = 145.5$, $p = 0.0000$

What is rape?

A man must threaten a woman with a gun, knife or fists in order for the act to be considered rape: Does rape require the use of a weapon or a threat of physical violence? Until recently, the legal definition of rape in Australian jurisdictions contained this element. Although in most instances physical force has been replaced by 'without consent', there is evidence that some judges and lawyers continue—within the bounds of their discretion—to equate the absence of physical violence with the absence of rape. Most respondents did not believe that such physical force is a necessary component of rape. However, Table 2 does indicate that *thirteen of every 100 males either agreed with the statement or were undecided.* Again, females aged 50+ were more apt to agree with this statement ($X^2_{[4]} = 11.0$, $p = <0.05$).

Rape cannot take place in a marriage because a husband has sexual rights over his wife: Can rape take place within marriage or do people still believe that the institution involves the absolute sexual right of the male over his partner? Table 3 shows that, although the great majority of respondents did not adhere to the latter viewpoint, *one out of every ten males either agreed or were undecided.* Both males and females aged 50+ were more apt to agree with this statement.

Table 2

A man must threaten a woman with a gun, knife or fists in order for the act to be considered rape, by gender

	Male n = 1,127	Female n = 5,327	Total n = 6,454
	%	%	%
Strongly agree	3.2	2.7	2.8
Agree	5.7	1.8	2.5
Undecided	3.9	1.3	1.7
Disagree	27.0	14.3	16 5
Strongly disagree	60.2	79.9	76.5
Total	100.0	100.0	100.0

Note: Significant difference between genders: $X^2_{[4]} = 205.0$, $p = 0.0000$

Table 3

Rape cannot take place in a marriage because a husband has sexual rights over his wife, by gender

	Male n = 802	Female n = 4,218	Total n = 5,020
	%	%	%
Strongly agree	3.7	2.0	2.3
Agree	2.0	0.5	0.7
Undecided	4.5	0.9	1.5
Disagree	26.4	8.4	11.3
Strongly disagree	63.3	88.3	84.3
Total	100.0	100.0	100.0

Note: Significant difference by gender: $X^2_{[4]} = 274.2$, $p = 0.0000$

Rape is a male exercise in power over women: The belief that rape is about sex, and not about violence and power, is extremely damaging to its victims as this belief contributes to other myths which suggest that the rape survivor is somehow responsible for controlling the rapist's uncontrollable sexual needs or desires. As such, the victim is then perceived as

responsible for her own victimisation. *It is thus somewhat alarming that 14 per cent of females either disagreed or were undecided about whether rape is a male exercise in power over women—and more than one-third of males were in disagreement or undecided, with one-tenth in strong disagreement* (*see* Table 4). Of particular concern is the finding that only half of the males aged under 50 agreed with the statement.

Table 4

Rape is a male exercise in power over women, by gender

	Male n = 1,120	Female n = 5,321	Total n = 6,441
	%	%	%
Strongly agree	34.1	63.1	58.1
Agree	29.0	22.4	23.5
Undecided	13.4	6.3	7.5
Disagree	13.0	3.6	5.3
Strongly disagree	10.2	4.6	5.6
Total	100.0	100.0	100.0

Note: Significant difference between genders: $X^2_{[4]} = 383.9$, $p = 0.0000$

The role of the survivors

The next six survey questions were designed to attain some understanding of how the victim or survivor is viewed. Is she seen as responsible for the assault in any way?

Women who hitchhike have only themselves to blame if they are raped: According to Table 5 'victim blaming' still persists in Australia. *Almost one-third of the sample was either undecided or agreed that women who hitchhike have only themselves to blame if they are raped.* This was the only question which did not result in significant variation by gender. Age, however, is a highly significant source of variation with almost half of females aged 50+ ($X^2_{[4]} = 148.4$, $p = 0.0000$) and a similar proportion of males aged 50+ ($X^2_{[4]} = 34.7$, $p = 0.0000$) either in agreement with or undecided about this statement.

Table 5

Women who hitchhike have only themselves to blame if they are raped, by gender

	Male n = 1,124	Female n = 5,331	Total n = 6,455
	%	%	%
Strongly agree	10.9	8.8	9.1
Agree	14.9	13.1	13.4
Undecided	8.7	9.2	9.1
Disagree	30.2	31.8	31.5
Strongly disagree	35.3	37.1	36.8
Total	100.0	100.0	100.0

'Nice' women do not get raped: Table 6 looks at a more direct query dealing with perception of the survivor's role: 'Nice women do not get raped'. Most respondents disagreed with this perspective, although a significantly higher proportion of males either agreed or were undecided (7.4 per cent—$X^2_{[4]} = 174.8$, $p = 0.0000$).

Even when a woman says 'no' she does not really mean it: Who has not watched a movie or read a novel where the heroine is saying, 'No, no,' as the man embraces her, and it quickly becomes obvious to the audience that her 'no' really means 'yes' as she melts into his arms. Is such an image retained by some and influential in forming attitudes?

Table 7 shows that *sixteen of every 100 male respondents either believed that 'no' means 'yes' or were undecided.* Over 20 per cent of males aged 50+ fit into this category ($X^2_{[4]} = 9.8$, $p = <0.05$); and almost eight of every 100 females aged 50+ in the sample also believed that 'no' means 'yes' or were undecided ($X^2_{[4]} = 21.0$, $p = <0.001$).

Women who have erotic fantasies about rape want to be raped in actuality: Over one-third of males either agreed or were undecided about this statement which concerned erotic fantasies about rape as a reflection of actual desire to be raped (*see* Table 8). In fact, *only 81 per cent of the entire sample disagreed with a statement which, at the least, implies that some women want to be raped.*

There is no behaviour on the part of woman that should be considered justification for rape: Another question in this section of the survey looked quite clearly at whether respondents identified the victims' lack of responsibility for being raped. It is disturbing to find, as shown in Table 9, that *27.5 per cent of the entire sample either disagreed or were undecided about the statement that there is no behaviour on the part of a woman that should be considered justification for rape with almost four out of every*

ten males falling into that category. Within the female sub-sample, females aged 50+ (19 per cent) were significantly more likely to disagree ($X^2_{[4]} = 15.9$, $p = <0.001$).

Table 6

'Nice' women do not get raped, by gender

	Male n = 1,128	Female n = 5,323	Total n = 6,451
	%	%	%
Strongly agree	2.6	2.5	2.5
Agree	1.2	0.2	0.4
Undecided	1.6	0.2	0.4
Disagree	20.4	8.6	10.7
Strongly disagree	74.2	88.6	86.0
Total	100.0	100.0	100.0

Note: Significant variation between genders: $X^2_{[4]} = 174.8$, $p = 0.0000$

Table 7

Even when a woman says 'no' she does not really mean it, by gender

	Male n = 1,122	Female n = 5,320	Total n = 6,442
	%	%	%
Strongly agree	2.4	1.9	2.0
Agree	3.6	1.0	1.5
Undecided	10.3	2.0	3.5
Disagree	28.1	12.9	15.5
Strongly disagree	55.6	82.2	77.6
Total	100.0	100.0	100.0

Note: Significant variation between genders $X^2_{[4]} = 377.3$, $p = 0.0000$

Table 8

Women who have erotic fantasies about rape want to be raped in actuality, by gender

	Male n = 793	Female n = 4,205	Total n = 4,998
	%	%	%
Strongly agree	2.0	1.2	1.3
Agree	6.3	1.5	2.3
Undecided	25.7	12.5	14.6
Disagree	33.2	24.5	25.9
Strongly disagree	32.8	60.2	55.9
Total	100.0	100.0	100.0

Note: Significant variation by gender: $X^2_{[4]} = 241.1$, p = 0.0000

Table 9

There is no behaviour on the part of woman that should be considered justification for rape, by gender

	Male n = 797	Female n = 4,201	Total n = 4,998
	%	%	%
Strongly agree	36.0	55.7	52.6
Agree	24.1	19.2	20.0
Undecided	15.2	9.5	10.4
Disagree	17.4	10.2	11.4
Strongly disagree	7.3	5.4	5.7
Total	100.0	100.0	100.0

Note: Significant variation by gender: $X^2_{[4]} = 112.2$, p = 0.0000

Most charges of rape are unfounded: A final query was designed to measure people's attitude about women who claim to have been raped. As Table 10 illustrates, *6.2 per cent of the males agreed that most charges of rape are unfounded with a further 22.2 per*

cent undecided. The 6.5 per cent of females who agreed came mainly from respondents aged 50+ (18 per cent) ($X^2_{[4]} = 272.0$, p = 0.0000).

Table 10

Most charges of rape are unfounded, by gender

	Male n = 1,123	Female n = 5,301	Total n = 6,424
	%	%	%
Strongly agree	2.4	3.3	3.1
Agree	3.8	3.2	3.3
Undecided	22.2	8.8	11.1
Disagree	39.4	26.8	29.0
Strongly disagree	32.1	57.9	53.4
Total	100.0	100.0	100.0

Note: Significant variation by gender: $X^2_{[4]} = 304.7$, p = 0.0000

Rape: the laws and the courts

Five questions were used to ascertain how the respondents feel the laws and the courts are dealing with rape.

A rape victim's past sexual history should be relevant evidence in the courtroom during a rape trial: Table 11 shows the sample's responses to the issue of victims' past sexual history as evidence in a rape trial. *More than one-third of males (36 per cent) either agreed or were undecided about whether such evidence should be admissible.*

This is somewhat higher than one would expect based on the responses to the earlier query about justification. In other words, one would expect that those who do not believe that there is ever justification for rape would also agree that testimony about the victim's sexual past has no place in the trial. The proportion below who believe in such evidence or are undecided would seem to be an indicator of those who believe a woman is in some way responsible for the assault; this is perhaps a more accurate indicator than the earlier questions that directly addressed this issue. The males aged 50+ (30.8 per cent) and females aged 50+ (27.2 per cent) were most likely to agree with this statement.

A man who has committed rape should be given at least twenty years in prison: How serious a crime is rape seen to be? Table 12 indicates that *almost three-quarters of the sample believed that rape is indeed a serious offence meriting at least a twenty-year minimum sentence*. Again, females were more likely to 'strongly agree' with this statement while thirty-eight out of 100 males were either in disagreement or undecided.

Table 11

A rape victim's past sexual history should be relevant evidence in the courtroom during a rape trial, by gender

	Male n = 1,124	Female n = 5,329	Total n = 6,453
	%	%	%
Strongly agree	16.1	15.0	15.2
Agree	10.9	3.6	4.9
Undecided	9.0	3.9	4.8
Disagree	21.2	13.9	15.1
Strongly disagree	42.9	63.6	60.0
Total	100.0	100.0	100.0

Note: Significant variation between genders: $X^2_{[4]} = 225.5$, $p = 0.0000$

Table 12

A man who has committed rape should be given at least twenty years in prison, by gender

	Male n = 1,121	Female n = 5,315	Total n = 6,436
	%	%	%
Strongly agree	45.0	56.5	54.5
Agree	16.9	16.5	16.6
Undecided	17.5	15.6	15.9
Disagree	13.5	7.8	8.8
Strongly disagree	7.1	3.6	4.2
Total	100.0	100.0	100.0

Note: Significant variation by gender: $X^2_{[4]} = 80.4$, $p = 0.0000$

Judges are too lenient on convicted rapists: Given the attitude advocating lengthy terms of imprisonment, it is not surprising that most respondents also believed that judges are too lenient on convicted rapists (*see* Table 13). It might be noted that, in an analysis of age differentiation (with gender controlled), the males aged under 50 were the least likely to

agree with the statement (70.6 per cent). Almost one-fifth of the total male respondents either disagreed or were undecided.

Table 13

Judges are too lenient on convicted rapists, by gender

	Male n = 1,125	Female n = 5,331	Total n = 6,456
		%	%
Strongly agree	59.8	75.1	72.5
Agree	21.0	14.9	15.9
Undecided	10.6	4.0	5.2
Disagree	4.2	1.6	2.0
Strongly disagree	4.4	4.4	4.4
Total	100.0	100.0	100.0

Note: Significant variation by gender: $X^2_{[4]} = 140.2$, $p = 0.0000$

The laws concerning rape are too lenient: As Table 14 illustrates, an even higher proportion of the sample believed that the laws concerning rape are too lenient. However, almost one-fifth of males disagreed with or were undecided about the statement in contrast to only 8 per cent of females. As in responses to the prior question, males aged under 50 (26 per cent) were more likely to disagree with or be undecided about the statement.

In order to protect a male, it should be more difficult to prove rape than other crimes: The viewpoints shown in Table 15 conform to the other beliefs about the courts and the laws. The vast majority of respondents did not agree that it should be more difficult to prove rape than other crimes. *However, nineteen of every 100 males either agreed or were undecided.* Of the females, once again those aged 50+ were significantly more likely to agree with the statement ($X^2_{[4]} = 69.6$, $p = 0.0000$).

Discussion

As in most situations, one can interpret the preceding findings either with optimism—for example, most people do not subscribe to myths about rape—or with pessimism—for example, there are still substantial numbers of people, particularly men, who see rape in terms of sex and the survivor as responsible to some degree.

Table 14

The laws concerning rape are too lenient, by gender

	Male n = 1,124	Female n = 5,332	Total n = 6,456
		%	%
Strongly agree	60.5	80.6	77.1
Agree	19.9	11.4	12.9
Undecided	12.1	3.9	5.3
Disagree	3.8	1.0	1.5
Strongly disagree	3.6	3.1	3.2
Total	100.0	100.0	100.0

Note: Significant variation by gender: $X^2_{[4]} = 230.2$, p = 0.0000

Table 15

In order to protect a male, it should be more difficult to prove rape than other crimes, by gender

	Male n = 1,124	Female n = 5,319	Total n = 6,443
		%	%
Strongly agree	2.8	1.7	1.9
Agree	6.2	2.0	2.7
Undecided	10.1	4.9	5.9
Disagree	37.3	21.7	24.4
Strongly disagree	43.5	69.7	65.1
Total	100.0	100.0	100.0

Note: Significant variation by gender: $X^2_{[4]} = 282.7$, p = 0.0000

The preceding findings have been presented with an emphasis upon the 'pessimistic' based on the premise that certain attitudes, particularly when held by men, are conducive to the continuation of high incidences of rape and low levels of reporting. Such attitudes are, therefore, undesirable and, if they are held by some people, there is a need to try to change

them. The ideal would be the elimination of such attitudes. That ideal is consistent with the proscribed moral standards of our society.

If a significant minority of men hold such attitudes, then that fact is worthy of note. If you are an actual or potential victim of rape then, for example, the suggestion that one-quarter of the male population believe that hitch-hikers are 'fair game' is something worth noting. The fact that the great majority of people do not think this is less significant. Similarly, if people are undecided about such issues, this indicates a lack of complete acceptance of certain moral standards. The survey did not ask people what kind of toothpaste they used or which political party they were going to vote for. If it had, then those 'undecided' responses would have been analysed separately. The benchmark for comparison was complete acceptance of certain moral standards. If a respondent was undecided then it was taken that they did not completely accept the standard portrayed in the survey statement. With the latter perspective as the emphasis, the survey results show that:

- Almost half of the male respondents either disagreed or were undecided about whether 'all kinds of men, many of them normal and respectable in other ways, are rapists'.

- Thirteen of every 100 male respondents believed that a man must threaten a woman with a gun, knife or fists in order for the act to be considered rape.

- One out of every ten males either agreed or were undecided about the statement that 'rape cannot take place in marriage . . .'.

- More than one-third of the male respondents either disagreed or were undecided about whether rape is a male exercise in power over women.

- Almost one-third of the sample was either undecided or agreed that women who hitchhike have only themselves to blame if they are raped.

- A significantly higher proportion of males than females (7.4 per cent) either agreed with or were undecided about the statement that 'nice women do not get raped'.

- About sixteen of every 100 male respondents either believed that 'no' means 'yes' or were undecided.

- Only 81 per cent of the entire sample disagreed that 'women who have erotic fantasies about rape want to be raped'.

- Almost four out of every ten males either disagreed with or were undecided about the statement that 'there is no behaviour on the part of a woman that should be considered justification for rape'.

- Almost three out of every ten males agreed or were undecided with the statement that 'most charges of rape are unfounded'.

- More than one-quarter of males and 18.6 per cent of females agreed that a victim's past sexual history should be relevant evidence in the courtroom during a rape trial.

- Most respondents believe that rapists should receive heavy sentences, and that judges sentences and laws concerning rape are too lenient; males were more apt to disagree.

- Nineteen of every 100 males either agreed or were undecided about the statement, 'In order to protect a male, it should be more difficult to prove rape than other crimes'.

Two other points should be stressed. One of the difficulties in survey research is the tendency for respondents to express what they perceive as the ideal response instead of their real answer. The inconsistency in the answers of some respondents may be an indication of that process occurring. Therefore, for that reason and other mitigating factors relating to the sample and the methodology, the opinions found in this survey may be more open-minded and liberal than an actual representational sample of the Australian public. Given these beliefs, plus the tendency of the male respondents aged under 50 to be more conservative in some of their attitudes, it would appear that there is ample ground for enlightenment and change in the Australian public's beliefs about rape.

PATTERNS OF RAPE: A PRELIMINARY QUEENSLAND PERSPECTIVE

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THE RESEARCH AND EVALUATION BRANCH OF THE QUEENSLAND POLICE Service has established a Rape Information System which will provide ongoing data on rape and attempted rape offences reported to the Queensland Police Service. The associated database will provide patterns and trends on these offences and can, in time, be utilised to enhance the service the Queensland Police provides to rape victims. The database could also provide an improved proactive function in this area.

This paper will present some of the initial findings from the Rape Information System and make some comparisons to previous research which has utilised police statistics on reported rapes from Victoria (Victorian Community Council Against Violence 1991) and South Australia (Weekley 1985). In making these comparisons, it is important to recognise the vast differences between the states with regard to the definition of rape. Victoria and South Australia's definitions are much broader than Queensland's definition, which is provided below.

This document is part of a larger, ongoing study being conducted into rapes reported in Queensland. It is intended that a complete and detailed report on the findings from the Rape Information System will be produced regularly in the near future, incorporating detailed analysis on many of the issues discussed in this paper. It is, therefore, necessary to highlight that this paper provides a descriptive analysis of the available information from a research perspective only. Analysis of the information from a policy perspective will not be possible until further research has been completed.

Methodology

Definitions

Rape is currently defined in Section 347 of the Criminal Code of Queensland as follows:

> Any person who has carnal knowledge of a female without her consent or with her consent if it is obtained by force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false and fraudulent representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of a crime, which is called rape.

In the preceding paragraph 'married woman' includes a woman living with a man as his wife though not lawfully married to him and 'husband' has a corresponding meaning.

Within the Rape Information System, the following coding classifications have been used:

Geographic location. *Inner City Brisbane* locations include all offences which occurred in an area with a 4000 postcode, while *Suburban Brisbane* includes all remaining Brisbane City suburbs.

Outer Brisbane regions and suburbs include the following areas: Redcliffe City, Logan City, Caboolture Shire, part Albert Shire, Pine Rivers Shire, part Moreton Shire, Ipswich City and Redland Shire.

Provincial Regional Centres and suburbs include the following Police District Station areas: Mareeba, Innisfail, Townsville, Mt Isa, Mackay, Rockhampton, Longreach, Toowoomba, Gladstone, Bundaberg, Maryborough, Gympie, Charleville, Roma, Dalby and Warwick.

Coastal Centres which have a high turnover of visitors have been identified and include the following: the Gold Coast Police District, the Sunshine Coast Police District, Cairns City and suburbs, and the Whitsunday Police Division including the Whitsunday Islands.

Country Towns includes all those rural townships not included within the category of Provincial Regional Centres. *Other Geographical Locations* include the Torres Strait Islands and the remainder of rural and remote Queensland.

Clearance. For the purposes of this study, an offence is deemed to be cleared when the offender has been arrested, summonsed, cautioned, or the complaint was withdrawn. The 'other' classification in this field includes those incidents where there was insufficient evidence to continue or the complaint was shown to be false. 'Withdrawn' incidents are officially withdrawn by the victim/complainant.

Actual location. These classifications are the same as those recommended by the Australian Bureau of Statistics, National Crime Statistics Unit (NCSU). They have been chosen as the codes for this category so that in the future, through the use of a national standard, comparisons between jurisdictions will be possible. *Residential Dwelling* includes single-dwellings such as caravan, granny flat, house, tent, and manager's residence and multi-dwellings such as block of flats, home units, orphanage and barracks. *Residential Other* includes garage, garden, greenhouse, pool, yard and shed. *Other Commercial Premises*

include establishments engaged in the business of providing accommodation, construction, manufacturing/storage, and personal services. The *Transport* location includes offences which occurred in a vehicle as well as those premises which engage in providing transport services.

Time of offence. Where an offence was reported to have occurred between two times, the first of the two times has been used.

Date of offence. Where an offence was reported to have occurred between two dates, the first of the two dates has been used.

Alcohol. The classifications involving alcohol attempt to establish, from the available information, if alcohol played a part in the offence. It does not necessarily mean that the victim and/or the offender were intoxicated.

Country of birth. The classifications used are the Australian Bureau of Statistics standard classifications.

Offender. Throughout this document, any reference to offender also includes suspects or accused persons.

Relationship to offender. For the purpose of this paper an acquaintance is someone known to the victim, prior to the incident. This relationship, however, may be only a matter of an hour or so. A friend is someone the victim has had a known (defined) relationship with, as determined by the victim's own terms or by a certain period of time. The strength of the friendship determined whether the relationship was categorised as an acquaintance or friend, and this was sometimes a subjective decision based on the available information. Family, as used in this paper includes: spouse, de facto, grandparent, natural parent, de facto parent, step-parent, sibling, step-sibling, and other family members including uncles and cousins.

Limitations

The results of this research are limited by the nature of the source information, in that through the utilisation of police records, the amount, type and reliability of the data available are limited to that recorded by the officer involved based on information provided by the victim.

Another major limitation of this research is that it is only examining those offences which have been reported to police. Crime victim surveys undertaken throughout various jurisdictions in Australia indicate that as few as one in eight rapes are reported to police. It has been discussed in current research, which has been based on the recent Queensland Crime Victims Survey (Queensland. Office of the Cabinet, Women's Policy Unit 1992, p. 8), that this figure is under-represented as victims may even be reluctant to report these offences in crime victim surveys. The Queensland Crime Victims Survey, undertaken by the Government Statisticians Office, was unable to provide accurate figures on unreported rapes in Queensland due to the standard errors introduced as a consequence of the small number of victims included in any randomised sample of the Queensland public.

A further limitation of the study is that a detailed analysis on the use of physical violence and the physical injuries sustained by victims of rape and attempted rape reported to police has not been possible.

Findings

All rapes and attempted rapes reported to Queensland Police between 1 January 1991 and 30 June 1992 have been examined for the purpose of the study. The Rape Information System will provide continued information on all rapes and attempted rapes reported to Queensland Police from 1 January 1991.

The information within the Rape Information System has been gathered from the Criminal Offence Reports and Court Briefs completed by police officers for each reported offence. This information has been supplemented by information from police officers directly involved with particular cases and from statements taken by police officers.

For the eighteen-month period studied thus far, the Rape Information System recorded 450 incidents, involving 448 victims, 370 known or identified offenders and 87 incidents with no offender identified as at 30 June 1992.

The characteristics of the reported rapes and attempted rapes (herein referred to jointly as rapes) have been examined and include issues such as the use of weapons, the geographic and actual location of the reported rapes, the time, day and season when the offence occurred, the clearance of offences, the involvement of alcohol and the relationship between the victim and the offender. Characteristics of the offenders and victims will then be examined in more detail.

In all, there were a total of 365 incidents of rape and 85 incidents of attempted rape reported to police throughout Queensland during the period 1 January 1991 to 30 June 1992.

Weapons

Of the 450 incidents, 7.6 per cent involved the use of a weapon. Knives were the most commonly used weapon, representing 55.9 per cent of all weapons used in these offences. Other weapons included rifles (5.9 per cent), other firearms (8.8 per cent) and other weapons (29.4 per cent). The 'other weapon' category includes such items as scissors, hammers, garden forks, carving forks, pieces of wood and wire.

The Victorian study identified that 18 per cent of rapes involved a weapon, of which 11 per cent were knives. Comparatively, 16.4 per cent of rapes in South Australia involved weapons, excluding fists (which are included in the South Australian study as weapons, and were not included as weapons in this and the Victorian study). Fists accounted for 12.4 per cent of weapons used, with knives representing 7.7 per cent and, overall, 28.8 per cent of rapes in the South Australian study involved the use of a weapon.

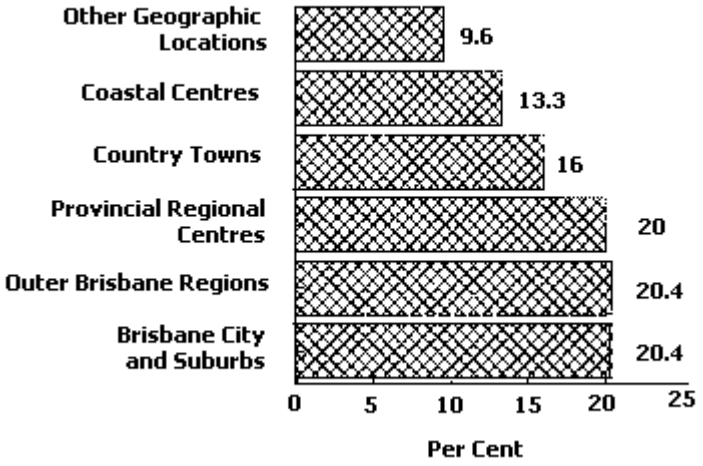
Geographic location

Due to the dispersed nature of Queensland's population, it is advantageous to examine information on the geographical location of offences throughout the state. The distribution of the reported rapes over the six previously defined Geographical Locations is given in Figure 1. The distribution shows that Brisbane City and Suburbs and the Outer Brisbane

regions each account for 20.4 per cent and the Provincial Regional Centres account for 20 per cent of all reported incidents. Country Towns and Coastal Centres account for 16 per cent and 13.3 per cent respectively. On a closer examination of the distribution for Brisbane, it can be shown that only 2.7 per cent of all offences occurred in the Brisbane central business district which also includes the city entertainment areas.

Figure 1

Distribution of Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992

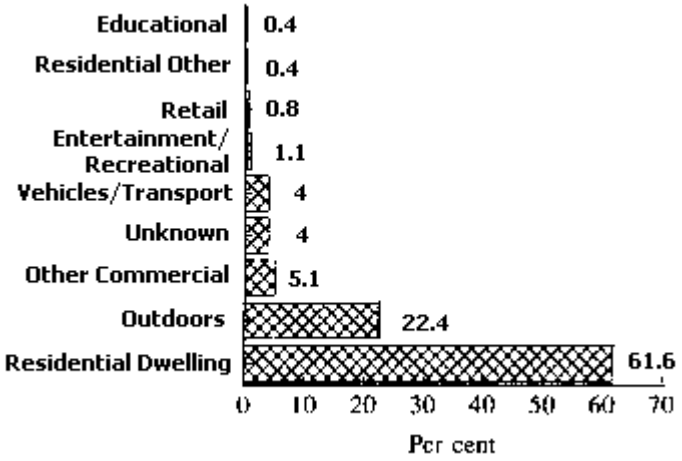


Actual location

In the majority of incidents (61.6 per cent), the offence occurred in a residential dwelling. The next most common location was outdoors, representing 22.4 per cent of which 41.6 per cent were committed by 'known' offenders. In the Victorian study, outdoor offences accounted for 23.5 per cent. Other locations where reported rapes have occurred, include Other Commercial Premises (5.1 per cent), and vehicles or near public transport (4 per cent). Decisions regarding actual location may have required a subjective decision and there may have been incidents where an offence occurred outdoors rather than in a vehicle or vice versa. Less common locations include entertainment premises such as nightclubs and hotels, educational premises, other residential premises and retail premises. A detailed breakdown is given in Figure 2.

Figure 2

Actual Location of Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992



This examination of the location of reported rapes differs from previous research in that the classification codes follow the NCSU recommended codes. However, it does still highlight that the largest number of offences occur in private homes as opposed to public places. These findings are similar to those identified by the Victorian and South Australian studies. The utilisation of the different classification codes would account for some of the differences between these results and previous studies.

Despite these findings, results from the Queensland Crime Victims Survey as examined by the Women's Policy Unit still show that, while only 12 per cent of women feel unsafe in their own home at night, 45 per cent of Queensland women feel unsafe walking alone after dark in their own area (Queensland. Office of the Cabinet, Women's Policy Unit 1992, p. 26).

Time of offence

Excluding 163 incidents where information on the time at which the offence occurred was not recorded, 74.9 per cent of the reported rapes occurred between 6 pm and 6 am. This is similar to Victoria's results where 72 per cent of reported rapes occurred during the same time period. Table 1 shows that 29.6 per cent of reported rapes took place between midnight and 3 am, with the least occurring during the daylight hours of 6 am to midday.

Table 1

Time of Offence
Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992

Time	No.	%
Midnight – 3 am	85	29.6
3 am – 6 am	35	12.2
6 am – 9 am	10	3.5
9 am – Midday	9	3.1
Midday – 3 pm	24	8.4
3 pm – 6 pm	29	10.1
6 pm – 9 pm	30	10.5
9 pm – Midnight	65	22.6
Total	287	100.0

Note: Information for 163 incidents unavailable.

Day of week

As Table 2 highlights, the majority of incidents (54.4 per cent) occurred between Friday to Sunday, with Saturday representing 20.4 per cent and Sunday, 18.2 per cent. There is a relatively even spread of incidents throughout the remainder of the week.

These results are basically consistent with the findings in Victoria, although the most common days identified in their study were Friday (18.7 per cent) and Saturday (18.8 per cent).

The fact that a high percentage of rapes occur between midnight and 3 am (29.6 per cent) accounts for the number of rapes recorded as happening on Sundays as they carry over from late Saturday night to early Sunday morning. Indeed, further examination shows that 28 per cent of incidents occurring on Sundays take place between the hours of midnight and 3 am.

Table 2

Day of Offence
Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992

Day	No.	%
Sunday	82	18.2
Monday	51	11.3
Tuesday	45	10.0
Wednesday	57	12.7
Thursday	52	11.6
Friday	71	15.8
Saturday	92	20.4
Total	450	100.0

Month and season

The number and percentage of reported rapes which occurred in each month, along with a seasonal breakdown, is displayed in Table 3. As data collection has been conducted over an eighteen-month period, the figures have been adjusted accordingly.

Just under one-third (32 per cent) of all reported rapes occurred during the summer months, with the remaining seasons accounting for 23.1 per cent (autumn), 21.8 per cent (winter) and 23.1 per cent (spring).

The Victorian and South Australian studies gave similar results with Queensland having a slightly higher proportion occurring during the summer months.

In examining the seasonal occurrence of reported rapes by geographical location, the results highlight several interesting facts. Firstly, the percentage of reported rapes occurring in summer and spring in the coastal centres (64 per cent) is noticeably higher than the state figure of 55 per cent. The number of visitors in these coastal areas is also higher during the peak summer months which could account for the higher number of rapes occurring during these periods.

The Outer Brisbane regions and suburbs display the opposite picture to that of the state, with just over half (52 per cent) of all reported rapes occurring during autumn and winter. At first it was thought that this may be attributed to the relatively large percentage of intra-family rapes (36 per cent) which occurred under this location code. Initial investigation, however, has shown this not to be the case. Further examination of this issue is currently being undertaken.

Table 3

Season of Offence*
Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992

Month	No.	%	Vic. %	SA %
December	36	11.9		
January	35	11.6		
February	26	8.6		
Summer	*97*	*32.0*	*28.1*	*30*
March	28	9.2		
April	23	7.6		
May	19	6.3		
Autumn	*70*	*23.1*	*25.2*	*25*
June	19	6.3		
July	22	7.3		
August	25	8.3		
Winter	*66*	*21.8*	*20.1*	*21*
September	11	3.6		
October	26	8.6		
November	33	10.9		
Spring	*70*	*23.1*	*24.3*	*24*
Unknown			2.3	
Total	303	100.0	100.0	100

* Adjusted to twelve months.

Alcohol involvement

It is difficult to ascertain whether alcohol was involved in an incident by examining the police reports since police reports often do not record this information. Therefore, there was a large percentage (68.7 per cent) of the reported rapes studied associated with an 'unknown' element. It was, however, possible to identify that 29.3 per cent of all reported incidents involved alcohol, to some degree as shown in Table 4.

Table 4

Alcohol Involvement
Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992

Involvement	No.	%
With victim only	41	9.1
With offender only	20	4.4
With both	71	15.8
Not involved	9	2.0
Unknown	309	68.7
Total	450	100.0

In both the Victorian and South Australian studies, the results regarding alcohol involvement indicate that alcohol was not considered to be a significant factor in the rape offences reported.

Multiple offender rapes in Queensland do appear to involve alcohol to a greater extent than single offender rapes. Further work is being done to examine this.

Clearance of offences

Of those offences studied, 58.2 per cent have already led to an arrest. Table 5 provides further details on clearance of reported rapes. It is necessary to remember that these figures were current on 30 June 1992 and some offences, uncleared as at 30 June 1992, may still be under investigation or may now have been cleared.

Unfortunately, this study has only examined the results of reported offences up until the time of police clearance of the offence. It is hoped in the future to also examine the court results of these clearances.

Table 5

Clearance of Reported Rapes
Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992

Type	No.	%
Arrest	262	58.2
Summons	4	1.0
Caution	1	0.2
Other	32	7.1
Withdrawn	83	18.4
Not cleared (as at 30/6/92)	68	15.1
Total	450	100.0

Victim's relationship to the offender

The results from this research show that 68.6 per cent of offenders were known to the victim in some way, with 'strangers' accounting for 21.6 per cent of offenders for all reported rapes. In Victoria and South Australia, the results indicated that 61 per cent and 58 per cent respectively of rape victims knew their attackers and stranger rapes represented 39 per cent in Victoria and 40 per cent in South Australia.

Within the 'known' category, 44.6 per cent of rapes were committed by friends (25.5 per cent) or acquaintances (19.1 per cent) and 24 per cent by family members. Victoria reported that 11.3 per cent of rape victims in their study were related to their attackers, and South Australia reported almost 13 per cent. Included in the family category are those rapes committed by a spouse or de facto which account for 6 per cent of all reported rapes. This marital rape figure is similar to Victoria's with 4.9 per cent of all rapes by a spouse or de facto and in South Australia this category represented 4.4 per cent.

In 9.8 per cent of the incidents, the relationship between the victim and offender was unknown.

Queensland appears to have a higher proportion of reported intra-family rapes. This may be in part attributable to charging practices. Advice from operational areas is that, in some cases, offenders have been charged with rape rather than incest because of the young age of the victims and the fact that it appears easier to get a conviction on a rape charge than on an incest charge.

The establishment of the Suspected Child Abuse & Neglect (SCAN) teams—which are multidisciplinary teams—may have been responsible for detecting more reported intra-family offences. The operations of the Juvenile Aid Bureau and specific targeting by Task Force operatives may also be responsible for the higher proportion of reported intra-family rapes. Further research into these possible explanations and other reasons for the high proportion of reported intra-family rapes is still required.

In understanding these differences, the relationship between the victim and offender and geographic location of the rape was examined. Table 6 shows that Brisbane City and Suburbs and the Coastal Centres have a higher than the state percentage of stranger rapes. The Outer Brisbane regions have a high percentage of intra-family rapes.

Table 6

Geographic Location by Relationship of Offender in Rapes Reported to Queensland Police 1 January 1991 - 30 June 1992

Geographic Location	Acquaintance/ Friend	Family	Stranger	Unknown
Brisbane City & Suburbs	46.0	23.0	27.0	4.0
Outer Brisbane	39.1	39.1	15.2	6.5
Provincial Queensland	46.7	24.4	22.2	6.7
Coastal Central	50.0	20.0	28.0	2.0
Country Towns	47.2	26.4	15.3	11.1
Other Geographic Locations	40.0	18.0	5.0	37.0
Queensland	44.6	24.0	21.6	9.8

The age of victims at the time of the offence and their relationship to the offender also adds further to the picture. As Figure 3 shows, a large number of intra-family rapes involved victims aged sixteen years and under. Friends or acquaintances also were major offenders in this age group and the 17 to 25-year-old age bracket. Older victims were more likely than younger victims to be attacked by strangers, as opposed to family or friends—44.4 per cent of victims aged over forty years were raped by strangers, while only 18.6 per cent of victims forty years and under were raped by strangers.

Characteristics of the Victims

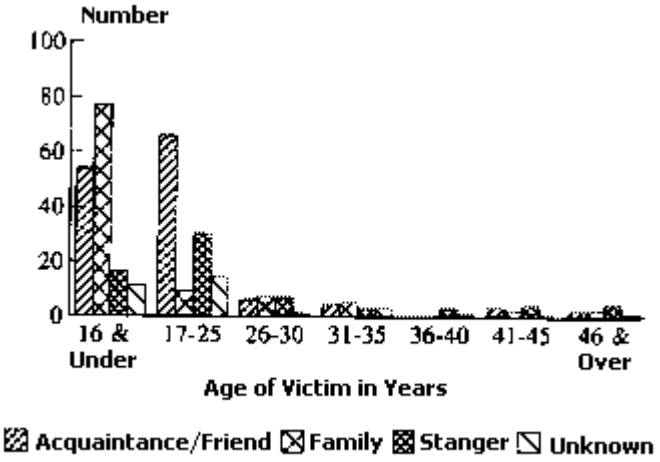
Due to the data source for this research, information regarding the victim is limited. However, from the data available the following findings have been identified.

Sex of the victims

Due to the current legal definition of rape in Queensland, all victims included in this study were female.

Figure 3

Age of Victim and Relationship to the Offender in Rapes Reported to Queensland Police 1 January 1991 - 30 June 1992



Age of the victim

Table 7 displays the distribution of victims' ages at the time the offence occurred. The largest proportion of victims were aged sixteen years and under, representing 48 per cent. The next largest age group is the 17 to 25-year-old bracket, comprising 35 per cent.

The Victorian study highlighted that the under twenty-five age group accounted for 70 per cent of victims, and in South Australia 76 per cent of victims were aged under twenty-six years. Queensland, therefore, has a larger number of younger victims, with 83 per cent of rape victims aged twenty-five years or younger—a figure that is in keeping with the high percentage of intra-family rapes.

Marital status

The study showed that, in the instances where marital status was recorded on the crime report, the vast majority of victims (79 per cent) were single. Married women and women in de facto relationships accounted for 9 per cent and 5 per cent of victims respectively, with 6 per cent of rape victims being separated at the time the rape occurred. Single victims accounted for 77.1 per cent of Victorian victims; with marital status recorded, married or de facto 11.1 per cent and divorced or separated 11.8 per cent.

It is necessary to note that marital rape has only been included in the definition of rape in Queensland since 1989 and this will have had an effect on the number of married or de facto women reporting rapes to police. It also affects comparisons with other states.

Table 7

Victim's Age at Time of Offence
Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992

Age When Offence Occurred	No.	%
16 & under	158	48.0
17–25 years	115	35.0
26–30 years	20	6.1
31–35 years	15	4.6
36–40 years	4	1.2
41–45 years	9	2.7
46 & over	8	2.4

Note: Information unavailable for 121 incidents.

Time before police notified

As Table 8 indicates, the majority of rapes which come to police attention are reported on the same day the offence occurred (46.2 per cent), or the next day (15.8 per cent). Rapes which have occurred two or more years ago represent 12 per cent of those reported to police. This may be due to the larger number of intra-family rapes in Queensland and the generally lengthy time associated before the reporting of these rapes, usually when the victim is older. Indeed, 50 per cent of intra-family rapes were not reported until at least two years after the rape occurred.

The Victorian study revealed that 81.2 per cent of rapes were reported to police within a month of the incident, while the Queensland results indicate 75.5 per cent of rapes were reported within the same time frame. While 12 per cent of rapes in Queensland are not reported to police until two or more years after the rape occurred, Victoria's results showed only 2.2 per cent for the same time period. As mentioned above, the high number of intra-family rapes could be an explanation for this difference.

Table 8

Time Before Police Notified
Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992

Time Period	No.	%
Same day	208	46.2
Next day	71	15.8
2 days – 1 week	41	9.1
1 week – 1 month	20	4.4
1 month – 6 months	30	6.7
6 months – 12 months	13	2.9
1 year – 2 years	13	2.9
2 years – 5 years	26	5.8
Greater than 5 years	28	6.2

Postcode of offence

An additional factor examined as part of this study has been those rapes which have occurred away from the victim's home address. It has already been stated that the majority of rapes occurred in a residential dwelling. By including information on the postcode of the offence, it has been possible to highlight that 25.3 per cent of rapes occurred in a suburb/town different to the victim's home postcode. The majority (69.3 per cent) of rapes did occur in the victim's own suburb/town. In 5.3 per cent of incidents, this information was unavailable.

A future requirement for the Rape Information System will be to include the postcode of the offender, in order to examine how many rapes are occurring in the offender's suburb/town. It is also planned to include information about whether a rape occurred within the victim's, the offender's or some other person's home.

Characteristics of the Offender

A number of variables regarding offenders has been collected from police reports. For this study, by definition, all offenders have been male. The results below have excluded those offenders who have not been identified or remain unknown. Of those identified or known offenders, some information is also unavailable.

Age of offenders

Results of the study indicate that the highest number of offenders were 17 to 25-year-olds, representing 38.6 per cent of all identified offenders. Table 9 provides a full breakdown of offenders by age.

Table 9

Offender's Age at Time of Offence
Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992

Age When Offence Occurred	No.	%
16 years & under	20	5.7
17–25 years	135	38.6
26–30 years	69	19.7
31–35 years	46	13.1
36–40 years	22	6.3
41–45 years	27	7.7
46–50 years	14	4.0
51 years & over	17	4.9

Note: Information unavailable for twenty offenders.

The results of both this study and the Victorian study show that the age distribution of offenders is similar in both states. There is a slightly higher proportion of older offenders (that is, older than forty years of age) in Queensland (16.6 per cent) than in Victoria (11 per cent). This difference may be due to the reporting of intra-family rapes appearing to be more prevalent in Queensland than in Victoria. Indeed, 23 per cent of offenders in intra-family rapes are over forty years of age.

Further analysis is required to examine the association between the age of the offender at the time of the offence and the age of the victim.

Country of birth

The majority of offenders were born in Australia (73.5 per cent), with information on country of birth unavailable for a further 14.6 per cent. Offenders born in the United Kingdom and Ireland accounted for 3.2 per cent, 2.4 per cent originated from New Zealand, and 1.9 per cent from Melanesia (including Papua New Guinea). Offenders born in the following countries represented 1 per cent or less each: Micronesia (including Fiji), Western Europe, Northern Europe, Southern Europe, Northern America North Africa, Southern and East Africa, and the Middle East.

Offender employment status

In those instances where employment status was identified, just over half (51.5 per cent), of the offenders were employed at the time of the offence, and 40 per cent were unemployed. A further 4.6 per cent were students, 3.6 per cent pensioners and 0.3 per cent were retired.

Offender police history

Examination of police reports and the police computer system highlighted those known or identified offenders with previous charges against them. Over half (58.1 per cent) had some level of police history, which included 4 per cent of offenders with previous charges for sexual offences. Over one-quarter (27.3 per cent) of the identified offenders had no previous police history and for 14.6 per cent of offenders this information was unknown.

Further research into the type of previous offences is planned along with an examination of other offences with which an offender may be charged at the same time as the rape charge.

Rape charges preferred

For each incident the number of rape charges preferred against an offender were recorded. By 30 June 1992, almost half (45.5 per cent) of the incidents had already resulted in one rape charge being preferred against the offender. A further 43.2 per cent had no charge preferred and possibly were still being investigated. Table 10 provides further details regarding the number of charges preferred against offenders to date.

Table 10

Rape Charges Preferred Against Offenders
1 January 1991 - 30 June 1992

No. of Charges	No.	%
One	235	45.4
Two	27	5.2
Three	14	2.7
Four	7	1.4
Five – Nine	8	1.5
Ten or more	3	0.6
No charge or not finalised	224	43.2

Multiple offenders

Rape offences reported to police involving more than one offender accounted for 8.8 per cent of the total rapes reported. Table 11 provides a further breakdown regarding offences involving multiple offenders. The Victorian study reported that 15.2 per cent of rapes involved more than one offender. A more detailed analysis of multiple offender rapes is being undertaken as part of this study.

Table 11

Multiple Offender Incidents
Rapes Reported to Queensland Police
1 January 1991 - 30 June 1992

No. of Offenders	No.	%
One	411	91.3
Two	26	5.8
Three	7	1.6
Four	3	0.7
Five or more	3	0.7

Summary

While the preliminary results of this research confirm that Queensland is largely the same as both Victoria and South Australia when examining rapes reported to police, there are some areas which appear to be different, in particular the larger proportion of intra-family rapes reported. This could be explained to some extent through different reporting and detection rates because of the use of SCAN teams and through charging practices.

When making inter-state comparisons, the differences between the states with regard to the definition of rape is important to take into consideration. The legislation in this area is under review in Queensland and changes resulting from that process may make comparisons easier in the future.

In presenting this preliminary research, many questions have been raised which have not as yet been fully explained by the data and ongoing research in this area is currently being undertaken.

To date, these results have been predominantly research orientated, but upon completion of all analysis, future policy analysis and development will benefit from the findings by developing appropriate strategies to reduce the incidences of this offence.

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ONLY A WITNESS

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AS WORKERS IN THE AREA OF SEXUAL ASSAULT, WE DO NOT PROPOSE TO speak on behalf of survivors. However, we have a great deal of information available to us, in a variety of forms, about what survivors think of the criminal justice system —the 1991 Victorian Real Rape Law Coalition Phone-In, statistics kept at some sexual assault centres, comments made to workers in court seminars, attending court with clients as support people, groups, and counselling sessions. The New South Wales Sexual Assault Committee also receives verbal and written complaints on a regular basis from survivors. These communications range from complaints about the way the police handled a rape report to the inadequate award of compensation received for the suffering from this horrific crime.

The New South Wales Sexual Assault Committee is conducting a phone-in for survivors of sexual assault in New South Wales modelled closely on the Victorian phone-in. Despite reservations from newspaper editors as to the validity of the exercise, the Committee believes it is crucial to consult with survivors about their experiences and take into account what they are telling us most emphatically and eloquently. These experiences should then be considered in any changes that are proposed. There have been changes to the law and the court system, but these changes have fallen short of ensuring that survivors receive justice or redress through the criminal justice system.

Victorian Phone-In

Police

The number of people assaulted each year is unknown, as many people do not report the assault to the police (as few as 40 per cent of those who are seen at a sexual assault centre). The information below, taken from the Victorian findings in the report, *No Real Justice* (Real Rape Law Coalition 1991), shows the reasons why survivors do not report assaults to the police:

- it did not occur to victims (32);
- she was not sure that what happened would be regarded by the law as sexual assault (62);
- she was advised by people not to report (32);
- family or friends did not want her to report (26);
- she did not want family or friends to know about the assault (82);
- she was so upset she felt she could not cope with reporting (66);
- she did not think reporting would do any good (95);
- she did not think she would be believed by the police (88);
- she felt guilty about what had happened (91);
- she was worried about the prospect of going to court (66);
- she did not want the person who assaulted her to get into trouble with the police (20);
- she was afraid that the person who assaulted her would get back at her if she reported (85).

Looking at the most commonly recorded reasons, the following observations can be made:

- women are not informed as to the meaning of sexual assault under the law (62);
- women do not want even those closest people to them to know about the assault (82);
- women do not feel they can cope with reporting the assault (66);
- women do not believe reporting will do any good (95);

- women do not think they will be believed by the police (88);
- women feel guilty about the assault (91);
- women are worried about court (66);
- women fear retribution from the assailant (85).

In six out of the eight reasons given most frequently, the implication is that the criminal justice system is failing women. The belief is that the system does not provide an adequate solution, information, support, or even protection from retribution by the offender.

Out of 267 assaults which were recorded, 179 did not report to the police, eighty-eight did report to the police and three were still under investigation. Of the victims who reported the matter to the police, sixteen said they were satisfied with the police, forty-four said they were not. Victims who were dissatisfied with the response made the following comments about the police:

- insensitive;
- cold;
- treated victim like a piece of dirt;
- did not believe the victim until the police surgeon reported that she had been a virgin:
- they said 'Don't talk to strangers' as if it were the victim's fault;
- there were too many police which was 'intimidating and confusing';
- the victim had to follow-up the police herself—they did not make contact with her to keep her informed;
- police advised against a rape charge as offender and victim both had an intellectual disability—the victim was very upset about this;
- a number of people complained about the lack of contact with police after the initial statement was made;
- a number of comments were made about the lengthy process of taking a statement immediately after a traumatic assault without food, sleep or a shower.

Courts

In the Victorian phone-in, survivors were asked an open-ended question about their experiences in the court process. The following points were made:

- there is a need for someone to support the victim through the entire process from reporting to trial;
- there is a need for more information about the court process to be given to the survivor;
- more contact is needed between the victim/witness and the Director of Public Prosecutions—this includes both the solicitor and the crown prosecutor;
- court delays are unacceptably long.

Of all aspects of the court process, the one most clearly identified as being the worst—and probably the factor that deters most from reporting the crime—is cross-examination. This is what survivors said about it:

- horrific;
- intimidating;
- terrible;
- degrading;
- the interrogation was unfair;
- I was put through hell;
- I was made to feel the guilty party;
- I felt filthy;
- the defence should have treated me better;
- the victim should not have to prove herself innocent, should not be made to feel guilty;
- I did not get a fair hearing;
- angry at being used as a witness, I wanted to confront the offender in court;
- court process all for the defendant, not the victim;
- I felt as if I were on trial;
- everything was in his favour, he was protected;

- I should have the right to legal representation too;
- my past history should not be brought into the case.

When asked whether they would advise other victims to go through the legal process, seventeen said yes, twelve said no, and three said they could not reply.

New South Wales

Courts

It would be convenient to dismiss the preceding findings as they are from Victoria, but it is expected that the New South Wales phone-in will produce similar results and statements from survivors who make contact. In fact, our experience in working with survivors in New South Wales assures us that the situation is comparable.

Fears of victims/witnesses who go to court are well-known to sexual assault counsellors. Such fears are frequently discussed in counselling sessions and when the counsellor goes to court with the victim as a support person. This anecdotal evidence is valid because the victims are relating their own first-hand experiences. The fears for victims/witnesses are remarkably consistent.

Some information has been documented after day-long court preparation seminars which have been conducted for the last three years by the Royal North Shore Hospital Sexual Assault Service. The court preparation program consists of morning seminars delivered by a number of guest speakers from the police, Office of the Director of Public Prosecutions (DPP), the Victims Compensation Tribunal and two or three speakers who themselves have been to court a victim/witness. In the afternoon session, participants are divided into three smaller groups to discuss their fears about going to court and strategies for overcoming these fears. The first group consists of those who are yet to attend the committal hearing, the second group is for those awaiting trial and who may or may not have had to attend the committal hearing, due to the use of paper committals, and the third group is for participants who are attending either or both committal and trial as a support person for the victim/witness. These people include parents, spouses, siblings and friends. The fears and strategies expressed in each of the three groups are reported back to the larger group and discussed. In summary, fears that have been recorded are:

- still feeling unsafe;
- guilt where taking a family member to court (the family member is the offender);
- not being believed;
- that the offender will be acquitted;
- forgetting the details of the assault, particularly if trial occurs years later;

- intimidation;
- is there enough evidence?
- safety when the offender is released;
- revenge from the offender;
- facing the offender in court;
- conflict in the family;
- friends not understanding me;
- power of the offender;
- humiliation;
- being seen as a victim;
- feeling responsible for what others have to go through, for example, friends or family may be witnesses;
- not understanding legal technicalities;
- legal technicalities complicating the case;
- dealing with my anger;
- that the jury will hold to the myths of sexual assault;
- that the offender will get off;
- not being clear and precise in answering;
- having my clothes paraded in court;
- of reprisal;
- how to handle all the waiting around;
- being cross-examined on my statement;
- crying, losing control;
- hearing somebody clever publicly doubting my story;
- everyone knowing exactly what happened to me—all the intimate details;

- they will think I asked for it;
- I am guilty until he is proven guilty;
- will they ask about my sex life?;
- the jury will not believe me because he was once my boyfriend;
- intimate parts of my body being discussed;
- all his friends and family will be there;
- my name getting in the newspapers;
- I can only answer questions—I cannot say what I want to;
- it will be a different solicitor and crown prosecutor for the trial;

For most victims/witnesses the court process can be as bad, if not worse than the assault. Victims experience the same symptoms of post-traumatic stress after court as they did after the assault. One victim/witness described her feelings at the end of the legal proceedings as:

> . . . exhausted, cried a lot, shocked, very disoriented. I felt like a part of me had died . . . Like a jigsaw—pieces everywhere.

Social Conscience Against Rape and Sexual Assault (SCARS)

During a court preparation seminar in May 1990, a number of survivors expressed their frustration with the legal process and their desire to push for reforms. A workshop on how to form such a group was organised and attended by a few survivors. Out of this, in late 1990, the group SCARS emerged. We, as workers, feel privileged to have been involved in the group, which is now a registered charity in New South Wales, enabling tax deductibility of membership fees and donations.

Early in its inception, SCARS held a public meeting which was addressed by the then Attorney-General, Mr John Dowd. Regular meetings have been held between members of the group and each successive Attorney-General. Members of the group have spoken publicly on many aspects of sexual assault and SCARS has received extensive media coverage. Contact has been made with survivors throughout Australia and, where possible, support has been given to other survivors when they attend court. While the group has worked tirelessly to push for change and has been consulted to some extent by the authorities, the reform process in New South Wales has ground almost to a halt.

Police

Police receive training covering the issues around sexual assault when they first join the service. However, this training lasts only a couple of hours, which is not enough to seriously challenge the myths and stereotypes that

many police and indeed members of the community believe about sexual assault. Most of us are more than familiar with these myths: women can provoke rape by their behaviour, men cannot control their desires, and so on. Officers can apply to undertake more training in the Initial Response Officers Course (IROC) in which several hours are spent on issues pertaining to both child and adult sexual assault, for example, how to take a statement, the need to refer a victim to a sexual assault centre.

Sexual assault workers have been involved in the writing and teaching of this course. The police officers involved in the training are committed to challenging the myths and improving the response by police to sexual assault victims. The course produces many fine officers with whom we have both had contact. It is fair to say that many victims and their families have had nothing but praise for many of the IROC officers with whom they have had contact. However, problems occur in areas where there may be few or no IROC trained officers or when there are staffing shortages and, contrary to police policy, a female officer is not available to take the statement from the sexual assault victim. Furthermore, detectives take over the investigation after the officers and, while they also receive training in sexual assault, very often detectives' attitudes are harder to challenge and shift.

Police procedures written in consultation with the sexual assault committee reflect the rights of victims to respect, dignity, support and information. Sadly, this is not always followed through by police officers who have either not read the procedures or are unwilling to implement them. A problem that continues to arise is the refusal of some police to recognise indecent assault as a serious offence. Many of these victims are never referred by police to a sexual assault centre.

Minority women and the police

Furthermore, while some complaints are brought to the attention of the sexual assault committee and are heard by workers in the sexual assault centres, what happens to those women who never get to a centre? Koori women and women from a non-English speaking background rarely use sexual assault centres.

Aboriginal and Torres Strait Islander Women. Work in the Women Out West project and the Aboriginal Women and the Law project (the former funded in 1992 by the Law Foundation of New South Wales and the latter wholly funded by the New South Wales Women's Coordination Unit) has provided some information of Aboriginal women's experiences. A number of issues are pertinent:

- An unwillingness to report sexual violence where the offender is a male Aboriginal. As stated by one Aboriginal woman: "There's a lot of pressure that if you do bring a thing against a man that you are going to cause another death in custody." The recommendation from the Royal Commission into Aboriginal Deaths in Custody that Aboriginal people should be gaoled only as a last option fails to consider the safety of Aboriginal women who are victims of violence.

- The report *Racist Violence: The Report of the National Inquiry into Racist Violence in Australia* (Australia. National Inquiry into Racist Violence in Australia 1991) concluded that:

  > Evidence from other research confirms police reluctance to take seriously sexual offences against Aboriginal and Islander women.

- Aboriginal women and girls have been raped by the police as documented in the report *Racist Violence* (Australia. National Inquiry into Racist Violence in Australia 1991).

- In a paper entitled 'Aboriginal women, sexual assault and the criminal justice system', Carol Thomas (*see* pp. 139-47) points out that Aboriginal women will not report rapes and be subjected to interrogation of non-Aboriginal police and barristers who often ask racist and sexist questions.

- Lawyers often present arguments that forced sex is part of Aboriginal life and is not considered as serious by Aboriginal women as it is by non-Aboriginal women.

- The high rate of sexual violence against Koori women, the lack of services for them and the lack of knowledge about their legal rights or their right to apply for compensation are also areas of concern. In their paper, 'Aboriginal women and the law', Joanne Selfe and Carol Thomas (1992) reported that Aboriginal women had not been told about victims compensation.

There is even less specific information from women from non-English speaking backgrounds.

Reports of sexual violence against women with an intellectual disability are increasing. While it is encouraging that they are being referred to sexual assault centres, it confirms the appalling fact that women with an intellectual disability are being raped at an alarming rate. Reports from a facilitator who conducts educational workshops on sexuality for people with an intellectual disability show that a large number of women and men during the course of a workshop disclose that they have been sexually assaulted at some time in their lives - usually more than once.

The Legal System

In New South Wales major reforms were made to the sexual assault offences in the *Crimes Act*—particularly in 1981 and 1991. The 1981 reforms made some important advances such as providing that a wife's consent to sex is no longer to be implied. In 1991, the offence of sexual assault without consent was supplemented by the creation of several types of offences including those that rely on 'aggravating circumstances', for example, whether a weapon was used or threats were made.

However, an accused still cannot be convicted of sexual assault without consent if he honestly believes a woman is consenting. It does not have to be a reasonable belief. Is it any wonder that victims feel as though they are on trial? They are! All aspects of the victim's behaviour is examined in an attempt to prove that what she did led the accused to believe

that she was consenting. The accused is not asked any questions. He has the right to remain silent.

As Smart (1990) maintains, the consent/non-consent dichotomy is too narrow to allow for women's experiences to be heard. Laws are made and interpreted by men, from their point of view.

If the other reforms that impact on the courtroom process are examined, it can be seen that the new laws contain elements of the old laws used at the judge's discretion, for example, section 409B of the Crimes Act allows that prior sexual history is inadmissible unless relevant. What is relevant? Basically, anything the judge decides is relevant. Since most women are sexually assaulted by men they know and may have had some previous sexual contact with the offender, then past sexual encounters would almost invariably be relevant and therefore admissible.

Section 578A of the Crimes Act makes it an offence to publish any matter which identifies the complainant in prescribed sexual offence proceedings or any matter which is likely to lead to the identification of the complainant. Despite this provision, the New South Wales Sexual Assault Committee has recently referred a matter to the Judiciary Committee of the Arts, Media and Entertainment Alliance (formerly the AJA) and to the Attorney-General which is a flagrant violation of this section. A few weeks ago a young woman was abducted and her identity published. When she was subsequently released, the media reports stated that she had been 'assaulted' and reported on one occasion that she had been 'sexually assaulted'. Another violation. Such occurrences are not rare.

Section 405B removes the requirement that a judge give the jury the corroborative warning; that is, that it is unsafe to convict where there is no uncorroborated evidence—evidence that independently supports the victim's statement such as medical evidence or the testimony of a witness. However, in *R v. Longman* 89 ALR 161 it was held that this was still a matter for judicial discretion.

Therefore, in all these legal changes there is still an element of judicial discretion. The judiciary are almost all men. There has been no shortage of reports in the media about the inappropriate comments that have been made by the judiciary.

Virtually nothing has been done about cross-examination—the aspect of the court process reported by survivors to be the most humiliating and degrading. To do so would be considered to be tampering with the basis of the adversarial system of law and the rights of the accused. Such measures were introduced at a time when the accused were invariably poor, disadvantaged and illiterate. While it could be argued that the accused who appear before courts today are still likely to be the disadvantaged—with the provision of highly experienced lawyers through Legal Aid who can more than adequately present the defence for the accused—such protection may be outdated. While it is acknowledged that there must be some protection of the rights of the accused, who protects the rights of the victims?

In 1989, the New South Wales government adopted the Charter of Rights for Victims of Crime, based on the UN Declaration. The emphasis is on the provision of information to victims about the legal process. The attempt has also been made through the use of Victim Impact Statements to give victims a say in court. Without going into detail about the pros and cons of these statements, it is unlikely that they do much to promote the rights of victims. In saying this, it must be acknowledged that there are victims who support the use of Victim Impact Statements, saying it is their way of having their 'day in court'.

Conclusion

What is clear when examining these reforms is that they do not go far enough or even begin to address the problems with the court process. They are at best dealing with the periphery. They completely ignore what survivors have been saying. It is not surprising that this is all that has been done. Men who make the laws and run the courts do not live in fear of rape. They do not face the prospect of cross-examination, where every detail of their behaviour is brought into question.

What survivors are saying in increasingly louder voices is that these reforms are not enough. What survivors say is not what legislators and the judiciary want to hear because it means a radical overhaul of the criminal justice system—a complete rethink of the way society deals with the crime of rape; from reporting to prosecution, sentencing and compensation. It also has implications for community education.

Survivors say:

- we are not just a witness, this is about what happened to us;
- cross-examination is humiliating and degrading—the accused should be questioned as well;
- we are sick of listening to the accused give an unsworn statement full of lies that cannot be challenged;
- sentences are far too lenient—non-custodial sentences for any sexual assault offence are inappropriate;
- compensation is inadequate to redress the suffering we have endured;
- we should have the right to legal representation, too;

It is up to us to listen to them.

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INTRODUCTION TO PART 2: THE SURVIVORS

EASTEAL'S PAPER HIGHLIGHTS THE FINDINGS OF THE AUSTRALIAN INSTITUTE of Criminology's national survey for survivors of sexual assault. Almost 3,000 surveys were analysed. The primary results show that for this sample, many had been raped before they were out of their teens, a high number had been assaulted more than once, and strangers were the perpetrators in just one-fifth of the cases. Only two-thirds had ever disclosed about the rape and only one in five had gone to the police. The responses from those people whom survivors told about their rape were mixed: police and family members were the least supportive and Rape Crisis Services were the most helpful *if* the survivor was able to get assistance from these under-resourced agencies (70 per cent of callers to these services were unable to receive immediate help). In this sample, the courts were evaluated as the most lacking of the criminal justice components. The next paper focuses on the failures of both the police and the courts in providing justice for rape survivors.

Donna Stuart looks at the legal system in Victoria and its failure to meet the needs of rape victims. Employing results from the telephone survey conducted by the Real Rape Law Coalition, Stuart points to the devastating consequences of rape and the re-victimisation by the police and the courts. A high proportion of callers stated that their reports made to police did not result in any further action. Inaction, scepticism and humiliation were frequent descriptions of police treatment. The court process could be even worse with the victim having few rights and her credibility questioned. The paper examines the issue of consent and the confusion of equating physical resistance with rape. Several American researchers' work, presented next, explain the problems inherent in making that equation.

Galliano, Noble, Puechl and Travis have looked at the immobility response and its relationship to rape. Although resistance may be seen as a prerequisite to rape, and those who are passive end up with more self-blame, the team suggests that such passivity may be an involuntary and reflexive response. They describe it as an unlearned state of profound motor inhibition elicited by a high fear situation that involves threat or restraint found in many animal species: tonic immobility. Such a response should be understood and considered by law makers and jurists who stratify the 'reality' of rape by the degree of victims' resistance.

Poropat examined women's fear of rape and its relationship to their history, if any, of rape. Employing a questionnaire of hundreds of University of Queensland students, she found that a quarter of the sample was extremely fearful whilst 50 per cent were only slightly

afraid. Those who had already been raped were less likely to use avoidance strategies. Nearly one-fifth of the women had been raped with only 5.5 per cent reporting the assault to the police. Reasons for not disclosing are discussed and an appendix—which looks at issues of consent, force and definitions of sexual assault—is attached to this paper.

The remainder of this section looks at specific issues related to some survivors of rape. The first is HIV and AIDS, presented by Polkinghorne. She points to the dearth of literature in this area and ascribes it to the fact that most rape victims are women. She also discusses several key issues that need more policy implementation and service provision: baseline testing, pre/post-test counselling, risk assessment, confidentiality and use of prophylaxis.

Two papers examined particular issues for Aboriginal women who are raped. Thomas surveys the historical antecedents of violence towards Aboriginal women and then identifies a number of concerns that are particularly relevant for this group: police and court response to Aboriginal women, and inadequate counselling services. Thomas concludes by presenting some of the responses which Aboriginal communities have developed to meet these issues.

Lloyd and Rogers look at rape among Aboriginal women in Central Australia and the high correlation of these assaults with alcohol abuse. Next, they survey some of the difficulties encountered by these women in the courts—for example, difficulties in giving evidence that are cultural in origin—and propose that closed courts and support persons could ameliorate these problems to an extent. Criminal injuries compensation is also problematic due to misunderstandings about the indigenous culture; the authors believe that anthropological evidence should be included or referred to.

There are other doubly marginalised groups of rape victims and the next paper looks at non-English-speaking background women. Aldunate has found that many of the sexual assault services are either not known about or not accessible (for cultural reasons) by the majority of non-English speaking women in Queensland. Further, some crisis workers are not aware of the telephone interpreter service and feminist services may attempt to hire a woman from a non-English speaking background or have one on the management committee yet do not offer adequate orientation or assistance. The author argues that real change must occur at both an individual and a structural level to achieve a non-sexist and non-racist response to rape victims.

The issues concerning rape and prostitutes are addressed in the next two selections. Scutt scrutinises two Victorian cases that involved prostitutes as victims of rape. She provides detail about the crimes, the judges' dispositions, and the community outrage. Scutt concludes that *Hakopian,* and its precedent *Harris*, illustrate the judiciary's capacity for uttering contradictory views in the same case. It would appear that they are actually espousing one law for prostitutes and one for 'chaste' women; if so, Scutt asks who is considered as the 'chaste' woman by judges?

Gilbert discusses rape and the sex industry by pointing to both the high frequency of violence and an inequitable treatment by the criminal justice system. He describes the differences between sex work and sexual assault, the trauma of rape for a prostitute and for the community of sex workers—for example, the greater violence in rape of prostitutes, fear of sexually transmitted diseases, harsh treatment by the courts. He recommends reform in guidelines for sentencing rapists and changes in the judiciary's attitudes.

Another specific sub-population focused upon as victims of sexual assault are those within the church community. Hall and Last of 'Project Anna' relate a few of the voices of survivors who were abused by clergy or other 'Christian' men. They place such violence

within the context of abuse of power and as a reflection of the male dominated Churches and the vulnerability of women and children in these settings. The *Pastoral Report*, the *Anglican Report*, and Project Anna all argue that the gender stratification within the Christian home and church must make fundamental changes to their sexist structures.

Sexual violence against intellectually disabled people is the subject of the next paper by Susan Hayes. She points out that there has been a recent shift in care-giving with an emphasis upon integrating the disabled into community life. Unfortunately one consequence has been the increased risk of sexual victimisation for this group; this has been shown with monitoring of cases in New South Wales and Victoria. The author discusses why intellectual disabilities create more vulnerability and provides signs or indicators of sexual assault. The personal and official outcomes of these rapes are also examined.

Another group which may be prone to sexual assault, according to Amanda George's paper, are female prisoners. She describes strip searches and other invasive acts such as random urine checks as sexual assault by the State. George graphically describes the indignities of prison strip searches that are imposed upon both the inmates and their visitors. Sanctions for non-compliance include withdrawal of visitation. Such practices are particularly problematic and potentially traumatic given the high proportion of incest and other sexual assault survivors among the prisoner population.

Although the focus of the conference (and this section) has been the female survivor, there are of course also males who are sexually assaulted. The last selection in this section by Poropat and Rosevear looks at this subject. The authors confirm that there is a lack of recognition given to this sub-population of rape victims. A broader definition of sexual assault is presented; its implementation would encompass higher numbers of male survivors. After looking at the scant literature available, the authors conclude that between 25 and 45 per cent of childhood sexual assault is targeted at males with the majority victimised by males. They believe that this figure is grossly underestimated due to the even lower rates of reporting by male as compared to female victims. The paper also reviews indicators of sexual assault, its consequences and treatment. The authors conclude that male victims are more under-serviced than females; however, they note that the latter's needs are also not adequately met.

SURVIVORS OF SEXUAL ASSAULT: A NATIONAL SURVEY

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Sexual assault/rape was defined on the survey form as penetration of the mouth, vagina or anus by any part of the attacker's body or by an object used by the attacker without the consent of the victim.

THE PRINCIPAL AIM IN CONDUCTING A SURVEY TARGETING SURVIVORS OF sexual assault/rape in Australia was to obtain more understanding as a prerequisite to the formulation of improved prevention planning. Existing studies have been either regional in scope or brief components of larger research inquiries into crime in general. Specifically, the survey was designed to ascertain the nature of the relationship between the survivors and the offenders; to gauge the extent to which sexual assaults were reported in Australia, in other words, to measure the 'dark' figure of rape; and following that objective, to determine what sort of response victims met with if they did report their rape and the outcome of cases that proceeded through the criminal justice system; and lastly, to attain some insights into why some victims chose not to report their victimisation.

[1] In preparation of this paper grateful acknowledgement is due to Diana Nelson for research assistance and word processing, and to Jennifer Hallinan for statistical analysis.

What does the preceding have to do with prevention? It is essential that any prevention programming is built upon a foundation of empirical knowledge. For example, if it is believed that the majority of rape takes place between strangers, then most of the time and effort of those interested in rape deterrence may be focused upon 'stranger danger'. In addition, prevention can be facilitated by increased reporting and prosecution of offenders; thus, we must understand why survivors do not report and whether those perpetrators who are reported to the police end up with a sanction which would deter others. It was also hoped that a national survey, by exposing the experiences of *many* victims, may act to decrease the false myths about rape, thus encouraging both more survivors to report and the criminal justice system to change.

The survey did not attempt to generate findings concerning incidence. Given the methods outlined next, it is obvious that specific conclusions about prevalence could not be produced. However, what will become obvious is the hidden nature of rape and the silence of its survivors which lead the researcher to conclude that any existing measure of incidence should be regarded with extreme caution since the figures are undoubtedly conservative.

Methodology

On Sunday, 13 September 1992, the survey appeared in all Murdoch newspapers of News Limited. The following two Wednesdays, an ABC−TV documentary *Without Consent* was aired. Each broadcast was followed by an announcement of the survey and provided a toll-free number to call to request participation in the study. Over the course of subsequent weeks, 2,852 surveys were received. These surveys were not sent in by 2,852 individuals since numerous respondents were multiple survivors and submitted more than one form. However, if a respondent was raped by one person more than one time, such as in marital rape, these assaults were counted as one response. Many of the respondents included with their surveys lengthy comments, some in the form of letters. Thus, aside from the quantifiable data, much qualitative or anecdotal material became available.

The quantifiable responses were coded by a team who were instructed on interpretation in order to ensure inter-coder reliability. Following data entry, these data were analysed for significant variation by several variables using the SPSS−X software package.

Prior to looking at the results, several caveats concerning the methods and the findings must be provided. Time constraints precluded a pre-test of the instrument. Instead, it was faxed to sexual assault centres throughout Australia and the feedback received was integrated. Once the return began, however, it became obvious that, for some questions, the choice of responses had been too limited and this resulted in a high number of 'other' answers. This was in part the consequence of dissemination through newspapers, a data collection source with restricted space requirements.

The respondents in this survey were self-selected. Hence their experiences may not be typical of a randomly derived set of survivors. It is possible that the results may be biased by those who had particularly negative experiences with reporting parties and were, therefore, more eager to participate in order to 'vent their spleen'. Another difficulty arose from one newspaper's failure to correctly define the meaning of numbers in the Likert scale. Therefore, the five-point scale had to be reduced to three points in the analysis (supportive, neutral, non-supportive). Lastly, given the nature of the data acquisition, it is possible that individuals who had not been raped could have responded to the survey as a prank.

Findings

Background

Most of the survivors were female (96.2 per cent). The ages of respondents were fairly equally distributed: 4.4 per cent were aged under twenty, 12.1 per cent were aged twenty to twenty-four, 15.4 per cent twenty-five to twenty-nine, 35.1 per cent were aged in their thirties, 22.2 per cent in their forties, and 10.8 per cent were aged fifty and older. The assault took place five or less years ago in 17.6 per cent of cases, six to ten years in 15.6 per cent, eleven to fifteen years ago in 17.3 per cent, sixteen to twenty-four years in 25.5 per cent, twenty-five and more years ago in 20.7 per cent of the cases, and at an unknown time in 3.5 per cent. The broad spectrum of time was ideal for the analysis since changes in reporting and in criminal justice response was an intended goal of the research.

Age when raped

Table 1 indicates that rape was a reality for all age groups in this sample. Well over half of the respondents (61.8 per cent) had experienced sexual assault prior to their twenties. The risk for young males was particularly high with 70.1 per cent of the males' victimisation taking place prior to the age of seventeen.

Number of rape incidents

Not only were many survivors children or teenagers at the time of the rape, but as Table 2 points out, about 60 per cent had been raped more than once during their lives to date; 13.1 per cent reported that they had been sexually assaulted 'too many times to count'. One survivor shared her feelings about this:

> Still too ashamed to talk about any of the three. I am also a victim of incest by two family members and have been raped within a relationship. I have not included these in this survey because I thought you would find it unbelievable. I have never reported any of this and do not think I can ever ask for help because I am ashamed and feel guilty. There must be something wrong for one person to go through this so many times.

Table 1

Age at the Time of Sexual Assault
By Gender

Age	Male n=97	Female n=2,665	Total n=2,762
	%	%	%
0–10	32.0	15.7	16.2
11–16	38.1	27.2	27.6
17–19	12.4	18.2	18.0
20–29	8.2	26.5	25.8
30–49	8.3	11.4	11.3
50+	1.0	1.0	1.0
Total	100.0	100.0	100.0

Notes:
1. In ninety cases age was unknown.
2. Apparent inconsistency in sum total is attributable to rounding error.
3. If a respondent gave a range of ages and stated that (s)he had been raped many times but only filled out one survey, the youngest age was recorded.

Relationship between victim and offender

Table 3 indicates that only one fifth of the rapes were perpetrated by strangers:

> I was made to feel guilty as it if was my fault—the police were very sceptical and I felt that my friend doubted me. I am still very bitter and the guy swore he would get me again. I live in fear in another state and am married and have a new home but I am still afraid (stranger, age 22).

> It took me years before I could begin to get over the hurt from this rape. The non-violence, in terms of bruises and so on, actually makes it more difficult to accept how much I had been hurt. I believe most men do not even understand 'rape'—that is, they are so thick, unaware, unconscious—they cannot comprehend what they are doing when they rape!! (stranger, age 17).

Acquaintances, dates and boyfriends accounted for 39 per cent of the assaults and were the most common perpetrators in cases involving the eleven through twenty-nine age groups:

I think this was a multiple rape but do not really know as I was not conscious at the time. This experience destroyed any trust I might ever have had in men—individuals or as a species. I did not drink alcohol for three years after this and did not get drunk again until I was twenty-seven (date, age 16).

I was brought up in the [name of place] in a very Catholic family so: (a) I did not believe that my mother and father would believe me; (b) thought it was my own fault; (c) did not know women's services/rape crisis centres even existed; (d) the male involved told me he would get all his mates to tell the police that it was a 'gangbang' and I wanted it. I believed him, plus I thought the police would also believe him over me (acquaintance, age 18).

Table 2

Number of Times Sexually Assaulted By Gender

Number	Male n=91	Female n=2,551	Total n=2,642
	%	%	%
Once	48.4	39.2	39.5
Twice	17.6	19.5	19.5
3–5	11.0	22.0	21.7
6–10	5.5	4.2	4.3
More than 10	17.6	14.7	14.8
Total	100.0	100.0	100.0

Notes:
1. In 210 cases this variable was unknown.
2. Apparent inconsistency in sum total is attributable to rounding error.

Husbands and estranged husbands were the offenders in 12.7 per cent, although for women in their thirties and forties, the most likely perpetrator was the husband or de facto. Over three-quarters (77.2 per cent) of the women who had been raped by a cohabiting partner had also been subjected to other types of violence; for those raped by estranged partners, other violence occurred in 65 per cent of the relationships; and if the boyfriend was the rapist, other violence was present for 30 per cent of these survivors:

We lived in a rented apartment in a rather large block of units. He had me pinned down. I could not move. I screamed and screamed and no one came (husband, age 23).

