Welcome to issue 23 of ACSSA Aware, the newsletter of the Australian Centre for the Study of Sexual Assault that updates you about what’s happening in the sector.

In issue 21 of Aware we shone a spotlight on the challenges that new technologies bring to our efforts to prevent sexual violence. Social interaction in virtual space, interactive games, digital communities and communication seemingly expand the forms of sexual violence in ways our current frameworks for action (e.g., detection and legal action) struggle to conceptualise. We’re very pleased to have Dr Anastasia Powell of La Trobe University contribute to In Focus. Many readers may be familiar with Anastasia’s previous contributions to ACSSA publications. In this article Unauthorised Visual Images and Sexual Assault, she examines the problems that the use of Information and Communication Technologies to record and distribute both consensual and non-consensual sexual encounters presents for the criminal law. We are also pleased to have an additional In Focus article in this version of Aware. Jessica Kennedy, Dr Patricia Easteal and Professor Caroline Taylor have contributed an article examining the influence of rape mythology in the criminal justice system. Their preliminary analyses of judicial sentencing remarks suggests that although judges are demonstrating a better understanding of the reality of sexual assault in their discussion of mitigating and aggravating variables, this awareness is not translating into sentences.

In our Profile section Haley Clark interviews performer Nelly Thomas and Secondary School Nurses, Maureen Weir and Margaret Chigros about the secondary school sexual assault and consent education show, The No Means No Show, and the process of doing arts-based sexual assault education work.

We also speak with academic Dr Adrian Howe, Associate Professor of Social Science at RMIT University, Victoria. Adrian has researched violence against women for over 20 years. She has recently published two books on sexual violence, one of which—Sex, Violence and Crime: Foucault and the “Man” Question—explicitly grew out of this 20-year commitment. ACSSA research officer Kirsty Duncanson interviewed Adrian about the continuing challenges in preventing sexual assault.

In Review, Kirsty reviews the two new additions to the field by Adrian Howe—Sex, Violence and Crime: Foucault and the “Man” Question and also Women, Crime and Social Harm: Towards a Criminology for the Global Era, co-edited with Maureen Cain.

We also provide summaries and reviews of a number of other recent publications relevant to the sexual assault sector. ACSSA has compiled a bibliography of recent publications related to sexual assault and violence against women.

All of ACSSA’s publications are available online. Visit our website at <www.aifs.gov.au/acssa>, where you can also browse our Promising Practice Database, peruse specialised bibliographies, look for upcoming events, or submit your research queries.

ACSSA welcomes contributions to newsletters from workers and researchers in the sexual assault field. We can assist with the development of your idea for an article to publish in ACSSA Aware; please get in touch with a member of the ACSSA team if you feel that you have something to contribute.
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Adolescence, pornography and harm

The Australian Institute of Criminology paper Adolescence, Pornography and Harm is a review of recent literature that addresses questions around access to pornography by under-18s, along with issues of prevalence and potential harms. In particular, the report explores the validity of widely held concerns around the possible effects of early exposure on individual sexual development, personal wellbeing and violence in our society.

The paper explores the factors affecting the onset and rate of the use of pornography including gender, age, social factors and personal characteristics. The research shows, that it is males who are more likely to view pornography earlier and more often, and more likely to have a positive attitude towards it at a young age (Carroll et al., 2008; Flood & Hamilton, 2003; Wallmyr & Wellir, 2006). Pornography plays a social function for young men, who are more likely than females to view it with friends (Wolak, Mitchell, & Finkelhor, 2007) as a means of performing group masculinity. Motivations vary between genders, with sexual arousal and masturbation being the primary reason for males, and curiosity (or because “it’s cool”) cited as the main motivators by female viewers (Carroll et al., 2008; Wallmyr & Wellir, 2006). Such consistent findings point to the fact that differences in the gendered and cultural responses to pornography are key areas for further study.

In terms of harm, one of the most important areas explored throughout the paper is that of subjectivity of experience. The review identifies that so-called “delinquent” youth are more likely to view pornography younger, more often, and to view more “extreme” pornography. However, Bryant notes that there is not necessarily a causal relationship between frequency of use, “at-risk” use, and psychological or social problems. The important point is made that young people are more than inactive sponges; they are capable of self-regulation. Similarly, all pornography is not the same, and content does matter. Violent pornography is linked to more violent behaviour and attitudes, but it is not as simple as “watching violent pornography makes one violent”. Choosing to watch such pornography may be as a result of other factors rather than the cause of the behaviour.
and attitudes. As Bryant says, “this does not mean that pornography use is not harmful, but rather that it is not the origin of the harmful effects” (p. 4).

Adolescence, Pornography and Harm highlights the need for nuanced debates around definitions of what constitutes pornography, and judgements about acceptable sexual practice. In synthesising the available literature, the paper identified interfering with “normal” sexual development; undermining relationships and fostering sexual violence as some of the effects of pornography.

However, within the literature reviewed, the paper does not examine the influence of normative and/or moral judgements about sex and sexual practices in relation to adolescents accessing pornography. Nor does it examine the consequences of these judgements on community diversity, the role of mainstream media, the Internet, or new technologies.

Most importantly, further research is needed regarding the relationship between pornography and sexual coercion. Young women “usually” have very negative views of pornography until they reach their twenties, and are more than likely exposed to pornography by a male. Bryant’s review suggests that further research should be done on the effect these gendered patterns of consumption could have on young sexual relationships. Does the pattern of female consumption, as facilitated or introduced by a male partner or by males within a peer group, serve to model preferred sexual behaviour for young women (i.e., to present to them the type of idealised sexual partner they should be)? In the context of recent research demonstrating the prevalence of sexual coercion in adolescent relationships (Powell, 2007), this is clearly an area worth exploration.

References


Sex offenders treatment program: Tasmania


At the request of the Tasmanian Department of Justice, Queensland Corrective Services were engaged to assess Tasmania’s Sexual Offending Program at Risdon Corrections Centre.¹ Review of Sexual Offending Programs: Risdon Correctional Centre, tabled in the Tasmanian Parliament 5 March 2009, compares Tasmania’s Sexual Offending Program to best practice.

Key findings suggest that many of the program requirements have been implemented, however a more coordinated approach to the oversight of program delivery is needed. The recommendations focused on the need to maintain program integrity, improve the evaluation process and ensure programs are targeted to the specific needs of the offender. In particular, the review highlighted the need to enhance internal mechanisms to assess the strengths and weaknesses of the programs. This would encourage the uptake of targeted programs that have been designed with reference to offender assessments and that relate to specific treatment needs. Queensland Corrective Services affirmed the need to focus on the empirically based concepts that inform these programs. These include:

- program interventions should target higher risk offenders;
- the underlying causes of offending should be targeted;
- efforts should be made to increase offenders’ responsiveness to the programs;
- the implementation of the programs should maintain the integrity of core elements of the programs; and
- program facilitators should retain some professional discretion in delivering the programs.

¹ This maintains the Sexual Offending Program’s methodological framework as the program was originally developed by the Queensland Corrective Services and acquired by Tasmanian Prison Services in 2003. Since then Queensland Corrective Services has provided ongoing training and assistance.
Increasing offenders’ responsiveness to the programs should be achieved through a negotiation of the tension between program integrity and professional discretion. An important aspect of this negotiated process is assessment and benchmarking. The recommendations seek to build on the expertise of the staff by providing a framework or mechanism to ensure the necessary quality assurance and evidence base.

Queensland Corrective Services adopted a “what works” approach to the assessment of programs designed to reduce recidivism. A “what works” model is a criminological approach to offending and crime prevention that seeks to base program methodology upon empirically tested evidence. Queensland Corrective Services suggest the concepts outlined above have been shown to effectively reduce recidivism.

The Department of Justice has adopted almost all of the recommendations (Press Release Lisa Singh, MP, Minister for Corrections and Consumer Protection, March 9 2009). This should assist Tasmania in implementing a best practice Sexual Offending Program, premised on an empirically tested research base.

The report offers a comprehensive analysis of program implementation to address the needs of individual offenders. However, there is no synthesis between this type of analysis and the evidence base that examines the broader societal context of offending. The two bodies of evidence are developing independent of each other. Of particular absence from the analysis conducted in the review is the input of victim/survivor knowledge in developing sexual offender treatment programs (Chung, O’Leary, & Hand, 2006). However, it must be remembered that this review is limited to the implementation of an existing empirically tested program, rather than a holistic focus on sexual offender treatment.

This review highlights the importance of empirically tested evidence not only in the design of treatment programs but also in their ongoing implementation. Unfortunately, the review did not engage with other areas of evidence-based research, including an examination of the social context of offending and the insight victim/survivors might bring to understanding sexual offending.

Review of Sexual Offending Programs: Risdon Correctional Centre is available to the public by contacting the Office of Hon Lisa Singh MP, Minister for Corrections and Consumer Protection.

References


Mensline research findings

In 2006, the national counselling service for men, Mensline, began collecting data from their callers concerning relationships. The Mensline database now holds records from nearly 70,000 men. The service frames itself as “first and foremost a relationship counselling service” (p. 14). This has shaped the information gathered within the report.

The concerns of the callers were recorded according to a list of 12 categories:
- relationship with partner/ex-partner;
- mental and emotional wellbeing;
- legal, custody and access issues;
- parenting;
- violence and/or abuse;
- caring for another;
- practical issues;
- sex and sexuality;
- suicide and/or self-harm;
- health;
- workplace relations; and
- pregnancy.

The findings may provide useful information to service providers working with men to address sexual violence and abuse. They show that the main issues concerning men when they call Mensline pertain to their relationships with a partner or ex-partner. These constituted almost 62% of the call concerns. The separate categories of “violence and abuse” (4%) and “sex and sexuality” (1.8%) constituted a lower reported concern for male callers than relationship issues.
The focus of Thomas’ (2009) article is the correlation between the relationship status of the callers and the issues they prioritise within the call. The findings show that men concerned with issues of violence and abuse were marginally more likely to be within a relationship, but only constituted 5.4% of men in relationships and 3.2% of men who were separated. The publication does not document the issues concerning men identifying as “single”.

The data collection appears not to lend itself to a more detailed analysis of the forms of violence, abuse, sex, or sexuality with which the callers present as concerns. But the findings indicate that men are accessing the Mensline counselling service regarding these issues.

Thomas prefaces his article by noting the possible bias of the data collected through Mensline as the research and collection of data is based on calls rather than individuals. This means that while individuals might call a number of times, this will not be distinguished within the research.

International

Hate Crimes: The Rise of “Corrective” Rape in South Africa.


Sexual violence has been a growing issue in South Africa. The non-government organisation ActionAid estimates that almost half of all women in South Africa will experience rape. ActionAid’s Hate Crimes publication focuses on a particular mode of this violence: sexual violence, specifically against lesbian women. It reports this as becoming increasingly prevalent. These acts of violence have been dubbed “corrective” due to the ideological discourse with which the perpetrators explain their actions to their targets. Victims are told by their attackers that they are being “punished” or “cured” of their sexual orientation. A number of attacks against lesbian women have resulted in murder, with 31 murders recorded since 1998, and speculation that further homophobic murders have taken place but have not been reported in these terms.

The publication provides statistical information about sexual assault globally, in South Africa specifically, and as a form of homophobic violence. It describes a growing culture of gendered and homophobic violence in South Africa—documenting reported social attitudes, fears held by lesbian women, and failures by the criminal justice system to address the violence appropriately or adequately.

Drawing on research by Triangle, a South African gay rights group, the publication states that:

- 44% white lesbians from the Western Cape fear sexual assault;
- 86% black lesbians in the same area fear sexual assault;
- 66% of lesbian survivors of sexual assault didn’t report their experiences of rape because they felt they wouldn’t be taken seriously; and
- 22% of these survivors reported being afraid that police would abuse them if they revealed their sexual orientation.

Black South African lesbian survivors, their friends, and partners contribute their views and share stories about their experiences of violence. These first-person traumatic accounts of rape and assault provide faces for the statistics documenting the violence, and give voice to the often-unheard victims of sexual assault.

The ActionAid report recommends:

- national and international prioritisation to tackle sexual violence and gender discrimination; and
- that the international community prioritise guaranteeing women’s security by addressing violence against women in all its manifestations.

Hate Crimes: The Rise of “Corrective” Rape in South Africa can be accessed through the ActionAid website at <www.actionaid.org>.

Conferences

For a full list of upcoming conferences, seminars and events, visit the Conferences and Events page on the Australian Centre for the Study of Sexual Assault website: <www.aifs.gov.au/acssa/conferences.html>
National research literature and public debate regarding the capture and distribution of unauthorised visual images has recently been increasing.\(^1\) Such debate has focused on these unauthorised images being voyeuristic or an invasion of privacy (e.g., images captured on mobile phones in locker rooms); being used for cyber bullying (e.g., distributed widely via email or mobile phones to harass or embarrass the subject of an image); or being inappropriate images of children (e.g., the debate regarding the use of digital cameras at public pools and playgrounds).

