



“What is the justice system willing to offer?”

Understanding sexual assault victim/survivors’ criminal justice needs

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Research has established that sexual assault is widespread and its harms are significant to individual victims, families and society more broadly (Morrison, Quadara, & Boyd, 2007; VicHealth, 2004; World Health Organization [WHO], 2000, 2002). In April 2009, the Australian Government (2009) positioned itself as having “zero tolerance” towards violence against women and children, and declared that, “Laws must be strong enough to hold perpetrators to account and offer justice and safety for victims and their families”.

Currently, the criminal justice system is the primary institution available for responding to sexual offences, yet this system is underused and largely ineffective at prosecuting cases (Australian Bureau of Statistics [ABS], 2010; Daly & Bourhours, 2009). Extensive changes have been made to sexual assault law and procedures over the past forty years, and there has been increasing emphasis on responding to the needs of victim/survivors of sexual assault (and crime victims more broadly) within Australian criminal justice systems. This has been demonstrated through, for example, the introduction of victims’ rights charters throughout Australia, the provision of specialist victim support services, and governments investing money into reforms aimed at improving support for and responsiveness to the needs of victim/survivors of sexual assault (see, for example, Victorian Law Reform Commission [VLRC], 2006). However, research indicates that reforms have not translated into significant change at an operational level (Heenan & McKelvie, 1997; Jordan, 2001, 2004; Lievore, 2003, 2005; Stubbs, 2003; VLRC, 2001, 2003,

2004). Reporting rates remain low, attrition rates are high (ABS, 2010; Lievore, 2003; Daly & Bourhours, 2009) and victim/survivors continue to report experiencing the justice system’s procedures, particularly trials, as re-traumatising and re-victimising (Heath, 2005; Koss & Achilles, 2008; Orth & Maercker, 2004; Taylor, 2004). The limited success of these reforms arguably may be attributed to their restricted focus. Indeed, key problems underlying prosecuting cases of sexual assault have not been addressed, including problems with the design of the legal system (particularly adversarial processes) for responding to the justice needs of the victim/survivors, as well as evidentiary issues that result from perpetrator strategies and power disparities that underlie sexual offending (Clark & Australian Centre for the Study of Sexual Assault [ACSSA] Team, 2010; Cossins, 2000, 2006a, 2006b).

Victim/survivors are placed in a central yet compromised position within the criminal justice system, and two interrelated aspects facilitate this. First, there is the nature of sexual assault—it regularly occurs in private, the victims themselves are often the only witness, there are generally long delays before disclosure, there is rarely any physical evidence and the case often centres on issues of credibility. Secondly, the entrenchment throughout society of misconceptions and stereotypes about victim/survivors (for example, that women and children routinely lie and fantasise about sexual assault, and that women are responsible for their own victimisation) infiltrates the justice system. Together, these aspects pose a unique set of challenges to the traditional processing of cases.¹

Given victim/survivors' poor experiences with system procedures and the poor likelihood of securing a conviction against a sexual offender, the idea of victim/survivors obtaining a sense of justice from the criminal justice system appears remote, even in the face of significant substantive law and procedural reforms. Yet the criminal justice system is customarily considered the primary institution for responding to such crimes. Reforms need to move beyond focusing on reducing victim trauma within current system structures, and towards addressing how the system can be responsive to victim/survivors' individual justice needs.

Key to developing system procedures that are more responsive to victim/survivors' needs is investigating what justice means to victim/survivors of sexual assault, as well as what aspects they consider important in criminal justice procedures. Victim/survivors' understandings, needs and experiences provide a starting point for developing policies aimed at improving responses to sexual assault. Yet, to date, there has been little research on how victim/survivors personally understand justice and how this applies to various aspects of criminal justice processes.

This paper addresses this research gap by drawing on the narratives of 22 adult victim/survivors of sexual assault about their understandings and experiences of criminal justice. Specifically, the paper identifies what justice means to these victim/survivors and discusses four key aspects that relate to their procedural justice needs: information, validation, voice and control. The paper concludes by discussing the implications of these themes, exploring the challenges that they present to contemporary criminal justice approaches and suggesting what might be some next steps for developing procedures that are responsive to victim/survivors' justice needs.