> If your husband rapes you you think that it is not really rape. He considers you are his property and you usually believe that but a rapist is a rapist and other women have been raped by this man and done nothing (husband, age 41).
>
> I was not physically battered because I always submitted. Mostly my husband jumped on me when I was asleep, pinned my arms down and clutched my legs with his so that I could not move. I was threatened and abused for thirteen years and finally left. Then he continued to intimidate me by driving backwards and forwards in front of my house and laughing at me. It took me years to realise that what my husband did was rape. I reported the rape to the police and they told me it would be devastating to go to court. Almost impossible to prove—I would be better not charging him even though he had a knife (estranged husband, age 26).

Table 3

Relationship to the Perpetrator
By Age at Time of Assault

	Age (Years)						
Relationship	0–10 n=448	11–16 n=755	17–19 n=492	20–29 n=707	30–49 n=313	50+ n=27	Total n=2,746
	%	%	%	%	%	%	%
Stranger	14.5	22.0	22.8	21.2	22.4	29.6	20.8
Acquaintance	14.3	31.8	31.3	24.6	18.8	22.2	25.4
Date	0	7.7	15.0	10.3	5.4	0	8.2
Husband/De facto	0	0.5	6.1	23.1	27.8	3.7	10.4
Estranged husband/ De facto	0	0.1	1.0	4.0	8.6	3.7	2.3
Family member living with	35.5	11.4	1.6	0.3	1.3	3.7	9.5
Family member living apart	12.3	5.3	1.0	1.0	1.0	0	4.0
Boyfriend	0	5.4	10.2	6.1	4.8	3.7	5.5
Other	23.4	15.8	11.0	9.5	9.9	33.3	14.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Notes:
1. 106 cases are not included since relationship was unknown.
2. Significant variation between age groups: $X^2_{[40]} = 1212.5$, $p = 0.0000$.

Other family members either living with the survivor or apart were the perpetrators in 13.5 per cent, with young children at the highest risk from someone in the family with whom they lived. Thus it is not a surprise to find that, in response to another question on the survey, over one-third (34.6 per cent) stated that they were also survivors of incest. However, of

these, only 35 per cent, actually filled out a survey describing the incest—the remainder were describing other rapes.

> As my life was threatened, this rape was repressed from conscious memory. Hereafter I was very depressed, suicidal, lots and lots of fears, nightmares, phobias. Bottom of the class at school. Barely even spoke. Memories became fully conscious during nine years of psychotherapy. There are more assaults I know, from the fragments of memory, dreams I have not placed. I do not want to remember any more (father, age 9).

> I blocked my incest for most of my life (only remembered in the last year). I still do not have 'picture' memories but I do have body memories (for example, phantom hands on the body) and sensory memories (for example, reactions to smell of alcohol).
>
> The incest probably started before I was one year old and continued for several years, at least six or seven years old, probably much older. My perpetrator is my father. There is a sense of trying to tell my mother at some time and being told that I imagine things. One very common issue with incest survivors is lack of memory of most/all parts of childhood.
>
> When I started to recall the incest I told my husband, my friends and the Incest Centre. Generally, my friends were at least partly supportive, the Incest Centre very helpful and supportive, my husband supportive at times.
>
> I do not believe that I would report it to the police as the legal system does not often accept current cases of incest let alone 'old' incest. There are also feelings of shame, fear and guilt as well as protecting my family (stupid isn't it?). Even if I did report it, conviction is unlikely. My father was also emotionally and physically abusive (as well as a heavy drinker, probably alcoholic).

Many respondents filled in the space for 'other' which revealed that just about any type of relationship can result in a rape (for example, school bus driver, landlord, car salesman, dentist, prospective employer, welfare officer, real estate salesman, and many others.) The highest frequency of 'others' included in ranked order: family friends, neighbours, employers, police officers, and clergy. Even women consulting doctors were not safe with twenty-seven respondents naming a medical practitioner:

> This happened when ill and the doctor was called to my home. Was not reported as I knew I had no hope or the money to get a conviction and the fear of him (doctor, age 50).

The relationship with offender varied by gender. Males were more likely than females to have been assaulted either by a stranger or by a family member with whom they lived:

> My mother sexually and physically abused me all of my childhood. I had no idea it could be reported or even that her behaviour was wrong or bad. I wanted to respond to the survey so people would be aware that rape is not the only sexual crime. I was continually bashed and sexually abused by my mother for most of my childhood. She used to 'torture' my penis by squeezing it in her fingers. She also used to force her little finger into my anus when she caught me touching my penis at all. This was her 'anger' response to having been raped continuously by her father when she was 16– through 20-years-old. She chose me, her first male child, to release her anger on, and also to totally repress my sexuality, presumably so I would not be like her father (mother, age 3–10).

Reporting the assault

Almost two-thirds (62.7 per cent) of the survivors told someone about the assault. The rate of disclosing had increased over time since only 53.2 per cent of those raped over twenty-five years ago had ever told anyone, in contrast to 76.6 per cent of those assaulted in the past five years. Those raped by a stranger were more apt to talk to someone (77.5 per cent), followed by estranged partners (68.8 per cent), family member living with (62.8 per cent), acquaintance (62.5 per cent), family member living apart (58.9 per cent), husband or de facto (50.8 per cent), date (50.4 per cent), and boyfriend (48.1 per cent). One-quarter spoke to someone within twenty-four hours of the rape, another 4.2 per cent within the following week, and some, almost 10 per cent, kept the secret for more than five years.

Females were significantly more likely than males to disclose ($X2_{[1]} = 9.1$, $p = <0.01$). Less than half (47.4 per cent) of the male respondents had ever told anyone in contrast to almost two-thirds (63.0 per cent) of the females.

Table 4 focuses upon reporting to the police. It is evident that a significantly higher number of survivors in the more recent past have gone to the police.

Just as in disclosing to non-police, Table 5 shows that there was a highly significant variation in reporting or non-reporting to the police based upon the nature of the relationship with the offender. Almost half of those assaulted by strangers reported the crime to the police. With all other perpetrators, the reporting frequency was extremely low with the exception of estranged partners.

Table 6 illustrates that those survivors who received any physical injuries such as bruises and cuts were more likely to go to the police.

Response of those they told

Did the survivors receive support from those to whom they disclosed? Table 7 indicates that there was a great deal of variation in response dependant upon the agency or person who was approached. Police were evaluated as the least supportive, with family members second in non-supportive responses. Males were less likely (26.7 per cent) than females (42.7 per cent) to find the police supportive.

It should be noted that the rape crisis services received the most favourable reaction from the respondents:

> I found the sexual assault referral centre at .. . to be a wonderful support. Family friends and relatives were also very supportive, although the perpetrator was not caught. I hope that no other person has to go through what I went through at the hands of this 'sick person'.

Table 4

Reporting to the Police
By When the Rape Occurred

	Age (Years)					
Was Rape Reported?	0–5 n=501	6–10 n=444	11–15 n=492	16–24 n=726	25+ n=590	Total n=2,753
	%	%	%	%	%	%
Yes, reported to police	30.1	22.5	18.3	16.1	13.7	19.6
No, did not report to police	69.9	77.5	81.7	83.9	86.3	80.4
Total	100.0	100.0	100.0	100.0	100.0	100.0

Notes:
1. 99 cases are excluded since time since rape was unknown.
2. Significant variation by time since rape: $X^2_{[4]} = 56.8$, $p = 0.0000$.

Table 5

Reporting to the Police
By Relationship to the Perpetrator

Perpetrator	Yes Reported to Police n=540	No, Not Reported to Police n=2,281	Total n=2,821
	%	%	%
Stranger	43.5	56.5	20.5
Acquaintance	13.4	86.6	25.1
Date	6.6	93.4	8.1
Husband/De facto	13.0	87.0	10.7
Estranged Husband/De facto	29.2	70.8	2.3
Family member living with	15.6	84.4	9.8
Family member living apart	6.9	93.1	4.1
Boyfriend	9.1	90.9	5.5
Other	14.0	86.0	13.9
Total	100.0	100.0	100.0

Notes:
1. 31 cases were excluded from the analysis.
2. Apparent inconsistency in sum total is attributable to rounding error.
3. Significant variation by relationship, $X^2_{[8]} = 273.2$, $p = 0.0000$.

Table 6

Reporting to the Police
By Injuries

Injuries Received?	Yes Reported to Police n=531	No, Not Reported to Police n=2,049
	%	%
Yes, received injuries	62.0	42.6
No injuries	38.0	57.4
Total	100.0	100.0

Notes:
1. 272 cases are excluded due to unknowns.
2. Significant variation by injury: $X^2_{[1]} = 62.7$, $p = 0.0000$.

Table 7

Assessment of Those to Whom Survivors Reported

Supportiveness	Police n=544	Rape Crisis Centre n=262	Domestic Violence Service n=64	Family Member n=910	Friend n=1,014
	%	%	%	%	%
Supportive	42.3	74.4	50.0	49.1	61.5
Neutral	20.8	10.7	16.5	17.0	19.5
Non-Supportive	36.9	14.9	34.4	33.8	21.0
Total	100.0	100.0	100.0	100.0	100.0

Notes:
1. 441 cases where survivor told 'other' are not included.
2. Apparent inconsistency in sum total is attributable to rounding error.
3. Significant variation in response by agency: $X^2_{[8]} = 122.5$, $p = 0.0000$.

However, in response to a query about success or failure in getting through to such a service, 70 per cent of those who tried to telephone were unable to get assistance.

The response of agencies and individuals was further analysed by relationship of survivor to offender and the age of the victim at the time of the assault. The only statistically significant differences emerged with reaction of family members by perpetrator ($X^2_{[16]} = 51.4$, $p = 0.0000$) and family members by age of the victim ($X^2_{[8]} = 20.8$, $p = 0.0000$). Fifty-nine per cent of relatives were supportive if the offender was a stranger, 62.9 per cent if the offender was a boyfriend; however if disclosing about another family member living in the same house, only 31.6 per cent received support. Difference by age was undoubtedly a correlate of relationship (the older the victim, more likely (s)he would receive support), since the younger-aged victims were more likely to have been assaulted by a cohabiting family member:

> Family members—for me—have been the least supportive and will not believe nor listen regarding anything to do with sexual assault or incest. My sister died last month—suicide from twenty years incest/assault by a family member.

> I was examined by a male doctor the next day (extremely bad experience) and after I came back home my mother ordered me to forget the whole thing (the assault). I was told to never speak about the incident and pretend it did not happen. Years later I am in therapy/recovery. (My mother however lives on in denial). She was raped herself as a child by a family member (acquaintance, age 8).

Although the police response did not differ significantly by offender, there was some variation. Almost half were supportive if the perpetrator was a stranger, while less than one-third (28.2 per cent) offered support if the woman was reporting her husband or de facto, and only 27.9 per cent received support if the rapist was a family member living in the same house as the complainant. However, according to Table 8, police response in general does appear to have become more supportive over time.

> Twenty years ago, it is hard to believe it was so long ago. I was advised by police not to bother pressing charges as I probably would not win. But this was after I had been through hours of interrogation and been physically checked, and it had been confirmed I had been physically bashed and penetrated by force. I was scared and totally intimidated (boyfriend, age 17).

> The police inferred that I was having an affair and was afraid to tell my husband and to quote them I 'was crying rape'. My husband was very angry but very supportive of me (stranger, age 31).

> The two young men were not found although the police had line-ups. I found the detectives very kind and understanding. They made me feel comfortable—I have nothing but praise for them—I am still affected by the attack and feel if they had been caught I would feel better now (stranger, age 21).

An improvement in supportiveness over time was also apparent in the case of families ($X^2_{[8]} = 34.8$, $p = 0.0000$) and friends ($X^2_{[8]} = 24.4$, $p = <0.01$).

Table 8

Response of Police Over Time

Response of Police	Age (Years) 0–5 n=151	6–10 n=100	11–15 n=90	16–24 n=117	25+ n=81
	%	%	%	%	%
Supportive	57.6	41.0	43.3	32.5	30.9
Neutral	16.6	20.0	28.9	21.4	19.8
Non-Supportive	25.8	39.0	27.8	46.2	49.4
Total	100.0	100.0	100.0	100.0	100.0

Notes:
1. Inconsistency in sum totals can be attributable to rounding error.
2. Significant variation by time: $X^2_{[8]} = 31.1$, $p = <0.001$.

Outcome of police involvement

Do the police arrest the offender? Of the 2,852 cases, 544 were reported to the police and, of these, only 201 arrests were made. Tables 9a, 9b, and 9c look at the intervening variables that may mitigate that decision. Presence of injuries and certain relationships of the offender to the survivor contributed to a greater chance of arrest. In addition, in recent years, police were more likely to make an arrest.

Even when the rapist was a stranger, the police may be reluctant to act, as one survivor noted:

> At the time of questioning the police did not offer any referral services for help. It took a counselling service, five years later to unveil the emotions.
>
> My attitude towards the police is very low. The police should be more supportive and helpful. I now think that it was a waste of time reporting this to the police (stranger, age 21).

Of those arrested and for whom the information was known (n=173), 46.2 per cent were remanded while the remainder were allowed bail.

Table 9a

Outcome of Reporting to Police
By Time Since Assault

Outcome	Age (Years) 0–5 n=148	6–10 n=103	11–15 n=87	16–24 n=111	25+ n=77	Total n=526
	%	%	%	%	%	%
Arrested	50.0	30.1	42.5	29.7	33.8	38.2
Not arrested	50.0	69.9	57.5	70.3	66.2	61.8
Total	100.0	100.0	100.0	100.0	100.0	100.0

Notes:
1. In 22 cases time since assault was unknown, although an arrest took place.
2. Significant variation by time: $X^2_{[4]} = 16.3$, $p = <0.01$.

Table 9b

Outcome of Reporting to Police
By Injuries

Outcome	Injuries n=324	No Injuries n=195
	%	%
Arrested	43.5	28.7
Not arrested	56.5	71.3
Total	100.0	100.0

Notes:
1. In 25 cases injuries were unknown although arrest did occur.
2. Significant variation by injuries: $X^2_{[1]} = 11.5$, $p = <0.001$.

Table 9c

Outcome of Reporting to Police
By Relationship Between Offender and Victim

Outcome	Stranger n=245	Acquain-tance n=93	Date n=16	Husband n=43	Ex-husband n=17	Family together n=38	Family apart n=9	Boy-friend n=16	Other n=50
	%	%	%	%	%	%	%	%	%
Arrested	38.4	46.2	25.0	25.6	35.3	42.1	77.8	25.0	28.0
Not arrested	61.6	53.8	75.0	74.4	64.7	57.9	22.2	75.0	72.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Notes:
1. In 17 cases the nature of relationship was unknown, although arrest did take place.
2. Significant variation by relationship: $X^2_{[8]} = 16.5$, $p = <0.05$.

Once an arrest was made, further attrition took place as the case proceeded through the criminal justice process. The outcome is shown in Tables 10a, 10b, and 10c. Of the 2,852 rapes and 544 subsequent reports to police, only 103 offenders were eventually imprisoned, although another forty-four were found guilty but received non-custodial sentences. The survivors had to testify in 59 per cent of the cases which went to trial. This proportion was lower for those who had been victimised prior to the age of eleven (35.7 per cent):

> I was strongly advised by the police not to testify as I would be put to trial as well. I was so shattered and physically abused by this rape that I decided not to testify or go to court at all. There is not a day that goes by that I do not fight away one of these haunting memories (acquaintances, age 13).

Dropping charges may be a result of the survivor's changing her or his mind which, according to several respondents—as typified by the following comment—may be a consequence of pressure from the police:

> In my case, the individual police officers were supportive, but their hands were tied by the legal system. They advised me to drop the charges. And, although I still feel a sense of injustice, I am glad I did not have to go through the humiliation and degradation of the court case. The legal system is where the problem lies (acquaintance, age 16).

Tables 10a, 10b and 10c indicate that a family member living in a different household from the victim, a stranger rapist, and a boyfriend were the most likely to be imprisoned. Injuries were not a significant indicator of guilt outcomes.

Perhaps the most interesting finding comes from Table 10a: the proportion of rapists convicted and sent to prison has actually decreased over time. Thus, although more were being reported to police and a higher proportion of those arrested were going to trial, a lower percentage of offenders were being sent to prison:

> I reported my assault to the police but it was not taken any further. Then I reported it two years later. It only went to trial on [date]. The Judge made comments at the trial that it was only a family conflict and should not have been brought to court. This is not true, it was sexual assault (family member living in same household, age 13–15).

> My rapist was given a more lenient sentence because he pleaded guilty and was drunk. I was not informed of the trial date and read about it in the newspaper!!! (stranger, victim age 34).

> I was raped by No. 1 vagina, anus and mouth plus beaten up. Guy No. 1 got four years (3½ years non-parole) and was out in one year. The other three totally got off—so what was the point of all the pain on my part? (strangers, age 18).

Table 10a

Outcome of Judicial System Over Time

	Age (Years)					
Outcome	0–5 n=67	6–10 n=37	11–15 n=37	16–24 n=33	25+ n=24	Total n=198
	%	%	%	%	%	%
Guilty, imprisoned	46.3	43.2	54.1	69.7	54.2	52.0
Guilty, released	25.4	21.6	24.3	12.1	20.8	21.7
Innocent	11.9	24.3	2.7	9.1	4.2	11.1
Dismissed, dropped	16.4	10.8	18.9	9.1	20.8	15.2
Total	100.0	100.0	100.0	100.0	100.0	100.0

Notes:
1. Inconsistency in sum totals can be attributable to rounding error.

Table 10b

Outcome of Judicial System
By Injuries

Outcome	Injuries n=141	No Injuries n=55
	%	%
Guilty, imprisoned	51.1	52.7
Guilty, released	23.4	20.0
Innocent	11.3	10.9
Dismissed, dropped	14.2	16.4
Total	100.0	100.0

Table 10c

Outcome of Judicial System
By Relationship of Perpetrator to Victim

Outcome	Stranger n=92	Acquain-tance n=38	Date n=4	Husband n=13	Ex-husband n=5	Family together n=17	Family apart n=6	Boy-friend n=3	Other n=19
	%	%	%	%	%	%	%	%	%
Guilty, imprisoned	65.2	39.5	0	23.1	40.0	41.2	66.7	66.7	42.1
Guilty, released	17.4	28.9	0	61.5	20.0	17.6	0	33.3	21.2
Innocent	7.6	18.4	25.0	0	20.0	0	16.7	0	26.3
Dismissed, dropped	9.8	13.2	75.0	15.4	20.0	41.2	16.7	0	10.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Notes:
1. Inconsistency in sum totals can be attributable to rounding error.
2. Significant variation by relationship: $X^2_{[24]} = 51.9$, $p = <0.001$.

Those who did not report to the police

Table 11 displays the reasons why four-fifths of the survivors did not go to the police. Overall, shame was the most often cited reason. Justification varied significantly by the nature of the relationship between the victim and the offender. Shame was not the principal reason cited by those raped by a husband or an estranged partner; fear of the perpetrator and belief that the police would not act were the major factors cited by those survivors. One survivor of marital rape explains:

> In a relationship, sexual assault can occur because of emotional blackmail. Also for fear of consequences, fear of family criticism of victim and so on often means assault goes without comment. Anxiety, and trauma often are carried without comment to anyone. Also, frequently you live with the hope that things will improve—stay together with the hope of a better relationship.

Few of the respondents had previously had a negative experience with the police, yet one-quarter of those who did not report believed that the police would do nothing.

In the space provided for additional comments, many of the survivors addressed the issue of why they did not talk about the assault. For example:

> I wish I had enough courage to press charges but before it happened I had slept around and did not want anybody to know about it, as I would be on trial also by the defence lawyer. I am ashamed of my past (boss, age 18).

> It was violent gang rape both times with sodomy and severe bashing. I was very young at the time and did not think I would be able to do anything about it. They were men who did the same thing to other women. Very ashamed and humiliated. I got into drugs afterwards. I am now free of drugs since my first child. I feel the need to tell someone everything, but do not know how to go about it—it happened so long ago (acquaintances, age 15).

> I think I felt shame because apart from struggling, kicking and screaming there came a point where I realised the inevitability of the act and 'went along with it' —I let myself go limp. The man rang me again to ask for a second date and when I accused him of rape he said 'I thought you must have liked it like that!'. What? Screaming and kicking and saying 'No,' continually?? (date, age 22).

> I did not report any of these rapes because it happened in a country town and the shame of being a rape victim would have been worse than being raped.

Table 11

Why Rape Was Not Reported to the Police
By Relationship to the Perpetrator

Reason	Stranger n=237	Acquain-tance n=613	Date n=214	Husband n=262	Ex-husband n=46	Family together n=233	Family apart n=108	Boy-friend n=140	Other n=2,270
	%	%	%	%	%	%	%	%	%
Didn't believe it was rape	19.0	20.2	24.3	23.7	13.0	24.5	21.3	30.0	18.9
Didn't believe police would act	33.9	29.0	33.6	40.1	50.0	17.2	13.9	31.4	25.9
Shock	42.8	41.4	36.0	34.0	19.6	35.2	33.3	31.4	32.2
Shame	53.2	62.5	62.6	34.0	45.7	45.5	44.4	57.1	45.6
Prior bad experience with police	7.5	6.9	3.3	8.0	10.9	4.3	3.7	5.0	5.3
Fear of perpetrator	23.9	30.3	23.8	61.1	50.0	42.5	38.0	28.6	29.9
Knew perpetrator	0	17.8	21.0	29.0	21.7	23.6	20.4	43.8	16.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Notes:
1. Significant variation by relationship: $X^2_{[42]} = 281.3$, $p = 0.0000$.
2. The columns exceed 100 per cent since many respondents identified more than one reason.

Discussion

The Australian sample of survivors has shown the following:

- Rape occurs at any age, with the young particularly vulnerable.
- The majority of respondents had experienced more than one assault.
- Only one-fifth of the rapes were perpetrated by strangers. Acquaintance and 'date' rapes were most common, although 10 per cent involved husbands and, in an additional 10 per cent the offender was another cohabiting family member.
- Almost two-thirds told someone about the rape but only one in five reported the assault to the police. The latter has increased over time. Relationship of victim to offender affected the decision about reporting; rape by strangers and/or injuries were more likely to result in reporting.

- The response that survivors received when disclosing varied; police and family members were the least supportive, while Rape Crisis Services were the most supportive but were difficult to access. Police response has become more supportive in recent years.

- Of the 544 survivors who reported to the police, 201 arrests occurred. If the victim had been injured or if the rape had occurred in more recent times, there was a greater chance of arrest. The relationship of the offender to the victim also impacted on arrest frequency.

- Of the 201 perpetrators arrested, 103 were ultimately found guilty and imprisoned. Over time, although there has been increased reporting to the police and increased arrests, a lower proportion of those arrested have ended up in gaol.

- Shame was the primary reason that survivors did not report to the police. Shock, fear of the perpetrator, and a belief that police would not act also played a major role in dissuading victims from going to the police.

How do we take this information and translate it into improved prevention? The fact that shame was the principal deterrent to survivors' reporting to the police is an indicator that the first step must be the dismantling of the structure of myths which continues to blame the victim and defines rape as an act (principally sexual, and secondarily violent) perpetrated by a stranger. If these erroneous beliefs can be fought with empirical data, both those working in the criminal justice system and the public (including those who are raped) will hopefully make a step forward in redefining rape. Reporting would increase, arrests would increase, and ultimately, it is hoped that the courts would respond with more findings of guilt, stronger sanctions, and less revictimising of the survivor.

One of the saddest reflections of the Australian government's priorities is the number of victims who tried to reach a Rape Crisis Service and failed: no 24–hour service, no such agency in the area. If the government and the public want to continue to deny the reality of rape and its consequences in this country, then little change will occur. The survivors need to be heard and the reality of rape not denied.

The results of this survey have also shown that prevention programs targeted at 'stranger danger' are far too limited. A major component of stopping rape must be to teach Australia's children two main ideas: first, that they have the right to say 'no' to *any* adult who attempts to touch them; and secondly, that if sexual abuse occurs, that they the survivors are not in any way responsible and must not keep the secret but come forward into an environment where they will not be blamed. If not, the consequences are tragic, as told by a survivor in the following poem sent with her survey:

Plea to a Child Molester

I don't want to
Can't you hear me?
can't you tell?

I know I have to do
What you tell me to,
Because you're an adult
and I'm just a child
So I have to
Besides, you scare me
with your threats,
How can this give you
pleasure?
Touching a small, scared
defenceless child
You're a sick man.

Even though my body
screams no
My mouth won't work,
No words come out
And I mustn't tell anyone,
No, I never tell

My heart's beating fast
and my muscles are tense,
No-one will come
to this small girl's defence
You know you are safe,
To do what you will.

Ten years later, it's coming
back to haunt me.
You're still my nightmare,
Even though I don't know
your name, or remember your face,
Even though I can
remember the place.

I realise now, what I didn't
know then,
That the only reason I
couldn't tell
was so that you wouldn't
get into trouble.
I'm in a private hell,
Every time I remember.

Did you ever think, what this
would do to me?
I know I'm not to blame myself
by thinking.

Your selfishness has damaged
my life.
What right did you have
to do that to me?
You took my childhood
innocence and naivety.
You took what was not
yours to take.

Insecurity, frustration.
Why me? No-one should
have to go through
that pain, or the
punishment.

Sex should be a
beautiful thing,
Not a time to remember
what you've done to me.

by M. (1992)

NO REAL HARM DONE: SEXUAL ASSAULT AND THE CRIMINAL JUSTICE SYSTEM

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. . . unlike the victim, everyone, including the accused, is entitled to remain present throughout the hearing . . .

. . . unlike the victim, the accused along with the rest of the crowd is entitled to hear the forensic medical evidence, the description of genitalia, the markings on nipples, the colour and size of bruises on buttocks, the presence or absence of semen on legs or in the mouth, the finding of the internal gynaecological examination . . .

. . . unlike the victim, they can hear about the presence or the absence of loosened pubic hair, of flakes of skin under fingernails, of sexually transmitted diseases . . .

. . . unlike the victim, they are entitled to hear the doctor's impression of the victim's state of mind . . .

. . . unlike the victim, the accused hears the doctor's findings . . .

. . . unlike the accused, the victim is never told. (Kate Gilmore, Public Meeting, Real Rape Law Coalition)

The War Against Women

> AS LONG AS SOME MEN USE PHYSICAL FORCE TO SUBJUGATE FEMALES, ALL men need not. The knowledge that some men do suffices to threaten all women. Beyond that, it is not necessary to beat up a woman to beat her down. A man can simply refuse to hire women in well-paid jobs, extract as much work or more work from women than men but pay them less, or treat women disrespectfully at work or at home. He can fail to support a child he has sired or demand the woman he lives with wait on him like a servant. He can beat or kill the woman he claims to love; he can rape women, whether mate, acquaintance or stranger; he can rape or sexually molest his daughters, nieces, stepchildren, or the children of a woman he claims to love. The vast majority of men in the world do one or more of the above (French 1992, p. 184).

Violence against women, in all its forms, perpetrated by men is not a 20th century phenomenon; it has been occurring on a systematic basis for centuries. What is a new phenomenon is that violence against women is finally being heard about and placed on political and social agendas. As French writes:

> The most important accomplishment of the feminist movement may be the exposure of this secret, the hauling it out of the private darkness where it has flourished and hanging it out in the air for all to see (French 1992, p. 199).

While hard fought gains by women, in both legal and social arenas, in the area of sexual offences are to be celebrated, it is clear that the players in the criminal justice system are still making judgments about whether a woman is a 'deserving' and to be believed victim or a 'non-deserving' and therefore lying victim of sexual assault, based on sexist and discriminatory stereotypes of women.

It appears that the hostile and humiliating treatment meted out by the legal system today hails back to and continues to rely on the words of wisdom of Sir Matthew Hale, a famous British jurist. He stated that:

> Rape is an accusation easily to be made and hard to prove and harder to be defended by the party accused tho' never so innocent (circa 17th century).

It appears little has changed within the legal system and its response to the crime of rape. Certain judicial utterances validate this proposition. Judge Sutcliffe stated:

> It is well known that women in particular and small boys are liable to be untruthful and invent stories (Sutcliffe J. cited in Smart 1989, p. 35).

Another illustration is:

> Human [sic] experience has shown that girls and women do sometimes tell an entirely false story which is very easy to fabricate but extremely

> difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all (*R v. Henry and Manning* 1968 53 Cr App R at 153).

In providing a context for the remainder of this paper, it is fundamental to be unequivocally clear about what rape is. Rape is a violation of basic human rights. Rape is about unequal power and use of control. Rape is about hate, humiliation and the degradation of women. It is an act of violence; of penetration that is unequivocally unwanted. Further, it is not an isolated act of aggression by one man against one woman. Rape is part of a continuum of violence perpetuated by men against women. Societal attitudes and structures allow a rape culture to flourish and in doing so ensure that victims/survivors of rape are effectively silenced (Brisbane Rape Crisis Centre 1990, p. 4).

> Male violence towards women could not be as epidemic as it is without the cooperation of the entire social system—the press, police, courts, legislatures, academia, welfare agencies, the professions and other institutions. Personal violence against women is an issue of individual acts given firm backing by entrenched institutions. Just as women's problems are circular, so is male oppression: systematic war against women could not succeed without the cooperation of individual men, and individual men's wars on women require the cooperation of the system (French 1992, p. 185).

Licence to Rape

In order to gain some insight into why victims/survivors of sexual assault have a crisis of confidence in the legal system, it is necessary to outline some of the reasons that a licence to rape exists in our community. Rape is a relatively safe crime for perpetrators to commit. In a sexual assault phone-in organised by the Real Rape Law Coalition, of the 267 assaults recorded only 33 per cent were reported to the police and a staggering 6 per cent resulted in a criminal conviction on any charge (Real Rape Law Coalition 1991b). As one victim/survivor succinctly puts it:

> Why go through all that when he'll be acquitted anyway? (Law Reform Commission of Victoria 1991, p. 119).

It is safe for perpetrators because they know how difficult it is for a woman to legally prove that she was not consenting. A perfect example of this comes from the sexual assault phone-in. A woman who rang was in her twenties when she was assaulted by a person whom she knew. He threatened to kill her if she told anyone about the assault. He also said to her, '*No-one will believe you anyway. I'll just say you're a slut and asked for it*'.

Add to this fear of reprisal, fear of disbelief (not only by the legal system but also family and friends) and the enduring consequences of a sexual assault, it is no wonder that silence is guaranteed. It is this silence that ensures the perpetuation of sexual assault and of the enduring impact on victims/survivors' lives. Given this it is not hard to agree with, Susan Brownmiller's contention that rape is 'a conscious process of intimidation by which all men keep all women in a state of fear' (Brownmiller 1975, p. 114).

It Never, Ever Leaves You

Enduring elements of the assault experienced by the victim/survivor are powerlessness and loss of control. 'I was made to feel powerless' was the most frequent single response when victims/survivors were asked how the assailant had effected the assault. When one considers that in 72 per cent of cases the assailant was known to the victim/survivor, it is hardly surprising that feelings of shock and denial overrode any considerations of resistance or escape (Real Rape Law Coalition 1992, p. 9). Couple this fact with the inappropriate response given to victims/survivors by both the legal system and the community, and it is understandable that a majority of victims/survivors harbour the responsibility for the assault; an unbearable burden wrongfully located that may be rectified by long-term counselling and support.

Taking the blame and the ensuing guilt are not the only enduring repercussions of sexual assault; the impact on victims/survivors' lives are diverse and wide-ranging. An overall legacy of low self-esteem and poor self-confidence are very common, as are feelings of worthlessness, shame and being 'dirty' (Real Rape Law Coalition 1992, p. 10). Anecdotal evidence collected via the phone-in illustrates the diversity of repercussions from sexual assault and emphasise the long-lasting nature of the damage suffered. Accounts included one caller who said that since being raped she can no longer relate to her own son because he is a male; another woman said:

> it has affected my career, now I can't get another job here in this town. I have also lost my ability to trust people and to form relationships. I have trouble relating to my family and friends who are divided about whether to believe me. I am very angry.

Another woman raped by four men ten years ago (when she was fifteen) recounted:

> It destroyed my life. I've never trusted anyone since. When you're married you are supposed to trust people but I can't. My sex life is a complete shambles, I shower continually because I always feel dirty. I can't sleep, I still have nightmares. They ruined my life so much, why didn't they just kill me?

Treated Like the Criminal

Having already suffered a horrific violation of their very being, a small proportion of victims/survivors of sexual assault then enter the criminal justice system to seek justice. However:

> despite formal legal recognition of her need for protection, a woman who is raped, assaulted or battered by a man may find herself victimised again by police, state and medical agencies . . . This refusal to recognise a woman's experience can appear to many as secondary assault (Radford 1987, p. 135).

Many victims/survivors experience the reporting system as intrusive and judgmental. They are required to recount in minute detail and with absolute consistency the entire assault more than once. It is hardly surprising that many women find this experience a damaging and disempowering one. The enduring elements of powerlessness and loss of control experienced by victims/survivors of sexual assault are also prevalent in her role in the

criminal justice system. The legal system dominates the official process of defining what behaviours constitute sexual assault. Further, it is the only formal channel of redress for the victim/survivor and provides the most legitimate and resounding means of validating the woman's experience. However, many victims/survivors find that the legal system offers them no justice, and instead reinscribes the assault.

While it is to be applauded that a new Police Code of Practice for dealing with sexual assault has been introduced in Victoria, one document alone cannot change ingrained perceptions of victims/survivors that police will not believe them. Police inaction on those sexual assaults reported to them holds this perception to be true. The phone-in results show that 60 per cent of reports made to the police did not result in any further action, and in 74 per cent of these cases it was the police who made the decision not to proceed (Real Rape Law Coalition 1991b, p. 23). As a consequence, victims/survivors in these cases expressed strong feelings of anger, hurt, disappointment, and/or a sense of being cheated or let down by the legal system.

A further compounding factor is the unsympathetic and disbelieving attitudes expressed by police to victims/survivors at the time of reporting and the asking of irrelevant and inappropriate questions. One caller recounted being blamed for walking alone at night in the park and being asked if she was a man-hater; another woman recalled how the police had commented to the doctor that she didn't have many bruises and how she was subsequently investigated by the police to construct a picture of her character. The police achieved this by contacting her family, friends and employers without her permission and, as the icing on the cake, released details to the local media. Her case was eventually dropped by the police with the official line that the assailant could not be located.

This police inaction, lack of belief and humiliating treatment of victims/survivors at the time of reporting is totally unacceptable. It appears that police perception is that women reporting rape are just 'crying rape'; that false reports are consistent and constant and make up a substantial component of rape reports (Freckelton 1988, p. 29). Indeed, the Victorian Police Complaints Authority report details how false reports occur:

> There are cases in which the woman at the time of intercourse is in two minds, feeling both fear and desire and therefore giving contrary indications to the man, or in which she has a change of mind which is fractionally too late or in which she protests but only to preserve status; and then subsequently, because she feels guilty and remorseful or fears pregnancy, or for both reasons, her mind rejects the idea that she could have consented and, by the mechanism of selective recall which we all possess, she genuinely remembers the event as a rape and reports it as such (Freckelton 1988, p. 27).

In light of this inherent lack of belief, the recent Police Code of Practice, which outlines the wide-ranging repercussions of sexual assault, is to be welcomed with its intent that victims/survivors' interests are paramount. However, unless appropriate implementation of the Code of Practice occurs, through systematic and ongoing training and education for police as well as breaches being treated with the abhorrence they deserve, we will see little change in the police response to victims/survivors of sexual assault.

Raped All Over Again

Going to court is never an easy experience, but it is particularly difficult for sexual assault victims/survivors owing, in part, to the 'intimate' nature of the assault. Many victims/survivors find it is a nightmare trying to cope not only with the repercussion of the assault itself but also with the strain of the legal process. For many, the whole legal process is mystifying and many feel completely unprepared for the court experience (Real Rape Law Coalition 1992, p. 34–5). Debbie, a victim/survivor, describes her experience:

> His barrister swung questions at me. I was only supposed to give a yes or no answer. If I paused even in the slightest the barrister would answer the questions for me. The barrister was very smart, he kept insisting that it was one of those boy meets girl affairs when it wasn't like that at all. I couldn't always follow the formal words that were used such as him saying 'my client' instead of using his proper name. Nor did I understand some of the big words that he threw at me. I became increasingly confused. It was just as if he was allowed to tear me apart and lie and get away with it and no-one stopped him. I looked to the prosecutor. She didn't say anything, she just kept her head down taking notes. With all this happening I went even further into a state of shock. I was shaky and nervous and my stomach felt like it was tied in knots. I wasn't really aware of what was going on. It was as if my body was there but my mind was elsewhere. In the end I just agreed with everything that his barrister said (Real Rape Law Coalition 1991a, p. 15).

Victims/survivors are often bitter and angry about the court's insensitive treatment of them and particularly of cross-examination tactics. Responses from the sexual assault phone-in clearly illustrate this. Responses such as:

> the court process made me feel raped all over again; and
>
> it took me longer to get over the court experience than the actual rape. I was treated as the criminal.

Furthermore, 38 per cent of victims whose case went to court would not report an assault or go to court again, if given the choice (Real Rape Law Coalition 1991b, p. 45). They would also advise other victims not to go through the legal process. One commentator has observed that:

> there is no difference between being raped and giving evidence as a key witness at the trial of your alleged rapist, except that this time it happens in front of a crowd . . . (Kate Gilmore, Real Rape Law Coalition Public Meeting, September 1990).

In particular, the victim/survivor must relate the explicit and detailed minutiae of sexual penetration. Most women, however, are unfamiliar with detailed discussion of the mechanics of 'sexual' behaviour and experience further difficulty in applying the terminology relating to genitalia, oral, anal and vaginal penetration to themselves. There is even greater stress and embarrassment attached when the acts being described are associated with revulsion, humiliation and shame.

In court, the rape trial amounts to a gruelling test of the victim/survivor's credibility, where the honesty and integrity of the parties are pitted in a legal struggle weighted overwhelmingly in favour of the accused. A typical scenario is this. The accused will have instructed his solicitor, met with his counsel, rehearsed his evidence, viewed and interrogated the prosecution's claims. He has the choice to remain silent and not testify in court at all; or he can give unsworn evidence from the body of the court; or he can choose to take the witness stand and undergo cross-examination. It is hardly surprising, then, that very few accused enter the witness stand.

In contrast, the victim/survivor has very few rights in the criminal trial because she is *merely a witness for the prosecution*. She has *no* choice but to testify and submit to cross-examination. She *cannot* instruct legal counsel, and will have had little, if any, preparation for giving evidence. She will have no knowledge of the defence claims or even of other prosecution evidence. She will have waited, perhaps for several days, until the court attendant finally comes to usher her into the courtroom, past the expectant audience. She will see the accused again, and will have to speak with him watching her. She will probably have been told to leave the court as soon as she has given her testimony. She will go home and continue waiting.

Consent ¾ Just Which Part of 'No' Don't You Understand?

The following report from an English rape trial illustrates the perverseness of the issue of consent.

The prisoner's defence was that, although the girl had resisted him before he struck her on the head several times with a wheelbrace and that she fought and bit his finger even after he had struck her several times on the head, she consented to the act of intercourse, or if she did not, he *reasonably and honestly* thought she was consenting.

Consent is the central issue in almost all rape trials. Of the cases that go to court, most commonly sexual penetration is admitted and the issue to be decided is whether it was rape, as the victim claims, or whether it was consensual intercourse, as the accused claims. The prosecution must prove beyond reasonable doubt that the victim was not consenting and that she *effectively* communicated that fact to the accused in such a way that he could not have *honestly* believed she was consenting.

Inevitably then, the issue of consent turns a jury's attention from the actions of the accused to those of the victim.

> Even though I was the victim, everything in that court procedure worked to place me on trial.

The victim in the rape trial is commonly implied to be a liar, an hysterical or even vicious jilted lover, a woman known by the accused to be of the type who could be expected to consent to his advances or an immature person who acquiesced in or even enjoyed a consensual act but who later feared the consequences of her actions. These scenarios (or variations on the theme) require the defence to show the victim as a person of low intelligence or of low moral fibre whose story should not be believed. As Jacinta, another victim/survivor comments,

> They use every tactic they can to portray you to the jury as this uneducated, emotionally disturbed, mentally deranged low life (Real Rape Law Coalition 1991a, p. 13).

Recently, the much publicised Kennedy-Smith trial depicted the victim/survivor within the parameters of the 'scorned woman' scenario. A woman who had extensive sexual experience, who relentlessly pursued him, had sex with him only two hours after meeting, and who, due to his callous behaviour after sexual intercourse, became angry and decided to report the rape. It was Patricia Bowman's reputation and credibility being judged not only in that courtroom but nationally. It was the discrepancies in her story that became the focus; the panty hose in the car, the screaming no-one heard, the untorn and unstained clothing and the fact that, although she said she felt dirty, Patricia Bowman did not take a shower after the alleged rape. To complete the humiliation, there was the talk-show host who had couples re-enacting the rape itself to prove that if it had happened as Patricia Bowman had described, it was anatomically impossible (Taylor 1992, p. 28)

Given this biased focus, it was fortuitous that Mike Tyson's victim was the quintessential girl next door. A freshman at a prestigious Catholic College, versatile sportswoman, volunteer worker with the mentally retarded, a Sunday School teacher and regular church goer. In short, popular, well-educated, intelligent and with a 'toothy engaging smile that is without guile' (Nack 1992, p. 5). The trial outcome was timely and, for many women, a cause for celebration. It belied the popular myth that Tyson's celebrity status would save him from his fall from grace. In many ways the Tyson trial became a microcosm of a wider and very heated national debate about how men treat women, triggered by *Thelma and Louise*, the Anita Hill and Clarence Thomas case, and the televised broadcast of the entire Kennedy-Smith trial.

Despite their apparent glaring differences, both the women bringing the charges in the Kennedy and Tyson cases quite clearly did have something major in common. Both were subjected to unbelievable violation at the hands of the legal system. Judgments in both cases had little to do with whether a rape was committed and everything to do with whether the accused was a Kennedy or a Tyson. The women were on trial. It was never made simply clear enough that 'no' means 'no' (*Spareribs*, 'Living in a Rape Culture' 1992, p. 32).

Similarly in Victoria, we have had judgments made based on stereotyped, outmoded and sexist assumptions. A classic case was that of *R v. Singh* in which the woman was raped by a man known to her in a flat where her children were asleep and in the company of a friend of the assailant. On appeal, the Supreme Court overturned a jury conviction in that case, saying that:

> it is a remarkable feature of the case that in spite of her evidence that she was forced to have intercourse there were no signs of force having been used on her body and no evidence of any struggle or resistance or of disarrangement of the furniture in the flat (*R v. Singh* 1990, unreported judgment of the Victorian Court of Criminal Appeal, p. 8).

The court also placed great emphasis in this case on the fact that the woman did not sustain significant physical injury. They commented that:

> when the prosecutrix was medically examined at about 10.30 am no abnormalities or any sign of force having been used, apart from the love bites [i.e. bruises] on the neck, were found (*R v. Singh* 1990, unreported judgment of the Victorian Court of Criminal Appeal, p. 8).

The effect of this decision is to require conclusive physical evidence of force or some other 'physical' corroboration of the victim's testimony, in order to sustain a rape conviction.

The unenviable choice for women then, is to sustain extensive physical injury in addition to the rape, or to risk disparagement and disbelief by the legal system, family, friends and the wider community. As one victim/survivor, whose case against her assailant resulted in an acquittal after much emphasis was placed on her alleged lack of resistance, says:

> The fact you are not torn limb from limb, splattered against a wall, maimed for life implies that you did not fight. The implication that you did not fight is submission. You submitted. And submission implies consent? That is absurd. The act of sex will not kill you if you lay there like a piece of meat. You fight and you could be killed, you could be maimed—but if you don't fight, don't expect the courts to believe you.

However, even when extensive physical injuries, apart from the rape itself, are sustained and even where the rape fits the stranger danger stereotype, one cannot be guaranteed that judges will utilise rational thought when meting out sentences for men who rape. A graphic example of this is the infamous Ealing vicarage rape in England in 1986 in which three men broke into the house armed with knives and two of the men sexually assaulted 21-year-old Jill Saward. The assault included rape, buggery and penetration with a knife handle. The judge sentenced one man to five years for rape and five years for aggravated burglary, and the other for three years for rape and five years for the burglary charge. The judge justified this extraordinarily light sentence on the basis that Jill Saward's trauma was not so great and because she had testified that she had herself forgiven the two men (*Spare rib*, 'Living in a Rape Culture' 1992, p. 32).

Women may also be disqualified from obtaining legal redress in sexual assault cases owing to their occupation, prior sexual history or lifestyle. The recent decision made by Judge Jones in the case of *R v. Hakopian* is a perfect example of how sexist attitudes inform the law. Judge Jones followed Supreme Court precedent of *R v. Harris*, which stated:

> the crime when committed against prostitutes . . . is not as heinous as when committed, say, on a happily married woman living in a flat in the absence of her husband when the miscreant breaks in and commits rape on her (*R v. Hakopian* 1991, County Court, Melbourne, Sentencing Decision, p. 8).

Are we to infer from this that women must be married in order to establish themselves as properly rapeable and then only by someone other than the woman's husband? If a woman does not sustain physical injuries, if she is not in the 'deserving rape victim' mould, and the case not otherwise considered to be a 'real rape', then the culpability of an offender is often seen to be minimal or not warranting sanction by the courts because it is considered that there has been no 'real' harm done.

R v. Hakopian again provides a good illustration of this point. When sentencing Hakopian for aggravated rape, aggravated indecent assault and kidnapping, Judge Jones said that:

> As a prostitute, Miss X would have been involved in sexual activities on many occasions with men she had not met before, in a wide range of situations . . . On my assessment, the likely psychological effect on the victim of a forced oral intercourse and indecent assault, is much less a factor in this case and lessens the gravity of the offence (*R v. Hakopian* 1991, County Court, Melbourne, Sentencing Decision, p. 8).

Overwhelmingly, the stereotype of criminal assault remains the experience of physical attack in a 'public' place by a (male) stranger. Notions of 'force' and 'resistance' are similarly defined according to male standards, as *R v. Singh* demonstrates. Women's experiences of assault—domestic violence as well as sexual assault—are often not recognised within that framework.

Yet the sexual assault phone-in established that the repercussions of assault frequently do not fit within the standard notion of 'injuries' consequent upon a criminal assault. For example, callers described sexually-transmitted diseases, recurrent urinary tract infections, pregnancy, panic attacks and depression as direct consequences of a sexual assault committed against them.

Some 98 per cent of callers to the phone-in described extensive and long-term emotional damage as a consequence of being sexually assaulted and more than one-third of victims suffered physical repercussions in addition.

Challenging Myths ¾ Law and Education

Rape laws which do not specifically exclude the application of sexist, discriminatory, and ill-informed attitudes and beliefs in determining outcomes of sexual assault cases tacitly condone rape, condemn women to suffer in silence, and perpetuate and compound this harm consequent on a sexual assault. Law and education play a fundamental role in challenging assumptions and stereotypes surrounding sexual assault.

Over the past twelve months, sexual assault has been placed fairly and squarely on the political agenda by various community and women's groups. It has required tremendous energy and commitment for this to occur. The time is ripe to bring to the community's attention (this includes all players in the legal system) the full dimensions of the problems of sexual assault and its repercussions for victims/survivors.

It must always be remembered that one in every ten women can expect to be raped in their lifetime and, as a result, experience in some degree: lack of motivation, depression, anxiety, fear, loss of confidence and trust, and a sense of hopelessness. Sexual assault dictates that women's primary social use is as sex objects. The extent of sexual assault, and

the consequences for victims/survivors, effectively deny women's right to be self-determining and sexually autonomous and equal members of society.

Clear legislation and appropriate education can indeed go some way in redressing this inequity. To quote Sally Brown, Chief Magistrate of Victoria:

> Legislation alone doesn't change culture, but it can be a powerful tool. What I hope the (rape law) reform . . . will do is balance the competing interests of the victim and the accused in a way which reflects the community's growing concern that a victim is often twice victimised. Once by the assault and once by the legal system (Real Rape Law Coalition Public Meeting, 9 September 1990).

It is time the law and the community recognised the nature of and the true repercussions of sexual assault on victims and that both respond appropriately to women who have endured a horrific violation of their very being and ensure that the legal process is accessible and as least traumatic as possible. It is time that victims/survivors are treated with sensitivity and respect by the legal system and the community and, more fundamentally, it is time their voices are heard and their experiences believed. There is no doubt that law does inform community attitudes, and it is vital in the area of sexual offences that it also educates police, judges, juries and makes dramatically and emphatically clear to men what sexual behaviour will be tolerated and what will not. Until this happens, we continue to hear haunting accounts of the consequences of being sexually assaulted.

In conclusion, an extract from a poem by Marge Piercy (1990, p. 5) illustrates the realities of rape that, tragically, millions of women across the globe can identify with.

There is no difference between being raped
And being pushed down a flight of cement stairs
Except that the wounds also bleed inside

There is no difference between being raped
And being run over by a truck
Except that afterwards men asked you if you enjoyed it

There is no difference between being raped
And losing a hand in a moving machine
Except that doctors don't want to get involved
The police wear a knowing smirk
And in a small town you become a veteran whore

There is no difference between being raped
And going head first through a windshield
Except that afterward you are not afraid of cars
But of half the human race.

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VICTIM REACTIONS DURING RAPE/SEXUAL ASSAULT: A PRELIMINARY STUDY OF THE IMMOBILITY RESPONSE AND ITS CORRELATES

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ONE OF THE MOST TROUBLESOME AREAS REGARDING RAPE CONTINUES TO BE the issue of 'consent' on the part of the survivor (Cohn 1975). Struggling, screaming, and other forms of active resistance by the victim become a crucial element in the handling of the crime of rape/sexual assault and in the treatment and recovery of the rape survivor.

Police seek visible signs of resistance in determining whether a rape has occurred, and when these signs are absent, it is difficult to convince investigators that a rape has taken place (Rose & Randall 1982). Further, indifferent treatment by medical personnel is often

based on their judgment of whether a victim adequately resisted (Schwendinger & Schwendinger 1980, p. 9). A survivor told of a physician who informed her that 'if she had really struggled, she could not have been raped' and demonstrated this by having the survivor try to put a pencil into a cup that he moved around quickly.

While most American states have deleted resistance standards from their statutes, the type and degree of victim resistance continue to influence jury verdicts (Abarbanel 1986). Harsher sentences are also given in cases where there is greater victim resistance (Scroggs 1976). Attitudes of both family and friends often depend on their perception of the victim's responses during the assault. Barnett and Field (1977, p. 94) found that 18 per cent of college women and 40 per cent of college men agreed that '. . . the degree of a woman's resistance should be the major factor in determining whether a rape has occurred'. Subjects also attributed more blame for the assault to the assailant as the perceived level of victim resistance increased (McCaul, Veltum, Boyechko & Crawford 1990).

During recovery, women who were passive or felt paralysed during an attack were especially vulnerable to self-blame (Meyer & Taylor 1986), and experienced higher levels of guilt and self-derogation (Mezey & Taylor 1988). Stewart, Hughes, Frank, Anderson, Kendall and West, (1987) found that 58 per cent of a group of survivors who sought immediate treatment had attempted to fight back, while only 27 per cent of a delayed treatment group had attempted to defend themselves. Clearly, active resistance is a critical factor in rape, yet anywhere from 12 per cent (Brickman & Briere 1984) to 50 per cent (Amir 1975) of victims are quiet and motionless during the attack and do not resist the attackers in any way. Burgess and Holmstrom (1976) report 37 per cent of a sample of rape survivors indicated they felt paralysed and unable to move. What is the nature of this reported immobility and what role might it play in the aftermath of rape?

There may be an involuntary, reflexive, physiological basis for this immobility. A long-documented physiological, involuntary, reflexive response which occurs in many animal species is 'tonic immobility' (Suarez & Gallup 1976). This is an *unlearned* state of profound motor inhibition typically elicited by a high fear situation that involves threat and/or restraint. After some struggling, a catatonic-like posture ensues. Vocalisation stops, tremors occur, and there are periods of eye closure. Heart rate decreases while body temperature and respiration increase (Suarez & Gallup 1976). Tonic immobility has seldom been studied in humans (Crawford 1977), but Suarez and Gallup (1976) proposed that freezing reactions during rape may be an instance of tonic immobility in human beings. This possibility is supported by victim self-reports such as, 'I felt faint, trembling and cold . . . I went limp' (Burgess & Holmstrom 1976, p. 416), or feeling '. . . unable to do anything . . . even move my legs (Rose 1986, p. 819).

The similarities between a rape attack and the methods used to induce tonic immobility are apparent (Suarez & Gallup 1976). Rape can, and frequently does, involve restraint and fear-producing stimuli such as weapons or violent threats. Ratner (1967) has suggested that tonic immobility may be an evolved defence mechanism to predation, and rape has been described as a predatory act (Selkin 1975).

Given that the experience of freezing or immobility during rape has such important consequences, it seems important to explore this phenomenon in greater detail. The specific goals of this preliminary study were to:

- evaluate the degree of similarity between the features of rape victim immobility and the features of tonic immobility observed in the animal laboratory;
- ascertain the frequency of occurrence of such immobility responses in a sample of rape survivors; and
- identify possible psychosocial correlates to the immobility response (such as childhood trauma, presence of weapons, post-rape adjustment).

Method

Participants

Thirty-five rape survivors (aged eighteen to sixty-one) were located through university counselling centres and word of mouth. Time since the rape ranged from two months to ten years, and eighteen (51 per cent) involved perpetrators who were strangers to the survivor. All of the rapes were completed.

Materials and procedure

A Rape Survivors Questionnaire (RSQ) was designed for this study. It consisted of thirty-one forced-choice and checklist items inquiring about:

- demographic information;
- exposure to violence during childhood and adulthood;
- pre- and post-assault attitudes and beliefs about rape;
- physical experiences and bodily sensations during the rape; and
- activities and changes made immediately after, and in the year following, the rape.

A packet consisting of a consent form, area rape crisis counselling information and the RSQ was delivered to each participant. An anonymous mail-back procedure insured confidentiality.

Results

The thirty-five participants were categorised into one of three mobility groups, based upon their responses to two questions. On a 7–point Likert scale, subjects rated the degree to which they froze and felt paralysed during the assault, *and* were unable to move even though not restrained. Participants scoring six or higher on *both* questions were classified as demonstrating the immobility response (Immobile Group). Participants scoring five were classified as Intermediate, and those scoring four or less comprised the Mobile Group. Thirteen subjects (37 per cent) clearly indicated Immobility during the rape. Eight subjects (23 per cent) were classified as Intermediate and fourteen (40 per cent) were included in the Mobile category.

Participants also reported (on a three-point intensity scale) the degree to which they had several specific experiences during the assault. These were selected to parallel behaviours observed during tonic immobility states in animals and included:

- degree of motor inhibition;
- tremors;
- eye closures;
- increased breathing; and
- coldness.

A one-way, randomised ANOVA revealed those classified as Immobile experienced these specific sensations to a greater degree ($\overline{X}$ = 2.0) than the Intermediate ($\overline{X}$ = 1.2) or Mobile Groups ($\overline{X}$ = 1.1), $F_{(2,32)} = 4.08$, $p<0.05$.

To explore possible psychosocial correlates of the immobility response, Chi-square analyses were performed on the obtained frequency of several variables across the three immobility categories. No significant relationships were obtained between the incidence of the immobility response and:

- exposure to violence during childhood or adulthood;
- prior beliefs about resisting an assailant;
- the presence of a weapon;
- the number of injuries suffered;
- whether the assailant was a stranger or not;
- relationship between the victim and a known assailant (distant or intimate); or
- how soon assistance was sought after the assault.

Although no significant relationship between the incidence of immobility and whether or not someone asked the victim if they resisted the attack was found, professionals (N = 35) asked this question more often to all victims compared to friends (N = 14) or family (N = 26).

A Chi-square analysis found a significant relationship between the frequency of life changes following the assault and immobility, $X^2(2, N = 35) = 31.55$, $p<0.05$. More changes were made in the Mobile Group (N = 62) than the Immobile Group (N = 48).

A 2x2 ANOVA revealed a significant main effect of the victim's belief that greater resistance would have stopped the assault (Immobile Group, $\overline{X}$ = 4.0; Mobile Group, $\overline{X}$ = 2.2), $F_{(2,64)} = 4.67$, $p<0.05$. A significant main effect of their belief that greater resistance would have led to more people believing they were raped was also found, (Immobile Group, $\overline{X}$ = 3.8, Mobile Group, $\overline{X}$ = 2.8), $F_{(2,64)} = 3.83$, $p<0.05$).

Several behavioural measures of fear were obtained to determine if the incidence of immobility was related to the amount of fear experienced by the victim. A one-way ANOVA showed no significant differences in the degree of fear experienced across the three immobility groups.

Discussion

The results of the present study provide a clearer picture of the immobility response during sexual assault than has previously been obtained. Like others (for example, Burgess & Holmstrom 1976), a substantial percentage of our sample (37 per cent) clearly reported the experience of being immobile or paralysed during the assault. It is interesting to note the sample was almost equally divided in terms of the number of women who reported immobility (37 per cent) and those who did not (40 per cent). This may be evidence of the involuntary nature of the immobility response. An involuntary response, unlike a learned response, would be more likely to be displayed or not, with few instances of partial responding. Other evidence for the involuntary basis of the response comes from the insignificant relationships between the frequency of reported immobility and various aspects of the history of the victim. Finding that factors such as prior experience or belief are independent of immobility may be interpreted as indirect evidence that the response is involuntary and not a result of experience (that is, learned). This interpretation could also explain why the immobility response is not gender-specific (McGowan 1991).

Behavioural measures of fear were found to be unrelated to the immobility response. However, the questionnaire assessed only objective measures of fear (hair standing on end, sweating, and so on) without asking subjects the degree to which they 'felt' afraid. Future studies should obtain a more direct and valid measure of fear to determine its relationship to the immobility response.

For the first time in the literature, empirical comparisons between the paralysis reported by rape survivors and specific features of tonic immobility in animals have been made. The degree of tonic immobility-like behaviours was significantly higher in the Immobile Group than the other two categories. This is the first empirical evidence that the Immobility Response experienced during sexual assault may be similar to tonic immobility in animals.

The role of the immobility response in the aftermath of rape can also be seen in the post-assault measures. The importance of the amount of resistance reported by the victim can be found in the mere frequency with which professionals asked the victim if she resisted the assailant. These findings support previous research (for example, Galton 1975) which stress how commonly resistance is used to assess whether rape has occurred.

Compared to the Mobile Group, the Immobile Group indicated a significantly stronger belief that greater resistance on their part would have stopped the rape and that greater resistance would have led to people being more likely to believe they were raped. Both of these beliefs could be directly tied to recovery for the victim. The finding that the Mobile Group immediately sought more sources of help than the Immobile Group, supports previous research (for example, Stewart et al. 1987) showing that passivity during the assault may affect victim willingness to seek help. Finally, the Mobile Group made significantly more changes in their lives following the assault. These combined findings show how immobility during the assault may significantly affect the victim and how she deals with the rape.

This study provides important information about immobility during sexual assault, and its role in the aftermath of rape. It should be stressed that this study was only preliminary in nature. Sample size was small and may not be representative of all rape survivors. Additionally, nearly half of the sample was raped ten or more years ago which could effect their recall of specific aspects of the rape. Continued investigation into the phenomenon of this immobility response is necessary before definitive conclusions that tonic immobility occurs during rape can be made. However, this study does show that immobility/paralysis is commonly experienced during sexual assault *and* that this paralysis involves responses similar to tonic immobility seen in non-human animals. With continued research into the nature of the immobility response, paralysis during sexual assault may come to be viewed as an involuntary nervous system response (tonic immobility). This view could have significant applications in the post-assault treatment of the victim by medical personnel, the legal system, family and friends, helping professionals and the survivor herself. At the very least, given our current knowledge of immobility during assault, all those involved in rape should be more aware that immobility does occur in women. It should be stressed that immobility may be involuntary paralysis, *not* a sign of the woman choosing not to resist or as an indication of consent on her part.

Additionally, this study raises many new questions for additional research. Researchers in the area of trauma and post-traumatic stress disease have noted the freezing and behavioural shutdown that occurs with fear-induced noradrenergic activation (van der Kolk 1987). Is this an instance of tonic immobility? What are the specific personal and situational predictor variables for the occurrence of the immobility response? None were revealed here. Is there a way to mediate the occurrence of the immobility response, and how can this be applied in self-defence training? How can the helping professional most helpfully respond to victims who experienced immobility, both during the crisis period and during long-term treatment? What is the impact of the immobility response on post-assault self-esteem, self-efficacy, and reactions to future traumas? What is the relationship between the immobility response and dissociation? All these questions remain, and more.

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UNDERSTANDING WOMEN'S RAPE EXPERIENCES AND FEARS

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IN CONSIDERING THE PHENOMENOLOGY OF WOMEN'S FEAR OF RAPE (FOR), this paper will examine both the psychological elements of FOR as well as women's experiences of rape. Information in this paper has been based on a study conducted at the University of Queensland during 1992. All subjects in this study were female aged eighteen years and older from non-clinical populations. There was a total of 412 subjects, with 58.8 per cent of subjects under thirty years of age, a median age of eighteen to nineteen years and an age range of eighteen to sixty-seven years. A number of different populations were accessed, although the largest group was comprised of first year psychology students completing the questionnaire to gain credit, of which there were 133 (32.3 per cent).

Subjects were given a questionnaire investigating both their fear of being raped and a number of questions regarding their experiences of being raped. In addition, all subjects were asked to provide their views on, for example, how rape should be defined and what methods they use to try and avoid being raped.

This paper will initially consider the issue of fear of rape and refer to previous studies conducted in this area. The rest of the paper will be based on the findings of the present study in the two main areas of FOR and descriptive variables of the rape experiences of the subjects.

Fear of Rape (FOR) and Fear of Crime (FOC) Studies

It has been recognised within the area of criminology, since the results of the 1969 President' Commission of Law Enforcement (USA), that the social consequences of crime are not limited to simply the direct victims of a particular crime (Warr 1985), but that the incidence of fear of crime within the society far outweighs the number of actual victims (Hindelang, Gottfredson & Garofalo 1978; Maxfield 1984; Skogan & Maxfield 1981). A number of

researchers have commented on the negative psychological effects of experiencing frequent fear; specifically that it reduces quality of life and forces people to change their behaviour (Clemente & Kleiman 1977; Hamner & Stanko 1985). Fear of crime is also frequently used as a central issue in soliciting potential voters during political campaigns.

The recognition of the possible negative consequences of fear of crime has led a number of researchers, particularly from the fields of criminology, sociology and media, to investigate the nature of FOC. Findings have consistently indicated that sex and age are the two biggest predictors of individuals' FOC—women and the elderly have significantly higher levels of FOC than other groups (*see* Baumer 1978; Garofalo 1979; Hindelang 1974; Maxfield 1984; Warr 1985). As incidence statistics show that men, particularly young men, are the most likely victims of all crimes except sexual assault (Junger 1987), the inconsistency between likelihood of victimisation and fear of victimisation has fuelled much debate.

It is the area of sexual assault and women's fear of becoming victim to this type of crime that has been suggested by a number of researchers to be the pivotal point in understanding the apparent discrepancy between genders in terms of FOC and actual victimisation.

It has been suggested that all women are victims of rape to the extent that they all experience a fear of rape and it is thus a 'universal condition' (Warr 1985) for women (Brownmiller 1975; Burt & Estep 1981; Griffin 1971). As early as 1971, Griffin and, in 1975, Brownmiller were writing about the devastating effects for women of the widespread and 'insidious' fear of rape. In 1978, a study by Riger, Gordon and LeBailly suggested that women had an additional crime to fear that men did not—rape, and so more overtly introduced the topic of fear of rape to research. Maxfield (1984) in a Home Office study of fear of crime in the United Kingdom has also suggested that a central explanation of women's fear of crime is the threat of rape. Junger (1987) suggested that fear of crime equated for women with fear of rape. As such, Junger stated that fear of rape is the area researchers should concentrate on when investigating women's fear of crime. Riger, Gordon, and LeBailly (1978) conclude in their study investigating women's fear of crime, that examination of fear of rape would be especially useful in understanding women's greater fear of crime.

Despite these assertions and recognition throughout the FOC research that women's FOR is a topic of significance, little research has been done in the area. The studies have generally been in response to the suggestions that women's FOC is irrational, commonly attempting to prove that women's fear is indeed rational (*see* Riger, Gordon, & LeBailly 1978; Riger & Gordon 1981). It seems that concentrating on whether or not fear is rational is unnecessarily adopting a defensive rather than an inquiring perspective.

The consequences of this fear of rape are varied. Feminist theorists argue that, generally, women's fear of rape serves the purpose of denying women freedom of movement by trapping them into their traditionally assigned roles (Holgate 1989) and is thus a form of social control of women by their being in a state of fear and using restrictive precautionary measures (Riger & Gordon 1981). Specific behavioural consequences of fear of rape include a number of attempts to avoid victimisation, such as installing locks and alarms, curtailing social activities and staying indoors at night. It is suggested that these perceptions of the necessity to alter lifestyle and take precautions have negative psychological consequences for women (Gomme 1986). Fear of becoming a victim of rape may also reduce willingness to help others, basic trust, and generally undermine sociability

(Brooks 1974; Clemente & Kleiman 1977). Riger and Gordon's (1981) research suggests that women take greater precautions to try and avoid rape than any other crime, even though the risk is lower than it is for many other crimes like robbery, for example. Women also take many more precautions in terms of their personal safety than do men (DuBow, McCabe & Kaplan 1980). Warr's (1985) research indicated that most women appear to go through at least one period in their lives during which much of their primary socialisation has fear of sexual attack as a central concept.

Specific Findings in FOR Research

The few studies that have been conducted investigating women's fear of rape have reported a number of interesting findings. The degree to which women fear being raped emphasises the seriousness and extent of this issue. There have been a number of suggestions made as to why women would be particularly afraid of rape. Central explanations include the actual incidence of rape, high estimation of risk of victimisation, the seriousness of consequences, perceived low levels of physical competency, previous sexual harassment including previous rape experiences, knowing someone who has been raped, media influences and an array of so-called psychological and social issues such as the influence of mothers' messages (Junger 1987).

The perceived risk of being raped is very high according to some studies (*see* Warr 1985; van Dijk 1978), but not particularly high according to other studies (*see* Riger & Gordon 1981). Risk of being raped is related to the risk of other crimes, such as murder, assault and robbery. This relationship is to be expected as rape is most frequently associated with these other types of crimes.

A different approach to women's risk of being raped was conducted by a number of studies asking men what the likelihood would be of them raping women. In a study by Malamuth (1981), 35 per cent of men indicted that there would be some likelihood of them raping (two in a five-point scale) and 20 per cent of men responded higher than three on the same scale, where five indicated 'very likely to rape if not caught and punished'. Koss and Oros (1982) found that 23 per cent of a random sample of 1,846 college men responded 'yes' to the question: 'Have you ever been in the situation where you became so sexually aroused that you could not stop yourself even though the woman did not want you to?'. These findings suggest that the actual risk of sexual assault of women is very high.

A number of studies have investigated the influence of avoidance attempts in relation to rape from a variety of perspectives. One area that has received a great deal of attention has been the identification of the legal and social implications of women's ability or inability to avoid being raped in terms of myths that have perpetuated victims been viewed as either responsible for the abuse, or at least, willing participants (*see* Box 1983; Brownmiller 1985). These beliefs are evident in legal proceedings in which rape is considered probably the only crime where the victim has to prove their 'innocence'. The false belief that women can avoid being raped is supported by a number of sources including articles and official self-help suggestions made by the police.

The research regarding ability to control being raped provides mixed reports. Some studies (*see* Gordon & Riger 1989) suggest that women may use many strategies but do not believe that they can control whether or not they are raped, whereas other studies (*see* Scheppele & Bart 1983) suggest that women do believe that they have some control.

Results from a study by Heath and Davidson (1988) suggest that exposure to the message of the randomness of rape decreases women's sense of ability to avoid being raped, and as such increases their sense of helplessness. They then use fewer precautionary measures, although their fear of rape may be higher than those women who have not been exposed to such a message.

Another area of interest has been the differences in fear of rape between women who have been raped and those who have not. Some studies have found no differences between rape-related fear in women who have/have not been raped (Kilpatrick, Veronen & Resick 1979; Veronen & Kilpatrick 1980). However, other studies (*see* Scheppele & Bart 1983) have found differences in levels of fear between victims and non-victims of rape. An analysis of victimisation surveys indicated that victims of rape are more likely to feel unsafe while walking in the streets of their neighbourhood (Henig & Maxfield 1978). Toseland (1982) suggested that individuals' fears may be increased by knowledge of victims and that individuals who have personally been victimised may be much more afraid of being raped again.

The only published study on women's fear of rape done in Australia was by Holgate (1989) and investigated the possible influence of having experienced sexual harassment on women's fear of rape. Holgate suggested that the continued experience of sexual intimidation in women's daily life, as reported by the majority of subjects, may generalise feelings of vulnerability and may thus restrict women's lives.

Most research until the present on FOC has generally concentrated on the effect of age and gender (Skogan & Maxfield 1981) and also other demographic variables such as: income, education, construction of household, and occupation. Age, generally, is a predictor of fear of crime, and some studies have indicated that it also plays an important role in women's fear of rape. Box, Hale and Andrews (1988), in a study regarding general fear of crime, found that women were more afraid than men of crime in every age group. The study discussed earlier by Warr (1985) clearly showed that younger women (those aged under thirty-five) were more afraid of being raped than older women.

In summary, women's fear of rape appears to be of considerable influence in women's lives, and there have been a number of identified predictors of this fear in the literature to date. However, there is also a great deal of disagreement regarding the factors and their relative importance. The research done thus far on FOR has identified the three major psychological factors in FOR:

- avoidance, or ability to control;
- likelihood of occurrence; and
- consequences.

All of these factors have been used in different studies, to various degrees expanding the understanding of this issue. However, none of these studies have purposefully combined these factors in a model to specifically test women's fear of being raped.

The following study combined these three components to predict fear of being raped and investigate the phenomenology of the FOR experienced by Australian women. This paper proposed a model of fear that postulated that the degree of fear an individual experiences may be perceived as the association the individual has between the object and

threat; thus how dangerous they perceive the object/situation to be, combined inversely with the degree of control they perceive they have over the situation. Therefore, the more threatening the individual finds the situation/object, the greater their fear and, conversely, the more control they believe they have, the less their fear. The dimension of perceived dangerousness or how threatening the event/object is, is further explained by dividing it into two components: how likely the event is and how bad or serious the consequences would be (Butler & Mathews 1983).

Assessment of women's subjective experiences of fear of being raped included how often they consider being raped, how they believe this compares to other women's fears, to what extent they are fearful of being raped, and what are women's beliefs about men's propensity to rape and their chances of being murdered if raped. The study also addressed a number of questions thus far yielding opposing results in the literature, including: the effects of victimisation or personal knowledge of victims on women's fear of being raped, and whether women believe that they can to some extent control being raped.

Findings

Women's fear of being raped

Ten per cent of women indicated that they were not at all fearful, and 50 per cent only slightly fearful of being raped. However, one-quarter of the women indicated that they were quite to extremely fearful at this time in their lives of being raped. These latter results indicate that there are a number of Australian women who are very concerned about the chance that they may become victims of rape. Subjects indicated that on average they would worry once a month about becoming victims of rape. Subjects also believed that their level of fear of being raped was comparable to those of other women, indicating that the subjects perceived their levels of fear generally as fitting the norm. This result indicates that women generally believe that other women are also afraid of being raped, which perhaps makes this fear more the norm in our society. With the possible acceptance of the normality of women being afraid of men raping them, there may be less concern about the negative implications of this situation.

Results from the present study suggest that Australian women have similar fear levels to those of women in overseas studies (*see* Riger, Gordon & LeBailly 1978; Warr 1985). Demographic data indicated that, the younger women were, the more afraid they were of being raped.

The subjects generally also believed that there was a moderate likelihood of being killed when raped. It seems reasonable to suggest that a person who believes that death could be a likely consequence of being raped would experience increased fear of such an event.

Results indicated that subjects on average believed that nearly half of the population of men (48.4 per cent) would rape a woman if they could be sure of not being caught or punished. This estimate is higher than those actually provided by men (*see* Malamuth 1981). The result suggests that women would expect half of the male population to rape them if given the opportunity, and this belief would most probably increase women's beliefs about the likelihood of being raped and, therefore, their fear of being raped. This belief can be postulated to also alienate men and women to some extent, which was indicated by the findings of the Real Rape Law Coalition sexual assault phone-in (1991) where the most

common consequences of being raped was a lack of trust of men and poor relationships with men.

Women who had been raped were significantly more fearful of being raped after completing the questionnaire than before attempting it. This suggests that exposure to questions about rape may adversely affect women who had previously been raped.

On average, subjects knew 2.1 other women who had also been raped. Those women who personally knew rape victims were significantly more afraid of being raped themselves than those who did not know victims personally.

Psychological variables predicting fear of rape

To investigate women's fear of rape, three areas related to rape were chosen as constructs within which questions were asked. The three areas were age, location and type of offender. Subjects were asked for each of these areas how likely it would be to be raped at each of seven different age groups (for example, between twenty and twenty-four years of age), at each of six different places (for example, in a public place, at home), and by each of seven different attackers (for example, by a stranger or by a partner). Subjects were asked for each of these groupings how serious the consequences of being raped at each of these ages, in each of the locations and by each type of attacker, would be. A further check of the model of fear was to also ask subjects how difficult it would be for them to avoid being raped in each of the situations described.

Separate analyses for each age level, location and type of offender indicated that the strongest predictor of fear in all instances was the perceived likelihood of being raped. The saliency of likelihood in predicting fear of rape, ascertained by means of the psychological model, is similar to findings of other studies (*see* Warr 1985). This finding also corresponds to research conducted on fear of crime in general. Although a number of critics of FOR, and specifically FOC research to date, have questioned the importance of likelihood as a predictor of fear, results from the present study confirm the saliency of this factor.

Most subjects consistently indicated that being raped at any age, in any location, and by any type of offender would have extremely negative consequences. When asked to indicate the extent of damage of specific types of consequences provided in the questionnaire, subjects indicated that the most damaging consequence of being raped would be emotional; that is, experiencing anger, fear, helplessness, anxiety and depression. Psychological consequences such as becoming increasingly suspicious, developing phobias and experiencing nightmares were considered the next worst consequence. Unlike the results of the Real Rape Law Coalition sexual assault phone-in (1991), subjects indicated that, in relative terms, their relationships would be least affected.

Previous studies have produced conflicting results regarding women's belief in whether rape avoidance strategies are useful. The variability of subjects' estimations regarding their ability to avoid certain situations indicates that women do believe that they have to some extent a degree of control over being raped. The belief that one has some control over a situation is essential in combating fear, and any attempts to help women reduce their fear of being raped would need to increase women's belief and knowledge in how to increase their control over the situation.

Although the degree of intrusiveness, time consumption and restriction imposed by various methods to attempt avoiding rape varied greatly, they can be assumed to have one

element in common—women generally appear to spend varying amounts of time structuring their lives around protecting themselves from the fear of possible sexual attack by men. The influence of this fear is suggested by the fact that all subjects indicated taking at least some precautions against being raped. The results suggest that there are a large number of women in the society fearing attack from men at any time, and a number of them are adopting quite intrusive methods of resisting such attack.

Of interest is the finding that both women who have been raped and women who knew rape victims personally, used significantly less avoidance strategies than women who had not been raped, or did not know victims personally. It is possible that because these groups have already experienced being raped or knew others who had, being raped may seem less avoidable and strategies seem less effective than the group who have not had more direct experience of rape. This suggestion corresponds with the earlier research by Heath and Davidson (1988) that women exposed to information about the possibility of being raped at any time received the message of the inevitability of rape, and thus increased their feelings of helplessness and decreased their use of precautionary behaviours.

Combining these findings with the earlier discussed increase in fear after completing the questionnaire for women who had been raped, it is suggested that increased information about rape may generally lead to increases in women's anxiety and fear of being raped. Further research in this area would be valuable in terms of interventions, as increased education programs may in fact be causing greater distress for women.

Statistics and descriptive variables related to rape in an Australian sample

Rape or attempted rape reported in Queensland ranged from 137 in the 1983–84 period to 366 in the 1988–89 period (Australian Bureau of Statistics 1990). This report also stated that rape and attempted rape offences that have been reported to police increased by 27.1 per cent in Queensland since 1987–88. Due to a lack of actual incidence surveys, it is not known what percentage of actual rapes these statistics represent.

The current study asked a number of questions regarding the subjects' experiences of rape in an attempt to obtain more accurate incidence statistics. Subjects were asked whether they had been raped, and if so to indicate:

- the number of times they had been raped;
- their age at the time of the attack;
- the location of the attack, their relationship to the attacker;
- what injuries they had sustained;
- whether they had reported the incident, and
- if they did not report the incident, the reasons for not doing so.

