

Title of the Paper in Title Case

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Abstract

My personal experience of sexual assault was for an attack by multiple strangers. I didn't conform to any of the usual rape myths and I had a witness standing right beside me when it happened, yet I have not gotten justice. For a long time I told nobody – my immediate family are still unaware of this. Thirty years later I am working through the aftermath, with symptoms that resemble PTSD that showed up 2 years ago. I have sat in a jury on what turned out to be a sexual assault trial. Using this perspective I make suggestions about improving the police response, jury directions,

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Victimisation

My first experience with the opposite sex was an attempted rape more than 30 years ago. It happened in a crowd crush, where everyone was packed so close that I could hear my attackers talking to each other about what they were doing to me. Afterwards, they pulled out a lock of my long brown hair and took it as a trophy. The night I was attacked was New Years Eve, in Darling Harbour, Sydney. I was stone cold sober when it happened. I was also underage.

I was with two friends, one male, one female. All of us were sixteen at the time. The crowd was so dense that everyone was walking with little steps. At times people stumbling pushed on others in front such that there was a knock-on effect of being pushed off-balance, but not enough to impede breathing or stop the crowd shuffling towards its destination. At first, someone behind me tried to slide his hand between my left arm and my body to grab my breast. I realized what was happening and pinned the hand with my left upper arm to stop the attack. I told my male friend who was directly to my left that I was being groped, and he put his arm around me to try to mitigate the real risk of the three of us losing each other in it. Eventually the hand was removed and then I felt a hand reach between my legs and fingers forcibly attempt to enter my vagina, through my thick denim jeans. I heard 2 male voices behind me – “Did you get it?” and the reply – “Not quite.”. Thanks to the crowd, there was no way I could get away from my attackers, but I remember thinking that they should not be allowed to get away with what they did to me. I turned around and looked at the row of men behind me, right in the eyes, to get a good image of them to remember them later. The crowd density that trapped me near them also stopped them from moving away from me. One in particular looked surprised, fearful, and stepped backwards, which had a knock-on effect on the people behind them. After they stepped back, there might have been 1 meter between me and them instead of them being within 30cm of me.

I also got to witness my female friend get assaulted in front of me. When she was pulled away from the two of us by the crowd, a male pushed his way over so he could grab her head, turn it around

and forcibly kiss her. When my friend was attacked, I screamed her name and started to panick a bit. A few minutes later the three of us got out of the surging crowd, caught our breath and it was decided to go find a police officer. I was never the same after that.

Short Term Effect

I got home after that night out and scrubbed myself clean. In the days afterwards, I picked at the scab on my scalp where the lock of hair had been pulled out. Once I got back to school, I told a couple of girls in my year about what had happened to me. One of them said she never went into a crowded space without a lit cigarette so she could defend herself. The consensus at the end of the conversation was that there was nothing I could do about what had already happened. On the inside, I told myself I would never let any man have that kind of power over me ever again. From that moment, my heart changed to stone.

Long Term Effects

In more than 30 years since that night, I have seen counsellors at times for other things. Part of the counselling process is where the counsellor asks about their client's family of origin and upbringing. Every time, the events described above would get some airtime, but since I believed at the time that I would not get justice for what happened, there was no point in dwelling on it and I should just get on with my life. What I didn't realise for over 30 years was that I hadn't emotionally processed what had happened, even though a few counsellors had led me past the events of that night to try to get me to deal with it.

Dealing with my sexual assault started, at 48 years of age, by suffering from flashbacks, followed by a fit of rage. Some of these flashbacks would get triggered at work. My manager and colleagues noticed something wasn't right. I became quite negative at work during that period. I ended up having to disclose the flashbacks to HR. I haven't attacked anyone because I have robust contingency plans to

minimize the risk of damaging people/property if I go off. At first I was unable to speak coherently about my assault, even with a counsellor, but eventually I drew a series of pictures depicting the event. This made it much easier for the counsellor to understand what was going on in my head. Two years have passed and I'm now at a point where I can talk about my experience for short periods of time. The flashbacks have been replaced by sudden bursts of anger in which I break things. I would like to get a flatmate to help out with my bills, but while I am like this, I think its safer that I live alone. I haven't partnered or had any children. I have tried relationships, but I don't seem to be able to make them last beyond a few months.