Of interest, however, is the comparative silence when the content of such images is of a sexual assault. In particular, there is little acknowledgement of the additional harm that the recording and distribution of instantly pervasive digital images of a sexual assault causes to the victim/survivor through the continued violation of their sexual autonomy. Mainstream media and indeed legal discussions have also largely taken place at a relative distance from the broader issues of gender and sexual violence. However recent cases of sexual assaults of young women and girls being recorded and distributed have undeniably blurred any neat categorisation between so-called minor privacy and voyeurism related offences on the one hand, and sexual violence offences on another.

In this article I argue that there is a direct link between existing debates about unauthorised visual images and the issue of sexual assault. In particular, it considers the adequacy of current Australian legislation to properly respond to this issue and to reflect the additional harm caused to victim/survivors of sexual assault when a visual image of the assault is recorded and distributed. This is not to undermine the importance of securing justice and support for victims regarding the original sexual assault. Rather, I argue that it is a continued assault on the victim, facilitated by advances in information and communication technologies (ICTs), when an image of the assault is recorded and distributed. For example, still and moving images may be taken by any number of devices (including mobile phone cameras, web cameras and surveillance devices) and then “distributed” whether by mobile phone, email, peer-to-peer file transfer, posted on user-generated content websites or otherwise sent on to others.

It might also be argued that the unauthorised taking and distribution of images of an otherwise consensual sexual encounter is similarly part of a continuum of gendered sexual violence and harassment primarily targeting women. The distribution is itself a violation of an individual’s sexual autonomy with the effect of humiliating, intimidating or otherwise harassing the victim. For this reason, the extent to which the unauthorised taking and distribution of images of an otherwise consensual sexual encounter causes harm to victims should be recognised. However legislation is ultimately a tertiary response to these behaviours and it is important to consider that the law is not the only forum, nor necessarily always the most effective forum, for addressing diverse forms of sexual violence. Indeed, as will be discussed, there may be limitations in applying the law to these behaviours. Arguably, there is potential for sexual violence prevention that is premised on the promotion of an ethics for the consumption of sexual imagery.

Emerging technologies, young people and sexual assault

Contemporary teens and young adults, often collectively referred to as the “.NET” generation or the “digital generation”, represent the largest proportion of end-users in the ICTs market (Australian Bureau of Statistics [ABS], 2007; ACMA, 2007, 2008). According to recent data published by the Australian Communications and Media Authority (ACMA) 79% of 14–17 year olds owned or used a mobile phone in 2007 and this usage peaked at 90% for 18–24 and 25–34 year olds (ACMA, 2008). In addition, 64% of Australian households have Internet access at home (ABS, 2007). This number increases to 80% of households with teens aged 14–17 (ACMA, 2008). Of particular interest are the patterns of mobile phone and Internet usage, which suggest that “socialising” and “entertainment” are the most commonly reported purposes, particularly for the 14–17, and 18–24, age groups.

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1 See: Australian Law Reform Commission, 2008; Campbell, 2005; Lodge & Frydenberg, 2007; and Standing Committee of Attorneys-General, 2005.
These activities can vary across text and picture messaging, instant chat messaging, online gaming, social networking websites (such as Facebook, MySpace) and other user-generated content sites (such as YouTube, Flickr, GoogleVideo). The burgeoning of user-generated content, particularly among teens and young adults, is illustrative of young people as the “pioneers” of new forms of social interaction and new media cultures (Oksman & Turtiainen, 2004).

However, there are claims by some researchers, as well as in the media and public debate, that these technologies are driving increases in violent offences committed by youth—including sexual assault—as teens and young adults attempt to emulate what they encounter on the Internet and compete with each other to “gain status” (refer to Roberts, 2008; Tobin, 2008). Professor Paul Mazerolle, a prominent Australian criminologist, recently stated that: “Young people want to demonstrate superiority and toughness. That’s why we’ve seen a proliferation of things like the videotaping of violent confrontations” (cited in Roberts, 2008).

Indeed “happy slapping”, a term initially used to describe young people filming pranks or minor assaults and more recently associated with cyber bullying, has come to encompass the filming and distribution of images of quite violent assaults as well as rape and sexual assault (Saunders, 2005; Smith, Mahdavi, Carvalho, & Tippett, 2006). The issue has emerged as such a significant problem in the UK that judges’ guidelines have been introduced prescribing a more severe penalty where crimes have been recorded and more severe again where the image has then been distributed (refer to Sentencing Guidelines Council, 2006). These guidelines establish a formal legal acknowledgement of the additional harm caused to victims where the original assault is recorded and the image distributed. While the term “happy slapping” itself has barely touched the Australian vernacular the practice of individuals taking images of a sexual assault and distributing them has, in recent years, become well known as a result of a number of high profile incidents.

In October 2006 the media was filled with reports of a sexual assault 3 months earlier of a 17-year-old woman. The 12 young men responsible had recorded and since continued to distribute digital video images of the assault. The “Werribee DVD” was initially sold in Werribee schools for $5 and later emerged for sale on Internet sites for up to $60 with excerpts also made freely available on YouTube (Cunningham, 2006). Six months later, Sydney newspapers reported a sexual assault of a 17-year-old woman involving five teenage young men who filmed the assault on their mobile phones and distributed the image among fellow school students (Braithwaite & Cubby, 2007). In May 2007, news stories were again filled with reports of a recording of a sexual assault, this time five men attacking two young women aged 15 in Geelong and recording the assault on their mobile phone (Cooper, 2007).

Yet those working in the field of responding to and preventing sexual assault will doubtless be sceptical that it is the technology that is ultimately driving these offences. Rather, technology merely offers “new ways for committing traditional crime” (Australian Federal Police, 2007, p. 3) and in the case of sexual violence the underlying causes continue to be gender inequality and societal attitudes condoning sexual abuses of women and children. Indeed, it is young women aged 15–24 who are most likely to experience sexual assault (Heenan & Murray, 2006) and it is women and children who are typically the victims of unauthorised visual images (Department of Justice Canada, 2002). Arguably, Australian legislative responses need to further address the harm to both
child and adult victims that the distribution of images of a sexual assault creates in addition to the original assault (Burton, 2005).

**Australian legislative responses**

Current Australian legislative responses to this issue operate across varying bodies of law, including: control of the use of surveillance devices; privacy infringement, voyeurism and other summary offences; and child pornography offences. This section briefly examines each of these bodies of legislation and considers their capacity to respond to the issue of sexual assault and unauthorised visual images.

**Surveillance devices**

Some Australian jurisdictions have introduced legislation controlling the use of surveillance devices for law enforcement purposes and restricting their use outside of these purposes. For example, Victoria’s Surveillance Devices Act 1999 Section 7 makes it an offence to install, use or maintain an optical surveillance device to record visually a private activity to which the person is not a party, without the express or implied consent of each party to the activity (maximum 2 years imprisonment) and Section 11 makes it an offence to communicate or publish a record of a private activity that has been made as a direct or indirect result of an optical surveillance device (maximum 2 years imprisonment). Similar legislation also exists in Western Australia (Surveillance Devices Act, 1998) and the Northern Territory (Surveillance Devices Act, 2007). However the legislation is not uniform across all Australian jurisdictions and encompasses a number of other potential limitations, which are discussed further below.

**Privacy infringement, “voyeurism” and other summary offences**

Unlike some jurisdictions internationally, there is no common law right to privacy in Australian law (Standing Committee of Attorneys-General, 2005), meaning that individuals are unlikely to be successful in pursuing recompense through civil action in response to any perceived infringement of privacy. The Privacy Act 1988 does regulate the collection, holding, security, use and disclosure of personal information, including a pictorial representation of a person (Section 6), by many private sector organisations (refer to Australian Law Reform Commission, 2008; Standing Committee of Attorneys-General, 2005). However these regulations do not apply where an image is taken by a person acting in their private capacity (Australian Law Reform Commission, 2008).

Nonetheless the issue of distribution of unauthorised visual images has largely been framed as an issue of privacy infringement and a number of minor or “summary” offences have been legislated employing the concept of a violation of privacy. For example, the New South Wales Summary Offences Act 1988 (s21G)² makes it an offence to film, or install device for filming, for indecent purposes “where the other person is in a state of undress, or is engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy”, with a maximum penalty of 2 years imprisonment. Tasmania’s Police Offences Act 1935 s13A makes it an offence to visually record another person either: in a private place, or engaging in a private act, or where the recording is made for the purpose of recording the person’s genital or anal region, without that person’s consent, in circumstances where a reasonable person would expect to be afforded privacy, with a maximum penalty of 12 months imprisonment. The Victorian Summary Offences Act 1966 (Division 4A) and Queensland Criminal Code 1899 (s227A) contain very similar offences with a maximum penalty of 2 years imprisonment. The very specific reference in some of these offences to recording a person’s “genital or anal region” was introduced in much state legislation in recent years in response to public concern over “up-skirting”. The term “up-skirting”, and indeed the related term “down-blowing”, refer to the covert

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² ACSSA addendum: At the time of writing this provision was in force, however it has been subsequently repealed pursuant to Crimes Amendment (Sexual Offences) Act 2008 No 105 (NSW). The repealed provision has been substituted by Division 15B Crimes Act 1990 (NSW) Voyeurism and Related Offences. Despite the symbolic shift of “elevating the offences into the Crimes Act the authors concerns are still relevant.

³ “Indecent purposes” in the New South Wales Summary Offences Act (1988) refers to filming in order “to provide sexual arousal or sexual gratification, whether for himself or herself or for a third person” (s21G). This mental element of the offence, that is that the offender’s intention in filming be for “indecent purposes”, is not however common across other Australian jurisdictions. For example, in the Tasmanian legislation, it is enough that the offender filmed or observed a person for the purpose of observing or visually recording a private act, regardless of a specific intention for the filming itself (s13A).
taking of images under a person’s clothing typically in public space and became the focus of heightened public concern across Australia after a number of voyeurs were apprehended at the 2007 Australian Open tennis tournament in Melbourne (“Upskirt”, 2007).

These offences are arguably limited in two main ways. Firstly, in the case of some sexual assaults that have taken place in public spaces, the meaning of “where a reasonable person would expect to be afforded privacy” has not been tested by court and is potentially problematic. Secondly, in the case of both the recording and distribution of an image of a sexual assault or of a consensual sexual encounter (where there may very likely have been an expectation of privacy) the framing of a minor “privacy infringement” offence does not reflect the level of harm caused to victims by the widespread distribution of the visual image. In other words, this issue is more than an issue of privacy infringement. “When technology allows images obtained by voyeurism to be posted instantly on the Internet, it raises concerns about the considerable potential harm generated by the distribution of these images” (Department of Justice Canada, 2002, n.p.). Indeed, the Internet provides a highly accessible forum for the mass distribution of unauthorised sexual images, such as through dedicated voyeur websites, through user-generated pornography websites, as well as through email forwarding and other file sharing mechanisms. Moreover, the gendered nature of these offences, in that they largely target women and girls, is more analogous to sexual exploitation than mere privacy infringement, whether it be a secondary sexual exploitation in addition to a primary offence of sexual assault, or a sexual exploitation in the form of voyeuristically recording a consensual sexual encounter.

Child pornography offences

All Australian states and territories have enacted legislation criminalising the production, distribution and/or possession of child pornography, “child exploitation material” (see Queensland Criminal Code 1899 s228 A-D, Tasmania Criminal Code Act 1924 s130–130G), or “child abuse” material (refer to Northern Territory Criminal Code Act Section 125B). For example, the New South Wales Crimes Act 1900 s91H makes it an offence to produce, disseminate or possess child pornography, with a maximum penalty of 10 years imprisonment (for the production and/or dissemination) and 5 years (for possession). Similar criminal offences exist in Victoria (Crimes Act 1958, s68–70), South Australia (Criminal Law Consolidation Act 1935 s65), Western Australia (Classification [Publications, Films and Computer Games] Enforcement Act 1996 Section 60) and the Australian Capital Territory (Crimes Act 1900 s64–65). Likewise the Commonwealth Criminal Code Act 1995 under “Subdivision C—Offences related to use of telecommunications” criminalises “using a carrier service for child pornography, possessing, controlling, producing, supplying or obtaining child pornography for use through a carriage service” (s474.19) with a maximum penalty of 10 years imprisonment. The potential for expanding this model to apply to adult victims of unauthorised sexual images is discussed shortly.

These offences are clearly limited as they apply only to minors under the age of 18, and thus offer no recourse to adult victims of distribution of sexual “exploitation” or “abuse” material more generally. However, police in various jurisdictions have demonstrated that they are willing to pursue child pornography charges under such legislation where the offender capturing and/or distributing the image is also a minor.4 Yet arguably there is scope to create a similar criminal offence, and with a similar severity, to be framed in terms of sexual exploitation and/or sexual abuse material that encompasses adult victims of sexual assault. The following section considers this scope in further detail.