Investigation of the issue of rape definition for the purposes of the study revealed a number of major difficulties. Most definitions of rape include the term 'consent'. There are, however, numerous legal difficulties and negative implications for the victim. A report by the Real Rape Law Coalition in Victoria (1991) criticised the inclusion of the concept in the definition

of rape, arguing that the use of 'consent' as the determining issue in the majority of rape cases is based on prevalent myths about sexual assault. If rape is defined by an absence of consent, the paper argues, then lawful intercourse should logically contain clear consent. This is rarely explicitly the case. The term 'consent' is highly problematical and is often used to discredit victim's accounts if they did not clearly refuse their consent, verbally or physically. Further support for the contention regarding consent is provided by Grabosky (1989) who suggests that, at times when there is no evidence which corroborates lack of consent, such as victims who acquiesce without struggle for fear of injury or their life, efforts are frequently made to discredit the witness/victim and thus put them on trial. The use of 'consent' in defining rape thus seems to both complicate a clear understanding of a rape situation and place a great deal of stress on the victims of rape, without clearly contributing to resolving the issue.

It has been suggested that the definition of rape should be broadened. However, doing so may well result in a highly subjective appraisal of any situation potentially perceived as rape, and would further complicate and possibly weaken legal procedures to bring to justice those individuals who rape others.

In consideration of the issues discussed, it is clear that the definition of rape is a complex issue. A useful definition of rape would need to include factors encompassing what is generally accepted by both society and victims as rape, without placing the onus on the victim to prove their innocence. It is suggested that a definition for use specifically in a questionnaire would need to be concise, to enable subjects to easily comprehend and refer to it; include the issues generally accepted as constituting rape; that is, the use of force or threat, and any means of penetration (unlike the present law in Queensland); and should not include the term 'consent'. Thus, for the purposes of the study, a definition fitting these criteria was designed:

> Rape is defined as vaginal, anal, and/or oral sexual contact involving force or threat of injury.

Using this definition of rape, nearly one-fifth (17.5 per cent) of women in the study reported that they had been raped according to a strict definition of rape which did not include sexual harassment or attempted rape. Only 5.5 per cent of the seventy-two women who experienced being raped reported this incident to the police. However, even though the present study has had a large success at eliciting actual data regarding rape incidence, it is suspected that the actual figures are even higher. One reason for this suspicion is that a number of women, either verbally or in writing, described being raped (often digitally), but did not themselves view the incident as rape.

Consideration of subjects' own definitions of rape (*see* Appendix A) also indicated a reluctance on the part of many subjects to view anything but penile penetration of the vagina as rape, although the definition provided did not stipulate means of penetration. It is, therefore, very likely that the number was depressed by non-agreement about definition and possible other factors found in other studies, such as denial of the experience of being raped (*see* Dukes & Mattley 1977).

Reasons for not reporting rape

Subjects who were raped, but who did not report the incident to police, provided a number of reasons for omitting to do so. The main reasons seem to fall into the categories of:

- shame and embarrassment;
- threats from the offender;
- protection of family, friends and intimate relationships from stigma;
- protection of self from stigma;
- feelings of responsibility for the incident;
- lack of awareness of what the implications were (usually with subjects who were very young at the time of attack);
- concern about not being believed;
- the lack of legal support (in the case of husband's being the perpetrator);
- pressure from others to not report;
- unwillingness to proceed with the legal process; and
- protection of the offender when in an intimate relationship.

Following are a number of specific comments made by subjects, asked why they did not report being raped, which speak for themselves.

> Fear of my life. Offenders were petty thieves, drug users/dealers well known to the police. No faith in the system and no awareness of any support available' (woman raped by a group of acquaintances).
>
> The two men concerned were my mother's lovers, and because my mother was present (inebriated) at the time of the rape, the matter was never reported. There was nothing anyone would do anyway and it would not have been worth any further emotional anguish and distress (woman, raped by two men, aged 14).
>
> It was my best friend's boyfriend and I could not stand the thought of hurting her, it all came out anyway so I should have reported it and the pain for me was much worse than she felt. I was also ashamed to think that I might have avoided it had I fought harder.
>
> I felt guilty that I had led him on.
>
> I didn't think anyone would believe me as I had avoided being beaten up by offering minimal resistance.

> At the time it was a misunderstanding. He didn't realise what had happened or what he was doing. We discussed it and now both realise each others feelings. It was an accident and won't happen again.
>
> At the time of his life, I knew he had many problems and he made an effort not to hurt me physically or verbally.

Relationship with attacker

One result from the present study, relatively disparate from previous findings, is that 90.8 per cent of the victims knew their attacker. These statistics regarding the acquaintance with the attacker are higher than those reported elsewhere; for example, according to figures from the US Department of Justice (1986), 55–60 per cent of women knew their attacker. However, this figure is considered unrepresentative of the actual incidence of being raped by someone known to the victim (Gordon & Riger 1989). One significant implication of the finding that most victims knew their attacker, is in helping to understand the remarkably small number of rapes which were reported to police. Acquaintance with the rapist was a major factor in not reporting rape. Consistent with this finding, three of the four rape victims who reported the offence in the present study, were attacked by strangers. The one woman who reported rape by an acquaintance was severely hurt during the attack. These conditions are similar to those found by Williams (1984) to predict likelihood of reporting. The high rate of acquaintance with their attackers may explain to some extent the remarkably low rate of reporting by victims in the present study.

Interestingly, subjects in the present study indicated that they believed strangers would be the most likely offenders. In terms of the findings of the present study and of most other studies, this belief is very inaccurate. It does suggest that the women in this study, like the rest of society, still believe that rape is something perpetrated by a stranger. The implications of this belief include the difficulty women have in reporting rape perpetrated by people they know and also in dealing with consequences such as feeling responsible and embarrassed which are often exacerbated by knowing the perpetrator.

A possible further consequence of not reporting rape is that perpetrators are not being charged and that many repeat offenders may be reinforced for their criminal behaviour by not being punished for their crimes. The majority of rapists and paedophiles have histories of sexual offences before they are incarcerated for the first time, and the lack of previous consequences for their behaviour is commonly used to justify sexual assault on a number of people. The lack of reporting appears, therefore, to have many negative repercussions for both the victim and the potential victims in society.

Summary

In conclusion, this paper has discussed areas of a study conducted with 412 women in Queensland in 1992. The psychological model used to investigate women's fear of rape proved valuable in increasing the understanding of this area. One-quarter of women were quite to extremely fearful of being raped. Subjects also believed that their fear of being raped was shared by other women, indicating that women believe that fear of rape is the norm in our society. Specific elements, including likelihood, consequences and avoidance of being raped, of FOR were discussed. The data also provided statistics regarding the

incidence of rape in Queensland, reasons for under-reporting of rape and subjects' views on what constitutes being raped.

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Appendix A

There seems to be considerable disagreement about what constitutes a 'real' rape (Sanders 1983). This argument is supported by the Real Rape Law Coalition report which suggests that it is frequently believed, by society generally, and reflected in rape victim's concerns, that 'real' rape fits into the 'stranger danger' mould (Real Rape Law Coalition 1991, p. 2). Rape perpetrated, particularly by an offender with whom a victim is in an intimate relationship, is difficult both for the victim to perceive as rape, and commonly for society to accept as such (Tetrault & Barnett 1987). Ellis (1989) suggests that the differences in estimates of actual rape statistics vary due to the differences used in criteria used to identify rape. Rape may thus be viewed as an act which varies along a continuum in terms of the amount of force used, risk of injury, and degree of non-consent involved (Malamuth 1986). Not only are there discrepancies in the legal and societal definitions of rape, but also by individuals who have been victimised (Scheppele & Bart 1983). Following is a detailed description of subjects' views on what constitutes a rape.

Consent

The most common addition to the given definition was to include the clause 'without consent' or 'against the will'. Many subjects thus indicated that stating that someone was forced to do something is not the same as not giving consent. Some specified that consent must be verbal consent. Saying 'NO' was often mentioned as a way that women indicate that they do not give their consent. However, some subjects suggested that any indication that you are not a willing partner in sexual activity was sufficient. Specific indications were not, however, suggested. Some subjects commented on situations when victims were unable to give consent; for example, when under the influence of alcohol or other substances. In such cases, sexual intimacy was also considered rape, even if the victim did not object.

Means of Penetration

A number of subjects did not appear to appreciate that the term 'penetration' in the definition provided included all means of penetration. A number of subjects specified the use of other objects apart from the penis; for example, fingers (digits) or dildos. One subject, who did not report herself as being raped, described being digitally penetrated as a child. As there was no obvious force used, she did not define it as rape, although she felt 'thoroughly violated'. Some subjects commented that only forced vaginal sex was considered by them to be rape. One subject phoned the author to discuss the definition of rape, relating an experience of digital penetration by a neighbour as a child. She did not feel that this was rape, and attached a note to her questionnaire stating that she had asked a number of friends who all felt that penetration by the penis was necessary for an attack to be rape.

Distinction Between Sexual Assault and Rape

Some subjects commented that they defined 'rape' similarly to the given definition, and 'sexual assault' as any other unwanted physical contact. Incidents involving alternative means of penetration or touching and rubbing against the will were considered to be 'sexual assault'. Some reports indicated that some subjects considered digital penetration of children to be 'molestation' rather than 'rape'. A number of subjects commented that they would also include 'incest' and 'child molestation' as rape although in these cases the child may appear to be a willing partner and force is not always necessary due to the child's lack of knowledge. Some subjects thus suggested that the definition of rape should be different for children and not necessarily include the concept of 'force'. One subject suggested that rape is only 'someone I do not know making me have sex with them'.

Broader Definitions

A number of subjects indicated that the given definition was limited in their view. Examples of more inclusive definitions were: 'any unwanted violation of your being, mental or physical', 'invading one's emotional, physical and personal space', and 'obscene comments, obscene phone calls'. Other types of sexual contact included in some subjects' definition of rape, included 'touching of genitals or breasts, and fondling or kissing'. One subject suggested that:

> Rape takes many forms including psychological. Males' remarks, verbal assault, sexual harassment, touches and physical sexual assault are all a form of rape. Rape also most commonly takes the form of sexual exploitation of children, women on dates and in relationships. Rape is sexual abuse in any form.

A particularly broad definition was:

> The definition of rape goes beyond physical penetration. If someone takes away my right to choose or empower my thoughts and body, then either physically or figuratively, I am being raped.

Subjects did not generally clarify or define terms such as 'sexual acts'.

Men as Victims

A few subjects acknowledged that men can be victims of rape, but this was unusual and, most commonly, victims of rape were referred to as specifically female. In the great majority of cases, definitions which did indicate gender, the offender was perceived to be male.

Types of Force

Frequently subjects suggested that 'force' did not necessarily mean only physical force, but that 'intimidation' was also a way of forcing someone into 'unwanted sex'. The concept of 'coercion' was also suggested; for example, the knowledge that the partner will become angry/abusive/withhold financial or emotional support if regular sex or sex on demand was not given, was considered forcing the victim to have sex. The concept of 'psychological force' was used by a number of subjects, in that they felt that men were in a position of power over women generally, and that the use of psychological force was enough without the use of physical force. A number of women commented that they believed that they had been raped by the use of psychological force or coercion, but did not report so.

SEXUAL ASSAULT AND HIV/AIDS: THE IMPLICATIONS

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UNTIL MORE RECENTLY, THE ISSUES SURROUNDING SEXUAL ASSAULT AND HIV/AIDS have received scant attention with minimal focus on discussion, research and implementation of protocol. Possible reasons for this omission include mythology and victimology, the androcentric bias, and sexual assault and gender.

Mythology and Victimology

Society tends to react to both survivors of sexual assault and people living with HIV with an 'out of sight, out of mind' attitude: they are seen as victims of events that are somehow outside the boundaries of the 'norm'. There is the myth which encourages the belief of 'innocent' versus 'guilty' victim, whereby the character status of the individual is seen as being the cause of the event. This labelling, for example, is evident by the stereotypical description of the rape survivor as being a young attractive woman hitchhiking alone, and the person with AIDS/HIV as being a down and out intravenous drug user.

The Androcentric Bias

The AIDS pandemic has usually been described in terms of being the 'gay (man's) disease', resulting in a failure to fully acknowledge the existence of women with HIV/AIDS. The scant research that exists dealing with women and HIV has usually focused on the sexual behaviours of HIV-positive sex workers, and pregnant HIV-affected women, with the study of the latter group primarily to investigate HIV transmission to the unborn rather than to examine the effects of the virus on the health of the pregnant woman (Rosser 1991).

Sexual Assault and Gender

The majority of known survivors of sexual assault in Australia are female. The notion that sexual assault is a women's issue precludes examination of this area within serious research; that is, having low priority in terms of subject matter and funding. If HIV/AIDS is seen to be classified as a predominantly 'gay disease', then it follows that sexual assault is not seen as being 'high risk' because of the heterosexual nature of sexual assault. AIDS prevention strategies have not addressed sexual assault because negotiation of safe sex cannot take place. The issue of HIV/AIDS will probably remain in the background as long as the problem of sexual assault continues to be viewed as an insignificant social concern.

Review of Existing Literature

The first comprehensive report concerning HIV testing and rape was compiled by Nikki Main in 1991. This report detailed her project which aimed at researching the issues and canvassing responses from service providers within the field. Her major findings were as follows:

- the exploration of published material indicated a notable gap in the coverage of rape and HIV transmission;
- service providers were noticing increasing anxiety expressed by survivors regarding HIV;
- there had been very little policy development of the issues to date; and
- the issues concerning the timing of HIV testing, baseline testing, use of prophylaxis, pre/post test counselling and privacy still required further clarification (Main 1991).

Other articles include a British paper detailing female survivors who had seroconverted following sexual assault (Clayden et al. 1991). The author suggests that the rate of HIV transmission could rise due to the increasing prevalence of HIV amongst heterosexuals, and the incidence of violent rapes. It is also suggested that samples of serum should be stored for testing at a later date if HIV testing is not immediately appropriate. Support for the recommendation that serum be stored for later testing has been generated by others (Forster & Estreich 1990).

The issue that anal rape can increase the risk of HIV transmission and that this aspect of rape is being increasingly reported amongst adults and children is also discussed in the literature (Lacey 1991). Further, an informal survey of a number of Sydney hospitals and sexual assault centres revealed an increase in anxiety regarding HIV, together with more frequent requests for HIV testing by survivors. The survey also found that a large proportion of counsellors interviewed preferred to discuss HIV during follow-up sessions which presented problems in relation to low follow-up rates (AIDS Networker 1990).

There have also been discussion papers relating to the possible usage of prophylaxis such as AZT, Hepatitis-B vaccine, and a spermicide containing Nonoxynol–9 (Boag et al. 1990; Williams 1990).

The Issues

In the context of service provision and policy implementation, several key issues requiring wider discussion and clarification arise. Although the following list of issues are by no means complete, they nevertheless constitute a solid core.

Baseline testing

The purpose of this particular test is to establish whether the survivor has previously been exposed to the HIV virus prior to the sexual assault. This test requires immediacy. However, due to the 'window period' factor, potential problems are inherent with this test, especially in determining the exact time at which seroconversion could have occurred. A baseline test would not be able to detect the antibodies to the virus if, for example, seroconversion could have occurred several days prior to the rape. Similar problems arise with the three-month follow-up test, since seroconversion could have occurred at the time of sexual assault or several days later. Obviously, these complexities will have implications in a court case, including a Crimes Compensation Claim.

The issue of testing also raises questions regarding the testing of perpetrators and others. Should policy be established requiring mandatory testing of perpetrators? In the case of sexual assault within the family, should other members of the family also be tested?

Baseline testing requires immediacy. Some service providers suggest that survivors are unable to make this important decision during the crisis stage following a sexual assault; others suggest that the freezing of serum would be far preferable, and would allow greater choice for the survivor. Still others argue that the added issue of HIV would be too traumatic for the survivor and that the risk of transmission in Australia is too minimal to warrant inclusion of testing within case management.

Pre/Post-test counselling

The survivor has the right to a full explanation as to what the test is, how it will be given, and the implications of the result. Some service providers suggest that survivors are unable to incorporate such information during the initial contact and, therefore, should be given such information during follow-up sessions when it is more likely to be retained. Others argue that the first contact may be the most optimal and the only time to discuss testing because of low follow-up rates. In any event, however, the survivor should have the right and opportunity to access of information, and the final decision whether to undergo testing or not must lie with the survivor.

Risk assessment

In giving a professional opinion as to whether an HIV test is warranted or not, service providers are faced with the dilemma of providing an 'at risk spectrum' that is as realistic as possible. Should testing be routinely carried out? How do service providers evaluate whether one survivor has been more at risk than another? To what extent should prior at risk behaviours be taken into consideration? To what extent should the incidence of HIV transmission be a guide to risk assessment, given that the statistics are low, but far from comprehensive?

The risk of transmission should be seen as being greater if the following co-factors are considered: presence of other STDs; the level of violence involved and damage to mucous membranes; the number of perpetrators involved, the number of assaults that took place; and anal rape.

Confidentiality

In what ways can survivors be assured that confidentiality will be maintained and what measures can agencies implement to ensure this?; for example, the use of a number code system for serum samples. Who will have access to positive test results now that a positive HIV status is mandatorily notifiable?

Use of prophylaxis

The use of the anti-viral drug AZT (which acts by slowing down the replication of the HIV virus, but not destroying it) is now widely used in the treatment of HIV infection. Some studies suggest that the use of AZT may inhibit initial replication of HIV if administered immediately following transmission. To date, however, there is no solid data to confirm this. Most hospitals in Australia offer AZT treatment for health care providers following needle stick injuries. It has been argued that sexual assault survivors should also be given the same choice and have access to AZT as a prophylaxis.

However, several concerns regarding the use of AZT have arisen, such as how service providers assess whether the risk of HIV transmission is great enough to warrant treatment with AZT. In addition, since the prophylactic efficacy of AZT is still unknown, there remains considerable debate regarding its potential usage. AZT can potentially produce side-effects of which less is known about in women. Further, the administration of AZT requires close medical monitoring; maintenance of contact between service provider and survivor could become problematic especially when follow-up rates tend to be low.

Conclusion

The foregoing discussion has attempted to summarise some of the major issues regarding sexual assault and HIV/AIDS, a subject that is still very much kept in the background.

Investigation of the available literature has indicated a gap in the level of research and knowledge of this area. The development of protocols has only recently commenced; the majority of sexual assault agencies in Australia do not, as yet, possess protocols.

The issues are numerous and require further clarification. Service providers are concerned as to the type of information they need to convey to survivors, in addition to the

most appropriate time to do so. The issues of testing, compensation and use of prophylaxis are indeed complex.

The guiding principle around these issues however, should be the belief that survivors have the right of access to appropriate and correct information so that they can make the choices with regard to available medical, counselling and legal options.

The discussion of HIV/AIDS is no longer bound by the concept of 'epidemological grouping'; rather, it has become far more diverse, and the inclusion of sexual assault and HIV/AIDS should be acknowledged as such.

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SEXUAL ASSAULT: ISSUES FOR ABORIGINAL WOMEN

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THERE ARE A NUMBER OF FACTORS THAT NEED TO BE CONSIDERED AND further explored when trying to develop appropriate strategies for agencies attempting to respond to the different needs of Aboriginal women. This paper briefly deals with some of those issues but by no means all of them.

An Historical Legacy of Violence

It is important to recognise the way in which Aboriginal women were treated when white man first arrived in their country. All Aboriginal people were treated violently with no regard for individuality, culture or spirit. Before white man's arrival, all Aboriginal people were treated equally; they had different roles but all had equal importance and all contributed in significant ways to day to day needs and the development of society. The following quotes from *Racist Violence: Report of National Inquiry into Racist Violence in Australia* give a brief indication of the violence used against Aboriginal people.

> The process of colonisation was characterised by small scale but systematic physical violence as a 'bloody frontier was moved across Australia' for more than 160 years. It is estimated that during that time approximately 20,000 Aborigines and 2,000 Europeans and their allies were killed in frontier conflict (Australia. National Inquiry into Racist Violence in Australia 1991, p. 38).

> According to Aboriginal oral history, those who caused trouble or questioned the authority of Europeans could expect little protection from the law or law enforcers (Australia. National Inquiry into Racist Violence in Australia 1991, p. 42).

Whilst all Aboriginal people experienced extremely high levels of physical and spiritual violence by the new non-Aboriginal population, Aboriginal women also experienced high levels of sexual abuse by this new population.

> On many stations there was no attempt to hide the extent of sexual relations between white station workers and black women. A pastoralist from the edge of the Nullabor Plains told a South Australia Royal Commission in 1899 that he had known stations 'where every hand on the place had a gin, even down to boys of 15 years of age'. Similar comments were made to a Western Australian Royal Commission six years later. On Vitriol River stations, a witness observed that on many stations 'there are no white women at all. On these the Aboriginal women are usually at the mercy of anybody, from the proprietor or Manager, to the stockmen, cook, rouseabout and jacked (Reynolds 1990, p. 207).
>
> On pastoral stations Aboriginal women were preyed on by any and every white man whose whim it was to have a piece of 'black velvet' wherever and whenever they pleased (Reynolds 1990, p. 75).

Judy Atkinson writes in her strategy paper on Aboriginal and Torres Strait Islander women and violence:

> White males abused such cultural practices and at the frontier, pastoralists and the facilitators of frontier expansion, mounted police, justifies their behaviour by such writing as: 'ideas of existence of chastity among their women is preposterous . . . no less preposterous is the idea of black women being outraged' (Northern Territory Pastoralist Alfred Giles). His close friend Mounted Constable William Willshire believed that God meant Aboriginal women to be used by white men, 'as He had placed them wherever the pioneers go' (Willshire 1896, p. 8). Willshire boasted often in his writing of his 'gin busts' which he appeared to see as part of his line of duty . . . He argued for the use of Aboriginal women by white bushmen but loathed the resulting offspring of these unions.

The above quotes give a very quick outline of the violence which was used against Aboriginal people. The issue of violence against Aboriginal women, particularly sexual assault during this time, is one which needs much greater research and cannot be fully described in this paper.

Issues of Concern

Sexual assault is a problem in most communities: black and white. Whilst all women experience many of the same problems in reporting and accessing services, Aboriginal women have identified a large number of issues and barriers which specifically relate to them in the area of sexual assault.

The following points and quotes were made by a number of Aboriginal women regarding sexual assault and their own issues of concern. The remarks do not apply to every town and community but have been identified by individual people as problems in their area. Generally, Aboriginal women are not reporting sexual assaults, and a number of factors were seen to contribute to this including:

Police

- The police are slow to respond to calls of sexual assault;
- police officers' own attitudes determine how quickly they come out and how much importance they place on calls;
- police stations may not be open when needed; and
- most of the police in country towns are male—Aboriginal women need to be able to talk to female police officers.

On many occasions, Aboriginal women have accused the police of sexual assaults. For instance, in the late-1980s an Aboriginal woman accused a number of off-duty police officers of raping her in a police cell. The case was eventually thrown out of court because of 'lack of evidence'. The people who were present were unwilling to give evidence against the police. This incident has stopped other Aboriginal women and men in the community from using the police.

Only recently, Aboriginal women in another town with a high Aboriginal and police population, have complained about sexual assault and threatened sexual assault by the police in the police cells. Comments from Aboriginal women in this town include:

- police do not have a good perception of Aboriginal women;
- police often have their own sexist and racist views which affect the way they react to Aboriginal women;
- the police do not put much effort into investigating rapes of Aboriginal women. They spend more time digging up old warrants; and
- the police need to make themselves more accessible.

The women spoken to made the following comments:

> The police would rather dig up old warrants instead of investigating rapes. These are the brothers of the girls who are being raped. Their experience of a cop is just that [being raped]. Historically, police were raping young girls in the back of paddy wagons. So we are talking about mothers of the girls who are now being raped. What sort of advice does a mother give her daughter when she knows herself or sisters or cousins were raped by police? What chance do you have against the police?
>
> Why would you go to them [the police] for help? .. . they are part of the problem.

Courts

- Historically, the courts have been used against Aboriginal people;
- a large number of Aboriginal people have had experience with the courts as defendants, if not themselves, then a member of their family;
- there is little support in the court system for Aboriginal women;
- the court has no compassion—it does not take human issues into consideration.
- the courts have a low opinion of Aboriginal women and see them as fine defaulters, nuisances, as women who report assaults and then do not follow through and, therefore, waste the court's time.
- the court system is foreign:

> It is foreign to non-Aboriginal people so it is another planet to Aboriginal women. The court is not a place where Aboriginal people get justice.

- rape is often mistakenly considered to be part of Aboriginal culture and this is not the case. When talking about this, one Aboriginal woman said:

> It is like saying that only one part of the Aboriginal community is important—the men. They [the court] just minimise everything that a woman is involved with—even the injuries she sustained.

- it is important that there is a woman who Aboriginal women can report to and, if they decide to go to court, that there are women who can support them throughout;
- the women have a lack of confidence in police and courts to provide protection or respond appropriately.

Counselling/Services

- Every woman needs good counselling.
- I hate to think of the number of Aboriginal women who have not said anything because they know of someone else in the community who did say something about what happened to them and nothing was done.
- If there is a bad experience with the hospital (with an individual or with the hospital's attitude towards Aboriginal people) and the sexual assault service is attached to the hospital, women will not wish to use it.
- If women only feel comfortable talking to another Aboriginal woman, then they should have access to one. There are questions that need to be asked the right way, and there are Aboriginal women with life skills who can be given on the job training. We cannot

wait for people to come out of University in three or four years time to provide a counselling service.

- A lot of counsellors and services do not know anything about Aboriginal people. Counsellors need to be culturally aware and sexual assault services need to employ Aboriginal counsellors. Further, the doctors doing the forensic examinations are mostly male and are non-Aboriginal—especially in a small country town.

White organisations and white people know there is a problem but they will not do anything because they see it as a black problem or they do not want to step on Aboriginal toes.

In many towns there is a lack of local and accessible services able to provide support, information, counselling, and education. There is often a failure by many visiting services to adequately meet the needs of the Aboriginal community. For instance, they may not hold their services in locations at which Aboriginal women feel comfortable. There is a lack of resources and people (especially from visiting services) which the community feel that they can trust and who will visit the community on a continuing basis.

Community Response

Aboriginal women and men in New South Wales are developing their own strategies in response to sexual assault. Few receive government funding. The Department of Health has allocated money under the National Women's Health Program to conduct statewide consultations and to run a number of pilot programs. A small number of sexual assault workers and educators are being employed through community organisations; for example, one Aboriginal organisation has received Commonwealth funding to employ a sexual assault worker.

New South Wales Aboriginal Women's Conference, Dubbo 1990

In 1990, New South Wales had its first Aboriginal women's conference, organised by the New South Wales Women's Aboriginal Corporation. Over 300 Aboriginal women from across the state attended the conference and many issues were discussed—including sexual assault. The following recommendations were made by the women at the Conference:

> That the Attorney General establish a working party to review the effectiveness of the Children's Court and the effectiveness of the criminal law system in relation to the needs of Aboriginal women and children who are victims of sexual assault. Aboriginal women have stated their feelings of alienation with the legal system. This system must be examined to determine how best it can include the needs of Aboriginal women and children. The terms of reference for the working party should include:

- the number of cases of sexual assault involving Aboriginal women and children which are reported;
- the reasons why such a low number of adult and child sexual assault cases are being reported;
- how court rules and procedures affect Aboriginal women and children as witnesses;
- an examination of the adequacy of Section 409(b) of the *Crimes Act* in relation to Aboriginal women;
- the development of strategies which would make the Children's Court and the criminal law system more relevant to and effective for Aboriginal women and children;
- consideration of support systems for Aboriginal child sexual assault cases (Recommendation 6.1);
- available and accessible information from the Department of Health on the dangers and issues of adult and child sexual assault to Aboriginal women in all communities (Recommendation 6.3) (New South Wales Women's Coordination Unit 1991).

Since the conference, the NSW Attorney-General has agreed to address Recommendation 6.1. A working party is to be established which will examine the issues for Aboriginal women reporting sexual assault and develop appropriate and effective strategies.

Women Out West

The Women Out West (WOW) project has also been working in the area of sexual assault. WOW involves the western part of New South Wales and has occurred over the last four years.

The project works on the assumption that there are parts of the state which will never be properly resourced and areas where lack of appropriate information inhibits women's ability to make informed decisions about their lives. WOW began after a request was made by Aboriginal women at Wilcannia who felt that, given enough information and knowledge, they would be able to act as resource people for the rest of their community.

WOW has participation from Aboriginal and non-Aboriginal agencies who visit towns to talk with and train Aboriginal women in areas which the women feel are important. The aims of WOW are:

- to create awareness in the Aboriginal women's community of support services in areas of women's health, domestic violence, sexual assault, child sexual assault and other issues of violence against women;
- to increase Aboriginal women's awareness of their legal rights in relation to physical and sexual violence; and

- to increase Aboriginal women's access to support services in the areas of women's health, domestic violence, sexual assault and other issues of violence against women.

The WOW project had a number of objectives relating to sexual assault which included:

- creating awareness of issues of violence against Aboriginal women;
- creating a supportive environment for women to discuss issues of violence;
- providing information in relation to sexual assault;
- increasing police awareness of their role to protect Aboriginal women;
- informing Aboriginal community members of the police role in issues of sexual assault;
- identifying resource and support community members who will provide information and assistance to Aboriginal women on issues of sexual assault;
- facilitating the development of strategies with community members to address violence against women; and
- increasing Aboriginal women's access to services and resources in issues of violence.

These objectives have been met in a number of ways:

- formal and informal discussion relating to issues of sexual assault;
- holding workshops and discussions in environments where women felt comfortable;
- providing resources and support networks;
- direct provision of advice and counselling to Aboriginal women;
- providing a supportive and confidential environment;
- providing continual contact after the project and advice where requested; and
- visiting the community a number of times to provide some form of continuity and subsequently develop trust with the community women.

The Aboriginal women have made a number of their own initiatives to deal with the issue of violence against women. They have started Nunga Nights where the women can come together in a social environment and discuss issues of concern to them and how to deal with these issues. The women have also had meetings with the local police about sexual assault and domestic violence. They organise workshops for the community and give support and encouragement wherever needed.

Mudgin-Gal Aboriginal Corporation

Mudgin-Gal is an organisation which is addressing issues of concern to Aboriginal women. It is situated in Redfern and offers an accessible service to all Aboriginal women in the Redfern and inner-metropolitan areas.

Mudgin-Gal has only been in operation for a few months but already has a large number of people using its services. It offers court support and information for women facing domestic violence; crisis counselling and support; workshops and classes on issues important to women, as well as offering a support network. The service offers information and referral on a number of areas such as domestic violence, family conflict, housing, emergency accommodation, health, sexuality, legal rights, drug and alcohol awareness, social security and sexual assault.

Mudgin-Gal are currently running a Girls Group. The Girls Group is a weekly two-hour group for young offenders who have been victims of sexual assault. The aim of the Girls Group is to get Aboriginal girls talking about what has happened to them and to talk about the way they feel. This takes place in an environment which is non-threatening and allows the girls to talk with other Aboriginal women.

Willa-Goonji: Aboriginal Corporation Women's Crisis Centre (proposed service)

Cheryl Blair, an Aboriginal woman active in sexual assault education and counselling, is currently working with a number of Aboriginal women on obtaining funding for Willa-Goonji. If funded, Willa-Goonji will be a 24–hour crisis centre which will cater to the needs of Aboriginal women and children who are victims of sexual assault, domestic violence, child abuse and incest. The service will be provided by Aboriginal women. Willa-Goonji aims to:

- provide culturally appropriate and accessible counselling;
- train Aboriginal women in isolated, rural and urban areas to enable them to cater for their own communities; and
- counsel male victims by offering telephone counselling.

Like Mudgin-Gal, Willa-Goonji will provide a service by Aboriginal women to Aboriginal women. It will provide a place where women are welcomed and are not pre-judged. Willa-Goonji has proposed a number of strategies, including providing:

- a 24–hour crisis centre with direct access to Aboriginal counsellors;
- a telephone counselling service for urban, rural and isolated Aboriginal women and men;
- information and counselling on child sexual assault;
- counselling and support for relatives and friends;
- referral information;
- education and workshops to communities and agencies; and
- help, information and support.

The above examples do not adequately address all that is happening in New South Wales. There are a number of Aboriginal people, especially Aboriginal women, who are active in the area of sexual assault in education, training, policy development and in trying to make services and information more accessible and effective.

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CROSSING THE LAST FRONTIER: PROBLEMS FACING ABORIGINAL WOMEN VICTIMS OF RAPE IN CENTRAL AUSTRALIA

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THE SUBJECT OF INTRA-RACIAL RAPE IS STILL PRONE TO ACCUSATIONS OF interference in Aboriginal 'business' and white feminists playing out their politics on Aboriginal territory (*see* Bell & Ditton 1991, pp. 385–412; Huggins et al. 1991, pp. 506–7). Unfortunately, the debate over the publication of an article on intra-racial rape by anthropologist Diane Bell and her friend Topsy Nelson, an Aboriginal woman from Tennant Creek (Northern Territory), was reduced to criticisms of their right to speak out about sexual assault within the Aboriginal community. The initial challenge came from Aboriginal women living in the eastern and southern states who were joined by white feminists who chose to organise panels at conferences to debate the issue of whether Diane Bell as a white academic and anthropologist could speak about such matters and either denied Topsy Nelson's voice or her right to seek representation in that particular style and forum.

What none of the critics realised is that, prior to the publication of that article, Topsy had assisted in bringing a criminal injuries compensation claim to court for a young Warlpiri woman who had been sexually assaulted. Topsy had given evidence before a Magistrate's Court. It was her 'business' to talk about rape.

Neither authors were ever invited to respond to the challenge nor enter the dialogue that their article generated; and out of all the debate that has raged, no-one responded to or took up the substantive issues which Bell and Nelson's article was concerned with; that is, the extent of intra-racial rape, the silence that surrounds it and the fact that it is not an issue of customary law but an issue of violent assault against Aboriginal women without any traditional basis. The work of Aboriginal researcher Judy Atkinson (1990) on violence in Northern Queensland and Audrey Bolger's (1991) study of violence in the Northern Territory lend support to the article by Bell and Nelson (1989).

The authors of this paper have the full support of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council, the Aboriginal woman Director of the Central Australian Aboriginal Legal Aid Service (CAALAS), and the views expressed in this paper are endorsed by all Aboriginal staff of that service. The President of Tangentyere's Four Corners Council, Wenten Rubuntja, has also given support to this paper.

The NPY Women's Council, whose members come from communities across the north-west of South Australia, the very southern communities of the Northern Territory and the Central Reserve communities of Western Australia published a report into child protection in 1991. This report touched on child sexual assault and violence against women and the research data contained many references to sexual assaults. Valerie Foster, a Ngaanyatjarra woman and member of the NPY Women's Council, responded to our paper by saying that it was really important and 'about time' that proper interpretations of Aboriginal social customs and law were made.

We Still Have That Law in our Hearts

When traditional women are asked about rape and about the incidence of incestuous sexual assaults, their responses are emphatic that it is not Aboriginal way, that it is not in accordance with Aboriginal traditions or customary law. Aboriginal women's way of explaining this is to describe the forms of punishment for such assaults and how the punishment would be administered. Pitjantjatjara women interviewed on this matter gave an example of how the uninvited attentions or harassment of a man would be dealt with.

> A woman was out gathering food and from behind a man stalked her and then grabbed hold of her. The woman was able to shake free of the man and ran back to her family to whom she reported the attack. The woman's brother or mother's brother then went after the man and speared him in the thigh (Nganinytja, translator L. Rive, Field Notes, Lloyd, J., 12 October 1992).

They said that a man could be put to death for rape or speared in the thigh, and if a man continued to sexually harass a woman he would certainly be put to death. Although women made distinctions on the nature of the assaults and the accompanying forms of punishment, the underlying issue remained that the assaults were serious and totally unacceptable.

Aboriginal women and men who have been interviewed on this issue are very clear on what constitutes correct social and sexual relationships and what relationships fall outside the strictures of the kinship system and customary law. When Aboriginal women and men talk about these issues they refer to ideal models of social behaviour; for example, when Pitjantjatjara women talk about fights between spouses, they say that the families of both spouses would ensure that the fight was controlled and, in doing so, would protect both the husband and wife. Families—in particular the woman's brother, mother's brother and father's sister—would speak out on behalf of a woman and protect her interests. People then understood and respected the boundaries of customary law. The women acknowledge that there are problems in adhering to these laws and maintaining social harmony but they say 'we still have that law (traditional) in our hearts'.

There has been wider acknowledgment that, outside the European judicial system, Aboriginal customary law not only exists but is a meaningful reference for many Aboriginal people. In the Northern Territory in particular, the Magistrates and Supreme Courts have encouraged and taken into account Aboriginal customary law and anthropological evidence in sentencing. In the Northern Territory, many of the community and statutory organisations which represent Aboriginal interests have been able to draw on applied anthropology to fulfil their particularly unique socio-cultural research designs.

Sexual Assault, Alcohol and Traditional Law

A large proportion of offences of violence in the Northern Territory are against women. Bolger reports that they were grossly over-represented in the number of offences of murder, attempted murder and sexual assaults committed against them in 1987 and 1988 (Bolger 1991, p. 11), and there is nothing to suggest that these figures would differ significantly for 1992. Given that a number of studies (for example, Scutt 1983) have noted that women are often reluctant to report incidents to police, and that it may be only 10 per cent of those cases reported which result in the arrest of a male (Scutt 1983, p. 228), Bolger estimates that the equivalent to about one-third of the Aboriginal female population in the Northern Territory is being gravely assaulted (including sexually assaulted) in a year (Bolger 1991, p. 12).

A paper about violence and Aboriginal women in Central Australia would not be complete without some reference to the abuse of alcohol, which is often perceived to be the cause of serious social problems for Aboriginal people—whether they reside in town, town camps, bush communities or outstations. It is a fact of life that alcohol is implicated in the commission of criminal offences by CAALAS clients in all but a negligible number of offences. It is also true that more Aboriginal women and girls are drinking, and this clearly makes them extremely vulnerable to any violence which may be committed on them.

Although it is recognised that sexual violence and alcohol often go hand in hand, it is becoming less acceptable to justify such violence on the grounds that the offender was drunk. In Central Australia, Aboriginal people have established programs to deal specifically with alcohol addiction. These programs have drawn inspiration and expertise from Canadian

Indian experiences. Central Australian Aboriginal organisations have also spent thousands of dollars in appealing takeaway liquor licenses and restricting liquor sales to Aboriginal people from roadhouses. This shift in attitude has also been reflected in the attitude of the courts; for example, in 1990 in an aggravated assault case reported in the *Aboriginal Law Bulletin*, Justice Kearney of the Supreme Court of the Northern Territory commented on the issue of Aboriginal men committing acts of violence against Aboriginal women in his sentencing. Kearney J. stated that:

> No effective steps have been taken by the respective governments of the day to remedy the social disaster of excessive drinking. To my mind, Aboriginal women have a right as all other women do, to be protected by the law; and in practical terms and in the case of this court, that means in practice I think ... sentences for Aboriginal men who wreak unprovoked violence on Aboriginal women while under the influence of drink (*R. v Hagan et al., Aboriginal Law Bulletin*, vol. 2, no. 46, October 1990, p. 18).

Until recently, Aboriginal women have generally made indirect references to sexual abuse in the context of alcohol-induced violence; for example, when the Australian Law Reform Commission held consultative meetings in Central Australia in 1982, Aboriginal women living in town camps in Alice Springs talked about alcohol and the family and social disruptions alcohol created. At Hermannsburg and Yuendumu, women also made indirect references to problems of sexual assault. At Yuendumu's west camp, women identified three sources of trouble which are of continuing concern in 1992:

- films which give the young people ideas contrary to customary laws and traditional ways;
- alcohol; and
- the YMCA, which allowed male and female youth to mix outside the bounds of the prescribed kinship categories (Australian Law Reform Commission 1983, p. 15).

Pornographic films and videos are frequently procured and shown on Aboriginal communities. Such films endorse violent and sexually exploitative acts against women as normal.

At Hermannsburg, women complained that Aboriginal Legal Aid often twisted Aboriginal law to the advantage of the defendant and that the evidence put forth by the defence is not always accurate. White lawyers, particularly male lawyers, have accepted Aboriginal men's explanation that traditional law sanctions their violent assaults against women in a whole variety of circumstances. Both Atkinson (1990, pp. 6–7) and Bolger (1991, p. 50) have criticised the justification put forth by both Aboriginal and non-Aboriginal men that the violence against Aboriginal women was embedded in customary law. While it is easy to criticise Aboriginal Legal Aid Services, they are not entirely to blame and responsibility needs to also lie with the courts, the Crown and Police prosecution, and the magistrates and judges who preside over the courts.

There are a number of serious problems which presently face Aboriginal women in Central Australia who have been raped. Some of these problems are related to the

administration and procedure of the criminal justice system itself; other problems are to do with crimes compensation.

Problems Encountered in the Courts

Closed courts

Women who have been raped face many difficulties in giving evidence in the courtroom. This is often compounded for Aboriginal women who may be shy of white people, easily intimidated by authority figures, and whose cultural background is such that sexual matters are not referred to in mixed company let alone in the presence of court personnel.

Section 5 of the *Sexual Offences (Evidence & Procedure) Act 1983* (NT) provides that a magistrate may order that certain persons (for example, members of the public, lawyers not involved in the case) be excluded from the court in committal proceedings. The legislation at present does not apply to proceedings in the Supreme Court; recently at a rape trial in Alice Springs, an Aboriginal woman had to give her evidence and undergo cross-examination in the presence of at least twenty 15-year-old teenage male and female students, as well as the jury, judge, lawyers and the court personnel. Additionally, at the end of one adjournment, the woman concerned was told to resume her seat in the witness box in preparation for the judge's return to the courtroom. The judge did not return for some time, and the woman was left sitting in the witness box while lawyers and the group of school students were seated in readiness for the trial to re-commence.

In a Discussion Paper on the law relating to sexual assault recently produced by the Department of Law, on behalf of the Attorney-General for the Northern Territory, it has been proposed that the law be amended to provide that whenever a complainant in a sexual offence is required to give evidence, in either the magistrates court or the Supreme Court, the court will have the power to order that the court be closed (Northern Territory. Department of Law 1992, p. 129). This proposal is endorsed. Such a procedure is a recognition by the system of the trauma involved for all women who must give evidence in sexual assault cases, and it also provides them with some dignity and privacy in the courtroom.

Support persons

Section 5 of the *Sexual Offences (Evidence & Procedure) Act* provides that a magistrate can close a court in a sexual assault case when a complainant gives evidence. There are a number of exceptions (as referred to previously); one of these concerns the parents or guardians of a complainant who is under seventeen years of age. There is no such provision if the complainant is an adult to enable her to be accompanied into court by a support person of her choice.

In early 1992 in Alice Springs, the committal proceedings in a rape case were about to begin. Both the victim and the man were Aboriginal, they were related, and English was their second language. The victim indicated to the (male) prosecutor an unwillingness to give evidence. A woman CAALAS lawyer was requested by the prosecutor to speak to the woman with a view to ascertaining the reasons for her decision. It emerged that she simply wanted her sister to sit with her in court while she was giving evidence. Both the prosecutor and the female police officer in charge of the case were immediately cooperative. The sister was located and an application was made by the prosecutor for leave from the magistrate for the sister to be with the victim in court while her evidence was given. These instances are exceptions to the rule (*see* Case 1 in the second half of this paper).

It is proposed by the Discussion Paper on sexual offences that the law be amended so as to provide that in either the Magistrates Court or the Supreme Court, a support person of the victim's choice should be exempt from the order to exclude witnesses from the courtroom when a victim gives evidence, and should be allowed to sit in close proximity to the victim (Northern Territory. Department of Law 1992, p. 129).

This proposal is also endorsed. Not only is a courtroom environment hostile and strange for a rape victim in criminal proceedings, there is an overwhelming preponderance of white people (including males) who are formally dressed or gowned and who often have difficulty understanding Northern Territory Aboriginal peoples' English. A support person's presence is reassuring and engenders confidence in the victim when giving evidence.

If the law in the Northern Territory is reformed as proposed with regards to closed courts and support persons, then it becomes formalised. Insensitive and/or disinterested prosecutors may then be prompted to use the legislation for the benefit of rape victims.

So far as other Australian jurisdictions are concerned New South Wales, Victoria and South Australia appear to have no legislative provisions regarding closed courts and support persons. It is to be noted, however, that lawyers with Aboriginal Legal Services in South Australia have known courts sitting in the Pitjantjatjara lands in the north-west of that state to allow a support person to sit with a rape victim while her evidence is being given.

In the Australian Capital Territory, the court has a discretion both to close a court and to enable a support person to be present (section 76A, *Evidence (Laws and Instruments) Act 1989*) but in practice the discretion is rarely exercised.

The Queensland approach provides for both arrangements where 'special witnesses' are required to give evidence (section 21, *Evidence Act 1977* (Qld). A special witness is defined as:

- a child under twelve years of age;
- a person who would be disadvantaged as a witness as a result of cultural differences or intellectual disability;
- a person who would suffer severe emotional trauma if required to give evidence; and
- a person who would be so intimidated so as to be disadvantaged as a witness.

The court may order, among other things, that the court be closed while the special witness gives evidence and that a support person remain in court with the special witness. These procedures obviously apply to adult women.

In Western Australia the Acts Amendment (Evidence of Children and Others) Bill 1991 enables a 'special witness' to have a support person in court. The definition of special witness is similar to South Australia's.

References to Aboriginal witnesses

In Central Australia most judges, magistrates and prosecutors refer to an adult Aboriginal female witness by her first name in court proceedings. Apart from the fact that such a reference is racist and paternalistic, it is demeaning for the woman who recognises, after hearing other witnesses referred to as Mr Smith or Mrs Jones, that she is regarded as less worthy. This affects her demeanour, her confidence and her ability to give evidence.

Unfamiliarity with Aboriginal ways

In 1992 in a rape trial in Alice Springs, a young adult female eyewitness was asked by the prosecutor about the nature of her relationship to a previous male witness who was of the same age as her. She replied 'grandson', and there were smiling grimaces and expressions of disbelief by the prosecutors, judge and court personnel, none of whom had even a basic understanding of the kinship system and 'skin' or subsections groupings. She was asked the question again and she gave the same answer. Apart from the inescapable conclusion that the prosecutor had not spent sufficient time with the witness prior to the trial, the experience was at best confusing and at worst humiliating for her. There are cross-cultural courses offered in Alice Springs by the Institute for Aboriginal Development. Every effort should be made by those involved in the court process which affects Aboriginal women victims to familiarise themselves with Aboriginal customs, culture and the problems they face.

Criminal Injuries Compensation for Aboriginal Rape Victims

In cases involving assault on Aboriginal women by Aboriginal men, the prosecution does not call competent evidence regarding the rights and responsibilities of Aboriginal men and their relationships with Aboriginal women or evidence which gives a proper interpretation of customary law. The prosecution's inaction makes them complicit in distorting the notions of Aboriginal culture and reinforces the commonly-held belief that sexual assault within the Aboriginal community is not a serious offence (Bell 1991, p. 403). The magistrates and judges also contribute to these inaccurate misconceptions in not demanding the prosecution

presents alternative evidence. There are, of course, exceptions. Diane Bell has detailed and cited a couple of Northern Territory Supreme court cases concerning Aboriginal women who had been raped and assaulted (1991, pp. 402–6).

In one case, the Judge was very sceptical of the arguments and pronouncements of tradition and requested that evidence be given from an anthropologist whose credentials included:

> knowledge of the local community, its politics, the dynamics, culture and customs; and a real understanding of kinship and the obligations that go with kin relations (Bell 1991, p. 405).

This reasonable request was not answered and as a consequence the victim's case was severely neglected.

In the aggravated assault case *R. v Hagan* cited earlier Justice Kearney (1990, p. 18) in his sentencing remarks, did not accept the submissions by the defence counsel that the sentence of both men accused should be totally suspended. Justice Kearney also dismissed the evidence of the father of one of the accused who asserted that it was his son's 'right' according to Aboriginal law to have sex with the 14-year-old victim. Kearney J. went on to say that:

> Aboriginal women have a right as all other women do, to be protected by the law . . . Rape, or attempted rape, in circumstances such as this case where there are no elements of tradition involved, are crimes of violence in their essence (*R. v Hagan et al.*, *Aboriginal Law Bulletin*, vol. 2, no. 46, October 1990, p. 18).

There have been many adverse comments over the years about the ability and availability of Aboriginal Legal Services to respond to the needs of Aboriginal women (Bell & Ditton 1980, p. 17; Bolger 1991, pp. 88–90) when the focus of such services is primarily to represent men charged with (among other offences) crimes against women. Until 1990, this was generally true of CAALAS, but this has now changed to the extent that Aboriginal women who have been sexually assaulted are actively sought out by a woman lawyer at CAALAS to advise them of their rights to criminal injuries compensation.

Broadly speaking, criminal injuries compensation is a formal acknowledgment by the community that a crime occasioning injury and suffering has been committed on a person. It is also an expression of support and concern by the community and government authorities (Bartley 1987, p. 44).

When advised about the existence of criminal injuries compensation legislation, most adult Aboriginal women rape victims in CAALAS's operational area want to make an application for compensation.

There are two main problems associated with pursuing such applications. The first is that, if the rape occurred outside the Northern Territory, then the compensation legislation for that jurisdiction must be used, and unfortunately it differs radically from one Australian jurisdiction to another. The second problem is there is often no place for the conventional medical and psychological reports which are used to support a woman's claim for compensation and alternatives, such as anthropological reports, must be utilised. The first problem may be illustrated by very brief summary of the relevant legislation available in Queensland, New South Wales, South Australia and the Northern Territory.

Queensland

Compensation for personal injuries suffered by rape victims is found in section 663 of the Queensland Criminal Code. Such an application is heard in the District Court before a Judge, and a compensation order can only be made against a 'convicted' person. If the offender is unknown or acquitted of the crime, then no application can be made at all. The maximum amount for a victim's mental injuries is $20,000, and for physical injuries the same as the maximum amount payable to an injured worker under worker's compensation. When a compensation order is successfully obtained, the victim may not receive anything if the offender has no assets. There is provision in the Criminal Code for compensation claims in some circumstances to be recovered from the state, but historically, the state is less than generous.

New South Wales

Compensation orders are primarily made in New South Wales under the *Victim's Compensation Act 1987* by the Victim's Compensation Tribunal, which consists of a magistrate sitting alone. A victim may be awarded compensation if the offender is unknown, provided the sexual assault has been reported to police within a reasonable time. Where a man accused of committing a sexual assault is subsequently acquitted by a criminal court, the tribunal must determine on the balance of probabilities whether the rape was committed by either that man or another person. The maximum amount which may be awarded is $50,000. Neither a convicted offender nor an alleged offender has any right to appear at the compensation hearing, and the proceedings are conducted with as little formality as possible. Once a compensation action order has been made, payment is forthcoming from the Attorney-General's Department.

South Australia

The compensation scheme in South Australia is governed by the *Criminal Injuries Compensation Act 1987*. A claim is brought in the District Criminal Court and there is a limit of $50,000 which may be awarded. Generally, the amount of compensation is paid to the victim by the state. If the offender is unknown, or acquitted of the offence using the criminal defences of age or insanity, a compensation order can still be made. However, if the offender is acquitted of rape due to a lack of criminal intent, then a claim for compensation cannot be made to the court; instead, an application can be made to the Attorney-General for a discretionary payment of compensation.

Northern Territory

The Northern Territory scheme is found in the *Crimes (Victim's Assistance) Act 1982* (NT). The claim is brought in the Magistrates Court. The maximum amount which can be awarded is $25,000 and, if the offender is unknown, then the court may only make a compensation order if the victim reported the offence to the police within a reasonable period.

The above is a barely adequate overview of criminal injuries compensation legislation in a number of different jurisdictions. However, it does serve to emphasise the point that uniform legislation is highly desirable throughout Australia. Northern Territory Aboriginal women are often highly mobile and frequently move, for example, between the Northern Territory, South Australia and Western Australia, or Queensland and the Northern Territory. It is an absurd situation that a woman raped in Queensland receives no compensation because the convicted offender has no assets, whereas if she was raped in South Australia she could be awarded up to $50,000 or, in the Northern Territory, up to $25,000.

Anthropology & criminal injuries compensation claims

In making criminal injuries compensation claims for Aboriginal women who have been victims of sexual assault in Central Australia and who have not sustained any serious physical injuries, CAALAS has sought an anthropological understanding and analysis of the assault and not psychological or medical evidence to support the claims.

The inclusion and reference to anthropological evidence in bringing criminal injuries compensation claims for Aboriginal women victims of sexual assault to court does not appear to have occurred in other areas of Australia where the Aboriginal Legal Services have either not pursued the claims for women or have briefed them to private legal firms that have relied upon medical and psychological evidence. Anthropological evidence explains cultural perceptions and gives an understanding of the socio-cultural implications and impact of such assaults on Aboriginal women victims. Psychology does not have the cross-cultural framework with which to assess the effects of sexual assault on Aboriginal women. Medical evidence will show physical trauma but will not describe the social or community perceptions of such assaults and the socio-cultural impact they have on the victim and others. Psychology and medicine will also not discuss much about the circumstances of the assaults nor that the notions of who is the victim are different and, therefore, the fallout or impact from the assaults becomes much wider. (Furthermore for many traditional Aboriginal women it is culturally inappropriate to be assessed by psychologists and doctors.) Anthropological research tells us who is committing the assaults and their relationship to the victims. Importantly, it also tell us who is in a position of authority to speak about such matters and give evidence for the victim (Bell 1991, p. 405).

Lifting the taboo

Criminal injuries compensation claims for Aboriginal women victims of rape are an avenue for redressing the way in which Aboriginal culture has been distorted and misrepresented in the legal system.

They also give voice to Aboriginal women's definition of culture and what is acceptable social behaviour. Intra-racial rape has been a taboo subject. It is only in recent years that there has been some public acknowledgment within the Aboriginal community of the alarming rate of sexual assaults. Through the work of Aboriginal women researchers, women's refuges, non-Aboriginal researchers and Aboriginal community groups, sexual assault within Aboriginal communities is slowly being seriously addressed.

In most cases where Aboriginal women have been sexually assaulted by Aboriginal men, the accused is a close relative of the victim and the offence is incestuous. They are often men in powerful and trusting relationships. Knowledge of Aboriginal kinship systems and social relationships alert us to what the possible social effects or impact of the assault on women is. The nature of the relationships and the reactions of Aboriginal women, and some men, are the indicators which support a claim for compensation.

While the courts in the Northern Territory are willing to respect and take evidence from Aboriginal men on matters of customary law, they have not afforded the same degree of interest and weight to Aboriginal women's voices.

The outcome in all three cases outlined below, and in other sexual assault cases, reinforce the wanton attitude of the courts, the police and the defence to assaults on Aboriginal women by Aboriginal men. Since 1988 there has been a growing awareness within the Northern Territory police force and among the judiciary of the horrific abuse inflicted on Aboriginal women. However, this awareness has yet to be translated into action which redresses the bias towards Aboriginal men's evidence and definitions of tradition and customary law and which will empower Aboriginal women.

Three criminal injuries compensation cases: redefining sexual assault

The first two cases below involved women in the Northern Territory who have both been awarded compensation. The third compensation case involved a woman from northern South Australia whose case has yet to be heard. The three cases are linked by disturbing aspects in common: all three sexual assaults were incestuous; the accused were all close relatives who either lived in the same community or were frequent visitors to the woman's residence; misleading and improper interpretations of the assaults were given by counsel for the defence and their witnesses. The prosecution (Crown) did not question the defence case nor put forth the views of Aboriginal women. In one of the Northern Territory cases, the prosecution accepted without question the defence's request that the sentence be totally suspended.

Case 1: Prosecution's reluctance to accept socio-cultural evidence. The first case involved a young Warlpiri woman of sixteen years who was sexually assaulted by two men, one was her mother's brother and the other a classificatory mother's brother; that is, within the skin or subsection classification of the kinship system, he is an uncle of the victim. In this case, the victim was interviewed with the woman who had 'grown her up', that is her social mother not her biological mother. This woman had taken care of the victim since she had been sexually assaulted four years prior to the compensation claim.

The background to the sexual assault led to evidence of previous sexual abuse and incest. The young woman had been the victim of sexual abuse by her stepfather, who was also in an incorrect skin relationship with her mother. The girl fell pregnant and the family

made arrangements for the child to be adopted by distant family. Following the birth of the child and ensuing family disputes as to who should have custody, the young girl, who was aged only sixteen at the time, began drinking. Three months later she was raped by her two uncles. The victim of this sexual assault said in an interview with a woman lawyer that:

> Since the rape I am scared that other wrong skin men will rape me. Under Aboriginal Law my uncles should respect me.

In the transcript of the statement given to the police the victim said:

> I have told this true story to the police and want A & B to go to court, because what they doing to me. They not the right skin, I'm not their girlfriend . . . I want to go to court and tell that judge what they did to me, so they will get into trouble. They did a bad thing to me. (Statement of Sabina X 1984, p. 6).

In the criminal injuries compensation case which was heard in the local Magistrates Court, evidence was given by the victim and the Aboriginal woman who had taken care of her since the assaults. Despite this and the fact that she was raped by two men, she was only awarded two-thirds of the full amount. Without medical and psychological evidence, the counsel (male) appearing for the Crown was unable to give the magistrate any guidance on the amount of compensation he could grant. While the counsel for the crown did not dismiss the evidence of the victim, her social mother and the anthropologist, he did not fully accept it. The male magistrate commented that the compensation rate appeared lower for Aboriginal women (Transcript 1988, No. 8721100, pp. 15–17).

Case 2. Defence tells court that it was not against any customary taboo. The second case also involved a young Warlpiri girl who was only ten years of age at the time she was assaulted. The accused was aged approximately forty-five and was her father's mother's brother (father's maternal uncle) and her mother's sister's husband's father. The prosecution had not been able to assess the first relationship between the accused and the victim, which would have told the court that it was incestuous. They did report on the second relationship which was less significant and their comments on that indicate their disinterest and inability to comprehend Aboriginal social relationships. The prosecution, after pronouncing the relationship between the victim and accused through the marriage of the accused's son and the victims' mother's sister, said that 'If you say it quick enough it doesn't sound too bad' (*R. v Jampijimpa*, Transcript 1985, No. 23 of 1985, 19/11/85, p. 4). And obviously it is not afforded any serious consideration in relation to the offence.

The defence called evidence from an Aboriginal man from the community of the accused. The prosecution neither cross-examined this witness nor sought to call any evidence on behalf of the victim. While the defence witness' evidence was not controversial it reinforced the emphasis placed on Aboriginal men's definition of Aboriginal culture as being the only definition. Furthermore, the counsel for the offender submitted that:

> Although it's not of great note, that it was compatible skin in the sense that my client is a Jampijimpa and the prosecutrix or complainant was a Nabanardi so it wasn't against any customary taboo in that sense . . . (*R. v Jampijimpa*, 18/4/86, p. 19).

Some minimal genealogical research showed that the compatible skin relationship was cancelled out by the evidence that the offender was the victim's father's maternal uncle and the victim was only ten years of age. Therefore, the assault was incestuous and against customary law. The compatible or correct 'skin' or subsection relationship was only a potential relationship. This young woman victim was awarded the full amount by the woman magistrate.

Case 3: Police say sexual assault on Aboriginal women not a crime. The third crime compensation case involved a Pitjantjatjara woman from northern South Australia who was arrested for being drunk and disorderly and was then sexually assaulted by two Aboriginal police aides and a community warden when being returned to her community. The victim was in police custody at the time. All three men eventually pleaded guilty. In sentencing, His Honour Justice Millhouse relied on the evidence of the Police Sergeant and stated that:

> there is no crime of rape known in your community. Forcing a woman to have sexual intercourse is not socially acceptable, but it is not regarded with the seriousness that it is by white people (unreported, *R. v Wangkadi Mingkilli*, Supreme Court of South Australia, Port Augusta, before Millhouse J., 20 March 1991, p. 2).

Although the Sergeant also gave evidence about the probability of swift payback or community punishment, this did not occur and full responsibility was given to the courts to deal with this case.

While this particular community is virtually immobilised by petrol sniffing and alcohol and is therefore unable to respond to such violence with any appropriate or meaningful reference to 'Customary Law', it does not mean that the offence is not serious. Once again in this case, attention and significance were given to Aboriginal male values which were reinforced by the values and attitudes of the white male community with no evidence or attention given to Aboriginal women's views of this matter. No evidence was presented by the prosecution on the relationships between the three men and the victim.

Once again preliminary research into the victim's genealogy has revealed that the sexual assault by all three men was incestuous. One of the men was her father's brother's son, 'cousin brother' or 'brother'. Aboriginal people do not distinguish between children of siblings of the same sex. He was described as being of 'one country with the victim's father' —a very strong expression of a close relationship. The other two offenders were the sons of the victim's cousin's brothers.

As in the other two cases, the family of the victim spoke about the tensions created between the families of the victim and offenders. In this case, the victim's father complained that 'the families can't come close together because those men have made problems for all the families'. Two of the men were sentenced to two years and nine months, while the third was sentenced to two years and six months. All three were given a non-parole period of six months and were eligible for release after four months. They are now living in the same community as the victim, who has been socially ostracised and is camping in a wiltja (traditional shelter) on the outskirts of the community. Such ostracism is generally only demanded of couples of incorrect relationship ('wrong-way' marriages) living together. In this case, it appears that the victim is being blamed by the community for the assault.

Aboriginal Community Strategies

A number of successful and innovative strategies have been developed by Aboriginal women and men within Aboriginal communities and community organisations; for example, the Julalikari (Aboriginal town camp organisation in Tennant Creek) Council's night patrol inspired the Yuendumu women's night patrol and the Alice Springs town camper's organisation, Tangentyere's Night Patrol. These initiatives have been welcomed and actively supported by the Northern Territory Police. Other Aboriginal women from communities as far away as Yalata in South Australia have been inspired by these community initiatives. The night patrols have been instrumental in reducing the level of assaults in the town camps and, at Yuendumu, there has been a noticeable drop in a range of assaults and offences. The Yuendumu women's night patrol has received some media coverage which has described the women as the 'Granny Vice Patrol' thus belittling their authority and law, which is the basis of their success in maintaining law and order at Yuendumu (*Weekend Australian*, 7–8 March 1992). This is another example of the way in which Aboriginal women are excluded from any pronouncements of law and culture.

In Central Australia, Aboriginal women are forming their own networks and seeking help from different groups of Aboriginal women. The Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council has been inspirational and responsive to other Aboriginal women's needs.

In June 1992, a ceremonial gathering of 500 traditional Aboriginal women occurred north west of Balgo in Western Australia. There was no formal meeting structure and the entire agenda was known only to the senior ceremonial women. The only formal discussions that were allowed concerned an exchange of ideas and experiences concerning night patrols and requests for the NPY Women's Council to assist a couple of groups of women develop their own women's council. It is when women have become empowered that they are able to develop their own strategies to deal with social problems that impact on them.

Although some constructive strategies and initiatives have been developed to tackle difficult social issues, they often ignore Aboriginal women's priorities or at best exclude them from the design stage, involving them at a later stage. Unfortunately, this is presently the case with Tangentyere Council's Social Behavioural Project. This initiative, which has defined alcohol-related violence, inappropriate sexual behaviour between 'skin' groups and sexual assault as problems, is supported by the Four Corners Council which at present is made up entirely of male elders from the Alice Springs town camps. A parallel women's council is planned but has not yet eventuated. It has been anticipated that the involvement of 'Women Elders' will address the evidence of spouse violence, rape and child abuse (Tangentyere & Memmott 1992, p. 3). The recent appointment of a Women's Cultural Officer may speed up this process.

In summary, the situation is grim but is gradually being addressed as a matter of concern. However, little change can be effected until Aboriginal women themselves become empowered. Some attempts at law reform and a range of community strategies are being included on the sexual violence agenda and these will hopefully create a safer environment for Aboriginal women throughout Central Australia.

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SEXUAL ASSAULT: A PUBLIC RESPONSIBILITY

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THE FOCUS OF THIS PAPER IS ON RESPONSE RATHER THAN PREVENTION, and the emphasis is on society's response to marginalised groups—the response to victims/survivors of rape and sexual assault who are members of non-dominant groups; that is, those who do not experience the privileges attached to being white, middle/upper class, English speaking, and of Anglo-Saxon cultural background.

Males were not included in that list since rape and sexual assault is a gender issue. The majority of perpetrators are male, and the majority of victims/survivors are female. Women's experience of violence is rooted in patriarchy and capitalism. The competitive and materialistic nature of capitalism, with profit as its core value, provides an environment where exploitative relationships flourish. Studies show that in our society, rape and sexual assault is more likely to occur within the context of pre-existing relationships rather than through one-off contact with a stranger, and so it often remains a private rather than a public crime (Sydney Rape Crisis Centre 1984). This exemplifies women's less powerful position within a patriarchal system. It is only through deconstructing patriarchy and capitalism that the question of prevention of violence against women can be answered. However, it is the issue of society's response to victims/survivors from the non-dominant culture, particularly women from non-English speaking backgrounds, which are addressed in this paper.

As a Chilean woman living in Australia since 1974, and after working for many years in women's services and migrant welfare services in Queensland, the author can readily state that the response is less than desirable. The marginalisation of women from non-Anglo cultural, non-English speaking backgrounds in society generally, is reflected at all levels in the provision of welfare services and within the legal system.

To understand this process of marginalisation we must go back historically and honestly analyse and understand the process of colonisation of the Aboriginal people by the British, and then look at the policies of successive governments in controlling subsequent migration and in dealing with the settlement of those newer migrants. Until the 1970s, Australia's

immigration selection policy was racially exclusive, and even today definitions of who is a desirable migrant, who is assimilable and who is to be defined as 'other', inform the immigration debate and related disputes about multiculturalism (Jakubowicz 1985). Marginalisation of people from the non-dominant culture has been an integral part of Australia's social and political systems then since 1788.

Australia is not alone in this of course. As Allen (1986, p. 6) writes about the American Indian woman:

> For the abuse of Indian women and children by Indian men can be traced to the introduction into Indian culture of alcohol and Christianity. The message of the conquerors was that female subservience was the will of God . . . The devaluation of women that has accompanied Christianization and Americanization is not simply a matter of loss of or shift in status. It also entails a rise in victimization of women by men.

The force with which colonisers repress indigenous cultures around the world and the perpetuation of this repression by patriarchal capitalism, have led to dramatic levels of violence—particularly rape, sexual assault and sexual exploitation—both within and against indigenous communities. The response by policy makers indicates not only the lack of priority given to indigenous communities, but also the lack of political will regarding self-determination, and a lack of knowledge about how else to deal with this violence.

For Australian residents and citizens from non-English speaking backgrounds, the message to assimilate to the ways of the dominant culture was clearly spelled out up to the early 1970s, in spite of the impossibility of this expectation. Identity, perception, and values are culturally determined. How can one divorce one's self from one's previous cultural influences, or from the experiences and influences of one's formative years? Later policies of integration and today's multiculturalism, while adopting a more enlightened approach, have not incorporated sufficient infrastructure to achieve their stated goals of a society in which resources and services are equally accessible to its ethnic minorities. More than this, as Jakubowicz (1985) and others state, the policy of multiculturalism does not sufficiently address class and gender issues to enable any real structural change to occur.

The policy outlined in the Commonwealth government's National Agenda for a Multicultural Australia states that all Australians have the right to equality of treatment and opportunity and the removal of barriers of race, ethnicity, culture, religion, language, gender or place of birth. In terms of the services provided by government itself, it means designing and delivering those programs in ways which reflect the needs, characteristics and circumstances of their intended clients, so that equal access and equitable entitlement are assured (Australia. Office of Multicultural Affairs, Department of Prime Minister and Cabinet 1989, p. vii).

The access and equity strategy which forms a significant part of the policy of multiculturalism is presently being evaluated by the Office of Multicultural Affairs. One of the community-based, government funded programs evaluated revealed an appalling lack of awareness of the strategy and very little effort to implement any policies or strategies to ensure that particular community-based program's accessibility and relevance to non-English speaking background communities in Queensland.

From working in women's services in Queensland, the author knows that the same situation exists. In spite of the valiant efforts of a few people, the services predominantly

remain unknown to the vast majority of non-English speaking background women, do not have staff or management committees which reflect the cultural diversity existing in Australian society, and remain predominantly Anglo-Australian in their approach to service delivery. For a female, non-English speaking background victim/survivor of rape or sexual assault, this generally translates to an experience of assistance from health, welfare and legal services that can include language barriers, complete ignorance of the cultural implications of her assault, patronisation, racial stereotyping, and sometimes overt racism. This, in effect, often prevents a woman from a non-English speaking background from speaking out about her assault, seeking out support, and from receiving appropriate support.

For example a Filipino woman's culturally-based emotional response when speaking to police, doctors, and in court about being raped meant that she smiled and even laughed. For her this was to overcome the sorrow, shame, and embarrassment she felt and to enable her to 'save face' in front of strangers. It was only when she was home alone that she cried and dealt with her anger and grief. However, the police, doctors and courts interpreted her smiles and laughter as meaning that it was not a particularly traumatic experience for her and that she must have even enjoyed it to some extent.

The same woman also faced a supposed 'credibility' problem as she knew her attacker and because she took too long after the rape in reporting it. The fact was she had extremely limited knowledge of the welfare and legal system and this, combined with her speaking a language other than English, simply meant it took her a lot longer to find out how to find help and to whom to report her attack.

Another woman, an African who had suffered rape by the military in her home country, was then raped by her husband in Australia. She was so isolated in Australia, with no knowledge of where or how to obtain help, that she burnt herself, presumably to find a way out of her trauma.

Many community-based services in Queensland still do not serve people from non-English speaking backgrounds. As soon as they hear an accent or a language other than English they refer straight away to a migrant welfare service regardless of the particular issue, even if the issue is in an area in which they specialise—such as tenancy, or problems with the police.

Recently, a Family Court judge said to a Chinese-speaking woman who was in a violent marriage: 'You have been here for two years now—you should not need an interpreter'. Therefore, no interpreter was made available to this woman.

There have been many instances when women have complained about staff in both medical and legal services using their children to interpret rather than arranging for an appropriately accredited interpreter. The intimate nature of health problems and the powerful position in which this places the child means this practice merely serves to exacerbate the woman's difficulties rather than to assist her.

In rural areas of northern Queensland, many refuge and crisis workers are not even aware of the Telephone Interpreter Service.

Then there is the situation where the feminist/'progressive' service invites a woman from non-English speaking background or an Aboriginal or Torres Strait Islander woman onto their management committee, or employs one in their organisation, but does nothing to orientate her, or facilitate her participation into all aspects of the service. The isolation she experiences then leads her to leave the service and to state that 'we tried but it was too hard; it did not work; she did not fit in'. The emphasis is thus placed on the woman's inability to fit

in rather than on the service's inability to develop an integrated and structured approach to access and equity.

Services will content themselves with employing someone from a fourth-generation Middle-Eastern background, for example, or a recent arrival from England, as their token migrant worker. This misses the point entirely about the barriers facing immigrant and refugee women from non-English speaking backgrounds. As Rahman (1989, p. 1) states:

> Racism is not just the blatant violence of hate groups such as the Ku Klux Klan. Racism is the subtle and not so subtle. It masquerades as an 'oversight', a 'slip of the tongue', a snub, a failure to get a promotion, etc. It is patronising and condescending, elitist and aloof.

All health, welfare and legal services must develop policies to enable accessible and relevant service provision. Such policies should address issues of language and interpreting, equal employment opportunities for women from the non-dominant culture, training in cross-cultural awareness and skill development for staff and management at all levels. Effective access and equity involve a comprehensive and integrated approach to programming and management, not a tokenistic approach.

But why should we expect this when a capitalist society has structural inequality as an inherent feature? How can services respond in an egalitarian way to diversity when they form part of a welfare system which aids in maintaining social class and gender inequalities? The welfare industry itself is female dominated, yet industrial conditions prevalent in the industry provide another illustration of gender inequality.

Despite these contradictions we do expect services to respond in a proper way. Services must not simply reproduce the inequality, they must challenge it. Community-based organisations in particular, have this role.

Multiculturalism, while an advance on former policies, has had little impact in practical terms on the lives of those most marginalised, namely the indigenous population and the immigrant working class. The social inequalities which impact on the immigrant working class are not just related to the cultural monopolisation of social resources. They include class and economic inequalities.

The interrelationship between gender, race and class, cannot be ignored. By focussing on only one difference—ethnicity—the policy fails to acknowledge and address other significant differences, particularly class differences. In the same way, the women's movement, by focussing upon the oppression of women, is usually guilty of ignoring the differences amongst the world's women—race, ethnicity, language, class, age, sexuality. As Audre Lorde (1984, p.114) states:

> Much of Western European history conditions us to see human differences in simplistic opposition to each other: dominant/subordinate, good/bad, up/down, superior/inferior. In a society where the good is defined in terms of profit rather than in terms of human need, there must always be some group of people who, through systematised oppression, can be made to feel surplus, to occupy the place of the dehumanised inferior. Within this society that group is made up of Black and Third World people, working-class people, older people, and women.

An intolerance of difference has become entrenched in our institutions primarily because of the necessity to use so-called 'outsiders' as labour in our profit-oriented economy. Our

socialisation within this system has conditioned us to respond to difference with fear and to manage difference in one of three ways:

> ignore it, copy it if we think it is dominant, or destroy it if we think it is subordinate. But we have no patterns for relating across our human differences as equals. As a result those differences have been misnamed and misused in the service of separation and confusion (Lorde 1984, p. 115).

Whilst there are real differences between people of race, age, gender and class, it is not the differences themselves which separate us, but the way in which we deal with them (Lorde 1984, p. 115). Too often, we as individuals, and as a society at large, operate from the belief that those differences are insurmountable barriers, or on the other hand that they do not exist at all.

Real change must occur at both an individual and a structural level. As individuals, we must honestly acknowledge and come to understand the differences between us. Those who are privileged through being male, or educated, or wealthy, or part of the dominant cultural group must acknowledge that privilege. We must develop true regard for each other as equals and we must work towards addressing inequality through structural change. As Lorde, in her interpretation of Paulo Freire, states, we must recognise:

> that piece of the oppressor which is planted deep within each of us, and which knows only the oppressors' tactics, and the oppressors' relationships (Lorde 1984, p. 123).

At a structural level, we must continue to ask how to achieve a participatory, empowering, non-racist, and non-sexist social system. Otherwise, we will fail in our responsibility, and the public response to *all* victims/survivors of rape and sexual assault will remain less than adequate.

To conclude, the following is a short poem from a Chilean woman from the Poblacion, Clara Estrella. The poem is titled *Todas ibamos a ser reinas* which translated means 'We were all going to be Queens'.

Todas ibamos a ser reinas	**We Were All Going to be Queens**
Lucha, siempre lucha,	Struggle, struggle always,
por un mundo mejor:	for a better world:
igualdad de condiciones,	for equality of conditions,
por la justicia y la verdad,	for justice and for truth,
por la vida y el amor	for life and love
por la libertad.	for liberty.
Ten presente que cuando	Remember that if you give up
cedas, para ti, el mundo	the world for you
se va a acabar, sin mas.	will end, without notice.

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JUDICIAL VISION: RAPE, PROSTITUTION AND THE 'CHASTE WOMAN'

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ON 20 MAY 1990, MR HEROS HAKOPIAN WENT DRINKING AT A NIGHTCLUB with a friend. Upon returning home early Sunday morning, he decided to drive to St Kilda to accost and utilise the services of a sex worker. He had done this in the past.

At St Kilda, Mr Hakopian approached Ms X, working as a street prostitute. She climbed into Mr Hakopian's van where, following a discussion, she agreed to provide oral and vaginal sex to Mr Hakopian for $90. Mr Hakopian gave Ms X the sum in advance. He then said he did not wish to engage in the activity in St Kilda, prevailing upon her to go with him to his brother's place in Carlton. Ms X agreed reluctantly. Mr Hakopian then drove not to Carlton but to the rear of his workshop in East Kew. Although uncomfortable about the change of venue, Ms X commenced oral intercourse with Mr Hakopian which she did for some fifteen to twenty minutes.

Ms X then halted, saying to Mr Hakopian that it had 'gone on too long and that if [Mr Hakopian] was not fulfilled, it was not through any inadequacy on her part' (*R v. Hakopian* 1991a: 4). In sentencing Mr Hakopian for rape with aggravating circumstances, indecent assault with aggravating circumstances and kidnapping, in the Victorian County Court Judge Jones summed up what happened upon Ms X's refusal to continue:

> At this point things changed. [Mr Hakopian] became angry and said that [he] had paid $90.00 and [Ms X] still owed [him] sex. [Miss X] offered to pay $40.00 back on the basis that she had initially said when [they] met, that oral sex was $50.00 and said she would leave.
>
> [Mr Hakopian] then produced a knife and threatened her with it, and pushed her head back into [his] crotch, forcing her against her will, to have further oral intercourse with [him] (*R v. Hakopian* 1991a: 5).