When I was younger, it always felt threatening to be approached even by nice men so I would ignore them. I'm sure that plenty of them thought I was snooty or stuck up when I did that. I could have explained the truth - disclosed my sexual assault, explained that their catcalls reminded me of the time a stranger used my body because he could. But it was just easier to pretend I hadn't noticed. Therefore, its not just the victim-survivor that pays a price, it's the well-meaning and emotionally healthy men who are getting ignored and getting bitter about why a woman won't even talk to them. I want them to know that getting rejected could have absolutely nothing to do with them. It has everything to do with the mess left behind from a woman being objectified, of some stranger feeling entitled to her body, or needing to prove his virility in front of his friends. To the well-adjusted men I say- don't be a bystander for that kind of man unless you want to be cleaning up after them.

ARLC Justice Responses to Sexual Violence

Question 1 Disclosing sexual assault

Yes. I told a mounted police officer, it was discussed briefly with the 2 friends and the rest of the friend group that went into Sydney city that night, a few weeks later with classmates back at school.

Then years later, with at least 3-4 counsellors.

Question 4 Safe disclosure and accessing support

I've been thinking lately of whether the lack of repercussions for my attackers has emboldened them to keep offending, or escalate their offending, and how men are currently only brought to justice on the weight of evidence from multiple victims. In answering question 4, the problem statement for helping stranger attack victims to get appropriate support, timely evidence gathering and addresses the problem of escalating offending behavior.

At large crowded events, there should be a police/ambulance tent with some privacy booths. The victim survivor stands a much better chance of giving a contemporaneous account that can be corroborated by police as reliable witnesses. If the case proceeds to prosecution, it gives the prosecutor a better chance of succeeding by avoiding the case being brought with only two opposing testimonies and nothing else.

Collecting evidence as soon as possible mitigates the risk of destroying evidence, as the victim survivor's first instinct will be to scrub themselves clean. The tent could have self-collection evidence kits available in the same way that there are now pap smear self-collection kits. The tent could have someone there to explain how to use the self-collection kit properly, or to take a verbal statement or pictures, whatever is needed. At this point it is important to tell the victim-survivor that by having evidence collected, she is not committing to bringing a case. Before leaving, the victim survivor is assigned a case identifier for use later. She can be asked for consent to add the evidence into a DNA crime database but its not linked to a commitment to press charges. If in future her attacker attacks other women, having evidence of serial offending could increase the chance of successful prosecution in future.

Question 5 Contacting the police

I and my friends approached a mounted policeman on the night and told him that I had been groped by a group of men. His response was that if I could point my attackers out, he would arrest them. By that stage my friends and I had walked perhaps 15-30mins out of the dense crowd just to find a uniformed officer and I was still visibly upset. While the officer's response was factually correct and all about him gathering enough evidence to make a report, I had no chance of seeing those men due to the large crowds. I left feeling helpless and didn't try reporting again.

Question 7 Improving police responses

To ensure positive outcomes for victim survivors, changes to police responses must be considered in the full organizational context. Tomkins and Bristow (2023) perform a qualitative analysis into the advantages and disadvantages of implementing evidence-based practices in a large metropolitan policing service in the UK. They argue that in time and resource constrained environments such as primary healthcare and policing, there is a tendency to outsource the thinking to expert consultants, which on face value is a logical adaptation to a work environment where a crew is expected to complete a certain amount of work in a day to meet their employment performance metrics. However, an insufficiently nuanced guideline can result in counterproductive implementations for victim-survivors. An example of this involves a retrospective data analytics trend review taken out of context. The identified trend was that arresting within an hour of arriving at scene led to more successful prosecutions. Translated into practice, for domestic violence scenarios, frontline officers would not leave the scene without making an arrest. In a particular domestic violence incident involving children, an adult female had attacked the adult male. The female was arrested for assault in the attempt to follow evidence-based practice. Even though the arresting officer suspected she attacked the male to defend her children, the children were left alone with the male.

Tomkins and Bristow (2023) also explored redefining evidence-based practices in terms of care ethics. In a policing context, care ethics seeks to motivate police actions from the point of view of safeguarding victim-survivors against further harm. Knowing that policing is time constrained, the suggestions below reflect both simple practical measures and a systemic change aimed at reducing harm:

- 1) Develop a standardized set of questions or wording in consultation with trauma-informed mental health professionals that the police can use to question victims. Do not rely on the innate communication skills of each police officer, as self-wording may be subject to unconscious bias. Lonsway & Archambault (2022) define appropriate wording in their 8-page guideline about language use for sexual assault, that avoids language that implies mutual consent or minimizes the seriousness of the offending. This type of wording could be used in preparing questions for interview or in drafting statements.
- 2) Training police on the effects of sexual violence on short term memory would help them understand victim behavior in the context of mental trauma and learn not to attribute this to victim unreliability. Based on my understanding of complex task sequencing in healthcare, trauma makes time-constrained policing more difficult because victims can be indecisive, potentially incoherent or may change their minds several times in the immediate aftermath. As Hurry (2022) and Huhtanen (2008) explain, victims may recant or change their stories for many reasons, not because they are unreliable witnesses.
- 3) Educate the police force about the effects of sexually objectifying media and the effects on bystander attitudes as covered in more detail for question 49.
- 4) A care-based response would make space in police operational procedures for respectfully acknowledging that mental health recovery can take a long, undefined amount of time. Balancing this with operational systems needs, police leaving assigned sexual assault cases