Sexual offences legislation

There is currently no Australian legislation that acknowledges the significant harm of the recording and widespread distribution of an unauthorised visual image, where the image is of a sexual assault. Likewise, current legislative responses fail to address the potential harm where an otherwise consensual sexual encounter is recorded and the image distributed without consent. Nor is the connection made in the emerging research literature and public debate on these issues between these behaviours,

4 For example, the young men responsible for the “Werribee DVD”, most of whom were under 18 years at the time of the offence, were charged with manufacturing child pornography as well as common law assault and procuring sexual penetration by intimidation (Victoria Police, 2007).
their gendered nature, and their relation to sexual violence more generally. Minor privacy and other summary offences legislation in particular reflect the pre-technology “peeping tom” scenario, and are arguably no longer sufficient to address these behaviours (Bell, Hemmens, & Steiner, 2006; Horstmann, 2006). Unlike in the past, when the harm of someone voyeuristically observing these behaviours may have been limited by the narrow accessibility of previous distribution mechanisms, the harm today is potentially both larger and ongoing because the image can now be widely distributed through ICTs and continue to be sent on by numerous people who receive the image or visit a particular website (Coleman, 2006). Moreover, while the ACMA administers a “take-down notice” scheme for prohibited content5 on websites (Australian Law Reform Commission, 2008), the scheme is limited because it has no authority over website content that is hosted in another jurisdiction (e.g., internationally) nor can it effectively monitor images sent via person-to-person distribution (such as mobile phone and email messaging). In other words, once an image is “out there,” it is very difficult to stop the image from continuing to be viewed and further distributed.

Internationally, researchers, lawyers and policy-makers responding to this issue have proposed new offences in order to address both the gap in existing legislation and to reflect the significantly increased harm caused by the widespread distribution of unauthorised visual images (Department of Justice Canada, 2002; Horstmann, 2006; New Zealand Law Commission, 2004). For example, in a consultation paper on the issue, the Department of Justice Canada (2002) suggested a “dual procedure” or “hybrid” offence whereby prosecutors could proceed with the minor (summary or misdemeanour) offence where the criminal behaviour was a breach of privacy alone, or with a major (indictable) offence where the privacy offence was also a violation of a person’s sexual integrity. These offences would be accompanied by a related offence of distribution. The consultation paper suggests that the “advantage of a hybrid offence is that it provides flexibility for an adequate and appropriate response to the gravity of the offence and the culpability of the offender” (Department of Justice Canada, 2002, n.p). An alternate model might be to create sexual offences, similar to child pornography offences, which are framed in terms of sexual exploitation and/or sexual abuse material encompassing adult victims of sexual assault, and which criminalises the production, distribution and possession of these images. These and other potential options should be considered as part of a formal review of Australian legislative responses to this issue.

A brief note on prevention

While new offences and a rethink of appropriate penalties may be required to better reflect the harm to victims and the seriousness of these behaviours, the law remains a tertiary or “after-the-fact” response. As such, while law can play an important role in making both a symbolic statement of community attitudes and in deterring individual behaviour, this is a process which both takes time and adequate enforcement. Recently there has been a strengthening focus in Australian research (Carmody, 2008; Carmody & Willis, 2006; Imbesi, 2008; Powell & Imbesi, 2008; Powell, 2007a,b,c) and policy (Office for Women, 2008; VicHealth, 2007) on the primary prevention of sexual assault, that is prevention which targets the underlying causes of sexual violence across the entire community, and also secondary prevention that targets “at risk” populations (e.g., young women and men who remain the predominant victims and perpetrators of sexual assault respectively). This research and policy context is cause to briefly

5 “Prohibited content” includes material that is rated, or would likely be rated, “Refused Classification” or X18+ according to the National Classification Code (Australian Law Reform Commission, 2008).
reflect upon the implications of the use of emerging technologies for prevention efforts.

Ethics and consumption of the sexual image

There are particularly important implications of the distribution of unauthorised visual images for sexual violence prevention through bystander education. In short, these images would not be distributed if those responsible did not consider that there was a willing and ready audience for them, and if that initial audience did not consider that it would be okay to send the image on to others. We can educate young people to be more critical consumers of images, to think about the images that they encounter, whether it is appropriate and ethical to send them on to their peers, and additionally whether it might be appropriate and ethical to report the image to an authority. Indeed, it is crucial that emerging sexual violence prevention programs engage young people in these discussions of what it might mean to be an ethical bystander. For example, Australian Criminologist Moira Carmody in collaboration with the NSW Rape Crisis Service has developed a sexual violence prevention program which focuses on supporting young people in the ethical negotiation of sexual encounters and engages young people in discussions about “being an ethical friend and citizen” (Carmody, 2008; Carmody & Willis, 2006). Another emerging sexual violence prevention program has been developed and evaluated by CASA House (Imbesi, 2008) with an additional component “Respect My Space” tackling issues of technology and sexual violence currently under development. It is critical that such prevention efforts are supported and expanded to continue responding to these emerging issues.

In this article I have focused on the harmful use of ICTs in distributing unauthorised visual images of sexual assault and also otherwise consensual sexual encounters. However, it is also important to acknowledge that ICTs can also be harnessed in more positive ways. For instance, paradoxically, the presence of ICTs in facilitating the recording and distribution of images of a sexual assault may inadvertently lead to increased reporting and detection of sexual assaults to police. More particularly, however, ICTs can also act as a forum for providing information and support to young people and adults who have experienced sexual assault and/or been the victim of distribution of unauthorised visual images. For example, Victoria’s South East Centre Against Sexual Assault (SECASA) has a profile on the popular social networking site MySpace, <www.myspace.com/secasa>. Other sexual assault support services are also exploring ways of offering information and support through other Internet forums and community websites, particularly to young people who are the majority users of ICTs.

Conclusion

In this article, I have raised questions regarding a direct link between existing debates about unauthorised visual images and the issue of sexual assault. I have critiqued the potential of current Australian legislative responses to properly respond to this issue and to reflect the additional harm caused to victim/survivors of sexual assault when a visual image of the assault is recorded and distributed. Informed by reforms taking place internationally, others have argued there may be a need for reform in the Australian context to create new criminal offences in order to address this gap in the existing legislation and to reflect the significantly increased harm caused by the widespread distribution of unauthorised visual images of a sexual assault (refer to Burton, 2005). It is crucial that the law keep up with changes in technology, to ensure that these “new ways” of committing “old crimes” of sexual violence against women and children are adequately responded to. However, it is also important to acknowledge that law remains a tertiary or “after-the-fact” response, and that there is already important work beginning to emerge to address this issue through prevention initiatives and to provide support to victims through diverse sources, including ICTs. It is critical that this mix of prevention work, alongside reform of tertiary responses, continues to be supported and expanded to facilitate the capacity of sexual assault services and the law to respond to these emerging issues.

References


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Oksman, V., & Turtiainen, J. (2004). Mobile communication as a social stage: Meanings of mobile communication in everyday life among teenagers in Finland. New Media & Society, 6(5), 319.


Dr Anastasia Powell is lecturer in Sociology at La Trobe University. In addition to investigating the role of ICTs in the perpetration of sexual violence, her previous research has explored sexual consent in young people’s love/sex relationships. The findings of this research and its implications for the prevention of sexual violence are to be published in her forthcoming Cambridge University Press book, Generation Y: Rewriting the Rules on Sex, Power and Consent (2010).
This research was completed for an LLB Honours thesis, which proposed to potentially serve as a pilot for a larger study. By examining sexual assault sentencing and judicial comments from a sample of mostly 2008 judgments in Victoria, this article explores differences in sentencing, focusing on the relationship between the perpetrator and the victim. The state of Victoria was chosen for the research because although Victorian sexual assault law and legal process has had the most progressive reforms, the only way to ensure these reforms are as effective and progressive as they seem, is to test their implementation with research. Our analysis suggests that although judges are demonstrating a better understanding of the reality of sexual assault in their discussion of mitigating and aggravating variables, this awareness is not translating into sentences.

In this article, we explore how judges interpret the harm of sexual assault during the sentencing process. We examined sexual assault sentencing and judicial comments for 2008 in Victoria. The sentences relate to offences under the Crimes Act 1958 (Vic) and include rape, incest, and sexual penetration of a child less than 10 years. These are all Level 2 offences (i.e., the maximum sentence for each offence is 25 years imprisonment (ss. 38(1), 44(1), 45(2)(a)).

This paper is concerned with how the judiciary make assessments about the gravity of the offence, relevant mitigating and aggravating factors and other relevant circumstances in order to determine a sentence. While judicial interpretation and acceptance of aggravating and mitigating factors in sexual assault cases remains an under-researched area, this paper, based upon a small recent sample of Victorian cases, provides an important beginning. Our analysis of sentencing judgements suggests that the harm of sexual offences is at times poorly understood by the judiciary, who must arrive at a sentence by considering among other things, the particular circumstances of the case, aggravating and mitigating circumstances, the character of the accused, and history of prior offending. Although we focus on Victoria, the aim is not to single out one state. Rather, this article describes just one context in which the difficulties of the legal response are evident. It should be noted that such difficulties have been identified both nationally and internationally (see Easteal, 1998; Smart, 1995).

Background

Misconceptions about violence against women exist broadly across the community. In a survey examining community attitudes, Taylor and Mouzos (2006) found that despite improvements, negative attitudes and stereotypes towards violence against women persist. Rape mythology is a stereotypical conception of “real” or “legitimate” rape defined as “vaginal penetration and physical injury perpetrated by an armed stranger in a public place” (Lievore, 2003, p. 3). It remains prevalent in Australian culture. In fact, in a recent Victorian study, 24% of respondents “either disagreed or were unsure about whether ‘women are more likely to be raped by someone they know than a stranger’” (VicHealth, 2006), which suggests that an inaccurate understanding of the context surrounding sexual violence remains prevalent.

Legal professionals, including judges—as members of the community—are subject to influence by such myths. Sentences and the judgements that accompany them have received significant scrutiny from the public, media (dating back from the furore created by Judge Bollen (“Judges on Trial”, 2009) in his “routher than usual comment” recently in Victoria), and researchers (refer to Easteal & Gani, 2005; Taylor, 2004; Victorian Law Reform Commission, 2004; Warner, 2005). With regards to sexual assault, concerns have been raised about judicial interpretation of the law (such as definitions of consent), their directions to the jury, and their assessment of mitigating and aggravating factors relevant to sentencing. It is commonly argued that, woven throughout these practices of legal interpretation, are misconceptions about the nature and extent of sexual offending (Lees, 1996, 1997; Tempkin, 2002; Young, 1998) and a gendered application of the law (Naffine, 2003).

Victorian sexual assault law and legal process has been extensively reformed since 1991, in an attempt to redefine the offence of sexual assault, minimise the
Evaluation is currently underway to determine the impacts of the reforms since 2004.

**Discretion and judicial interpretation**

Judicial discretion refers to the power of judges to make legal decisions according to the particular circumstances of the case before them. Legislative provisions, legal policy, jurisprudence, sentencing principles, and precedence guide this decision-making. In this article, we are concerned with how the judiciary interpret, attribute value to, and create meaning of the circumstances in order to determine how a case fits with the principles of sentencing, and particularly with how harm of sexual assault is addressed through sentencing.

Historically, assumptions and misconceptions about sexual assault and sexual assault victims have been expressed through judicial interpretation when sentencing or directing the jury. Such examples include the warning that it is dangerous to convict on the uncorroborated evidence of the complainant (*Longman v R* (1989) 168 CLR 79); that a delay in reporting could affect the credibility of the complainant (*R v Crofts* (1996) 88 A Crim R 232); and the acceptance of past sexual history as evidence. The case of *Longman v R* demonstrated that although the requirement for corroboration warnings has been abolished, judges retain the discretion to give a corroboration warning where they deem necessary. As an authority, Longman has not been overturned; in fact, the High Court went further in the case of *Doggett v R* [2001] HCA 46, declaring that the corroboration warning should be given as a blanket warning in all sexual assault trials, regardless of corrobating evidence. Victoria has recently sought to limit these rulings through amendments to the *Crimes (Sexual Offences) Act 2006* (s61(1e); see also Judicial College, s2.6.1).

There is evidence to suggest that some judges continue to give the old form of corroboration warning (Department for Women, 1996; Heath, 2005; Victorian Law Reform Commission, 2004). A New South Wales study (Department for Women, 1996) found corroboration warnings more likely to be given where the relationship between victim and offender was one of “acquaintance, friend, family member or associate”. There is no available information to indicate how judicial directions to the jury on evidence are currently expressed following these reforms in 2006.
Sentencing in Victoria

Research has shown that rape mythology influences perceptions of the legitimacy of sexual assault and the credibility of victims (Lievore, 2005; Taylor, 2007). Whether it also influences sentencing remains a crucial question. Sentencing is a part of the criminal justice system open to judicial discretion within certain parameters. The Sentencing Act 1991 (Vic) provides guidance to judicial officers when determining sentences in Victoria. This Act outlines the purposes for which sentences may be imposed, including specific and general deterrence, rehabilitation of offender(s), and protection of the community (s5(1)). Section 5(2) of the Act outlines aspects of the offence that the court must consider, including the nature and gravity of the offence, the offender’s culpability, and the impact on the victim. Section 27 addresses suspended sentences, detailing circumstances where this may be appropriate, and the issues the court must consider in determining the suitability of a suspended sentence.