Research method

A qualitative research approach was taken to establish an in-depth understanding of victim/survivors' knowledge and experiences of justice and criminal justice system responses. Semi-structured interviews were used to gain participants' experiences, views and opinions in their own words, without predetermining the exact content. This approach to interview structure enabled participants to define and discuss their experiences and, at the same time, keep the information relevant to the research questions (see Chatzifotou, 2000). Such research methods have been acknowledged as being particularly suitable to explorative research, where a sound understanding of participants' experiences is sought (see Denzin & Lincoln, 2000; Kitzinger & Wilkinson, 1997; Olesen, 2005). These methods (when conducted with care and sensitivity) are also considered particularly appropriate for researching sexual assault from an ethical perspective, because they promote participant control over the content, create an environment where participants can develop meaning for their unique experience, and demonstrate a commitment to "give voice" to the knowledge and expertise of research participants (Olesen, 2005; Reinharz, 1992; Renzetti, 1997). This article focuses on one aspect of a larger research project: the criminal justice needs and experiences of victim/survivors of sexual assault.

Participants

Sampling method

Participants who had experienced sexual assault (in adulthood and/or during childhood) were sought through sexual assault and family violence services and associated networks in metropolitan and rural Victoria. This "purposive sampling method" allowed for selecting information-rich cases rather than selecting a sample for the purpose of empirical generalisability (see Lincoln & Guba, 1985; Patton, 2002).

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Offending circumstances

Participants in the research comprised 22 adult victim/survivors, 13 of whom were adult victim/survivors of sexual assaults that occurred within the family, 12 of sexual assaults during childhood by their father, siblings and other relatives, and 3 of sexual assaults by their husbands or partners.² Of these 22 participants, 3 were male and 19 were female. Almost half of the participants spoke about more than one separate instance of sexual assault being perpetrated against them by different offenders. The relationships between victim/survivors and the perpetrators included siblings, fathers, uncles, grandfathers, acquaintances, husbands and strangers. Two victim/survivors discussed sexual assaults perpetrated against them by females (one was a significantly older sister, the other a mother who perpetrated together with the victim's father on one occasion). A number of participants also discussed sexual abuse of their sisters, daughters, brothers and other relatives.

Involvement in the criminal justice system

Of the 22 participants who had experienced sexual assault, 8 had no contact with the criminal justice system and the remaining 14 had been in contact regarding their abuse: three perpetrators pled guilty, two cases went to trial and resulted in a guilty verdict, one case went to trial and the perpetrator was found not guilty, one case reached a committal hearing, four cases did not proceed beyond the police, and one case was currently being investigated by police at the time of interview. Three perpetrators were convicted for offences other than sexual offences against the participant. Many victim/survivors had also been involved in other formal and informal response mechanisms, such as church responses, crime compensation schemes, family law courts, civil proceedings, family mediation and counselling.

Key findings

The findings presented below begin first by considering how "justice" was broadly understood by adult victim/

survivors of sexual assault and how these understandings were translated into a system response to their experiences of sexual assault. The subsequent sections discuss the four aspects of criminal justice procedures that victim/survivors reported as being key to obtaining fair and just responses: information, validation, voice and control. Notably, there was as much overlap as variance in the responses given by victim/survivors of childhood sexual abuse compared to those who experienced sexual assault in adulthood, and also by those who were assaulted by a family member compared to those who were assaulted by non-family members. This indicates that the themes are more reflective of criminal justice system responses than of any particular category of victim or offence.

Justice

Participants emphasised that establishing justice was integral to criminal justice system responses, but the meaning of “justice” differed considerably according to individual participants. For some, justice involved retribution, while others sought official acknowledgement of the crimes, and yet others felt that community safety was their primary justice goal.