It was this forced act of fellatio that constituted the rape with aggravating circumstances. The indecent assault then took place:

> After the forced oral intercourse . . . [Mr Hakopian] pulled [his] trousers up and accused [Ms X] of stealing [his] Mastercard. [He] still had the knife and also made reference in a threatening way to .. . a gun in the back of the van. However, the knife was the only weapon produced.
>
> [Miss X] wanted to get out of the van and in an endeavour to placate [Mr Hakopian], said that [he] could search her and her property to see that she did not have the card. She therefore undid her jeans and pulled them down and pulled her underwear out so [Mr Hakopian] could see that the card was not there.
>
> When she did that, [Mr Hakopian] inserted his fingers into her vagina.
>
> When she lifted her top to show that the card was not in her bra, [Mr Hakopian] put [his] hand into her bra and fondled her breasts. While she was indecently assaulted in this way, [Mr Hakopian] continued to hold the knife (*R v. Hakopian* 1991a: 5).

There was a struggle with Mr Hakopian continuing to hold the knife and Ms X screaming and trying to get out of the van. Mr Hakopian prevented her from doing so, driving off and shoving Ms X's head down into her lap and into the console when she was screaming. Mr Hakopian then collided with another vehicle but drove off without stopping.

Ms X was eventually let out of the van at Heidelberg, a long distance from St Kilda, where she was picked up by a taxi driver who described her as 'looking like an mess and being very distressed'. He took her to the Heidelberg Police Station where she was both 'very distressed' and 'aggressive'.

The reporting of this case caused a furore in Victoria, and received national and international coverage. Letters to the editor deluged *The Age*, the majority (from both women and men) expressing disagreement with the judge's sentencing decision. Alluding to a statement made on behalf of Mr Hakopian by his Counsel, put forward in a plea for a lesser sentence for the offender, the (then) Minister for Planning and Housing wrote in *The Age* of 13 August 1991:

> I am most concerned about several aspects of your story 'Rape Trauma Less For Prostitute' . . .
>
> No doubt other readers, like myself, were deeply disturbed by the comments made during this case to the effect that the gravity of the crime was reduced as the victim was a prostitute and the inference that this double standard is shared by the community.
>
> As the Minister for Planing and Housing, I totally reject the incredible stigmatisation of public housing and public housing tenants.
>
> I understand that the defence counsel, Mr George Traczyk, drew an analogy between the rape of a prostitute and 'the rape of a woman wandering through a housing commission car park wearing make-up, mascara and a seductive mini-skirt'.

> Through his comments I believe he conveys an image that is undoubtedly biased and contributes to what is generally recognised as an outdated and anti-social stereotyping of public housing and, in particular, our clients.
>
> No matter where a woman is or what she is wearing she should feel secure and in no circumstances feel she should 'expect' to be raped because of her appearance or location.
>
> The department has an ongoing security review of all public housing estates and attempts to make these areas as safe as possible. I hope, as a result of such slurs and comments, our clients do not feel less safe though I am sure they will unfortunately feel more stigmatised.

Judges, Prostitutes and Rape

R v. Hakopian, like the case upon which it relied for its 'rationale', *R v. Harris*, illustrates well the way in which the judicial mind is capable of uttering contradictory statements, all the while maintaining an illusion that it is operating judicially. (Perhaps, in the end, the judges are right: is this what 'judicial' means?)

'Courts do not apply one law for prostitutes and another law for chaste women,' said Judge Jones. 'Prostitutes are not second class citizens. Prostitutes are not, by reason of their vocation, any the less entitled to receive the protection of the law.' He was echoing the words of Justice Starke in *R v. Harris*:

> the Solicitor-General submitted that it would be unthinkable that this Court or any other court would apply one law for prostitutes and another law for chaste women. With that general submission I entirely agree . . . (*R v. Harris* 1981: 5–6).

Justice Crockett said, similarly:

> Prostitutes, of course, are not by reason of their vocation any the less entitled to receive the protection of the law . . . (*R v. Harris* 1981: 12).

Yet in both cases, judicial (lack of) logic enables the judges to proceed at once to contradict their own principle.

In *R v. Harris* two women were raped, by two men in concert. One of the men (the other was tried as a minor) was found guilty 'with mitigating circumstances' on one count of rape, guilty of two further counts of rape, guilty of forcible abduction, and of common assault on two counts. The effective sentence was five years, with a non-parole period of two years. (This does not mean that the man would be released after only two years; to the contrary, time is generally taken *off* the non-parole period, by reason of remissions and good behaviour, so that Mr Harris could well have been released after some months in prison.)

The first woman was picked up by the men using deception: the minor climbed into the boot of the car before she was approached. This was a deliberate ploy, because the men considered a woman would be less likely to get into the car if there were two men in it. There may have been further deception:

> [Mr Harris] then indulged in what I understand is known as 'kerb crawling', saw the girl [sic] [Miss Y] on the kerb, and asked her to get in the car, which she voluntarily did. They discussed terms and struck a bargain for her sexual services. *It is unclear to me, at all events, whether either or both of them were in a position to pay the agreed price* (*R v. Harris* 1981: 3, emphasis added).

Mr Harris then tooted the horn, the pre-arranged signal for the younger man to get out of the boot and into the front of the car. The car was then driven, against the will of Ms Y, to parkland near St Kilda where the two rapes by Mr Harris occurred. (Ms Y was also raped by the minor, Julian.)

Ms Y was then left in the park with Julian, while Mr Harris drove back into Fitzroy Street to collect another woman:

> In the case of the girl [sic] [Miss Z], some force was used to get her into the car. However, he succeeded in getting her in and drove back to the park. Here the two counts of common assault were committed and a rape on her was committed by [Mr Harris], and Julian also raped the girl [sic] (*R v. Harris* 1981: 4).

Ms Z was then driven to a motel (forcible abduction) where a room was rented and she was led toward it. She screamed, knocking on windows and 'generally caus[ing] a commotion'. People came out of the motel and Mr Harris and Julian drove off. The number of the car was taken and the pair was shortly afterwards apprehended by the police.

When the Crown appealed against the inadequacy of the sentence imposed on Mr Harris, the Supreme Court (Court of Criminal Appeal) dismissed the appeal, holding that the sentence was appropriate. In doing so, Justice Starke said:

> it would be unthinkable that this Court or any other court would apply one law for prostitutes and another law for chaste women. With that general submission I entirely agree. *That, however, does not mean that the factor that one of the girls [sic] was a prostitute and the other had been is an irrelevant consideration*. The girl [sic] [Miss Y] was and the other girl [sic] had been engaged in the trade of selling their bodies for gain. Accordingly it seems to me that one of the elements which is taken into account in respect of the crime of rape is not as potent an ingredient in this case as in the case of a chaste woman, and the reason I think that is so is this, that in the case of a chaste woman experience in these courts shows that very often the forcible act of sexual intercourse, while perhaps not harming her physically to any extent at all, *very often has a very serious psychiatric effect on the victim. That in the same degree I think cannot be said here.* The fact that the women are or have been engaging in prostitution is relevant, I think, in this way. It follows, in my opinion, that *the forcible sexual act itself would not cause a reaction of revulsion which it might cause in a chaste woman* . . . [I]t seems to me that the crime when committed against prostitutes, at all events in the circumstances of this case, is not as heinous as when committed, say, on a happily married woman living in a flat in the absence of her husband when the miscreant breaks in and commits rape on her (*R v. Harris* 1981: 6–7, emphasis added).

Justice Crockett, saying that prostitutes are not any the less entitled to the protection of the law, and that Mr Harris' behaviour 'was outrageous, and calculatedly so', said:

> On their face, the offences of which he was guilty called *for penalties of greater severity than those imposed. However, on closer acquaintanceship with the case it is plain that there were circumstances to enable it properly to be described as unusual*, and it was as such that the [trial] Judge described it and treated it (*R v. Harris* 1981: 11, emphasis added).

The circumstances? The terms of a pre-sentence report on Mr Harris and *the character and antecedents of each of the two victims.* That, in *Hakopian's case*, Ms X's income was earned from prostitution, and in *Harris' case* Ms Y was working as a prostitute immediately prior to the attack and Ms Z 'had also been a prostitute, although it was said, and apparently accepted at the trial, that she was not on the street for that purpose on the night in question' (*R v. Harris* 1981: 5), meant the sentence for each of the offenders should, in the courts' eyes, be less than it otherwise might have been. One law for prostitutes and 'chaste women'? One law for prostitutes, another for 'chaste women'?

The Case of the Elusive 'Chaste Woman'

May chaste women, at least, breathe easy in the understanding that, should they be raped, their rapist will receive an 'appropriate' penalty through the courts? May chaste women sleep more easily knowing that they are protected from rape, so far as the law is able, because rapists are, by reason of a heavier penalty accruing to men who rape 'chaste' women, alerted by the courts to the 'greater wisdom' of raping prostitutes? This seeming division of women into the 'worthy' and 'unworthy' can give no woman cause for complacency.

The *Oxford English Dictionary* defines 'chaste' as:

> abstaining from unlawful or immoral or from all sexual intercourse, pure, virgin; decent (of speech); restrained, severe, pure in taste or style, unadorned, simple . . .

According to the *Macquarie Thesaurus*, 'chaste' is 'celibate', 'decent', 'pure', 'single'.

In the mind of the Supreme Court in *Harris' case* and *Hakopian's case*, it seems that neither 'celibacy' nor being 'single' is a necessary prerequisite of chastity: presumably the 'happily married woman living in a flat' engages in marital sex (when her husband is at home). Ironically, however, one of the definitions of 'chastity' or a quality of 'chasteness' is that the person is 'undefiled, unsoiled, . . . unstained, unsullied, untainted . . .' Many women who are raped feel themselves to be defiled, soiled, stained, sullied, tainted. Just as 'never had sex' cannot be what the learned judges mean when they speak of the 'chaste' woman, this latter definition cannot, then, be within the meaning the Supreme Court of Victoria attaches to 'chaste' in the context of sentencing rapists.

Women who are, however, not in 'happy marriages' may well be at risk of being included, by the Supreme Court, in the category of the unchaste. It is not only women who work at sex for money whose antecedents will preclude them from equal protection of the law through the sentencing process. The statements of the judges in *Harris' case* and *Hakopian's case* make this clear.

In both cases, the court dwells to a considerable degree not only upon the women's profession, but upon other aspects of their lives. From *Harris' case*, according to Justice Starke:

> The facts which emerged at the trial were that the girl [sic] [Miss Y] was a practising prostitute, and indeed was plying her trade on the footpath when picked up by [Mr Harris]. The girl [sic] [Miss Z] had also been a prostitute, although it was said, and apparently accepted at the trial, that she was not on the street for that purpose on the night in question. *However it also emerged that she had convictions for prostitution and for armed robbery and other offences, and the evidence led was that she was dressed in such a style that one would have assumed it probable that she was a prostitute waiting to be picked up. Both she and the girl [Miss Y] were addicted to hard drugs* (*R v. Harris* 1981: 5, emphasis added).

What a woman wears has a direct and indisputable connection with whether she suffers, or to what degree she suffers, when raped? What is this 'style' that makes 'one' assume it 'probable that the woman is a prostitute waiting to be picked up'? Clearly the Supreme Court has not heard—or paid attention to—the feminist chant: 'Yes means yes, No means no. However we dress, Wherever we go'. To suggest that the way a woman dresses affects her psychological and physical capacity to be hurt by rape is risible. Or is it? Clearly the Supreme Court of Victoria does not think so.

And what of drug-taking as a 'relevant' factor in assessing the harm of rape? As with the judges in *R v. Harris*, according to Judge Jones in *Hakopian's case*:

> [Miss X] . . . was working as a street prostitute. She was 28 at the time of these offences and since coming to Melbourne from Adelaide, had worked on and off for a number of months as a prostitute.
>
> *At the time of these offences, she was having trouble with heroin which had been a problem on and off for about 4 years. On this occasion, she had been using heroin for about a year and was working as a prostitute to obtain money for heroin. It is apparent that she had a substantial habit. [Miss X] was also having trouble sleeping and was taking Rohypnol and Valium as well as using heroin* (*R v. Hakopian* 1991a: 3, emphasis added).

Why such factors should be considered relevant by a court with the task of sentencing *not the women*, but *the rapist*, is mystifying. Or is it? It seems that (alleged) heroin addicts, and women allegedly 'hooked' on Valium and Rohypnol are worth less protection than others. And the court, in its questionable wisdom, considers that drug-taking (alleged and not proven) affects a woman's capacity for experiencing rape as the horrific crime *we know* that it is; always. Notably, because the women in these cases were *victims* of the offences, there was no standard of 'proof beyond a reasonable doubt' necessarily to be applied in determining whether the allegations about their 'antecedents' were correct. The women stand effectively condemned, by a court, as to their alleged drug-taking habits, without any protection of the criminal standard of proof: they are not the offenders in the trial, the rapists are; ironically, this means that allegations are allowed to be made about them, which even if true are not relevant to whether or not any one of them suffered the crime of rape—or suffered *from* the crime of rape.

In each case, the court determines that prostitutes (and 'drug addicts' and women who dress in a particular way—which way?) do not 'suffer' from rape, or at any rate 'suffer' less. The public response to the *Hakopian case*, both when it was reported as a consequence of the County Court decision (that of Judge Jones) and the Court of Criminal Appeal judgment

(Justices Crockett, Southwell and Teague), was that it was inappropriate to determine upon a lesser sentence *because a woman works as a prostitute.* Yet what the cases make clear is that *any woman* who is not (in the eyes of the court) a 'chaste' woman will be seen as deserving of lesser concern when it comes to sentencing the rapist. Effectively, almost all women—and perhaps *all* women—are at risk of having their response to rape downgraded in this way. At the same time almost all rapists—and perhaps *all* rapists—are provided with the opportunity for having their sentences set at a low threshold—because the response of the victim is downgraded by the courts.

In *Hakopian's case* Judge Jones said, referring to *R v. Harris*, that the 'fact that the victim of a sexual attack is a prostitute is a relevant consideration when determining an appropriate sentence' (*R v. Harris* 1991a: 7). He then went on, however, to refer to Ms X's activity *not only in relation to the sex-for-money* aspect:

> As a prostitute, [Miss X] would have been involved in sexual activities on many occasions *with men she had not met before, in a wide range of situations*. She had, for money, agreed to have oral and vaginal intercourse with [Mr Hakopian] and had very shortly before these offences occurred, had oral intercourse with [Mr Hakopian] on a consensual basis.
>
> On my assessment, the likely psychological effect on the victim of the forced oral intercourse and indecent assault, is much less a factor in this case and lessens the gravity of the offences (*R v. Hakopian* 1991a: 8, emphasis added).

Sex-for-money is one aspect of a woman's sex-life which, in the assessment of the court, means she is 'used to sex' and, therefore, (by some sleight of hand, or perverse 'logic') will not be 'so upset' by rape. But being 'involved in sexual activities on many occasions with men the woman has not met before, in a wide range of situations' is also a factor to be taken into account as mitigating the horror of rape.

The 'rationale' in *Harris' case* establishes that, according to judicial logic, the horror of rape is lessened for a woman who *at some time previously* has worked as a prostitute: Ms Z (it was accepted by the trial court) had been a sex worker but was not working as a prostitute on the night of the rapes. *R v. Harris* also illuminates the approach taken by Counsel for Mr Hakopian in stating to the court words to the effect that this was a 'lesser offence' because it was akin to a woman, 'wearing makeup and mascara, and a seductive [sic] miniskirt' and 'wandering through a housing commission carpark'. Evidently the barrister had (properly) had recourse to *Harris' case*, where Justice Starke pointed out that the evidence led was that Ms Z 'was dressed in such a style that one would have assumed it probable that she was a prostitute waiting to be picked up . . .'.

Any woman 'dressed in such a style', at least on the streets of St Kilda, will in accordance with Supreme Court jurisprudence be deemed to be less likely to be harmed by rape. (And who knows, the courts may well consider any location—not just Fitzroy Street—is sufficient. It is axiomatic that women in Kings Cross and Kalgoorlie wearing miniskirts and mascara are according to this logic highly likely to be classed by courts as less psychologically damaged when raped. Yet what of women wearing miniskirts and stilettos—anywhere? Where does judicial logic end?)

What about 'sexual experience' generally? In *Harris' case* Justice Starke said:

> I should say that it does not appear to me that the learned [trial] Judge over-emphasised the fact that the girls [sic] concerned were or had been prostitutes. What he said was, 'I have also taken into account the fact that *each victim of these rapes was, to say the least, very sexually experienced* (*R v. Harris* 1981: 7, emphasis added).

What constitutes 'very sexually experienced'? Two lovers, consecutively? Two lovers, simultaneously? Two husbands, serially? Group sex? Sex every night of the week? Sex three times a week? Sex in the daytime, at weekends? Sex in the open air on more than one occasion? Same-sex sex? Who knows?

What we do know is that many women engage in sexual relations outside marriage. Many women have had sexual experiences with more than one man. Some married women (even those 'happily married') sometimes engage in extra-marital relations. Are all these women classed, now, according to the judicial intelligence of *Harris' case* and *Hakopian's case* in a category where the man who rapes them will be penalised less, because of their 'antecedents'?

And what of women who engage in sexual relations with women? Are they chaste? Unchaste? Sexually experienced in such a way as to sully them to such a degree as to render them incapable of suffering from rape, or suffering less. Or would their Honours consider there is such a disparity between consensual sex between women partners and non-consensual sex forced upon a woman by a man, that a lesbian is *more* likely to be harmed by rape than a heterosexual woman?

And there is the nub of the problem: are their Honours actually asserting that there is so little difference between consensual sex between a man and a woman, that non-consensual sex between the same couple is neither here nor there—or only a little bit, anyway. *She*—being acculturated to this form of 'sex'—can hardly be much damaged when that man, or any man, forces himself upon her. She is 'used' to it. Or is it that they consider that sex is sex is sex; a penis is a penis; a vagina is a vagina; a mouth is a mouth; a tongue a tongue—and putting one inside the other, or one around the other, is much of a muchness, really, whether there is consent involved or not. Can they actually *tell* the difference between consensual sex and rape?

Shame, Guilt and Revulsion: Rape and the Liberation of Women

The Women's Movement has worked hard to ensure that women *do not* feel guilt and shame at being victimised by rapists and other sexual offenders. This is difficult indeed: we have been socialised into 'accepting' we are to blame when set upon by violent, aggressive, exploitative and power-hungry men who rape. Women have come to internalise guilt and shame in respect of conduct, and 'being done to' that is not our guilt, nor our shame at all. It is shameful that men rape women. Men who rape are those who should bear the burden of guilt. Men who do not rape, but who condone the rape by failing to move themselves to understand the position of women, to fight back against the exploitative attitudes and behaviours of their fellowmen are the ones who should experience shame and guilt.

If—when—the Women's Movement reaches the millennium, and women no longer feel shame and guilt at being the victims of crimes designed to destroy our autonomy, our sense of self, our pride in being women, our right to exist as women in this world—at that time, will

the courts then hold that all sentences for rape should be lessened, because women no longer experience shame and guilt as victims of the offence?

Apart from the shame and guilt factor, in *Harris' case*, Justice Starke considered:

> very often the forcible act of sexual intercourse, while perhaps not harming [a chaste woman] physically to any extent at all, very often has a very serious psychiatric effect on the victim. *That in the same degree I think cannot be said here. The factor that the women are or have been engaging in prostitution is relevant . . . in this way. It follows, in my opinion, that the forcible sexual act itself would not cause a reaction of revulsion which it might cause in a chaste woman* (*R v. Harris* 1981: 6, emphasis added).

A woman who 'has sex for money' is less likely to be revolted by being raped than a woman who does not (notwithstanding the evidence before the court in *R v. Harris* that one of the women had been hospitalised as a consequence of mental breakdown: this was due to her heroin habit, Counsel asserted). By extension—taking into account the comments of the court as to what a woman is wearing, being sexually experienced and the like—a woman in a miniskirt who is raped is less likely to be revolted at being raped. A woman wearing mascara *and* a miniskirt—*and* walking the streets of Kings Cross or Kalgoorlie .. . her 'revulsion factor' will be even less attuned.

In both *Harris' case* and *Hakopian's case* the court, while downplaying the 'revulsion factor' because of the women's antecedents, nonetheless recognised that the women *could be frightened*—not by the rapes, but by the activity surrounding the crimes. This is hardly a concession, however: rather it attempts to 'divide off' the brutality of a physical attack from the sexually charged aspect of it. Far from rape *not* being 'about sex' as some are wont to argue, rape is directly relevant to 'sex'. Certainly for the victim, it is nothing to do with loving, caring, consideration which *we* see as *consensual* 'sex'. But it is 'about sex': the 'sex act' is intimately linked with power and violence in the act of the rapist. If it were not, then why not bash the woman on the head? Why attack a *woman* at all? And the woman who is raped certainly experiences the act as the gross invasion of privacy—and explicitly *sexual* privacy —that it is. *She* feels beaten, battered, bruised—whether physically or mentally or both. *She* feels sullied, dirtied, invaded. It is her very self—her sexual self, her sexual autonomy, the essence of her independence and sense of wholeness as a woman, as human, as a sexual being—that is attacked.

The problem with rape is that the men who rape have so closely identified sex with power, aggression, violence, brutality, ignorance of the wishes of a woman vis-a-vis sexual relations, studied denial of women's sexuality. Indeed, a desire to destroy woman *as woman*. Rape is a manifestation of power, aggression, violence and brutality specifically directed *through sex*. It is not 'not sex'.

In 'dividing off' the sexual component—the sexual sensitivities of 'chaste women' in contradistinction to the lack thereof, on the part of prostitutes and women who are 'sexually experienced'—from the 'scare factor' or 'fright' associated with the circumstances surrounding rape, the courts dichotomise women's rape experience. The rape trauma reality describes the brutally 'holistic' nature of rape: the whole woman is subjected to an intrusion into her self. When a woman is frightened and scared as a consequence of the circumstances associated with the rape, she is frightened and scared *because of the rape itself*. It is the whole experience which affects the raped woman.

Nonetheless, the courts apparently believe they are making a concession to sex workers, in acknowledging they can be terrified—or terrorised—by rapists and rape. On appeal in *Hakopian's case*, it seems that the court considered it could overcome the public's problems with the decision first time around, by increasing the sentence *on the basis that the 'scare' experienced by the victim/survivor had not been taken into account sufficiently by the trial judge*. Understandably (to women), this did not satisfy the public—women and men. Setting to one side the pain and horror of rape-as-rape, whatever a woman's antecedents, is the issue.

In any case, the question of fear and fright consequent upon the 'circumstances surrounding the rape' is hardly dealt with satisfactorily by the courts, even within their narrow compass. This is apparent in both *Hakopian's case* and *R v. Harris*.

Justice Jones, in *R v. Hakopian*, after 'assessing' the likely psychological effect on Ms X as a victim of forced oral intercourse and indecent assault as being a 'much less factor . . . and lessen[ing] the gravity of the offence':

> Nevertheless, it would have been a frightening experience for [Miss X], particularly as [Mr Hakopian] had a knife . . . It would also have been a frightening experience for her to be detained and then driven off in the car against her will in the way that she was (*R v. Hakopian* 1991a: 8).

Justice Jones determined, despite this concession, that 'all in all' the offences of Mr Hakopian were 'at the low end of the range of seriousness' (*R v. Hakopian* 1991a: 9). On appeal, the court effectively reaffirmed the 'rationale' of *Harris' case*. Nonetheless, the effective sentence of three years, four months imprisonment, with a non-parole period of sixteen months (meaning Mr Hakopian could be released having served only four-and-a-half months) was increased. The increase was based partly upon the weight which, the Court of Criminal Appeal said, had erroneously been given to the existence of Mr Hakopian's parents:

> The . . . judge . . . wrongly took into account the effect that the sentence may have had upon [Mr Hakopian's] parents. In the course of the plea for leniency it emerged that [Mr Hakopian] was accustomed to give his elderly parents some comfort and support. The assistance was more or less of a domestic nature, together with the provision of some facility in the English language which the parents lacked. However, it is not altogether clear whether the inability of [Mr Hakopian] to provide assistance during his incarceration could not be met by assistance being given by other members of the family. At all events, the effect of the penalty upon an offender's relatives must be exceptional, otherwise the weight to be given to such an aspect in fixing a sentence can only be minimal . . . I think that the judge was in error . . . in finding the circumstances to be exceptional . . . (*R v. Hakopian* 1991b: 12–13).

The second factor leading to an increase in sentence was that Judge Jones had rightly considered that there was a need to give consideration to the issue that 'regardless of whether the victim was a prostitute or not, [were] the offences committed upon her . . . of such a nature as to have caused fear and terror'. Nevertheless, said the court:

> having regard to the degree of terror and fright to which the victim was subjected and the effect of the experience upon her, the judge's sentence does

> not, in fact, reflect the degree of weight that he was required to give those particular considerations. Our attention was drawn to a number of passages in the evidence of the complainant from which the manner in which she was subjected to terror during the period she was the subject of the dominion of [Mr Hakopian] emerges quite graphically. Accordingly, I think that there was error in this respect on the judge's part (*R v. Hakopian* 1991b: 11–12).

Mr Hakopian's penalty was thereby increased to an effective sentence of four-and-a-half-years imprisonment, with two-and-a-half-years non-parole period, probable release after a period of some months.

Yet even then, with the courts giving some ground to sex workers—refusing to acknowledge the psychological harm of rape, whatever their antecedents, yet 'giving' on the ground that women working as (or in the past working as) prostitutes may be frightened—even terrified—at being raped, there is a caveat. Justice Starke:

> The factor that the women are or have been engaging in prostitution is relevant . . . [T]he forcible sexual act itself would not cause a reaction of revulsion which it might cause in a chaste woman. *That, however, is not to say that the other circumstances surrounding the rape may not have had a considerable effect on them.* Prostitutes, of course, by their very trade, that is those of them who ply their trade in the streets, are very subject to the crime of rape and indeed, to murder. Such offences as the recent 'Ripper' offences in England are by no means unknown, and no doubt they walk in fear of those crimes. However, they go into it, they embark upon their trade knowing the dangers which are inherent in it and accepting them, and in those circumstances it seems to me that the crime when committed against prostitutes, at all events in the circumstances of this case, is not as heinous as when committed, say, on a happily married woman living in a flat in the absence of her husband when the miscreant breaks in and commits rape on her (*R v. Harris* 1981: 6–7; emphasis added).

Working as a prostitute means a woman intentionally places herself in a position where 'Jack the Ripper' or his Yorkshire counterpart may be just around the corner. Or in the next cruising car. That she does so, somehow seems to mean (according to high judicial authority) that she will be less harmed, less terrorised, less terrified than a woman who does not set herself up in this way.

Yet is there not a problem in all this—even for the 'chaste' woman so beloved of the Victorian Supreme Court, that married woman living in the flat. Do we not know now, that married women run a real risk of rape and criminal assault at home, by their husbands? Are we not then inexorably led to asserting that married women—especially those who have been beaten and raped by their husbands—have placed themselves in a situation where they are acculturated to rape and bashing. How, then, can their terror at being raped be classified in the 'high' bracket. Are they not, by logical extension, placed in the Supreme Court category of the 'less harmed'.

Judicial Arrogance ¾ and Community 'Ignorance'

In 1981 in *Harris' case*, the Court of Criminal Appeal said that community views ought to be taken into account, if the community expresses a view founded in a fully informed

knowledge of the facts. Justice Starke said that the question of deterrence in a very serious crime of the nature of that committed by Mr Harris (and his confederate) 'looms large', and:

> the effect that an over-lenient sentence might have on the public is a matter that must be considered. However, in saying that, one must not be taken to mean that if the mere charges and sentences are presented to the public without any description of the circumstances, that that is the opinion that we ought to take into account. *The question . . . is whether the community, if informed of all the facts, would or would not be outraged by the leniency of the sentence* . . . (*R v. Harris* 1981: 9).

In 1991, with Heros Hakopian, it seems that the Court of Criminal Appeal chose to follow, effectively, the 'rationale' in *R v. Harris* that an 'unchaste woman', sex worker, or sometime sex worker, will suffer less upon being raped. Simultaneously, it chose to ignore the community response to that notion.

There can be little doubt that the community was 'informed of all the facts' surrounding Mr Hakopian's attack against Ms X. The facts of the case received wide publicity. On 3 August 1991, a report by Michael Magazanik, 'Man convicted of raping prostitute under knife threat' appeared in *The Age*. It contained a brief but full account of the attack (in approximately 550 words), including material from the transcript, both of what the prosecutor said, and an extract from a taped police-interview with Mr Hakopian:

> the woman began screaming and Hakopian panicked: he held her hair to prevent her leaving the van and drove to Heidelberg, where he dumped her . . .
>
> The woman told the court she had worked for four months as a prostitute; she knew the job was not risk-free but would not accept being raped at knife-point. She said that on the night of the rape she had been concerned at the level of violence against prostitutes in the St Kilda area.
>
> Hakopian made admissions to police about the offence. In a taped interview heard in court, he said: 'I grabbed her hair and pushed her down . . . I paid a lot of money and I wanted to get my money's worth.' He said he got 'fairly angry' when she did not continue oral sex and 'things got a bit rough, that's all'.

On 12 August 1991, letters to the editor of *The Age* appeared under the headings 'Judicial Leniency strikes fear in me' (from a senior tutor-in-law at the University of Melbourne) and 'The people do not accept that dress can excuse rape' (the 'lead' letter that day; it was written by the acting chairperson of the ministerial advisory committee on women and housing, Department of Planning and Housing. 'Access *Age*', a column of telephone letters of fifty words or less, was on that same day headed 'Law's double standard' and contained a preamble:

> The Access line has been jammed with calls from readers upset at a court's reasoning [sic] that the gravity of a rape was lessened because the victim was a prostitute, the Government, say some, must act.

Of the thirteen letters appearing, eleven referred to the *Hakopian case*: 'Deplorable example'; 'The law must change'; 'At gunpoint?'; 'Inappropriate decision'; 'Dress is

irrelevant'; 'You could be next'; 'Archaic thinking'; 'Sex determinant'; 'Righteousness'; 'Whatever our job'; 'There you go, boys'. All disagreed with Judge Jones' sentence.

On 13 August 1991, the lead letter was written by a male member of the Prostitutes Collective of Australia, and headed 'No woman deserves to be violated against her will'; 'Access *Age*' carried the one communication that might be said to be less unfavourable to Judge Jones' decision, although it was somewhat ambiguous: 'Anyone has a price' (written by a man). It was also on that day that the letter from the Minister for Planning and Housing appeared.

On 15 August 1991, the editor of 'Letters to the Editor' wrote three columns, headed 'Sex laws outmoded?' covering seven letters written by *The Age* readers, under the lead-in sentence: 'The County Court decision in the case of rape of a prostitute at gunpoint is still provoking much comment from readers'. Only two of the seven (four men and three women) approved of the judge's approach, although for one it was less in relation to the sentence, and more because the man was convicted at all:

> Such a sentence, or even a conviction, would have been unlikely 10 years ago. The judge proved himself to be well in tune with community attitudes.

The other correspondent (also male) said:

> Where a rape occurs, such as the one in question, a lesser penalty must be imposed, where the victim is sexually experienced to the extreme degree, which obtained in the instant case.
>
> It must, of course, be borne in mind that each case depends on its facts. Clearly, there would be rapes of prostitutes which would demand the most severe penalty, but this case, while clearly demanding a jail term, was not one of such. One can see the sense and justice in His Honour's reasoning.

If a man raping a prostitute of four months is appropriately to be released after (probably) four-and-a-half months, should a man go scot free if the woman has a one- or two-year pedigree as a sex worker? On this correspondent's rationale, this seems the likely outcome.

Instead of even attempting to understand the reasons for the public outcry, the court on appeal in *Hakopian's case* seems to have considered the problem was solely the *length of the sentence*, rather than the *rationale underlying it*. It thus increased the sentence, but refused to acknowledge the public disquiet as to the spurious distinction drawn between 'types' of women and raped-women's suffering.

One of the grounds of appeal against leniency of sentence was that the judge 'had erred in placing too much weight on the fact that the complainant was a prostitute'. That ground was, however, abandoned in the course of argument and *it was conceded that the judge was justified in making the comment* that the 'likely psychological effect on the victim of . . . forced oral intercourse and indecent assault is much less a factor .. . and lessens the gravity of the offences'. Thus the 'principle' in the *Harris' case* remains.

The abandonment of the ground of appeal would have occurred because the court made clear its disposition not to concede the point. The court thus failed to give any account to the public's concern as to the reduction of sentence on the basis of the victim/survivor's being a sex worker. This was the problem, in the public mind, rather than any generalised concern about the leniency of sentence. The court arrogantly ignores the public view,

however, and does so either on the basis that the public is not worth listening to (contravening what was said in *R v. Harris*), or dismissing the public view as based on ignorance. Judges, of course, are far from ignorant—in their own eyes.

Conclusion

For centuries women have been politically active against rape. For centuries women have recognised the harm and horror of rape for themselves and their sisters. We continue this work today. How far have *we* come? In sisterhood and recognition of the realities of rape—the rape trauma *reality*—we have walked miles.

How far have the courts come? I weep at the answer to the question.

Note

The real problem lies with the Supreme Court of Victoria. Judges of the County Court are obliged to act in accordance with precedent. The Supreme Court of Victoria is superior in the court hierarchy to the County Court. Thus, unless Judge Jones was able to find some means of distinguishing *Hakopian* from *R v. Harris*, he had no choice but to follow the *Harris* rationale. It would seem to be the responsibility of the Supreme Court, generally and also in the light of the community response, to specifically deal with the question raised by *R v. Harris* and *R v. Hakopian*.

It is hardly Judge Jones' 'fault' that the 'principle' remains that a rapist will be sentenced to a lesser penalty where he rapes a prostitute or 'unchaste' woman. This is the responsibility of the Supreme Court which had the opportunity to deal with the matter. (As the appeal came before that Court, and that Court is 'the end of the line'—apart from the High Court—in Victoria, what other body *has* that responsibility. Is it not the Supreme Court's *job*?).

The Supreme Court cannot absolve itself of responsibility by relying upon the fact that the Crown dropped that as a ground of appeal. The Court knew full well that that was a ground, and made it clear in the course of the appeal that in its view there was nothing 'wrong' with *R v. Harris*. At minimum, it should have written into its judgment in *R v. Hakopian* the fact that remained of the view that *R v. Harris* was correct. Rather than doing so, it sidestepped the issue by making it clear where its opinion lay, and thus effectively causing the ground of appeal to be abandoned. That the Supreme Court left *R v. Harris* intact and did not in *R v. Hakopian* substantively address the issue, means that the responsibility lies with that court for the law in Victoria on this point.

References

R v. Harris 1981 (unreported), Victorian Supreme Court, Court of Criminal Appeal, August.

R v. Hakopian 1991a (unreported), Victorian County Court, August.

R v. Hakopian 1991b (unreported), Victorian Supreme Court, Court of Criminal Appeal, December.

RAPE AND THE SEX INDUSTRY[1]

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RAPE IS A CRIME OF VIOLENCE. WOMEN FORM THE OVERWHELMING majority of targets of rape and indecent assault while men form the overwhelming majority of perpetrators of these crimes. Rape not only subjugates individual victims/survivors to the power of the attacker, but also impacts upon the whole community.

Rape, and the criminal justice system's treatment thereof (as evidenced by the sentencing in *R v. Hakopian*) are direct outcomes of legal, administrative and cultural frameworks which attempt to control the sexualities of women, transsexuals and men who sleep with men (in particular, sex workers) and which accept the denial of women's choices, in favour of men's freedom to exercise power and force.

The Prostitutes' Collective of Victoria (PCV) receives an average of twenty reports of violence against sex workers (women, men and transsexuals) each week. This is an under-representation of the level and incidence of violence against sex workers.

Moreover, sex workers have unequal access to the criminal justice system. Consequently, and appallingly, such incidences of violence are not regarded as seriously as violence against other members of the community.

All people deserve the unconditional right to safety from rape and from the threat of rape. All survivors of rape and indecent assault should have equal access to the criminal justice system—including reporting, court and sentencing procedures. The gravity or implications of rape cannot be measured by the 'class' of the victim. Nor can they be measured by the 'class' of the perpetrator. The effects of rape are experienced differently by each victim/survivor regardless of gender, age, class, cultural background, occupation and/or sexual history. Further, there is no 'appropriate' victim/survivor response to this crime which can provide a basis for the sentencing of rapists.

Sentencing guidelines and procedures in rape trials play an important role in that they inform the community of the court's attitude to the crime and act as a deterrent to potential offenders. Sentencing in *R v. Hakopian* relied heavily on misinformed attitudes towards sex industry workers and has compounded stress levels for those workers (through increased risk) and restricted legal access for many rape victims/survivors.

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The Difference Between Sex, Sex Work and Rape

Prevailing myths about prostitution are the basis of misconceptions that sex industry workers are victimised by virtue of their work, and that they are disempowered to make decisions and choices regarding their sexualities and sexual behaviour. In fact, sexual acts within commercial sexual transactions are, commonly, more clearly negotiated than other sexual acts. Evidence given in *R v. Hakopian*, for example, showed that the two parties involved agreed to both the payment for the acts which were to take place and the nature of those acts. Given that agreement, the individual parties maintain the right, as within all commercial transactions, to re-negotiate the terms of the service to an agreed and mutually satisfactory resolution. In *R v. Hakopian*, this right was exercised when the venue where the activities were to occur changed.

It is implied, however, that this right is not held by a sex worker if he/she wishes to cease engagement in, or change the nature of, sexual activity. William Keough (1991) cites a number of rape cases in which the 'court regarded the fact that the victim offered himself to the defendant for money as a significant mitigating factor' *(R v. Tutchell*; *R v. Butler*; *R v. Stewart*) as well as in *R v. Hakopian*. Not only does someone's occupation and/or sexual history come to be regarded as a mitigating factor in rape crimes, but the victim/survivor 'is in some way deemed to be inviting the commission of such an offence upon their person' (Keough 1991).

The role of a client of a sex worker is clear within commercial sexual transactions. It is unacceptable to conclude that a sex worker should expect aggression or assault if he/she wishes to re-negotiate the terms of a transaction.

Further, it cannot be expected that his/her reaction would be less or greater than that of any other individual under assault. Violations of power/trust relations, acts of aggression and violence (including rape), or degradation are *not* a matter of course within commercial sexual transactions. They occur in a broad range of contexts and inter-relationships in our community, and all should be considered by the criminal justice system as factors in rape, not in sex or sex industry work. That is, rape is violent, not sexual.

Any person is betrayed, violated and abused by an act of rape. The type or nature of his/her work, sexuality or sexual history do nothing to 'prepare' him/her for rape *or* inform us of his/her likely response. Equally, the class or social circumstances of the individual rapist do not inform us of the malevolence of the attack. It is the nature of the crime that must be assessed, not the context or the victim.

The Trauma of Rape for the Sex Worker Community

The current prostitution and related legislation ignores the realities of sex industry work, creates few legal options for sex workers, and forces most sex workers 'underground' where they must operate illegally and/or with no occupational health and safety measures in place. Apart from severely limiting those workers' access to the legal and criminal justice systems within a community that acknowledges widespread violence and rape of women, it creates an opportunity for men to attack certain classes of women with little or no fear of retribution. Rather than challenge some men's assertions that prostitutes are 'asking for it' or 'flaunting it and what do they expect?', the legal system forces many sex workers into 'high-risk' work environments—for example, street work—where those same men can easily target them.

Sex workers frequently do not report acts of violence to the police owing to the likely response. For example, a number of rape survivors have advised the PCV that they may be turned away instantly on the grounds that 'it's part of the job', they are suspected of fraud, or they may be charged with a prostitution-related offence as a result of making a statement.

The PCV believes that these factors have made rape and indecent assault 'occupational hazards' for sex workers. If rape is to be treated fairly by the justice system, it must be recognised that all women are targets of rapists, and that current legislation is what makes sex workers easier targets for rapists and not the sex industry or its workers themselves.

The World Health Organization (WHO Press/42) has identified stress as the major health issue for sex workers. One of the main contributing factors to that stress is discriminatory sex legislation coupled with unequal access to the criminal justice system. While current laws and regulations continue to provide no health and safety measures for the majority of Victoria's 15,000 sex workers, fear of rape and violence contributes to high levels of stress for sex industry workers. This fear is compounded by the knowledge that crimes of violence against sex industry workers are often more brutal than crimes of violence and rape against other people in our community:

> Sex workers tend to be raped in a more violent manner involving more weapons, subsequently suffering more (physical) injury than non-sex workers. Their attackers tend to have a record of sexual offences and other violent crimes (Harrington and Bourke 1991).

The criminal justice system has sent alarming messages to all people in our community, and, in particular sex workers, through its inadequate response to rape crimes. Not only has it been shown that reporting and trial procedures in rape cases are distressing for victims/survivors (Law Reform Commission of Victoria 1991), but it has been made clear by judges' sentencing practices that the rape of sex workers is tolerated by the courts as a means of preventing violence and rape against so-called 'chaste' women.

> The attackers of sex workers received universally lower sentences than other men convicted of rape. The lowest sentences in 1990 for rape and aggravated rape were received by men who attacked sex workers (Harrington & Bourke 1991).

The community would, rightly, be outraged were the harm inflicted by a shooting in a bank robbery considered relevant to the acknowledged 'high-risk' nature of work in the banking industry and that such incidents prevent aggressive behaviour towards 'innocent' community members; that is, those not employed in banking. Indeed, the courts would not take this into account. Rather, the inadequacy of safety measures for employees (such as bank tellers) in the banking industry is assessed independently of the criminal justice system.

Similarly, the community of Victoria sex industry workers and their peers condemns the judiciary's sentencing practices in both *R v. Harris* (Supreme Court, 11 August 1981) and *R v. Hakopian*.

The Prostitutes' Collective of Victoria has been witness to the outrage and fear caused by rape in the sex worker community. In April 1989, Amanda Byrnes (a street worker) was assaulted and murdered in St Kilda. The sex worker community suffered extreme grief and shock following this attack, and the resultant fear in this community was heightened by the knowledge that sex workers have: severely limited options with regards to work and the

law; few or no occupational safety measures and standards; and are viewed by the criminal justice system as being a more 'rapeable' class of people than other community members.

More recently, the sex worker community has responded to the *R v. Hakopian* case and vocalised its distress at the sentencing decision in which Judge Crockett said:

> the likely effect on the victim of the forced oral intercourse and indecent assault is much less a factor in this case and lessens the gravity of the offences' (*R v. Hakopian*, Victorian Government Reporting Service 1991).

The Victorian Government Reporting Service clarifies the judge's comments thus:

> That statement .. . can be seen in the context in which it occurs to be a reference to the fact that the victim of the assault was a prostitute (*R v. Hakopian*, Victorian Government Reporting Service 1991, p. 10).

and that further:

> He was not in breach of any sentencing principle when he dealt with the matter as he did on the basis that the complainant was a prostitute (*R v. Hakopian*, Victorian Government Reporting Service 1991, p. 11).

The judge's statements were, however, in breach of ethical principles and community standards. They extended the harm inflicted and, understandably, both the sex worker community and the Victorian community reacted strongly.

The *R v. Hakopian* ruling provided a forum for the community to come out in support of sex workers and condemn discriminatory practices within the criminal justice system. The PCV received approximately fifty calls from individuals and community groups after the announcement of the Supreme Court judgment. Non-sex workers demanded that a second protest be held. The public protest attracted widespread community and official support for sex workers. Letters to the editors in all major newspapers also confirmed that the community was outraged at this discriminatory treatment.

The Trauma of Rape for Individual Sex Workers

While it is evidently the view of the courts that sex workers would experience less harm than other victims/survivors of rape, there are in fact circumstances specific to the sex industry and its workers which indicate that there are measurable harms which result from the rape of a sex worker. These have been exacerbated in light of recent judiciary decisions in *R v. Hakopian*.

The PCV had contact with the defendant in the *R v. Hakopian* case. She has reported to us several real harms which resulted from the incident, which are measurable but which the *Victorian Sentencing Manual* (Mullaly & Duncan 1991) does not identify.

One of the main issues pertaining to the trauma she has experienced is the breach of her confidentiality and the subsequent fear of incidents of assault upon her. She has been publicly identified as a prostitute, and the court has ruled that she is more 'rapeable' than other women.

Sex workers have been threatened and assaulted by male family members upon learning of their occupation through media reports. Others who have been raped and go to

court have received abusive phone calls and mail, including death threats. There have also been incidents of harassment by the media seeking to sensationalise aspects of the experience of sex workers who have been raped. All of these occurrences are ongoing causes of trauma.

Apart from confidentiality issues (which *all* sex workers report to the PCV as having an impact upon their fears both of subsequent attacks and of reporting and court procedures), many sex workers who have been raped become unable to continue working and earn an income.

They can become frightened of men—in particular, violent men who may pose as clients. Not only are a sex worker's personal relationships potentially damaged through this fear and mistrust, but so are his/her relationships with those men who provide the source of his/her income, the clients. In the instance of a sex worker being unable to return to work because of an attack which occurred in the workplace, he/she would not benefit from the industrial rights and financial support of workers in other industries who were similarly assaulted.

The issue of loss of income for a sex worker who has been raped has been ignored by the courts, yet, disturbingly, in sentencing *R v. Hakopian*, Judge Jones placed weight on the offender's potential loss of income.

Sex workers are widely recognised as the main educators of men with regards to safe sex and sexual health. Surveillance reports from the Melbourne Sexually Transmitted Disease Centre support this, revealing again and again that sex industry workers, as a group, have lower incidences of sexually-transmitted diseases than other community members. The impact of contracting a sexually transmitted disease through rape (whether or not a condom was used or used properly) can be highly traumatic for a worker who takes great pride in being involved in safe sex education and the minimalisation of the transmission of HIV and other sexually transmitted diseases.

The fear of acquiring AIDS/HIV from a rapist is a common concern expressed to the PCV by individual victims/survivors. Again, loss of income can be the outcome, as workers in the sex industry do not have access to sick leave and Workcare compensation and cannot work while infected with a sexually transmitted disease (*see further* Women's Legal Resource Group 1992). In the case of HIV—a potentially life-threatening organism—concerns are exacerbated by the asymptomatic and unpredictable nature of the virus itself and by the fact that an accurate HIV-antibody test result is not possible until three months after transmission-risk activity.

Loss of employment options, and often blackbanning from working in the sex industry, are experiences of sex workers who have been raped. Many workers who inform their employers and managers of incidents of sexual assault are warned not to 'make a fuss'; that is, not to take legal action. (Employers' main concerns are about media sensationalism and potential threat to future renewal of licences.) Sex workers who have taken action are unable to find work again and, in many cases, are forced to move interstate.

Occupation and sexuality of rape victims/survivors bear no relevance to the crime. Individual sex workers, and sex workers as a group, experience severe trauma arising from rape and other violent attacks upon them, and it is unacceptable to assume that sex industry work predisposes someone to any level of 'rapeability' or that there is an appropriate response to violent attack.

The stress of sex industry work brought about by inadequate, outdated legislation and occupational health and safety standards has been compounded by court decisions such as that in *R v. Hakopian*.

Psychological Harm and Victim Impact Statements

There is no 'appropriate victim/survivor response' to the crime of rape. There are, however, other factors related to harm—and to the culpability of the offender—which can inform the sentencing guidelines in rape trials.

Sex workers do not possess inherent psychological traits which determine their response to violent attack and distinguish that response from other survivors. In light of the recent decision in *R v. Hakopian*, however, it has been argued that if a sex worker is the rape victim, then this bears relevance to the culpability of the offender.

However, the PCV does not support the introduction of Victim Impact Statements (VIS)[2] in rape trials. Victim Impact Statements are problematic for many reasons:

- rather than assessing the crime, they assess the victim and serve to trivialise the intent of the offender;
- psychological harm is not easily measurable—the extent of it cannot be assessed through a VIS nor by the courts (given that long-term social and psychological effects and delayed trauma are reported by many individuals as part of their experience of rape);
- offering a VIS as evidence in court provides the defence with the opportunity to question and/or cross-examine the victim yet again and to submit contradictory evidence. This situation forces the complainant to defend his/her response to the crime as 'appropriate' and sets up a situation whereby the class, occupation or sexuality of the victim/survivor are accepted as relevant to that response; and
- addressing the individuals' psychological harm is the role and responsibility of counsellors, mental health workers and, in the case of rape, Centres Against Sexual Assault (CASA). It is not the domain of the justice system to address the issue of individual psychological harm.

It needs only to be acknowledged by the court that rape results in extensive short- and long-term serious trauma for individuals and that offenders are aware of this.

Sentencing Practices and the Court's Responsibility

Current guidelines for sentencing, as outlined in Section 5 of the *Crimes Act 1958* (Vic.), have provided for inadequate responses to rape offenders and rely too heavily on judicial discretion. For example, Section 5(1)(b) states that sentences may be imposed 'to deter the offender or other persons from committing similar offences'. The sentencing in *R v. Hakopian*, however, has revealed judiciary attitudes that encourages deterrence of rape

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2 A Victim Impact Statement is a statement made by the victim and addressed to the judge for consideration in sentencing.

against certain classes of women only. The effect in the real world is a 'regionalisation' of crime, whereby a judge may accept evidence that anyone raped in the St Kilda area, for example, is aligned with a class of women that the judge may believe to be more 'rapeable'.

Similarly, with regard to Section 5(2)(c), the judiciary has historically revealed its misunderstanding of the 'nature and gravity of the offence', particularly in its view that the victim/survivor's sexuality, occupation, psychological response, and/or legal status is of relevance.

Section 5(1)(e) does nothing to direct the judiciary to acknowledge the fact that certain communities of people are at greater risk than others due to circumstances such as inadequate legislation and/or industrial safety standards, economic dependence, sexuality or perceived sexuality, and disability or perceived disability. All of the preceding can also change over time for individuals and communities.

The culpability of the offender must be of primary concern to sentencers in rape trials. There is a danger, as with the judiciary's historical view that the class of victim/survivor impacts upon harm, that the class of the offender is seen to bear relevance to the malevolence of the crime. In *R v. Hakopian*, for example, the facts that Hakopian had only a relatively minor criminal record and did not appear to be a violent man were relevant to sentencing indicates that certain classes of offenders are protected on the grounds of social status and appearance despite conviction and despite the malevolence of the attack.

Conclusion

All rape is violent and unacceptable whatever the background of the victim. To work in the Victorian sex industry is legal; to rape is not. *R v. Hakopian* has revealed serious problems with the criminal justice system's response to the crime of rape, particularly where the victim/survivor is a sex worker.

Traditionally, the courts have judged the victim/survivor and not the offence or the offender. This core issue must be addressed with regards to reporting and trial procedures, legal restrictions on the victim/survivor, and attitudinal changes within the judiciary and those enshrined in sentencing guidelines and practices.

The community expects and demands that all victims/survivors of sexual assault receive equal access to and fair treatment by the criminal justice system, regardless of sexuality, occupation, sexual history, legal status, economic status, cultural background, age, class, race, or gender. It is time to address the current imbalances and injustices which have been made obvious in the misunderstanding and mistreatment of sex workers who survive rape.

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VIOLENCE AGAINST WOMEN IN THE CHURCH COMMUNITY: PROJECT ANNA

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IN DEDICATION TO CHRISTIAN WOMEN WHO ARE VICTIMS/SURVIVORS OF violence in their own homes, in their own congregations and in their own churches. For many of these women, Project Anna marked the first time in which their voices, their lived experiences, had been truly heard.

> Thank God, we have heard in our own lifetime, the words for a suffering that was kept in darkness (survivor of sexual assault perpetrated by a member of the clergy).

Hearing Voices Speaking . . .

> Where is God in all of this? I thought He cared about what happens to us? Well, that's one of the cruellest lies the Church tells. If He was going to look after anyone He should have stopped my father from abusing me when I was a child, and He should have stopped the vicar from trying to have sex with me (woman, aged 24).

> I hear the clergy speaking of justice for all, especially in third world countries, and I wonder if they are blind and do not see that more than half of the congregation sitting in front of them is experiencing injustice at the hands of the church they represent . . .
>
> And then we sing hymns which speak of us all as 'brothers' and 'sons' of God the Father, and we have made promises to obey our husbands when we married them, and we have to take our children to a man to be baptised and confirmed. There are just no messages that I, as a woman, am really equal in God's eyes (woman, aged 43).

Violence against women is a manifestation of the abuse of power. The way in which the abuse of power is expressed can vary, but the intention is always to exert control over the victim. Definitions of violence against women must always take into account the experiences of women.

The countless courageous Christian women who have broken the silence on violence within the Church have given credence to the fact that the Church, alongside the rest of society, is not immune to the sin and crime of violence.

It has become painfully clear that the Church has neglected to critically review their male-dominated institutions, thus perpetuating the suffering of the large group of women and children victims/survivors within their walls. Hand in hand with this, both history and current disclosures have revealed that the mainly male leadership has acted to protect and comfort the perpetrators of the violence and to attempt to maintain what could be named a 'white-washed sepulchre'—in other words, an image of the Church which indicates its innocence in this matter—an image which covers up its culpability around the issue.

Reports from other sexual assault centres and family violence services which assist victims also confirm to us, on a daily basis, that the Church community is far from being a place of justice and love for all. Rather, the Church too often is experienced as a haven for the perpetrators of criminal activity and a hell for the victims of those assaults.

Far too often we hear reports of women being encouraged to co-exist within violent relationships. Prayer is offered as a tool of adaptation to violence and the faithfulness of Christian women is exploited to maintain their submission to violent and abusive husbands, fathers, brothers, sons, uncles and acquaintances.

Disclosures to us by women which have brought us to this understanding have been, and continue to be, almost overwhelming. Women of all ages speak of sexual assault, incest, racial violence, bashings, psychological, emotional and spiritual trauma, financial and social restrictions—all within 'Christian families'. Offenders are ordinary Christian men: church-attending husbands, fathers, grandfathers, brothers, friends. In many cases the perpetrators are members of the ordained leadership: clergy, priests, ministers, pastors, leaders of church-sponsored groups.

In too many cases it has been seen that the Church has adopted the cultural norm of the 'privacy' and 'maintenance' of the family over the disclosure of the violent acts within it. All too common are the reports of the rape, assault and incest victim seeking help from the clergy and experiencing patronising, inadequate 'victim blaming' or 'silencing' responses.

Instead of experiencing sound theological support and referral to appropriate community agencies, these victims of violence, who are in the midst of life crisis, are directed to 'accept God's will', 'suffer gladly', 'keep praying for healing' or 'be more faithful and the violence will stop'.

And it must be stated that, subsequent to the publication of the *Pastoral Report* (Last 1990) and the research conducted among church-attending Anglican families for a forthcoming report, *Hearing Voices*, Project Anna has recognised even more strongly the serious consequences of violence for the Church as a community which reinforces its image as a 'family' of God.

Congregational members go to church expecting a nurturing, caring environment—a safe place to grow in faith. In this setting, women and children are especially vulnerable to sexual assault and exploitation. There is usually a power imbalance in the congregational

'family'. Clergymen and male congregational or parish leaders are officially entrusted with the care and shepherding of souls. They are the ones with the greater power within the pastoral situation.

When this sacred trust is betrayed and woman or child is sexually assaulted by their church leader or another congregational member, then the crime is tantamount to family incest. The woman or child has been assaulted by one whom they have come to think of as a 'brother in Christ', someone who is, with them 'a child of God'.

And then, as with incest within the nuclear family, when a whole family is affected by this crime the assault of the one victim becomes the spiritual and psychological assault of the whole congregation. In hearing that the church leader is the perpetrator of this crime, the members of the Church confront many feelings and responses; denial, anger, disbelief—secrets are kept, rumours can take hold, people take sides and usually against the side of the victim.

The congregation or parish family goes through an entire range of grief emotions, for in a way there has been a 'death'. The death of the belief that the Church is a safe place. It becomes a highly ambiguous and charged situation, which can result in the loss of many members from the congregation.

Both the *Pastoral Report* (Last 1990) and *Hearing Voices* (Last & Gilmore 1993) argue strongly that this environment of unequal power, which lays the ground for violence to flourish, is obvious both in the Christian home and the Christian congregation. Men who abuse often claim that sermons preached in the Church support them in the right to misuse power and authority. They lay claim to all sorts of cultural assumptions about the meaning of (for example) 'headship' to justify what often amounts to criminal activity.

These reports are also brave enough to name the reality of the spiritual assault which comes as a direct result of sexual assault. They assert that traditional theology has maintained a monopoly on the meaning of 'spirituality'—relegating it to virtues, codes of prayer or rites of passage centred on the esoteric or 'other worldly', rejecting the body and God-created sexuality—especially female sexuality. It has defined acceptable sexuality (especially for females) as being submissive to an exclusively male God, restricted to stereotyped concepts of Father, Powerful Judge, Victor, Almighty, Omnipotent.

If our images of God are in the main *male*, the woman who has been raped or bashed, or the child abused by a father or father figure, may have no means of perceiving God as loving and protective of the innocent. Trusting her essential, spiritual, psychological self to heal can be traumatic and almost untenable in the context of the Christian community.

It is the assertion of both reports that theology follows or arises from life experience. It does not precede it, nor is it imposed artificially on it. God does not control each specific event. God does not push us around. Thus the work of Project Anna draws heavily from the stories of women in an attempt to articulate the complex spiritual and theological consequences of sexual assault and family violence. And these women who are victims of violence confirm that the integral relationship of body and spirit is what makes us fully human.

Any form of violence is always spiritually destructive. It threatens self-respect and mutual trust, giving rise to feelings of personal and social powerlessness. Violence destroys our human capacity to create and transform community, both interpersonal and political. If a blanket of silence exists then violence breeds and our innate spiritual capacity to envisage a course of action and alternative future is paralysed.

Our call, therefore, as workers committed to ending violence, is to courageously take up developmental processes of conversion from a systemic abuse of power through patriarchy to a more equitable and mutual journey. There is no doubt that the old tyranny of violence can be broken through truth telling, and deeper systemic changes can occur which will empower and authorise all rather than a few. These alternative models of power can be explored and experienced in our institutions, heralding change throughout our public and private lives.

The development, publishing and outcomes of both the *Pastoral Report* and *Hearing Voices*, and the continuing work of Project Anna affirms to us that the Church can play a key role in this movement against violence. Our research into sexual and family violence in the Church community is based on the process of self-examination by the Church community with its capacity to acknowledge structural complicity and to initiate recommendations for change and healing. *We are breaking the silence*.

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SEXUAL VIOLENCE AGAINST INTELLECTUALLY DISABLED VICTIMS

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THE PAST TWO DECADES HAVE WITNESSED IMPORTANT CHANGES IN THE living, working and social environments of intellectually disabled people. Negative stereotypes of eternal children, or sub-human beings with little or no quality of life, have been replaced by positive developmental perspectives which emphasise the individual's ability to grow, learn and to take risks. A major concept underpinning the changes in philosophy of care-giving has been normalisation, a principle which advocates providing intellectually disabled persons with conditions which are as much like normal conditions as possible to foster culturally normative behaviour. Occurring along with the concept of normalisation has been integration into community life, and the closing down of many large institutions.

While in general the consequences for intellectually disabled people have been positive, the move from 'whole of life' institutions into community-based residential environments with lower levels of supervision has meant, in some cases, an increase in the day-to-day risks experienced by the disabled person—including the risk of being a victim of sexual violence. It is, of course, a moot point as to whether or not levels of sexual victimisation have increased or decreased, or stayed stable with de-institutionalisation. There is evidence—anecdotal, legal and empirical—which demonstrates that intellectually disabled people in institutions were often victims of sexual assault from other residents, or from staff members. Involuntary sterilisation of intellectually disabled women occurred in institutions and was considered to be normal, sensible and wise. It was only in the 1970s that the individual's right to be able to bear children became an issue (Macklin & Gaylin 1981). At that stage,

the emphasis was on the prevention of unwanted pregnancies and the attendant social and medical complications, rather than upon expression of sexuality.

Now that many intellectually disabled people are living in the community, the problem of sexual violence against them has been recognised, and the emphasis has shifted towards providing them with the opportunity to choose their sexual partners and to engage in appropriate sexual activity, but also to protect their rights if they are the victims of sexual assault.

A common scenario has been described in a report by the Public Advocate in Victoria:

> An intellectually disabled woman taking part in an independent living skills program who 'alleged' [sic] assault by a non-disabled individual. Case notes comment:
>
> > There is little doubt that an incident of a sexual nature occurred between A and (the non-disabled individual) . . . it seems (the non-disabled individual) has taken advantage of A's passivity and lack of sexual experience and skills in defending herself . . . still though the committee feels strongly that A's contact with (the non-disabled individual) be terminated and other residents be discouraged from having contact with him.
> >
> > No charges were brought against the non-disabled individual involved, in spite of the acceptance that some kind of sexual advantage had been taken by him. (Bodna 1987).

Incidence of Sexual Assault

A benchmark study of sexual assault against people with an intellectual disability was prepared for the Women's Coordination Unit in New South Wales (Carmody 1990). The report acknowledges that accurate statistics concerning the prevalence and incidence of sexual assault amongst people with an intellectual disability are difficult to obtain, particularly since disability services rarely collect data on this issue. On the other hand, those agencies which do collect data on crime statistics rarely note whether or not the victim is intellectually disabled.

A study of 855 adults referred to the sexual assault services of the New South Wales Department of Health in the first six months of 1989 revealed that 6.4 per cent of victims had an intellectual disability.

In Victoria, nineteen agencies agreed to monitor their cases of alleged crimes against people with an intellectual disability during the last quarter of 1987. During that time, 144 alleged crimes were reported to agencies with 130 involving sexual offences. The researchers indicated that there was strong evidence of under-reporting of crimes by people with intellectual disabilities themselves and by workers. The data suggested strongly that sexual offences and physical assault were the most frequently recorded crimes against intellectually disabled people, and that the recording of these figures is particularly significant in view of the low reporting rates for these crimes in the general population (Johnson, Andrew & Topp 1988).

Overall, there seems to be an alarmingly high incidence of sexual assault against people with an intellectual disability. But even more alarming is the apparent lack of action and resources to address the problem.

Vulnerability to Sexual Assault

People with intellectual disabilities are likely to have increased vulnerability to criminal victimisation as a consequence of many factors, such as:

- their impaired judgement and intellectual disabilities;
- deficits in adaptive behaviour, including lack of interpersonal skills and sex education;
- accompanying physical disabilities, including limited speech, which may inhibit the person from conveying the fact of sexual victimisation;
- the high risk environments in which they often live and work, accompanied by a lack of outside and independent contacts;
- their frequent contact with unscrupulous care-givers, friends, or family members;
- their lack of knowledge about their rights, and their abilities to protect themselves; and
- the attraction of some abusers to environments in which they will encounter vulnerable victims (Carmody 1990; Luckasson 1992a).

It is of great significance in reducing vulnerability to sexual assault to note the research finding that sex education for people with an intellectual disability is negatively correlated with the incidence of sexual abuse (McCabe 1992). That is, those with more knowledge about sexual behaviour are less likely to be victimised.

Victim or Offender?

The generational perpetuation of child abuse is well recognised. Children who have experienced abuse are likely to grow up to be abusing parents, unless there are specific interventions which enable them to learn other forms of parenting behaviour (Oates 1990). Although as yet no empirical study has been conducted on the link between being sexually abused and becoming a perpetrator amongst the intellectually disabled population, it is noteworthy that amongst the client population of this author and Luckasson (1992, Department of Special Education, University of New Mexico, pers. comm.), there has been no case in which the intellectually disabled sex offender was not sexually abused him or herself. Luckasson states that in her experience with intellectually disabled offenders on 'Death Row' in the USA, she has never encountered one offender who was not sexually abused.

The important point to emerge from this finding is not that professionals or courts should be lenient with intellectually disabled sex offenders or murderers because they themselves have been the victim of abuse. Rather, the lesson to be learned is that, if sexual abuse of the intellectually disabled population were reduced, it is likely that there would be a reduction in violent crimes by intellectually disabled offenders. Intellectually disabled people who are the victims of sexual abuse themselves learn aberrant patterns of sexuality which

may never be contradicted because they are not exposed to more normal patterns of interpersonal behaviour. One client of this author had no idea that sexual activity could be conducted between a man and a woman, or between people who consented to the sexual activity. His only learning experience involved older boys and staff members in the institution inflicting violent and painful sex upon him and he grew to adulthood believing that this was the only form of sexual expression. The lack of appropriate sexual learning programs for intellectually disabled people exacerbates the perpetuation of such gross misinformation, and the consequent behaviour.

Indicators of Sexual Assault

Carmody (1990) gives an excellent and brief summary of indicators of sexual assault amongst people with an intellectual disability (based on a New South Wales Department of Health document 1989). She states that there are four main ways that sexual assault may come to the attention of another person:

- the person with a disability tells someone they have been sexually assaulted;
- the sexual assault or exploitative behaviour is observed by a third party;
- the behaviour of the person with a disability changes significantly; and
- the person complains of physical symptoms or they are observed by another person.

Carmody also gives a list of behavioural and physical indicators of sexual assault, but sounds the warning that the presence of any of these indicators alone does not clearly confirm sexual assault and that there may be other reasons to explain these factors.

Behavioural indicators of sexual assault

- Self-destructive behaviour;
- sleep disturbances and nightmares;
- acting-out behaviours;
- lack of interest in usual activities;
- persistent and inappropriate sexual play;
- sexually aggressive behaviour;
- sexual themes in artwork;
- irritability, short-tempered behaviour, weeping;
- withdrawal;

- eating and elimination disturbances;
- increase or decrease in hygiene;
- unexplained accumulation of money, gifts or toys;
- fear of particular people or situations; and
- saying, 'I've got a secret'.

Physical indicators of sexual assault

- Semen stains on clothing, particularly on women's clothing;
- pregnancy;
- bruises, bleeding or trauma in the genital or rectal area;
- foreign objects in genital, rectal or urethral openings;
- sexually transmitted disease;
- itching, inflammation or infection in urethral, vaginal or anal areas;
- trauma to breasts, buttocks, lower abdomen or thighs;
- abdominal pain, migraines; and
- psychosomatic illness.

Added to these indicators are the more serious behaviours of assault or murder. It is not unknown for intellectually disabled victims of sexual assault, particularly males, to lash out violently against the perpetrator, and the incident may result in homicide.

Outcomes of Sexual Assault on a Person with Intellectual Disability

There are two areas of outcome which need to be explored—the first is the personal outcome for the intellectually disabled victim of sexual assault (which includes the effect upon their family, friends and caregivers), and the second outcome is the official outcome, that is, possible notification, police questioning, and charges. Also included under the official outcome may be disciplinary procedures brought against the perpetrator by government departments, but stopping short of the criminal justice system.

Personal outcomes

It is well-accepted that victims of sexual assault are often blamed, not only by the criminal justice system but also by hospital personnel, police, and friends. The victim is often blamed for the attack on the basis of such fallacious arguments as 'he or she was dressed too

provocatively' or 'he or she was out on the street alone'. These fallacious excuses are expanded in the case of the intellectually disabled victim to include 'he or she came on strongly' (usually a comment on inappropriate overly friendly social behaviour) or 'he or she did not say no'. The latter comment becomes—at its kindest interpretation—breathtakingly naive in view of the lack of knowledge amongst intellectually disabled people of their rights, their frequent inability to assert their rights even if they know what they are, their subservience to authority figures, and the fact that to say 'no' has often been in the past interpreted as their being stubborn or defiant.

This paper will not dwell upon the feelings of shock, fear and physical and emotional violation which follow sexual assault. Nevertheless, it should be emphasised that all of the feelings experienced by non-disabled victims are also experienced by victims with an intellectual disability, except that they are at a further disadvantage because of their feelings of helplessness and powerlessness in most other areas of their life, and their poor verbal skills which may inhibit attempts at counselling.

Official responses

It is with a sense of dismay that a statistic such as the following one is discovered; of some ninety cases of sexual assault against intellectually disabled women referred to a sexual assault clinic at the Royal North Shore Hospital in Sydney, not one has resulted in charges being laid by police against the perpetrator (Kendall, S. 1992, social worker in the Sexual Assault Clinic at the Royal North Shore Hospital, pers. comm.). Reasons for this which may be put forward by criminal justice personnel include the difficulty of ensuring a conviction when the main witness is a person with an intellectual disability, or the difficulties of obtaining evidence from other witnesses who are also intellectually disabled. Nevertheless, it is difficult to imagine a situation where repeated acts of sexual violence against a child who could not speak, for example, would go unremarked by police and others involved in the criminal justice system.

Clearly, the issue of official responses to sexual assault against a person with an intellectual disability is one which needs to be addressed strongly by many government departments.

Issues for Discussion

A number of issues arise from the foregoing summary, and include the following:

- The prevention of sexual abuse against victims with an intellectual disability, including training in sexuality, and removal of perpetrators from the environment of the intellectually disabled person (be it their working or living environment).

- The establishment of comprehensive and well-resourced units for addressing the problem of sexual violence amongst people with an intellectual disability, particularly the perpetrators, but also offering behavioural management to the victims whose behaviour may have deteriorated as a result of the assault.

- The training of criminal justice personnel, particularly police officers, in the obtaining of evidence from intellectually disabled witnesses and victims of crime.

- Training of sexual assault workers and provision of guidelines and resources for addressing the needs of intellectually disabled victims of sexual assault.

- Increasing awareness amongst the community, families and caregivers about the high incidence of sexual assault against intellectually disabled people and the fact that this is simply not acceptable.

- To what extent the issue of power in relationships is relevant to sexual assault when both victim and perpetrator are intellectually disabled.

- The differential diagnosis between paraphilia and functional age related behaviour.

It is a fine line to tread between over-protection of people with an intellectual disability, and abandoning them to the risks, and perhaps increased risks for them, of living and working in the community. A past president of the American Association on Mental Retardation has referred to the new realism in the field of intellectual disability (Ellis 1990). Ellis describes the successes which have been achieved for people with an intellectual disability under the banner of normalisation. He states that he is not calling for a resiling from the principle of normalisation, but that this catch phrase has led to some incorrect and counter productive approaches to people with disabilities and the services they receive.

> In particular, if 'normalization' is misperceived as invariably treating a person as if he or she did not have a disability, people with handicaps may be badly disserved . . . In its most dangerous form, this approach argues that no public policy should ever take disability into account. From this point of view, any law or policy that treats people with disability differently from those who have no handicapping condition is a violation of normalization . . . We have seen this approach most recently in the debate over the death penalty as it relates to people with mental retardation . . . Some have argued that no matter how distasteful or repugnant the result, we must acquiesce in the execution of people with mental retardation because this is a 'normalizing' experience . . . This approach is wrong in assuming that every law that treats people differently because they have a disability is harmful or wrong-headed. In fact, all of the principal victories we have won in the last two decades have involved differential treatment in some way or another (Ellis 1990, p. 265).

The presence of intellectual disability is real. The limitations of people who have intellectual disabilities are significant. These limitations may make them particularly vulnerable in certain circumstances, including the circumstance of sexual assault. People with an intellectual disability are different in some respects from non-disabled people, and as such they may need differential treatment to protect them from sexual victimisation, to treat them and counsel them when they have been sexually victimised, to make sure that their evidence gets to court in the best possible way, and to ensure that all of the services and resources which they need to receive following a sexual assault are appropriate to their needs.

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STRIP SEARCHES: SEXUAL ASSAULT BY THE STATE

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> I removed my clothes one piece at a time as requested. When we had stripped down to our underwear in the street, we were searched. I honestly felt the only way to prevent the search becoming more intrusive or sexual was to remain as quiet and docile as possible. I later wondered why I was so passive all I could answer was that it was an experience similar to sexual assault. I felt the same helplessness, the same abuse by a male in authority, the same sense of degradation and lack of escape (St Kilda Pedestrian).
>
> We are strip searched after every visit. We are naked, told to bend over, touch our toes, spread our cheeks. If we've got our period we have to take the tampon out in front of them. It's degrading and humiliating. When we do urines it's even worse, we piss in a bottle in front of them. If we can't or won't we lose visits for three weeks (Fairlea Prisoner).

THE VOICES OF WOMEN HAVE RAISED AND CHANGED, THE PUBLIC discussion around sexual assault. The many manifestations and consequences of sexual assault, have affected the lives of most women. The definitions that the legal system has used to describe rape, incest and indecent assault have negated the reality of many women and men's experience of the spectrum of behaviour which is described as sexual assault.

It is interesting that the lowest incidence of sexual assault, that committed by strangers, has historically, received the greatest notoriety, while overwhelmingly the greatest incidence of sexual assault, those committed within families has been the most hidden. This perversity is easily explained by simply looking at in whose interests it is that the myth of the dangerous stranger is perpetuated, and who has the power particularly in the reproduction of culture to reinforce this myth. This paper will look at sexual assaults within the state controlled apparatus of prisons and police.

The acknowledgment that sexual assault does occur in institutions, for people with intellectual disabilities, prisons, psychiatric hospitals, youth training centres and police

stations, usually centres around the criminal acts of rape and sexual assault by individuals employed in those institutions. These offences, though they are rarely reported, are clearly understood as being 'crimes' for which the individual and not the state is responsible. At the same time as the state deplores 'unlawful' sexual assaults by its employees, it actually uses sexual assault as a means of control.

In Victoria, prison and police officers are vested with the power and responsibility to do acts which, if done outside of work hours, would be crimes of sexual assault. If a person does not 'consent' to being stripped naked by these officers, force can lawfully be used to do it (Office of Corrections, Director-General's Rule No. 2.11, Rule 3.4. Search and Apprehension of Prisons). These legal strip searches are, in the author's view, sexual assaults within the definition of indecent assault in the *Crimes Act 1958 (Vic.)* as amended in section 39.

Everyday, women and men experience these sexual assaults at the hands of the state. The state tries to deny that these acts are crimes, firstly by justifying them for a variety of purposes, secondly by labelling the victims as being of a class deserving of the treatment, and thirdly by completely ignoring the experience of the victim. The state goes to these lengths to justify giving itself these powers precisely because it knows they are crimes.

Prisons: Strip Searches

Prisons are places where each minute of the day one's life is controlled. Prisoners are to do what they are told, when they are told, and are punished if they do not.

What is a strip search then? You are told to remove your clothes one item at a time and pass them over. You stand naked. Open your mouth. Lift up your tongue. Take out dentures. Flick your ears. Stretch out your arms. Lift your feet. Lift your breasts, men their testicles. Spread your legs. Bend over to touch the floor and part your cheeks for inspection. If you are menstruating you remove the tampon in front of them and insert a new one. (Although the practice of tampon removal is not in the Director-General's Rules, it is still required of women prisoners.)

In 1988, eight women at Fairlea Prison went on hunger strike over conditions; in particular, strip searches. In 1989 women in G Division Pentridge protested over the 'squat and cough' routine of the search. The Coroner's finding regarding a woman who died at G Division that year said the:

> squat . . . leads to allegations of degrading treatment and created further tensions between officers and prisoners (Record of investigations of death of Karen Watson).

After this inquiry, the 'squat and cough' routine was finally stopped.

Strip searches are done on prisoners whenever they have family and friends visit, and increasingly now after professional visitors (lawyers, housing and community workers). The practice of strip searching prisoners when they have professional visitors, in effect, punishes prisoners who are seeking information, support and assistance from outside organisations. This is quite contrary to Office of Corrections (OOC) policy which says:

> The management of women prisoners should emphasise their continuing part in the community . . . The OOC has for many years actively encouraged the participation of community agencies in prisons, recognising their expertise and

> commitment to providing support to prisoners (Victoria. Women Prisoners and Offenders Advisory Committee 1991).

The use of strip searches on prisoners seeking support and assistance is currently the subject of joint protest by community, church and legal organisations.

Strip searches are also done on family and friend visitors to the prison either by a process of selection, or randomly. Visitors who refuse the strip when asked do not get to visit at all. While the Director-General's Rules say a non-contact visit can be offered, they frequently are not. More often than not, the visitor is met down the road by police for a car search. The visitor's refusal to strip is seen as being motivated by something to hide rather than any concerns about dignity, fear, humiliation or cultural and religious issues (Easteal 1992, p. 108). The attitude of the state is that friends and family of prisoners should be treated like prisoners.

> it is the feeling of most if not all the women prisoners that the searches are far too often and very degrading for our families to be put through. Most of the women of the unit (Banksia, maximum security Barwon Prison) have no visits at all because of this fact. We had an Open Day with a band but it was a disaster because of lack of visitors (*Barwon Times* 1991, p. 24.).

In May this year in Fairlea, there were sixty women inside. Over a one-month period, 386 strip searches were conducted (Victorian Office of Corrections response to Freedom of Information request 6/10/92). That same month the author read with concern an article in *The Age* about the simultaneous strip searching of women in prison in Northern Ireland. There was no outrage though at the simultaneous strip searching and urine testing of all women in Victoria's gaols on a Sunday night in April 1992.

The latest prank of the OOC is to force prisoners to give urine samples. For this, a prisoner is strip searched, redresses and urinates into a bottle in front of the officer. For strip searches or urine tests there is no absolute requirement that the officers be of the same gender as the prisoner (Victorian Office of Corrections, Director-General's Rules No. 2.11; Search and Apprehension of Persons Rule 3.1 and 3.3).