Several documents guide judicial decision making in sentencing: the Sentencing Act 1991 (Vic), the Victorian Sentencing Manual (2005) and the Sexual Assault Manual (2007), published by the Judicial College of Victoria. The manuals provide explanation of the Act and examples of judicial interpretation of its application to particular cases and offences. Section 26 of the Victorian Sentencing Manual (VSM) is dedicated to sexual offences, outlining sentencing purposes in cases of sexual assault, and detailing the circumstances of offence and offender that are relevant to sentencing. It provides an overview of current sentencing principles, practices, and includes sentencing statistics and recent cases. In sentencing, judges must consider the maximum penalty for an offence; current sentencing practices; the nature and gravity of the offence; the circumstances of the victim and offender (including offender’s culpability); the impacts on the victim (including injury); whether the offender pleaded guilty; the offender’s previous character; and the presence of any mitigating or aggravating factors concerning the offender or of any other relevant circumstances (VSM, s21.3.2.1). These are the general principles. It is their application to sexual offences that we now consider, particularly the last of these considerations—mitigating and aggravating factors.

Sexual offences are regarded in the VSM as “among the most serious non-fatal offences in the Victorian statute book and this is reflected in high maximum penalties, now generally 25 years imprisonment” (VSM, s26.3.1). A statistical analysis by the Sentencing Advisory Council (2009) found that of the 244 charges of rape heard by higher courts in Victoria, 92.2% resulted in imprisonment. Incest and sexual penetration of child under 10 similarly had high rates of imprisonment (over 90%). Of the 475 charges heard for sexual penetration of child between 10 and 16, just over half (51.8%) resulted in imprisonment. Sentences for sexual offences are on average significantly lower than the upper level of the penalty. Concentrating on the charge of rape, the average sentence was 4.7 years, with a total effective sentence (i.e., for a case of rape where more than one charge of rape is heard) was 7.6 years. Over a 5-year period, the mean length of imprisonment for an offender was 5 years (meaning that half the terms were under five and half were between five and 25 years) (Sentencing Advisory Council, 2007a). For armed robbery (also a Level 2 offence) the median imprisonment term was 2 years and 9 months and the average sentence imposed was 3 years and 9 months (Sentencing Advisory Council 2007b).

Although sentences for sexual offences appear longer than other similarly classified offences, it must be kept in mind that a vigorous attrition process means that only the most robust and serious offences make it to the court stage in the first place. In addition, sexual offenders are more likely to be found not guilty than other offenders. Aggregate data shows that 76.1% of sexual offenders were found guilty in the most recent available data—significantly lower than the 92.1% of defendants in total found guilty of offences finalised in Higher Courts in Australia in that period (Australian Bureau of Statistics, 2009).

Research suggests that misconceptions about sexual assault influence decision-making across the legal process. Lievore’s (2005) work on prosecutorial decisions shows how the nature of the relationship between victim and offender, victim credibility, forensic evidence, and additional injuries affect the progression of a case. For the judicial process, even when judges are aware of and acknowledge contemporary understandings of rape and sexual assault, this awareness is not always readily reflected
Research by Taylor (2004) has shown, however, that in cases of intrafamilial sexual assault, while breach of trust has been weighted as an aggravator, it may be outweighed by an abundance of mitigating factors. Taylor (2004) found mental illness, health problems, age, lack of prior convictions, good character, financial difficulties, pain and suffering, as well as contributory negligence on behalf of the victim or a third party, to be among the mitigating factors used in reducing an intrafamilial offender’s sentence. Further, while judges were prepared to consider all mitigating factors at the sentencing pleas, according to Taylor (2004), they were not as receptive to evidence concerning the degree of suffering experienced by the victims. The remainder of this paper examines this issue further through analysis of a small sample of recent sexual assault cases in Victoria.

The sample

We examined sexual assault sentencing and judicial comments for 2008, including two earlier cases of partner rape, noting differences that correlated with the offender’s relationship to the victim. Supreme Court cases were accessed through the AustLII database, and County Court decisions from the Victorian County Court’s internal database. The sentences relate to offences under the Crimes Act 1958 (Vic) and include rape, incest, and sexual penetration of a child less than 10 years. The maximum sentence for all of these offences is 25 years imprisonment (ss38(1), 44(1), 45(2)(a)).

The 19 cases were divided by relationship of offender to victim; four partner/ex-partner; five family members; five stranger; and five known other than family. There were a total of 36 sentences for the offences of rape, incest and sexual penetration of a child less than 10 years; and 86 sentences with non-sexual charges included. Quantitative analysis determined the number of guilty and not guilty pleas, the average sentence, and the number and type of alternative (non-imprisonment) sentences imposed for each category of offender.

The mitigating and aggravating factors mentioned in each sentencing decision were recorded for each category of defendant, and relevant sentencing comments, including those referring to the relationship between the victim and the offender, were examined qualitatively to provide a current view of judicial perspectives on rape and sexual assault in Victoria.

As this was a small study restricted to one state of Australia, and no analyses of statistical significance were conducted, the results are of a preliminary nature, and indicative only.

Sample results

All 19 defendants received a sentence of imprisonment, with just two (11%) receiving partially suspended sentences. The defendants pleaded guilty to
27 (75%) of the charges, and the average sentence for all offenders was 4.6 years imprisonment. This average sentence is low considering that the maximum sentence for all offences covered by the study is 25 years imprisonment.

As Table 1 shows, sentences were somewhat higher for stranger perpetrators.

When the total effective sentences of imprisonment for all offences, both sexual and non-sexual, were examined (refer to Table 2), the average non-parole period for strangers was 8.3 years, compared to 3.1 years for offenders known to the victim.

The longer average sentence for strangers may be a result of the greater number of convicted charges for strangers. Stranger rapists and those acquainted with the victim were more likely to be sentenced for more than one count of the sexual offence for which they were charged, with the average number of counts per person being 2.5. This compares to an average of 1.2 counts for each offender in the categories of family and partner/ex-partner. This

### Table 1: Sentences for sexual offences for offenders by relationship to victim

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Total cases</th>
<th>Total sentences</th>
<th>Guilty pleas/charge</th>
<th>Average sentence/charge</th>
<th>Partially suspended sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n (%)</td>
<td>n (%)</td>
<td>n (%)</td>
<td>Years</td>
<td>n (%)</td>
</tr>
<tr>
<td>Stranger</td>
<td>5 (100)</td>
<td>13 (100)</td>
<td>11 (85)</td>
<td>6.4</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Partner/ex-partner</td>
<td>4 (100)</td>
<td>6 (100)</td>
<td>6 (100)</td>
<td>4.2</td>
<td>1 (25)</td>
</tr>
<tr>
<td>Family</td>
<td>5 (100)</td>
<td>5 (100)</td>
<td>2 (40)</td>
<td>4.4</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Other known</td>
<td>5 (100)</td>
<td>12 (100)</td>
<td>8 (67)</td>
<td>3</td>
<td>1 (20)</td>
</tr>
<tr>
<td>All known</td>
<td>14 (100)</td>
<td>23 (100)</td>
<td>16 (70)</td>
<td>3.8</td>
<td>2 (29)</td>
</tr>
<tr>
<td>All offenders</td>
<td>19 (100)</td>
<td>36 (100)</td>
<td>27 (75)</td>
<td>4.6</td>
<td>2 (11)</td>
</tr>
</tbody>
</table>

(a) The case of DPP v John Henry Goodall [1999] VSC 565 was excluded from this calculation as it involved counts of murder and attempted murder which would have distorted the results. If this case is included in the analysis, the total number of cases is 4; there are a total of 15 sentences; the average total effective sentence is 11.8 years; and the average non-parole period is 8.1 years. (b) 13 counts of rape, 4 counts of indecent assault, 2 counts of threat to kill, 2 counts of false imprisonment, 2 counts of theft, 1 count of burglary, 1 count of intentionally causing serious injury, 1 count of threat to inflict serious injury, 1 count of recklessly causing serious injury, 1 count of common law assault, 1 count of kidnapping, and 1 count of being a prohibited person possessing a firearm. (c) 5 counts of rape, 3 counts of administering a drug for the purpose of sexual penetration, 1 count of kidnapping, 1 count of intentionally causing serious injury, 1 count of arson with intention to endanger life, and 1 count of recklessly causing serious injury. (d) 12 counts of committing an indecent act with a child under the age of 16 years, 3 counts of incest, 3 counts of indecent assault, 1 count of rape, 1 count of attempted incest, 1 count of sexual penetration of a child under the age of 10 years, and 1 count of sexual penetration of a child under the age of 16 years. (e) 2 counts of rape, 8 counts of indecent assault, and 1 count of recklessly causing serious injury.

### Table 2: Sentences for both sexual and non-sexual offences for offenders by relationship to victim

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Total cases (n)</th>
<th>Total sentences (n)</th>
<th>Average total effective sentence (Years)</th>
<th>Average non-parole period (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stranger</td>
<td>5</td>
<td>31</td>
<td>11.6</td>
<td>8.3</td>
</tr>
<tr>
<td>Partner/ex-partner</td>
<td>3</td>
<td>12</td>
<td>7</td>
<td>3.8</td>
</tr>
<tr>
<td>Family</td>
<td>5</td>
<td>22</td>
<td>5.3</td>
<td>3.3</td>
</tr>
<tr>
<td>Other known</td>
<td>5</td>
<td>21</td>
<td>4.5</td>
<td>2.5</td>
</tr>
<tr>
<td>All known</td>
<td>13</td>
<td>55</td>
<td>5.4</td>
<td>3.1</td>
</tr>
<tr>
<td>All offenders</td>
<td>18</td>
<td>86</td>
<td>7.1</td>
<td>4.5</td>
</tr>
</tbody>
</table>
appears to contradict the evidence and research base on family and partner violence, which suggests that violence of this type is often long-term, comprised of multiple, continuous acts (Easteal & Feerick, 2005; Taylor, 2004).

**Aggravating factors**

As Table 3 illustrates, the most common aggravating factor mentioned in sentencing three of the four groups of offenders was the nature of the crime and its impact on the victim. Where the defendant was a partner or ex-partner of the victim the only aggravating variable mentioned was the nature of the crime and its impact on the victim. With defendants who were family members of the victim, the most common aggravating factor was breach of trust due to the familial relationship between offender and victim.

Judicial sentencing remarks suggest that the longer sentences given are linked to the perception of the severity of the nature of the crime and victim vulnerability in the face of “real” rape by a violent stranger:

You entered the premises of your victim in the early hours of the morning; you found a knife and you threatened your victim with that knife and raped her over a protracted period. (*R v Moses, Sherwin* [2008] VCC 055, 12)

The facts in this case are most serious. They are disturbing in that they occurred … in circumstances where you did not know the victim prior to this assault. It is also disturbing that this offending occurred in her bedroom at the university premises, and that she was entitled to feel safe. Your behaviour was totally unacceptable. (*R v Ipia, Immanuel* [2008] VCC 0355, 3)

It was a horrific experience for your victim to return to her home to be confronted by you, a complete stranger armed with a bread knife, and then be subjected to your degrading and humiliating behaviour for a sustained period. It was … every woman’s worst nightmare. (*R v Lancaster, Damien* [2008] VCC 0043, 5–6)

An extremely serious example of the offence of rape … Such conduct was craven and despicable … She was unknown to you, taken from the street where she had the right to feel safe. She was attacked without explanation and suffered extremely serious injuries. (*R v Gill, Luke* [2008] VCC 0027, 46–47)

The nature of the crime was also mentioned as an aggravating factor in all of the partner/ex-partner cases. However, all of these cases had some level of violence accompanying the rape; and it was that violence, and not the relationship, that was referred to:

These were grievous crimes, committed in the home of the victims—a place which should have been their safe haven. (*DPP v John Henry Goodall* [1999] VSC 565, 30)

You were angry and aggressive towards the complainant and you hurt and injured her by bruising and effectively kept her imprisoned in her room for some time. Before the rape you had harassed her and kept her under your observation as she came and went from her room. Those circumstances persuade me that I must regard your offending as more serious and deserving of a sentence consistent with that. (*R v Pereira, Sanjeewa Romeshal; Don Mahabalage* [2008] VCC 0544, 24)

Although the relationship between the victim and offender drew comment in cases of partner/ex-partner rape, it was never explicitly used as a variable.

<table>
<thead>
<tr>
<th>Aggravating factors</th>
<th>Stranger</th>
<th>Partner/ex</th>
<th>Family</th>
<th>Other known</th>
<th>All offenders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impact on victim(s)/nature of crime</td>
<td>4</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>Breach of trust</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Previous convictions</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Lack of remorse</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>High risk of re-offending</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Persistence of criminal conduct</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>
that mitigated the sentence (see Table 4). However, neither was it used as an aggravating factor in sentencing, which, in some cases, appeared to contradict the judge’s commentary:

The mere fact that you and your victim had had sex on numerous prior occasions does not, in my view, diminish its seriousness. Indeed, it may be argued that such conduct by a previously trusted lover is additionally traumatic. (R v Peter James Harrison [2000] VSC 195, 25)

At all times, [the victim] was a vulnerable spouse who you took advantage of and then proceeded to seriously injure her in an outrageous act of setting fire to the bedroom where she lay drugged in a stupor caused by your administration of sleeping tablets. (R v A [2008] VCC 0333, 35)

Thus as stated above, it is when additional violence is seen as an aggravating variable that the judge determines the crime was serious, despite the defence arguing that the relationship ameliorated the seriousness.