unfinalized is not ideal because the frontline officer is always busy with new jobs and the backlog would become unmanageable. Therefore, the suggestion is to redistribute the process steps for sexual violence policing jobs to expedite evidence collection, then pause until the victim-survivor decides to proceed with pressing charges, potentially handing over for pressing charges as a separate job to the initial step of collecting evidence. The frontline policing task is considered complete (for the purposes of employee performance metrics) if contact details and evidence are collected and lodged for processing. In my response to question 4, I mentioned creating a DNA database of potential attackers. Victim-survivors not wanting to press charges immediately are told the evidence collected from them goes to this attacker's DNA database and policing work pauses until the victim-survivor decides to press charges. This method preserves victim autonomy and dignity by not expecting an instant decision from someone in an emotionally heightened state, but still allows frontline policing to meet its performance metrics. A finer-grained method to record victim wishes as discussed in my response to question 48 would also apply here in a similar fashion to addressing jury and police perceptions of victim recantations (Hurry, 2022).

Question 19 Improving jury directions

Jury experience in Queensland

In Queensland, I have been empanelled in a jury on a sexual assault trial. This coincidentally happened not long after I started having flashbacks about my own assault. I only found out the details of the case when the juror pool was walked into the courtroom and told the facts of the case by the judge. I am a strong believer in things happening for a reason, so I didn't seek to avoid jury service. I knew I would have to think quickly should I be chosen, whether or not I could be objective about the trial. The judge gave ample opportunity to be excused and was very clear that it was better to speak up as soon as possible so as not to waste court time. In the end, my rationale for staying were that 1) whatever

happened to me had no material bearing on what happened to the plaintiff, 2) that regardless of my status as a victim-survivor, I was capable of making logical, fact-based decisions, and 3) that even though jury duty was personally uncomfortable to me, I was most useful to the victim being in the jury, since I knew what it was like to be a victim-survivor myself.

The judge and court did their best to make the experience less traumatic for the victim by allowing her to give evidence by video feed and with family support. Reflecting on the trial process afterwards, there is some room for improvement. I observed the defense legal team vetoing young women during jury selection, which they are allowed to do in a limited capacity. Without further educating the jury about rape myth biases, vetoing young women specifically is unfairly biasing the trial against the victim.

Juror education

One suggestion is educating the jury about victim-blaming, minimizing and rape myths, with a focus on how these behaviors deny basic human rights, and how reducing women's dignity and autonomy can disempower bystanders such as themselves (Galdi & Guizzo, 2021). Specifically, the jury can view videos about this as part of the judge's instruction of the jury. The rationale behind using a video is that the explanation is provided free of unconscious bias (as many judges are older men), and for consistent delivery. The jury is composed of members of the public, who range in age from 18 through to old age. Given that migration is necessary for Australia's economic growth, it would be unrealistic to expect that the public has had the same level of sex education as is available in schools today. The cultures our migrants come from don't necessarily hold to Australian societal ethics. Older generations may not have received any formal sex education. Relying on school sex education will make victim-survivors wait a generation for jury attitudes to shift away from victim-blaming. Personally, I did not know what minimizing and victim-blaming were until I had a counsellor explain it to me, telling me I

was doing both to myself. This is completely consistent with Huhtanen's (2008) assertion that victims routinely self-blame, and, being unsure of themselves, are reluctant to report. Having an educational video would reduce time wastage from jurors ventilating these views as part of jury deliberations, nor would it rely on fellow jurors to speak up about rape myths. I wasn't comfortable to talk about my own assault in the jury room, nor to explain victim-blaming. Additionally, juries are instructed carefully to avoid basing their deliberations on anything other than the facts presented in the case. Disclosing a sexual assault during jury deliberations to try to correct these attitudes would have seen me get emotional, also running the risk of having wasted court time by needing to be excused after the trial had been heard. This only reinforces why better jury education is needed and that it shouldn't be a juror's responsibility to explain rape myths.