Any prisoner who refuses to strip search is charged with an offence. Force can and has been used to accomplish the strip and search. A prisoner who refuses or who cannot urinate within three hours of being ordered to, loses contact visits for three weeks. For three refusal offences, prisoners lose contact visits for twelve months (Victorian Office of Corrections, Director-General's Rules No. 4.5, amended 22/4/92; and principal Rules 2.11 and 3.11). In reality there is no choice but to submit to these assaults and to this humiliating and degrading treatment.

The 'choice' that the 74 per cent of women in Victorian prisons who are mothers have is that, unless they submit to these sexual assaults, prison regulations say prisoners only get to see their children for a weekly half-hour visit through glass:

> The pram is wheeled up to the front door by the officer. When I inquired of him why I couldn't take my son to my husband his only reply was 'You might get drugs passed to you.' 'So strip search me then', I scream. 'Don't use my son against me. Placing my son in the pram I will myself not to cry, I won't give the officer the pleasure of seeing me fall apart. Keeping my eyes focussed on my son is the only way I stop myself from breaking.

> As the officer wheels the pram away, Michael turns and looks back at me, he does not understand and neither do I. Why can't I be treated with dignity, to be respected and allowed to be me . . . Back in my room my mind is a whirl. I realise the contradiction of it all. I can clean their toilets, wash their walls, I can even wander around the administration area with all types of people coming through the gates, but I cannot be trusted to hand my son to my husband simply because I may get drugs. I have no drug history and to be honest would not know what they look like, but because I am in prison I will always be a drug taker (Hawthorn Community Education Project c.1992, 'No Title' by Sarah).

On perhaps an even bleaker note, some 70 per cent of women inside are survivors of incest and sexual abuse (Queensland. Women's House Survey 1989). The OOC runs programs for women who are survivors. These programs are to increase confidence, self-esteem, body image and develop assertiveness. Yet these same women regularly get strip searched by the OOC without their 'free agreement'. They can be forced to submit, and it is illegal for them to resist. Until late-1991, even women who were being internally examined in outside hospitals could be required to wear handcuffs during the internal, in front of an officer. Now it is in front of the officer without handcuffs.

The prison environment that this abuse occurs in is one where the woman is completely powerless. There is no real accountability in prisons. It is a closed hypermale military environment demanding a slavish submission to hierarchy and authority.

Under the new regime of Unit Management in prisons, the officers who strip prisoners, search prisoners and inspect prisoners' urine technique are also their welfare officers, the people prisoners are supposed to confide in, be counselled and supported by. These officers are also the people who can charge prisoners with offences and report on their behaviour at regular meetings which determine prisoners' education and recreation privileges and accommodation.

The weekly roundabout of the 'strip as the price to get visits', followed by courses to develop confidence and assertiveness, followed by a literal stripping of these qualities is sadistic, and may indeed constitute a 'cruel and unusual punishment' under the International Covenant on Civil and Political Rights (United Nations 1976). And why is this sexual assault and humiliation legal? Because the victim is a prisoner. She may be in for social security fraud, drugs, spouse murder, credit fraud or another offence, but she loses her humanity, her individuality, her right to freedom from assault, humiliation and fear, and her right to resist those assaults.

Of course, in the time-honoured tradition of government there are reasons provided for practices that would in other circumstances be illegal. The main reason given is drugs. These strip searches and urine tests are ostensibly designed to detect and stop drugs and other contraband.

Drugs raise interesting issues in the context of women prisoners. As we know the vast majority of women inside are victims/survivors of sexual, and physical abuse. For women who are survivors of sexual and physical abuse, legal and illegal drug use has been seen as self-medication (Barnacle [forthcoming]). In Australia and the USA, 84 per cent of participants in Odyssey House programs reported a history of sexual abuse as children. A Queensland study indicated that 70-80 per cent of women in prison were incest survivors (Queensland. Women's House Survey 1989).

As well as the majority of women inside being survivors, many women's offences are drug or alcohol related. There is a clear and established nexus between sexual abuse and drug use, yet in the state's pursuit of the drug-free prison, women are subjected to further abuse while at the same time they are offered programs to deal with their own history of sexual assault.

Clearly these searches and public urination exacerbate a prisoner's poor self-image and self-esteem, increase fear and create a perfect scenario for further self-medication. Apparently the OOC does not think urine testing is too bad. In the report, *Strategies to Reduce Drugs in Prison*, it was said that 'urines are no more invasive than that relating to the regulation of breath tests' (Abbot 1990).

Police: Strip Search

The police power to strip search is on the basis of their forming a reasonable belief that a person is in possession of concealed drugs (Victorian Chief Commissioner of Police Standing Orders 9.11(g)). The police are totally unaccountable in their use of strip searches. When the Victoria Police were asked to provide information on the number of strip searches done by police, they replied 'There is no requirement for such searches to be centrally documented therefore no statistical data exists' (Letter from Victoria Police to Western Suburbs Legal Service on 4 November 92 in response to Freedom of Information request).

This power gives the police carte blanche to harass, abuse and assault women whom they identify as deserving—in particular, any woman walking in St Kilda, where street prostitution occurs, is fair game. These searches are rarely carried out in police stations. They occur in back lanes and in doorway recesses. Perhaps it is because of the poor lighting in these areas the police are taking a more hands on approach? According to a member of the Prostitutes Collective of Victoria:

> I had to strip down to my undies, they made me go out the back of the light, I was a bit scared, I wet myself literally because I knew what they'd do next. Only one guy searched me internally, but he did me anally and vaginally. I had nothing on me, they told me to run off home.

These internal searches are completely illegal, but what woman is going to be believed making such serious complaints against police. And who working legally or illegally in the sex industry can afford to stand up to police?

These strip searches, when they do happen in police stations, usually go far beyond the legalised indecent assaults. Reports of women getting interviewed while naked and having photographs taken in front of groups of officers while naked are documented (Federation of Community Legal Centres (Vic.), Police Issues Group 1991).

Further terror tactics and sexual assaults by police have been documented in a book on police shootings in Victoria released in October 1992. In this book, a woman disclosed that, after being punched by police, she had a shotgun put between her legs. In the same raid, an eighteen-year-old man was punched, had his pants pulled down and had a gun up his behind (Fitzroy Legal Service 1992).

Conclusion

Examples of police and prison officers abuse of power must not focus on the few bad apples in the barrel argument. Abuse of power comes as no surprise. What must be acknowledged is that, in giving prison and police officers the power to strip search and to use force, they are being given them the right to sexually assault. In doing this, any right of the victim to resist, to complain and to have their experience of the assault legitimated is removed. If this idea seems wrong, reserve judgement until you have experienced a strip search.

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SEXUAL ASSAULT OF MALES

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THE MOST STRIKING FACT TO BE FOUND IN REVIEWING CURRENT INFORMATION regarding the sexual assault of males is that nearly all writers who specifically address male victimisation begin by commenting on the lack of recognition given by the public, professionals, and researchers to males who are victims of sexual assault, whether the perpetrator be male or female. All forms of abuse are inherently difficult to research because of the secrecy and denial that tends to accompany them. However, lack of social awareness of abuse creates a vicious cycle of silence by restricting victims from seeking assistance and limiting professional ability to identify victims, thereby placing restraints on the ability of researchers to obtain information about abuse to help raise social awareness and develop effective responses.

Despite the wide problems that remain regarding the recognition of abuse in society, remarkable changes have occurred in western cultures in the preparedness to respond to some forms of abuse. Workers and researchers have played vital roles in the development of specialist programs to alleviate child abuse and neglect, inter-spousal violence, sexual victimisation of women, and so on.

The process by which nearly all of the currently identified abuse areas have come to be acknowledged as social problems has involved the incidence of victimisation initially being recognised as much more severe than commonly recognised. The publication of research more closely reflecting actual rates of victimisation in the community have typically been

accompanied by increases in social awareness and responses. As the public and professions become more aware of abuse, more victims seem to be empowered to seek assistance. Workers such as psychologists, social workers, counsellors and nurses become more skilled at identifying the problems, with a recursive result in increased government, community and academic awareness of the issues. This paper aims to encourage recognition of the need for an increase in resources to investigate and respond to male sexual victimisation, and thus to redress the imbalance indicated in the limited research available.

Recognition of Male Sexual Assault

Sexual assault (SXA) tends to be viewed as male violence to women and, subsequently, there has been very little research or attention given to the problem of male victimisation (McMullen 1990). This is reflected in the relative numbers of publications addressing male victimisation. References identified in computer assisted searches using the terms 'rape', 'sexual assault', 'sexual offences', or 'incest'—which deal principally with male victims of SXA—comprise only 2–3 per cent of all references listed for the period 1987–1992 (PsycLit 1992).

In a recent extensive review of the available literature about child SXA of males, Watkins and Bentovim claim that research about sexual abuse of boys:

> has clearly lagged behind that of girls, partly because it is seen as an uncommon, if not rare, problem and partly because it was doubted that sexual abuse had significant effects on boys or their subsequent development (Watkins & Bentovim 1992, p. 197).

The available research on SXA of adult men is negligible, even in comparison to research examining SXA of boys. Comparative data on the SXA of adult men and women is also rare (exceptions include Anderson 1981–82; Kaufman 1984; Kaufman, Divasto, Jackson, Voorhees & Christy 1980) and, therefore, adult gender comparisons are severely limited. This lack of academic attention given to male victims of SXA relative to female victims parallels social attitudes.

Public recognition of victims of sexual assault

Public recognition of victims of SXA is similarly biased towards women. It is uncommon for public education programs to provide information regarding the prevalence of male victimisation, and those that do, tend to devote substantially more attention to female victims. Community groups that have been formed to address rape law reform sometimes exclude men and are expressly concerned only with male attacks of women. Some rape crisis centres refuse to respond to male victims. Consideration of male victimisation is seen by some feminists as confusing the issue of male violence to women (McMullen 1990).

Laws are often examined by writers in the area of abuse as reflective of community values and attitudes. Legal definitions of SXA have tended to exclude males as victims, or to represent their victimisation as a lesser crime to the rape of women (McMullen 1990). For example, in Queensland the crime of rape is defined as 'carnal knowledge of a female without her consent or with her consent, if it is obtained by force, or by fear of bodily harm, or by means of false or fraudulent representations as to the nature of the act, or, in the case of a married woman, by personating her husband'. Penile, digital or artificial penetrations of

non-vaginal orifices have historically been deemed to be less serious crimes compared to rape; hence rape of males has historically been regarded as a lesser crime to female rape.

Rape law reform has resulted in most Australian states broadening their definitions of rape to recognise non-consensual anal and oral penetration of women *and* men, and the manipulation of objects by a person of either sex into the vagina or anus of a female or the anus of a man (Centre Against Sexual Assault 1990). However, even with such reforms, large sections of the public maintain much more restrictive definitions of rape (Howard 1988). It is unlikely that social attitudes have caught up with the many changes in abuse law reform that have occurred over the last decade. The effectiveness of such laws are dependant upon the awareness of the public and the professionals who are involved in their implementation.

Defining Sexual Assault

There is little consensus regarding definitions of SXA. Although most theoretical definitions involve concepts of sexual penetration, the use of force or intimidation, and lack of consent, there remain many unresolved issues (Bourque 1989). Some unresolved issues that may be pertinent to an understanding of male sexual victimisation involve examining the influence of gender relationships on boundaries between SXA and non-abusive behaviour; for example, how do the boundaries of acceptable contact vary between fathers' and mothers' relationships with their daughters and sons. Considering the wide research suggesting a strong relationship between experience of SXA and subsequent SXA by females and particularly males (*see* Watkins & Bentovim 1992, for a literature review), it may be important to include modelling of sexually abusive behaviour to children as SXA.

Sexually-related abusive behaviour that may be more extreme amongst young male groups (relative to female) involving informal initiation rites, may also often be unrecognised as SXA because the perpetrators demonstrate no overt sexual attraction to their victims and/or because victims can be restrained from reporting by peer pressure. Much of this violence seems to be driven by a desire to sexually humiliate the victim and thus should be termed SXA. Examples of such behaviours would include the once well-known military ritual of blackballing, where a group of men would shoe-polish the victim's testicles forcing him to then scrub this sensitive area clean.

Whatever the definition of SXA, it is clear that the broader the definition the more cases will be identified as victims. For example, if it were deemed sexual abuse for children of eight to ten years to touch their parent's genitals, incidence rates from one study would suggest that 50 per cent of girls are sexually assaulted by their mothers and 30 per cent by their fathers, and 40 per cent of boys are assaulted by their mothers and 20 per cent by their fathers (Rosenfeld, Bailey, Siegel & Bailey 1986).

Comparable definitions for male and female sexual assault

Comparable definitions for male and female SXA are necessary to examine similarities and differences between the abuse of men and women. If comparisons are to be legitimate, application of the same definitions and methods of obtaining data to men and women is necessary. There are, however, some practical and theoretical problems with comparing men and women's experience of abuse.

The single major problem is that, regardless of the actual differences between men and women, the vast majority of people have clear stereotypes about what men and women generally want, do and think (Brannon 1978; Cicone & Ruble 1978). The fact that stereotypes are widely held, together with actual generalised differences between men and women, indicates that the contexts for male and female victimisation will inevitably be quite different. Given the real and imagined differences between men and women, applying any operational or theoretical definition of SXA may create artificial biases, if these differences are ignored. Sometimes it is only with the benefit of hindsight that such biases are identified.

The definition of sexual assault adopted for this paper is as follows:

> One person's use of another person by means of authority (for example, as: employer, parent, teacher, doctor, and so on), force, or threats of force or injury, to attempt to satisfy their own needs through sexual contact with the other and without the expressed, informed, consent of the other (thereby denying the other's rights and choices).

In reviewing literature in the area of male victimisation, strict criteria as to acceptable research must be relaxed because there is so little research to review. Common problems with research on SXA include the use of widely varying theoretical and operational definitions of SXA, very small samples, reliance on anecdotal and clinical or criminological reports, lack of comparison groups, lack of objective measures, use of retrospective reports, and, importantly for the current paper, failure to conduct gender analyses (Watkins & Bentovim 1992). There may be a number of confusing disparities also arising due to reliance in Australia on American and English studies. Unless otherwise stated, these methodological limitations should be taken as applying to any of the studies cited.

Prevalence Research

Estimates of the incidence of SXA can vary greatly depending on the actual incidence, the use of biased samples, the potential for different methods of obtaining data to exacerbate problems of self-reporting, and the degree of inclusiveness of the definition of abuse used.

It might be argued that the bias amongst academics, professionals, and the public towards concern for female relative to male victims of SXA, is appropriate to relative severity of these problems. In order to accurately assess the relative severity of these problems, it would be necessary to use a representative sample methodology which:

- minimises under-reporting for men and women;
- is fully crossed for gender of victim and perpetrator, and that;
- examines the prevalence and frequency of forms of SXA and other forms of abuse (for example, physical abuse, emotional abuse);
- the impact of this abuse on victims; and
- estimates the subsequent costs to society.

No such study has yet been reported.

Peters, Wyatt and Finkelhor (1986) reported a review of incidence data collected from eleven community samples, five college student samples, and three volunteer samples. Prevalence ranged from 3 per cent to 31 per cent for males, and 6 per cent to 62 per cent for females. Such widely varying data illustrate the necessity of employing comparable methods of data collection for making comparisons between male and female victimisation. It might be assumed from such data that the ratios of male to female victimisation is about 1:2. Community studies, interestingly, tend to find higher ratios of male to female victimisation compared to clinical studies (Watkins & Bentovim 1992).

Criminological data typically report even lower proportions of SXA cases involving male victims. Incidence from crime statistics are difficult to interpret due to widely varying definitions of terms, the fact that many forms of SXA are labelled physical assault or other crimes, and the widely acknowledged fact that the vast majority of cases involving SXA go unreported. Yet such statistics are often relied upon to provide incidence data.

Most analyses of SXA reported from crime statistics indicate the vast majority of victims are female. For example, after amendments in New South Wales which redefined SXA to include offences committed against men, only 7.5 per cent of complainants were male (Bonney 1985). These data of course include victimisation of adults and therefore are not readily comparable to the child SXA statistics given above. Nevertheless, even this rate would suggest that SXA of males is a widespread problem.

Professionals who work with various victims and/or offenders, should be aware of the silence that surrounds abuse, and that, unless workers are alert to risk factors, and skilled in methods of sensitively exploring clients' circumstances, much abuse in people's lives tends to remain unidentified. Ignorance of the prevalence of different forms of abuse, including sexual victimisation of males, can cause workers to get a distorted perception of abuse occurrences, because abuse tends not to be identified unless it is looked for. For this reason, clinical and criminological incidence data is always suspect. There is no way currently of knowing, for example, whether abuse-related professionals are equally likely to identify different forms of victimisation. Given the limited literature and that male victimisation is seen as a relatively unimportant problem, it is likely that many workers are inadequately trained in identifying SXA in male clients or encouraging males to disclose. Subsequent failures to identify male victims will thereby reinforce the belief that male victimisation is rare thus maintaining a cycle of denial.

Considering the likely exacerbation of sample bias problems in clinical and legal data, the best evidence available—that is community samples—suggests that between about 25 per cent and 45 per cent of childhood victims of SXA are boys (Watkins & Bentovim 1992). This is much higher than estimates, such as one male in nine victims, which were commonly accepted ten years ago (Watkins & Bentovim 1992). It is clear that females are more frequently victims of SXA, but disparities in the prevalence or male and female victims appear to be much smaller than is acknowledged by public or professional responses.

It should be noted that there appears to be a strong post-pubertal decline in the ratio of male compared to female cases of SXA (Cupoli & Sewell 1988; Rimza & Niggerman 1982). Although it has been suggested this decline may be due to under-reporting (Watkins

& Bentovim 1992), it may also be caused by a decline in SXA vulnerability of males relative to females. Men are generally more able to defend themselves against attackers than women. However, adult men are still at risk, especially when offenders are assisted by other men and/or weapons. Vulnerability to attack is consistently cited as risk factor for various forms of abuse whether the victim be male or female. Not surprisingly, higher rates of victimisation of males are reported amongst groups that are less able to defend themselves or to seek redress. These groups include prisoners, children, homeless boys, psychiatric patients and homosexuals (McMullen 1990; Watkins & Bentovim 1992).

Who is the Abuser?

Males are consistently found to be more frequently both perpetrators or victims of violent assault with the notable exceptions of victims of SXA and date/spouse abuse victims (*see* National Committee on Violence 1990). Heterosexual men are more often perpetrators of SXA than homosexual men, whether the victim is male or female (McMullen 1990). Females constitute the majority of male offender victims. Whereas the vast majority of offences against girls are committed by individuals known to the victim, it appears that boys are more frequently abused by strangers or extrafamilial offenders (Watkins & Bentovim 1992). This may be because parents are less protective of boys.

A minority of male SXA victims are abused by women (Bentovim, Boston & Van Elburg 1987; Dimock 1988; Faller 1989a). Although child victims of female offenders have been considered to be mostly female (*see* Russell & Finkelhor 1984), three more recent studies suggest that female offences to females, as compared to female offences to males, are a minority (Faller 1989b; Hiller & Goddard 1990; Johnson 1989). It has been argued that female sexual offences are often seen as normative sexual experience or of little consequence because the abuse was frequently regarded as positive (Dimock 1988). However, case studies of individuals abused by females demonstrate that the effects of this SXA can be devastating (*see* Sheldon & Sheldon 1989) even though abuse by women is less likely to include threats or use of force (Johnson & Shrier 1988). The most commonly reported relationships between female offenders and their male victims include mothers, sisters, and baby-sitters. Initial descriptions of female offenders as predominantly psychotic (Rosenfeld 1979) have been clearly discounted by subsequent research (Krug 1989; McCarty 1986). Very little research has considered female SXA of other adults, although lesbian SXA has been noted as a serious problem by one author (Hart 1986).

There is a serious lack of information about male or female perpetrators of SXA to boys (Watkins & Bentovim 1992). Most information is drawn from clinical literature and parallels descriptions of male abusers of women; for example, male abusers are described as having problems of dependency and power issues (McMullen 1990). Several studies reviewed by Watkins and Bentovim (1992) have suggested that perpetrators of child SXA are more likely to have been victimised themselves than the general population. A history of victimisation is almost always found amongst female offenders. Male victims, however, appear to be more likely than female victims to subsequently sexually offend. It should be noted that the majority of SXA victims do not offend.

Gender and Under-reporting of Sexual Assault

Watkins and Bentovim conclude from their review of child SXA prevalence research that:

> the discrepancy between the general survey and clinical study samples, along with the differences within these samples between the male and female abuse ratios, strongly suggests that abused boys have not been coming to public attention to the same extent as sexually abused girls (Watkins & Bentovim 1992, p. 200).

Numerous other writers have similarly concluded that under-reporting of SXA is more of a problem with male compared to female victims (Blanchard 1986; McMullen 1990). For example, the finding that more male child-sexual-assault victims, compared to girls, are reported by third-parties supports the proposition that males are less likely to self-disclose SXA (Watkins & Bentovim 1992). Under-reporting of SXA can be due to restraints to victim disclosure and/or professional failure to detect SXA.

Commonalities in restraints to male and female disclosure of SXA have been widely discussed in clinical literature (*see* Watkins & Bentovim 1992; McMullen 1990 for literature reviews). Victims often inappropriately assume responsibility for the SXA, or fear that others will consider them responsible. Guilt regarding experiences of arousal while being victimised is commonly cited as a consequence for victims of abuse. This guilt, however, may be complicated for males by homophobic responses. Males also may be more likely to experience sexual arousal during victimisation, and to interpret this obvious arousal (such as an erect penis or ejaculation) as confirmation of their responsibility for the act.

Male and female victims may be unable to report the victimisation due to lack of self-confidence. Shock or more severe post-traumatic reaction can similarly disable victims. Very often, though, the major reasons for victims failing to report involve perceptions of negative or unhelpful consequences if they do so. Victims fear disclosure of abuse will lead to further emotional pain; for example, humiliation, reliving the experience, facing the abuser. They may fear becoming stigmatised or degraded as a victim. Victims are sometimes disgusted with themselves, to the extent they fear others will reject them. They may fear publicity and/or other invasions of their privacy. Incest victims may fear the loss of a parent. Often the abuser may be a threat to the victim's future safety if SXA is reported. Additionally, victims may feel that no-one can help them, they may not want to burden others with a problem that in any case seems unresolvable.

Particular restraints to male self-reporting of SXA have been commonly linked to gender cultures (McMullen 1990; Watkins & Bentovim 1992). Hierarchical systems, such as commonly found in western culture, such as the United States, Australia and the United Kingdom, offer definite advantages to men. However, it is also important to recognise that patriarchy poses specific restraints on the disclosure of abuse by male victims. Patriarchy is described as a social arena for competition and survival of the fittest, where for every champion or winner, there has to be many losers (McMullen 1990). Denial or degradation of loser/victim status is vital to the stability of systems founded upon inequality and domination. Thus in aggressive male cultures, men are often afraid to be seen as weak, non-masculine, or 'easy prey' for further victimisation.

Most western boys are socialised into a gender-culture which values self-reliance, competitiveness, material or political achievement, and sexual proficiency, while discouraging disclosure of sadness, fear, inadequacy or homosexuality (Finkelhor 1986). Men generally are less expressive of negative experiences than women (with the exception of anger—*see* Wood, Rhodes, & Whelan 1989), and may be more likely to be negatively evaluated if they do disclose (*see* Derlega & Chaikin 1976). Men less frequently seek professional assistance

for depression or anxiety, despite being three times more likely than women to suicide (Goldman & Ravid 1980; Nolen-Hoeksema 1987).

Male victims often fear the consequences of being labelled as homosexual. Anderson expresses this problem succinctly by stating:

> the victim perceives that his actual or presumed homosexuality is targeted for attack (Anderson 1981–82, p. 145).

Given the high levels of homophobia likely in a society that until very recently jailed consenting adult homosexuals, it is ironic and tragic that homophobia appears to have such deleterious consequences for heterosexual as well as homosexual male victims.

There is also evidence that male victims are more likely than women to receive negative responses to reports of abuse. Two studies of undergraduate attitudes (Broussard & Wagner 1988; Smith, Pine & Hawley 1988) found subjects (in particular men) were likely to attribute more responsibility for the SXA to male compared to female victims.

These restraints to self-disclosure of SXA, while requiring empirical validation, tend to support the assertion that male victims are less likely to volunteer information about their victimisation than women, and therefore the actual proportion SXA inflicted upon males may be higher than current estimates. Further research is clearly needed to determine the relative impact of these restraints to victims seeking help.

Indicators of Sexual Assault

Given the problem of under-reporting, it is vital that professionals who commonly come into contact with victims are alert to indicators of abuse. Unfortunately, due to a lack of empirical research, the reliability of indicators of SXA is often very uncertain. This places a strain on workers who are often aware of the negative consequences of failure to identify and respond to SXA versus the consequences of an unfounded allegation.

The connection between physical abuse and sexual abuse appears to be stronger with boy victims of SXA than girls (Watkins & Bentovim 1992), and therefore suspected victims of physical assault should also be considered at risk of SXA. Several studies have suggested that boys are also more likely to be sexually assaulted with their sisters rather than in isolation (*see* Faller 1989b; Finkelhor 1984; Vander Mey 1988) and therefore any identification of SXA in a family should alert workers to the possibility of SXA of other children *including* boys. The relationships between SXA and other forms of abuse needs further investigation. Alcoholism, personality disorders, disruption of family relationships, excessive physical punishment and emotional neglect are also associated with male victimisation (Genius, Thomlison & Bagley 1991). Self-harming behaviour, attempted suicide, or thoughts to self-harm, may also indicate past or continuing sexual victimisation.

Factors which contribute to vulnerability of victims—for example, social isolation, oppressive power relations, lack of resources, membership of minority groups—may also serve as indicators of increased risk of abuse. Further research is clearly needed. However, in identification of risk factors, care should be taken to avoid blaming victims for their abuse. The fact that vulnerability figures so largely as a risk factor suggests that victims are often merely vehicles for the perpetrators' demonstration of their power (McMullen 1990). Vulnerability should never be interpreted as an invitation for SXA or other abusive behaviour.

Damage Caused by Sexual Assault

Many of the indicators of SXA relate to current understanding of the effects of SXA victims. If male victims are to be readily identified, then understanding of the commonalities and differences between the effects of SXA of men and women is needed.

Commonalities in the impact of SXA of men and women have been noted by several researchers (*see* Anderson 1981–82; Bruckner & Johnson 1987; Masters 1986; Mezey & King 1989). All the major symptoms noted as resulting from SXA of females—shock, depression, anxiety, low self-esteem, learned helplessness, guilt, distrust, sexual and relationship problems, drug and alcohol dependency—have also been noted in male victims (Genuis, Thomlison & Bagley 1991; McMullen 1990; Singer 1989; Watkins & Bentovim 1992).

Differences in the impact of SXA of men and women need to be evaluated in terms of the consequences for both victims, perpetrators, and subsequently for our culture. Most current conclusions regarding differential SXA effects for males and females are drawn from scattered case studies or small clinical samples (Watkins & Bentovim 1992), and therefore require further empirical validation.

In terms of child SXA, a number of studies cited by Watkins and Bentovim (1992) suggest that the effect of SXA on boys is minimal or less than the effects on girls, although the authors suggest that further research is needed to eliminate under-reporting as an explanation of these results.

Two differences that seem clear from Watkins and Bentovim's research review (1992) is that males are more likely to be subjected to anal penetration and that the sexual victimisation of boys is more frequently accompanied by physical abuse. Both of these differences disproportionately predispose male victims to physical damage as a consequence of abuse. Anal intercourse increases the risk of transmitting sexual disease, including HIV/AIDS, due to the increased likelihood of fluid to blood contact. The high proportion of male SXA victims suffering anal abuse, combined with the likelihood of trauma to the rectal region, may explain why studies suggest physical signs of SXA are more frequent amongst male compared to female victims. Some studies have suggested boys suffer more severe abuse than females (*see* Bentovim, Boston & Van Elberg 1987). In relation to adult victims Calderwood (1987) claimed that male rape victims often sustain more physical injuries than do females.

Externalised and internalised effects of SXA have been suggested as typifying (respectively) male and female responses to victimisation (*see* Schacht, Kerlinsky & Carlson 1990). For example, diagnostic categories of depression and anxiety appear to be more common with females, while antisocial behavioural disorders and substance abuse are much more common amongst men and boys (American Psychiatric Association 1987). Externalised responses may make male victims less likely to attract sympathy and concerned inquiry. Victim determination to be self-reliant and controlled may also contribute to under-reporting of SXA effects. Gender cultures and the differential effects of SXA to males appear to reflect each other. The external/internal descriptions of male and female reactions to SXA fit well with current stereotypes. Masculine identity confusion (Dimock 1988) and fear of being labelled homosexual (compounded if the victim did not resist or became aroused) have been related to an apparent need in many male victims to reassert their

masculinity and power with aggressive and antisocial behaviours (Watkins & Bentovim 1992).

The relationship between victimisation and increased risk of offending has been noted with a variety of sex-offender populations including females. Recognition of the previous victimisation of male-offenders may be restrained by the concern that offenders may adopt a victim stance to justify their unacceptable behaviour. Nevertheless the increased risk of becoming a perpetrator has inappropriately been excluded in the assessment of adverse long-term effects of SXA (Watkins & Bentovim 1992). If increased risk of offending is included amongst the consequences of abuse, it may well be that the social costs of SXA of males is greater than that of females, since costs would then include not only those of the male victim/offender himself, but also those of his subsequent female and/or male victims.

Treatment

There has been a paucity of research directed towards evaluating and developing the effectiveness of various modalities or components of treatment for male victims of SXA (Watkins & Bentovim 1992). Most therapeutic methods explained in the literature for male victims however suggest group therapy is a preferred treatment (*see* Bruckner & Johnson 1987). Groups may encourage self-acceptance and acknowledgment of abuse through client recognition of commonalities in their experiences with others. Group programs may help males to recognise that they are not that unusual, but rather that SXA and abuse are widespread in our culture amongst men and women. However, it is becoming increasingly recognised that symptoms can vary greatly between victims, depending on the nature and frequency of abuse, and that different symptoms may also be apparent at varying times after the abuse (Calderwood 1987). Group programs may therefore have difficulty in responding to individuals with greatly varying needs, and perhaps should be supplemented with individual therapy.

The preferred gender of therapists remains an unresolved issue. Boy victims of SXA are often described as mistrusting of adult men (*see* Myers 1989) and therefore it has been suggested that women may be more appropriate workers with these victims, particularly in disclosure interviews (Frosh 1988). However, given the likelihood of sex-role confusion and inappropriate modelling of masculine behaviour by the offender, others have argued for an exclusively male treatment approach, focusing on the clarification of sexual confusion, positive identification with the masculine gender, and the development of the ability to sustain intimate relationships (*see* Dimock 1988). In a study which addressed this issue, 264 adolescent males attending a clinic for sex offenders were questioned as to their preference and comfort in talking about sex with a male versus a female interviewer. Males who themselves had been victims of sexual and/or physical abuse preferred a female interviewer. Those subjects victimised by males showed the greatest preference for female interviewers, although those abused by females also preferred a female interviewer (Kaplan, Becker & Tenke 1991). However, the authors suggest that self-disclosure about SXA may be facilitated when interviewers of both genders are available.

Victims who are also offenders pose difficult problems for treatment. There is a dramatic disparity in the literature in terms of treating victims and perpetrators of abuse. For example, therapists are encouraged to respond empathically to an identified victim while empathy for clients identified as perpetrators is often seen as encouraging of denial,

minimisation, or justification of abuse. In practice this may translate into a predisposition to react to males as perpetrators and women as victims. Such a bias is likely to restrain the disclosure of male victimisation and female offending. Recognition of SXA of males by men and women challenges such approaches.

Methods of working with men and women who are both victims and perpetrators in a manner where they feel encouraged to overcome denial, minimisation, and justification of their abusive behaviour, and cease to blame themselves for their own victimisation, are needed. Considering that externalised reactions to victimisation (including sexual offending) may be more common with males, recognition of SXA of males may promote the development of therapeutic processes which set limits on abusive acting out, while empathically helping the client to label and cope effectively with their own traumatic reactions to SXA (*see* Schacht, Kerlinsky & Carlson 1990). Our own subjective experience in working with male and female victims/perpetrators is that not only is this possible, but that acceptance of self and other, accompanied by encouraging acknowledgment (non-denial) of one's own abuse *and* victimisation, enhances treatment for both victimisation and offending, while modelling to clients important features of healthy relationships.

Conclusion

From a structuralist perspective, acknowledgment of SXA by victims, perpetrators, the general population, and professional services, is needed to obtain accurate information from which effective social interventions can be developed. Failure to acknowledge SXA of males as a social and personal problem maintains silence and causes secondary victimisation. Cultural gender differences suggest particular disadvantages for male victims of SXA. One possible gender difference which may have profound consequences for the enculturation of the sexes arises from the conclusion that both males and females are most often sexually assaulted by other males. That women are most often victims of male violence has tended to bring females together, to support each other in their coping with and/or working actively to prevent SXA. The victimisation of men by men however appears to drive males apart, either through fear (for example, a homophobic reaction) or anger. Social isolation of men from other men may in fact promote current gender differences associated with abuse.

At the moment, service delivery is determined by a range of factors that do not lead to an objective allocation of social resources to problems of abuse. Anyone who has had a hand in seeking resources for social problems will have an understanding of the discriminatory nature of funding processes. Resources for social problems tend to be allocated according to the pressure that can be brought to bear on politicians, which often involves some form of assessment of community awareness. Not surprisingly most advocates of problem areas need to begin therefore by raising community awareness. Allocation of non-government resources (for example, community organisations) is similarly linked to public awareness of social problems. Unfortunately, public awareness is often slow to recognise issues and, even if public awareness is raised, without avenues for this to be translated into resources, little change is likely to occur.

In presenting the case that male victims of SXA are underserviced in our current cultural context, it would be erroneous to suggest that female victims are overserviced. It is

perhaps inevitable that attempts to gain recognition for male victims will be seen as a threat to resources for women. Our own position is that services for both male and female victims are underserviced. The case for underservicing of women has been capably argued elsewhere. If a lack of resources for women is evident however, then this only strengthens the case that services for male victims are even more impoverished. It is the responsibility of society and its power brokers to ensure that sufficient resources are directed for all victims of SXA.

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INTRODUCTION TO PART 3: ABOUT THE RAPIST

THIS PART OF THE PROCEEDINGS IS RELATIVELY MEAGRE IN CONTRAST TO the previous section which looked at survivors. The dearth of material is at least in part reflective of the disagreement among those in the field about who the rapist is; the false myths would evoke an image of the stranger/psychopath whilst feminist theory perceives the rapist as another by-product of patriarchy and misogyny. (The emphasis on survivors is also a consequence of the organisers' ideological stance.)

When Frey and Douglas ask the question 'What is it about men that make them do the things they do?', they appear to subscribe to the latter orientation explaining how violence is an integral part of masculinity in Australian culture. This includes the emphasis upon aggression and the process of objectification—treating people as instruments for one's own ends. The authors discuss Men Against Sexual Assault (MASA) and their role in encouraging all males to choose non-violent behaviour through activism, education and support.

From a similar theoretical perspective, Goldsmith explores pornography and its connection with sexual offences. She cites research conducted overseas which has shown a connection between the two. She provides other examples which demonstrate a causative relationship and explains some ways in which depictions of naked women—violent or non-violent—may contribute to higher incidents of rape. Goldsmith also attempts to estimate the level of sexual violence in Australia by taking reported rapes and multiplying by the estimated rate of non-reporting. She concludes that, in New South Wales, every female has a one-in-eight chance of being raped during their lifetime.

Cull reviews treatment programs for sex offenders. In Western Australia, the Department of Corrective Services provides three different models, two are within prisons with the third on offer for those on a probationary or parole order. Cull describes each program, explaining how assessment is conducted and what criteria are used for assessing suitability for participation. The treatment goals and content are set out in detail. She concludes that it is too early to measure the efficacy of these services but is hopeful based upon overseas experiences of success.

Crake surveys some of the psychological literature on rapists and case studies drawn from his work, also with the West Australian Department of Corrective Services. It must be pointed out that such a population of rapists—that is, rapists who are incarcerated—are probably not reflective of the total group of offenders. He reports that there are so many

different alternative theories concerning rapists that it is best to only answer the question 'Who is the rapist?' in reference to the individual case. The case studies provided do point to the diversity of type even within this particular sub-sample of those who sexually assault.

Glaser, also a psychologist, examines the best predictors of recidivism for sexual assault offenders. The three best known risk factors are youth, prior violence history and possession of psychopathic traits. Models have been constrained by practitioners' limitations in knowledge which stem from professional attitudes, the response by the law and media which have too willingly believed the offender and disbelieved the victim. Similar to Crake, Glaser proposes that any prediction model needs to be individualised: a victim-responsive prediction paradigm should be constructed.

The last paper on offenders demonstrates that professional pathologising of criminal behaviour generates a view of 'madness rather than badness'. Wallace first discusses drug induced exculpation and how damaging it has been in the context of sexual violence. He supports Scutt's view that a pathologising focus is not helpful in the long run and that a view of alcohol abuse as causative acts to justify or rationalise violence towards women and in doing so actually increases the prevalence of rape.

WHAT IS IT ABOUT MEN THAT MAKES THEM DO THE THINGS THEY DO?

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THE TITLE FOR THIS PAPER COMES FROM THE CHORUS OF A SONG BY THE feminist folk singer, Judy Small, which was written in reaction to the massacre of fourteen female students at the University of Montreal in December 1989. This incident, which made headlines around the world, occurred when a young male entered a classroom at the University of Montreal, Canada, dismissed the male students, and then lined up the female students and, after accusing them of being 'feminists', shot them. Small's song summarises so well an issue that we, in Men Against Sexual Assault (MASA), have attempted to personalise—what is it about men, about us *as* men, which makes us do the things we do?

MASA members feel that, given the nature and extent of male violence in our society, this may be one of the most important questions of our time. To us, it is certainly the most important question men can ask themselves—more important than why do we die seven or eight years earlier than women (which for many women may be a blessing), have such difficulty with intimate relationships, feel so distant from our spouses and children, are four times more likely to complete suicide, and comprise about 75 per cent of all substance abusers (except cigarettes and tranquillisers). Given the fact that 97 per cent of all childhood sexual assault, 95 per cent of all domestic violence, about 98 per cent of all adult rapes are committed by males and that 96 per cent of the prison population is male, and given that at least one in four girls and one in about six boys will be sexually assaulted before age eighteen, that as many as one in two women may be sexually assaulted across their entire life-span, and that one in three marriages will be marred by at least one incident of domestic

violence, male violence takes on a frightening urgency that makes it one of the most vital issues for our culture to solve if we, as a species, have the slightest hope of long-term survival. As the amount of destruction one person can do with a weapon increases, it is extremely important that we address ourselves to this question: what is it about men which makes them do the things they do?

It is not accidental that most violence is committed in our society by men. Violence is so deeply embedded in the traditional male role that the real issue for men becomes how to be traditionally masculine and yet set limits on our aggression so that we do not violate others' rights. That so many men become confused about where these limits are is not surprising—what is surprising is that there is not much more male violence than there is already. (This is not to imply that any level of violence is acceptable, of course, only that the traditional masculine role places men in the double-bind of requiring them to be aggressive but not completely aggressive.)

Learning 'Masculinity'

If developmental psychology has taught us anything, it is that learning starts very early for children. Babies are not 'roly-poly sponges soaking up TLC', as one psychologist called them in the early 1970s (Rappoport 1972, p. 151), but rather extremely active learners:

> Unless he's [sic] practically starving, any baby worth his [sic] salt would rather look than eat', says [child psychologist David] Stern. That is what babies spend most of their lives doing, looking and listening. They have an avid push to explore all that's going on outside (Friday 1985, p. 334).

And to the baby, who is starting to build up what Piaget, a Swiss Psychologist, called 'schemas', one of the first things he or she notices is that the world is divided into groups called 'boys' and 'girls' and that which category she/he is a member of matters a great deal, especially to his/her parents.

There is a philosophical tendency in our culture, dating at least as early as Augustine (*see* Dollimore 1991), to divide the world into opposites—for example, 'black-white', 'good-bad'. The very young child quickly learns that one of these opposites is 'male-female'. Arguably, it is one of the first dichotomies the developing child learns, and therefore it becomes the guide-line to the way so much of the child's growing knowledge base will be structured.

This is why it is so important to children to 'get-it-right' when it comes to gender. It is one of the first things they learn. It is one of the most fundamental things they learn, and it serves to both model and structure so much of their further learning. This is also why children, from very young ages, act in traditional 'gender-appropriate' roles: girls playing with dolls and boys playing with trucks—so that it often looks as though this is some sort of sex-role genetic program that compels a little boy to reach for a gun or a truck rather than a doll or a toy dish. This is also why little boys, in particular, are so hard on other little boys who deviate, those little boys who do play with dolls and toy dishes. This sort of 'deviation' is immediately calling into question the sex-role schema the other little boys are 'rehearsing', thereby challenging one of the most fundamental cognitive structures the children have attained so far in their lives.

It is a well-known fact, again established through the work of Piaget, that children use play to explore the adult world of which they will one day be a part (*see* Phillips 1984). Therefore, the play children indulge in can tell us a great deal about the understanding children have been given about what constitutes 'masculine' and 'feminine' behaviour. Davies (1989) observed and played with children in four different preschools. She discusses one particularly memorable incident in which a little girl who had a doll taken by a little boy, first goes to a box of play clothes, puts on a man's waistcoat, and then goes over and recovers her doll from the little boy. Having thus made her point, she then returns the vest to the play clothes collection and becomes a little girl again (Davies 1989, p. 16–17).

This incident can be seen as an exemplar of a template of masculinity and femininity that little boys and little girls learn very early and spend the rest of their lives trying to fit. Authors like Chodorow (1978) and Dinnerstein (1978) have argued that this is particularly true if the little boy has limited contact with a father who is absent, at a place called 'work' most of the time. Horsfall extends their argument to point out that if the little boy does not have enough contact with his father to identify with him as a person, he will identify with the male 'position' as normally presented to him through the media and society at large instead:

> Positional male gender identification allows for the incorporation of accessible cultural stereotypes of masculinity into the actual gender identity of the male. This process incorporates macro-social behaviours into the intra-psychic processes; and it renders consciously apprehended material part of some unconscious stereotyped way (Horsfall 1991, p. 61).

There are two cultural stereotypes of 'masculine' behaviour that are particularly relevant for an understanding of male violence. The first of these is that real men are aggressive, and the second is the phenomenon of objectification. With regard to the first stereotype, many women may not be aware of how vital a part aggression plays in traditional masculinity. For example, here is a quote worth pondering from a book written for young Christian men in the early 1970s:

> A man of steel is a masculine man. He is aggressive, determined, decisive and dependent . . . He rejects softness and timidity. When he has made a decision based upon the best of his judgement, he is as unbendable as a piece of steel. These qualities of masculinity set him apart from women and children and weaker members of his own sex (Andelin 1974, pp. 18–19).

It is interesting to note that this book is not written as an army training manual, nor does it necessarily wish to encourage men to get into violent fights with other men. It certainly does not seek to encourage male violence against 'women, children and weaker members of his own sex'. Its purpose is to educate young men into a standard of Christian manhood. But it still equates that manhood with aggression.

Others are less reticent about the link between masculinity and the ability and willingness to express aggression, at least against the enemy or on a battlefield. (This was especially so before weaponry became too sophisticated to make war 'feasible'):

> The nation that has trained itself to a cancer of unwarlike and isolated case is bound, in the end, to go down before other nations which have not lost the manly and adventurous virtues . . . There is no place in the world for nations who have become enervated by the soft and easy life, or who have lost their

> fibre of vigorous hardiness and masculinity (Theodore Roosevelt, US President, cited in Kimmel 1987, p. 148).

Whatever we may feel about these sentiments, aggression is a commonly accepted part of masculinity. This is not intended to deny the need for courage, self-discipline, emotional and physical strength in facing the challenges of the future. It is rather to raise the question why these qualities should not also be encouraged in little girls, and most importantly, to ask if it is such a wise idea to create one sex role (boys) in which the only emotion that can be expressed is anger and aggression without any nurturing or tenderness to temper its expression.

Ganley, writing about feminist theory with men, is one of the few counsellors who has dealt with this issue:

> While much has been written in the men's liberation field about men being socialized to avoid expressing emotions, less attention has been given to the reality that men are oversocialized to use the emotion of anger as a mask for other emotions. The issue is not so much that they do not express feelings, but that they usually express all feelings as anger. Women are socialized to be emotional and men are socialized to be angry. This has particularly serious consequences when this emotional pattern is paired with the behavioural pattern of violence. While all men do not physically batter their partner or children or strangers, most misuse anger. When experiencing the full range of human emotions, such as happiness, sadness, fear and anger, men tend to identify and express the negative emotions of sadness and fear in all their varying degrees as anger/upset. Consequently, guilt, anxiety, hurt, disappointment, etc. result in inappropriate angry expressions. (Ganley 1991, p. 12)

On the face of it it seems completely crazy to take all the human attributes, divide them in half and assign all the soft, tender ones to one sex and the hard, aggressive ones to the other sex. Far from being surprised that most violence in our society is committed by men, it is more surprising that there is not more violence than there actually is!

The second 'bit' of traditional masculinity the little boy learns is objectification. This involves treating people as instruments, or objects, and using people to achieve one's own ends rather than treating people as ends in themselves. To paraphrase the philosopher Martin Buber, every relationship becomes 'I-It' rather than 'I-Thou!' This diminishes the little boy's ability to take others' points of view and may account for the fact that men's morality tends to be based on abstract principles rather than relationships (*see* Gilligan 1982). Where male violence is concerned, objectification makes it impossible to identify with the victim's distress, caring only about the victim as a means to an end. This underlies all male violence, including soldiering, as well as much male competition.

This attitude also entered the practice of science, so much so that scientists performing experiments on animals in the last century were able to assert that the animal only appeared to feel pain! Contrast the late Nobel prize-winning geneticist Barbara McClintock's attitude towards her ears of corn: 'I know them intimately and I find it a great pleasure to know them' (cited in Belenky et al. 1986, p. 144) with this statement from one of the founders of modern psychology, John Watson, who later became one of the founders of modern advertising: 'I began to learn that it can be just as thrilling to watch the growth of a sales

curve of a new product as to watch the learning curve of animals or men' (McClintock cited in Karier 1986, p. 135).

Others (*see* Capra 1982, 1988; Easlea 1981; Merchant 1980; Schiebinger 1989) have written at length about objectification in science. Recently, Knudtson and Suzuki (1992) have pointed to the world view of native peoples which refuses to objectify the environment. In a sense, this is what the Aboriginal land rights debate is about—will Australians objectify our country? Cowan (1989, p. 23) quotes T.G. Strehlow as saying that to the Australian Aboriginal 'The whole countryside is his living, age-old family tree'.

As this applies to the development of men, then, it becomes an expectation that men will be able to 'objectify' outside the home in business competition, in war and in sport but somehow leave this ability behind when they re-enter the home at the end of the day. Yet, men are not given the slightest clue how to do this. This may be one of the major barriers in male friendships as well—the tendency to see all other men as competitors, rather than as persons (*see* Stoltenberg 1990). Together with the tendency to compact all emotions into anger, and an encouragement to act aggressively, objectification almost ensures that it will be men who are responsible for most of the violence in society.

The good news is that few men really fit the template of masculinity. Most men worry that they are not masculine enough, unaware that most of their 'mates' are probably worrying about the same thing! This is, of course, the irony of traditional masculinity. Traditional masculinity is actually very easy to throw off as soon as men face the fact that they do not really fit its ideals in the first place. The reason men do not shed the ideals of traditional masculinity, of course, is that they fear they will be thought of as 'less than a man' if they do. But until the structure of masculinity is challenged, as Judy Small puts it 'the question still remains'.

Men Against Sexual Assault and Sexual Violence

If masculinity serves the purpose of some structural, systemic entity, the name of this entity is patriarchy. If we sincerely intend to reflect critically on the implications that patriarchy has for the construction of masculinity and for male perpetrated sexual assault, we turn to feminism.

Some feminist theories perceive rape as a *'conscious process of intimidation by which all men keep all women in a state of fear'* (Brownmiller 1975, p. 15). The effect of rape and all male violence against women serves to remind women that men have physical, economic and social power. The threat of rape is a weapon men use to perpetuate their dominance of women. In this respect all men benefit from rape, and all men are potential rapists.

A continuum of male behaviour is said to exist which extends from seemingly 'innocuous and harmless' actions such as wolf-whistling and sexist jokes, through to violent rape. All men who act out behaviours anywhere along this continuum contribute to an environment where rape is possible, even inevitable.

Men's sexual behaviour is viewed not as some expression of an innate biological imperative, but as having been socially constructed to be aggressive, exploitative and objectifying. As such it has contributed to an effective system for the subordination of women. The system is constructed by men, in men's interests, for the benefit of all men.

Rape has nothing to do with an uncontrollable sexual urge; rape is an expression of power and hate. Men rape to cause fear and pain and to prove their superiority.

A woman who is not 'protected' by a man (father/husband/lover/pimp) cannot move freely at the risk of being raped. Men want women to be protected and punish them if they are not. Any display of independence by women is often interpreted as 'asking to be raped'. By seeing autonomous behaviour by women as incitement or proof of consent to rape, the law absolves rapists and legalises it. Men control the whole situation from the physical rape itself, to the way society perceives the act, to the final judgement in court (Rhodes & McNeill 1985, p. 39)

While not everyone would agree with such an analysis of sexual assault, it is not possible to deny the central and indispensable role that the work of feminists have had in forcing the issue of sexual assault before the public eye. Without the dedication and commitment of many feminists over many years, such a conference as this would not have occurred, and a group such as MASA would never have come into being.

MASA is best characterised as a pro-feminist, male positive and gay affirmative group of men who are confronting male responsibility for rape and sexual assault on both individual and societal levels. As a group we owe an unremitting debt to feminism for our perspective and ideology, but we do not seek to appropriate their space. It is only because of feminism that males are able to begin to create a 'Critical Theory' of men by men. This work is still in its infancy, and as Helene Cixous has written, '*men still have everything to say about their own sexuality*' (Cixous cited in Jardine & Smith 1987, p. 60). However, groups such as MASA are a starting point for such an analysis.

Briefly put, MASA aims to encourage all men to accept responsibility for choosing non-violent, non-abusive behaviour, and to redefine aspects of traditional masculinity that culturally support sexual assault. To these aims we have worked with feminist groups to agitate for rape law reform; developed and run programs focusing on personal and social change for males in schools, universities, workplaces, prisons and the general community; developed media campaigns that challenge sexism and violence; lobbied government and other agencies to implement programs designed to prevent sexual assault, as well as organised annual rallies and marches in most Australian capital cities.

Given what MASA has and is aiming to achieve, what does it mean for a man in a patriarchal, misogynist and homophobic society to take such a stance and actively work to end sexism and male violence? On a personal level, it means being free to throw off the shackles of a masculine imperative that many men do not feel comfortable with. To have the opportunity to explore their emotional, sensual and nurturing qualities previously left underdeveloped. It means becoming a fuller, richer and more complete individual. Politically, it means to reclaim masculinity for males who want to live in a just and equitable society—to deconstruct hegemonic masculinity and all that it involves.

At first glance this strategy may seem to involve a distancing from what we traditionally view as masculine and all the associated horrors men perpetrate. The reality however is quite different. If men are to effectively confront and challenge masculinity in its present construction we must not distance ourselves from it, but identify with it. It is only by such a process that we can hope to understand and eventually change male attitudes and behaviours.

The last thing MASA needs is hoards of self-congratulatory men saying 'Of course I am against rape' yet not recognising their own responsibility. Many men will flock to

disassociate themselves from 'those awful men who rape'. Men expect to be thanked for not raping and for adopting anti-sexist positions when such attitudes should be a societal given. We must recognise that the minority of men that do try to dissociate themselves from acts of violence and sexism are still given more power, freedom and wealth than women. We must not distance ourselves from 'rapists', but identify the common elements we share and confront these both in ourselves individually, and in societal structures generally.

While MASA acknowledge that structural factors are implicit in masculine construction, this recognition should never absolve men of individual responsibility for their actions. Men attack others because they choose to take a course of action that results in another's suffering. We need to be careful that structural analyses do not provide men with a rationale for the denial of responsibility through an emphasis on external factors. The ideology of blaming the system provides an escape route from male responsibility, and men have been very adept at avoiding it up to now. It is important that the tension between social construction and individual responsibility is not misunderstood. Both factors need to be addressed in a 'double-pronged' strategy which does not ignore the inter-relations between them.

When considering the construction of masculinity and its relationship to sexual assault, male sexuality is of central concern. Traditionally, it has taken the form of an aggressive, objectifying, supposedly uncontrollable obsession with penetration, as well as the ability to separate sex from emotion, affection and sensuality. Given these characteristics it should not be surprising that a person who encapsulates them, unmediated by other more 'feminine' qualities, would rape. What exists in this stereotype to prevent it?

While we would like to believe that no single man could exhibit only these traits, we must recognise that they are present in all men in some measure and mix. This reality raises more questions than we have answers for.

> What does it mean when a man looks at a body as if it were an object, a thing, and the man becomes sexually excited?
> What does it mean when a man with one hand is paging through a magazine containing pornographic images, and with his other hand is masturbating?
> What does it mean for a man to pay for sex with a stranger in preference to an intimate sensual exchange with a loved one?
> What does it mean for a man to believe that if a person says 'no' to sex they really mean 'try harder'?
> What does it mean for a man to use emotional blackmail or physical force to ensure he comes inside a body?
> What does it mean that such a man is 'normal'? (Stoltenberg 1990, p. 50).

Changing Male Attitudes

MASA has set itself three tasks: activism, education and support for men to change. Whereas in activism we are basically seeking to confront and challenge patriarchy, in education and counselling we are seeking to convince men to change themselves. Counselling is a bit easier in this regards because one begins with the issue brought in by the counsellee, an issue that therefore becomes the focal point of change. Not all issues in counselling are related to gender, but gender and gender-role play a part in shaping many issues.

In MASA, Brisbane, we have tried first to apply the feminist critique of masculinity to ourselves which, of course, is a continuing process. We have found a number of issues have brought the members of MASA to approach the need to change ourselves. Many of us have lived with someone of strong feminist principles who has kept probing our masculinity and brought us to question it ourselves. We owe a debt to these women which cannot be repaid. For other members, we have lived with a victim of sexual assault or been victims of sexual assault ourselves and are aware of how power is used against women, children and other men by men in our society. For still others, the breakdown of an important relationship led us to question our abilities to relate intimately and, therefore, the limitations of the traditional male sex-role. This can be an important turning point for a man. Still others have felt victimised by homophobic attitudes and sought greater intimacy with men—some of these men are gay but others are hetero or bisexual.

There are two issues often expressed by men in counselling that particularly open the door for change for men. One is the breakdown of a relationship. There is much research that men tend to see relationships as they see much else, instrumentally (*see* Abbott 1990; Bograd 1992; Brod 1987; Friday 1985; Levinson 1978; Michaelis 1983; Stoltenberg 1990). In intimate relationships, men often use the relationship as a secure launching pad from which to develop their lives outside the home. As a result, they often ignore their most intimate relationships until they are beyond repair. This is a crucial time for men, who are often left feeling angry, hurt and confused. At this point, men have the opportunity to question how they have contributed to the breakdown of the relationship, and this usually means challenging how they have viewed masculinity. The other option, unfortunately at least as often exercised, is to channel the anger into bitterness against women, feminism, the Family Court, and similar 'objects'. (For example, in 1992, on the television program *A Current Affair*, the leader of the Perth-based Men's Co-fraternity argued that 'feminism has gone too far' and that 'women should return home and nestle'.)

The other issue that often arises with men is their resentment at how little time their fathers had for them as children. In the USA, the poet Robert Bly, amongst others, has built the so-called 'mytho-pactical' movement (also called the 'wildman' movement) around this need (Bly 1990). Many men have determined to play a much more active role in their own children's lives, which is the very tonic Chodorow (1978) and Dinnerstein (1978) recommended in the late 1970s. This should greatly contribute to the demise of the traditional male gender-role, although current research with fathers indicates only a small portion of fathers are following this trend. (*see* Greif & Bailey 1990; James 1988; Risman 1986; Russell 1983). However, many men have a lot of anger about their fathers, and this can be used in counselling to promote change.

Education with men is more difficult because the issue does not automatically engage them. Like the Biblical parable of the sower, a lot of the seed tends to fall by the wayside! It is useful with men to begin with compelling statistics to keep them from dissociating themselves with male violence. It is human not to like to hear potentially disturbing things about ourselves and the typical male reaction when we first hear this material is 'that is other men they are talking about, not me'. When men realise how common male violence is, and how little difference there is between sex offenders and other men, we can then question how traditionally masculine we are. Stoltenberg's description of male sexuality in *Refusing to be a Man* (1990, p. 46–61) is particularly hard for men to deny.

Other men are quick to feel themselves under attack, particularly if that 'horrible' F-word—Feminism—is used. Still others agree that men generally have a problem with violence, and that this problem is not being overstated by feminists but believe that nothing can be done about it. They appeal to genetics, animal behaviour or testosterone to argue that men will always reproduce a patriarchal world. (A number of authors have refuted this very deftly; *see* Kaplan & Rogers 1990).

Just as a 'discount hierarchy' was once developed to chart people's willingness to come to terms with child sexual assault, there is a sort of discount hierarchy amongst men whom MASA attempts to educate:

- Level 1 — 'This may be true of a few men who are sick and deviant, but is not true of me';
- Level 2 —'OK, it may be true of many men, but feminists have gone too far';
- Level 3 — 'OK, the feminists are right but there is nothing I can do about it for genetic and biological reasons' (that is, 'I cannot change');
- Level 4 — 'The feminists are right, but I have already changed'; and
- Level 5 (the final level, where men at MASA try to live) — 'Change is an on-going process and we must continually challenge our beliefs and attitudes and ask ourselves are we a part of the problem, or a part of the solution'.

Men can improve the odds of our being part of the solution greatly if we continually challenge ourselves to see how far we can change. This is the adventure of MASA.

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SEXUAL OFFENDERS AND PORNOGRAPHY: A CAUSAL CONNECTION?

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THE QUESTION OF WHETHER A CONNECTION EXISTS BETWEEN THE availability of pornography and the prevalence of sex crime is an emotive one, canvassing as it does the issue of freedom of speech. As a result there has been, perhaps, a tendency to shoot the messenger, ignore the research or, as public opinion makers Phillip Adams (1992) and Richard Neville have done, express concern while at the same time opposing censorship and not being particularly helpful in suggesting alternative remedies. Perhaps Brownmiller best summed up the philosophical problems in dealing with this vexed question:

> Pornography has been so thickly glossed over with the patina of chic these days in the name of verbal freedom and sophistication that important distinctions between freedom of political expression (a democratic necessity), honest sex education for children (a societal good) and ugly smut (the deliberate devolution of the role of women through obscene, distorted depictions) have been hopelessly confused (Brownmiller 1975, p. 392).

Given the level of confusion about the meaning of pornography, it may be useful if it is defined for the purposes of this paper. The (unanimous) Canadian Supreme Court redefinition of pornography, in February 1992, as material that degrades women or promotes violence is the interpretation used here (Supreme Court of Canada 1992). This paper's concern is not about putting fig leaves on classical statues; it is about the increasingly virulent tide of material in which the primary concern appears to be to demean women and reassert their treatment as inferiors.

The following then, has three tasks: first, to demonstrate a connection between pornography and violence against women; second, to provide evidence that the connection

is a causal one; and third, to then provide a theoretical explanation of the causal connection. A fourth task also may be useful: to show that the level of sex crime is high enough to matter.

Pornography and Rape: Is There a Connection?

The literature in this area is substantial and growing. A few examples follow:

- In a comparative study of rape rates in the USA, Scandinavia, Britain, Australia and New Zealand, Court (1984) found a connection between the availability of pornography and the level of rape. He specifically refutes earlier studies that purported to show otherwise, particularly in relation to Australia, where the uniform crime data:

  > actually support the case for an increase [in rape rates after the liberalisation of pornography] quite convincingly (Court 1984, p. 158).

- In the USA, the eight major men's magazines (*Chic*, *Club*, *Gallery*, *Genesis*, *Hustler*, *Oui*, *Playboy* and *Penthouse*) have sales that are five times higher per capita in Alaska and Nevada than in other states such as North Dakota—and rape rates that are six times higher per capita in Alaska and Nevada than North Dakota. Overall a fairly strong correlation was found between rape and circulation rates in the fifty states, even with controls for potential confounding variables, such as region, climate, propensity to report rape and police practices (Milne-Home 1991; Baron & Straus 1985 cited in United States Attorney-General's Commission on Pornography 1986, p. 944–5).

- Exposure to pornography of less than five hours over a six-week period resulted in a halving of sentences thought appropriate for rape (Malamuth 1984). Malamuth (1986) links pornography to the level of hostility felt towards women and, further, finds the level of hostility is a significant predictor of sexual violence.

- In New South Wales, in the period 1975–91, a time during which pornography has become increasingly available, there has been a 90.6 per cent increase in the level of rape (Categories 1–3 Sexual Assault) (New South Wales Bureau of Crime Statistics and Research 1991; New South Wales Police Statistics Unit 1988–89).

- In the USA, while the overall homicide rate declined, sex-related murders rose 160 per cent between 1976 and 1984 (Faludi 1991, p. 11).

- A Michigan state police study found that pornography was viewed just before or during 41 per cent of 38,000 sexual crimes committed over twenty years (Pope 1987).

The above are only a few examples; the literature is extensive. For a more comprehensive overview, *see* Thomson (1991), a brief but well-researched article with an extensive bibliography; Weaver (1987), a PhD thesis which reviews the literature and has over 140 references; Milne-Home (1991) for a feminist overview; and of course, the report of the United States Attorney-General's Commission on Pornography (1986) which has attracted a certain amount of opprobrium from critics who allege that it is a biased report because it set out to find pornography harmful. The emotional response to the United States Attorney-General's Commission on Pornography is interesting because, although politicians may often have quite strong views on an issue at the start of an inquiry, this argument is not used to discredit the committee/commission process generally. Moreover, most politicians are quite capable of modifying their views and even changing their minds when the evidenciary weight of a committee inquiry contradicts their initial position. Committees frequently produce reports that contradict political expectations. It is interesting that critics are prepared to discredit not only the conclusions of this inquiry, but the substantial accumulation of research and testimony that forms the vast bulk of the report.

Is the Correlation Causal?

An examination of the above research might be sufficient to cause concern about the contribution of pornography to hostility towards and violence against women. However, an argument frequently presented to defend pornography in the face of such data is that correlation is not the same as cause: perhaps both these variables occur together because they are the result of some other factor. The 'other factor' generally used in such examples is the relative openness of a society: more open cultures (the argument goes) have both more pornography and more willingness to report sexual violence; therefore, there *appears* to be more sexual violence, although only the reporting rate has changed. Faludi states that crime statisticians in the USA, examining the data, 'have widely rejected this argument' (Faludi 1991, p. 504).

However, if the argument were sustainable, then moves to subsequently restrict pornography in already open societies should have no demonstrable effect. Consider, then, the following:

- in Hawaii in 1974, restrictions were placed on the sale of pornographic material. Rape figures fell for the following two years. The restrictions were then lifted, and rape immediately increased. (United States. Federal Bureau of Investigation 1973–78); and

- in Oklahoma County, 'adult' stores were closed in 1985, and a 25 per cent decrease in the rape rate occurred over the next five years 1985–90. In the remainder of Oklahoma, there was no such law and no decrease in the rape rate (Macy 1991).

The correlation between sale of men's magazines and level of sex crime cited above would also suggest that the openness argument fails, as the different states are in the same country. However, there is more cultural diversity among American than Australian states, so perhaps we should examine our own record. In 1985, South Australia had the highest reported rape rate in Australia, Queensland the lowest. South Australia was the first state to liberalise the availability of pornography while Queensland was still the most restrictive state in 1985. The figures cited are reported rapes and there are problems with using reported rape alone—but are South Australians so very dissimilar to Queenslanders? And the US magazine study controlled for variations in reporting and yet remained statistically significant.

The problem with using reported rape rates alone has created a great deal of confusion for researchers. Reported rape data, for example, are often used to deny any connection between pornography and rape. However, the reported rape rate is extremely low in Sweden, not because rape is rare but because the level of conviction is so low: in 1990 only 12.3 per cent of *charged* rapists were convicted. Not surprisingly, Swedish women are reluctant to pursue charges in the face of such a low likelihood of gaining a conviction. The statistical yearbook of Sweden for 1992 (325) reports a 34.9 per cent increase in rape from 1986 to 1990 (during a period when the population grew by 0.4 per cent). (For further discussion of Swedish and Danish data and detailed analysis of a number of critics of the pornography-rape nexus, *see* Reisman 1992).

Theoretical Explorations

Class, power and selling magazines: sociological issues

It is too soon to attempt prescriptive theories about the pornography-rape nexus. However, the definition of pornography in the introduction to this paper needs to be remembered: material that involves degradation or violence. Two particular magazines, in this context, have been instructive: *People* and *The Picture*. Until mid-1992, both magazines were sold openly on newsstands, without any submission for censorship classification, restriction or code of standards. The sorts of images of women in the two magazines included:

- frequent representations of women as animals or behaving like animals (the woman-on-a-dog's-lead cover being the most well known of these);
- images of female subordination, such as naked women being used as tables for men to rest their beers on while playing cards; and
- images of women subjected to various forms of violence (for example, covered in bruises).

The language used about women in these magazines is similarly depersonalising. These images are about violence and degradation; they are not what one would generally think of as erotica.

The publisher of the magazines, Richard Walsh, has claimed publicly (Olle, Andrew 1992, Interview with Richard Walsh and Beatrice Faust, Radio 2BL, 14 May) that they are 'good working class material' and that 'these magazines are aimed at young working class men'. One might question Walsh's glib categorisation—which is an insulting generalisation about working class men—as his target might be a somewhat different one: such as, men who perceive themselves to be of low social status because their jobs and/or environment give them little support for their self-esteem. Walsh's magazines gives them someone to look down on: no matter how low their self-image, the male readers of *People* can reassure themselves that they are superior to 50 per cent of the human race—the female 50 per cent. (A relevant comparison here is the American Ku Klux Klan, which draws its membership from a similar socioeconomic group and provides them with the reinforcement of feeling superior to blacks.)

In the same radio report, noted feminist scholar and writer Beatrice Faust states:

> The sex life of the working class is nasty, brutish and short. Every survey of behaviour, whether it's sexual offences or marital behaviour or premarital behaviour shows that. I had a dear friend who used to say 'tell me how a man makes love and I'll tell you how he votes', and that is absolutely justified in terms of what we know about class attitude and conduct in sexual matters (Faust in Olle, Andrew 1992, Interview with Richard Walsh and Beatrice Faust, Radio 2BL, 14 May.).

Faust cites Miriam Dixson (1976), in *The Real Matilda*, as reinforcing this view, by arguing that Australian working men have power only over women. Unfortunately, Faust's response to the problem is to 'put down-market stuff in down-market outlets'—in other words, to ignore the plight of the working class [sic] woman and hope fervently that this nasty stuff can be kept safely quarantined from the rest of us.

Rapists in the recent ABC-TV documentary *Without Consent* did not describe their motivation and pleasure as sexual but as the thrill of exercising power over another human being. Rape is not about sex, it is about power. From Brownmiller (1976) on, the sociological literature has established rape as a crime of violence rather than lust, aggression rather than sex—a crime that is about power.

The power of the image: psychological issues

Weaver's substantial review of the literature and research led him to conclude that:

> exposure to sexually explicit themes results in a general 'loss of respect' for female sexuality and self-determinism (Weaver 1987, p. 86).

How such a loss of respect might operate is a relevant question.

The visual image is processed by the right side of the brain; print by the left. The latter is rational and analytical; the former holistic and pattern-recognising. Left brain/right brain research is beyond the scope of analysis of this paper, but clearly questions need to be asked about the impact of the visual (whether photographic or film) image on the brain,

particularly the male brain, which recent research indicates has much less connection between its left and right halves than the female brain, and therefore possibly much less opportunity for the rational left to control the impulses generated by the impressionistic right.

A further point: even many apparently non-violent images of naked women show them presenting as if in estrus—as if already aroused and frequently in poses reminiscent of animal sexuality. Human females do not experience estrus, so such poses are a lie. However, they may well function to arouse the male (as pornography avowedly aims to do anyway), who is then left with no real partner to share the experience, only a magazine or film. Unsatisfied arousal may become displaced as anger and hostility against 'provocative' but unobtainable women (Reisman 1992, p. 25).

Status, violence and culture: anthropological issues

An anthropological perspective on rape is provided by Sanday (1981) using a cross-cultural examination of 156 separate societies. Although these societies were studied at different times by different anthropologists with different focuses (this last a relevant point in the likelihood of disclosing sensitive information about rape), Sanday nevertheless found sufficient information about rape to analyse ninety-five of the societies.

Some 47 per cent of the societies experienced little or no rape, 17 per cent were 'unambiguously rape-prone', while the remaining 36 per cent had evidence of rape but no clear indication of its incidence. These last were incorporated into the 'rape-prone' category. Sanday found patterns of behaviour that differed markedly between the two kinds of society. As Benderly (1982) summarises:

> Societies with a high incidence of rape . . . tolerate violence and encourage men and boys to be tough, aggressive, and competitive. Men in such cultures generally have special, politically important gathering spots off limits to women, whether they be the Mundurucu men's club or the corner tavern. Women take little or no part in public decision making or religious rituals: men mock or scorn women's practical judgment. They also demean what they consider women's work and remain aloof from childbearing and rearing. These groups usually trace their beginnings to a male supreme being (Benderly 1982, p. 42).

Benderly's conclusion is that:

> The way society trains its boys and girls to think about themselves and each other determines to a large extent how rape-prone or rape-free that society will be (1982, p. 43).

In other words, societies that provide negative images of females and female roles are societies which are rape-prone. Pornography specialises in negative images of women.

The Level of Sexual Violence

It is difficult to estimate the actual level of sexual violence in Australia. There appears to be little research available on, for instance, the level of actual as opposed to reported sexual violence. Moreover, the elimination of the term 'rape' from the legal lexicon, while undoubtedly promoted by the best of motives, has perhaps confused the issue: 'sexual violence' can include everything from violent language to the most brutal of rapes.

The Council of Europe survey was the basis for *Without Consent*. The survey involved over 2,000 Australians as well as similar sized samples from thirteen other countries. It found Australia to rank the highest of all in the level of 'sexual incidents' (including offensive behaviour) (van Dijk, Mayhew & Killias 1990). The Standing Committee on Social Issues of the New South Wales Legislative Council will be examining this report carefully in the near future.

Rape is the principal concern of this paper. Reported rapes (Category 1–3 Sexual Assaults) totalled 2,171 in New South Wales in 1991 (New South Wales Bureau of Crime Statistics and Research 1991, Table 4.1). Estimates of the level of actual as against reported rape in Australia vary, from 2:1 to 9:1. Taking the lowest level (2:1) as a conservative estimate (Centre Against Sexual Assault 1991—a Victorian study, as the New South Wales Bureau of Crime Statistics and Research had no figures for New South Wales), then there were at least 6,500 rapes in New South Wales in 1991. Given that over 90 per cent[1] of rapes have a female victim, and extrapolating over an, again conservative, seventy-five year lifespan, then *on 1991 rates, every female in New South Wales would have at least a one-in-eight chance of being raped during that lifespan*.

Walker (1992a) in a radio interview has estimated that the level of sex crime in Australia is 'not extraordinarily bad'. However, one of his conclusions from the data he surveyed is that the risk of a rape or an attempted rape is around 1:200 women per year. Over a seventy-five year lifespan, that equates to *three in every eight women experiencing rape or attempted rape*. One is tempted to wonder what level this crime must reach before it is perceived as being high.

Conclusion

Sexual assault is a major and growing social problem, a fact that this paper contends is directly related to the availability and increasing toxicity (in terms of violent and degrading images) of pornography, and its effects on those who become sexual offenders.

Businesses spend billions of dollars on advertising, in the belief that media can and do have an effect on human behaviour. We support and encourage the arts, in the belief that novels, films and such have the capacity to uplift and enhance human society; in other words, that the arts have a capacity to influence people. Yet we are expected to believe that the increasing tide of pornography does not affect attitudes to women.

A 1983 Minneapolis, Minnesota, USA city ordinance proclaimed pornography as sex discrimination and therefore actionable for damages. The ordinance states that pornography:

> is central in creating and maintaining the civil inequality of the sexes. Pornography is a systematic practice of exploitation and subordination based on sex which differentially harms women. The bigotry and contempt it promotes, with the acts of aggression it fosters, harms women's opportunities for equality of rights in employment, education, property rights, public accommodation and public services . . . (Merck 1992).

Minneapolis foreshadowed the Canadian Supreme Court decision in February 1992. A reading of the judgements in that case is instructive. Yet in Australia we appear still reluctant

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1 Oral information from police; statistics available only for sex of victim across all categories of sexual assault in 1991—84 per cent female (2,568 of 3,057 cases).

to acknowledge the existence of this issue or to undertake substantial research on it or even to feature it at conferences dealing with rape (this paper is a late inclusion, following my discussions with the Australian Institute of Criminology after seeing the original program). Political freedom of speech is one thing; the systematic degradation of, and promotion of violence against, half of the population quite another.

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THE TREATMENT OF RAPISTS: A MEASURE OF PREVENTION

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MANY HAVE STRONG FEELINGS WITH REGARD TO HOW SOCIETY SHOULD deal with people who commit sexual offences. The effect of rape upon the victim can be most traumatic and the physical, mental and emotional ramifications long-lasting. The implications of the assault can affect the partner and family of the victim. The family of the perpetrator of the offence is often also affected and the cost to the community—emotionally and financially—is great. So it is no wonder the issue evokes a strong and emotive reaction. Feminist theory says that rape is used as a tool in order to subjugate women and to reinforce patriarchy. It is not this paper's intention to challenge this theory. Nor is it the intention to attempt to disregard or minimise the subsequent feelings and devastating effects of rape upon the victim and family members—they are valid and appropriate. Rape is an horrendous and emotive experience and, because the author works with the perpetrators of these hideous and emotive behaviours in no way suggests acceptance, tolerance or justification of their actions.

Suggestions are frequently heard of appropriate measures to deal with the perpetrators of rape as a punishment and as an endeavour to prevent future rapists from acting on their impulses. These suggestions typically include locking rapists up for life, hanging them, 'cutting off their balls', adjusting their anatomy—swiftly, sharply and with a blade — and raping their loved ones and see how they like it.

Rarely do we hear loud expressions of 'treat them', 'help them to understand their behaviour', 'punish by all means, but provide constructive rehabilitation'. Emotion takes over and rationality is lost. Rational argument will show that the truth is that rapists *will* one day be released from prison. They *will* return to the community and they *will* continue to present a risk of re-offence, unless they somehow come to understand their behaviour and, on release, return to society as a positively-changed and healthier individual.

Furthermore, the rapist has used this form of behaviour as a weapon of power, of threat and of control for centuries. He *will*, unfortunately, continue to rape, and fear of the consequences will rarely act as a deterrent. These are facts of life; however the intention of this paper is to talk about what *can* be done to reduce the risk of re-offence, what *is* in fact being done in Perth, Western Australia, and what has been regarded as a viable treatment option internationally for a considerable period of time.

The nature of rape, what causes some individuals to behave in this way, the effects upon the victim, the personality of a rapist, and other similar factors will not be discussed in this paper. The program for this conference has clearly provided opportunities for these aspects to be more than adequately addressed elsewhere.

Treatment programs, both for prisoners within correctional institutions and for non-incarcerated or released offenders, have been in existence overseas for many years. Studies have shown varying dimensions of success for such interventions and considerable difficulty exists in even attempting to undertake an evaluation of treatment effectiveness.

Western Australia took the initiative in Australia a number of years ago and accepted the challenge to provide a treatment program for the perpetrators of sexual offences. In its preliminary form, the program was initially established within Perth's major maximum security institution. This pilot program ran for a two-year period prior to a temporary suspension of treatment pending an evaluation and assessment of treatment efficacy and methodology. In June 1990, the Sex Offender Treatment Program was re-established and continues today in a similar but extended format.

It needs to be clearly stated that, in providing a treatment program of this type for the perpetrators of such violent and abusive acts, the focus is on the protection of the community. We have a strong interest in and commitment to preventing re-offence, with our concern being for future potential victims.

Treatment Venues

The Department of Corrective Services in Western Australia has assumed responsibility for providing three different treatment packages. The most intensive of these treatment packages is at Casuarina Prison, a maximum security prison which was opened in 1991 following the closure of Fremantle Prison. This intensive treatment option is conducted in the form of a Residential Therapeutic Community established within the prison—separated but not isolated from the mainstream prison population. This program caters for twelve participants at any one period of time and the treatment process can last for up to twelve months. Participants are in treatment full time and are constantly addressing issues relevant to their offending cycle.