It was submitted by [the defence] on your behalf that the rape occurred in the context of a relationship that had been unstable but continuing … Whilst that does not change the nature of the offence nor ameliorate the complainant’s distress [the defence] submitted that it distinguishes the crime from that which might be perpetrated by a stranger with the attendant potential terror to the victim and places it at a lower end of the range of severity, a matter relevant to sentencing. (R v Perea, Sanjeeewa Romeshal; Don Mahabalage [2008] VCC 0544, 23)

Breach of trust and abuse of relationship were mentioned in all five of the cases involving family-member perpetrators, and as Table 3 shows, breach of trust was explicitly used as an aggravating variable in four of the sentences in this category:

The sanctity of the father/daughter relationship has been completely abused by yourself, and most aggravating is not only the gross breach of trust but also, of course, the fact that you knew your daughter was unable to exercise any decision of her own to refuse you. (R v Z [2008] VCC 0579, 13)

It must be observed that these offences were a despicable breach of trust … your niece was entitled to look up to you, trust you and rely upon you, to support her in her formative years. You, sir, have grossly breached that trust. (R v M [2008] VCC 0353, 93)

It is hard to imagine a grosser breach of trust than this, a loved and trusted stepfather … digitally penetrating his 13 year old stepdaughter in her own bed whilst her mother was in an adjoining room … children should feel safe in their own homes … from sexual depredation. They should feel safe with … those who step into the role of parents as step-parents. They should not be subjected to selfishness that permits an adult’s desire for sexual gratification to overcome boundaries of decency, trust, respect, care and protection which all children in our community should be able to enjoy and take for granted. (R v Mc [2008] VCC 0507, 27)

The offence against your daughter occurred … during a contact period … where it was thought safe, naturally, that a daughter could go to her father unattended and be safely cared for and looked after … You were trusted with that care and responsibility and you breached it, badly. (R v L [2008] VCC 0432, 8)

You abused your defenceless stepdaughter, who was entitled to expect your protection, not to be exploited as she was … you have committed a very serious breach of trust. This is a significant aggravating feature. You knew what you were doing was wrong, very wrong. (R v M [2008] VCC 0353, 93)
Breath of trust was also referred to as an aggravating variable in two cases involving perpetrators known to the victim, but not family or partner/ex-partner. The victims in these cases were patients under the professional care of the offenders at the time of the offences:

> Your breach of that trust meant a humiliation that may be difficult to measure … but which has been keenly felt on her behalf by her family. (R v Alexander, Henry [2008] VCC 0310, 34)

> Medical Practitioners are placed in positions of extreme trust … Any patient and women in particular, should be able to attend medical consultations and receive genuine medical treatment. Your conduct in purporting to administer a genuine treatment whilst in fact acting for your own sexual gratification is disgraceful. (R v Tong, David Wee Kin [2008] VCC 0315, 85)

However, breach of trust was only mentioned in one case of partner/ex-partner rape. In this case, breach of trust was neither referred to as a mitigating nor aggravating factor, but was mentioned in regard to the issue of general deterrence. The judge stated that the breach of trust within the relationship contributed to the need to deter the general public; however, the breach of trust alone was not enough to increase the sentence:

> In relation to the sex related counts, the degree of moderation of general deterrence is slight, given that the offending involved a breach of trust and my earlier finding that your moral culpability was not reduced. (R v A [2008] VCC 0333, 35)

### Mitigating factors

Mitigating variables mentioned in all cases were similar for each category of defendants. These were primarily: that the defendant pleaded guilty; demonstration of remorse; no prior convictions; previous good character; and reasonable prospects for rehabilitation. However, the mitigating factors applied in the family cases appear to be given greater weight that those in any other category, cancelling the effect of any aggravating variable and resulting in lower

<table>
<thead>
<tr>
<th>Table 4: Use of mitigating factors in sentencing by relationship between victim and offender</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mitigating factors</strong></td>
</tr>
<tr>
<td>Good prospects for rehabilitation</td>
</tr>
<tr>
<td>Guilty plea</td>
</tr>
<tr>
<td>Remorse</td>
</tr>
<tr>
<td>No prior convictions</td>
</tr>
<tr>
<td>Good character</td>
</tr>
<tr>
<td>Impaired mental functioning</td>
</tr>
<tr>
<td>Hardship</td>
</tr>
<tr>
<td>Delay</td>
</tr>
<tr>
<td>Age</td>
</tr>
<tr>
<td>Spontaneity/unlikely to re-offend</td>
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<tr>
<td>Drug related crime</td>
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<tr>
<td>Cooperation with Police</td>
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<td>Conduct in prison</td>
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<td>Not sexually motivated</td>
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<td>Aboriginality</td>
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sentences. It should be reiterated however, that no analyses of statistical significance were conducted, and consequently, interpretations of this data should be viewed as suggestive only. Table 4 outlines the mitigating variables that were specifically stated by the judges as reducing the sentence they were about to hand down.

Judicial remarks reflect the belief that offenders who commit crimes against known victims are less likely to offend in the future, because the offender knew the victim, and are therefore less of a threat to the community and have greater prospects of rehabilitation:

Other mitigating factors … [include] that you have very good prospects for rehabilitation and it is most unlikely that you would offend in future. (R v Pereira, Sanjeewa Romeshal; Don Mahabalage [2008] VCC 0544, 22)

You were not motivated in any sexual way to commit the offence. I see the significance of these findings to be related to the sentencing purposes of community protection, specific deterrence and your capacity for rehabilitation. (R v Alexander, Henry [2008] VCC 0310, 29)

You are unlikely to re-offend in the sense that your public persona is completely devoted to the maintenance of the lie that you never raped your daughter. That inevitably would mean that upon your eventual release from prison … you would deny any offending behaviour in order to maintain credibility with your family and your associates. I accept that view … that it is unlikely you would re-offend in a similar manner again. (R v Z [2008] VCC 0579, 32)

You have good prospects of rehabilitation and that specific deterrence needs little weight in your case. You have learnt a very powerful lesson from this and the punishments you have suffered personally and will continue to suffer I accept are clearly enough to make it highly unlikely that you will commit further offending at this time. (R v Mc [2008] VCC 0507, 24)

Conclusion

There is a real concern that judges may diminish the seriousness of sexual offences when offences do not conform to dominant, but factually wrong stereotypes about rape and sexual assault. These stereotypes relate to the victim–offender constellation, victim behaviour, and the context of the crime. A very real danger is that these stereotypes are perpetuated and embedded within social and legal discourse, resulting in only those cases that conform to narrow and false stereotypes attracting serious judicial reproach and sentencing, and that they influence investigation and prosecution practices.

This study provides preliminary support for previous findings that show a relationship between dominant negative stereotypes and sentencing that is a consequence of the process and decision-making behind sentencing that is subject to judicial discretion. This relationship is further compounded by research that suggests judges are subject to influence by rape and sexual assault mythology. This study considered a small sample with preliminary analyses to test if the relationship between the offender and victim appears to affect sentencing. While it is evident that judges have an increased awareness of the severe and enduring effects of rape by a known assailant, they remain reluctant to apply this to sentencing, resulting in sentences that contradict accompanying judicial commentary. As predicted, longer sentences are given where the offender is unknown to the victim and where some level of violence accompanies the rape. While a prior sexual relationship between victim and offender is no longer viewed as a mitigating variable in sentencing, neither is relationship seen to aggravate the crime. Further, while breach of trust appears to be given significant weight when sentencing cases of intrafamilial sexual assault, it is not applied in incidents of partner or ex-partner rape.

In this study, as a result of judicial discretion, stranger rape and rapes accompanied by violence were viewed as the most serious forms of rape. Less gravity was accorded to known-offender rape; therefore stranger and violent offenders were most likely to receive the longest sentences. While judges may articulate an increased awareness of the effects of various types of sexual assault, and acknowledge aggravating factors such as breach of trust, this awareness is either not translating into sentences or it is being balanced by the emphasis of other mitigating factors. For this knowledge to successfully translate into sentences, societal beliefs and stereotypes surrounding sexual assault need to be significantly adjusted. Given these findings, further study over a larger dataset would provide more accurate sentencing statistics and a better overview of the judicial perceptions of sexual assault across Australia.
addition, as sentencing does not normally contain the machinations of thought to provide how judges necessarily arrived at their findings, further research on how judges determine and arrive at their decisions would be greatly beneficial, providing for more transparency and accountability in sentencing.

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Sex, Violence and Crime

Foucault and the “Man” Question


Reviewed by Kirsty Duncanson

Sex, Violence and Crime is a thorough, theoretically-informed look at the ways in which shared ideas about heterosexuality and gender difference shape current debates of preventing men’s violence against women. The principal focus of Howe’s book is domestic violence and femicide, nevertheless her overall argument is also relevant to addressing sexual assault.

Howe’s central argument is this: that even as violence against women is increasingly understood to be a major social issue, the gender or “maleness” of perpetrators of violence against women is nevertheless disappeared and “un-named” in current debates about prevention. Howe attributes this in part to criminology’s tendency to ignore gender as an object of analysis (except when the offenders are women). Historically, male criminologists have left unremarked—and unremarkable—the sexed identity of male offenders involved in sexual violence against women. That they are sexed socially, psychically, physically as “men” was tangential to the drivers and expressions of violence against women—when criminology did manage to address sexual assault, child sexual abuse, or partner violence that is.

Over the last few decades, feminist criminology (such as work by Carol Smart, Ngaire Naffine, and Howe herself) has sought impressively to right this balance and build up a theoretical and empirical evidence base from which to begin to understand notions such as “masculinity”, “power”, “woman” and how they are at work in gendered forms of violence. From Howe’s perspective though, this knowledge is continually absenting and “un-named” in current debates about violence against women. “Discourse” here refers a system of representation that takes place through language; and an attempt to confront men’s violence against women without retreating into totalising or essentialist forms of feminism.

In analysing the absenting of men’s gender in talking about violence against women, Howe uses the work of the French thinker Michel Foucault. Foucault was concerned with the connections between power, knowledge and the production of what counted as “truth”. For Howe, what is useful about Foucault’s thought is the insight that apparent social, biological “facts” such as “man”, “woman”, and “sex” are as much products of what is said about them as they are material facts.1 This is to recognise that how we talk, write or represent an event, an object or an abstract concept shapes what can be said about them and what is understood as the “truth” about them. In this way, the script—discourses—we express about gender, pleasure, violence and sexual difference shapes our knowledge and our responses to men’s violence against women. “Discourse” here refers a system of representation that takes place through both language and practice to construct dominant understandings of the social world. (These ideas are explored in more detail in the interview with Adrian Howe, this edition of Aware).

The book aims to expose what Howe calls “discursive manoeuvres” in the production of knowledge about men’s violence against women. Such manoeuvres take place through language choices and the construction and evaluation of research, which disguise or obscure various components under analysis. In the context of sexual assault and domestic

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1 The “linguistic” or “structuralist” turn of the 1960s significantly shaped critical scholarship of the 20th century and continues to do so. Structuralism argued that meaning, truth or knowledge was not an inherent or essential property of what was being studied, but a product of relationships between things (e.g., day is day because it is not night, man is man because he is not woman) (Tallack, 1995). European thinkers such as Michel Foucault and Jacques Derrida expanded thinking in this area and many feminist thinkers enthusiastically took up their perspectives because they provided a set of tools and system of thought that suggested gender difference was not a biological given but was produced through linguistic and social practices. Foucault’s utility is that discourse extends beyond language and signs of meaning to institutional and organisational practices (Threadgold, 1997).
violence, Howe identifies these discursive manoeuvres downplaying or erasing the “sex” at the centre of men’s violence against women. Such manoeuvres are not regarded as conspiratorial, but are presented as uncritical repetitions of familiar, taken for granted frameworks for understand the social world. Howe provides various examples to demonstrate discursive manoeuvres taking place.

Chapters 2 and 4 focus on criminological research into violence. Criminology has been a rich resource for “knowledge” about crime; it is in this field that statistics documenting violence are generated, investigated and theorised. This knowledge goes on to inform policy and practice in such areas as the sexual assault sector. But the analysis in Howe’s work reveals that many criminological investigations “unnamed men’s violence”, downplaying or erasing the sex of the perpetrator. This erasure in turn shapes the knowledge that is produced by the research.

In one example, Howe describes a US study of “inter-sexual violence”, which comparatively calculates violence perpetrated by women against men, women against women, men against men, and men against women. Howe’s analysis shows how the research design created an artificial finding because of a shared “truth” among the researchers. The method designated a “control” category of uncalculated violent acts in an acknowledgement of men’s “greater propensity” for violence. Creating “control” categories is an established research method to prevent one variable from being overwhelmed and perhaps disguised by other already known variables. In this study, the “control” categorisation sets aside data concerning men’s violence as unproblematically “greater” than women’s in order to calculate the comparative inter-sex violence of men and women. The conclusion is that female-to-male violence occurs “relatively” more often than male-to-female violence, “once the greater propensity of males to assault has been controlled” (Howe, p. 59). The controlling of data is just one step in the study’s method but it plays a central role in obscuring (or “controlling”) men’s violence by uncritically ascribing masculine violence a natural inevitability.