Victim/survivors in the study stated that justice was important to them, and they generally regarded the criminal justice system as the primary institution for providing justice in response to sexual offences. As one participant, Mandy, pointed out, “It’s very hard to think outside the system when the system is what you’ve got”. Participants reiterated that individual justice, as they understood it, could not ever really be achieved. They emphasised that attempts at redress would ultimately fall short: nothing could undo what had been done to them and no process would be able to fully compensate or make it up to them:

If you think of justice as a re-righting of wrongs, you can never undo the abuse, so there can never be [adequate] compensation or recourse or addressing of the wrongs in any form. It can never undo the injustice or the wrongdoing. So any form of justice that exists is an approximation; it’s the best or the closest you can come to acknowledging the depth of damage from the original wrongdoing. (Hannah)

Nonetheless, being provided with an avenue to achieve a meaningful sense of justice or, as Hannah puts it, an “approximation” of justice through a formal system response, was considered important by all the victim/survivors in the study. Participants emphasised that the criminal justice system should play a role in producing or facilitating justice for them (and for other victim/survivors of sexual assault).

The type of justice sought by victim/survivors through the criminal justice system was varied. Some survivors sought retribution, they wanted their perpetrator to receive punitive consequences:

I just thought, no, we are gonna pursue this. He is not getting away with this and I am not just gonna let this go. I’m not just gonna write this off. I want consequences to this and I want him to be punished. There really are, or there should be, very drastic consequences for people who step outside that line. (Danielle)

Participants considered the receipt of consequences as purposeful; a way to send direct messages to the perpetrator that sexual assault is not on and to promote deterrence from future offending. Many victim/survivors



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wanted the perpetrator to receive counselling or treatment as well or instead of a term of imprisonment in order to better influence desistance from future offending.

Other victim/survivors felt the priority should be that the harm and wrong of the offences be officially recognised and documented by system authorities:

I really wanted to have the criminal justice system to acknowledge that the crime had been committed and the enormous impact that it had on my life. I didn’t want the perpetrator to go to jail or anything like that, I just wanted an acknowledgement or something—but I didn’t get it, so I felt pretty ripped off. (Brenda)

Many approached the system for reasons other than to seek personal justice. Participants frequently expressed that they engaged the system for altruistic reasons, most often to identify a dangerous person to the authority for the protection of others:

It wasn’t so much justice in my mind but that I wanted to make sure he didn’t do it to anyone else. I kept quiet for 20 years, so I wasn’t so much after justice. I just wanted to protect others from him and that was my primary goal in going there. (Justin)

In this way, participants provided a complex picture of justice and what achieving it through a system would require. Participants understood justice to have multiple levels—individual, community and societal. Individually, they wanted authorities to acknowledge the wrongdoing and personal harm. They wanted the perpetrators to be identified, made accountable, and for them to receive consequences (such as imprisonment, treatment, relocation and/or providing financial compensation to the victim and sexual assault support services). On a local community level, they wanted family and friends to be educated on the wrong and harm of sexual assault, and for resources and support to be made available. On a societal level, they wanted authorities to identify sexual assault as a serious



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issue and to establish mechanisms to prevent further sexual offending.

It was clear through the victim/survivors' narratives that they wanted the criminal justice system to play an active role in delivering their justice needs. However, although many of the options suggested by participants are available through various legal jurisdictions throughout Australia, they are rarely realised, as the vast majority of perpetrators never come into contact with the criminal justice system (ABS, 2006), and the perpetrators who do are regularly not charged nor convicted for their crimes (ABS, 1996, 2010; VLRC, 2004). The vast majority of cases that enter the system do little to hold the perpetrator accountable, even in cases that result in conviction—most perpetrators maintain not guilty pleas, even after the case is finalised. Plea bargaining, a common legal practice, also encourages perpetrators to minimise and deny their offences. Perpetrators can make “no comment” statements to police and do not have to give evidence at trial. Further, stereotypes and misconceptions around sexual assault that blame the victim and excuse the perpetrator continue to prevail to some extent within both the Australian community (VicHealth, 2009) and criminal justice institutions (VLRC, 2004). Moreover, participants' experiences of the criminal justice system were far removed from their ideals of justice. Rather, the system was described as being “re-victimising”,

“threatening”, “a game about winning and losing” and “certainly not about justice.”