A less intensive pre-release treatment option is provided at Karnet Prison Farm, a minimum security institution where prisoners prepare for release following a long sentence or where prisoners who receive a short sentence may be accommodated. This treatment package runs for a period of seven months, one afternoon per week, and is available for ten offenders at any one period of time.

The third treatment option is presented in the community and is available for offenders who are on a probation or parole order. Three separate treatment groups run in the course of a week, providing treatment for a total of thirty offenders (ten per group) at any one time.

Treatment, similar to that available at Karnet Prison Farm, runs over a period of seven months on a weekly basis.

The Sex Offender Team

The various treatment options, as described, are quite extensive and are provided by a team of eight professional staff. The commitment of the resources necessary to provide such an intensive and diverse range of treatment options is not something the Department of Corrective Services undertakes lightly. Nor would such an option be tolerated if the provision of treatment was not seen to be addressing the relevant issues or providing a valuable and viable service. In other words, as professionals specialising in this field, we believe in what we are doing and, while it is too early yet to make predictive judgements relating to efficacy, we are optimistic that our programs are effective in bringing about change. There are, of course, numerous provisos that need to be taken into account when making a statement such as this, and these provisos are borne in mind during the process of assessment when an applicant is taken through an extensive assessment procedure to determine his attitude towards his offence, in addition to his suitability and amenability for treatment. This assessment procedure will be addressed later in this paper.

The Treatment Population

While rape is still the familiar terminology used to describe the forcible act of sexual penetration, legally rapists are now sentenced on charges of Aggravated Sexual Assault. The major distinction is that, while rape formerly described penile penetration, aggravated sexual assault is applied to a sexual assault involving penetration of any part of the body by any means.

Each treatment group consists of offenders who have committed a variety of sexual offences, not necessarily aggravated sexual assault and not necessarily a sexual offence against an adult. The range of offences may include paedophilia, incest, indecent dealings (against a minor), sexual assault, wilful exposure and others. The commonality is that all offences are of a sexual nature. It is a deliberate decision to include in any one treatment group, participants who have been convicted of a range of different sexual offences. This lessens the likelihood of participants who have similar offences supporting the justifications and minimisations of other participants' attitudes towards their offence. It provides an opportunity for offenders to challenge each other on the distortions of thought which have contributed to their deviant behaviour. It also equalises the attitude of the offenders in relation to how they view the nature of their own offence. Rapists lose their self-proclaimed status and paedophiles become people. What becomes very important, however, as treatment progresses is that the participants learn to accept each other as people at the same time as rejecting out of hand the deviant behaviour that has brought them together. Support, safety, trust and encouragement within the group for each other is essential and is never automatic. It becomes earned and is highly valued. The absolutely essential balance to that support is that it not be used to camouflage or protect the individual from his own pathology which got him where he is today.

Assessment

Members of the Sex Offender Team undertake assessments of all sex offenders generally within the early stage of their sentence. Sometimes this occurs prior to sentencing (if ordered by the court); however, most assessments occur once the prisoner has settled into the prison environment. The assessment process is designed to determine the following:

- the offender's attitude towards his offence;
- his amenability and suitability for treatment;
- his treatment needs; and
- the appropriate treatment program which will best meet those needs.

The assessment procedure includes a lengthy clinical interview followed by the administration of the Multiphasic Sex Inventory (MSI), a measure of the individual's normal and deviant sexual interests and behaviours, and the Clinical Analysis Questionnaire (CAQ), a measure of normal and clinical personality factors. In addition, the offender's previous criminal record is perused as well as information on Departmental files from previous contacts. The Judge's comments, court depositions, including the victim's statements, are thoroughly read and the offender is confronted with any discrepancies or minimisations in his version of the events. Factors relating to his offending are taken into account, such as the abuse of alcohol and/or drugs, the offender's ability to control his behaviour, including anger, and any early developmental experiences which may have contributed to the offence cycle.

Criteria for suitability

The major criterion which determines suitability for inclusion on any of the available treatment programs is the degree of motivation for treatment. The offender needs to *want* to change—not in order to get parole or any other form of inducement. He needs to be able to acknowledge he has a problem and to *want* to do something about it. In addition to this interest in behavioural change, the offender needs to be emotionally and psychologically stable. He should not present with any form of uncontrolled psychotic tendencies and he needs to have the intellectual capacity to cope with the rigorous treatment requirements.

Assessment of dangerousness

The assessment outcome revolves around the assessment of risk. An appropriate treatment venue which, in fact, denotes a particular degree of intensity of treatment, is determined according to the assessed risk of re-offence and is the result of consideration of the following factors:

- degree of cooperation with the assessment process;
- degree of responsibility taken by the offender for his behaviour;
- degree of honesty and self-initiated disclosure;

- nature of factors/events precipitating the offending;
- pattern of events and the amount of violence demonstrated;
- length, nature and progression of history of sexual aggression;
- frequency and duration of offences;
- number of apprehensions for the offence;
- the use of disinhibitors (alcohol, drugs and similar substances);
- previous criminal history;
- non-offending sexual history and past victimisation;
- personality traits and mental and intellectual abilities;
- ability of the offender to manage and control his behaviour;
- stability of social relationships present for the offender;
- strength of family and community ties;
- amount of access by the offender to victims;
- specificity of victim selection;
- age of the victim;
- vulnerability of the victim;
- previous treatment history.

It can be seen from this that the assessment process is not taken lightly and a reasonably responsible outcome can be achieved from this procedure.

Timing of Treatment

Prisoners who are determined as suitable for inclusion in either of the prison-based treatment programs are wait-listed for entry in the latter stage of their sentence. The rationale for this is that it is believed that to treat an offender early in his sentence and then to return him to mainstream prison will be counterproductive and treatment gains will be lost.

To survive in prison, emotionally and possibly physically, sex offenders tend to become very guarded and self-protective. Once on the treatment program, where the environment is safe and highly supportive, the offenders no longer have to defend themselves. While previously they may have minimised the nature of their offence or denied their guilt, this is not permitted once treatment begins. They become emotionally and physically vulnerable in a setting which allows it. To then return to mainstream prison, and to survive, often requires a

return to being guarded and self-protective. Hence, gains are lost as this is a return to their previous style of interaction.

Ideally, once treated, the prisoner then moves to either release because his sentence time is completed, or to a minimum security prison to prepare for release.

Treatment Programs

Casuarina Prison intensive residential treatment program

The treatment program at Casuarina Prison is in the form of a Therapeutic Community where offenders who are assessed as requiring intensive long-term treatment are accommodated in a segregated wing, having minimal contact with other mainstream prisoners. This segregation is intended as a twofold function. Firstly, it provides some degree of protection for these prisoners who may otherwise be targeted for attack because they have voluntarily chosen to undergo treatment (not an admired fact amongst many of the 'heavies' in the prison system). Secondly, maintaining a boundary between the therapeutic environment and mainstream prison helps to integrate treatment gains more effectively. Treatment becomes most effective when the participant feels safe, emotionally and physically, when he feels he is able to trust his peers and to gradually shed his defences and habitual emotional guards. Contact with prisoners who are not undergoing this process would require the participant to constantly re-defend himself and to become self-protective. To do so would become counterproductive to the treatment process.

Treatment on this intensive program consists mainly of group therapy on a daily basis, morning and afternoon, as well as regular individual therapy. Written tasks and 'homework' assignments are expected and the demands are considerable. The Therapeutic Community fosters a strong sense of trust and support amongst the participants as well as providing a safe environment where they can practise newly acquired skills. The community is relatively self-regulating by the participants, within the rules of the prison and of the community, and autonomy and decision making are encouraged. All participants are expected to take responsibility for their treatment gains and, should anyone not be prepared to push himself fully to maximise the opportunity, he is removed. The focus is not upon a 'cure' but instead upon 'control'. Participants who see themselves as 'cured' run the risk of complacency and with complacency comes the risk of re-offence. They come to accept that for the rest of their lives, the possibility of re-offence exists. Our role is to help them recognise if and when that risk is there and to be able to instigate alternative behaviour to take them away from the potential offence. Treatment is regarded as a process of preventing relapse.

Participants on the intensive residential program can expect to be in treatment for a period of nine- to twelve-months duration. Daily therapy over such a lengthy period of time, combined with the intangible treatment factors which occur through being part of such a supportive environment, provide these participants with a very real opportunity to turn around their previous lifestyles. Sex offending is the commonality which brings these community members together; however, the treatment content is, in essence, a broad focus on life issues as well as on specific issues relating to sexual deviancy.

Karnet Prison Farm

A pre-release treatment program at Karnet Prison Farm is less intense with participants undergoing normal prison routine and meeting once a week for the treatment group. The assessment process determines suitability for inclusion in the treatment program at Karnet Prison Farm if the likelihood of re-offence is considered to be less than for those determined as appropriate for inclusion on the intensive program; however, treatment prior to release having been determined as necessary. Treatment is in the form of group therapy running on a weekly basis for a period of seven months.

Community-based sex offender treatment program

A treatment program similar to that at Karnet Prison Farm is available in the community for offenders who receive a probation order or who have been released on parole. In both instances, assessment by a member of the Sex Offender Team has determined the offender to be suitable for inclusion on this program.

Like Karnet Prison Farm, the three treatment groups run on a weekly basis for a seven-month time period. Strict conditions apply which, if disregarded or abused, will result in the participant having his probation or parole order revoked and his freedom will be reviewed by the court or parole board.

Treatment Goals

The following goals are identified as a focus for participants in treatment to work towards:

- to take responsibility fully for his deviant behaviour and to acknowledge the presence of a problem within himself which needs to be addressed;
- to develop an understanding of the antecedents of the assaultive behaviour and the high risk situations into which he may place himself and consequently be at risk of re-offence;
- to recognise when that risk is imminent and to be able to deviate himself away from the potential offence by implementing a planned strategy of appropriate and socially-acceptable behaviour;
- to develop an understanding of the consequences of his behaviour upon his victim, upon significant others in his own and his victim's family and upon society in general;
- to challenge his attitudes and beliefs towards women, towards issues relevant to gender roles and bias and to understand the implications of cultural change upon males and females and their respective interactions and social roles;
- to be able to recognise how he distorts his cognitions to attempt to justify his behaviour and to minimise the full implications of his behaviour upon others;

- to understand the roles played by alcohol and/or drug use as well as the mismanagement of anger and the irrationality of his thoughts in the committing of the offence;

- the acceptance of the existence of the potential to re-offend and that control over his deviant behaviour will be a lifetime process.

Treatment Content

Treatment methodology incorporates a combination of a cognitive-behavioural approach, psychotherapy and social skills training. While the treatment intervention is primarily a group therapy approach, individual therapy and, to a much lesser degree, family therapy, are also incorporated into the treatment program.

Group therapy

Group therapy, is seen as providing an opportunity for an offender to be confronted and challenged by his peers at the same time as being supported and encouraged to persist with the often difficult process of treatment. It also enables other group members to process issues relevant to them and which have been identified by another offender working openly within the group setting.

Group therapy is presented in a modular form with the following modules being rotated over the treatment time-frame. Those listed below are as presented on the intensive treatment program at Casuarina Prison. Modules marked with an asterisk (*) indicate those which form the less-intensive programs at Karnet Prison Farm and on the community-based sex offender treatment programs.

*Relapse prevention**

This module is designed to help participants become familiar with the cyclical nature of their offending and to understand the pattern of events, thoughts, feelings and behaviours which were antecedent to the offence. They will come to understand high risk situations and alternative strategic behaviours to deviate them away from the assault. Once an offender is aware of what he is doing in the moment of doing it, then he has a choice. Relapse prevention brings about awareness of the subtle cues that contributed to the eventual offence. Consequently, when an internal trigger is pressed, the person can then immediately anticipate what might follow and, hopefully, do something different.

*Anger management**

Many offences are the result of an inappropriate expression of anger. To suppress one's anger is as potentially damaging as is the expression, verbally and/or physically, of aggression. Angry people often vent their feelings inappropriately and irrationally. This module is designed to help the offender understand the basis to his anger and to employ appropriate means of self-expression prior to the anger becoming overwhelming and out of control. Conflict resolution skills are rehearsed and opportunities to implement these new skills are presented through the process of living within the Therapeutic Community environment.

*Social skills**

The social skills module is intended to help the participants learn appropriate and viable means of interaction with others. It illustrates the difference between aggressive, passive and assertive behaviours as well as learning valuable interpersonal communication skills. Many of these individuals are extremely damaged psychologically and their life experiences have often not provided opportunities to interact with others in a healthy and safe environment. The social skills module is designed to teach what many non-offenders take for granted; that is, the capacity to recognise what he wants and to know how to go about getting it appropriately and without risk to others.

Covert sensitisation

This module teaches a means of instantly stopping deviant thoughts and fantasies by mentally pairing the deviant thought with a strong and powerful memory of the negative consequences of such behaviour. The procedure is intricate and the result is highly effective for those who genuinely choose to change. It is a process of thought stopping at a moment when the offender is still in control of his behaviour.

*Victim empathy**

While some rapists have concern and empathy for their victim, many do not, and some choose to distort their thoughts in such a way as to help them justify their deviant behaviour. The victim empathy module brings home to the participants, powerfully and effectively, the full implications of their behaviour upon their victims. The long- and short-term consequences are spelled out and, for most people undergoing treatment, this module changes the focus of their attention away from themselves and onto the victim. This module is a very powerful process and usually signifies an important turning point in treatment.

*Autobiography**

While taking part in treatment, each participant undertakes to write his autobiography. For many of these individuals, this is a considerable undertaking as not all have good literacy skills and, in most instances, a very commendable outcome eventuates. Writing the life story provides an important step in helping them review their life stages and developmental experiences. Eventually, each participant in treatment reads their life story to the rest of the group who question, challenge and confront any possible 'blocks' or avoidances at the same time as being supportive and understanding. For the other group members listening to the autobiography, many are affected by the process and get in touch with experiences of their own which may be similar.

Other modules

While the above modules are perhaps regarded as 'core modules', other less intense but still important areas are covered. These are:-

Alcohol and drug awareness. An educative module with regard to the part played by alcohol and/or drugs in the committing of the offence and in affecting the individual's lifestyle.

Human sexuality*. This module is both educative and confrontational with regard to attitudes and beliefs. An offender may typically attempt to justify his deviant behaviour by distorting his beliefs about the events leading to the offence, about his perception of women and of his victim's part in the offence. These cognitive distortions are challenged with the offender's assumption of responsibility for his behaviour being the goal. Issues relating to gender roles and attitudes towards women are constantly being addressed.

Coping with future change. This module helps the offender prepare himself for changes in his lifestyle and future relationships. Irrational beliefs are challenged and the participant is encouraged to become aware of how to convert irrationality into rational thought.

Self-awareness. A module designed to help the person become aware of his behaviour and his own personal style of interacting with his environment. With the awareness of how one behaves, thinks and feels, then there is choice—to continue as before or (hopefully) do things differently.

Relaxation skills and stress management. Instruction is given in how the body is affected by stress and what to do to lessen the degree of stress and its negative effect. A variety of relaxation and meditation skills are taught, with the program participants being encouraged to practice and focus on those which suit them best.

Individual/Family therapy

In addition to the group therapy format of treatment, individual therapy is provided on a regular basis within the Therapeutic Community at Casuarina Prison and is provided if deemed appropriate or necessary to maximise treatment gains at Karnet Prison and on the community-based programs. Similarly, if believed to be appropriate, contact is made with family members of the offender in order to determine another view of the man, his background and his pattern of offending, other than his view of himself. If necessary and/or appropriate, joint counselling will occur with the offender's partner if this is believed to be relevant to reducing the risk of re-offence.

Treatment Efficacy

How successful is the program? Is it, in fact, achieving what it sets out to achieve and are we in fact impacting to a significant degree on the recidivism rate? The honest response to these questions is that it is too early to determine accurately how effective the treatment programs are. While we can confidently say that change does happen and that we are optimistic that the participants are maximising the opportunity that has been made available to them and leaving treatment greatly different from when they arrived, it will take a good five to ten years for any scientific evaluation to verify or reject this belief.

While treatment change is constantly being measured by pre- and post-module and pre- and post-treatment psychometric measures, such measures are unable to determine how effective the changes will be once the offender is released and is subjected to the normal rigours, stresses and demands of day-to-day life in a less structured environment. People do not commit a sex offence in isolation of any other factor. Situations need to

present themselves which act as a trigger for the deviant behaviour. The individual's sensitivity to that trigger is not always primed and ready to react; a culmination of situations, thoughts, feelings and actions need to come together before the rape is committed. Those factors need time to become significant and the rapist who has been through the treatment program, while learning a lot about himself and his behaviour, needs that time to test his new way of dealing with situations and other people with whom he interacts.

Therefore, time is necessary before we can reliably and validly assess our therapeutic intervention. Given the nature of the behaviour we will eventually be assessing, it is evident that the statistics that we will base our evaluation upon will only relate to those treated sex offenders who are charged with further sexual offences. There is no way of undertaking any form of follow-up study that will canvas the long-term success of treatment; that is, those who do not re-offend. Once a released prisoner completes his period of parole, our mandate is finished and we have no right of access to his behaviour. Similarly, we will have no way of knowing how many re-offend and are smart enough to not get caught. So, the success of the treatment intervention will always remain, to some degree, an unknown quantity.

The evaluation of effectiveness of a treatment program within a correctional institution is also hampered by the difficulty in obtaining a control group against whom to measure the success for treated prisoners. This is because the degree of motivation for treatment is obviously a strong factor in achieving a successful outcome and consequently to deny a highly motivated prisoner the chance to participate, in order that he take part in a control group, will deny that individual the opportunity to change.

Throughout the course of assessments and treatment, the Sex Offender Team is collating an extensive database of information gained. It is expected that this will provide a valuable means of detecting flaws or aspects of treatment not being adequately met. The database will also enable us to pursue further research into the aetiology of sexual offending and the treatment of perpetrators of the abuse.

Overseas Treatment Programs

Despite the difficulties outlined above, the experiences of programs overseas are most encouraging. Perhaps the most notable and well-regarded treatment programs are those conducted under the direction of: W.L. (Bill) Marshall in Toronto, Canada; Barry Maletzki in Washington State, USA; Gene Abel in Georgia, USA; and Judith Becker in Arizona, USA. Becker's experience has been more prominent in working with adolescent sex offenders. The research statistics which have been produced in recent years by these (and other) professionals are varied and draw attention to the huge range of variables which influence the outcome of such studies. Overall, however, the programs upon which we have based the sex offender treatment programs in Western Australia show the viability of providing such treatment to sex offenders.

While research figures reflect a positive effect of treatment upon the likelihood of re-offence for child molesters, paedophiles and exhibitionists, most studies indicate a less optimistic prognosis for rapists following treatment. It is believed that most rapists live a generalist criminal lifestyle so the sexual offence results from a standard of behaviour that flaunts social rules and norms, that a moral code of appropriate behaviour may exist for these individuals but it is one that suits their needs and not those of society. To be most

effective, treatment of rapists needs to also address the issues specific to the generalist offender, to focus on lifestyle and peer standards.

In addition, it is believed the difficulty in treating rapists also stems from the fact that rape often results from a deeply-seated belief system which serves to justify the behaviour, to minimise the effect of the rape upon the victim(s) and, in fact, to support denial that what occurred was not consensual. These cognitive distortions have come about over the rapists' developmental years. His experiences in life will probably have served to confirm to him the validity of his beliefs.

The difficulty lies, therefore, in attempting to turn around and to positively shape a belief system which has developed along with the individual over many, many years as opposed to shaping behaviour which is deviant and which is more malleable and responsive to reinforcement.

We do not believe we are wasting our time or our resources. We firmly believe the treatment program we offer does impact upon the lives of those who willingly commit themselves to treatment out of a desire to seek personal change. The degree to which those treatment gains remain with the offenders after release will vary and will be conditional upon many factors.

Our program provides an opportunity for these men to come to terms with their deviant pattern of offending, to understand why they committed the offence and to recognise situations in their lives when they may be at high risk of re-offending. We help them to become aware of the triggers which precede the offences and to be alerted in the future when that trigger may be about to be pressed. We provide them with an opportunity to understand what makes them angry and how they can express that anger appropriately, rather than to suppress it until it becomes rage or to be continually angry with the world. We help the participants in treatment to understand the link which may exist between their alcohol and/or drug use and the offence. We confront the cognitive distortions which have contributed to the offending and/or helped justify their behaviour. We challenge the denial and the minimisation of the offending and we provide an opportunity for these men to understand the full effects of their behaviour upon the victim. If, by doing this, we prevent a future rape, then our purpose has been served.

WHO IS THE RAPIST? A SERIES OF CASE STUDIES

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THE FOLLOWING CASE STUDIES ARE TAKEN FROM THE WEST AUSTRALIAN Department of Corrective Services Sex Offender Branch. The Sex Offender Branch is a part of the Department's Community Based Corrections Division and is responsible for the provision of advice and consultancy to the courts, the releasing authorities and the Department on the management and deposition of sex offenders. The Branch also provides assessment, treatment and development services to sex offenders in prison and community settings. For recidivist high-risk offenders who are motivated, an intensive (six to twelve months) therapeutic community program is available at the maximum security Casuarina Prison. At the minimum security Karnet Prison Farm, a twenty-seven session (minimum) group work program is provided for those assessed as lower risk or as needing a pre-release program. In the community, a twenty-seven session (minimum) group work program is provided for those sex offenders on community-based orders (parole or probation). Group work is the core of all the programs but individual and family counselling is provided as assessed.

The term 'rape' is embedded in our cultural lexicon and has powerful evocative and descriptive qualities. It evokes feelings of fear and loathing as it is essentially about people who force themselves sexually upon others, often in very violent ways. Technically, the term 'sexual assault' is probably a more correct label as the act of rape is often associated solely with sexual penetration and sexual penetration is only one form of sexual assault.

The term 'rape' also has strong labelling qualities. Two aspects of the labelling process are of significance to this workshop. The first is that the term is highly reductionist and serves to belie the heterogeneity of the population of people who rape. Researchers have put much effort into trying to develop a profile of the 'typical rapist', largely to no avail. This effort is perhaps a reflection of a desire to find simple explanations for a complex human behaviour that is determined by the interactions of many intrapersonal, interpersonal and social variables. The second aspect of the labelling process is that, being reductionist, it dehumanises and objectifies those who are so labelled. No doubt this is useful in that it

reassures us 'normal people' that these perpetrators of violence are not like ourselves or our loved ones. It is perhaps analogous to blaming victims for their misfortune in that it makes the accusers feel more secure and helps them deny their own vulnerabilities.

This paper seeks to encourage reflection upon the diversity of individuals who rape and upon the fact that until the time of their assaults they were, in most cases, normal people with normal life difficulties and, if undetected, continue to present as such. However, having made the above qualifying comments, through their very behaviour people who sexually assault others are identified as a sub-population of our society.

Who is the Rapist?

The study and treatment of sexual offending behaviour is a developing area and, as such, the theoretical and research focus has shifted in recent years beyond the notion that rape behaviour is primarily in service of sexual needs. This has happened particularly in response to the feminist critique of sexual assault. Sexual assault has come to be understood as sexual behaviour in service of non-sexual needs, and violent sexual behaviour such as rape is often conceptualised as being used by the perpetrator to achieve a sense of power and control through domination (Groth 1979). At a macro theoretical level this can be a self-evident truth. However, at the individual case level for perpetrators being evaluated or undergoing treatment, the twin issues of how did the behaviour develop and what maintains the behaviour once established takes us back into the complex psychological and social worlds of individuals.

For some individuals the behaviour seems to manifest itself in response to an acute developmental life crisis, such as grief and loss to do with death or a failing relationship. The rape behaviour, in such cases, can be conceptualised as a regressive maladaptive coping response in which the most salient features are of anger and/or a desire to restore a sense of power and control. However, in other cases, research into that sub-population of men who rape has found that a large percentage have long-standing paraphilic interests (sexual activities unusual in nature) in conjunction with a general deficit of control over deviant behaviour. Many rapists do report recurrent and compulsive urges and fantasies to commit rapes. In addition, many also engage in a range of other deviant and non-consensual sexual behaviours, such as child molestation, exhibitionism and peeping (Ables et al. 1988). Therefore, for some rapists their behaviour would seem to be a chronic condition.

At the level of psychological motivation there are obvious differences between the reactive, acute rapist and those with a career of chronic behaviour and arousal problems. The commonality is that they deal with their problems by violating the rights of others in sexualised and extremely intrusive ways. Criminological and clinical researchers have noted that sexual offenders generally have a relatively high incidence of convictions for non-sexual crimes and the overlap between sexual and non-sexual crimes becomes stronger when aggressive and violent sexual offenders are considered alone. That is, many rapists are generalist, criminal offenders. Typically, these generalist violent sexual offenders show a patterns of aggressive behaviour through their lives 'suggesting that aggression rather than perversion is the more salient characteristic of some sex offenders' (Broadhurst & Maller 1992, pp. 72–3). Therefore, while an individual may or may not hold deviant sexual interests, it may be the cognition (attitudes and beliefs) they hold which predispose them to act out violently. For example, aggressions and violence may be held to be legitimate ways

of getting needs met and perhaps they accept the cultural legitimation of the male domination of females.

Both sexes perpetrate sexual assault as broadly defined but the common saying is that only males rape. However, there are enough isolated cases encountered in clinical practice and the correctional system to indicate that females can and have resorted to assaulting other adults sexually, either with sexual intent or in service of some non-sexual need.

Therefore, to attempt to answer the question 'Who is the rapist?' definitively is to fail. He would most likely be male but possibly female, an upstanding member of the community or part of an alienated subculture. He may be a specialist offender with a particular interest in deviant, aggressive sexual behaviour, or a generally criminal person who is inclined to take what he wants when he wants, or an individual who acts out when overwhelmed by life difficulties. Some may be psychologically over-controlled, closeting away their feelings until their ability to repress is exceeded and all their feelings and emotions come flooding out in destructive ways, or they may be under-controlled, impulsive and poorly socialised with sociopathic tendencies, having little regard for the rights and needs of others. Some rapists have problems with chronic substance abuse and dependence, and others do not. The disinhibiting effect of psycho-active substances features heavily in aggressive sexual assaults but not in all.

It is the position of this paper that the question of 'Who is the rapist?' can only be answered in reference to the individual cases. The cases to be presented have been selected to highlight the similarities and differences between cases both in terms of the individual rapist and their behaviour and the social context in which it occurs. The social context of the behaviour often leads to treatment and management dilemmas.

Before moving onto a consideration of the individual cases, some people may contest both the worth and efficacy of providing treatment services to sexual assault perpetrators. It is argued here that in a judicial system where, but for exceptional circumstances, prison terms are finite, the evaluation and treatment of perpetrators must be part of the community's response to dealing with sexual assault. It must be viewed as a tertiary prevention strategy in accord with primary prevention via community education, and secondary prevention via treatment and support services to victims. Services to perpetrators can be philosophically victim-orientated in that the intent of the services is to prevent future sexual assaults and thereby protect potential victims. If in some cases the sole outcome of treatment is to delay relapse into sexual assault, this may in fact have saved some victims. Sex offender recidivism (that is, returning to prison) is not a good measure of treatment success.

Case Studies

Case 1: Mr A

Offender details. Twenty-nine-year-old slightly-built Melanesian male in a de facto marriage of five-years standing with two children. He reported a history of violence in his family of origin and peer group violence in gang settings through his childhood and adolescence. He was of normal intelligence and articulate but suspicious and controlled. His criminal record revealed a history of property offences, damage and break and enters.

Offence details. Aggravated sexual assault (rape) upon his estranged de facto wife.

Mr A and his wife had separated because of his domestic violence. They had had several separations in the past for similar reasons but had always reconciled. On the night of the offence he had gone out with her and friends and he was hoping to effect a reconciliation. Alcohol was consumed during the evening. His wife rejected his attempts to reconcile whereupon an argument ensued. He violently physically assaulted her and raped her.

He was arrested, pleaded guilty, was imprisoned and eventually released to parole. He engaged in no development programs while in prison, but a condition of his parole was that he participate in the West Australian Department of Corrective Services Community Based Sex Offender Program (CBSOTP). This recommendation was made on the basis of then available information that he was a low-risk re-offender. His offending behaviour appeared power related, situational, victim specific and influenced by the disinhibiting effect of alcohol.

During the crisis following his arrest and court appearances, he and his wife reconciled and upon release resumed their relationship.

Mr A complied with all parole conditions and he had almost completed the twenty-seven group work sessions (seven months) of the CBSOTP when he and his wife presented for couple counselling. The domestic violence had recommenced. During the first session she revealed that the issue of most concern was his rape of her; there had been three episodes since his release. She wanted the violence to stop and the relationship to continue. She wanted help for him and for them as a couple. It would seem he had presented at the sessions under a threat from her.

The practice dilemma presents itself. Who is the client? The offender, the victim or society?

Mr A, while on parole and engaged in a treatment program had continued to perpetrate domestic sexual violence of the very form that took him to prison. However, he and his partner were presenting for help with expectations of professional confidentiality and service. The fact that the secrecy of the extent of the behaviour was broken and his partner was presenting seemed to offer an opportunity for effective therapeutic intervention.

However, at a clinical case discussion, it was decided that his parole should be revoked and that he should return to prison on the grounds that he had breached his parole contract not to re-offend. His treatment contract made the distinction between confidentiality and secrecy and stated that when someone was put at risk through his behaviour then action would be taken to ensure that his behaviour ceased. Further, it was felt that the new information showed he had not assumed full responsibility for his behaviour and had minimised it while in treatment and, therefore, his motivation and commitment to getting control of his violence was questionable. Generally, it was felt that to form a new treatment contract was to collude with the violence through inaction. The position taken is that the client is ultimately society.

When the recommendation for breach was presented to the Parole Board it was queried in that the Board members thought it a positive indication that he should present for counselling. Eventually, the recommendation was accepted but six months later he still avoids the police. In that time he has presented himself at a Domestic Violence Counselling Centre. They concluded that he essentially believes that it is his prerogative to sexually take his wife when he chooses and that he sees nothing wrong with his behaviour.

His prognosis for change is poor.

Case 2: Mr B

Offender details. Thirty-three-year-old Caucasian male. The youngest of three siblings, he described a stable and nurtured childhood in an intact family. Gender roles in the family were traditional. A poor student, he left school at fifteen years of age to seek work and is now a skilled labourer. His adolescence was uneventful and his sexual and social developmental history evidenced no disturbances. A theme through his life was that of sudden separations via death and lack of permission to grieve for the loss. In his twenties he entered a heterosexual relationship which lasted twelve years. They lived together but it would seem the relationship was characterised by tension about issues of closeness and individuation. Conflict over their respective commitment to the relationship, poor conflict resolution skills, and poor communication led to a cycle of separations and reconciliations.

Offence details. Aggravated sexual assault, deprivation of liberty. There was no previous criminal record.

While drunk at a sporting club function he followed a woman into the female toilets in the club house, loitered in a cubicle, attacked her when the opportunity presented itself, dragged her into adjoining rooms and proceeded to sexually assault her. She called for help when a friend came looking for her and she broke free. He was caught immediately and summarily punished by her friends.

A week prior to this assault he had discovered his de facto wife in bed with another man. He had come home to talk out some problems that they had been having. In a blind rage he had beaten the man until the man was able to make his escape, leaving him and his wife alone. He did nothing but contain himself and leave without talking to her.

For the rest of the week he drank heavily, full of resentment and hurt, harbouring thoughts of revenge but at the same time wanting to go back and work things through but too proud to do so.

The day of the assault he had again been drinking heavily, mulling over his feelings of anger, resentment and grief. He claimed to be so drunk as to have little recollection of the events.

He was imprisoned and released to parole with a condition that he attend the West Australian Community Based Sex Offender Program. This he did in an unqualified manner. His shame and remorse for his sexually assaultive behaviour was evident. He was observed to employ skills gained in the program (conflict resolution, anger management) and to gain insight into his behaviour.

His prognosis for remaining offence free appears good.

Case 3: Mr C

Offender details. Twenty-year-old Caucasian male. The youngest and only male of four siblings. He was assigned the label of 'the baby' of the family. His childhood was stable, nurtured and there were no reported life crises. His family remains intact but it would seem

his parents were disengaged and his mother had formed a close, perhaps enmeshed relationship with her only son and 'baby'. In adolescence, as he attempted to separate and individuate from the family, tensions arose. This was evidenced most strongly in his parents finding fault with his girlfriends. He was pushed to end each relationship, of which there became a succession. One girlfriend became enamoured with him and, when it seemed he was going to end the relationship, it is reported she deliberately fell pregnant to hold him. He was eighteen years of age.

He found himself in a double bind, wanting to break with his girlfriend and being encouraged to do so by his family but feeling himself responsible to support his girlfriend and unborn child. He decided to stay with her and marry. However, his mother refused to acknowledge her. Throughout the pregnancy and after the birth of their child he resided in his family home, she in hers as they saved money. His parents described him as normally a placid and good natured person who was popular and a good worker.

Offence details. Aggravated sexual assault.

Mr C pursued and attacked a sixteen-year-old girl walking across a darkened park. He demanded money, restrained her, dragged her into the park and raped her. He was wearing dark clothes and a mask. He claimed to have a knife. Following the assault he returned to his car, which was in a side street, removed identifying clothing and approached her in his car as she made her way home. He pulled up alongside her and offered assistance as she looked distressed. She ran off.

Several weeks later, wearing dark clothing and a mask, he again attacked a girl in a park at night but only robbed her. He claimed both assaults were impulsive acts, happening when he saw the unaccompanied women as he drove home from seeing his fiancee and child.

At the time of the assaults his child was four months of age and he was very worried about providing financially for his fiancee. Psychological assessments described an immature and anxious individual with a poor self-concept. He also seemed to have limited psychological resources to handle everyday stress and was inclined to give way to his emotions.

He was sentenced to prison, his fiancee left him, and he was granted parole with a special condition to complete the West Australian Community Based Sex Offender Program. Initially resistant, he was eventually successfully engaged and completed the program. In the program he evidenced significant distorted thinking and misperceptions regarding females and the sexual harassment of women. His world view was simplistic and egocentric. He was sensitive to perceived criticism and reacted immaturely (childishly) when he felt rejected. While on parole he described a series of melodramatic relationship conflicts with a new girlfriend which coincided with family pressures to end the relationship.

Mr C's unresolved family issues, poor sense of self, his immaturity, his poor stress tolerance, in conjunction with his distorted thinking about women, suggest he remains a risk of acting out against women when his psychological resources are stretched.

Case 4: Mr D

Offender details. Thirty-two-year-old Caucasian male. Reports a normal childhood in an intact family and a good relationship with his parents except for a general inability to confide in them.

He reports no sexual interest in early adolescence. However at fifteen years of age he approached a neighbour for sex after breaking into the house. He was caught, went to the Children's Court and was put on probation.

Since his entry to prison, his family report that he was caught cross-dressing in early adolescence but he denies any memory of this.

At seventeen years of age he and a friend were peeping on a regular basis at a woman on their way home from sport training. After some weeks he reports they decided to stop before they were caught but thought they would take some of her underwear off the clothesline as a memento. He was caught in the act. Shortly after this he commenced to break and enter into houses for money. He did this for several years but then his pattern changed.

Offence details. Aggravated sexual assault - four victims.

Over a six-monthly period he broke and entered four houses, attacked, restrained and raped the women he found there. The victims were all near in age and had similar physical characteristics. After each rape he would vandalise the house.

He describes the rapes as break and enters gone wrong despite his apparent careful selection of victim type. He denies any fantasies or urges to commit rape despite a pattern close in time and the absence of any precipitating life crisis that may have overwhelmed his psychological coping mechanisms. He claims not to know why he stayed in the houses once he became aware of someone else's presence. He denies any premeditation in the assaults. He is currently engaged in treatment.

He claims to be wanting treatment services but does not like to think of himself as a rapist.

Case 5: Mr E

Offender details. Non-Caucasian male, aged in his late-twenties. Reports a normal childhood in an intact family with supportive parents. He did have to cope with racism in the wider community.

In his early teens he formed a relationship with a white Australian female but this relationship was vigorously resisted by her parents on grounds of race. They remained together, lived together at his parent's home, married in their early twenties but continued to cohabit with extended family members for financial reasons. Her family continued to treat him with disdain and arrogance.

Their first child was born with a degenerative, terminal disease. The child never left hospital and a few weeks after the birth it fell to Mr E to approve withdrawal of the life support. Their relationship and their extended families were full of grief and stress.

A short time after these events, her family had a gathering. One of his wife's female relatives pointedly told him that his family were rejected by theirs because of their race. He

left their home and went to the hotel where he drank. His wife's female relative followed, confronted him and blamed him for his child's illness and death.

He stayed in the hotel, containing his rage, but drinking and ruminating with thoughts of revenge against people in his wife's family who had provoked and rejected him for years through racial slurs.

Offence details. Aggravated sexual assault.

Alcohol affected and heavily disguised he broke in upon the woman who blamed him for the death of his child with intent to humiliate and degrade her through rape. Mr E is in treatment. He is very ashamed, remorseful and motivated to engage treatment.

His prognosis appears good.

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PROFILING THE RAPIST: THE PREDICTION OF DANGEROUSNESS

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The Use and Misuse of Prediction

IF ANY MAN CAN BE A RAPIST (BROWNMILLER 1975) AND IF SEXUAL offenders (including rapists) are 'not a homogeneous group' (Canada. Working Group, Sex Offender Treatment Review 1990), then the definition of the 'typical' rapist and the development of a typology of rapists should be considered a fruitless enterprise. There are no physical or psychological characteristics which distinguish rapists, or types of rapists, from their fellow men. About the only thing rapists have in common, apart from their commission of the crime, is their shared social attitude towards women: this is summed up neatly by one of the subjects in Gebhard's classic study:

> Man, these dumb broads don't know what they want. They get you worked up and then they try to chicken out. You let 'em get away with stuff like that and the next thing you know they'll be walking all over you (Gebhard et al. 1965, p. 205).

In parallel with this abandonment of taxonomic schemes, there has been despair about our apparent inability to predict which known rapist will attack again, at which time and in what circumstances. Not only have empirical studies on the prediction of violence generally shown that most predictions of dangerousness turn out to be false positives (Steadman & Cocozza 1974) but also such predictions with respect to 'sexual psychopaths' lead to excessive periods of indeterminate incarceration in poorly resourced facilities with little hope of any 'treatment' (Kittrie 1971).

This is a gloomy picture. It is tempting to simply let sentencers, parole boards, clinicians and correctional officers get on with their work as best they can, using essentially a retributionist model dressed up with a little bit of rehabilitation. Yet there are cogent reasons

for persisting with the prediction paradigm in the hope of making it more applicable to what actually goes on in the real world.

Firstly, punishment alone, even long periods of incarceration, does not ensure the safety of future victims once the offender is released. Not only are many (perhaps most) offences committed by an individual rapist never detected; there is also no guarantee that he will confine his attentions to adult victims: up to one-quarter of rapists have been involved with teenagers and young children as well (Abel et al. 1987; Abel, Becker, Cunningham-Rathner, Mittelman & Rouleau 1988; Freund 1990). It is important to realise that potential victims may include contacts which the rapist makes in very different circumstances: friends, work-colleagues, his children, children of friends and neighbours, students and, unfortunately, in some cases, even his patients (McPhedran 1991).

Secondly, there is an increasing acknowledgment that prediction must be linked to appropriate interventions. For too long, prediction studies have concentrated on static or 'tombstone' factors—those which are not amenable to any interventions. The three best-known (and most reliable) of these are an offender's *youthfulness*, *previous history of violence* and *possession of 'psychopathic' traits.* Yet, dynamic and 'fluid' variables are also important in determining whether an offence will actually be committed, even in 'high-risk' offenders. For example, one study of rapists noted that 94 per cent of the offenders reported feeling anger caused by interpersonal conflict, just prior to 'relapsing'. (Pithers et al. 1988). For sex offenders in general, it is likely that specific interventions can be designed to deal with these 'dynamic' contributors to re-offending (Rice et al. 1990); a list of such variables is provided in Table 1.

Thirdly, prediction studies are an important way of achieving fairness and consistency for offenders. Many offenders were once victims of one sort or another, if not of sexual abuse then at least of gross social and emotional deprivations. While there have been some doubts raised about the accuracy of (for example) child molesters' accounts of being sexually abused as children (Freund, Watson & Dickey 1990), there is enough evidence to indicate that the behaviour of certain subgroups of sexual offenders is truly a function of social disadvantage rather than being an expression of persistent criminality or deviance. This applies particularly to the intellectually disabled (Hingsburger, Griffiths & Quinsey 1991; Glaser 1991). In such cases, punishment is inappropriate, both pragmatically and from the human rights perspective. Rather, it is more important to evaluate the needs of an individual offender and design interventions which will not only ensure the safety of the society in which he lives but also will eliminate behaviour which is in fact causing him considerable distress.

Table 1

Factors Contributing to Sexual Offending that are Potential Targets for Intervention

motivators	sexual desire; deviant sexual desire, cerebral basis for sexual pleasure, emotional needs and conflicts; for example, dominance, hatred, acceptance, aggression, nurturance, and so on.
blocks to legal sexual outlets	low IQ, unattractive, unassertive, low social skills, restrictive views on sexuality, low sex knowledge, sexual dysfunction, unavailability of appropriate sex partners, marital discord.
disinhibitors	alcohol/drug abuse, pornography use, models (childhood victimisation), cognitive distortions, deviant sexual attitudes (rape myths, victim blaming), attitudes supportive of violence, antisocial lifestyle, psychopathy, psychosis, brain injury/pathology.
inhibitors	moral values, empathy for victims, aversion to violence, fear of consequences, legal penalties, incarceration, unavailability of potential victims, resistance of victims.

Why Predictions Go Wrong

Clinicians and scientists have a different understanding of prediction failure from that of the community. For the community (and particularly for potential victims), predictions fail when a rapist is released and re-offends in a violent fashion. For the scientists and service providers, however, the reliability and validity of a predictive instrument depend more on its ability to pick the offenders who will *not* re-offend. Indeed, the paradox is that the more such non-offenders there are, the greater the suspicion that the instrument has unnecessarily locked up 'non-dangerous' offenders or subjected them to some other unnecessary intervention.

It could be argued that this enormous difference between measures of predictive success arises simply from the age-old problems of human error and imperfect knowledge. Certainly there have been dramatic improvements in predictive capacity using comprehensive and systematised information-gathering systems as well as specific investigations such as penile plethysmography (Quinsey 1990). In fact, the main impediments to the accurate and reliable assessment of rapists are associated more with the social structure of the community in which we live, rather than with their well-known deviousness or the possible lack of competence in those who attempt to deal with them. These social and political factors are summarised next:

Professional attitudes and resources

It is still unfortunately the case that those who attempt to deal with rapists, whether they be police, judges, correctional officers or clinicians, are too willing to accept the offender's description of his crime. Kinsey's remark that the difference between a 'good time' and a 'rape' may hinge on whether the girl's parents were awake when she finally arrived home, is still often believed, even if less often quoted (Kinsey, Pomeroy & Martin 1949). This same willingness to believe the offender often extends to his claims that he has never offended before, he has never practised any other form of sexual deviance, he did not plan the current offence or that he does not experience any aggressive sexual thoughts or fantasies. Further careful questioning and investigation is usually needed to reveal the falsity of such claims (Abel et al. 1987).

The facilities provided for the assessment of rapists and other sex offenders who have finally been convicted are still grossly inadequate. There has been absolutely no improvement in the pitiful resources allocated by the Victorian Government to the management of rapists and other sex offenders in the community since they were last described by the writer at a conference (Glaser 1991). The community psychosexual treatment program still operates out of cramped cold quarters in a building which is going to be demolished any day. A total complement of just over three full-time equivalent staff attempts to run a service which provides not only treatment for offenders but also reports to the courts, provides clinical support for community corrections staff, direct treatment for a range of other non-sex-offender difficult clients, teaching for other professionals and consultation and liaison with other service providers. There is little privacy for either clients or staff, inadequate security and sometimes no electricity or telephone services. Facilities in other parts of the system are in similar disarray: the prison psychosexual treatment program, which is run on a shoe-string, has just lost its third coordinator within the space of approximately eighteen months.

The community is quite rightly sceptical of the sort of 'service' that such facilities can provide. One can only wonder at the priorities of a system which purports to provide a treatment and management service for serious offenders but leaves the service so poorly resourced that the safety of the community must inevitably be compromised.

The response by the law

There is no doubt that the law actively encourages the willingness to believe an offender's story, as described above. As well, the credibility of women and children as witnesses has been discounted throughout legal history (Scutt 1990). Even with the new definitions of 'consent' introduced in recent rape legislation in Victoria and other jurisdictions, it may well be that women and children are revictimised during lengthy cross-examinations in court proceedings (Brereton 1992).

When a conviction is obtained, courts still have little to guide them in assessing the future dangerousness of an offender. Plea bargaining inevitably reduces the number and severity of the charges and the adverse medical or psychological report prepared for a defendant's legal advisers is rarely put in evidence. The courts are often the last to know

what an offender has actually done and thought while committing his crime; yet they are responsible for ordering the ultimate disposition which is intended to protect the community.

The response of victims

If the professionals and the judiciary are prevented from accurately coming to grips with the rapist, then the victim is in a worse position. Unfortunately, it is too often the case that victims are seen crying out for vengeance or (as the offenders seen by this writer now assert) they are simply after money from the Crimes Compensation Tribunal. The reality often may be very different. The trauma inflicted by the rapist upon his victim involves not only physical and psychological hurt but also the unrealistic hope that the offender will change with 'treatment'; that he will make appropriate restitution and/or will resume a more peaceful relationship. These hopes, born out of fear and despair, are not in any way the basis for making a decision about an offender's risk of re-offending.

The response by the media

A study of British newspapers over the last forty years has found little serious reporting of the subject of sex offending; rather, the emphasis has been on a rather moralistic (and hypocritical) sensationalism (Soothill & Walby 1991). The electronic media have simply amplified this trend by pretending that the reporting of sexualised violence amounts to 'news' in such 'tabloid television' programs as *Hard Copy* (Rowe 1992).

It is debatable as to whether 'serious' treatments of rape have eliminated this emphasis. The recent ABC-TV program about sexual violence, *Without Consent*, has made an attempt to record, as accurately as possible, both the factual and emotional components of the experiences of rapists and their victims. However, a fundamental mistake has been made here: it is assumed that the community is able to appreciate the horror of the victims' suffering and the callousness displayed by rapists when bragging about their crimes. Yet, there is only so much horror which a viewer can experience before disbelief sets in. There is only so much disgust that a male viewer can feel for his rapist colleague before he, too, starts to enjoy the fantasies of sexual power.

Therefore, rapists cannot simply be allowed to tell 'their side of the story'. They must be cross-examined by the media in the same way as their victims are in court. Otherwise, such programs simply end up confirming community prejudices. As a rapist client said, when asked whether he had watched the program:

> I tried to watch it, tried to see if the women were legit . . . it was difficult though, because the other blokes were laughing too loudly . . .

Towards a Victim-Responsive Prediction Paradigm

Predictions of dangerousness can no longer be seen as a detached and objective scientific enterprise. Their evil has arisen from the use by the state to exclude arbitrarily-defined 'dangerous' individuals from society. Yet, the cynicism and despair surrounding such abuse have produced a disregard for the positive aspects of prediction work. Ultimately, the protection of society demands that more sophisticated and refined predictive instruments are produced and that they are linked not to simple dichotomous decisions about release or

detention of an offender but rather to the determination of specific interventions which will ensure the safety of society while also ensuring the minimum possible intervention in an offender's life.

For victims, and even for potential victims, punishment may be preferable to pragmatism. All too often, the debate about offender intervention programs has centred around resource allocation: for every offender in a treatment program, a victim is being denied appropriate support and restitution. At a more general level, it is very difficult to decide whether the grief and rage of a victim who requires a punitive sanction in order to gain some resolution of her distress outweighs the ill-defined promise of decreased risk to the community provided by less punitive 'treatment'-oriented models.

It must be emphasised that most effective 'treatment' paradigms focus on an offender taking responsibility for his crimes, on developing empathic responses to his victim(s), on following treatment goals set by the therapist rather than himself and on learning techniques to prevent re-offending behaviour. Whether this, in itself, constitutes 'punishment' rather than 'treatment' is both an ethical and pragmatic question. Again, it is hard to know whether such treatment requirements satisfy the needs of the victim who has already been wronged.

Nevertheless, if victims are to be given a voice in the matter (and this could well occur through, for example, the introduction of victim impact statements) then such a choice needs to be informed. The victims themselves need to have accurate and reliable information about the chances of their torturers repeating the offence, or indeed any other offence involving violence. They also need to know the chances of his responding to specific interventions, whether these be formal treatment programs, intensive supervision in the community or incarceration for a determinate period.

The needs of victims are the best reason for improving and refining our predictive models. A victim focus should be the primary justification for changing professional attitudes, for improving intervention services, for removing the impediments to sentencers and parole boards acquiring comprehensive knowledge about an offender and for educating the media in responsible reporting.

A victim's life after rape involves misery, humiliation and disempowerment. Knowledge is power: a rapist, nearly all the time, knows what he wants to do to his victim; his victim does not. Practitioners and social scientists are gradually learning much of the rapist's art and cunning. The more their victims and potential victims acquire of this knowledge, the more power they will possess against them.

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PROFESSIONAL RESPONSIBILITY FOR SEXUAL VIOLENCE: A STUDY OF SELF-INTEREST, MYTHOLOGY AND EXCULPATION

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THERE IS NO DOUBT THAT PROFESSIONALS PLAY A MOST IMPORTANT ROLE in assisting individual victims of sexual violence. Medical practitioners apply their skills to the tending of physical damage suffered, while psychologists are often called upon to help heal the psychic wounds. Legal practitioners apply their skills to the obtaining of swift and sure convictions for offenders with least trauma to the survivors, and other professionals also play supportive roles. But these reactive interventions are unlikely to have any promotive or preventive influence upon the overall prevalence of sexual violence, although they certainly produce important and helpful effects for the 'micro actors' involved.

This paper will demonstrate how professions proactively contribute to the prevalence, if not the incidence, of sexual violence in the community. In doing this, it will describe some larger ('meso' and 'macro') perspectives than are usually taken by the helping professionals, who traditionally take most account of the reactive, micro-view of the situation. It will primarily focus on the helping professions (psychology, psychiatry, social work and other mental health and psychotherapeutic professions) and, to a lesser degree, the legal profession which relies so symbiotically (if unreliably) upon these professions for much unsatisfactory practice in the area of sexual violence.

To continue to remand offenders into the hands of psychotherapists who continue to treat offenders ignores the most central and critical of scientific issues. Even if one were to suppose that evidence existed for a recognised pathology which could be shown unequivocally to be present and to be a material cause of the offences (and this is doubtful), then the more problematic issue of postulating a valid and efficacious treatment regime becomes pertinent (*see* Victoria. Parliament. Social Development Committee 1992). It is no overstatement to say that treating professionals often have no better than a lay understanding of the nature of the pathology of the offender, despite a plethora of psychological and physiological propaganda.

The principal purpose of this paper is to argue, with illustrative rather than exhaustive examples, that some professional attempts to 'pathologise' criminal behaviour have been hugely successful in promulgating the modern scientific mythology of 'madness rather than badness', both in the lay and the legal minds, with the reciprocal effects of augmenting the ambit of professional practice and responsibility, while diminishing the responsibility of offenders for their sexual violence through a range of professionally sanctioned exculpatory manoeuvres. Scull (1975) presents a detailed discussion of how madness was transformed into mental illness during the eighteenth century, specifically to serve the professional interests of the medical profession. Most interestingly, Scull traces this shift from moral to scientific through ecclesiastical channels. He shows how medical interest in mental pathology originates from the middle of the eighteenth century, primarily in response to the success of the privately-run 'moral treatment' institutions. Despite initial antagonism to this therapeutic modality, which finally found full expression through restrictive legislation, the medical profession was quick to assimilate many of the practices of moral treatment under its own rubric when it finally monopolised control of the insane asylums. This was easily accomplished given the lack of professional ownership of the moral treatment community (especially in the face of the increasingly powerful medical profession) and the 'medicalese' which the moral treatment community used to describe their work. A particularly striking recent parallel of this strategy has been the medical profession's relationship with the fellowship of Alcoholics Anonymous. It is interesting to note that another branch of the medical profession is currently mounting a solid drive for ascendancy in the addiction field (Group for the Advancement of Psychiatry, Committee on Alcoholism and the Addictions 1991).

Specifically, the aim is to show how one of these exculpatory manoeuvres (the intoxicated defence), while serving the specific interests of helping and legal professions, lacks the empirical warrant which both these professions (and indeed the general community) generally assume, and functions to perpetuate rather than diminish the existence of sexual violence.

Lastly, it is proposed that the helping and legal professions fail to serve the general community adequately in the area of sexual violence. By sponsoring a range of mythological exculpatory manoeuvres which have gained general community allegiance, they have cultivated a climate of social permission for sexual violence. In addition, this self-interested focus on the 'meso' aspects of sexual violence, despite its demonstrable shortcomings, has enabled professions to avoid addressing the interrelated 'macro' view which may include much more significant determinants of sexual violence.

Drug Induced Exculpation

There are many examples of professional misunderstanding about the issue of sexual violence, but none is more damaging than the widespread and uncritical acceptance of the mythology of drug-induced exculpation. While it is bad enough that alcohol's putative ability to absolve guilt has captured the public and legal mind, it is scandalous that this scientific fiction continues to occupy a respected place in the minds and practices of the helping professions. In focusing on alcohol, one can draw the appropriate inferences as they apply to other drugs.

In a review paper on alcohol and sexuality, Leigh (1990) reports that experimental evidence shows that *beliefs* about the effects of alcohol actually produce behavioural changes, whereas the presence of alcohol itself produces 'little or no effect on behaviour' (Leigh 1990, p. 131). This finding is supported by other studies which demonstrate that 'alcohol-induced transformations in behaviour' vary widely across cultures and within the same culture across time periods. She concludes that 'people learn from cultural modelling and reinforcement *the appropriate behaviours to display when intoxicated*. These behaviours are seen as the 'living confirmation of their society's teachings' (Leigh 1990, p. 132). Although it is recognised that alcohol has active pharmacological properties, the direction of behavioural change in the presence of alcohol is 'determined, not by this pharmacological action, but by circumstances and beliefs about alcohol's effects'. This phenomenon is summarised by the concept 'outcome expectancy': a causal belief about the behavioural effects of alcohol on people. Ironically Leigh (1990) cites evidence to show that the ingestion of alcohol does not necessarily facilitate the overstepping of cultural bounds. And this may be the situation where the male offender recognises the social and cultural acceptability of perpetrating sexual violence on an available female.

Other studies cited by Leigh suggest that males interpret the generalised physical sensations resulting from alcohol as feelings of power and aggression. This kind of experimental evidence may well be adducible to augment culpability rather than mitigate it. It may well be that the male use of alcohol in certain situations is emblematic, rather than causative, of the putative sexual and aggressive rights which males bestow upon themselves in a range of relationships with women.

As can be seen from the above, evidence that alcohol leads to any specific behaviour at all is quite problematic. Nonetheless, it is often successfully argued in court that it was the drug which caused the behaviour, as in the 'automated' states often invoked in criminal defences. This is roughly equivalent to asserting that smoking causes child abuse. Although we can recognise some distant relationship, we have trouble in linking the ingestion of specific chemicals with the activation of specific psychomotor routines resulting in the injury to another person. Scutt summarises that:

> there is no way in which the studies reviewed can in any way bolster the idea that alcohol 'causes' domestic violence (Scutt 1981, p. 87);

and asks the question why:

> researchers persist in adhering to a doctrine for which there are no adequate, properly controlled studies to grant it a secure foundation (Scutt 1981, p. 88).

Scutt offers the explanation that the classification of someone as an 'alcoholic' enables society to ignore an even more disturbing reality: the social normalisation of male-perpetrated violence upon females. Scutt's important 'macro' point will be revisited later.

The Australian justice system has provided us with a specific and central exemplar of this professional mythology: the *O'Connor* precedent. Broadly understood, the *O'Connor* precedent refers to a High Court appeal judgment which determined that an accused, who could argue an incapacity to form an intention to kill as a result of excessive intoxication, could not be found guilty of murder.

Although cognisant of Goode's admonition (professionals are usually unwilling to attend to any but the most powerful of franchises in addressing substantive critique and usually respond to any 'external' critique by disenfranchising the critic—the classic ad hominem defence) when discussing the *O'Connor* precedent, that people 'got upset about something they did not understand and which is really nothing' (Goode 1985, p. 222), the paper now crosses disciplinary boundaries to make some critique of matters substantive to both jurisprudential and behavioural professionals, without the undoubted benefit of a recognised qualification in jurisprudence. While undertaking this discussion, it is important to recognise a core mythology of professions (Mulkay 1976). In order to justify their autonomous (self-regulatory) status, the professions have had to assure the general community that extra-mural critique, lacking the insider/specialist knowledge of a profession, is essentially irrelevant and valueless. This ultra vires positioning of professions has meant that the critique of many less powerful social interests has been effectively disenfranchised: for example, victims/survivors, lay public, other professional and non-professional groups.

However, the issue of sexual violence, a problem which requires interdisciplinary understanding and cooperation, is too important to be owned by any professional group. One need not be reminded that it is precisely these interface disciplinary areas which require examination for, as Scull (1975, p. 221) reminds us, the judgments of psychiatrists can be transformed into social reality on account of their relationship to legislative controls (*see*, for example, *Mental Health Act 1986* (Vic.)). Goode's position is that 'to base the criminal justice system on such anachronistic mumbo-jumbo is ridiculous and bound to lead to trouble' (Goode 1985, p. 218). Goode states that the rules which govern when 'state of mind' is very important and when it is not are 'absolutely chaotic' (Goode 1985, p. 217). He reports that state of mind of the accused is of no consequence in minor offences, but a mens rea (guilty state of mind) is a requirement for the forming of a safe conviction for a number of serious offences. This inversion of culpability may itself strike some as curious.

Goode's exposition on the history of exculpatory intoxication documents the bi-polar swings in the availability of this defence. Interestingly, the modern view, which supports the *O'Connor* defence, 'probably began in the eighteenth century but did not reach full flowering until the nineteenth century' (Goode 1985, p. 218). This period just happens to correspond with both the ascendance of the 'germ' theory of disease, and in particular, the 'disease conception of alcoholism' (Wallace 1992). Since 1843 the defence of insanity had been admitted under the law, but the putative relationship between intoxication and disease of the mind, which attracts such modern allegiance, only found expression after this time. Goode attributes the enthusiasm of judges to accept the insanity defence as motivated, as much by their unwillingness to invoke capital sentences, as by their frustration with the rates of acquittals based on psychological defences. He notes how 'judges began to force as much abnormal behaviour into the 'straight jacket' of insanity as they could, so that abnormal

accused would not get off scot-free' (Goode 1985, p. 219). This unfortunately resulted in the expansion of the *legal* definition of insanity.

Meanwhile, other defensive diversions had been created over the 1950s which fell under the rubrics of 'automatism' and 'involuntariness'. Unfortunately with the complicated situation which arose in this country, as a result of the successful appeal of *O'Connor* to the High Court of Australia in 1979, evidence of gross intoxication can be adduced to deny that 'the act itself is attributable to the accused', who is thus 'entitled to an acquittal on the basis of automatism' (Goode 1985, p. 219). Goode is quite unequivocal in demonstrating the arbitrary character of determining the 'specificity' of intent for a criminal behaviour: as 'no one could tell why apart from mere assertion' (Goode 1985, p. 219).

While it remains de jure for the courts (objectively) to determine incapacity to form specific intent to an offender, it may well be just as jurisprudentially appropriate to allow the *victim* to make (objective) judgments as to the capacities of the offender to form and effect specific intentions. When looked at from the perspective of a first-hand (objective) key informant, it may well be that the (objective) judgments of the offenders' capacity to form specific intentions may well be complemented by the evidence of the victim. When viewed from this perspective, it may be difficult to convince the survivor of a sexual violence crime that alcohol prevented the assailant from forming a specific intent. Most clinical evidence adduced would support the opposite contention: that the assailant seemed incapable of forming any other intention save the specific one which found some effect. And if logical analysis is imported into the process, there is some argument, from a 'reasonable' perspective, that the end result of the offender's behaviour may well correspond better to the victim's (objective) judgment of the relevant specific intentions than to the defendant's later reconstructed version after consulting with legal counsel. Scutt (1981, p. 88) cites several examples when such arguments were successfully adduced in legal process.

Yet the 1970s bottom line holds that evidence of intoxication 'could be lead to show that the accused did not have a specific intent' (Goode 1985, p. 218). When examined behaviourally, the notion of 'specific intent' has no valid scientific basis and it is problematic whether the ingestion of alcohol in any doses has any effect at all on the forming of intentions. Indeed, the kind of evidence required to substantiate such a claim might prove more epistemologically resistant than first thought.

Of course the evidence adduced to support this state of intoxication is reliant totally on self-report, which presumably is affected by self-interest and especially the interest to exculpate oneself. Offenders and their counsel have now learnt that a classic defence against criminal charges of all kinds is to invoke the disease of alcoholism, especially to report massive intoxication at the time of the offence. It makes good sense for the intending offender to pre-construct a history of 'disease' in advance of the commission of the crime and to ensure that sufficient alcohol is taken in short temporal contiguity with the actual commission of the crime and before offering the defence which, most surprisingly, may be accepted by judicial authorities.

But in another sense the execution of a crime under extreme state of intoxication again becomes problematic, because as has been shown (Julien 1985), the more alcohol that is consumed the *less* capable the subject is in mustering the psychomotor coordination required to *effect* that intention. Goode expresses some doubt that a person so drunk they did not know they were driving, could possibly operate a motor vehicle. I wonder how he

would adjudge a defendant's capacity to rape who claimed he was so drunk he did not know he was raping.

The critical problem which Scutt (1981) raises is the transcendent status which such defensive ploys enjoy. She bemoans the fact that public explanations for sexual violence almost always originate from statements by defending counsel or the sentencing judge. She cites Smart and Smart:

> Consequently, motivations for rape which are provided with the specific intention of trying to achieve an acquittal for the accused, or in an attempt to reduce his sentence, are reported in the press as *the* motivations and therefore these statements assume the status of legitimate and reasonable accounts of rape (Smart & Smart 1978, p. 98).

In the light of the above, it is perhaps surprising that Goode argues in support of the *O'Connor* precedent. His support, however, is based somewhat on his disapproval of a disapproving attitude to alcohol. Although his dismissal of the English doctrines which invoke a distinction between 'specific' and 'basic' intents is sound, his unwillingness to repudiate 'intoxication induced automatism' as fictional, stands in stark contrast to his thoroughgoing critique of other elements of English law. His proposals for Australian law reform in this area, are curiously silent with respect to 'strict liability'.

Skene (1986) in responding to Goode, argues that defendants who use alcohol in contiguity with the commission of a serious crime have placed themselves (as a result of free choice) in a position to cause harm and cannot argue that they are unaware of the possible effects of alcohol or other drugs.

Empirical evidence shows that those who commit criminal offences while intoxicated are more likely to re-offend. The defence of intoxication then becomes more problematic for the legal system. Rather than providing a defence for the initial act, it might be more apposite for evidence of intoxication to attract more restrictive penalties for offenders rather than providing them, as in *O'Connor*, with total exculpation.

Skene quotes an example where a diabetic, who failed to take food after insulin and committed a violent offence was adjudged as criminally liable as:

> he knew that his action or inaction might cause him to act aggressively or to injure others and he takes no remedial action when he knows it is required (Skene 1986, p. 280).

Although Skene's argument is littered with references to the putative 'loss of control' and biological determinist arguments, her attack upon *O'Connor* defences is warranted on other grounds. She quotes the 1983 acquittal of a man who (was alleged to have) 'raped, knifed and humiliated his victim'. This acquittal was based upon defence argument that his alcohol and drug induced intoxication rendered him incapable of acting intentionally. Other evidence successfully adduced by the defence in the 1983 case concerned the conjugal status of the victim and the defendant and their prior history of 'consensual, abnormal intercourse' (Skene 1986, p. 281). One can only bemoan the admissibility of such evidence which can be translated to mean that any contract of marriage or scheme of arrangement for mutual pleasure *ipso facto* entitles one of the parties to later perpetrate suffering upon the other.

Unfortunately, the law and behavioural science failed all parties at this time because the same man was later convicted of a similar offence in 1986 after another victim suffered

substantial injuries. Unfortunately, Goode (1986) invokes 'a psychiatric disorder' to explain the behaviour of this rapist, without recourse to any supportive evidence. This pathologising inclination is just the sort of behavioural reification which constitutes professional responsibility for the prevalence of sexual violence.

Goode reasons that the offender's 'state of mind' has underpinned the notion of criminal responsibility, at least in part, because there has been 'no system of social theory of individual responsibility which has been either acceptable or capable of replacing it' (Goode 1985, p. 218). And despite the fact that some professions continue to bulwark this theory, which consequently 'retains a firm hold on the concepts of moral responsibility held by our society' (Goode 1985, p. 218), it is clear that professional allegiance to this social/professional theory is misguided and detrimental to the general community interest. In the next section we will examine how professionals might be involved in developing a social/professional theory which actually prevails against the social acceptance of sexual violence.

A Macro Analysis of Sexual Violence

The notions of figure and ground become helpful organising principles when trying to understand such a complex issue as sexual violence. Scutt (1981) has long argued that the pathologising focus on the offending 'figure' is misplaced and unhelpful if we are to do more than punish the individual. She urges us to address the wider 'ground' which is much more significant in influencing the continuing problem. In fact, it might be argued that the identification and prosecution of 'micro' offenders is the very process which diverts public awareness from the broader issues and subverts the proper analysis of determination of responsibility for sexual violence.

There can be little doubt that we live in a society which revolves around the distribution and exercise of aggressive power. For those who reject the notion that war is *the* organising principle for human society, one only has to look at past presidential election campaigns in the USA. On one hand the incumbent, fresh from an unambiguous and heady military victory in defence of asset-rich country which disenfranchise its women, assailed his opponent about his alleged unwillingness to kill or die for his country. It should come as no surprise that significant achievements in reducing infant mortality by government action in his home state represent meagre political capital for the aspiring candidate and, as such, failed to make any front stage presence on the political platform.

It might even be argued that sexual violence is just the modern theatre for the on-going war against women (French 1992). Remember that society used to burn 'mad' witches before the invention of insanity. Our modern strategy is to enrol and protect, under the rubric of the secular priests, those 'insane' gender-guerrillas who actually manage to contribute to the body count. Those unwilling to recognise a generalised misogyny might find it difficult to explain the sustained campaigns currently raging against Madonna and Sinead O'Connor, especially when viewed in a global context of major famines and civil wars which are being positively facilitated by a range of identifiable males.

The traditional sex-typing for our young of both genders reiterates the message that aggression is, not only a pervasive part of our life, but also a socially sanctioned, institutional method of problem solution. This social mode simply and effectively perpetuates a masculine

mythology and modus vivendi. Any community which reinforces masculine imperatives is encoding into 'micro actors' an understanding that, although sexual violence is against the law, this behaviour is not fundamentally wrong; as otherwise it would not be socially sanctioned through the virtual symbolic equivalences which are the staple of our cultural heritage.

Remember that the average fourteen-year-old has witnessed almost 14,000 mediated acts of deliberate killing, yet has limited legal access to witness one act of procreation, no matter how tender or appropriate. One must question the psychological diet of a community which focuses on and portrays violence so relentlessly and uncritically. It is hardly surprising then that youth surveys reveal such permissiveness for male sexual aggression.

Scutt (1981) also argues that the 'alcoholic imperative' underpins the sexist rationalisation of rape and domestic violence. Whether it be a 'triggering factor'[1] for the perpetrator or a 'precipitating' explanation in the victims' behaviour, the involvement of alcohol ensured that the buck never stopped at the male offender. And this was despite the fact that a number of these offences occurred *without* recourse to the demon drink. The need to 'pathologise' the nature of sexual violence is recognised by Scutt as a displacement strategy to ensure that the social forces, roles and expectations which allow and perpetuate the commission of these crimes escape the scrutiny and modification which may be required to produce any change in the frequency and intensity of these crimes.

Examine the waves of terror, outrage and violent revenge which were orchestrated against sharks as a result of an 'attack' upon a surfer. The graphic and uncritical portrayal of the shark as a '*man*-eating killer' which must be eliminated for the public safety shows us the power of social displacement. If the shark's behaviour enjoyed the benefit of a quasi-legal analysis, one might immediately characterise its behaviour as natural, feeding behaviour conducted in its normal environment by its only methods. To term such behaviour as aggressive seems to miss the point.

We live in an age of secular power when the power of science is dominant and the corresponding power of professionals who command this science is unquestioned. Indeed, it has been argued that science itself has become just another instrument of male oppression (Harding 1986). One problem is that sexual violence essentially entails *moral* arguments, as no scientific evidence can demonstrate that pain and suffering is bad, or that it is inappropriate to rape young women or execute their attackers. These are essentially moral questions which professionals have attempted to evade for at least the last century.

Professionals have a duty of care to reveal their political/moral stances which disclose their interests and values. This might even include examining the kinds of interventions which might serve as behavioural constrainers or punishments which have not traditionally been considered by these professions as appropriate applications of scientific knowledge; for example, mandated chemical administration, or surgical intervention). And the most strategic manoeuvre for this evasion, as Scutt points out, has been the scientific ambit of disease and pathology.

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1 When considering only the 'triggering' factor, it is evident that this concept is just a specific example of the 'loss of control' thesis which has gained such uncritical acceptance, in the absence of empirical 'objective' evidence. This particular species of masculist mythology has served mankind well as it has simultaneously allowed the perpetuation of unilaterally determined sexual behaviour upon the non-consenting females, while implicitly dismissing female sexuality as lacking in the drive and energy required to sustain such animal behaviour.

It is not unreasonable to describe the science of psychopathology as essentially underdeveloped, uncertain and riddled with equivocation, ambiguity and paradox. Those most familiar with its findings are struck more by its incompleteness and inconsistency than its essential clarity and coherence. Any practitioners pretending otherwise are either running a self-interested rhetorical line or are simply naive to the import of the scientific foundations.

Sexual violence is an issue which is primarily instigated by males, yet it is the whole community, male and female, which provides the social permission which maintains and reinforces this toxic behaviour. Consequently, all those appalled by sexual violence ought be involved in its elimination. But it is also an issue which predominantly affects women who are under-represented in the socially powerful professions (Victoria. Department of Labour, Women's Employment Branch 1992). Responsible members of all professions cannot escape the reality that we live in a gender specific world where females have historically been, and continue to be, disenfranchised by their male co-citizens (Smith-Rosenberg & Rosenberg 1973). Hence, concerned professionals (of either gender) are uniquely placed to ensure that feminist perspectives are given voice by those in position to do so. This, of course, implies substantial social change, especially in the professions involved in the knowledge-production.

As has already been suggested (Victorian Women's Health Policy Working Party 1987, p. 120), one of the key issues which finds little explicit expression in training programs for professionals is the issue of gender differences. Alternatively, professionals can allow themselves to be silenced and marginalised by those biological determinists who wish to disenfranchise any gender-inappropriate voice. They can lose patience with those who do not share professional discourse or assumptions and retreat to a secure distance, unencumbered by the bother of negotiation and the humbling process of sharing responsibility with the disparate and competing stakeholders in the issue of sexual violence.

Professionals may argue that they are addressing the problem of sexual violence satisfactorily. But, the issue of under-reporting should be addressed as a matter of urgency, and new and appropriate methodologies need to be developed, with less emphasis on 'reliability' and more emphasis on 'sensitivity'—in both their technical and common meanings. There exists precious little research knowledge of victims, little in the area of specific interventions designed to ameliorate their distress, and an absolute poverty of training programs for those charged with their care.

Unfortunately, the very definition of 'professional' work disqualifies many professionals from the kind of 'macro' social action required. Yet Milgram (1965), if not Darley & Latane (1968), have documented the problems of well-intentioned people failing to act responsibly. Little attention has been given to the role of professionals in social action, and even less to their ethical responsibility to do so.

Although many professionals are galled and appalled by all kinds of sexual violence crimes, they rarely take public stands on these issues for a number of reasons. Some fear that such stands may weaken their status as objective, impartial scientists. Some fear recriminations from their peers as it is simply 'bad form' to go public and show one's hand on such tawdry matters. Others may simply fear the loss of income if they are to take moral

positions against those who may well become their primary clients. Whatever the reason, it is quite obvious that few professionals, especially from the helping field, take such stands[2].

As professionals we can exercise our responsibility to community in a number of ways. We can choose to be narrowly focussed on our specific ambit of professional responsibility under the specious assumption that our work continues in isolation form the rest of the community (Zola 1972). The notion that clinical and scientific disciplines are in some sense immune from social interest must be challenged at all levels and explicitly in training courses. The isolationist stance of some sciences must be tested and breached so that discussions of social interest and construction are recognised even in the most objective and rigorous disciplines (Harding 1986). But more importantly, the nature of most social problems is beyond the realm of any discipline and the constitution of society must be examined and changed if we are to change the prevalence of sexual violence. Consequently, it is incumbent upon all professionals to influence key policy makers in the law, judges, law reformers and government lawyers to determine the adequacy of existing legislation especially as it relies upon and is relates to other (especially psychotherapeutic) disciplines. Implications for training, rules for evidence and other matters may need to be reconsidered in the light of this discussion.

Standards and burden of proof should be reconsidered as must the whole legal process. In the *Drugs and Controlled Substances Act 1981* (Vic.) (as amended) it is deemed appropriate that the onus of proof is *reversed* and a *balance of probabilities* is sufficient to obtain a conviction. On what do we base our reluctance to provide the highest standards of legal *protection* for women?

And so the broadest challenge for professionals in stepping outside their traditionally self-imposed boundaries is to develop a critical climate both internal and external to each profession. Despite a rich heritage of 'internalist' (content) controversy in many disciplines, professionals are generally unwilling to criticise their own professions more globally, perhaps for fear of alienating their professional colleagues. This has meant that the professional critique remains 'internal' to the discipline and little substantive 'meta' critique is available, especially from an expert perspective. Given that most professionals feel just as uncomfortable, (without the usual intramural sanctions) in critiquing the activity of other professions, we can at least explain the poverty of 'external' critique. Despite the threatened loss of influence and power, professionals must break the 'brotherhood' code by facilitating community critique of all professional activity. This disciplinary abdication may be costly in placebo, status and financial terms, but it represents a new and substantial challenge for the emerging professional who seeks a more developed duty of care in the *noblesse oblige* tradition, which itself represents a most significant challenge to professional self-interest.

Conclusion

In summary, self-interest has influenced the augmentation of professional jurisdictions into the area of sexual violence and the absence of empirical warrant required for such involvement necessitated the development of a scientific mythology. This pathologising

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2 This paper has concentrated on a particular professional mythology which exculpates sexual offenders. It may be fruitful in future to initiate some discussion about manoeuvres which professions may invoke to exculpate themselves from taking such social action.

mythology has been an abject failure: having neither been successful at curing the pathology of alleged sufferers, nor in managing/controlling the behaviour of these people. Rather than diminishing the prevalence of sexual violence (despite any contributions to ameliorating the sequelae of sexual violence), this mythology significantly contributes to the social permission for such crimes to occur, leading to an unacceptable standard of community protection from sexual violence.

Perhaps the greatest advancement that professions have made in the area of sexual violence is rhetorical: they have managed, so far, to convince the community they are an essential part of the solution. In the light of the above they could possibly more properly be described as a critical and unrecognised part of the problem.

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INTRODUCTION TO PART 4: PREVENTION AND CHANGE

THE PREVIOUS SELECTIONS HAVE EACH CONTAINED SOME PORTION OR information relevant to the prevention of sexual assault. However, the following papers were constructed by the authors around the theme of preventing rape or of change—either needed or already taken place.

Easteal's thesis is that, in order to reduce rape, Australian culture needs to be changed dramatically. These changes include confronting the false myths concerning rape, further modification of the criminal justice response, and fundamental shifts in attitudes about gender, power and misogyny. The bulk of the paper provides a review of the literature in the presentation of empirical evidence concerning who rapes, why they rape, and the impact upon its victims. The erroneous beliefs are shown to be just that by the research which has been conducted in this field.

Tomaszewski builds upon one component of Easteal's thesis and addresses how schools need to develop programs and materials to reduce and prevent violence against females. She discusses other studies which have revealed that a portion of the community believe that physical force against a wife is at least sometimes justified and that a substantial segment of Queensland fourteen-year-old boys believe that rape is acceptable under certain conditions. Further, girls' experiences of sexual harassment in Australian schools is described. She concludes that these attitudes must be addressed in the schools through the development of policies and protocols, professional development, and curriculum that promotes equity.

Talking to people to educate and change their attitudes is also the subject of a paper by Pease and Velazquez who address the need for men in the workplace to learn about sexual harassment and discrimination. They begin by explaining how hegemonic masculinity operates as a concept within organisations and either keeps women out or in 'their place'. Strategies for implementing change in men's attitudes and behaviours are then discussed with an overview of the Men Against Sexual Assault anti-sexist educational programs. The basis of thought underlying education about myths and other relevant matters is that men are more apt to change if they are encouraged to do so by their male peers.