Another domain Howe critiques is the representation of sexuality and sexual practice in the sex advice articles of British and Australian magazines including Cleo, Cosmopolitan and New Woman. Removed from their original settings and arranged next to each other in an academic critique of violence, the quotes Howe draws from the magazines appear comical. However, through this proximity Howe reveals the way in which scripts about what is sex and what is “sexy” facilitate men’s violence against women. Howe’s black humour builds a discomforting revelation of a consistent, implicit prioritisation of masculine desire, which is articulated in these magazines through a discourse of “women’s empowerment”. Howe demonstrates the way in which women’s magazine’s “sex talk” continually prompts women to make compromises in order to please or support their male partners, a regular feature of much sexological literature (refer to Bettina Arndt, 2009, The Sex Diaries). Although these articles regularly and frankly describe some sexual practices ostensibly most desired by men as painful, uncomfortable or not enjoyed by women, desire, pleasure and comfort of these women is repeatedly silenced. Howe furthers the way in which this discourse of prescribed feminine heterosexuality depends upon a homogenised understanding of masculine desire, which also limits the range of male heterosexual expression to the same script.

Howe is careful to distinguish her analysis from the position of radical feminism in which masculine sexuality is conflated with aggression and violence, and feminine sexuality with victimhood. Instead, Howe’s nuanced analysis demonstrates the complexity of heterosexual sexual relations, and the discursive quality of sexuality and sex. Through the use of a Foucauldian understanding of discourse, sex as identity and as practice is revealed as a construction built through such media as magazine tips for having better sex. This process exposes the assumptions attached to male and female bodies as they inform the production of knowledge about violence and crime.

Approaching sexual violence in this way allows for critical engagement with the social frameworks that facilitate such violence. This framework coincides with a central theme raised in the recent Framing Best Practice report setting national standards for primary prevention of sexual assault through education (Carmody et al., 2009, Framing Best Practice, NASAV). The release coincided with the Government’s release of The Plan to Reduce Violence Against Women and their Children (2008). The authors of the report stress the different affective consequences of education programs that seek to change attitudes and those that change behaviour. By recognising that sexual identity and practice, understandings of what is sex and what is sexy are discursively produced takes the issue of violence deeper and allows the sexual violence to be challenged as it functions at the level of ostensibly “natural” gendered behaviour, pleasure and desire. It challenges the scripts at work in heterosexual engagements. This is how the behaviour supporting or enacting sexual violence can be addressed.
Howe’s book also intersects with the concerns of the recently released *National Plan* (2008). The release of the Government’s plan was framed explicitly through a language of gender and feminist understanding of the intersections of sex and violence. The Prime Minister Kevin Rudd (2008) laid the responsibility for violence against women distinctly in the hands of men by stating that it was “his gender” that perpetrated such violence. Howe’s book has pre-emptively investigated this discourse of gendered or sexed responsibility for violence against women, particularly as it has been used in public policy implemented to reduce that violence.

Chapter 6 addresses the problems of getting men’s violence onto the political agenda in Australia and the UK, and investigates the difficult path of feminist engagement with policy development. Taking the very naming of the violence as an example, Howe explores the way in which the choice of “family violence”, “domestic violence”, “violence against women” or “men’s violence” each present different political problems. While most attempts to name the violence de-emphasise the sex of the perpetrator, Howe notes that naming the perpetrator’s sex causes “all hell to break loose”. However, Howe also identifies the importance of naming “family violence” for Indigenous communities in Australia as a means of recognising the conditions and experience of violence within these communities.

Through this critique Howe presents discursive awareness as a strategy for getting men’s violence against women onto the political agenda, and perhaps reducing the violence. This is not a prescription for naming violence in a specific way, but rather proposing an approach that exploits an awareness of the power of discourse and of language to leverage political engagement with the issue of men’s violence against women.

Howe also argues that prevention efforts are undermined by what she regards as the prioritising of masculine comfort over effectively challenging violence experienced by women. A primary goal of her book is the creation of a “usable” Foucaudian tool for developing critical understandings of sex and “sexed” violence (see interview, following). This is a potentially onerous goal, but it is a goal that she fulfils with an accessible writing style, dark humour and a balanced interplay of theory and analysis.

At the same time, it worth considering the costs of focusing on men’s sexed subject positions by calling it “men’s violence”. Does it mean that impact of the violence on women is lost? Will it result in a disengagement of men from prevention work (a tension that was examined briefly in *Aware 22 by the ACSSA team*)? Furthermore, Howe’s position on “sexed violence” (see following interview) is rather sketchily informed. It has been widely illustrated that violence is understood poorly when relying solely on explanations relating to men’s “sexed” identities, especially in Indigenous communities. Other dimensions of masculine identity such as class, race, ethnicity, rurality, or education, also intersect with and arguably transform the meaning and experience of men’s sexed identity.

Throughout the book, Foucault’s theory is applied through Howe’s discussion of the issues and the case studies she addresses. In this way the reader is not confronted by a separate and impenetrable theoretical chapter, which so often stands as a barrier to the substantive analysis of other potentially useful texts. Howe fulfils her goal of creating a “usable Foucault”. Her use of Foucault’s reconceptualisation of sexuality as something produced discursively is accessible. She goes on to demonstrate how it enables a disentanglement of men’s acts of violence from assumptions of “natural” masculine sexual aggression.

This is a challenging book, confronting the reader with the “discursive manoeuvres” that often remain hidden. But it also provides a set of tools for critically understanding sexed violence, or reinserting men and their agency into understandings of violence against women. It also offers reflections on strategic engagements with political bodies and involvement in policy development. *Sex, Violence and Crime* presents an accessible poststructuralist framework for reconceptualising sex that is crucial to addressing issues of sexual violence. Howe’s findings do not fail to shock as she unveils what is hidden in plain sight: the sex of the offender committing violence against women and the choreographed exercises that work to disguise it.

**References**


At the time of writing Kirsty Duncanson was a Research Officer at the Australian Institute of Family Studies.
This collection of eleven essays with a reflective introduction explores the harms and violence faced by women as a result of forces of globalisation. While the causes of harm are explored, the essays also examine and celebrate the efforts women have made to address the harms they experience. By extending the focus of analysis to the global, Cain and Howe enable examination of the conditions for women’s vulnerability beyond the domestic or the national frames. This reveals positive and negative impacts of such global agencies as the United Nations or global financial institutions such as the International Monetary Fund and the World Bank, transnational research, the international tensions of the politics of terror, the global marketplace, and the exportation of liberal values.

The introduction situates the discussion and analysis of the essays within a theoretical field of “social harm”. Harm is a concept central to criminology and criminal law, as the point at which the state is justified, or required to intervene in such private spaces as the home or the corporation. The concept of “social harm” proposed in Women, Crime and Social Harm shifts the focus from specific individual harms or types of violence to broader circumstances of wider-reaching acts that negatively affect the living conditions of a community. This enables the authors to include acts affecting women not formally identified as criminal into the “scope of criminology” (p. 4). For example, this approach allows a contemplation of economic policies that reduce family incomes to below subsistence level as a form of social harm, a harm that has damaging consequences for the lives of women and their families.

The individual chapters foreground the often obscured issues concerning violence against women when focused on nation-based incidents. For example, Perera’s chapter about female refugees arriving on the islands recently excised from Australian territory raises the question of how violence against women might be addressed when the women and the violence appear to sit between the borders of any law’s jurisdiction. Green considers the culpability of the state in the development of policies that harm, while Kisaakye investigates the fallout of conflict situations in which women become the targets of “sexed crimes” such as rape, mutilation, and enslavement, and the different levels of liability for these crimes, that extend from the individual perpetrators, through the warring factions to the international facilitators of the conflict. Bose’s chapter “Dangerous Liaisons: Sex Work, Globalisation, Morality and the State in Contemporary India” investigates the trafficking and exploitation of sex workers within the international and global context, and the impacts of policing the trade on the workers themselves.

Davis provides a chapter titled “International Human Rights Law and Aboriginal Women in Australia”, exploring the ways in which the globalisation of human rights has silenced Indigenous women in legal and political engagements with Indigenous communities. Davis suggests local judicial trends have disqualified Aboriginal women from human rights protections. She suggests Aboriginal women’s rights fall by the wayside in the intersection of Aboriginal customary law and the Australian legal system through a distortion of customary law by Aboriginal men to justify and condone violence against Aboriginal women. This process of distortion has oversimplified the issues of violence in Aboriginal communities. Discussion and reform must be conducted with informed nuance, acknowledging the differences between the legal systems and accounting for the imbalance in power between Aboriginal men and women in society.

The collection also includes a recognition of women’s resistances to the forces of harm, and their strategic harnessing of international agencies and networks to take control of their futures. Chapter 10

Reviewed by Kirsty Duncanson
in particular, “Global Feminist Networks on Domestic Violence,” focuses on the achievements of women’s movements at local, regional and international levels, addressing violence against women.

The final chapter presents a set of questions of particular relevance to knowledge about sexual violence in Australia. Walklate’s “Local Contexts and Globalised Knowledges: What Can International Criminal Victimization Surveys Tell Us About Women’s Diverse Lives?” provides a critical examination of a central source of comparative statistics about women’s experiences of sexual assault. Walklate provides a history that contextualises the creation of the survey and a critical explanation of how the survey is conducted. She explores both issues that have been revealed through the survey and those that have remained hidden despite the implementation of the survey. Her lens is a critique of universally applied research tools, through which she asks if such heavily relied on resources as the International Criminal Victimization Surveys can appropriately recognise the diversity of women’s lives and the conditions of their experiences of violence. Walklate’s critique has important implications for the sexual assault sector, by cautioning against the uncritical reliance on statistics.

For the Australian sexual assault sector, this book presents an opportunity to step back and reflect upon our role as a Western nation in the global network and on the practices of policy that impact upon the burden carried by women, both within Australia and internationally, affecting women’s vulnerability to violence and exploitation. However, in its broader focus, the collection allows us to recognise the culpability not only of individual offenders, but the culpability of the larger, global bodies and networks in this violence. It also suggests hope through tactical engagements with those global agencies to address issues such as sexual violence experienced by women.

At the time of writing Kirsty Duncanson was a Research Officer at the Australian Institute of Family Studies.
Interview with Adrian Howe

Kirsty Duncanson

Kirsty Duncanson caught up with Dr Adrian Howe, Associate Professor of Social Science at RMIT University, Victoria about her book, Sex, Violence and Crime: Foucault and the “Man” Question. Kirsty interviewed Adrian about the continuing challenges in preventing sexual assault.

Kirsty: Can you describe the major themes of your book?

Adrian: The book is based on a 20-year engagement with criminological texts and a range of other cultural representations of interpersonal violence, violence against women and children, particularly men’s violence. I came to it as a feminist when I was appointed in criminology. There were really only two areas that feminist criminologists would go into back then and that was women prisoners/women offenders or violence against women. And I was astounded at what I came across in terms of representations of violence against women beyond the feminist literature. There was a lot of feminist work looking at problematic violence against women, but when you looked at mainstream criminology it was just astonishing at how men’s violence against women would disappear very quickly.

I came across an article by Hillary Allen (1987) about women committing violence against children/other women and how violent acts got disappeared. She coined this term “discursive manoeuvres” that had the effect of disappearing the very violent acts that these women had committed. This was very uncomfortable for feminists, as feminists were trying to keep women out of prison. But in fact Allen was saying that they were not taking into account that these were actually very violent women. So I adopted the method of spotting discursive manoeuvres and that’s the method I’ve been using for 20 years—of spotting how men’s violent acts get disappeared. The point is looking at the methods through which violence gets disappeared, which is absolutely crucial to policy because it gets to how we name social problems and how we name this—men’s violence against women.

So that’s why I wrote in the book: basically to talk about what happens when you try to make men’s violence the topic of conversation—in casual conversation, or as the subject of a university course or a policy: all hell breaks loose. And the thesis of the book is that I believe that it is still not socially permissible to name men’s violence against women as men’s violence in any non-feminist forum. And I’ve experienced that debate right up till now.

It’s still a very powerful thing that people have problems with—both men and women.

The conclusion I’ve come to after about 20 years of reading policy, criminological and other kinds of popular and cultural texts about violence against women is that it’s still not permissible to name it as such. People will still resort to discursive manoeuvres—states of denial, disavowals; it’s a very hard analytical object to keep in focus.

Kirsty: Throughout the book you identify a tradition of de-sexing or de-gendering male violence against women in both the language and practice of criminological research and policy. Could you elaborate a little more about what you mean by this (and any examples that you think especially illustrates this)? What do you see as the implications of this de-gendering?

Adrian: I call it sexed violence rather than gendered violence because it seems to me that you’re playing on the concept of sex, as in having a sex rather than a gender (whatever that is). The whole distinction between sex and gender was blown out of the water a long time ago.