Information

The criminal justice system was considered, as one participant described, “a foreign land”. As such, victim/survivors repeatedly emphasised the value of having clear accessible information about the criminal justice system and its procedures. Victim/survivors in this study requested practical information about the various stages of the system, the key players, their role in the procedures, the potential implications for them of the legal processes, and possible outcomes. Such information was considered important by victim/survivors, as it allowed them to make informed decisions about engaging with the system, and to prepare for the criminal justice processes:

I would say I would want someone from the criminal justice system to come to me and speak very clearly—not get caught up in a whole lot of legal mumbo jumbo, but speak very clearly to me—and say what were my options [and] the procedures that would be gone through. (Rose)

The need for information about system processes emerges clearly, as victim/survivors spoke of not only a lack of information about the system but also a raft of confusing messages about their cases, which left them uncertain of

the system's purpose, unaware of their rights, confused about police and legal procedures and frustrated with seemingly futile decisions:

I initially thought it was just going to be just something that will be put on record, and I was quite surprised, I was quite surprised when they said that they were going to investigate it, because I thought they wouldn't; you know I was just making a statement. (Kane)

It would be better if they explained, "Well look, we've made a decision, can we make some time to see you? This is how the system works", you know, and explain to me something or even say, "Um, look, I acknowledge that this happened to you; however, our system, blah blah blah". I don't know how they made the decision [not to prosecute the offender]. (Penny)

Victim/survivors regularly translated the lack of information and communication into a message about their relative (lack of) worth and status in the system. For example, Penny said, "Well, the message I got was it really isn't important to the justice system". Other research has likewise found that victim/survivors feel that the criminal justice system marginalises them and trivialises sexual assault (Herman, 2005; Koss, 2006; Riordan, 1999).

Victim/survivors who did receive information about the system expressed relief, as it provided them with forewarning about the system, and they were able to adjust and manage their expectations accordingly. However, victim/survivors who were better informed about the legal system's handling of sexual assault cases (through research, and practitioners' and others' experiences) were more likely than those with less knowledge to view the system with frustration, and as being unethical and unjust. This is because the information they received emphasised their relatively marginal role in the procedures and highlighted system difficulties in handling cases; that is, the processes are often distressing for victim/survivors, cases have high rates of attrition out of the system, there are low conviction rates and decisions on whether to proceed are regularly influenced by complainants' credibility:

The police themselves were saying, "You know, it's just not worth putting yourself through it. You could go through it, but he's just going to get off and it's one word against another and you know basically the system doesn't ...". I got the impression, from their point of view, the system doesn't work in these cases. (Kane)

Together, these research findings about the role of information in victim/survivors' understanding of the criminal justice system emphasise not only the importance of providing victim/survivors with practical information about the system and accurate, consistent messages about their case, but also the need for systemic changes that improve the criminal justice system's handling of sexual offences. Doing so would help ensure that the information being provided can be used to instil confidence rather than dismay in victim/survivors of sexual assault who are seeking recourse through the criminal justice system.

Validation

Expressing belief to victim/survivors is recognised as being necessary to their healing process, and corresponds with reduced victim trauma and increased help-seeking (Campbell, 2006; Flood & Pease 2006; Lievore, 2003). In terms of procedural justice for victims, being believed is a stepping stone to attaining acknowledgement, validation,

victim status and support. Victim/survivors in this study, as in other research (Temkin, 1999), expressed that being believed by system officials was essential in criminal justice responses. Those whose reports were met with belief and empathy by officials found this extremely powerful; largely because of the status they afforded the criminal justice system within society. In contrast, participants who felt that their allegations were met with disbelief felt that their credibility was judged and the seriousness of their claims was undermined:

That seemed to be the conclusion after they'd interviewed [the offender]: "Oh [he says] he didn't do it, so let's not go any further. It's not worth it—your word against his. He's an upstanding member of the community, he's done this that and the other. You're just a nobody who has a mental illness". So, yeah, in a way I think that I was made out to be a liar. (Kane)

I was judged on my sexuality. My sexuality impacted on their enthusiasm, if you like—their support for the case that they were prosecuting, because I'm a lesbian. And the sexual assault—they said that I was consenting. Their perception was that it was minor, that it wasn't serious. (Amanda)

[The defence] just said, "You are just after the money, aren't you? That is what this is all about" ... I think that was very unfair that they made something, something so personally devastating to me, about the money. They were just undermining my credibility and making it about money and it was never about money. They never asked me what it was about, it was never about money. (Felicity)

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Participants' narratives emphasised that both mistrusting relationships with criminal justice representatives and outcomes that did not hold the perpetrator to full account led them to feel disbelieved and discredited, and that the veracity of their claims was undermined. In this way, an unsatisfactory outcome (such as the case not progressing beyond the police) could undermine even the most respectful, supportive treatment by system authorities. Nonetheless, participants overwhelmingly expressed satisfaction with the police (but not the system more generally) when they felt both that the police were committed to the case and where charges were laid against the perpetrator.

Further, victim/survivors requested more than belief being expressed to them by justice system authorities; they wanted an official acknowledgement that the crime occurred and of its profound impact on their life:

So, understanding, acknowledgement of not just the abuse—'cause that was acknowledged in my case—but of the damage that it caused. And then support and nurture during that time, rather than abandonment and rejection, which is what I got. (Carmen)

Victim/survivors wanted the system to recognise and respond to the impact of the assaults rather than to primarily concentrating on gathering evidence or questioning their experience. This need poses challenges to current

procedures that focus on gathering “facts” and that are governed by legal rules steeped in historic misconceptions that victim/survivors are not trustworthy (Boniface, 1994; Cossins, 2000, 2006a; Taylor, 2004).

The focus in the legal system is on events that happened: he did this on this day to me. Whereas there wasn't much focus on the actual impact. But I reckon that the impact, you know, what might happen, might objectively seem to appear to be a small thing or a short thing, or a small event. But the impact that it's had on the victim and everyone else is enormous. I think there needs to be more consideration taken about that. You know, it's, because it's such a horrendous violation of young girls and it really affects your whole development. So that's what I wanted to say, don't just focus on the “fact” of what happened. (Penny)

As illustrated in Carmen's and Penny's comments above, participants consistently emphasised that they wanted the justice system to play a role in supporting and validating their experiences of the assaults and the impacts they had on their lives. This finding is in line with Judith Herman's (2005) study of victims of serious offences that also found that victim/survivors most frequently first sought validation followed by vindication by their communities. Validation was demonstrated by supportive, respectful interactions with officials, as well as mechanisms that held the perpetrator accountable. Ultimately, these were demonstrated through the actions that were taken; outcomes such as a police charge, conviction, and the offender being publicly denounced and sentenced.

Currently, however, victim/survivors' aspirations for the system to provide them with belief, validation and vindication are rarely achieved. Providing official acknowledgement of a crime is difficult within the criminal

justice system given the constitutional limitations of the law designed to protect the accused against the powers of the state (Herman, 2005). Moreover, research has demonstrated a history of distrust of victims of sexual assault among criminal justice representatives and the public generally, which still remains prevalent. Although victim/survivors are the least likely of all victims to report their victimisation to police (VLRC, 2004), and research demonstrates that false reports are rare (Heenan & Murray, 2006; Kelly Lovett & Regan, 2005), misconceptions and negative stereotypes about sexual assault, including the belief that victim/survivors regularly lie about being assaulted, continue to be pervasive in police cultures and the criminal justice system more generally, and affect the progression of the case through the criminal justice system and the treatment of survivors of sexual assault (Campbell & Johnson, 1997; Gregory & Lees, 1999; Heenan & Ross, 1994; Jordan, 2001, 2004; Kelly, 2001; Kelly et al., 2005; Reiner, 2000; Rumney, 2006; Temkin, 1999, 2002).