Reekie and Wilson look at the new understanding of consent, resistance and self-defence and how these affect the need for more law reform and prevention. The evidence is conflicting and the orientation of women's safety programs is to advise women that there is no one uniform response to rape. If a woman does choose the path of resistance, the authors point out that the existing laws do not adequately protect her since they are defined

in white male middle-class terms of reason which do not recognise the extent to which rape inflicts bodily harm. They also advocate that more than law reform is needed in the Aboriginal community and present several models for enhancing women's justice.

The next two papers point to changes that are needed in legal procedure. Heenan and McKelvie review the work of the Victorian Law Reform Commission focusing upon three significant changes that arose from its labours: the Police Code of Practice for Sexual Assault Cases; jury directions; and alternative arrangements for giving evidence by adult victims. For each area, the authors summarise what they see as the major stumbling blocks to implementation and point to the need for monitoring programs which can be problematic in either the police or the courts' domain.

McSherry also looks at the significance of changes to the *Victorian Crimes Act 1958* in Section 37(a). She focuses upon how the change has altered the concept of consent and has initiated what she hopes is the beginning of seeing sexuality on a communicative rather than a penetrative model. Aside from shifting to a negative definition of consent, that is, 'without consent' means that she did not freely agree to it, the section also mandates certain changes in judges' directions which include the lack of free agreement, and the awareness that rape does not require physical injury, lack of prior sexual contact with that person or another. Consent must now be clearly communicated which lends support to a communicative model of sexuality.

Turning from the courts, the last two papers in this section look at policing rape and changes that could or currently are being implemented. Scheffer reviews some of the recent developments in forensics and the Victorian Sexual Offences Intelligence (SOI) System with its component parts. He provides details concerning the current scientific testing employed by the Victorian Forensic Science Laboratory. The article concludes with a discussion of how the SOI can be used to assist the police particularly in identifying serial rapists and recommends that a national standardised DNA profiling system must be implemented in order to generate an Australia-wide database.

Moloney, a Victorian Police detective Inspector, looks at what the police objectives are in criminal investigation and in sexual assault specifically. Following an evaluation of police procedures with the latter in 1988, a specialised rape squad was formed, a Child Exploitation Unit was transferred to the Crime Department, and all detectives were trained in victim sensitivity. In March 1992 the Code of Practice for Sexual Assault (mentioned above) was adopted; this Code outlines procedures from the start to completion of a sexual assault case. Moloney also discusses the United Nations Declaration relating to victim's rights—Victim Impact Statements. In addition, he points to the need for increased police powers for obtaining samples or physical examination in order to best connect offenders to crimes.

RAPE PREVENTION: COMBATTING THE MYTHS[1]

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THE FEAR OF SEXUAL ASSAULT OR RAPE IS A PART OF EVERY WOMAN'S LIFE. In a plethora of ways this constricts and restricts females' mobility and manner of living. 'Do not walk alone at night', 'Do not talk to strangers', 'Do not hitchhike', 'Do not dress in a provocative way' are just a few of the rules that females are socialised with. Indeed, the reality is that rape is indeed a threat for every female in Australia and the advice above is solid and well-meaning, although in many ways it is based upon stereotypes about sexual assault which are not true and which act insidiously to impute blame on the victim.

The purpose of the following paper is to tear down the myths about rape by confronting the erroneous view of what rape is, who rapes, why men rape, and the impact of rape on the victim or survivor. 'Wait', you may be saying. 'The title of this paper includes the word *prevention* and you are proposing to dispel myths. How is that prevention?'

Answer: One of the only means available to reduce sexual assault and to enhance the probability that its victims will report it to authorities is through knocking down the false images of rape that act to perpetuate it in society. Therefore, although there will be little space given to specific preventative measures against 'stranger danger' and acquaintance/marital rape in the following article, both the overt and underlying message of the paper is that rape prevention lies in changing societal attitudes about rape and about men

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1 A substantially similar version of this paper was published as: Easteal, P.W. 1992, *Rape*, Violence Prevention Today, No. 1, October.

2 In preparation of this paper grateful acknowledgement is due to Diana Nelson for research assistance and word processing.

and women. Rape is not limited to male perpetrators and female victims; however, it is overwhelmingly a crime against women. This article will, therefore, only focus upon adult female survivors and male offenders. In addition, issues such as the role of pornography and treatment programs for offenders are not discussed but undoubtedly merit research in the context of rape prevention.

What is Rape?

There are a multitude of definitions of rape both legally and within the folk mores of a culture. In this article, rape is defined as:

> the penetration of the mouth, vagina or anus by any part of the attacker's body or by an object used by the attacker, without the consent of the victim.

What does 'without consent' involve and/or what does it not require?

Myth: Rape requires physical force

Studies have shown that in the majority of rapes, the perpetrator does not use force which results in physical injuries (Green 1987; Weekley 1986). The threat of force and death and the intimidation inherent in gender stratification are sufficient. In reality, many forms of covert coercion and force may be used in rape. It is the victim's fear of the assault and its outcome that render her passive, not compliant, and without consent. Since many victims of rape are also survivors of incest and other sexual abuse they may 'shut down' their emotions and bodies at the onset of a rape; they learned this 'survival' behaviour as children (Lundberg-Love & Geffner 1989). Other women have been socialised not to be aggressive or assertive, and their comparative lack of physical strength may contribute to less of a willingness to fight back. Thus, female passivity is a quite common response to male violence.

Myth: Rape requires physical resistance by the victim

Unfortunately, this myth is still accepted by segments of the criminal justice system. The survivor who does not evidence injuries which she acquired through resistance becomes the incredible victim. This image is a by-product of the previous myth which mandates physical force as an element of sexual assault. The reality is far different. Almost three-quarters of the victims in a Victorian sexual assault phone-in reported that 'they felt an overwhelming sense of powerlessness' (Corbett 1993, p. 136). In addition, women have often been advised not to resist in order to minimise the likelihood of severe injury or death. Rape is the only criminal act which has required resistance to substantiate that a crime occurred.

Myth: Rape requires a weapon

Various surveys of victims and other studies have shown that the vast majority of sexual assaults do not involve the use of a weapon (Bonney 1985; Bownes, O'Gorman & Sayers 1991; Weekley 1986).

Other pervasive myths concern the nature of the act of rape itself:

Myth: Rape is a sexual act

This myth is reinforced by certain stereotypes about male sexuality such as men's alleged inability to control themselves if they are aroused. These are false images. *Rape is not a sexual act. Rape is an act of violence which uses sex as a weapon*. Rape is motivated by aggression and by the desire to exert power and humiliate. Just as wife-battering had to be taken out of the privacy of the home and criminalised in order to effectuate any change, *rape must be taken out of the sexual realm and placed where it rightfully belongs in the domain of violence against women*.

The latter view of rape as a sexual act is perhaps one of the most pervasive, enduring, and damaging myths; damaging since it contributes directly to another misunderstanding about the crime:

Myth: Since rape is primarily a sexual act, the victim in some way may precipitate the offence through arousing the male in some provocative manner

This erroneous belief has a serious impact on how people view the crime, the rapist and the victim. It also affects the survivor's view of herself. She often accepts self-blame since she has not succeeded in controlling the male's behaviour and has somehow provoked it (Carmody 1984). It is crucially important that this myth is dispelled since it also influences the response of the criminal justice system.

Myth: Since rape is provoked by a female, it is commonly a spontaneous act

This belief is obviously false since it is dependent in large part on the preceding premise concerning victim precipitation. Sexual assaults are not usually done spontaneously or impulsively; studies have shown that in most instances, rape is premeditated and often involves a pre-rape time period of interaction with the victim (Cobb & Schauer 1974; Flowers 1987).

Myth: Aboriginal women (or Afro-American women in the USA) are more highly sexed than 'white' women and, therefore, are always willing to have sex; thus they precipitate rape by their sexual behaviour

This myth is compatible with the theory that victims of sexual assault tend to be those with less power in the society. Myths about Aboriginal sexuality and Black African sexuality in the USA justified the colonial males' oppression, subjugation, and on-going rape.

To reiterate, rape is an act of violence which is most commonly directed by males toward women. *The woman is not responsible for her victimisation in any way*.

The Outcome of the Myths: Incidence and Under-Reporting

The nature of rape makes it an extremely problematic crime to measure. Due both to the ambiguity about what it is and to the societal and criminal justice response, which at best could be labelled ambivalent, sexual assault is grossly under-reported by its victims. There is reason to suspect, from international crime surveys, that Australia has a particularly high incidence of sexual assault, certainly higher than the United Kingdom although probably second to the USA (Main 1991) and according to Weatherburn and Devery (1991, p. 26) third to the USA and New Zealand. Walker (1993) reports that the combined sample of the 1989 and 1992 Australian national crime victim survey showed that about one out of every 200 women had experienced a rape or attempted rape during the twelve months preceding the survey. Goldsmith (unpub.) estimates that, based on 1991 Bureau of Crime Statistics figures and a 1:3 reporting rate, a woman in New South Wales has a one in eight chance of being raped.

The proportion of rapes that are reported are estimated by different sources to be any where from one in ten to four in ten (Belknap 1989; Carter 1991; Koss 1989). The National Crime Victim survey found that 32 per cent of the victims of rape or attempted rape had reported the assault (Walker 1993). This figure is similar to that found by the Victorian sexual assault phone-in described by Corbett (1993): two-thirds of those victims who called in had never reported the assault.

There would appear to have been either an upsurge of rape in this country or an increase in its reporting to authorities. For example, in Queensland, the sexual assaults reported to the police increased 160 per cent from 1980 to 1990 (Westbury 1991, p. 82). Wilson (1989) found that reported rape had steadily climbed in Australia from 1973 to 1987. However, he notes that the increase may be attributable to legislative changes or police behaviour rather than actual incidence. In New South Wales, reported rapes increased from 27.5 per 100,000 in 1981 to 70.3 per 100,000 in 1987–88. It is speculated that this increase was a by-product of the legal changes in that state and education of police which has resulted in their increased sensitivity (Weatherburn & Devery 1991, p. 26). Victorian reported rapes rose 23.4 per cent in 1991–92 from the previous year (Victorian Community Council Against Violence 1992). This has been attributed to legal reform and increased reporting by victims.

Reasons for non-reporting

There are a variety of reasons why survivors do not report the assault. It is abundantly clear from numerous reports that rape by a stranger is more likely to be reported than assault by a partner, date or acquaintance (Belknap 1989). In Walker's sample (1993), 'fear, dislike of going to the police' or a belief that 'it was not serious enough for the police' were the two main reasons cited. Two-thirds of the Victorian callers believed that the police would not believe them, while half thought that it would do no good (Corbett 1993, p. 139). Fear of being blamed and having their families find out have also been found to stop victims from going to authorities (Criminal Justice Newsletter 1992).

If a victim believes that the police will treat her supportively she is more apt to report (Feldman-Summers & Norris 1984). Those survivors who have suffered injuries that required medical attention and have family or friends with strong values about reporting are

most likely to go to the police (Feldman-Summers & Norris 1984). *Community education programs need to actively encourage all rape victims to report the crime.*

A final point on under-reporting: women within Aboriginal communities, rural areas, and migrant women may be particularly reluctant to report the attack. This reluctance stems from a perceived lack of confidentiality, cultural norms and, in the latter case, lack of English. Further, the intellectually disabled may be at particularly high risk for victimisation. *Prevention programs should be constructed that are specifically geared to each of these groups.*

Who is the Rapist?

A number of authors have created typologies of rapists. The variety is clearly indicative of a lack of consensus by specialists in this field. That is one reason why these will not be presented here. The other reason lies in the biased data source in these studies: imprisoned rapists. Since it is now clear that the arrested population is not necessarily representative of the entire class of rapists because of under-reporting of acquaintance and marital rape, the reliability of such typologies must be questioned.

Myth: The rapist is usually a stranger

An abundance of research both overseas and in Australia has established that the majority of sexual assaults are perpetrated by acquaintances, dates or marital partners. The erroneous image of the rapist as a stranger stems in part from the fact that such rapes are more likely to be reported to the police (Bownes et al. 1991). However, various victim surveys show a different picture: in Matchett (1988), 29 per cent of callers had been sexually abused by their husbands; in a nation-wide victims survey in the USA only 22 per cent had been raped by strangers (Crime Victims Research and Treatment Center 1992, p. 4); Green (1987) reports that, in Australia, more than half of the victims knew or were related to the attacker; Bonney (1985 p. 30) looked at reported rapes in New South Wales and ascertained that only one-quarter involved strangers. This may be a fairly accurate figure since the national crime victim survey also shows that only 24 per cent of the crimes of rape or attempted rape were perpetrated by strangers (Walker 1993).

Differences have been found in elements of the sexual assault and in its impact on the victim based upon her relationship to the perpetrator. Some of these contrasts are in part responsible for the relatively low reporting of 'date' rape. 'Date' or acquaintance rapes are more likely to involve verbal threats than either a weapon or physical injuries. The attackers are also more likely to threaten the victim about disclosing (Bownes et al. 1991). Low levels of reporting in 'date' rape are also a consequence of the victim's inability to perceive herself as a rape victim. Several studies have shown that people are more likely to label an act as rape if the survivor protested both verbally and physically early in the scenario, and if the male arranged the date but the female paid her own way (Shotland & Goodstein 1983; Muehlenhard 1989). The victim has been socialised with these fallacious concepts; even if she does label the act as a rape, she may be reluctant to go to the police since she might either believe in her own partial responsibility or believe that the police would blame her.

Marital rape has been found to be a component in a high number of marriages that involve physical battering (Bowker 1983). Finkelhor (1985, p. 204) estimates that 10 to 14 per cent of all married women have been or will be raped by their spouse. Although

marital rape involves more violence and physical injuries than acquaintance rape, the lower rate of reporting can be attributed to both the isolation of the battered woman and to the on-going societal assumption that husbands are immune from sexual assault charges.

Myth: Rapist have pathological personalities and tend to come from the lower class

The myth that men who rape are mentally ill is not substantiated by the data: only a small minority of perpetrators are psychopathic (Stewart 1990). Empirical research has not found any consistent type of person that distinguishes rapists from other males. Alder (1985) looked at self-reported sexual aggression in men and found that class, education, and occupation were not significant variables. Aggression was most strongly correlated with having sexually aggressive friends. Chappell (1989) notes that rapists are more likely to adhere to the myths about sexual assault and to hold callous beliefs about rape. *Thus one can see that an important element of prevention should indeed be the eradication of these myths.*

Impact on the Victim

Myth: All women really want to be raped

Myth: Women ask to be raped

Rape is a crime which has devastating effects upon the survivor. It has been described as 'the beginning of a nightmare' (Main 1991). Table 1 outlines the possible consequences of rape.

The effects may vary depending upon a few variables: the relationship of the rapist to the survivor ; the brutality of the crime; ego strength and the support or lack of support that the victim receives from those to whom she discloses (Girelli et al. 1986; Schwartz, Williams & Pepitone-Rockwell 1981; Scott & Hewitt 1983; Stewart 1990). Some of these symptoms are short-term; others have been documented as lasting for years—possibly for the survivor's entire life.

Victims who do not report the crime experience more personality disorder, isolation and self-blame (Peretti & Cozzens 1983). It must also be noted that being raped by one's spouse does not ameliorate the trauma for the victim. Studies have shown that the long-term effects are in fact more severe and longer-term since such assault involves betrayal, isolation and living with the rapist (Finkelhor 1985).

Survivors of rape must not be compelled by the myths into self-blame. Passivity, marriage, victim's appearance or behaviour should not be interpreted as consent.

Table 1

The Potential Impact of Rape on the Victim

Emotional	Depression, fear, anxiety, lack of trust, withdrawn, shame, self-blame (greater for acquaintance rape victims), guilt, humiliation, anger, rage, betrayal (for marital rape), perception of the world as malevolent, low self-worth, phobias.
Physical	Headaches, muscle tension, gastro-intestinal upset, genito-urinary complaints, pregnancy, disease, injuries.
Behavioural	Suicidal actions, anorexia, alcohol and drug addiction, isolation (for marital rape), eating disorders, sleeping disorders, effects of phobias, nightmares.

Note: This table was derived from the following: Burgess & Holstrom 1974; Criminal Justice Newsletter 1992; Finkelhor 1985; Girelli, Resick, Marhoefer-Dvorak & Hutter 1986; Koss, Dinero, Seibel & Cox 1988; Mishkin 1988; Report on Sexual Assault Phone-In 1984; Young 1991.

Prevention: Changing Attitudes and Behaviour

Changing societal norms

Societal beliefs about rape are in large part a by-product of the large amount of misinformation and mythology about sexual assault. They are also the result of other values and behaviours in the culture. Chappell (1989) reports that cross-cultural studies have found that rape is most prevalent in cultures with low female power and authority and where masculinity is expressed with violence. Some authors have described Australia as one of the most misogynist countries in the world (*see* Westbury 1991). Historically, female convicts were released to fulfil the needs of the male immigrants with 'an official endorsement of rape' (Gilmour 1990, p. 28). Thus, Australia's history and the persistence of certain values and gender roles in the culture would conform to the high risk environment for rape.

Misogyny is also derived from the emphasis upon aggression in the enculturation of males which is manifested in the type of sports which are popular. Males are more comfortable with males, they tend to socialise and communicate at a non-intimate level with other men, and they are apt to have a low regard for females. The latter is evidenced by both the type of verbal comments directed at women and the high frequency of physical violence toward female partners that has been well-documented (Mugford 1989).

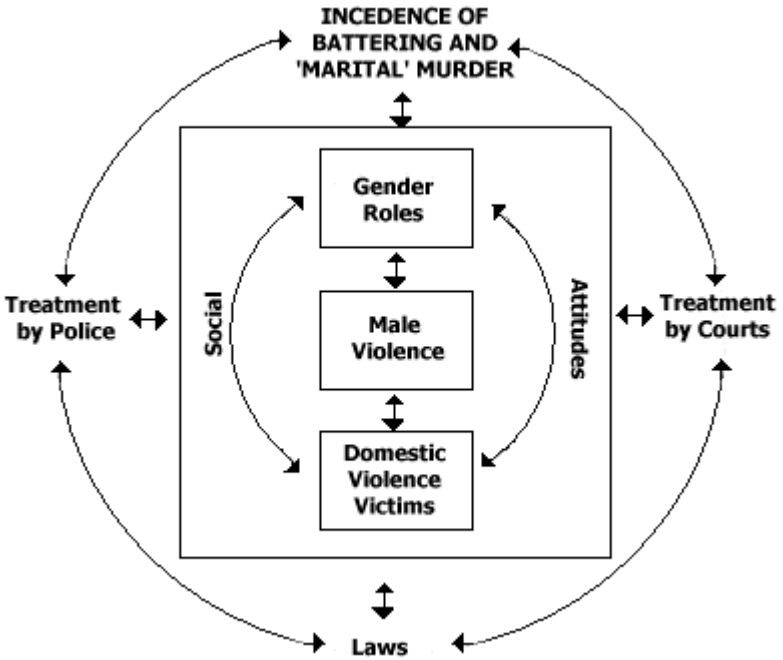
Australia is a patriarchal society with an ethos which includes machismo and male domination. In other cultures, this gender stratification is coupled with a code of gallantry and respect toward females that is often lacking in this country. The cultural norm is for women to submissively receive sex and their unwillingness to be disregarded: 'A real man will not take no for an answer'. Combine all of this with a cultural endorsement of violence as a means of solving interpersonal conflict and rape rates are undoubtedly high (Broadhurst & Maller 1992).

Therefore, rape is an act of domination which cannot be seen as isolated from the patriarchal fabric of the society in which it takes place. *Prevention and reporting require attitudes about the nature of rape and the nature of male/female relations to change. The beliefs that promulgate male violence need to be eradicated and women's relatively powerless position within Australian society should be radically modified.*

As Figure 1 illustrates, there is a complex dynamic interaction between the various ideational and structural components of a culture which produces both the high incidence and under-reporting of rape and the less than adequate response of the criminal justice system which will be discussed next.

Figure 1

Societal Variables that Contribute to Rape Incidence and Treatment of Survivors



Changing the criminal justice response

The criminal justice system can play a major role in changing attitudes and preventing both rape and the revictimisation of the victim. However, as illustrated in Figure 1, laws, the courts and the police are influenced by the prevailing beliefs of the culture. Just as norms about rape cannot be understood without perceiving how they fit within an existing cultural framework, the workers in the criminal justice system cannot be seen in isolation from societal attitudes. *It is, therefore, not sufficient to change legislation; new laws are hollow promises of what could be if they are not accompanied by shifts in the attitudes and behaviour of the police and the judiciary.*

Laws[3]

There has been significant law reform in reference to sexual assault in every state and territory of Australia. Rape legislation has always been set apart from other criminal laws with implicit or tacit rules such as a mandated prompt reporting to validate that a crime had taken place. In the past (and in some cases to the present) rape laws centred around the protection of the defendant's rights. Thus historically, the victim's dress/appearance at the time of the assault, her previous sex life, her physical resistance, and quick reporting were significant components of the trial. In a variety of ways, the survivor became the prosecuted. This has changed to an unknown, but probably limited, degree.

One reform model (for example, New South Wales) has been to create several graded offences of sexual assault to replace the old charge of rape. By offering different levels of seriousness, it was hoped that convictions and reporting would increase; this would appear to have taken place in New South Wales (Carter 1991), although Polk (1985) did not find similar increases in California following a similar innovation. Naffin (1984) believes that reporting does increase with graded-type offences which confront the stereotype of rape as only a brutal act between strangers.

The legal definition of rape or sexual assault has also been broadened to include penetration of the mouth or anus by any body part or object. This is substantial progress from old laws which narrowly defined rape as vaginal penetration by the penis. Additionally, in at least some jurisdictions such as the Australian Capital Territory the victim's evidence can be given in camera with a support person present and a survivor's name cannot be published without her consent (Follett 1986).

The requirement for the judge to warn the jury against convicting on the word of the victim alone (corroboration) has been removed; however, the judge still has the discretion to deliver such a warning. Further, in many jurisdictions at the statutory level, the assumption that a woman has to physically resist to constitute a bona fide rape has been removed. Again, the gap between laws and their application has been apparent.

A woman is no longer supposed to abdicate her sexual rights in marriage; a wife's consent is no longer to be implied. However, the reality is that few rapes by cohabiting spouse/rapists are either reported or tried. Even estrangement has proven problematic. In practice, extreme violence appears to be a necessary component in the marital rape for it to be deemed as a criminal act. Certainly the change in legislation has not resulted in a flow of marital rape cases through the courts. Browne (1991) reports that in September 1991, a man in Tasmania was sentenced for the rape of his wife. This was the first marital rape trial in that state, although immunity was abolished in 1987. The couple were estranged. Similar paucity of such cases was found in South Australia six years after that state's reform (Sallman & Chappell 1982). *More legal reform and implementation of the law are needed in this area.*

Other problems which require legislative change include the continuation of judges' discretion in allowing evidence about the victim's sexual history, the admissibility of unsworn testimony by the defendant while the victim is cross-examined, and the issue of consent. The last is perhaps the most problematic. Consent needs to be defined clearly, such as in the

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3 The literature on law reform in the area of sexual assault is voluminous. Material presented on this subject was integrated from numerous of these sources. For further reading, *see* Carter 1991; Franzway, Court & Connell 1989; L'Orange & Egger 1987; Scutt 1990.

Western Australian legislation which states that consent must be freely given without force, threat or intimidation (Rape Reform 1986). Smart (1990) states that the consent/non-consent dichotomy is too narrow to allow for women's experience since the laws are made and interpreted by males. Thus, it needs to be spelled out or it ends up with a definition used in practice that is based upon sexist attitudes.

Courts

The laws may change but, unless the attitudes of the judges, lawyers, and juries change, the impact of new legislation is limited. *Prevention requires increased education of the judiciary and lawyers*. They must be taught about what rape is and its impact on the victim. As indicated above, many of the new laws still retain old elements which are to be used at the discretion of the judges; for example, allowing testimony about the victim's past or the corroboration rule. Further, although the new legislation may remove a concept, it does not stop judges from raising it in their remarks to the jury or in their sentencing. For instance, although Victorian law now says that force is not an issue, judges' remarks have implied their persistent view that a struggle is necessary (Scutt 1993).

Traditionally and to 1993, the survivor is frequently revictimised in the courtroom. In no other violent crime is the victim subjected to the type of scrutiny and interrogation that befalls the rape victim in the court. She has traditionally been shown as either pure and chaste—hence a bona fide victim—or impure and a 'bad' woman. Thus, a judge in Victoria recently gave a rapist a less severe sentence since the victim was a prostitute whom, the judge felt, would not be as psychologically affected by rape. *This type of attitude and trial experience have to change in order to both encourage more survivors to report and prosecute and to increase the negative sanctioning of rapists.*

In addition, many researchers have expressed dismay at the light sentences in general which are dispensed to rapists by the judges (Carter & Wilson 1992, Le Grand 1977). Do the current sentences reflect the horrific nature of this violent crime? *Heavier penalties and a more offender-oriented trial should contribute to improved deterrence.*

Police

Prevention of rape requires increased training and education for police about both sexual assault and its impact on the victim. A high proportion of callers in several sexual assault phone-ins have reported negative experiences with law enforcement officers. These include not being believed, feeling judged, blamed or ridiculed, treated in an insensitive manner, and talked out of proceeding with charges (Report on Sexual Assault Phone-In 1984; Corbett 1993). Cabassi (1990) found that in Victoria, police held a more stereotypical view of rape victims than other occupations and that their response to the survivors is still orientated around what they consider to be indicators of a valid rape: prompt reporting, resistance, and emotional distress. Interviews with police confirm their adherence to the myths that women contribute to their own victimisation and that violence is a natural part of masculinity (Carter 1991).

There have been some changes in police practices in charging offenders: the number of police-designated 'unfounded reports' has apparently dropped during the past decade (Broadhurst 1990). However, this must be placed in the context of what had been traditionally an extremely high level of 'unfounded' designations (Scutt 1988). Thus, a recent

Victorian study found that only one out of three victim reports ended in police charges (Brereton 1993, p. 52).

Changing police attitudes must be a part of prevention. However, the sexist nature of the police sub-culture and its preponderance of males make this a highly problematic hope for the future. Police can, however, be retrained about the realities about rape and its effects upon survivors. Supportive and sympathetic interviewing techniques could be taught. There is indication that increased use of female officers and specially trained 'sex crimes' units have had some positive impact.

Precautions

Although it is the thesis of this article that the principal means of rape prevention lie in changing social attitudes about sexual assault, drafting law reform and implementing it in practice, significantly modifying gender roles and gender stratification, and changing the cultural emphases upon violence, it must be acknowledged that we do not live in a utopian world nor in a society that is amenable to radical change. Therefore, it is important that precautionary measures are adopted by women. Until women can indeed 'take back the night (and all hours of the day)' and be safe from violence on the streets, in their homes and within their relationships, there are ways to minimise the potential danger. The steps listed below are an aggregation of some suggestions outlined by the Sydney Rape Crisis Centre (1990) and other readings. *The list in no way is intended to put, or even imply that, the responsibility for rape rests with the victims.*

Acquaintance and spousal rape

- Learn assertiveness;
- learn self defence;
- know your sexual rights as a person and as a partner;
- be cautious about going to a date's home or having him to yours, particularly if alcohol has been consumed. Most rapes do not occur outside; they take place in the victim's home. Most rapes do not involve strangers; the offender is more likely to be a date or an acquaintance than someone you do not know; and
- understand that rape does not have to involve physical force. If an acquaintance, date, or spouse insists on having sex with you without your free and willing consent, he is committing a criminal act.

Stranger danger protection

- Learn self-defence, not only to fight back but to become more assertive and able to detect danger;
- use deadlocks; install a peep-hole; and be wary of strangers;

- leave your car in a well-lit area; have your key in your hand; shift parking places occasionally; and check seats before entering the vehicle;
- stand straight and walk with a firm step on the street; do not carry too many objects; and wear clothing which does not impede running;
- wait for trains in well lit areas; sit near the aisle; and let someone know how you are travelling and when you expect to arrive;
- book a taxi by phone; sit in the back seat; and be dropped a short distance from destination;
- if hitchhiking, ask the driver for his destination; sit close to the door; and carry something for self-protection.

Increased Resources for Crisis Services

Sexual assault crisis services arose in Australia during the late 1970s. They are critically important in providing crisis care, counselling and public advocacy that can assist in eradicating the false myths and in implementing legislation (Pittman 1990). A supportive and trained counsellor can greatly ameliorate the trauma for a survivor. Yet, these agencies are generally underfunded to the point that 24–hour service is not available for all potential victims in this country. Increased funding should be directed to such services to ensure that these critical life lines can operate to their full potential.

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PREVENTING ADULT SEXUAL ASSAULT: VIOLENCE, GENDER AND POWER, AND THE ROLE OF EDUCATION

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> While on yard duty I saw three boys (Year Two) taking the pants off a girl (Year Two) in the sand pit. I rushed to tell the principal and he said 'Now, now boys will be boys!' (First year out teacher, in Clark 1989, p.12).

THE AIM OF THIS PAPER IS TO PROVIDE A FRAMEWORK FOR THE UNDER-standing of violence against women, in order for schools to develop preventative approaches, including policies, strategies and materials, to reduce and prevent violence, in particular violence against women.

Violence, violence against women, violence against girls, and the construction of gender and its relationship to violence will be considered. The role that the education system plays in either challenging or accepting the status quo will then be addressed.

It is now well-established that gender is a factor when examining violence. Two significant issues have emerged from the research and data collection within the last decade —the majority of violent crime is committed by men, about 98 per cent; and the majority of violent crime against women is committed by men they know.

We know that women are more at risk from a man they know well than from a stranger. In a study of reported rapes in Victoria, it was found that 61 per cent of victims who reported the rape to police were known to their offender (Victorian Community Council Against Violence 1991). We must ask ourselves:

- why is it that men are more likely to commit violent crime than women? and
- why is it that women are more likely to be raped, injured or killed by a man they know?

To have a clearer understanding of this phenomenon we need to consider what status our society has given to violence, to women (and children), to men and importantly, what is the connection between these three?

Attitudes Towards Violence

To explore this further the construction of gender, in particular the construction of masculinity and its relationship to violence against women, needs to be examined.

Elliott & Shannahan (1988), in their research on family violence for the Office of the Status of Women, found that the prevailing attitude is that one in five people (20 per cent) believed that it is okay to hit your wife in *some circumstances*. Table 1 lists these circumstances; they are located in beliefs about appropriate behaviour for women, and the right of men to chastise their wives.

Table 1

Circumstances in which Physical Force Against Wife Considered Acceptable

Circumstances	% Who Agree
Argues with or refuses to obey him	2
Wastes money	2
Does not keep house clean	2
Does not have meals ready on time	1
Keeps nagging him	3
Admits to sleeping with another man	11
One or more of the above circumstances	14
At least one circumstance	19

Source: Elliott & Shannahan 1988.

What is obvious about these factors is that they all relate to what is considered to be gendered behaviours; that is, women keeping the house clean, cooking meals and so on. They all focus on her behaviour and his assessment as to whether she has behaved appropriately or completed a task to his level of satisfaction, and an approved use of violence.

Power and Violence

According to Dobash and Dobash, men learn the appropriate contexts in which to use violence 'through a male culture that condones and encourages violence'. In their research they found that:

> In the violent events experienced by women . . . violence was used by the men they lived with to silence them, to 'win' arguments, to express dissatisfaction, to deter future behaviour and to merely demonstrate dominance (Family Violence Professional Education Taskforce 1991, p. 116).

An aspect of this control is manifested in the traditional notion of women being the chattels of men which is still held by many, and this view directly impacts on the way women and girls are responded to by the legal system, the social system and economic and cultural systems. It accounts for society's resistance to acknowledge that violence against women is criminal behaviour. It should be remembered that it is only recently that we have had a significant change in the legal status of women: for example, in Victoria, it has only been since 1985 that marriage could not be used as a defence for a man who was accused of raping his wife.

The attitudes and values that underlie adult behaviour are not suddenly formed when a person turns twenty-one, but are shaped and informed from childhood. When we consider the beliefs that underlie violence against women and in particular sexual assault, they too have been shaped from the earliest of years. We see these attitudes being constructed in many ways, by the social, legal, cultural, political, economic and historical factors which influence our lives. They are reinforced daily, in our education system, in our many activities and interactions and in particular in the way we respond to boys and their behaviour, and in the way we respond to girls and their behaviour, and the gender roles we assign to them. Much of these attitudes are based on the constructions of masculinity and femininity and the gender roles which they prescribe. Their influence on our earliest experiences are so entrenched in our behaviour as to be unquestioned. According to Clark: 'the power relations between males and females, where men are in charge, where boys chase and girls run, appear as normal' (Clark 1989, p. 25).

The beliefs that underlie sexual assault and violence against women are the same attitudes that underlie sexual harassment and violence against girls. Just as there has been a resistance to recognise violence against women as criminal behaviour, there has also been resistance to describe many of the behaviours directed towards girls and young women as violence. Much of the violence that girls currently experience at the hands of boys is dismissed as boys being boys or, worse, as normal behaviour. This is evidenced in the way in which the legal system traditionally defines and responds to women who have experienced violence and is paralleled in the way in which the education system defines and responds to girls who experience violence at school. Both help to maintain and legitimise male violence.

Kelly (1987) introduces the concept of a continuum of sexual violence. This paradigm is intended to highlight the fact that sexual violence exists in most women's lives, while the form it takes, how women define the events and its impact on them at the time, and over time, varies. The continuum does not relate to a linear straight line.

It is useful to use the concept of a continuum to understand the relationship between violence against women, and violence against girls. The common elements consist of:

- male attitudes towards women and girls that is expressed not only in forms of violence but in many forms of coercion and control; and
- the experience of that violence and its impact for women and girls are similar.

Experiences of Girls in School

This paper will now draw on current research in primary schools and secondary schools to illustrate the commonalities. In *Listening to Girls* (Australian Education Council 1991) female students were interviewed on a range of their schooling experiences. First, at a primary school, ten Year Six students were discussing their relationship with boys:

> They call you slut and I don't like it.
>
> The teachers don't do nothing about the boys, and say don't worry, but its a bit hard.
>
> All the girls have nick names—Broccoli, Juice Bag, Ugly, Whorebag. They call us all Dog . . .
>
> Boys tease you about your period, breasts and what's going to happen to you. If they can they flick your bra strap. We tease back but they start it. They say look at her she's a dog. They pat their leg and say come here (Australian Education Council 1991, p. 6).

In this research, the authors note that the girls believed that boys do not like girls. In fact, they thought that boys despise girls. The feeling was not mutual, they said. They seemed puzzled as to why the boys were the way they were (Australian Education Council 1991, p. 7).

The second range of experiences are from girls in a country high school where there were only fourteen female students in Year seven and only eight in Year eight. The girls apparently felt strongly about the harassment they endured from day to day and they felt powerless to change things. Their comments included:

> They call you dog and make comments about your body like 'Gee you've got big ones'. You get sick of it.
>
> The boys 'dak' you (they pull your pants down). I think its disgusting. We stand against walls or sit down so they can't get you.

> Some say 'Will you come to bed with me?'. They come up close and grab you and they make crank calls. At the start of the year we had to give our phone numbers out loud and the boys wrote it down (Australian Education Council 1991, pp. 7–8).

As the researchers were leaving, one student turned back and said

> I know that you said this was confidential so we could tell you anything and that you wouldn't comment to staff on the things we said . . . But couldn't you just drop some hints about the dakking. It really is awful and we would like it to stop (Australian Education Council 1991, p. 8).

Many girls were identifying violence at the hands of boys, and in particular sexual violence. They described their experiences as humiliating, upsetting and degrading. The dominant school culture defined girls experiences and dismissed them with responses such as 'boys being boys' as if it was to be expected for boys to harass and intimidate girls.

Clark (1989, pp. 41–2) describes behaviour in primary schools where 'girls [are] being held down and kissed, dragged into the boys toilets, having their dresses flicked up, girls being chased etc'. She claims that, for boys, these sexual practices are connected with having power and dominance over girls, and the girls experience it as domination and sometimes violence. She also goes on to say that one of the problems is that this behaviour of boys is often not recognised as sexual harassment but as teasing.

A number of girls identified that a way to avoid male teasing and harassment was to have a boyfriend to protect them. In these experiences there were only two ways for boys to then relate to girls; either as perpetrators of violence or as protectors against (male) violence.

What Happens when the Protector Becomes the Perpetrator?

In Queensland, a survey amongst fourteen-year-old boys was undertaken (Domestic Violence Resource Centre (Qld) 1992). The survey asked about attitudes towards the use of male violence (sexual) against girls. A total of 187 boys were surveyed in a number of schools in the Brisbane metropolitan area. They were asked 'Is it OK for a boy to hold a girl down and force her to have sexual intercourse if . . .' and a number of circumstances were presented.

The boys were given a choice of three responses to each category: 'No', 'Yes', and 'Unsure'. The Brisbane Domestic Violence Resource Centre claimed that the results were *alarming*. One in three boys (32.6 per cent) believed it was okay for a boy to hold a girl down and force her to have sexual intercourse if she led him on. Less than half (49 per cent) believed that leading a boy on did not justify forced sexual intercourse. The next highest categories were:

- she gets him sexually excited (27.3 per cent);
- they have dated a long time (15 per cent); and
- she lets him touch her above the waist (11.8 per cent).

Significant numbers of boys were *unsure* as to whether these circumstances justified forced sexual intercourse. The following indicate the percentage who were unsure as to whether this was OK under the following circumstances:

- she has led him on (18.7 per cent);
- she gets him sexually excited (17.6 per cent); and
- she lets him touch her above the waist (12.8 per cent).

There was not one category in which there was a unanimous 'No; it is not okay'. The survey findings indicate that:

- a percentage of boys believe it is OK to use violence against girls (to hold her down and force her to have sexual intercourse); and
- they are prepared to blame the girl for their (the boy's) sexual violence.

The myths that are perpetuated about adult violence against women are being absorbed into the boys' thinking, their behaviour and their rationalisations for their violent behaviour.

Across all schools there was a common belief (held by boys) *that girls often said no when they really meant yes*. A majority of boys also claimed that they could 'ascertain *with some confidence when 'no' meant yes and when it meant 'no'*. It seems that the boys did this on the basis of *'tone and volume of voice, facial expression and other non-verbal communication*'.

As can be seen, the attitudes that support male violence against women, and in particular sexual assault are already firmly entrenched in many of these responses. The researchers also found that:

> many males had already engaged in behaviour that could be categorised as abusive, sexually harassing and demeaning of females. They lacked understanding that their behaviour may have been offensive or possibly even illegal (Domestic Violence Resource Centre (Qld) 1992, p. 4).

How Do We Prevent Male Violence Against Women?

> If we don't intervene we are allowing primary schools to be training grounds where the links between masculinity and violence become cemented (female primary teacher in Clark 1989, p. 28).

We collude in male violence against women by not addressing the very attitudes and behaviours that we see everyday in the school ground and in the community and pass off as children's behaviour. The boy who flashes himself in the school yard and has his behaviour laughed at will warrant arrest if he does it in ten years time. The boys who dak girls in the school yard, and have their behaviour dismissed, can be charged with assault in ten years time. The tolerance and acceptance of this type of violent behaviour is saying to boys that it is okay to do this and saying to girls that this is what you can expect to happen, and worse we will not help stop it.

> There is a connection between boys' violence and the denigration of girls, when they are young, and domestic violence and gun shootings when they are older (male primary teacher in Clark 1989, p. 28).

One construction of masculinity assumes boys, and therefore men, are dominant, aggressive (physically and sexually), strong and powerful, and one construction of femininity assumes girls and therefore women to be (the opposite) submissive, passive, weak and powerless. There are many structural factors at work which reinforce this.

While both boys and girls are confined in regimes of masculinity and femininity (Connell 1987), it is not only determining how they behave but also how they will relate to each other. *These 'regimes' are not simply different from one another but express relations of power*. Gender equity, by creating an equality between men and women, boys and girls, and by reducing the power differential, is a central element in the long term prevention of violence against women. Gender equity is valuing women's and girls' experiences; gender equity is about women's and girls' safety.

Clark (1989) argues that within primary schools there are a range of practices that serve to give boys' interests, and boys' skills more status (than girls' interests and skills). They also unwittingly give boys access to forms of behaviour which make life very difficult for both women teachers and girls and which ensures that boys have greater power to define what goes on in the classroom or what is to be valued.

Education has a role to play in addressing attitudes and behaviours

Issues of violence against women cannot be adequately addressed unless sexism, power and gender inequality are challenged. The messages and signals that are given to girls and boys need to be questioned. We need to look closely at the factors that influence and determine their behaviour and their lives, from childhood into adulthood. We must begin with a recognition that:

- issues of power and gender are integral when discussing violence;
- in order to reduce violence, educational and social systems must promote gender equity and equality;
- violence should always be named for what it is. Violent behaviour should not be disguised as 'boys being boys' or as 'harmless fun' when there is clearly someone who is being made to feel unsafe or fearful because of that behaviour;
- violence is never acceptable behaviour, there is never any excuse for violence;
- violence can take many forms, including racist and sexist behaviour;

- the way in which schools address issues of violence and discipline will serve as role models to children; and

- many social and institutional structures themselves are often inequitable and violent.

We can apply these principles to the following areas:

- the development of policies and protocols in each school about violent behaviour and codes of behaviour; for example, a policy on sexual harassment that clearly identifies it as unacceptable;

- professional development to educate teachers and school support staff to recognise violence against girls and to feel confident in their ability to respond;

- curriculum should be used to foster equity; for example, the widespread use of gender inclusive curriculum; and

- promote curriculum that encourages equity and challenges racist and sexist attitudes and behaviours.

Teaching structures, methods and curricula need to be consistent in their approach. The learning that violence is unacceptable, as is gender and racial inequity, should be reinforced throughout the school community, the school and the curricula. To account for girls' experiences the definitions of violence must incorporate sexual harassment.

Violence, and violence against women must be seen within a broad social context. We must not simply focus on the classroom, but in recognising violence, it is important that the school environment itself does not perpetuate inequalities and violent behaviours. There must be a cooperative model of decision making and rule setting that sees an involvement from students, teachers, the school council and parents.

The education strategies must be short term and long term. In the short term, strategies must recognise the gender-based violence that is occurring in schools and intervene to stop it. For the long term, strategies must address and challenge the attitudes, assumptions and inequities that underlie all violence against women.

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TALKING TO MEN IN THE WORKPLACE ABOUT SEXUAL ASSAULT AGAINST WOMEN

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FOR YEARS WOMEN HAVE IDENTIFIED PROBLEMS WITH GENDER INEQUALITY and discrimination within the workplace. The introduction of the *Sex Discrimination Act 1984* (Cwth) legitimated such concerns by allowing often marginalised groups to seek legal protection against sexual harassment, discrimination practices, and unfair wage scales. The Act, however, did not become law without resistance by men from within the halls of Parliament and the offices of the corporate sector.

The resistance continues today as few women are willing to file charges against employers, supervisors, or teachers for fear of negative repercussions as well as time consuming and costly court procedures. Research has shown that less than 10 per cent of unwanted sexual behaviour incidents are reported and even less are prosecuted within a court of law (Holgate 1989). Such figures are problematic given that a great deal of research has repeatedly shown that a high percentage of women will be victims of unwanted sexual attention. One early study (Kinsey, Pomeray, Martin & Gebhard 1968) found that 24 per cent of women had been victims of some form of forced sexual contact during childhood. A study conducted by the United States Merit Systems Protection Board (1981) reported that

42 per cent of female federal employees had experienced sexual harassment at work. One Australian study found that 90 per cent of the surveyed women had been grabbed or fondled and 62 per cent had been physically restrained as a form of sexual harassment (Holgate 1989, p. 25).

It can be argued that resistance to anti-sexual harassment and discrimination legislation derives from patriarchal conditions within the workplace that include male control over decision making and policy enforcing systems that operate within hierarchical constraints. Such male power is threatened if there is an acknowledgment of the full intention of the Sex Discrimination Act. The resistance that develops can probably be best understood by considering the extent to which hegemonic masculinity creates and recreates divided gendered relations within organisations.

This paper will first identify the resistance men exemplify within the workplace to address matters related to sexual harassment and other forms of sexual violence. Secondly, a set of strategies for working with men in workplaces and other organisations will be described as a means of challenging that resistance. These strategies are a part of the ongoing work that Men Against Sexual Assault has been developing in Victoria and other parts of Australia.

Hegemonic Masculinity in the Workplace

Male norms and practices in the workplace over-emphasise strength, independence, aggression, group solidarity, rationality as well as a top to bottom flow of information for decision making processes. Such practices can be understood by recognising the manner in which hegemonic masculinity operates as a concept within organisational cultures.

Hegemony involves the construction of power relations and the velveteen of social groups that have the potential to maintain and create organisational cultures which keep women subordinated and marginalised. Various practices are used to establish power including an:

> ability to impose a definition [to a] situation, to set terms in which events are understood, and issues discussed, and to formulate ideals and define morality (Donaldson 1991, p. 1).

Other practices may include agenda setting, gate keeping and the regulation of information flow. Furthermore, Connell (1987) has identified hegemonic masculinity through systems of punishment, enforcement, and the division of labour. Connell, suggests that hegemonic masculinity:

> stabilises a structure of dominance and oppression [for] gender as a whole (Connell 1990, p. 94).

Combined, these practices allow for a systematic control of decision making processes which represents the means by which organisations can enforce policy statements including provisions mandated by anti-sexual harassment legislation.

Hegemonic masculinity can be realised in many forms beyond decision making processes including violent and aggressive resistance to women entering traditionally male-dominated organisational cultures. Recent studies reveal that most men feel resentment towards women for having sustained careers (Cockburn 1983). Bernard (1989) says that

men threaten women co-workers by showing hostility, denying them competence or presence, and transforming them in fantasy into whores, lovers, mothers, or any role that allows them to treat women as traditional females rather than peers.

Men have developed various strategies to try and keep women out of some workplaces or to 'keep them in their place' once they have entered the organisation. One of the ways in which they do this is by emphasising sex boundaries in friendship patterns and group relations. These single gender work cultures reflect and enhance job segregation. They help to preserve conventional views of proper masculinity and feminine behaviour while creating an environment for male bonding. (Bradly 1989) Such bonding reinforces gender inequality in the workplace by giving men access to practical sources of information and contacts while materialising and subordinating women (Cockburn 1983). A second strategy used by men to 'keep women in their place' is the use of sexual joking and obscene language. Trading obscene stories is a common practice when some men gather. To be equal, women must tolerate, join in and be prepared to tolerate in kind when sexual innuendo and jokes are used around them. (Cockburn 1983) Women must be prepared to engaged in coarse jokes and teasing and accept the male-based informal structure of the organisation (Fine 1987).

Many men seem to be unable to refrain from making sexually-charged remarks. From the point of view of the man, this is just playful sexual joking and teasing. Though, of course, many men are also trying to establish sexual relationships with women in the workplace.

Places of work provide opportunities for the search for mutual sexuality. A recent survey of 645 persons found that one-quarter had met their marriage partner at work (Hearn 1985). Thus, workplaces provide avenues for sexual advances. Further, when studies show that 74 per cent of workplace romances involve a man in a higher organisational position than the woman, mutual sexuality may be a half truth (Hearn 1985).

Men are generally allowed to behave in a blatantly sexual manner in workplaces, seemingly without impunity. Management tends to treat the expression of men's sexuality as largely unproblematic. Men's work environments are regarded as male territories. Thus, displays of heterosexual interest are seen as simply part of the territory (Starko 1988).

However, if women act in a seductive manner this is viewed as detrimental to the organisation (Gutek 1989). So women are required to desexualise themselves, while at the same time, maintaining some requisite level of silent femininity (Sheppard 1989). In fact, men endeavour to emphasise the womenness of their female co-workers as one of the ways to marginalise them. Further, sexual harassment is used as a strategy to try and drive women away from invading an all male environment (Starko 1988). Women more often report sexual harassment if they are working in non-traditional areas (Walby 1988).

The explicit sexist behaviour that men exemplify within the workplace and the use of decision making processes that reflect hierarchical constraints within organisations represent a form of resistance to the development and enforcement of anti-sexual harassment and discrimination policies. Such resistance is problematic but not insurmountable, as witnessed by the efforts of Men Against Sexual Assault. As an organisation that is comprised of men working towards eliminating sexual violence within a pro-feminist framework, the group has experienced some success in challenging men to become responsible and accountable for their sexist, racist, and homophobic behaviour.

The next section of this paper will detail some of the strategies used by Men Against Sexual Assault in working specifically with men in groups in the workplace as a means of breaking down hegemonic masculinity and its negative impact within organisational cultures.

Strategies for Change

Most men are not going to yield privilege, prestige, and power voluntarily. However, there is a need for a strategy that wins defectors from power systems (Cockburn 1983). Rape, battery, sexual assault, and sexual harassment will not diminish unless men can be persuaded or forced to change their expectations and behaviour.

MASA believes that society needs anti-sexist educational programs and workshops targeted at males in organisations where they congregate; this includes schools, universities, community groups, unions and workplaces. Towards this end, we have developed an educational program for addressing these issues. Although presentations will vary depending upon the age of the males, whether women are present in the group, the number of participants, the time available and the personal style of the facilitators, MASA endeavours to cover the following issues:

- examine the extent of the problem and report available statistics on the prevalence of sexual assault, while emphasising the under-reported nature of the crime;

- challenge the prevalent myths about rape; for example, 'I could not help myself', 'She asked for it', 'He is not normal', 'A real man does not take no for an answer', 'She deserves it', 'She lied', and 'She loved it' along with similar comments (Shapcott 1988);

- talk about the rape spectrum and encourage men to see rape not as an isolated act but part of a broad spectrum of behaviours and attitudes that involve all men;

- talk about the violent and sexist language that men use to talk about sex and how this language dehumanises our sexual interactions and makes sexual assault more acceptable (Biernbaum & Weinberg 1992);

- talk about socialisation into rape attitudes and emphasise that rape is not natural, by reference to anthropological studies distinguishing between rape-prone and rape-free societies (Sanday 1981). While not all men are rapists, every man has to some extent internalised the patriarchal construction of men's sexuality. As such, virtually every man learns to think like a rapist, to structure his experience of sex in terms of status, hostility, control and dominance (Beneke 1982), and this is illustrated by outlining the construction of the objectification, fixation, and conquering model of men's sexuality (Litewka 1977);

- discuss what men can do; for example, men can educate themselves, form a study group with other men to share ideas, start reading some of the recent literature about rape, and men can read personal stories of women who have been raped (Julty 1979);

Men can also examine their behaviour and how other men's behaviour makes women feel. By staring at women, joking about women as objects of gratification, harassing women, touching women inappropriately, men are participating in the gendered violence directed at women; therefore, all men need to monitor their behaviour and begin acting in ways that reflect equality with women (Stevens & Gebhardt 1984);

Men can also become an alternative model for other men. All MASA members come into contact with many men every day. To some men we can be important role models. When we begin behaving in appropriate ways, we show other men that there are alternative ways to interact with women and amongst ourselves (Stevens & Gebhardt 1984);

- talk to other men—once we feel we are developing an awareness and understanding of how we should behave as responsible men, we can begin sharing this information with other men. This can be done by discussing the implications of a sexist joke or comment with a friend. Alternatively, it may mean talking to other men about how one is offended by the comments or behaviour of other men (Stevens & Gebhardt 1984); and

- organise other men—once men have developed an awareness and sensitivity to the issue, they should actively organise other men. We suggest that they join MASA or form a MASA working group and use the media to communicate their ideas to other men (Stevens & Gebhardt 1984).

All of these strategies have been implemented with some success over the two years since the establishment of MASA. Most recently, we have separated these educational activities into a two day Patriarchy Awareness Workshop inspired by the Racism Awareness Project developed by Action for World Development.

The aim of the workshop is to address the problem of patriarchy and its impact on the lives of women, children and men. Patriarchy is defined as 'the institutionalisation of men's dominance over women and children in society'. Men's dominance is reflected in:

- male control over social institutions;

- men's greater access to opportunities to accumulate prestige and income in employment;

- patterns of male violence and abuse against women; and

- the allocation of privileges and obligations in heterosexual marriages.

The program of the workshop uses small group discussions, simulation exercises, and video to explore issues such as men's personal journeys in relation to gender issues; analyses of patriarchal culture; men's experience of power and domination (hegemonic masculinity); alternatives to patriarchal power; the impact of men's domination on women; social and personal blocks to men's ability to listen to women; and the visions, obstacles, and potential for men to change.

It is the policy of MASA to invite and pay feminist women working with the survivors of men's violence to observe and monitor the workshops. This procedure is to acknowledge that patriarchy is created by men and maintained by men to benefit men. Thus, when men get together, even if it is to critically analyse and challenge patriarchy, subtle forms of male bonding may develop. Feminist observers help us to keep the process on track and reinforce our view to participants that men's practices with other men should be accountable to women.

Conclusion

Men have resisted legislation that attempts to equalise status and opportunities in workplaces. This resistance can be conceptualised within a framework that recognises hegemonic masculinity whereby men attempt to systematically control, dominate, and 'keep women in their place' within originational cultures. However, we believe that workplaces and other organisations where men congregate provide suitable environments to challenge men's sexist attitudes and practices towards women in both the workplace and beyond.

Men are more likely to change if they are encouraged by their male peers and provided with appropriate role models. One of the facts of patriarchy is that men are more willing to listen to other men. Through educational programs such as those conducted by MASA, many men have come to recognise the need to become more accountable and responsible for their own controlling behaviours and sexist attitudes.

If we are going to end the many ways in which men do violence to women, it will require a major transformation in consciousness among men. MASA endeavours to be one small step in that direction.

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RAPE, RESISTANCE AND WOMEN'S RIGHTS OF SELF-DEFENCE[1]

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LARGELY UNDER THE IMPETUS OF FEMINISM, RAPE RESISTANCE AND RAPE avoidance have been a persistent focus of criminological, psychological and sociological research over the last two decades. Rape prevention advice formulated on the basis of this research has shifted considerably in this period. Women have variously been told not to resist and not to fight, to try to talk men out of raping them, or to use a combination of strategies including strong physical resistance. Current practice among those working in women's safety programs and rape crisis service provision is to avoid telling women they should or should not resist, and instead provide a range of options and strategies.

There have, at the same time, been significant feminist legal interventions into debates surrounding consent, resistance and self-defence. Some of the more discriminatory elements of rape legislation have been or are in the process of being removed or ameliorated, and some progress has been made towards legal recognition of the reality of women's experiences of sexual violence (*see*, for example, Scutt 1990a, pp. 469–75). There have also been preliminary moves towards recognising a woman's legal right to defend her life against a violent and sexually abusive husband by killing him if necessary. Reforms in both areas represent serious challenges to the longstanding bias against female victims of crime under masculinist law.

Despite clear continuities between acts of resistance and actions taken in self-defence, at least in women's experiences of sexual violence, there has been little attempt to link the

1 The authors would like to thank Chilla Bulbeck and Annette Corrigan for helpful comments and gratefully acknowledge the assistance of staff associated with the Australian Institute of Criminology, Women's House, Brisbane, and the Women's Safety Project, Queensland Police Service.

research findings on rape avoidance to the analysis of laws relating to self-defence. This paper examines the connections between these changed understandings of consent, resistance and self-defence and suggests their implications for rape law reform and prevention strategies. Using the notion of a continuum of sexual violence, critiques of laws relating to domestic violence are applied to the analysis of women's rights of resistance and self-defence in rape. Our findings suggest that women's right to defend themselves against assaults on bodily integrity may best be protected by programs which challenge the masculinist perception that women's bodies constitute the primary site of consent.

Rape and Resistance

Crime victim studies (Braithwaite & Biles 1980; Walker, Dagger & Collins 1990, p. 63; Mukherjee, Neuhaus & Walker 1990; Queensland Criminal Code Review Committee 1991; Queensland Criminal Justice Commission 1991) suggest that a variety of situational factors severely circumscribe Australian women's capacity to defend themselves against a relatively high risk of sexual attack (Walker et al. 1990, Table 1). The female victim of crime is most likely to be a victim of a crime of sex, of interpersonal or family violence, or of the fear of violence: in other words, of crimes of an immediate, intimate and bodily nature. Her relationship with the offender—almost inevitably male—is also more likely to be personal (Queensland Criminal Justice Commission 1991, p. 53; Real Rape Law Coalition 1991b, p. 2). Knowing, or even living with, their attackers may limit women's self-defence options, and it may not always be appropriate to directly or physically resist rape.

Evidence of physical resistance in the form of documented injuries has, however, been considered necessary in order to secure a conviction. Defence counsel can use the absence of 'serious' injury to argue that the victim participated in consensual sexual intercourse. As statements made by the Supreme Court in overturning a jury conviction for rape in the case of *R v. Singh* in 1990 suggest, courts continue to place emphasis on such facts as 'no signs of force having been used on [the victim's] body and no evidence of any struggle or resistance . . .' (Real Rape Law Coalition 1991b, p. 4). Brereton's (1991, pp. 15–20) analysis of all rape prosecutions initiated in Victoria in 1989—a total of 144 accused men—demonstrates that the greater the injury, the greater the likelihood that the accused would be convicted: in cases in which medical treatment was required, 55 per cent of accused were convicted of rape, and another 40 per cent convicted of charges other than rape; in cases where there was no evidence of injury, 65 per cent were acquitted of all charges. The study convincingly demonstrates that, despite the acceptance by some sections of the community of the need for rape law reform, juries are still extremely reluctant to convict without evidence of injuries or admissions of guilt.

Yet until recently, women were advised not to resist, because resistance would lead to injury. The Queensland Police, for example, used to distribute a booklet called *Lady Beware*. Research conducted from the mid-1970s on rape avoidance and resistance patterns suggested, however, that the majority of rape victims/survivors resisted the rape in some way (Katz & Mazur 1979; Wilson 1978). Research conducted by Bart (1981) and Bart & O'Brien (1985) suggested that the most effective strategy in avoiding rape was a combination of yelling and physical force. Other researchers found no relationship between verbal and physical resistance and the amount of injury sustained (Hazlewood, Reboussin & Warren 1989).

On the contrary, considerable evidence now exists for both stranger and acquaintance rape that women who resist by screaming for help, running away or fighting back are more likely to avoid being raped (Sanders 1980, p. 74). While criticised for its methodology (Chappell 1989, p. 92; Levine-MacCombie & Koss, 1986, p. 312), Bart and O'Brien's (1985) research and their advice to women—'do not be a nice girl'—was widely adopted and reinforced in the 1980s by other researchers (Levine-MacCombie & Koss 1986; Caignon & Groves 1989).

The promotion of active resistance strategies supported a wider move in the 1980s to place women centrally as decision-makers and actors in cases of sexual violence, and to view women as survivors rather than victims of rape and sexual assault (Sanders 1980, p. 74; Caignon & Groves 1989, p. xxvi). Kelly (1988) suggested that the distinction between active and passive resistance was misleading. She proposed instead a resistance model which acknowledged a range of women's choices, decisions and agency in situations of sexual violence. Her definition of resistance encompassed active resistance, coping strategies, and 'passive' resistance including situations in which women chose over other alternatives to submit or 'consent'.

These more positive meanings of resistance are qualified to some extent by evidence of its complexity. Women's capacity to resist is often constrained by fear (of death, physical injury or mutilation), especially in situations that appear to be hopeless or dangerous such as group rapes (Katz & Mazur 1979, p. 173; Chappell 1989, p. 92). For those women who do resist sexual assault, the particular form and extent of resistance varies considerably (Katz & Mazur 1979, pp. 177–8; Wilson 1978: p. 45). For example, women raped by their husbands—an estimated 13 per cent of wives according to one Australian study (cited in Scutt 1990b, p. 143)—are more likely to avoid rape by leaving or divorcing their husbands than they are to use strong physical resistance (Russell 1982, pp. 313–24; Scutt 1990b, p. 157). Women married to or living with men who have a history of violence have few escape options and fear that if they resist sexual assault they will be hurt even more seriously. Knowing that they need to keep the peace and will have to face their partner the next day, appeasement may seem the best tactic (Russell 1982, p. 314).

In extreme circumstances, resistance can have damaging or even fatal consequences. There is no guarantee that resisting will prevent either rape or murder (Chappell 1989, p. 92). Women who resist strongly or put up a severe struggle against particularly violent men may be more likely than other victims to sustain serious physical injuries (Wilson 1978, p. 31; Chappell 1989, p. 92). American data collected from forty-one incarcerated serial rapists suggested that when the victim resisted, the amount of pleasure experienced by the rapist was greater and the duration of the rape was longer (Hazelwood, Reboussin & Warren 1989, pp. 72–3).

The diversity of contexts in which a sexual attack may occur makes it difficult to provide a standard set of advice to women. Even if a woman is acquainted with her attacker (as a neighbour or co-worker, for example), how is she to know if he is a serial rapist, a particularly aggressive man, or a potential rapist who will be easily deterred by verbal assertion? Rape situations and the backgrounds of both attacker and victim vary considerably (Wilson 1978, pp. 32, 45; Hazelwood, Reboussin & Warren 1989). A strategy that works in one situation will not necessarily work in another, and that adopted by one woman may not be appropriate for another (Bart & O'Brien 1986, p. 34).

An more equivocal picture is now emerging from this literature on rape response strategies (Carter, Prentky & Burgess 1988, p. 107). Some researchers acknowledge the 'disservice that might be done by providing universal advice, meant to fit all women'. There is an interest instead on individual decision-making processes and the multiple ways in which women weigh up the consequences of different responses to rape (Furby, Fischhoff & Morgan 1991, p. 60).

Women's safety programs are now tending to avoid providing women with a standard set of advice on how best to defend themselves against sexual attack. As a current leaflet on safety for women motorists states:

> There are no hard and fast rules about what to do.
>
> Trust your instincts and do what makes you feel safe. However, planning ahead or thinking about possible options may enable you to think more clearly when faced with a problem. Remember people react differently in difficult situations . . . (*Safety Tips for Women Motorists*, n.d.).

Educators attached to the Queensland Police Women's Safety Project, for example, are reluctant to state that women should always in every circumstance physically resist sexual attacks. There is a danger that if women are told they ought to resist and precisely how to resist, those who choose not to, or are unable to, will feel that they have failed or are in some way responsible for the attack. Instead, a range of possible options and empowering strategies stressing protective behaviours are presented (Interview with Lisa Rosier & Dianne Jeans, 30 March 1992).

Brisbane Rape Crisis Centre workers at Women's House, Brisbane, also prefer not to prescribe a particular course of action in rape avoidance. The Centre's emphasis, rather, is on promoting self-defence awareness, unlearning passive behaviours and facilitating women's access to as many protective skills and knowledges as possible (Interview with Cheryl Parsons, Women's Safety Project, Queensland Police Service, 31 March 1992). Simply saying to women that the answer is to fight back ignores the complicated meanings our culture gives to rape, resistance and consent, and the problems posed by the systemic nature of women's low self-esteem, vulnerability and often daily experiences of male abuse. It is important, therefore, that women know they have the right not to be abused and that they deserve and have the right to resist. However, a woman's choice not to resist is equally valid.

Self-Defence and the Law

If a woman does choose to defend herself against a rape attack, is she protected by the law? Recent studies of the laws of self-defence and provocation as they apply—or, rather, fail to apply—to women victims of domestic assaults (Tarrant 1990a, 1990b; Gillespie 1989; Greene 1989; Rathus 1989) suggest women's legal rights of self-defence against male sexual violence are limited.

Sexual violence, perceived as a continuum ranging from choice to pressure to coercion to force (Kelly 1988), is a common thread in crimes against women. Violent men frequently rape their wives as well as beat them in their attempts to terrorise, humiliate, intimidate and dominate (Russell 1982; Gillespie 1989, p. 52; Scutt, 1990b). Domestic violence is a crime of sex and of violence, not only because it frequently occurs in the context of a sexual

relationship, but also in the sense that it is overwhelmingly committed by members of the most powerful sex against members of the less powerful sex. Cases of assault in male homosexual and lesbian relationships, though much less common, also suggest the complex and often violent ways in which sex and power find expression within some domestic situations.

The law maintains a distinction between resistance and self-defence. However, from the perspective of the female victim of crime, they are inextricably linked. In order to prove that she did not consent to the crime, a woman has to resist, in other words to defend herself. Resistance is thus a form of self-defence and, in extreme circumstances, can result in a woman killing her attacker in order to survive. The difference between the woman who struggles with, kicks, hits or seriously injures a man attempting to rape her and a woman who kills in self-defence a husband who has been repeatedly sexually and physically abusive is one of degree. The success of recent attempts in Australia and elsewhere to have expert testimony on the battered woman syndrome/reality admitted in defence of women accused of killing abusive husbands—other potentially negative implications notwithstanding—is, therefore, as much a statement about women's right to resist sexual violence as it is a significant shift in the application of the laws of self-defence to women who kill.

Women are nevertheless still disadvantaged by laws of self-defence which, even in recently revised laws such as the draft Queensland Criminal Code (Queensland Criminal Code Review Committee 1991, p. 37), still fail to recognise the sexually-specific realities of women's experiences as victims. The paradigmatic danger envisaged by the law is that of an immediate single, purely physical contest between strangers in a public place (Tarrant 1990a, pp. 597–8; Gillespie 1989, p. 51; Real Rape Law Coalition 1991a, p. 155). The law thus ignores the constraints acting on women not only in cases of prolonged and cumulative domestic violence (Tarrant 1990a), but also in rape situations where the rapist is known to them. Notions of 'reason' and 'self-control' embedded in the laws of self-defence are based on an assumed rational man who is unlikely to consider women's actions in self-defence against rape proportionate to the provocation. Women appear to have limited legal rights of self-defence against men who attempt to rape them.

Consent and the Law

A similar assumption that resistance is a physical and violent manifestation of a struggle between strangers is evident in legal and criminal justice notions of resistance (Scutt 1977; Vandervort 1987–88; Real Rape Law Coalition 1991a, 1991b; Carter 1991). Recent feminist legal interventions into rape laws (*see*, for example, Scutt 1990a, pp. 469–81) have included shifting the meaning of 'without consent' away from physical resistance towards a notion of consent as a performative act; that is, as absolute, positive and verbal (Vandervort 1987–88, p. 309; for Australia *see* Carter 1991, p. 32). Rape law reform has begun to move in this direction in most states, the most comprehensive explanation of consent as 'free agreement to sexual penetration' being incorporated into the *Crimes (Rape) Act 1991* (Vic.) (*see* also Western Australian Statutes 1985; Queensland Criminal Code Review Committee 1991).

Proposals to eliminate evidential requirements relating to physical injury have met with opposition from those concerned to protect the rights of the accused. The accused, however, cannot be convicted unless the prosecution has proved beyond reasonable doubt

his intention to have intercourse with the woman without her consent (Scutt 1977, p. 76). As the Real Rape Law Coalition of Victoria pointed out, the intention of defining consent in verbal terms is simply to redress the balance of justice in favour of the victim by placing proper responsibility on the accused to articulate what he has done that constitutes a criminal offence and to redefine circumstances of coercion to take account of women's experience of sexual assault (Real Rape Law Coalition 1991b, p. 9).

The consequences of these non-physical definitions of 'without consent' extend beyond the legal sphere into consenting sexual relations. They suggest, for example, that the female body can no longer be seen as the site of sexual consent. It is commonly assumed that a woman's agreement to sexual intercourse can be read from compliant body language and the absence of physical opposition. One rapist, asked how he would know that a woman was not willing to have sex with him, replied: 'If she fought me the whole time we were having sex' (Gelman et al. 1990, p. 70).

Male lawyers and judges still make statements in court which reinforce the popular belief that a woman's body and external appearance give unambiguous messages of sexual access (Carter & Wilson 1992, p. 8). The absence of verbal consent in 'normal' heterosexual relationships is used as an argument in favour of the accused. One judge held that:

> when a man has intercourse with a woman, it is not preceded by the man saying to the woman, 'May I have intercourse with you?' and the woman saying 'Yes'. I mean this does not happen (Real Rape Law Coalition 1991b, p. 4).

But perhaps it should. The courts have played an important role in perpetuating the masculinist notion that what a woman's body 'says' is more significant than what she makes verbally explicit.

Consent communicated implicitly and passively by non-verbal or physical means via the woman's body is taken to be a part of 'normal' sex. The female body is represented in this discourse, as it is in some 'sex toys', as inevitably and by nature inert and compliant, a thing that is acted upon. Thus, the model of normal heterosexual intercourse on which the law and the criminal justice system is based incorporates the understanding that passive body language is not incompatible with female sexual pleasure. Vandervort argues that:

> once consent is viewed instead as the act of an agent, of a person who is the bearer of certain rights, all non-verbal behaviours are suddenly of secondary significance (1987–88, p. 275).

Consent, according to Kelly (1988) also becomes a conscious decision, an observable act, and a clear agreement to engage in a sexual transaction. Attempts to negotiate an explicit but non-physical way of communicating lack of consent are particularly important in the case of 'date rape', marital rape or other assaults that take place within the familiar context of an established heterosexual relationship—and often of 'normal' relations between men and women.

The extent to which rape inflicts bodily harm must also be recognised by the law if women's rights of self-defence are to be effectively guaranteed. Cynthia Gillespie argues that rape:

> involves such an overwhelming invasion of personal bodily integrity that it constitutes, by itself, the serious injury contemplated by the self-defence law (Gillespie 1989, p. 188).

There should be no requirement that there be evidence of additional physical injury or attempted homicide before a rape victim can use any means available to fight back. Women, according to Gillespie, must have the right to defend themselves against rapists with deadly force if necessary.

Proposed changes to the law and criminal justice system may not be sufficient, however, to guarantee the rights of Aboriginal women to defend themselves against rape by Aboriginal men. Recent studies have revealed appallingly high rates of rape, child sexual abuse and domestic violence within Aboriginal communities in Queensland, the Northern Territory and New South Wales (cited in Bell 1991, p. 387). White colonisation has effectively dismantled women's customary laws and traditional ways of resisting men who raped or beat them (Bell & Nelson 1989, p. 415). Aboriginal women, forced to turn to white law for protection, understandably have little faith in a criminal justice system represented by racist white male police and defence lawyers who trivialise or ignore the harm they have suffered (Atkinson 1990, p. 6). Arguments based on customary law—for example, claims that violence against women is an accepted part of Aboriginal customary practice—also fail to protect abused Aboriginal women.

Atkinson (1990, p. 8) proposes a model of Aboriginal community justice which would include training Aboriginal women to investigate sexual offences, Aboriginal involvement in dispute resolution and community education. White anthropologist Diane Bell, doubting the value of 'spurious appeals to "tradition" ', suggests that Aboriginal women's voices would be heard more effectively if courts drew on expert testimony relating to women's customary authority to speak on laws relating to sexual conduct and on the specific cultural context within Aboriginal communities of notions of consent (Bell 1991, pp. 405–7). Some Aboriginal women (Huggins et al. 1991, pp. 506–7), however, believe that rape in Aboriginal communities is 'their business', not that of white women.

Recent rape law reforms certainly go some way, as rape law reform advocates claim, towards replacing a male world view of resistance, force and sexuality with the female reality of sexual violence. These interventions into legal interpretations of consent have more than semantic significance. New legal definitions of consent not only improve the chances that the rape victim/survivor will achieve justice and equality before the law, but fundamentally challenge men's assumed rights of sexual access to women's bodies. Defining the notion of consent and the conditions under which it may not be freely given makes a space within the law for the female corporeal reality of rape. The rape law reform campaign thus contributes to a wider exploration of the lived female body as a surface on which social laws are etched. Defining consent as free verbal agreement helps reinscribe the body of the female victim/survivor with different and more positive meanings (Grosz 1987, pp. 14–15).

Self-Defence Strategies

Preventative measures such as community education programs, curriculum change, the incorporation of women's safety considerations into urban design, feminist self-defence programs and 'comprehensive feminist-oriented programs that tackle the structural and cultural foundations of women's victimisation' (Searles & Berger 1987, pp. 76–80) are all

clearly necessary in the struggle to dismantle rape cultures. An analysis of the legal language of the female body suggests, however, that those programs that promote a view of women's bodies as strong, capable and self-reliant are those most likely to counter the image of the passive body and give women the means with which they can resist. Campaigns to encourage women to engage in contact sports are not only physically empowering for individual women, as Bart and O'Brien (1985, p. 121) suggest, but may allow women to remake their bodies, extend their bodily limits and reshape their imaginary body in more resistant ways.

Self-defence programs, as rape crisis centre workers readily acknowledge, are only part of the answer. They can perpetuate many of the myths surrounding rape by focussing on attacks by strangers. Those that rely on a martial arts model rather than feminist principles and taught by men are often paternalistic and in co-educational settings women may feel embarrassed or uncomfortable exerting themselves physically with men present. The self-defence movement in the USA and probably elsewhere has been less successful than other initiatives in attracting funding (Searles & Berger 1987, pp. 76–8). There is a need therefore for more extensive government funding for feminist self-defence programs. These programs and rape resistance advice generally must, however, make women fully acquainted with the current limits to their rights to defend themselves under the law (Bernholtz 1989).

The new laws relating to rape also demand that, in addition to educational programs which aim to eliminate men's violence, men learn the meanings and signs of consent and are fully aware of their responsibilities in ascertaining whether or not a woman consents to sex. Consent must be seen as the outcome of a choice made by an independent agent, freely and verbally given, not seen to have been granted by custom (in the case of Aboriginal women) or implicitly and bodily granted. These revised meanings of consent constitute an important component of the self-defence movement and strategies aimed at structural resistances to male violence. A more explicit attention to the positioning of the female body in the law and the inscription of the law on women's bodies might strategically be incorporated into moves to fully extend to women the legal rights of self-defence, law reform aimed at clarifying from women's standpoint definitions of consent and non-consent, and efforts to change in women's interests the practices and procedures of the criminal justice system and crime prevention programs.

Summary

In summary, this study of the literature on resistance and self-defence suggests that rape prevention strategies need to be directed at three objectives. First, efforts need to focus on changing men's behaviour in consenting sexual situations. Second, the law must be reformed to give women more rights of self-defence against sexual assaults, especially by men who are known to them. Third, to successfully resist sexual violence women need to be provided with a range of knowledge and techniques which enhance self-esteem and allow the female body to be experienced as active and resistant.

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TOWARDS CHANGING PROCEDURES AND ATTITUDES IN SEXUAL ASSAULT CASES

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THE PRIMARY OBJECTIVE OF ANY LAW REFORM SHOULD BE TO ENSURE THAT it is implemented at the 'ground level'. To achieve that objective, organisational practices—and therefore individual and institutional attitudes—need to change. To rely solely on the passage of legislation as a means to effect changes of this type is unrealistic. Legislation is too blunt an instrument. By its nature it must be couched in reasonably general terms, leaving it up to the agencies affected to translate general directives into specific rules, procedures and routines. Legislation is also open to interpretation, so that the intention of policy makers and the parliament may be lost in strict adherence to the letter, rather than the spirit, of the law.

In its review of sexual assault laws and procedures over 1991 and 1992, the Victorian Law Reform Commission recognised that a more practical approach was called for to accomplish *real* reform. The Commission had been requested by the Attorney General to report on two specific issues:

- the definitions of rape and indecent assault, and particularly the element of consent; and
- further measures to improve the experience of victims in the investigation and prosecution of sexual assault cases.

Three main research projects were undertaken:

- quantitative and qualitative analysis of rape prosecution files over a two-year period;

- a review of relevant legislative developments in Victoria and other jurisdictions; and

- the collection of data (by informal interview) from relevant individuals and groups from across the spectrum of experience in the sexual assault field—from victims and sexual assault counsellors, to police and prosecutors.

These projects revealed a number of areas in which measures could be taken to improve the law and investigative and prosecutorial procedures for victims. The Commission's recommendations are made in a series of three reports, and a set of appendices documenting the research.

While not ignoring the role of legislative reform, the Commission chose to concentrate much of its effort on developing detailed proposals for modifying existing practices and winning the agreement of the relevant agencies to institute the necessary changes. The close involvement of members of those agencies in the process meant that workable solutions were found and a cooperative tone set for their implementation.

The package of reforms proposed by the Commission also included amendments to the *Crimes Act 1958* (Vic.) and *Evidence Act 1958* (Vic.). In brief, the main provisions of the new legislation included the following:

- an extension of the physical circumstances defining the offence of rape;

- a legal definition of 'consent';

- mandatory jury directions in relation to 'consent' and 'late complaint' evidence;

- further restrictions on the admissibility of 'sexual history evidence' so that evidence in relation to a sexual relationship with the accused is not routinely admissible;

- the use of alternative arrangements for giving evidence (closed circuit television; blocking screens) is available to adult victims in some sexual assault cases; and

- the maximum penalty for rape has been increased to twenty-five years.

In general, all the proposed reforms were well received by the agencies that had been involved in the Commission's reference. Media commentators and members of the government embraced the reforms as:

> progressive and a genuine attempt to balance the rights of a rape victim with the rights of the accused to a fair trial (Editorial, *The Age*, 9 October 1991).