Question 48 Improving civil justice responses to sexual violence

Civil litigation support and training to address misconceptions about sexual violence could be other ways to address the difficulties with the civil trial jury having to be convinced beyond all reasonable doubt to find the defendant guilty. However, civil litigation is not without its problems and would need some additional safeguards to make it more suitable for sexual assault survivors. Hurry (2022) examines retaliatory defamation lawsuits lodged in the Canadian Justice System. In the wake of the #MeToo movement, many people made sexual abuse disclosures on social media and found emotional support from other survivors. Systemic issues with the formal justice system cause it to be stacked against the sexual assault victim-survivor, leading to low conviction rates, causing survivors to be so skeptical about their chances of justice that they seek emotional validation elsewhere. With respect to retaliatory defamation lawsuits, Hurry (2022) states that civil defamation law in Canada places the burden of proof on the victim survivor/defendant to prove the sexual assault happened, before they can use a truth or qualified privilege defense against the defamation suit.

When victim-survivors recant testimony, this is often counted against them and causes the justice system to question their credibility, which in my opinion has the potential to be most damaging for trials where there is no physical evidence. In some cases, the jury must judge the case based on the credibility of the plaintiff and defendant, which can be quite difficult if both plaintiff and defendant are intoxicated. Huhtanen (2008), explores the many reasons victim-survivors recant statements. For example, a recant due to victim emotional exhaustion has no bearing on witness reliability, but there is no consistent method to discriminate between that and a recant due to a malicious or mistaken complaint. Huhtanen (2008) recommends changes to recantation investigation in the state of Oregon, USA, but the principle of finer grained data recording is still relevant to an Australian law context. Since most sexual assaults occur where the victim and attacker are known to each other, it is possible that the victim recants due to coercion or intimidation from the attacker/family/community, or that the victim must make a difficult choice to preserve their mental health or to risk damaging their mental health even further to continue with a trial. (Huhtanen, 2008) suggests any recantation be investigated to determine its true root cause. If the police case had a way of recording the reasons for a retraction, this information could be made available to the jury, should the case proceed in future, to prevent incorrect assumptions about victim credibility. This information could also be used for trend analysis if the proportion of a particular root cause changes over time. Quality trend analysis is an important system performance indicator and could help the justice system to uncover the proportion of retractions that are malicious false allegations. Some finer resolution on sexual assault recantation rates would provide actual data to counter misleading narratives reporting a high proportion of false allegations when those figures are based on the total number of recantations.

Question 49 Other Reforms

Reduce harm from objectified representations of women in the media

Pornography and advertising that objectifies women have a lot to answer for in generating problematic attitudes towards women. I first read about the power of pornography and its power to change the brain in a book called “The Brain That Changes Itself” by Norman Doidge. The book examines neuroplasticity – the ability of the brain to remodel itself- and challenges the long-held belief that the brain is static after childhood. Doidge (2010) argues that neuroplasticity, the brain’s learning process can be hijacked by illegal drugs, gambling or pornography because these activities include all the prerequisites to neuroplastic change. Therefore, in the context of sexual violence, the brain is incentivized to view harder and more violent pornography to bring satisfaction. Neuroplastic change offers an explanation for why pornography consumption and masturbation can lead to increasingly objectified views of women. Casual objectification of women by use of “sex sells” advertising and portrayal of women in movies also play their part in creating a belief sexual activity is synonymous with manhood. Kuhn and Gallinat (2014) examined male subjects brains for any structural differences and correlated with the self-reported amount of pornography they viewed. Results showed some areas of the brain were changed in size and independent of general internet addiction. Willis, Bridges and Sun (2022) showed in their multinational study that pornography use increases rates of sexual objectification. Galdi and Guizzo (2021) assert that sexually objectifying media (not just pornography but mainstream media) shifts social norms towards increasing acceptance of sexual violence against women, which leads to increasing sexual harassment. They explain that for sexual harassment to increase, three factors are present – dehumanization, reducing empathy/ moral disengagement, and by shifting cultural norms. These characteristics are present in advertising and entertainment that present women as sex objects and reduces the likelihood of bystander interference when a woman is being sexually harassed. They suggest education as a way of reducing the harm that focuses on changing the individual to become more resistant to the effects of sexually objectifying media:

- 1) critical evaluation of media, becoming aware that as viewers of sexually objectifying media they are open to being influenced by it
- 2) developing the will to control that influence
- 3) creating enough compassion that viewers have the capacity to control the consequences of viewing sexually objectifying media

Since Galdi and Guizzo (2021) also showed that all age ranges were affected by sexually objectifying films, advertisements and stories, education needs to have outreach strategies targeting the full population. Butterfield (2012) is another example of how media sensitization can help to educate men on consent boundaries. Canada took the lead in providing education to the general public about what constitutes consent, placing provocative posters in pub bathrooms and saw a 10% decrease in sexual assaults reported (Butterfield, 2012). The education strategy could also be used to educate women to identify objectifying behavior that motivates them to take up their rights, or by consumer backlash to convince companies that indulging in “sex sells” disengages half of their target consumer population. Media should be used to help people create proactive controls for viewing sexually objectifying media consumption and for women in particular to understand the destructive nature of self-objectification. The government-produced posters would target locations in nightlife spots, but also shopping centre toilets. I have personally witnessed creepy old men approaching girls in shopping centres and bus stops (and been approached myself at the age of 12). Including posters about approaching obviously minor children as well as “jail-bait” could be worthwhile given the number of security cameras in public places now.