Given the emphasis the participants in this study placed on receiving validation through formal mechanisms, the introduction of official procedures to meet this need may well need to be considered. This might include state-sanctioned events or ceremonies during which victim/survivors' testimonies are welcomed, officially recorded and vindicated by officials, and where they are provided with an outcome that demonstrates a commitment to supporting their individual healing needs and preventing sexual assault in the future.

Voice

Participants advocated for a forum through which they could voice their experience. For many, the most



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customary place for this was a courtroom. Many stipulated that they wanted their “day in court”. This aspiration was deflated when they learned about what their role within a committal hearing and trial would entail. Trial processes are notorious for their poor treatment of victim/survivors of sexual assault (Easteal, 1998; Lees, 2002; Orth, 2002; Taylor, 2004). Indeed, Judith Herman (2005) argued that “if one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law” (p. 574).

Those who were directly involved in a committal hearing and trial process found this aspect of the criminal justice process particularly frustrating and traumatic. It did not allow victim/survivors to tell their story as a whole or to explain what the assault meant to them. Other research, particularly analyses of court narratives, has emphasised how victim/survivors’ stories get reconstructed into that of the defence (Rush; 1997; Taylor, 2004; Young, 1998). Victim/survivors in this study who went through a court process found the de-contextualisation and reworking of their story within the trial and committal to be particularly distressing and unjust. More than silencing their voice and undermining their experience, these victim/survivors felt they were manipulated, humiliated, degraded and forced to endorse lies:

In the end it was disempowering. In the end I couldn’t speak my truth. There was no space to speak my truth whatsoever. And the words that I had spoken, the contexts were twisted and used to say the opposite to what I meant. So it did the opposite. It didn’t just not enable me to speak my truth, it actually spoke lies using my words. (Hannah)

Given that exposing the truth, often after many years of silence and shame, was a major incentive for victim/survivors to engage with the system, the reconstruction of their stories into “lies” in a formal justice proceeding was incredibly distressing. Overcoming this barrier to victims’ justice needs is constrained by the adversarial approach used in Australian legal systems. Herman (2005) argued that victims need an opportunity to tell their stories in their own way, in a setting of their choice, whereas the court requires them to respond to a set of yes/no questions that break down any personal attempt to construct a coherent and meaningful narrative. Further, the adversarial trial has been criticised for its focus on proof and credibility rather than truth (Moisidis, 2008; Taylor, 2004) and for elevating the interests of the legal parties and destruction of the opposition’s case over the need or desire to find the truth or to secure justice more broadly (Auld, 2001; Streir, 1994; Wexler 2009). Participants in this research, on the other hand, advocated for having a more inclusive approach to evidence, being able to provide the full context and offending circumstances, being given the opportunity to voice their story, highlighting the impacts of the assaults, and exposing their understanding about the truth of the sexual offending.

Control

In this research, victim/survivors understood that they were central to their case. However, sexual offences are processed by the criminal justice system as harms against the state, not individual victim/survivors. As such, the

state is represented as the adversary of the defendant in a criminal trial. In this system, victim/survivors are witnesses not clients, and complainants not victims. They are thus afforded little, if any, control over decisions relating to the case. Indeed, referring to the position of victims in the justice system, McBarnet (1983) stated that “if victims feel that nobody cares about their suffering, it is in part because *institutionally* nobody does ...” (p. 300; emphasis original). Participants in this study, in line with past research (Herman, 2005; Koss, 2006), were shocked and concerned when they realised that their interests were not a priority to the system and that they lacked control over critical decisions, including whether and how their case was pursued:

You know, I’m a person being violated in, I would say, one of the worst ways a person could be violated, and I get this little letter to say, “Sorry it’s not really important”. For the criminal justice system to say, “Well it’s not worth our pursuing”, that’s the bit that’s been the hardest. Apart from the abuse itself, that part has been really hard. It almost felt like being abused again. (Penny)

As demonstrated in Penny’s comment, decisions on pursuing cases highlighted the disjuncture between the legal system’s operation and individual victim/survivors’ justice needs, including the messages it sent to them about the seriousness of the crimes committed against them. The prioritisation afforded to proceeding with certain cases over others seemed to denigrate the value of their experience, question their credibility as a person, and repeat the position of insignificance that the perpetrators put them in.