It’s also coming from a critique of what counts as sex crime. What is usually counted as a sex crime is usually very narrowly defined as rape or as murder followed or during rape or sexual assault. It usually focuses very much on public events. You don’t refer to domestic killings or violence as a sexed crime. So there was something problematic and very exclusionary about the category of sex crimes. It was problematic in one case that I studied about 10/15 years ago, the headline in the paper was “sex crime”. It was the murder of a young woman in Frankston, but when you read the report it said that the police found no evidence of a sexual assault. So why was this a sex crime? The only reason that one could deduce from that was that a partially nude body was found. So a partially nude...
body equalled sex crime. So it seemed to be a very problematic notion.

I also have a problem with the idea of violence being anything to do with sex. There has been many feminist debates about that back in the 80s. So “sexed crimes” tries to bring on board a wide gamut of events that involve sex. Most sexual assault takes place between intimate relations within the home. However, the term also takes account of the sexed identity of the perpetrators and victims. It furthermore acknowledges interpersonal violence committed by men that has a lot to do with sex. It has to do with with his allegations that she’s taunted him: that he’s lousy at sex, or some other guy is better at sex. It’s a lot to do with departing sex: that she wants to leave; or inadequate sex.

So sex, as in having sex is often at the heart of the violence. And it’s his sexed identity as a man that is at stake in the violence. So that is why I call it “sexed violence”.

I know that internationally though it’s called gendered violence.

Kirsty: Public health frameworks and international campaigns such as White Ribbon Day are inviting men into the violence prevention discussion, this has been criticised as another reason for playing down the gendered component of the violence addressed. Do you see a role for men in addressing violence against women? How do you see the tensions between keeping the gendered nature of violence central on the one hand and on the other, getting men involved in addressing men’s violence?

Adrian: This issue of the criticism of men’s involvement is a long-standing one and it’s one that’s still going on today. About funding men’s perpetrator groups takes funding away from women’s groups—that’s a long-standing indisputable criticism.

Personally, it’s not a question that’s engaged me so much. I’m much more interested in how comments—statements about men’s violence—are received. Basically, the underlying thesis of the book and my underlying position is this: that nothing is going to change until the cultural scripts are changed. The cultural script of “she asked for it” is just so pervasive—she either asked to be sexually assaulted or killed. That is the script that is enshrined in the provocation defence, which still exists after all these enquiries, several in the UK, two in Victoria, one in WA and in Tasmania. At the heart of all those enquiries is the way men have these feeble excuses to kill women. And that is the “she asked for it” script. And after all these enquiries and months and months of consideration of the issues, these law commissioners are still not getting it: to abolish the defence and leave it as a sentencing discretion still leaves the judge to say “well okay, you’ve been convicted but it’s been mitigated”. That whole idea that someone provokes their own demise needs to be abolished.

Until we get rid of that script, I don’t care who says it, if a man or a woman says it. The problem is the script, not the actual agents. So I’m not particularly interested in the sexed identity of the people who are challenging the violence.

The question is: will there ever come a time when women can take on board, can learn to speak openly and directly about this? And I do ask about men too: can there ever be a time when men can talk about it openly without getting into one of the many defensive modes of operation. But they don’t interest me as much as the women. I’m interested in the way that the women all form around and protect men’s feelings—and the failure of men and women to really keep the focus on the cases which are by far the predominant number and the most troubling and that is the cases of men killing or hurting women.

Yes, so there is a role for men, as for women.

Kirsty: Chapter 1, “Let’s Talk About Sex, Baby” presents an analysis of sex tips from women’s magazines such as Cleo and Cosmo. Can you elaborate on how these tips preface your analysis of criminological, feminist and policy discourses?

Adrian: Ok, so why is it the first chapter? Firstly, it’s just a kind of logical question of that the university course called Sex Crime and Violence started with sex. When I started teaching the course in the 1990s, some of the biggest debates at the time, certainly in the 80s, were around the question between radical feminists versus liberal feminists (before the poststructuralists started kicking off): is violence against women
violence or is it about sex? And what is this relationship between sex and violence? The question, “Is all heterosexual sex violence?” was a big one brought on by the radical feminists. And there were big debates around consent: under the conditions of hegemonic masculinity or patriarchy (a concept I don’t use), is it possible for heterosexual women to consent to sex? The whole question of force and of when consensual sex runs into non-consensual sex (rape). There were many debates around that.

I was also using in this chapter on sex talk in *Cosmo* and *Cleo*—that’s how I always started my course, with copies of *Cosmo* and *Cleo*—to introduce the method of discourse analysis, or spotting “discursive manoeuvres”. I thought it was a very good way to see Foucault’s underlining premise: that you can’t talk about sex, you can only talk about talk about sex. Or, what matters is how sex or violence is put into discourse. That’s absolutely crucial. So it’s kind of Lesson 1 in Foucauldian analysis: looking at *Cleo* and *Cosmo*, cultural icons if you like, cultural forms that young women, students are very familiar with.

And some of those magazines are of course very problematic. I mean they are basically telling women to please men. I look at them over a range of years from the early 90s, and they always tell the sex acts men want more of. Even advising women to go along and compromise their own sexual desires. There are shifts.

I use that then to go back to the debate about “is this forced sex?” Radical feminists of the old days, and probably now still, would probably read that as forced sex. I argue from a Foucauldian, poststructuralist perspective that it’s much more complicated than that. Consenting to sex certainly is a complex business, but it’s not simply forced. But certainly you get a sense of a subordination of women’s desires to men’s desires. That is still how it is being constructed.

So there were lots of reasons to start with sex: the way that sex is put into discourse; to understand the method. And then I apply that method throughout back to criminology: “Ok this is how they talk about sex, now let’s look at how they talk about violence.”

What disappears when you look at sex talk in women’s magazines is women’s desire, and what you get is men’s desire being constructed.

It also helps elaborate what Liz Kelly (1988) famously called the continuum of sexual violence: there’s not a clear line between what’s assault and what’s consensual sex. There is in heterosexual women’s lives a continuum of forms of violence or consent.

**Kirsty:** You use the work of Michel Foucault explicitly throughout the book—he forms a central part of the title. Why Foucault? And why so explicitly theoretical? What is the importance of incorporating theory into addressing violence against women?

**Adrian:** I just think that his analysis of the production of truth is the best available. It doesn’t matter that he was hopeless in terms of looking at sex and gender and violence himself. We can still use the method. That method of “discursive manoeuvres”, Hilary Allen may not have made it explicit, but it all comes from Foucault. He is the master theorist of discourse analysis, even though he’d barely call it that himself.

His understanding of sex was very powerful as well. *The History of Sexuality* volumes are some of the most important books written in the late twentieth century in terms of disputing the theory of repression and moving toward an understanding that sex is constantly being produced. His work is also a very powerful method for looking at what’s going on in representations of violence. And he is the master theorist of power and the connection between power and truth.

What’s important about this sort of theory in particular is that it is the best way to challenge the real. He says he’s trying to shift thresholds of tolerance for the way things are—he’s trying to shift people’s sensibilities. So I apply that method to this. I see his theoretical work as enormously important for shifting people’s tolerance for men’s violence, and for how it’s spoken about.

I think that we need theory. The well-known feminist scholar, Bell Hooks put this best, we need theory to change the way things are, to shift that kind of lumpen positive notion that that’s just the way it is—we can’t have it any better than this. Language and discourse are so crucial. To understand the discursive production of truth is to immediately understand that if it’s been constructed that way, that the way it’s been constructed is just an event, then there can be another event which shifts it, which changes it.
We see this played out in the whole debate on how to name violence against women. It’s been a major part of all the campaigns across the west and at the international level, and now they’re starting to call it gendered violence. It’s very powerful because it’s the way you frame the problem. It’s crucial because something’s going to get left out. If you call it family violence, then you’re losing the men’s violence in that. The underlining theory of the discursive production of truth is very powerful for shifting policy and for shifting practice.

Kirsty: A large part of your book was developed through the tertiary course “Sex, Violence, and Crime” which you have taught in both Australia and the United Kingdom. How do you envisage this book as a tool of broader community education? Who in particular do you hope will engage with its concerns? How might your research be used outside tertiary education?

Adrian: Certainly I developed this course and the book, as a university course at La Trobe and it was very much an engagement with the students themselves, most of whom were young women around 20 years old and they were very bright students coming from a diverse range of minority ethnic backgrounds, and predominantly working class students. We used to think a lot about all these sorts of issues. The question of the accessibility of the theory was always pressing on our minds.

I think it is easy to grasp—that discursive construction of truth. I can do it in a couple of sentences sometimes, the way that men disappear. People will take an interest in some of the key themes that I address about civil versus criminal sanctions, the concern about feminists being seen as “law and order” if they want to go for criminalisation.

But there’s criticism of the partnership approach where if you want to get the money you’ve got to work with police, you’ve got to work with men’s groups. This is really causing some problems and really diluting the challenge. That is certainly what the Southall Black Sisters in the UK found. For example, when the police in London were forced to go into partnerships they would play multi-cultural politics and say “we don’t want to interfere, we’re being racist”. Or they would offload some of their solutions to the women’s groups rather than actually taking actions and prosecuting some of this. What they were picking up with some of the partnership schemes is starting to happen here too, with the co-optation of the feminist demands for action, into broader initiatives.

References

At the time of writing Kirsty Duncanson was a Research Officer at the Australian Institute of Family Studies.

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The No Means No Show

Interviews with Nelly Thomas, Maureen Weir & Margaret Chigros

Haley Clark

Haley Clark interviewed performer Nelly Thomas and Secondary School Nurses, Maureen Weir and Margaret Chigros about the secondary school sexual assault and consent education show, The No Means No Show. From their different positions as writer/performer of the show, and educator/audience member, Nelly, Maureen and Margaret discuss how the show came about, what it’s about, and how the young women and schools who make up the target audience have received it.

Interview with Nelly Thomas

Haley: Tell us a bit about the No Means No Show.

Nelly: The No Means No Show is an entertaining show for young women (although a boys' show is currently in production) about respectful and consensual sexual relationships. It includes sketches, stand-up comedy, music and audience participation to get across some key messages about being treated with respect and dignity in relationships and about what to do if this does not happen. It also specifically covers difficult issues around sexual assault and consent.

The show is a 1-hour performance followed by a 1-hour question and answer session with trained professionals—usually a counsellor who specialises in sexual assault, a police officer, a medical professional and a peer educator.

Haley: How did the show come about?

Nelly: I had been working with the Royal Women's Hospital for a year or so—a woman called Meg Gulbin (who managed their health promotion unit at the time) had commissioned me to write a fun and funny but informative show about safe sex for young women because they were having trouble conveying the safe sex messages to the young women who often found sex education boring and preachy. We called the show “The Condom Dialogues” and it premiered to 5 packed audiences of over 500 young women. It was and continues to be very successful (we’re still touring it).

When Renee Imbesi from CASA House saw The Condom Dialogues and how effective it was at conveying health messages to the young people, she suggested to Meg that we do a similar show about sexual assault and consent.

Thus, The No Means No Show was born.

Haley: What are the main issues that the show addresses?

Nelly: The core issue in the show is respect—respect for yourself, for your body and for others. We talk about specific issues that flow from this such as:

- age of consent;
- feeling good about yourself and your body;
- how people might try to manipulate you into sexual activity;
- legal issues around what constitutes consent;
- being pressured to do things you don’t want to do;
- what activities constitute sexual assault (i.e., definitions beyond “rape”);
- where to go for help if you are sexually assaulted;
- issues around technology and sexual harassment; and
- what to do if someone discloses to you that they have been sexually assaulted;

Haley: Using comedy to discuss issues of sexual assault sounds disconcerting. First, what is the purpose of using comedy to address sexual assault in this particular setting? Secondly, how is comedy used in positive, constructive way in the No Means No Show? Thirdly, in what ways does the No Means No Show’s comedic discourse differ from other comedy about sexual assault?

Nelly: I have been a comedian for 7 years and have been all over the world. Prior to that I worked in welfare and community settings—including the family violence and homelessness sectors. For some of that time I worked in policy roles for peak bodies in those fields and I got frustrated with writing beautiful and passionate policy papers that no-one read. Or if they did, they fell asleep before the end of the first page!

Then I fell into comedy (that’s a whole other article) and discovered, to my joy, that when used appropriately, comedy is a very powerful tool to convey social and health messages. Most discourses about health issues are, frankly, boring and people tune out. This is especially the case with young people.

I firmly believe that any subject can be addressed with comedy as long as the right person/group/idea is the butt of the joke. For example, you may see disgusting comedy in comedy clubs where rape
victims are lampooned. Obviously we would never do such a thing. However, we will make fun of the guy who tells a girl that his testicles will explode if she doesn’t have sex with him! We tackle the same situations as other comedians, but always from a feminist/empowering perspective.

In short, I have every confidence in the appropriateness of the show—it is respectful and all the material has been vetted by me and the health workers from CASA House and the Royal Women’s.

It is also important to remember that not the whole show is funny—there are obviously some very heavy and moving moments. However, the humour is crucial as it gets the kids listening and gets them to open up at the end. The question time is quite extraordinary and I believe it is because the young people feel connected to the performers on stage. That is because they have laughed with us.