The then Premier, Mrs Kirner, described the Commission's report on changes to the substantive law as:

> extraordinarily important . . . really trail blazing in terms of turning around attitudes to rape (Editorial, *The Age*, 9 October 1991).

While both the legislative and administrative reforms should be acknowledged as progressive, their success in the long term will depend largely upon the degree to which they are able to promote change at an attitudinal level for those who are integral to the criminal justice process. Systematic monitoring of both the legislative and administrative reforms is one method of being able to measure their success, and their potential for implementing change at the 'ground level'. Continued monitoring and evaluation will also go some way towards maintaining a focus on the issues surrounding sexual assault.

The Criminal Justice Statistics Planning Unit (formerly the Victorian Bureau of Crime Statistics and Research) is currently conducting an evaluation of the recent legislative and procedural reforms. The remainder of this paper will focus upon three significant changes to arise out of the 1991 reform activity:

- the Police Code of Practice for Sexual Assault Cases;
- jury directions; and
- the use of alternative arrangements for giving evidence by adult victims.

The paper will explore the developmental process of these reforms, and discuss the strategies being undertaken for their evaluation.

Police Code of Practice for Sexual Assault Cases

There has been considerable efforts over recent years to improve police procedures and practices when responding to victims of sexual assault. As part of their research, the Victorian Law Reform Commission consulted with both victims/survivors of sexual assault and victim support workers who spoke positively of their experiences with the police and especially members of the Community Policing Squad (CPS).

Despite these improvements, several problem areas were identified. A common complaint of victims and sexual assault workers heard by the Commission was that victims' needs often take second place to investigative and administrative priorities, particularly where the Criminal Investigations Branch (CIB) is involved. Many victims said they felt they were disbelieved—others that they were believed but were made to feel like 'a piece of evidence'.

The Commission formed a Working Group to examine these and other problems. The Working Group consisted of senior representatives of the CPS and Rape Squad, a forensic physician and two coordinators from the Centres Against Sexual Assault (CASAs). The main objective of the Working Group was to clarify unclear lines of responsibility and confusion about appropriate procedures to follow both in crisis-care and other situations. Obviously the attitude of some members is also part of the problem, and educating and training all members of the police force, in relation to sexual assault issues would be of immense benefit. However, establishing clear procedural guidelines was seen to be the most effective way of improving the situation in the short term and, at the same time, providing a focus for the necessary training.

The CPS Coordinator's Office had previously drafted a comprehensive set of guidelines for all members of the police who come into contact with sexual assault victims. This document was used as the basis for the Working Group's discussions over several

months. A final version was produced and the Police Code of Practice for Sexual Assault Cases was launched in March 1992.

The Police Code contains a comprehensive set of guidelines detailing the procedures to be followed by different sections of the police when dealing with victims of sexual assault. The Code makes clear the respective roles of the police and CASA counsellor/advocates, so that there is a more efficient and coordinated approach from the period of initial report through to the giving of the victim's statement.

The guidelines prioritise the victim's physical and emotional needs. Members are told to allow victims to recount what happened *in their own words*. They are told *never* to presume an allegation of rape is false; they are required to have the victim at a medical examination *as soon as possible*, and in any case no longer than two hours after the report was made to the police.

The Code was distributed in the form of a Force Circular Memo, and has the same authority as Police Standing Orders for police members. Also included in the document are a number of 'feedback' mechanisms so that where significant breaches of the Code's guidelines occur, individual members can be held accountable to the relevant organisation heads—for police this would be either the Officer-in-Charge of the Rape Squad, or the CPS State Coordinator. Similarly, where police have a concern about a particular CASA worker, the Coordinator of the relevant CASA can be approached.

The evaluation of the Police Code of Practice began in May of 1992 in the hope that early research would assist in the process of implementation, and/or identify any problems that need to be addressed. To assist in the evaluation, a Working Group has been set up consisting of CASA representatives, the Victoria Police, the Victim Liaison Officer, a Forensic Physician, and a representative from Court Network. This mirrors the approach taken by the Commission at the development stage.

The evaluation is primarily focused on *implementation* processes, the *extent of compliance* with the guidelines, and *surveying* relevant personnel with regard to their perception of how well the Code is working.

In consultation with Working Group members, various research initiatives have been undertaken to meet the above priorities. There are three main components: a crisis-care survey, police questionnaires, and a victim survey.

Crisis-care survey

All CASAs and Sexual Assault Units/Centres are currently filling out surveys for all crisis-care cases. A crisis-care case is one where the victim either received or was perceived to need a medical examination. The survey collects systematic data on the procedures being followed at the crisis-care stage by all personnel involved, including police members, forensic physicians, and CASA counsellors. The information collected monitors adherence to the Code's guidelines, particularly in relation to *times*; that is, the time taken between reporting the offence and the time taken to bring the victim/survivor to the medical examination. The survey also provides CASA counsellors with the opportunity to record their comments, both positive and negative, regarding the way in which victims/survivors are treated by the relevant parties involved at the crisis-care stage.

Police questionnaires

The objective here is to obtain the 'police perspective' on the effectiveness of the Code, how well it is working and whether the provisions set out are adequate and appropriate. Members from the CPS, general duties, and the CIB, who have recently attended a rape report, are asked to complete a questionnaire. Much of the information collected relates to the procedure followed by the individual member during the reporting process. The final section of the survey deals with the member's knowledge of the Code, and their experiences and perceptions of working with the Code's guidelines.

Victim survey

Arguably the most important component of the evaluation is the victim survey. This research will be part of a broader study in which the experiences and perceptions of victims of rape going through the criminal justice system will be explored. Victims will be able to discuss, *in their own words*, the treatment they received *after* reporting the assault to the police.

Victims later become involved in a prosecution will be reinterviewed after the completion of court proceedings. The first interview will focus specifically on the period following the report of the offence, and the treatment the victim received by the police and other support services at this early stage in the legal process.

Findings to Date

Preliminary 'feedback' on whether the Code is being followed is difficult to assess. There is a real dilemma for CASA workers in reporting significant breaches of the Code where the victim indicates that she/he is not willing to make a formal complaint against a particular police member. For a formal complaint to be made, the Incident Report requires that the victim be identified, and the police member involved is named. However, if the victim has had a negative experience with the police, she/he may not want any further involvement with them. The CASA worker is then constrained by ethical and confidentiality factors from taking follow-up action in regard to a breach of the Code's guidelines. Similarly, if a police member is concerned about the actions of a CASA counsellor, she/he may not wish to have the matter taken along the formal channels of notifying the Coordinator from the particular CASA involved so as not to strain established working relationships.

The establishment of small 'liaison committees' at each CASA may go some way toward alleviating this predicament. The liaison committee would have a CPS and CIB representative present at the meetings. Issues regarding breaches of the Code could be addressed at these meetings without individual police members or victims being identified. The police representatives could then filter the information back to their particular district or station. Fellow police members may be more disposed to receiving feedback from police colleagues than from CASA counsellors.

A second difficulty with the Police Code is that the guidelines seem far more geared to the needs of recent *adult* victim/survivors than for victims of 'older' assaults and child victims. Much of the Code is directed to 'managing' the victims' medical and emotional needs following the assault; for example, CASAs will only be notified routinely if it is a 'crisis-care case'. However, if a victim attended at a police station and said that she had been raped a year ago, there is nothing in the Code which compels police members to

phone the CASA and inform them that a report has been made. Instead, the Code simply states that police have an obligation to provide the victim with information about CASAs and other support services.

Whether victims are provided with this information is extremely difficult to monitor. Victims may not receive the information, or they may receive the information and choose not to attend a centre. There is an additional problem of some CASAs in the rural regions not having a 24–hour service, so that even victims requiring crisis-care may not have the added support of a CASA worker being present.

These and other problems will be the focus of the Working Group's task of evaluating the Police Code of Practice. In the meantime, it is essential that the police and the CASAs keep the lines of communication open, and continue to work towards the amicable relations that were being established prior to the Code's development. This is critical for improving the experience for victims/survivors, and ensuring the effective coordination of services.

In the meantime, the effectiveness of the Police Code of Practice will depend upon the systematic implementation of the document. This requires that a training program be implemented at all levels of the police force, in both metropolitan and rural stations. It is hoped the evaluation will facilitate such initiatives being undertaken by the Victoria police.

Alternative Arrangements for Giving Evidence

A number of the victims who spoke to the Law Reform Commission, during its consultation process reported that the presence of the accused in the courtroom caused them severe distress and affected their ability to give evidence clearly and accurately. This trauma was exacerbated by the layout of the courtrooms, some of which allowed a direct line of sight from the dock to the witness box. As most people in the field are now aware, the Evidence Act, as amended by the *Crimes (Sexual Offences) Act 1991*, permits alternative arrangements, including closed-circuit television, to be used in sexual assault or assault cases involving a complainant who has impaired mental functioning or is under the age of eighteen years. Where such arrangements are made, the judge is required to warn the jury not to draw adverse inferences about the accused, or to give the evidence any greater or lesser weight because of these arrangements.

The Commission recommended that the application of these provisions be extended to adult victims who are not intellectually impaired. This recommendation was accepted without significant opposition. The relevant provision of the Evidence Act states that:

> The court may, of its own motion or on the application of a party to a legal proceeding, direct that alternative arrangements be made for the giving of evidence by a witness if—
>
> (b) the proceeding relates (wholly or partly) to a charge for a sexual offence and the court is satisfied that, without alternative arrangements being made, the witness is likely in giving evidence—
>
> (i) to suffer severe emotional trauma; or
>
> (ii) to be so intimidated or stressed as to be severely disadvantaged as a witness.

The Victorian provisions are just over a year old now having come into operation during February 1992. It is difficult to assess at this stage the extent to which these provisions are being used for adult victims, or for children and intellectually impaired victims. The Sexual Offence Section of the Office of the Director of Public Prosecutions (DPP) is providing the unit with ongoing information about the outcome of applications for the use of alternative arrangements. A more detailed analysis of the relevant cases can then be undertaken.

Clearly though, it was not intended that the alternative arrangements for giving evidence would be used as a matter of course in sexual assault cases. The Commission found that some victims felt that giving evidence in open court was an empowering experience. Rather, it is envisaged that cases in which the use of alternative arrangements would be sought are those in which the prosecution will submit that somewhat unique circumstances exist.

The extent to which the provision will be used for adult victims relies on a number of significant factors. Preliminary feedback, from a small number of cases examined, indicates that so far, in sexual assault cases, child victims and mentally impaired victims, only, have been able to give their evidence using alternative arrangements. There has been at least one application for an adult victim to use alternative arrangements; however, this was unsuccessful. Similarly, applications for the use of alternative arrangements for child victims and intellectually impaired victims are far from routinely granted.

No doubt there will be difficulties encountered in the implementation of this reform, as is the case with most other legal change. Firstly, trial judges may be loathe to abandon the traditional principle of having the accuser face the accused in an open courtroom. This is particularly important when the case is conducted in a higher criminal court, where long established legal conventions may be less easily dislodged. Conversely, individual DPP solicitors may have reservations about the use of alternative arrangements. Davies and Noon (1991) found that some barristers were concerned that the use of closed circuit television, or screens, would lessen the emotional impact the victim's evidence could have on the jury. There is a loss of eye contact with the witness, and the added difficulty of building rapport with the complainant when alternative equipment is used.

Secondly, DPP solicitors may only make applications in those cases where they believe that the application has some chance of success. If there is opposition from the judiciary regarding the use of these arrangements—even for child victims—the DPP may adopt a very conservative approach.

Thirdly, if trial judges were not fully supportive of the new provisions, they could give directions commenting on the inadequacy of the arrangement. DPP solicitors have indicated that, where alternative arrangements have been used, some judges have commented to juries that they (jurors) were at a disadvantage when viewing the victim's evidence. According to the judges, this was because the victim's demeanour could not accurately be assessed, nor is the jury privy to any body language, outside of that which the television monitor could produce.

On an encouraging note, there has been positive feedback from the judiciary in other states and countries regarding the successful use of alternative arrangements for giving evidence. Cashmore's study (1991) on the use of closed circuit television for child witnesses in the Australian Capital Territory found that closed circuit television may reduce the child's stress level and improve the quality of the evidence given. Furthermore, with increasing experience, there was greater acceptance of the procedure by those professionals involved in the process. The English researchers, Davies and Noon (1991), also found that legal

professionals were more in favour of the use of closed circuit television, after they had observed the influence it had on the quality of the complainant's evidence. Those witnesses who used the 'video link' were more self-confident, more audible, and less likely to be inconsistent.

It is likely that with time, these new provisions will become a more acceptable method for giving evidence, and the legal profession in Victoria will become more favourable to their use in a relevant case.

Judge's Directions

Considerable debate took place around the Commission's conference table as to the precise wording of the consent provision that finally appeared as part of the *Crimes (Rape) Act 1991* (Vic.). In addition to the consent provision, some of the Commission's consultants wanted to include a statement of general principles which would form a preamble or interpretation clause for the sexual offences section of the Crimes Act. Instead it was decided to incorporate the main principles into directions that judges would be required to give juries in appropriate cases - that is in cases where consent is the central issue. These directions have become section 37 of the Crimes (Rape) Act.

Section 37, of the Crimes (Rape) Act states that the person (complainant) must communicate 'free agreement' or their consent to the particular act. Judges, according to the Act, must direct juries that not saying or doing anything to indicate consent is 'normally' enough to show that there was no free agreement on behalf of the victim. Furthermore, jurors are warned not to assume there has been free agreement just because: there is no evidence of physical resistance, no protest was made, no injuries were sustained, or there had been free agreement to sex with the accused or another person on another occasion.

The direction relating to 'late complaint' evidence was introduced by the *Crimes (Sexual Offences) Act 1991* (Vic.). Sexual offence proceedings are unique where this type of evidence is concerned. Normally, evidence that a witness made a statement to another person consistent with the testimony they are giving is 'inadmissible'. However, with sexual offences, the concept of 'recent complaint' evidence has been developed. This means that evidence of a complaint of sexual assault having been made as soon as possible after the incident, is admissible—not as evidence that the assault in fact occurred, but as to the consistency of the complainant's account of the incident. The new jury direction was designed to counter the commonly-held assumption that a person who has been sexually assaulted would complain 'immediately' to someone about what had happened. The direction makes it more difficult for the defence to successfully argue that a delay in complaining is evidence of the falsity of the complainant's allegation of sexual assault. Section 61 of the Crimes Act now states:

> (b) if evidence is given or a question is asked of a witness or a statement is made in the course of an address on evidence which tends to suggest that there was delay in making a complaint about the alleged offence by the person against whom the offence is alleged to have been committed, the judge must—
>
> (i) warn the jury that delay in complaining does not necessarily indicate that the allegation is false; and

> (ii) inform the jury that there may be good reasons why a victim of a sexual assault may hesitate in complaining about it.

Both of these directions are mandatory; they are not discretionary. That is, judges are *required* to give these directions in a relevant case. It is arguable that, in a general sense, the new directions carry an enormous potential for re-educating the community with regard to the rights of all persons to enjoy sexual autonomy and integrity. During rape trials, jurors will be challenged to re-evaluate preconceived images and perceptions they have of the crime, and apply the directions given to them by the judiciary.

However, the impact that these directions will actually have on jurors' decisions cannot readily be assessed. Other factors, such as the evidence of the complainant, the closing addresses, and other comments made by the judge, may well outweigh the effect the new directions have on case outcomes.

Unfortunately, we are not in a position to interview jurors about why particular decisions were made. However, it *will* be possible to monitor the types of cases that result in convictions. The Law Reform Commission's study of rape prosecutions for 1989 found that cases where there was evidence of physical injuries to the complainant, and evidence of admissions by the accused, the jury was more likely to convict. Therefore, if the conviction rate increases, particularly in relation to cases where there is, for example, an absence of physical injury, it seems reasonable to conclude that juries are reaching their verdicts according to the law as it now stands, mindful of the directions given to them by the judge.

There is a further danger that the new instructions will become lost in the often complex and elongated directions given to juries in criminal trials. In its final report (Law Reform Commission of Victoria 1991c), the Commission suggested that, as far as sexual assault trials were concerned, jurors would be better able to apply the law correctly if they could have a written summary of the relevant principles with them in the jury room. The task of understanding the long *oral* directions given by judges, especially where many of the terms are foreign, could only be improved by having a list of these principles 'on hand'. However, this recommendation has been met by the judiciary with less than enthusiasm; they have argued that the varying circumstances of cases precludes the possibility of any standard written instructions being formulated.

Nonetheless, before predictions can be made regarding the effect these new directions will have on the attitudes of both the judiciary and jurors, one must consider the actual substance of the relevant sections, and perhaps more importantly, the discretionary power which trial judges have in presiding over criminal matters.

With regard to section 61, the 'late complaint' direction, the following addendum is attached:

> (2) Nothing in sub-section (1) prevents a judge from making any comment on evidence given in the proceeding that it is appropriate to make in the interests of justice.

Interestingly, the draft bill for the Crimes (Sexual Offences) Act did not contain this clause. It appears that for the judiciary to accept the new direction in law, assurances needed to be given that a discretionary power still existed. Therefore, a judge has the power to make any comment about the evidence that they feel should be made in the 'interests of justice'; for example, a judge could quite legitimately say to a jury with regard to a 'late'

complaint that: 'There may be good reason why the witness delayed telling someone about the offence; however, in this case, there is not.'

Now, whether this goes against the 'spirit' of the legislation or not, this comment can, and may well be made if the judge is not convinced that there is a good explanation for the victim's decision.

The judiciary has also yet to be tested on their interpretation of section 37 of the Crimes Act, and the meaning of 'normally' in the text of the section. It is certainly not hard to imagine a defence barrister putting to a jury that the case in question is 'unusual' in that the woman was still consenting, or freely agreeing, even though she was doing and saying nothing. The barrister may argue that the accused had engaged in consenting sex with the complainant before in circumstances where there has been little verbal or nonverbal communication. As is the case with all criminal trial proceedings, the onus will then be placed firmly on the prosecution to prove beyond reasonable doubt that this was not the case.

As part of the Rape Evaluation, we will be examining the extent to which judges have implemented the legislative changes, particularly in cases where consent, or belief in consent, was the central focus of the case. We are further proposing to conduct a detailed analysis of rape prosecutions, which will in part concentrate specifically on the themes and legal issues raised in rape trials. This will repeat the DPP study conducted by the Law Reform Commission as part of the 'Rape Reference' last year. We are also interested in exploring trial outcomes, and whether the influence of the new legislation can explain any change that may exist.

Conclusion

These reforms have the potential to go a considerable distance towards meeting the overriding objectives of improving the experience for sexual assault victims who go through the criminal justice system, and, more generally, of legally affirming every person's right to refuse to engage in sexual activity . The Rape Reform Evaluation Project will make every effort to ensure that the necessary feedback is obtained and directed to the appropriate individuals and organisations. Clearly, it is only with their cooperation and commitment that *real* reform at the 'ground level' can be achieved.

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LEGISLATING TO CHANGE SOCIAL ATTITUDES: THE SIGNIFICANCE OF SECTION 37(A) OF THE VICTORIAN *CRIMES ACT 1958*

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> Man is the hunter; woman is his game:
> The sleek and shining creatures of the chase,
> We hunt them for the beauty of their skins;
> They love us for it, and we ride them down.
> (Alfred Lord Tennyson, *The Princess* vol. 1, p. 147).

THERE IS NOTHING NEW IN STATING THAT THE THEMES OF DOMINANCE and submission in heterosexual relationships are constantly reinforced in literature, film and television. From popular romance novels to 'men's' magazines, there are two main assumptions which circumscribe what is generally perceived as 'normal' sexual behaviour. The first is that sexuality is somehow centred upon the act of penetration; and the second is that women enjoy being 'coerced' or persuaded to engage in sexual intercourse. There is a general belief that the art of seduction allows for any reservations on the part of the woman to be rightfully overcome by the persistence of the man.

These conceptions of sexuality have shaped the context of how rape has been defined by the criminal law. The traditional masculine concern in defining rape has been that the act of sexual penetration can be seen as either physically pleasurable and lawful, or unwanted and unlawful depending upon the whim of the woman involved.

In Australia, the crime of rape (or sexual assault in certain jurisdictions) is generally defined as some form of sexual penetration, be it vaginal, oral or anal, without the victim's consent. This emphasis on whether or not the victim consented to sexual penetration has

reflected male assumptions about women's sexuality rather than women's own experience. Women continue not to report rape partly because of the justifiable fear that the legal system will not view the situation from their point of view.

Changing the law of rape to take into account women's perceptions of sexual violation necessitates challenging the two assumptions of 'normal' heterosexual intercourse. This is, of course, not an easy task, but recent changes to the *Crimes Act 1958* (Vic.), initiated by the Law Reform Commission of Victoria, provide a vehicle for addressing the problematic nature of current conceptions of consent.

This paper will explore how section 37(a) of the Crimes Act has altered the presumption of consent in rape trials and how it has paved the way for a new understanding of sexuality based on a communicative rather than a penetrative/coercive model.

The Penetrative/Coercive View of Sexuality

Various authors in recent years have explored the notion that social beliefs and attitudes are crucial in determining whether an act should or should not be labelled rape. Before examining how judges and academics have defined rape, it is necessary to look more closely at the assumptions which underlie how sexuality is viewed in our society.

Smart (1989) emphasises the importance of the concept of phallocentrism in defining sexuality. She writes that sexuality:

> is comprehended as the pleasure of the Phallus, and by extension the pleasures of penetration and intercourse—for men (Smart 1989, p. 28).

> Female pleasure is, it would seem, largely incomprehensible in a phallocentric world. Usually, however, it is presumed to coincide with the pleasure of penetration and intercourse. While this may indeed be a form of pleasure, the mistake which is too easily made is to assume that penetration, being pleasurable to men, must always be pleasurable to women (Smart 1990, p. 9).

The importance placed on the act of penetration is mirrored in the language used to describe sex:

> One thing all words about sex have in common, the four letter words, medical words and euphemisms, is that they include the idea of penetration of a vagina by a penis. You haven't really 'made love' unless this has happened. Sex without penetration is considered to be 'foreplay' or 'petting'. No matter how exciting sex is or how many orgasms a woman has, the process is not complete without penetration. The use of language reflects and reinforces the idea that the goal of every mature sexual encounter should be penetration and orgasm (Kitzinger 1983, p. 36).

The sexual pleasure of women is thus assumed to coincide with the male definition of sexuality. This assumption can be found in the general belief that rape must be pleasurable for women because it involves penetration. Gager and Schurr write that:

> [p]robably the single most used cry of rapist to victim is 'You bitch . . . slut . . . you know you want it. You all want it' and afterward, 'there now, you really enjoyed it, didn't you?' (Gager & Schurr 1976, p. 244).

Other authors have examined the link between cultural values celebrating male aggression and rape. Brownmiller (1975) describes rape as a structured mechanism of male social control over women which keeps the latter in a constant state of fear and intimidation. She argues that 'the ideology of rape is fuelled by cultural values that are perpetuated at every level of our society' and condensed in the term 'machismo' or 'the theory of aggressive male domination over women as a natural right' (1975, p. 389).

More recently, MacKinnon (1989) has challenged the view that rape is a crime about violence, not about sex. She argues that sexual intercourse must be seen as a social construct and our society has constructed a sexuality which can be and is often linked to violence. From MacKinnon's perspective, women are socially denied the right to refuse sex and, therefore, attempts to draw a sharp line delineating what is rape and what is not are doomed to failure.

It certainly appears that 'normal' heterosexual intercourse has been constructed in terms of a submissive, receptive woman and an active, aggressive man. Films, television and literature reinforce this model by portraying women as enjoying sex only after their sexuality has been awakened by a determined lover who overcomes their resistance.

Yet, at the same time, women are viewed as agents of precipitation; their very appearance can be portrayed as arousing men's sexual desire. This explains why in rape trials there is such an emphasis on the victim's actions. The Real Rape Law Coalition writes that:

> a woman's engagement in everyday social activities—such as accepting a car ride, a dinner invitation, making a friendly response to conversation—or the mere fact of her physical appearance, is misread or intentionally rationalised on the part of the perpetrator as a sign of consent to participate in anything and everything, including sexual intercourse (cited in Law Reform Commission of Victoria 1991b, p. 161).

Taylor writes that men: 'have placed responsibility for sexual aggressiveness on women by imputing to women a desire to be taken forcefully' (1987, p. 111). This is borne out by a comment in the *Yale Law Journal* which effectively justifies the use of force in sexual penetration on the basis of women's 'needs':

> [a] woman's need for sexual satisfaction may lead to the unconscious desire for forceful penetration, the coercion serving neatly to avoid guilt feelings which might arise after willing participation ('Note' 1952, p. 67).

The penetrative/coercive model of sexuality in which women simply inspire and react to sexual desire rather than experience it, represses women's ability to explore sexual pleasure and undermines women's credibility in rape trials.

The Presumption of Consent

Although terminology may differ between Australian jurisdictions, in general, in order to establish the crime of rape, it is necessary for the prosecution to prove beyond reasonable doubt that the victim did not consent to sexual penetration by the accused.

A short outline of the development of the law relating to rape exemplifies how the penetrative/coercive model of sexuality has led to a presumption of consent. That is, it is

presumed that unless a woman strongly resists her assailant, she is consenting to sexual penetration.

Originally, the crime of rape was defined as the carnal knowledge of a woman against her will. This necessitated the use or threat of force or violence by the accused and resistance by the victim.

In the mid-nineteenth century, English courts began to use the concept of 'lack of consent' in order to include within the definition of rape the situation where the victim was asleep or inebriated or where there was fraud as to the nature of the act.

However, the change from the prosecution having to prove that penetration occurred 'against the will' of the victim to 'without the victim's consent' did not in reality alter the assumption that unless a woman resisted or struggled in some way, the act of penetration could not amount to rape.

Various judges have referred to the amount of 'resistance' a woman must show in order to prove that she did not consent. For example, in *R v. Howard* [1965] 3 All ER 684, the English Court of Criminal Appeal stated:

> the prosecution in order to prove rape, must prove either that [the victim] physically resisted, or if she did not, that her understanding and knowledge was such that she was not in a position to decide whether to consent or resist (p. 685. *See also R v. Chadderton* (1908) 1 Cr App Rep 229; *R v. Harding* (1938) 26 Cr App Rep 127; *R v. Lang* (1975) 62 Crim App Rep 50).

More recently in *R v. David Ram Singh,* the Victorian Court of Criminal Appeal stated:

> The absence of any marks on [the victim's] body, apart from the two love [sic] bites and her failure to call out . . . for help was evidence that the jury had to consider on that issue. Indeed it is a remarkable feature of the case that in spite of her evidence that she was forced to have intercourse there were no signs of force having been used on her body and no evidence of any struggle or resistance or of disarrangement of the furniture in the flat (No. 226 of 1990, 18 December 1990, pp. 7–8).

This passage seems to imply that not only must there be physical resistance, it must be such as to result in the disarrangement of furniture (Scutt 1991, p. 20).

Occasionally, judges have remarked that it is not necessary for the prosecution to prove that consent was vitiated by force, the fear of force or fraud and that there may be other occasions where the victim did not consent (*R v. Olugboja* [1981] 3 All ER 443, p. 448; *R v. Maes* [1975] VR 541, p. 548).

Provisions in the Australian Capital Territory (section 92P(2) *Crimes Act 1900* (NSW) in its application to the Australian Capital Territory), New South Wales (section 61R(2)(d) *Crimes Act 1900*), South Australia (section 48 *Criminal Law Consolidation Act 1935*), Western Australia (section 324G *Criminal Code 1913*) and now Victoria (section 37(b)(i) *Crimes Act 1958*) also state that a failure to offer physical resistance to a sexual assault does not of itself constitute consent. This is fine in theory, but because of the operation of the assumptions about sexuality, it would be a rare case indeed where a conviction for rape could be obtained in circumstances where no force or no threat of force was used.

In reality, cases involving 'date rape' or involving situations where a woman has submitted to sexual penetration because of the application of economic pressure, or by virtue of the assailant's position of authority, very rarely find their way into the courts. As the Law Reform Commission of Victoria (1991b, p. 41) points out, police crime statistics indicate that only a minority of complaints of rape result in charges being laid and a substantial amount of 'filtering' still takes place (1991b, p. 51). In its study of rape prosecutions which occurred in 1989, the Victorian Law Reform Commission found that of those incidents which resulted in charges being laid, 85 per cent involved allegations of physical coercion. The remaining incidents either involved allegations of verbal threats or fraud, or claims that the victim was either drunk, drugged or asleep at the time of the alleged rape (1991b, p. 69).

Recent studies reveal that most rapes are accompanied by only minimal violence and are usually perpetrated by an assailant known to the victim (Waye 1992, p. 96). Yet the law still centres on whether the victim showed a manifest refusal or resistance in order to prove non-consent.

In jurisdictions outside Victoria, it remains the case that because the law sees lack of consent as the only thing distinguishing rape from sex, there is an onus on the woman to show that she effectively communicated lack of consent to the accused. Fisse (1990) writes:

> although in theory D is not entitled to make any presumption of consent, the fact that P must prove non-consent as part of his case means in practice that if V consciously submits with passive acquiescence, subject only to a mental reservation, D should be acquitted unless V's acquiescence is explicable in the context as arising from fear of the consequences of resistance. V must make it clear to D, up to the moment of intercourse, that she does not consent, but in so doing she is not required to incur the risk of brutality (Fisse 1990, p. 179).

Before examining how the introduction of section 37(a) has changed this presumption of consent in Victoria, it is worthwhile exploring precisely what conduct has been viewed by the courts as constituting consent.

Consent as Physical Inaction

In *R v. Holman* [1970] WAR 2, Jackson CJ stated that consent: 'to intercourse may be hesitant, reluctant, grudging or tearful, but if [the woman] consciously permits it . . . it is not rape (p. 6). While the English Court of Appeal stated in *R v. Olugboja* that there was certainly a difference between consent and submission, it also stated that consent:

> covers a wide range of states of mind in the context of intercourse between a man and a woman, ranging from actual desire on the one hand to reluctant acquiescence on the other (p. 448).

Even in the case of *R v. Maes* where Nelson J talked of consent as 'active acquiescence' rather than submission, he went on to say that a woman may convey her consent to a man 'by the very fact that she remains physically inactive' (p. 548).

In the academic field, Fisse (1990, p. 179) also refers to the situation where a woman 'consciously submits with passive acquiescence' as not constituting rape. That statement follows from his earlier comment that:

> [o]utward reluctance to consent may be no more than a concession to modesty or a deliberate incitement to D to persuade a little harder (Fisse 1990, p. 178).

Thus, the 'lie back and think of England' syndrome seems to be alive and well in relation to the way in which consent is viewed by the courts and legal academics. A woman's physical inactivity or passive acquiescence is considered enough to signal consent. In its submission to the Law Reform Commission, the Real Rape Law Coalition writes:

> [There is a proposition] that in both sex and rape the woman's role consists in having something done to her, that being the male act of penetration. Consequently, no matter what she says, if she 'lies there' during the assault, and does not injure the assailant or sustain extensive physical injury herself, that is considered to be consistent with a woman's part in 'consensual' sexual relations. (Law Reform Commission of Victoria 1991b, pp. 163–4).

In most jurisdictions there are now provisions defining those circumstances which may negate consent or which show that there has been no free agreement to sexual penetration. These provisions mostly follow along the lines of the common law in relation to consent being negated by force or fraud.

However, by providing a negative definition of consent these provisions do not solve the considerable confusion as to what is and what is not consent. The notion remains that 'passive acquiescence' or 'physical inaction' usually equal consent.

The presumption of consent running through the case law dealing with rape obviously needs to be altered. It is now necessary to turn to an exploration of recent changes to the Victorian Crimes Act in order to identify how the penetrative/coercive view of sexuality can be changed to take women's experience into account.

Recent Changes to the Victorian Crimes Act

As a result of a number of reports by the Victorian Law Reform Commission between 1987 and 1990, the Victorian Crimes Act was amended midway through 1991 and again at the beginning of 1992.

The *Crimes (Sexual Offences) Act 1991*, which came into force on 5 August 1991, repealed and replaced nearly all the existing provisions relating to sexual assaults. With regard to the crime of rape, the Act expanded the definition of sexual penetration to include penetration of the anus or vagina by any part of the body, thus extending the crime to acts involving digital penetration.

The *Crimes (Rape) Act 1991*, which came into force on 1 January 1992, abolished the common law offence of rape as well as the previous statutory offence of rape with aggravating circumstances. The maximum penalty for rape was increased to 25 years. This Act also repealed and redefined the provisions dealing with rape and indecent assault without losing the main amendments inserted by the *Crimes (Sexual Offences) Act 1991*.

Consent is now given a 'negative' definition in section 36 of the Crimes Act. This section states that 'a sexual act with another person takes place without that person's

consent if she or he does not freely agree to it'. This is followed by a set of circumstances in which a person is taken not to be freely agreeing to an act. The real change to the law, however, occurs in relation to the jury directions on consent:

> 37. In a relevant case the judge must direct the jury that—
>
> (a) the fact that a person did not say or do anything to indicate free agreement to a sexual act is normally enough to show that the act took place without that person's free agreement;
>
> (b) a person is not to be regarded as having freely agreed to a sexual act just because—
>
> (i) she or he did not protest or physically resist; or
>
> (ii) she or he did not sustain physical injury; or
>
> (iii) on that or an earlier occasion she or he freely agreed to engage in another sexual act (whether or not of the same type) with that person, or a sexual act with another person;
>
> (c) in considering the accused's belief that the complainant was consenting to the sexual act, it must take into account whether that belief was reasonable in all the relevant circumstances.

In its Report No. 43, the Victorian Law Reform Commission of Victoria writes that the introduction of these jury directions was intended to:

> formalise good practice to ensure that a consistent approach is taken to the issue of consent (1991c, p. 8).

The jury directions set out in section 37(b) generally bring the law into line with practice in other states. Section 37(c) deals with that which can be taken into account in assessing whether an accused honestly believed that the victim was consenting. What is truly significant, however, for the purposes of this paper, is the concept of consent expressed in section 37(a). According to this direction, where a woman 'lies back' and does nothing to indicate free agreement, this is normally enough to show that she is *not* consenting. Physical inactivity or passive acquiescence now means non-consent rather than the opposite. The use of the word 'normally' in this section seems to imply that the presumption of non-consent in such circumstances may be displaced if evidence can be produced showing that for some reason physical inactivity or silence did amount to consent.

Through one provision, therefore, the presumption of consent has been transformed into a presumption of non-consent and social attitudes about dominance and submission challenged. The Victorian Law Reform Commission makes no secret of its desire to use these jury directions as an educative vehicle:

> Another benefit of expressing these directions in legislative form is that the community in general will be made aware of what type of evidence is, or is not, sufficient to prove lack of consent (1991c, p. 8).

The Commission also states that:

> it is not acceptable for men to cling to outdated myths about seduction, sexual conquest and female sexuality (1991c, p. 16).

It is significant that this jury direction is mandatory; a judge *must* direct the jury that the absence of any indication of free agreement normally means the absence of consent in 'a relevant case'. It is to be expected that this direction will be used often, as consent is by far the most common defence raised in rape trials (Law Reform Commission of Victoria 1991b, p. 86).

The Victorian Bureau of Crime Statistics and Research is currently documenting the use and effect of jury directions under section 37. It is too early to say at this stage whether or not the direction under section 37(a) will have an effect on the way in which rape trials are run. What is important, however, is that the provision exists and, if nothing else, it will cause judges and juries to reassess the former notion of 'passive acquiescence' as akin to consent.

The Significance of Section 37(a) in Relation to Social Attitudes

The importance of section 37(a) in relation to social attitudes concerning sexuality is that the concept of 'free agreement' now means that consent must be positively communicated either verbally or by unequivocal non-verbal behaviour. It is no longer open for an accused to claim that he thought the victim was consenting simply because she did not resist.

This alteration to the presumption of consent has wider repercussions in relation to the penetrative/coercive model of sexuality. The necessity for consent rather than non-consent to be communicated opens the way for an alternative model of sexuality to come to the fore.

A 'communicative' model of sexuality leads to women becoming agents of their own sexuality rather than simply conforming to a male version of sexual pleasure. It enables a woman's lack of consent to a man's sexual actions to be respected.

Pineau (1989, p. 232) argues that both 'science' and women's own perceptions concur in concluding that aggressive incommunicative sex is not what women want. Where such sex takes place, the rational presumption is that it was not consensual:

> it seems to me that there is a presumption in favour of the connection between sex and sexual enjoyment, and that if a man wants to be sure that he is not forcing himself on a woman, he has an obligation either to ensure that the encounter really is mutually enjoyable, or to know the reasons why she would want to continue the encounter in spite of her lack of enjoyment (Pineau 1989, p. 234).

A communicative model of sexuality implies that there must be ongoing positive and encouraging responses by both parties. Pineau (1989, p. 235) states that sexual interaction should be looked at 'as if it were a proper conversation rather than an offer from the Mafia'.

Section 37(a) reinforces this model in that it can now be presumed that where communicative sexual interaction does not occur, there was no consent.

Instead of focusing on whether or not the victim resisted or whether or not she was in a fearful or intimidated state of mind, the way is now open for the prosecution to home in on what actions the accused took to ensure that there was free agreement to sexual penetration:

> [The cross-examiner] could use a communicative model of sexuality to discover how much respect there had been for the dialectics of desire. Did he ask her

> what she liked? If she was using contraceptives? If he should? What tone of voice did he use? How did she answer? Did she make any demands? Did she ask for penetration? How was that desire conveyed? Did he ever let up the pressure long enough to see if she was really interested? Did he ask her which position she preferred? (Pineau 1989, p. 241).

A communicative model of sexuality emphasises the importance of mutuality of desire and is far better suited to women's experience of sexual pleasure than the penetrative/coercive model. It also provides a framework for the legal system to appreciate that 'passive acquiescence' and 'physical inactivity' is not enough to establish consent to sexual penetration.

Conclusion

Sally Brown, the Chief Magistrate of Victoria, has been quoted as saying:

> Legislation alone doesn't change culture, but it can be a powerful tool (Law Reform Commission of Victoria 1991b, p. 170).

Section 37(a) is a 'powerful tool' in that it provides an opportunity to reassess the assumptions pertaining to 'normal' sexuality.

The educative role of rape reform legislation is always significant in that it means an immediate change in the behaviour or practice of those involved in the legal system. The inclusion of section 37 in the Crimes Act means that judges have no choice except to comply with the mandatory requirement to give jury directions in 'a relevant case' whether or not there is individual agreement with the policy objectives of the reform.

Changing the presumption of consent means that there must also be an immediate change in trial practice and procedure. This will hopefully have a flow on effect in that other professionals, notably the police and hospital personnel will become aware of the effect of section 37 in changing the law as to consent.

Other Australian jurisdictions may benefit from examining the reforms to the Victorian law of rape, but it must be remembered that rape laws exist in a social context and case law inevitably reflects cultural norms and values. Section 37(a) has changed the presumption of consent in the legal context. It now remains to be seen whether or not it can also inspire a reassessment of social attitudes towards sexuality.

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SEXUAL OFFENCE INTELLIGENCE: PROACTIVE APPROACHES FOR POLICE

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WITH THE CURRENT CLIMATE OF VIOLENT ATTACKS AGAINST WOMEN, children and the elderly in their homes, the community looks to government to provide a better means of protection and detection. Increased police numbers are discussed on an annual basis and the lengths of sentences given to convicted persons draw significant space in the media. However, other agencies also have a role to play in the investigation of serious crime. Through the development of new techniques and information storage systems, the State Forensic Science Laboratory (SFSL) in Victoria is one such organisation assisting the criminal justice system.

Although the incidence of reported sexual crime is approximately 1,000 per year (Victoria Police 1992) only about 350 cases per year are delivered to the SFSL for forensic examination. The large discrepancy in these figures is generally explained by a lack of evidence. The complainant may not report the incident for several days or longer for a variety of reasons. Bathing or washing, to rid the body or clothing of any connection to the assault, lessens the possibility of detecting biological material. In cases of incest, it may be many years between the offence and the report and often the scene of the attack is the offender's own bed. Additionally, the examination of exhibits in sexual crimes may not yield any semen despite rapid reporting to the authorities and a prompt medical examination. In such cases, the offender may have difficulty obtaining or maintaining an erection or be unable to ejaculate. Increased awareness of the potential probative value of semen may influence the offender to attempt to render it inaccessible to the scientist. Use of a condom, cleaning up the victim by washing, having the victim swallow the ejaculate following fellatio or simply not ejaculating are methods encountered.

Of the crimes submitted, 50 per cent will have suspects and approximately 20 per cent will never proceed. The remaining 30 per cent represent cases with no known offender. Due to staff shortages and pressing deadlines, it is often tempting for the forensic laboratory to only concentrate on cases with offenders or urgent investigative requirements. Nevertheless, the latter 30 per cent of non-offender cases represent real victims and, although extensive scientific analysis is not required, the exhibits are 'screened' for potential evidence and those samples thus generated are stored awaiting future analysis should a suspect be identified. This process has been on-going at the SFSL for the past nine years.

In approximately 75 per cent of cases presented at court, consent is the issue in dispute (Victoria. Director of Public Prosecutions 1992, pers. comm.) and, therefore, little scientific analysis in regard to the biological evidence is required. The presence or absence of damage on articles of clothing is far more significant. It is the remaining 25 per cent of cases that require an extensive scientific examination to assist in exculpating or inculpating any suspects presented. However, any case, regardless of defence, may contain information linking that case or individuals to other serious crimes.

It is in the area of linking cases at the earliest possible point in an investigation that the SFSL is endeavouring to establish a sexual offence intelligence capability. Such proactive analysis is important when little other information is available to pre-determine said associations. Once in place, a significant level of detection will be available.

Background/Development

Traditionally, the provision of an intelligence service has been based on *modus operandi* (MO) information supplied by police investigators. However, forensic laboratories have a large amount of information on cases in their archives which has the potential to disclose information that would be of considerable assistance to criminal investigations.

In 1983, the SFSL contacted investigating police within the state of Victoria by means of a questionnaire, seeking information on the type of offence and the recent medical/sexual history of the complainant. The motivation for obtaining such information was born out of the need to provide a more professional scientific service to the courts. Although comprehensive data of spermatozoa survival following sexual intercourse in a variety of orifices had previously been published (Willott & Allard 1982; Enos & Beyer 1978; Lewington & Williams 1979), not all the data reflected casework situations as experienced by the SFSL.

Higgs and Willott (1988) from the Metropolitan Police Forensic Science Laboratory, London, developed a computer system described as the 'Sexual Assault Index'. It was hoped that this 'index' would provide the means to collate and rapidly re-call data obtained from the SFSL manual questionnaire system. A copy of the program was graciously supplied to the SFSL, but unfortunately, it concentrated on MO-based questions and did not answer those scientific questions considered to be of paramount importance. Although a significant development, the information comprised only a small proportion of MO questions already offered in the Crime Department of Victoria Police.

In an attempt to include some MO information that still had a high degree of impact on the scientific interpretation of results, a new and essentially complete form was produced and is still in use today. Once completed by the investigator, it is submitted to the SFSL along with a copy of the complainant's statement and details of any specific examinations required. This entire package assists the scientist in the determination of which tests are

needed to obtain the maximum evidence available. It is also the beginning of the intelligence process. The concept of sexual offence intelligence is not unique (Keating 1988; Keating, Higgs, Willott & Steadman 1990; Davies 1991), but the package described in this paper incorporates a team approach which includes the investigator, medical officer and forensic scientist.

The Sexual Offence Intelligence System

The Sexual Offence Intelligence system (SOI) has three main objectives:

- to provide scientific information on aspects of sexual offence cases as required of an expert witness in a Court of Law.
- to provide a database for examining and tracking possible serial offences and offenders; and
- to provide for a professional approach to casework management, with particular emphasis on priorities and efficiencies.

To achieve these objectives, the SOI consists of a manual questionnaire (as supplied by Police, medical and scientific staff) and two computer programs capable of rapid cross-referencing and searching.

Never intended to replace MO systems, but rather to complement them, the SOI should provide for the possible matching of cases when MO information is vague or inconclusive. Naturally, a high level of confidentiality exists surrounding all reports and information gathered and supplied.

The manual system

The manual system is dependent on the correct and rapid return of the original questionnaire (RECSO). Once the scientific examination is completed (using conventional techniques), a second form (RESSE) is filled out by the casework manager. If required, a third form (DNA res) is completed by the molecular biology casework manager and details some aspects of the DNA profiling technique. The scope of the information supplied on each form is as follows:

RECSO

- the offence including location, time and date;
- the medical, including medical officer, time and date;
- the complainant's medical history;
- the complainant's recent sexual history including any contact with other partners;
- the use of any lubricants or foreign objects; and
- the offender as described by the complainant.

RESSE

- the samples supplied for examination;
- the condition of the samples (wet, dry);
- the presence of any interfering substances (for example, blood, faeces, saliva, urine) that may inhibit the interpretation of any or no results obtained;
- identification test results for semen; and
- comparative test results (ABO grouping and PGM typing) of seminal stains, swabsticks and blood samples.

DNA res

- information required to set priorities in casework management;
- the strength of the samples submitted based on spermatozoa numbers or the size of blood stains;
- the DNA profiling of blood stains;
- the results obtained
- the progress of the analysis (necessary when court deadlines are being considered).

The computer system

The first computer system incorporates the information from the manual system previously described. Data is recalled by using an 'ad-hoc' menu of fields in combination with one another. This system is currently run on a Prime mini-computer, model 9750, and operates under Prime Information developed in Info/Basic using a system development tool 'Advanced Generation'.

The second computer system is a database generated from the DNA profiles of samples supplied by the original casework manager. Included are samples from suspects, complainants and any partners. The files are searched immediately the new DNA profile has been entered. Simply, the following question is asked: 'Has this profile been seen before?'. Any matches obtained (within certain tolerances) are then manually retrieved and reviewed for any probative value on even stricter criteria. This system is currently run on a Personal Computer using dBase IV software.

On a routine basis or when urgently requested, the files are searched for evidence of serial offences or scientific knowledge required in court.

The SOI seeks to answer questions pertaining to scientific and statistical information for courts of law. These include: the survival time of spermatozoa in body cavities; the ageing of seminal stains; the success rate of conventional blood grouping/typing or DNA profiling given particular conditions such as the relative strength of the samples tested; the success of detecting seminal stains after machine or hand washing; the effects of personal hygiene on the detection of spermatozoa; the effect of interfering substances (such as contamination) on any expected results; and the number of cases that have been examined where combinations of sexual acts have occurred; for example, oral and anal.

The SOI also assists in operational investigations by questions based on the MO information from the forms completed such as time, date, suburb of the offence, type of motor vehicle used, words spoken, weapon used, type of sexual acts and unusual characteristics of the offender (any combinations are possible) and by comparison of the scientific results on either a *case vs case* or *case vs suspect* criterion.

Scientific Evidence

In order to have an understanding of the capabilities of the SOI, a brief review follows of the types of biological scientific testing that is currently in use at the SFSL. The evidence available falls into one of two categories.

Conventional systems

The forensic biologist not only analyses exhibits from individuals but can attend, examine and collect for further testing, various biological substances from crime scenes. Such exhibits may include articles of bedding, clothing, furniture and motor vehicles or external areas that have been identified as the possible crime scene. Most testing at scenes is of a presumptive nature and requires confirmation in the more controlled environment of the laboratory. Some are immediately interpretative and provide assistance to the investigator in the field. Blood stain pattern (blood dynamics) interpretation is such an example.

Blood, semen, hair, skin, saliva, nails and vaginal secretions provide, to varying degrees, information that categorises individuals based on biochemical and/or immunological markers. Urine, faeces and vomit, however, are substances that can only be identified as such, and therefore only provide corroborative evidence. The ability of any of these tests to give meaningful results diminishes with the age of the stain, but this trend can be arrested to some degree if the samples of interest are identified and then stored away in ideal conditions (usually $-70^{o}C$).

The discriminating power of a technique is its ability to differentiate between individuals selected at random. Although having sufficient discrimination to exculpate individuals,

techniques in the conventional category have limited use in inculpating individuals with particular crimes. The analysis of semen, for example, has only two blood grouping/typing systems in use at the SFSL. In contrast, blood has a wider range of polymorphic systems from which to exculpate an individual. DNA profiling provides an even greater degree of discrimination. However, when semen is identified in the absence of spermatozoa, DNA profiling cannot be used and the probative value of the evidence relies on conventional techniques. In one serial rape case in Victoria, at least twenty suspects were eliminated from the inquiry by using conventional methods (PGM typing).

In general, the conventional methods are cost-effective and the results are obtained rapidly thus proving to be a substantial investigative tool. It is these results that are entered on the RESSE form in the SOI system. For further detailed information regarding forensic biology the reader is directed to the review by Raymond (1993).

DNA profiling

It is because of the inability to adequately distinguish between individuals using conventional techniques that DNA profiling has been utilised. DNA profiling has undergone a continuous state of flux ever since it was first introduced. Controversy and change have been ongoing; not surprisingly, considering the overwhelming weight of evidence produced if not challenged.

The traditional method associated with the technique used at the SFSL is called Restriction Fragment Length Polymorphism (RFLP). The DNA is cut into small fragments by an enzyme (restriction endonuclease), separated according to size by applying an electric current across an agarose gel matrix, transferred to a stronger matrix (the Southern blot) and identified by annealing radioactive labelled complementary DNA fragments (or probes) to the fragments separated. The resulting pattern when visualised on X-ray film is similar to the 'bar-codes' observed on supermarket articles. Although providing a high discriminating power, it is also time consuming and requires a relatively large sample. In addition, problems are encountered when the sample tested is mixed with substances such as soil or faeces. Interpretation is achieved by placing 'bins' or 'windows' around each band visualised on the x-ray film. RFLP results are recorded on the dBase IV computer program.

In recent times, new technology has been developed that allows smaller samples to be profiled at a lower cost and in a shorter time. Second generation DNA profiling uses the Polymerase Chain Reaction (PCR) as an integral part of the procedure. DNA is prepared from samples and amplified to provide a workable number of copies of the original. Interpretation can be either by a 'dot-blot' method where known DNA types are impregnated into a paper matrix, or by the separation methods similar to those used in RFLP technology. The final result is more easily interpreted than RFLP analysis although contamination from material such as vaginal secretions must be taken into account by analysing all relevant blood samples; that is, complainant, suspect and any other sexual partners.

This second generation DNA technique is the basis of the SOI system. The results obtained can be entered on either of the computer systems. Since results can be obtained in a shorter time frame than for RFLP analysis, DNA profiling is now a useful investigative tool. For further details on DNA profiling the reader is directed to the review by Gutowski (1993).

Casework Applications

As previously discussed, the main thrust of the SOI system was to provide information for the scientist when attending court and to assist in the identification of serial offences and/or offenders. It is the latter aspect that has direct impact on investigative policing.

Serial attacks can be indicated through MO information and a list of such crimes given to the SFSL. Conventional and DNA testing may be required to confirm the link between each offence. In some instances, the number of cases originally attributed to a particular offender have decreased. The SOI system aims to accelerate this process and also, as has been the case already, widen the inquiry.

Over the past few years, a serial rapist was attacking women primarily in one or two neighbouring suburbs of Melbourne. Originally the cases were linked by the investigating police via MO information and a conventional and DNA profile provided by the SFSL. As part of normal procedure, another rape case was brought to the SFSL from a substantially geographically separated suburb. The urgency to process this case arose from the need to eliminate a suspect being questioned. Although the suspect was indeed eliminated, the seminal stain located on the victim's clothing was established to have the same PGM type and PCR type as the serial offences previously analysed. Following this information, the direction of the investigation was altered and the inquiry widened. Eventually, a suspect was located and charged with all of the offences. Prior to the SFSL intelligence, no connection between the cases had been made.

The importance of highlighting such an example is to stress the need for cooperation and a team approach to investigating crime. Although the SFSL did not provide the identity of the offender (diligent police work provided this link), without the scientific input it would have been doubtful if any connection between the various suburbs would have been made. If a suspect had been previously convicted of a sexual offence and had supplied a blood sample as a consequence of that prior event, then the SOI system should have identified that individual.

The numbers of cases in the database are as yet very limited and, therefore, the full impact on investigation is yet to be fully tested. Other examples of serial offences have occurred over the past five years indicating a need for an operational system. Additionally, if a case is to be contested on consent, or the victim has by public opinion a degree of lack of respectability, then an acquittal or a failure to prosecute may be the outcome. However, if the same suspect is identified as having participated in several similar-fact crimes of sexual assault then each victim gains credibility and a successful prosecution is more likely. Similarly, if a suspect considered to be a pillar of the community is suspected of one crime it may be put aside. However, if there are a multitude of offences confirmed to be caused by the same individual, public perception changes. Paedophiles may generate a large number of cases. In one such case, over seventy charges were prosecuted involving multiple victims.

Although not supplying absolute proof of inclusion, the SOI system should eliminate the innocent and provide additional investigative information on other crimes and individuals. The application to casework should not be limited to sexual offence cases. Arson, homicide and drug trafficking investigations should also have a direct application to such an intelligence database.

Future Applications

As the need for information exchange grows, so does the requirement to centralise or nationalise that information. Particularly in the justice system, crime and criminals have no respect for jurisdictional boundaries. Davies (1991) has noted that in the United Kingdom the advent of DNA profiling has drastically changed the quality of evidence in sexual offence crimes. There has been an increase in the number of cases attributed to certain offenders and an acceptance of the recidivist nature of a significant proportion of sexual criminals.

Another avenue to providing evidence of serial offences or offenders has been developed in both the USA (the Federal Bureau of Investigation at Quantico) and in the United Kingdom (by the Metropolitan Police Forensic Science Laboratory and University of Surrey). These processes are known respectively as the Violent Criminal Apprehension Program (VICAP) and Offender Profiling and are essentially based on behavioural factors leading to the acquisition of knowledge about the offender (Hazelwood & Burgess 1987; Canter 1989; Canter & Heritage 1990; Davies, 1991). The offender profile is a weighted list of offender characteristics defined, at least in the United Kingdom model, by indicators of the extent and constituents of his criminal career, the aggression displayed, the amount and type of the language used and the nature of the sexual component.

VICAP is essentially a data-capture system and the information gained is used in offender profiling or Criminal Investigative Analysis (CIA). Based on the premise that the behaviour exhibited by an offender at the scene of a crime reflects personality, the CIA process is designed to provide a number of services to investigators including the provision of a psychological profile of the offender.

At present, offender behavioural profiling has little evidential application but may be useful as an investigative tool when little else is available. However, a combination of both these techniques and the SOI system should be a significant investigative aid. Victoria Police are currently intending to establish a Victorian Centre for the Analysis of Violent Crime with a view to eventually establishing a National Centre for the Analysis of Violent Crime (NCAVC). Incorporated into this proposal should be the Violent Offender Integrated Computer Evaluation system (VOICE).

The VOICE proposal will integrate all aspects of intelligence information. Detectives in the field will be equipped with notebook computers that have software covering the types of questions asked in both the VICAP and SOI system programs. Once obtained, the information will be electronically transferred to a central computer and disseminated through local area networks (LAN) to various bodies. The crime squads (such as the Rape Squad) will have access to the vast majority of the prepared MO information. Searches can be initiated to cover specifically targeted offences. The SFSL would have access to the information presently contained in the RECSO. Additional information is processed as at present (for example, RESSE, DNA res). Naturally, barriers as to access to parts of the information will be enforced via login restriction. A scientist does not need to have access to all the details of an investigation just as a detective should not be expected to interpret complex scientific results or personal background material.

Since DNA profiling is part of the VOICE proposal, if a national system is to be established then a uniform core of DNA profiling systems needs to be investigated. The SFSL and the Forensic Science Laboratory in Adelaide have collaborated to obtain a research grant from the newly created National Institute of Forensic Science. As a result of

this research, recommendations will be made and, if accepted, provide a mechanism for a national database.

In order to achieve a truly national system, legislative differences between the states will need to be addressed. One area of reform is in the ability to obtain comparative samples from suspects. The *Crimes (Blood samples) Act 1989* (Vic.) has addressed this need in part. It is currently being proposed that an amendment to the Act incorporates the ability to obtain a blood sample from a suspect when it is believed blood or other biological material could have been expected to have been transferred from the victim to the suspect. Examples of such a transfer could be when either a young child or menstruating adult is sexually penetrated, or in the case of serious physical violence causing serious injury or death.

Benefits to the Community

While sex offences make up a small proportion of total offences, their impact is significant. In particular, the perceived public fear when a serial offender is highlighted in the media warrants further attention.

- Serial offences or offenders may be discovered as a matter of course as this system will provide information on cases that had not been previously targeted as serial offences.

- Victims (generally women and children) may recover more rapidly following the detection of the offender. Where serial rapists are involved, a greater number of crimes may be revealed than was first considered, thus helping more victims to cope with rehabilitation. In the case of 'Mr. Stinky', due to the now defunct 6–hour rule (*Crimes Act 1958* (Vic.), section 460) a large number of sex offences attributed to him were not prosecuted. Although the victims have been assured by the investigating police that he was the offender, the lack of conviction or guilty plea to their particular crime has not enhanced their recovery (MacDonald, G. 1989, VOCAL, personal communication).

- Investigations may be geared toward a specific number of crimes as some offences may be eliminated. Police resources can be reallocated and a monetary saving in overtime costs observed.

- Suspects will be eliminated rapidly, thus allowing them to resume a normal life with no adverse consequences. In the collection and retention of any information on individuals, it is expected that the checks and balances in operation ensure confidentiality. It is not the function of the SOI system or indeed legislation to maintain open files on individuals once excluded or whose blood had been originally obtained for elimination purposes.

- That scientists will present up-to-date relevant interpretations to scenarios put by barristers in court. At present, some areas of the scientific literature that are often explored in court are vague and provide little insight to the court in their deliberations

- It is estimated that since DNA profiling was first introduced into routine casework, 25 per cent of all cases submitted gave no result for the test sample. Of the 75 per cent remaining, 50 per cent of the suspects were eliminated. It was also observed that the frequency of guilty pleas or changes to lines of defence has significantly increased in those presented cases for trial (Roberts, H. 1992, State Forensic Science Laboratory, Victoria, pers. comm.). Although the incidence of obtaining results by conventional testing has in the past been low, cases where a result was obtained have been reflected in the successful elimination of a large number of suspects. In all, at least two serial rapists in Victoria in recent times have pleaded guilty to multiple offences when confronted with overwhelming scientific evidence. There would, therefore, be an additional cost-saving in the reduction of court time and/or appearances.

Summary

On examining any intelligence system designed to provide police with information about similar cases or serial offenders, the simple question should always be asked: Do we need intelligence in this area of investigation?

In the case of sexual offence investigation, the recidivism of sex offenders has been the subject of many academic research papers. Most recently, Broadhurst and Maller (1992) studied sex offenders in the Western Australian prison population over the period of 1975–1987. For non-Aboriginal prisoners, the failure rate analysis (probability of re-incarceration) for any offence was 0.35. Estimates of committing further offences of violence, including further sex offences, were 0.21. It was further implied that prior record, age and race were crucial factors, but little evidence of the specialist sex offender were detected.

It is claimed that in the USA, one in three women will be victims of rape or attempted rape during their lifetime (Russell 1982). Although no lifetime rates are available for Australia, rates of sexual victimisation are considered to be higher than for England and Wales (Walker, Collier & Tarling 1990). Since the apparent reporting to relevant authorities is low, fears of crime, whether statistically meaningful or perceived, should never be ignored.

The work of Blumstein, Cohen, Roth and Visher (1986) and Blumstein, Cohen and Farrington (1988), demonstrates that only a few offenders account for the majority of crime, especially serious crime. Furby, Weinrott and Blackshaw (1989) found that the longer the follow-up in examining sex offenders the greater the chance of re-offending. A ten-year follow-up period from such studies was therefore recommended. Burgoyne (1979) found that of 115 rape offenders followed for five years, 58 per cent had at least one subsequent conviction for any offence, while 31 per cent had been convicted of violent offences. A study of adult sex offenders in the USA. (Romero & Williams 1985) found that over half were re-arrested within ten years for any offence and 11 per cent for further sex offences. It was concluded that:

> Individuals with a history of sex offences and sexual assaulters with a history of any violent offences are more likely to recidivism over a long time span than individuals with one sex offence (Romero & Williams 1985, p. 63).

Further studies have been published with similar conclusions (Rice, Harris & Quinsey 1989; Grumfeld & Noviek 1986; Van der Werff 1989). It is suggested that for repeat offenders 'generalists' rather than 'specialists' exist. Findings indicate that recidivists:

> show a pattern of aggressive behaviour—suggesting that aggression rather than perversion is the more salient characteristic of some sex offenders (Broadhurst & Maller 1992, p. 72).

From these studies it appears that the chance of re-offending is a real problem to the community. Therefore, systems such as described in this paper will play an important role in early detection given a sizeable database of blood samples from convicted sex offenders. In many states of the USA, and included in the proposed amendments to the Crimes (Blood Samples) Act 1989, is the requirement for convicted sex offenders considered likely to re-offend to provide a blood sample on release. Under the SOI system described, all cases will be screened for semen and other biological material and a profile placed for each on the database. If the individual re-offends, then the profile from both the semen and supplied blood sample will be recorded as a 'hit'. The investigating detective can then narrow the inquiry and, if warranted, effect an arrest.

It is this process that provides a proactive team-orientated approach to the investigation of sexual offences. The community gains from such a rapid response since the victim observes a degree of finality to one phase of the rehabilitation process. Court times may be reduced with more guilty pleas and the police can be re-deployed to other investigations.

At the very least, a change in direction for the investigation by the inclusion or exclusion of cases may lead to a breakthrough. To some members of the community, if a system so described leads to the arrest of one serial sexual offender or re-offender then the system has proved its worth.

Although consisting of both a manual and computer system at present, it is hoped that, following the introduction of the VOICE proposal, a more rapid system of obtaining data for searching purposes (generally MO information) will be available. When linked to a national database via the NCAVC proposal—which includes MO, behavioural profiling and DNA profiling—a powerful investigative tool will be available to all jurisdictions. Collaborative studies between different States on the standardisation of DNA profiling system (National Institute of Forensic Science Research Project 1992) have begun this national approach.

Conclusion

In conclusion, the SOI system will provide investigators with a new proactive approach in addition to established MO principles. It relies on a coordinated team approach and will aid, not replace, the normal investigative techniques employed in modern police forces.

The SOI system will have proportionally increased impact once the database increases in size. This will improve the chances for a victim of having either the offender identified or having additional victims identified from whom mutual support may be gained. Simply put, the greater the incidence of reporting sexual offences, the greater the database, the greater the chance of detection.

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SEXUAL ASSAULT: THE POLICE INVESTIGATION PERSPECTIVE

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VICTORIA POLICE HAS A VERY IMPORTANT ROLE TO PLAY IN THE ADMINIS-tration of justice when a report of sexual assault is made by the community. The following paper will describe the detective's perspective of our responsibilities, the judicial system and the inhibiting factors that affect the police ability to actually achieve the objectives and expectations of the community.

In our society there is a natural tendency for an adult person to make sexual advances towards another adult, and that is acceptable. It must be recognised, however, that at any stage the person who is approached has the right to say 'no', either by word or action. Where the police investigation commences is, in fact, when that 'no' is ignored. When that occurs we have a criminal offence committed against an individual and, in the author's view, against society.

Police Objectives

It is imperative that the police, in accepting its responsibilities be supported in its endeavours. The objective of any police force is the prevention of crime, the protection of the community and the identification and apprehension of such criminals within the community. It is equally important that the other organisations and support agencies within the administration of justice, understand and appreciate that the procedures adopted by the police force are implemented in accordance with the law, community welfare and expectations of society.

It should be clear to all that the three cardinal rules which apply to the investigation of any criminal offence must be adhered to:

- the first rule of any investigation is to establish whether a crime has been committed;

- if a crime has been committed, the second rule, is that the identity of the offender must be established; and

- the third rule is to establish a connection between the offender and the crime. That nexus must consist of legally admissible evidence that is capable of withstanding the critical examination of an adversarial justice system that places the high burden of proof upon the prosecution.

Police do not have the luxury of readily accepting information on its face value, as it is the police role to eventually present that information to a legal system that is critical in the extreme: a system that is adversarial in nature and one which provides the accused with an advantage over prosecution from the outset.

This advantage is the standard of proof beyond reasonable doubt to be adopted unanimously by the jury of twelve before the accused can be judged guilty of a crime. Once convicted, it is the responsibility of our judges to ensure that they are fully aware of the consequences of such criminal activity, not only to the victim but also to the victim's family and the community. They must also ensure that the penalties of such crimes are representative of the community's expectations.

Duty to inquire

It must be understood that it is not the role of the police to judge guilt or innocence. It is the role of the police to establish the facts in issue and then to present those facts to a court.

This duty to inquire and search for the facts may or may not agree with the allegations as provided by the accuser and, in some cases, it may be impossible to determine the true facts. Even where there is no reason to doubt the word of the complainant, there are many cases that fail to reach the required standards of evidence for a prosecution to be launched. It is here, in this search for the facts, that often leads to criticism of the police. It is not a matter of belief or disbelief; it is a matter of establishing the facts.

The police officer must approach the investigation of reported sexual offences in an objective manner as the investigator would the investigation of a reported fatal accident, fire or the death of a small child in a cot. The officer must inquire as to the facts which may convert the fatal motor car accident into culpable driving, the fire into an arson or the infant death into murder.

Victim handling

The officer who inquires into reported sexual assaults must be sensitive to the delicate physical and emotional state of the victims. The police force aims to educate its members and allocate appropriate specialised units to coordinate victim welfare and the application of investigative procedures.

The inquiry as to the true facts can only reveal two scenarios: either the commission of the most degrading, humiliating and soul destroying crime that can be committed against another human being, or a false report motivated by greed, fear or pressure from those

within the victim's environment or psychological cause. In either case, the responsibility of a police force is to achieve its objectives with the least amount of trauma inflicted upon the complainants as they pass through the judicial system.

The Victorian Scene

Victoria Police, in 1988, conducted an evaluation of its procedures and investigation techniques required to combat the ever increasing rate of reported sexual offences within that state. The police force adopted the recommendations in the formation of the specialised Rape Squad, the transfer of a Child Exploitation Unit to the Crime Department, the training of detectives at all levels and Community Policing Squad members in victim sensitivity.

The issuing of instructions on victim handling procedures were the basis of the current 'code of practice for sexual assault' which was formally adopted in March 1992. This code sets the minimum standards and procedures to be adopted by all members of the police force from the time of the initial report until the conclusion of any court hearing. Other initiatives include the creation of the Assistance Support Kit and the development of liaison and protocols with other victim support units.

The police forces of Australia seek a united approach in the manner they treat the victims of such crimes and the procedures adopted in their investigation. We believe the Victorian blueprint, which is under constant review, is the basis for professional investigation combined with appropriate victim handling. The Victoria Police do accept that we have a responsibility to victims of such crimes while the inquiry is conducted. It is also acknowledged and accepted that the police force is accountable for its performance while the reporter of such crimes is under their umbrella.

The Criminal Justice System

The other organisations associated with a sexual assault victim, including the government, welfare agencies, director of public prosecutions, defence lawyers and the judiciary, must also adopt the duty to inquire, self-educate, accept responsibility and be accountable.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power resolution, which was passed by the United Nations General Assembly on the 11 December 1985, was the first serious attempt to document the manner in which victims of crime should be treated. Before this time, it was assumed that the agencies within the criminal justice system possessed mechanisms within their organisations which could effectively deal with the victim's plight. In reality, however, a huge void existed between what organisations perceived that victims of crime required by way of emotional and material support, and what victims actually needed. An international set of guidelines which reflected the responsibilities a society had to its victims of crime, was therefore seen as necessary. Some of the issues raised by the United Nations that sought to address victims of crime were:

- the right of victims to be treated with compassion by criminal justice authorities;
- the right of victims to be kept informed of occurrences;
- the right of victims of crime to be duly compensated; and

- the right to have access to the best available support services.

The adoption of the charter of victims' rights by all Australian states has ensured that those agencies within the criminal justice system, (the police and courts in particular), are now held accountable for victim welfare at all stages of their dealings with victims.

Victim impact

One of the important issues which was addressed was the right for the victims of crime to express their ordeal through a written or verbal statement to the court. The belief amongst most victim support groups was that victim's rights had been usurped by a criminal justice system which championed the accused, but paid scant regard to the victim's vulnerability and sense of powerlessness. This reduced sense of worth was further exacerbated by a belief inherent in the criminal justice system, that a victim is merely a witness for the prosecution.

We must be careful that the victim impact statements are not seen as a panacea for the problems that victims confront. The impact of such crimes on the individual has permanent emotional and psychological consequences. The effects on those close to the victims also include long-term welfare needs which affect them as individuals and their relationship with the victim. The effect on the community varies from a private event affecting few, to a serial rapist placing the complete community under siege.

From police officer's experience and observations over many years of investigating crimes against persons, the most effective emotional and psychological remedy to a victim's welfare is the identification, arrest, conviction and appropriate sentencing of the perpetrator.

Police powers

The government has a responsibility to give its servants, the police force, the appropriate authority to achieve the community's expectations and objectives. Our investigations are inhibited by this lack of authority.

The serial rapist who operated in the Melbourne suburbs of Armadale, Prahran, Malvern and Frankston was responsible for an alleged eleven aggravated rapes within our community. Since 1989, while masked, armed and gloved, he stalked women throughout Melbourne. One of the most inhibiting factors in trying to identify this criminal was that the police were unable to demand the names and addresses of persons on the streets.

Police officers conducted many operations within this community in an attempt to identify this criminal in order to prevent further crimes. Police were placed in the community to search the areas, stalk the offender and hopefully identify those people within the community that he had under siege. Detectives were assigned to walk in those areas among the many high-rise flats. They were observing in laneways, streets and even looking through windows. When a police officer had observed someone of interest and approached him to ask his name and address, the suspect was able to walk away.

Victoria police cannot identify him because they do not have either the authority to demand such particulars or have the resources to follow that person to a motor vehicle, or wait for him to drop litter, to enable police authority to demand his name and address.

The detective has a duty to identify possible suspects, but unless granted the power to demand names and addresses and provide proof of identity, officers cannot implicate them if they are involved or eliminate them if they are not. If in fact the individual is there for ulterior

motives, the establishing of his identity acts as a preventative measure, in that the person would have second thoughts about returning to the area or committing further crimes.

The Chamberlain Bill on Police powers, which was introduced in 1988 to the Victorian Parliament's Legislative Council, recommended that the power to demand names and addresses should be given to the Victoria Police as they have in other states. It remains however, on notice of motion. That these recommended police powers would assist police to protect society even more effectively and it is now an appropriate time for this matter to be reconsidered.

There exists another inhibiting factor confronting detectives who are trying to identify the perpetrators of these types of crimes. A further attack occurs again in Armadale and the Rape Squad responds and locates the injured victim. They find that the victim has been humiliated, violated and injured with lacerations. She describes how her hand was cut by the perpetrators' knife, that she scratched the offender on the inside of the thigh, that she saw that he had a tattoo of a swallow on the top of his shoulder and that she bled with her cut hand across his back.

Can we connect the offender to the crime? The investigators identify a suspect, ask him to remove clothing for the purposes of photographing a tattoo, observe the scratches on the inside of his thigh or take a swab of the victims blood from the middle of his back. The suspect, however, has the right to decline this request. Under current laws in these circumstances, the Victoria Police have no power to gain the vital evidence which corroborates the evidence of the victim. On numerous occasions, over an extended period of time, it has been recommended that police be granted these powers (*see* Victoria Police 1991, and Victorian Consultative Committee on Police Powers of Investigation 1986).

This Committee recommended that the Police be given the power to conduct tests and physical examinations in order to observe injuries, such as bruises, scratching and distinguishing marks such as tattoos, birth marks and, if appropriate, photograph them, take gunshot residue from external skin surfaces, hair samples, fingernail scrapings, blood samples and mouth swabs.

Proposed legislation in regard to obtaining samples from suspected persons and examination of their person is pending debate before Parliament in the form of the Crimes (Forensic Procedures) Bill 1992 and amendments by the Honourable M.A. Lyster.

One can only conclude that if a police force had these additional powers they could identify the criminal at the earliest possible time, thus protecting society and preventing the commission of further crime.

Conclusion

The police force, as an organisation, and all others involved in the judicial system, have a responsibility to ensure that the system is simple and thorough. A police force has great difficulty in discharging its responsibilities on behalf of the community, without the appropriate authority and support both from the government and the community.

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WITHOUT CONSENT: CONFRONTING ADULT SEXUAL VIOLENCE MELBOURNE, 27 - 29 OCTOBER 1992

RECOMMENDATIONS OF THE CONFERENCE[1]

Aboriginal Issues

- The Aboriginal workshop of this conference explicitly and totally rejects the myth that sexual assault is in any way condoned by traditional Aboriginal law.
- There is an urgent need to recruit and retain at least equivalent numbers of female Aboriginal police aides to deal with issues of violence against Aboriginal women.
- There is an urgent need to ensure that the voice of the Aboriginal women is heard in any consultations with the Aboriginal community and that the status and rights of Aboriginal women are respected in the law reform process.
- Further research is urgently needed to examine the implications for women arising from the Royal Commission into Black Deaths in Custody recommendations.
- Aboriginal organisations need to establish clear guidelines and protocols regarding the recruitment, employment and training of non-Aboriginal staff.

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1 Topic areas are presented in alphabetical order.

Community Awareness

- This conference recommends that there be statewide community awareness campaigns in each state using radio and television to address the false myths of rape that discount survivors' experience, confound prosecution and hinder recovery for people who are raped. In line with such campaigns, counselling services for survivors of sexual assault need to be adequately funded in the lead-up to such campaigns so that they can meet the increased demand for counselling that is generated.

Criminal Justice System

- This conference calls on every state to enact legislation and court procedures to ensure that women's experiences of sexual assault are not discounted or discredited through the legal system.

- The Australian Institute of Criminology should write to the committees of the Attorneys-General and urge that, in reviewing matters to do with the media, they have particular regard to the AJA Code of Ethics and other articles of self-regulation, and ensure that these self-regulatory devices are enforceable and enforced, particularly with respect to the rights of victims to compassion, respect and protection against invasion of privacy.

Education

- Within the development of policies and protocols for schools, the Education Department and schools should affirm the right of all students to learn in a safe environment; that curriculum and education materials used in schools promote an awareness of issues of violence and promote non-sexist, non-racist and non-violent behaviour; that professional education programs be available for all teachers, principals and school support staff—addressing violence in schools and in particular gender-based violence and sexual harassment; that schools develop codes of practice to respond to sexual harassment and gender-based harassment; and that schools recognise gender-based harassment is occurring right now and develop policies and protocols to prevent it.

- Tertiary institutions must recognise that they have a legislative obligation to ensure equal participation in all aspects of tertiary life and recognise that personal safety on campus is an issue.

- As a sign of commitment to these principles, tertiary institutions across Australia are strongly urged to establish a personal safety awareness position to undertake systematic education and training with the aim of reducing violence, overt and covert, on campuses nationally.

- The topic of Sexual Assault should be an option/compulsory in degree courses. Units would be credited towards degrees and raise awareness of violence across the community.

- The impact of the training that has been made available to health workers and police is acknowledged with the consequent improvement in many sectors of the response to victims of sexual assault. Mandatory training for the judiciary, the magistracy and other members of the legal profession needs to be introduced in order that community attitudes be reflected in their judgements and conduct of sexual assault matters.

- The National Women's Health Program should be funded by Commonwealth and State Governments.

The Judiciary

- An accountability mechanism should be developed for the judiciary which is not the Appeals Court but rather structured to respond to community outrage.

- This conference recommends the introduction in all states of a strategy to bring about a judiciary and magistracy that reflects the diversity of Australian society, including proportionate representation of women and diverse cultural groups.

- The conference expresses its concern at the lack of attendance by the judiciary at this conference.

The Police

- The police forces of Australia need to educate their members in the sensitivity required while investigating reported crimes of sexual assault and that they adopt a policy of specialisation and the application of the appropriate resources.

Survivors of Rape

- A national policy regarding victim compensation and the responsibility to inform victims of their rights, with uniform administration and authorities, needs to be established.

- A national position on the policy and procedures underlying compensation for victims of crime; a national Charter of Victim's Rights; and the use of victim impact statements in criminal trials, should be worked on by the State Attorneys-General.

- The community needs to make a genuine effort to include people from the community (particularly survivors of rape and sexual assault,) in efforts to prevent rape, so that the community can own and take responsibility for it.

- This conference should support a consultative process involving all states to lobby the Federal Government for adequate, equitable and ongoing funding for sexual assault services for survivors of sexual assault and abuse throughout Australia.

- This conference recommends that, given the extreme importance of the reactions of others after rape, each state publish grievance procedures for survivors who have received unsatisfactory treatment by health services, police and the Director of Public Prosecutions. Survivors should be informed of the outcome of the process.