The lack of status, power and control over the process that comes with reporting the crimes was a significant barrier to victim/survivors wanting to engage with the system and a significant disincentive to reporting:

In actually initiating that police statement, once it gets in the process I felt [that] I was handing over a lot of control to them. And basically, they wanted me to follow through with it. It was sort of like, “Well, we’re going to do all this work for you. You know, if you go and pull out, this is your credibility at stake”. And I found that difficult to handle. (Rose)

We were advised that if we made a statement, then the police, if there was enough evidence as they believed in the statement that they would charge him [sic]. And I kind of thought that that was a bit unfair, because you know I really only just wanted them to know that there was a man out there with his problem and how they could protect other people. (Felicity)

Indeed, research shows that regaining a sense of control over one’s life following sexual assault is integral to beginning the healing process (Lebowitz, Harvey, & Herman, 1993) and the loss of control that comes with reporting the crime to police may be counter to individual healing needs.

Victim/survivors in this study differed on the extent to which they wanted to be involved in the process. Some wanted to have little involvement, while others wanted to play a central role in the official procedures. Irrespective of the level of involvement they wanted, most (13 of the 14 victim/survivors whose crimes were reported to police) found that they were largely excluded from the process, not consulted on their case progress and not able to fully

contribute in a way that they believed would be helpful for prosecuting the case:

And at no stage, um, of any of the process of this thing have they even attempted to speak to, like myself, his ex-wife, to see if there's anything in his past or anything, and I just find that is just ludicrous, because how is that getting a clear picture? (Lucy)

Strong advocacy and representation were important to victim/survivors, more so than the ability to have personal decision-making power. Indeed, as much as participants desired control over whether their case would proceed, decision-making power was identified as a potential burden of responsibility, and something that individual victim/survivors may not have the confidence or expertise to undertake. For instance, although participants wanted their perpetrators to receive consequences for the crimes, no participants expressed a desire to be personally responsible for assigning a particular sentence.

While having their story heard was important to victim/survivors in this study, some did not want to be involved in the legal procedures directly. Rather, they desired to have their voice represented through strong advocacy and representation throughout the system. Ensuring that the system is transparent about, and accountable for, decisions not to proceed was also requested by victim/survivors. They wanted to be kept informed about their case, have their needs respected and interests represented, and to have community safety prioritised. In this way, system accountability to victim/survivors (and communities) may be more helpful than requesting that victim/survivors become more involved in legal procedures or being

delegated with decision-making power over their case. As it stands, however, victim/survivors have little status within the system and their needs (although increasingly recognised) are not prioritised. They do not have access to an official system representative, such as their own legal council, and there is little system accountability for the impact that its processes have on them.

Conclusions

I would have to ask this: What is the justice system willing to offer? (Rose)

Sexual assault against children and adults is recognised as a heinous offence that warrants responses that see victims/survivors achieve justice, hold perpetrators accountable and uphold the safety of the community. However, meeting these requests within current criminal justice system procedures is difficult. Child sexual abuse and adult sexual assault are crimes commonly perpetrated under a veil of secrecy, with no witnesses and, by the time victim/survivors come forward, often no physical evidence. This makes the criminal justice system a forum where the primary contest is often about establishing who is more credible, and where the most vulnerable victim/survivors are often the least convincing.