**Haley:** What are the plans for the show in the future?

**Nelly:** We plan to do as many shows as we can get funding for! All the performers involved hope we can continue to bring the show to as many kids as possible. I wish I’d seen something like it as a teen.

For information about my other health promotion shows for young people (including the Condom Dialogues) and general health shows go to: <www.nellythomas.com/health.htm>.

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**Interview with Maureen Weir and Margaret Chigros**

**Haley:** Could you tell me about your role at the school and your involvement with the *No Means No Show*?

**Maureen:** I am a Secondary School Nurse at Preston Girls Secondary College (PGSC) and Collingwood College (CC). I work for the Secondary School Nurse Program in Melbourne’s northern suburbs. PGSC is a small school with approx 340 students many of whom are from an Arabic speaking background or are recently arrived refugees. CC is an inner city school, which includes a Steiner stream. My role mainly involves providing health education/promotion to the school community. An important aspect of my role is the delivery of sexual and reproductive health classes to students.

I have long been associated with the Royal Women’s Hospital (RWH) through Fiona Lange at Absolutely Women’s Health (AWH), the RWH health promotion department. I was invited to take students to the No Means No show (NMN) by Fiona Lange.

**Haley:** Why did your school decide to put on the show?

**Maureen:** The show was performed by professional actors and hosted by Nellie Thomas at the RWH theatre in Carlton and we attended the performance. Previously AWH ran a show called the Condom Dialogues and it was decided it would be of greater value to write a show based on the SAPPSS program with messages about sexual rights and sexual assault for young women. The No Means No Show was written in partnership with RWH CASA House and first performed in 2006.
Margaret: The NMN show was performed at the RWH and CC chose to send a year 9 class to see the show. I had previously attended AWH shows with students including Condom Dialogues. I found that comedy was a fantastic medium through which to address difficult or uncomfortable issues with young women. I am aware that sexual assault is a major issue for young women and felt that attending the NMN Show was an excellent opportunity to further discuss and inform young women.

Haley: The No Means No Show is integrated into Sexual Assault Prevention Program for Secondary Schools. Could you explain the use of the show within the broader program?

Maureen: The show is a good starter for the SAPPSS program and also a good reinforcer. The SAPPSS program educates young people on the definition of sexual assault, understanding the definition and importance of consent, impacts for the victim/survivor, the law, the rights of young men and women, introduces them to CASA House and its services and finally encourages the students to take a stand and help promote respectful relationships.

Where the SAPPSS program introduces discussion about relationships, The No Means No Show debunks myths, explores relationships further and gives young women practical strategies and confidence to negotiate sex when it feels right for them following a decision making process.

An interactive performance medium is used which is clever and funny. Using singing, music, slide show, chanting, audience participation in competitions, slapstick humour, and actors asking for immediate response from the audience, followed by a panel of experts at the end answering questions and discussing various issues. It is a very high energy show with a great deal of laughter.

Margaret: Neither of the schools that I work at have the Sexual Assault Prevention Program for Secondary Schools (SAPPSS) however I have had Northern Centre Against Sexual Assault (NECASA) involved in classroom education over the past 5 years at some of the schools that I have worked in. The NMN show was a chance to consolidate some of the messages that the students had already been exposed to in the past.

Haley: How has the show been received by teachers and students?

Maureen: I have attended the show twice with 4 different teachers. On the first occasion spontaneously on the bus on the way home a student stood up and stated that on behalf of the students this was the best excursion the girls had been on. The staff openly discussed sexual assault and harassment over lunch and shared stories and experiences.

The show was evaluated using pre and post performance surveys with students and an evaluation session the following year was conducted by Royal Women’s Hospital. Students who attended volunteered to participate in two further evaluation sessions with great support from the Year 9 coordinator Ms Anne Richards. Separate surveys of staff were also conducted pre- and post- the No Means No Show. I was invited to the Women’s Hospital for a session 9 months following the show, to participate in a discussion group with representatives from other participating schools. Generally it was felt by both staff and students that the show was valuable, funny, clever and a perfect medium to deliver key messages which were sent and understood.

Some of the feedback included comments such as:

The comedy made it great to watch, the actors were great, it was really easy to understand whilst being humorous.

Put out an important message in a funny, entertaining way.

It was funny and the information stuck with me.

It was really funny but you also learn heaps about sex that I have never been taught.

Humour made it easy to talk about.

How the characters acted like real teens and the show was the things that happen in real life, it answered all the questions in my mind.

I liked everything, you guys were really helpful and I’ve learnt so many things that I didn’t know were sexual assault.

The actors were hilarious and this is why I was listening to everything they said.

I liked the way they bring humour into this show and how they tell the truth.
That it is explained through the skits, that it is never the victim’s fault but always the offender’s fault and girls should never blame themselves.

It helped us say “no” and it taught us that it was not a bad thing to say “no”.

Real situations, opportunities, panel help.

**Margaret:** Teachers and students gave very positive feedback following the show. The teacher attending thought that all students should attend the NMN show. The teacher, students and I felt that it was time for a similar show to be developed for boys. I had several conversations with Fiona Lange (AWH) about my ideas. The use of comedy, song, the interactive performance and panel discussion meant that students were very entertained and had the opportunity to learn much about consent, myths, sexual assault, relationships, rights, in addition to services and strategies to negotiate sex.

**Haley:** How do you think students respond to using comedy to address sexual assault issues?

**Maureen:** Students responded positively as the comedy removed barriers to release and explore feelings, especially because at times the show did push the comfort levels of the students. An example of discomfort was seeing the actors kissing live on stage; the students stated it made them feel uncomfortable. Many students had these awkward feelings and were unaware that others shared them. To see them acted out on stage was at times confronting yet liberating. It also gave them confidence in their ability to make decisions and freed them from feeling so anxious with regards to the decision making process of choosing to have sex and gave them confidence knowing their legal rights.

**Margaret:** Students responded very well. They know that it is a serious issue however the use of comedy reduces discomfort and allows discussion in a safe environment.

Shame and at times secrecy often surround sexual assault and the NMN show was able to remove the barrier so that students were able to look at this issue in some depth.

Comedy is an excellent way to engage students in what could be otherwise uncomfortable for them.

**Haley:** What does the show offer to teachers and the school community more broadly?

**Maureen:** The show offers a medium, which is easily understood by everyone, as it is funny, clever and entertaining. It has a mixture of media, acting, singing and audience participation. All levels of learning are catered for and it takes away the awkward feelings experienced when discussing this topic in a formal environment. It is also based on health promotion and social marketing models of health.

**Margaret:** An excellent medium through which to explore issues surrounding sexual assault. The show possibly reminds teachers about some of the issues young women are facing and may cause some reflection on what is taught in schools. More broadly I expect students who attended NMN would have talked about the show to friends and family, hopefully passing on important messages.

**Haley:** What future plans are there for the show?

**Maureen:** A boy’s show has been in the pipeline. It is very important not just for girls to promote healthy relationships but also our boys. Boys need to be comfortable in becoming young men aware of young women’s feelings and their own. Comedy is a wonderful forum to deliver these key messages.

The formal long-term evaluation for the No Means No Show has been commenced by RWH but has not yet been completed. It is important to have the long-term evaluation completed and published as this will tell us if the key messages have been retained, and delivers the evidence based data which will justify the importance of the show and ensure it continues.

Speaking with my other hats on as a midwife and a mother of adolescents I would recommend all mothers and daughters see this show. It would open discussions, and break down many barriers to talk about relationships, feelings and decision-making, important conversations to be had with young people.

**Margaret:** Hopefully there will be more shows and a show developed for boys. In addition I hope that the NMN show is continually performed to as many students as possible and that similar shows are developed for young people.

**Haley Clark** is a Senior Research Officer at the Australian Institute of Family Studies.
Literature highlights

Compiled by Carole Jean, Librarian

The following are a selection of resources addressing current issues in the sexual violence field. In this edition of Aware, we focus on responding to sexual violence in culturally and linguistically diverse communities. ACSSA receives many of these resources. Print resources are available via the interlibrary loan system. Contact your local library for details. Electronic resources are available directly via the web address. The inclusion of a publication in this list does not necessarily mean that it is endorsed by ACSSA.

Culturally and linguistically diverse communities and sexual assault


Data from a study of 11 Victorian women from Chinese, East Timorese and Vietnamese backgrounds is used to examine the adequacy of sexual and domestic violence service providers in meeting the specific needs of victims from culturally and linguistically diverse backgrounds. In recognising the totality of the intersection of gender and racial oppression that CALD women experience, the article highlights the specific needs of CALD victims and the barriers they face in accessing services. The article explains how such needs and barriers are addressed, if at all, by existing service providers, as well as government policies that establish and inform service delivery provision.


The conclusions of an enquiry into the response of government agencies in Victoria to allegations of sexual assault are presented in this publication. The report discusses the reporting of incidents of sexual assault, terminology, information sharing and privacy, systemic issues for people from culturally and linguistically diverse groups, protection against sexual assault, providing a safe environment, female only residential options, relocation of persons following a sexual assault, child protection, inter agency liaison, Indigenous people, workforce issues, agency employees accused of sexual assault, vetting of employees working with people vulnerable to sexual assault, specialist workers and multi disciplinary teams, police investigation processes, police communication, evidence gathering, Independent Third Persons, withdrawn complaints, non authorisation of briefs, community education about sexual assault, and the role of the media. The report makes recommendations in response to these findings.


This report evaluates the Polish Domestic Violence Support Group project conducted between June and December 2004 called “Before it’s too late”, from the perspective of participants and the program facilitator. It was found that the program and the implemented therapeutic interventions made a significant and positive impact and improved the emotional wellbeing, sense of safety and belonging for all participants. It also reduced the fear of social rejection and stigma attached to victims of domestic violence.


In this interview, the Coordinator of the Immigrant Women’s Support Service in Queensland talks about the following: the service’s philosophy and organisation; the importance of having a separate service for women from non English speaking backgrounds; issues that are specific to this group of women; what the service offers to female survivors of domestic violence and sexual assault; how the service addresses the issue of male partner rape; issues that the service is working on; and lessons learned.


The author uses the concept of intersectionality proposed by Crenshaw (1991)
to analyse the intersection of gender, race and class in domestic and family violence settings. An intersectional approach encourages practitioners to work with women’s own angles of vision. The intersectional perspective provides insight into the way social, economic, cultural, political and legal forces oppress and marginalise women and compound women’s experiences of intimate violence. The article focuses on gender race intersections in Australia specifically regarding Indigenous women and migrant women and discusses class and status.


This report is an international literature review on the issues of non-reporting of sexual assault, and hidden recording (that is, the degree to which sexual assault is recorded as a secondary charge versus primary charge). The focus is on females aged 16 years and older, of diverse backgrounds and situations. The review focuses on research conducted in Australia, England and Wales, Canada, New Zealand and the United States since 1992, and includes the 2000 sweep of the International Crime Victims Survey. Data sources and their limitations are discussed. Risk of sexual assault is found to correlate with gender, age, victim-offender relationship and partner status. Factors effecting decisions to report sexual assault are explored, with personal barriers and perceptions of the criminal justice system having an important role. Attrition and hidden recording of sexual assault is considered. Sexual assault is discussed in relation to indigenous women, women from non-English-speaking backgrounds, rural Australia and women prisoners. The report also looks at recording of sexual assault in other systems, and finds that marginalisation is both a risk factor and a barrier to reporting.


Cultural and collective supports for sexual assault found among many men must be undermined in order for sexual assault prevention efforts to work, the author argues. Men’s perpetration of sexual assault is heavily influenced by contemporary constructions of masculinity and heterosexuality. The author identifies important examples of violence prevention strategies among boys and men, including in schools, through community and mass education, and in collaborative activism, and also shows important dilemmas associated with each. He points out that prevention strategies must also address the complex intersections of gender, class, age, race and ethnicity which shape women’s and men’s experiences of sexual assault. He argues that multiple forms of social differentiation and oppression structure men’s practice of violence against women, its effects, and the responses of communities and media.


The author presents results of some exploratory investigations with women from a range of cultural and linguistic backgrounds who are potential sexual assault service users. She discusses the participants’ responses to the following: responses to the information; awareness of sexual assault services; access, equity and confidentiality; awareness raising strategies; and perceptions of sexual assault. Consultations with two other groups are discussed: NSW health service providers attached to hospitals or community health centres that provide counselling, medical care and examinations, court preparation practical support to people who have been sexually assaulted; and generalist bilingual counsellors and bilingual mental health workers working within the mainstream health system. The author then discusses service provision strategies and prevention and awareness raising activities.


This paper considers several groups of victim/survivors of sexual assault which are less likely to appear within the estimates of large-scale victimisation studies. The authors draw on research that uses targeted approaches to identify the “hidden” prevalence of sexual assault among adults who were sexually assaulted as children, women from non-English-speaking backgrounds, sex industry workers and young homeless people. As well as being less visible in victimisation surveys, these groups of victim/survivors are less likely to disclose their experiences or report the sexual assault to the police, and often feel unable to access support.