Further, in providing legal responses to sexual assault, we rely on victim/survivors to come forward and cooperate with the criminal justice system. However, rather than being rewarded for coming forward, victim/survivors'



Although victim/survivors are the least likely of all victims to report their victimisation to police, and research demonstrates that false reports are rare, misconceptions and negative stereotypes about sexual assault, including the belief that victim/survivors regularly lie about being assaulted, continue to be pervasive in police cultures and the criminal justice system more generally.

Table 1 Misalignment of participants' justice needs and system experiences

Justice needs	System experience
Information	
Practical information about system processes and individual rights	Miscommunication, irregular and delayed communication, involvement of multiple system officials
To be kept informed about case progress	
Evidenced supportive practices and successful outcomes	Re-traumatisation from system procedures and low conviction rates
Validation	
Belief, sensitivity and empathy from system officials	A history of mistrust, prejudice towards victims of sexual assault, and inconsistent police practices
Status as a victim and survivor of a serious crime	Status as complainant and witness
Responses that acknowledge the seriousness of the crime and its impact on their life	A focus on "evidence" and detail of the offence rather than the context in which it occurred and the nature of the offending
To hold the perpetrator to account for his crimes	Low rates of police charges, high rates of attrition, high rates of not guilty pleas, low rates of conviction, high rates of successful appeals
Voice	
A forum to tell their story in their words to a supportive and receptive audience	A trial dictated by legal rules of evidence, with cross-examination gruelling and often based on scrutinising personal credibility
The context and circumstances of the offending to be included in proceedings	A reconstruction of victims' narrative
	Relatively high rates of not guilty verdicts
Control	
Representation, consultation and decisions made in their best interests	No legal council—state prosecution, with decisions centring on the case rather than individual victims
Victim discretion to proceed with or withdraw the complaint	System decisions to proceed or discontinue
System accountability to proceed with their complaint through to prosecution	Reform efforts not centred on accountability in increasing prosecuting cases, victim/survivors' wellbeing
Outcomes	
Retribution and punishment	A majority of perpetrators undetected
An official record	Imprisonment and treatment orders as sentencing options but conviction rare
Safety and protection	Response options that do not prioritise victim/survivors' individual justice needs
Recognition that individual justice needs are diverse	

experiences show that they are instead regularly subjected to procedures that are distressing, options that do not meet their justice needs and outcomes that are insufficient. The misalignments highlighted by participants in this research are displayed in Table 1.

Taking victim/survivors' specific criminal justice needs as a starting point in developing significant procedural reforms is necessary for overcoming the disparity between the need to provide an avenue for addressing sexual assault and the current operation of the criminal justice system. Including innovative procedures that address the unique nature of sexual offending and overcome significant evidentiary burdens need to be considered if higher rates of prosecution are desired. Moreover, there is a need to directly involve victim/survivors in discussions about reform and to consider implementing mechanisms that respond to their specific (and currently unmet) justice needs. Doing so would promote the system as one that takes responding to sexual offending seriously, values individual victims' justice needs and promises to respond in a way that makes the system accountable to victim/survivors and to the broader society that it serves.

Endnotes

1 These aspects also have significant implications for those from marginalised and vulnerable populations. In a review of the legal system, the Australian Law Reform Commission (ALRC; 1994) concluded that women are systematically discriminated against within the legal system, including in

cases of sexual assault. Further disadvantages are faced by victim/survivors who are, for example, Aboriginal (McGlade, 2006; Putt & Taylor, 2007), from a non-English speaking background (Aldunate, 1999; Neame & Heenan, 2003), have a mental illness or other disability (Heenan & Murray, 2006; Lievore, 2004), work in the sex industry (Banach & Metznerath, 2000; Neame & Heenan, 2003), or who were sexually assaulted during childhood (Taylor, 2004).

2 These figures do not sum to the exact sample size because a number of participants discussed multiple sexual assaults perpetrated by different offenders. For example, during interview, one participant referred to have being sexually assaulted by her father in childhood and also by a partner in adulthood. Likewise, some participants had reached different stages within the criminal justice system for sexual offences perpetrated by different people.

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