Self-defense classes for all girls

Encourage more girls into self-defense lessons from a young age, potentially during a term of PE classes, by providing government funding to support it. Girls should be taught what they can do and

drilled so they have their own escape or evidence gathering plan already set in their minds long before they may be attacked. If I had been asked why I didn't scream in my own situation given there were many people nearby while I was being assaulted, that would have been a hard question to answer at the time. With the benefit of decades more life experience, in crisis situations, I know I have the freeze response and couldn't scream immediately because of it. Fight, flight or freeze are the natural immediate responses to threats to personal safety but their respective disadvantages in responding to sexual harassment can be ameliorated by drilled training. Otherwise, the innate response of each victim may not be known to them in advance of the assault and this lack of knowledge is an advantage to their attacker.

Social media, user generated content and data privacy laws

With respect to newer forms of media like social media and other inventive methods of perpetrating technology-facilitated abuse, the law reform commission could develop guidelines for a) identifying software features at risk of facilitating technology-based abuse and 2) practical but rigorous methods to follow for automated submission of collected digital evidence. These guidelines would be publicly available for app developers and other small businesses, who are most in need of this assistance and less likely to be able to afford to employ a dedicated cybersecurity expert. Recent examples of technology abuse are use of the payment comment field to abuse a former partner when paying child support (Roberts & Ibrahim, 2024). Banks must comply with an industry payment standard in order to be able to process payment transactions securely, but each bank will have its unique technology stack and procedures to achieve this (Kurose & Ross, 2021). If there is a guideline for rigorous evidence collection it gives the software developer a consistent standard to meet and streamline reporting to aid in law enforcement.

References

- Butterfield, M. (2012, December 1). Edmonton sexual assault awareness campaign: 'Don't be that guy' so effective city relaunches with new posters (PHOTOS). *The Huffington Post Canada*. Retrieved May 20, 2024 from https://www.huffpost.com/archive/ca/entry/edmonton-sexual-assault-awareness-campaign-dont-be-that-guy_n_2224228
- Celeste, E., & Fabbrini, F. (2020). Competing jurisdictions: Data privacy across the borders. In Lynn, T., Mooney, J.G., van der Werff, L. & Fox, G. (Eds.), *Data Privacy and Trust in Cloud Computing* (pp. 43-58). Palgrave Studies in Digital Business & Enabling Technologies. <https://doi.org/10.1007/978-3-030-54660-1>
- Doidge, N. (2010). *The brain that changes itself*. Scribe Publications.
- Engle, J. C. (2022). Sexual violence, intangible harm, and the promise of transformative remedies. *Washington and Lee Law Review*, 79, 1045-1092. Retrieved May 16, 2024 from <https://research.ebsco.com/c/6cbqes/viewer/pdf/geex4odvbz>
- Galdi, S., & Guizzo, F. (2021). Media-Induced Sexual Harassment: The Routes from Sexually Objectifying Media to Sexual Harassment. *Sex Roles*, 84(11/12), 645–669. <https://doi.org/10.1007/s11199-020-01196-0>
- Huhtanen, H.J. (2008). False allegations, case unfounding and victim recantations in the context of sexual assault. Attorney General's Sexual Assault Task Force, Oregon. Retrieved May 21, 2024 from <https://evawintl.org/wp-content/uploads/ORSATFPaperFalseReports.pdf>
- Hurry, A. (2022). Defamation as a sword: The weaponization of civil liability against sexual assault survivors in the post-#MeToo era. *Canadian Journal of Women and the Law*, 34(1), 82-108. <https://doi.org/10.3138/cjwl.34.1.03>

- Lonsway, K.A. & Archambault, J. (2022, November). *Suggested Guidelines on Language Use for Sexual Assault*. End Violence Against Women International (EVAWI). Retrieved May 17, 2024 from https://evawintl.org/wp-content/uploads/2013-06_TB-Language-Use-for-Sexual-Assault-1.pdf
- Kuhn, S. & Gallinat, J. (2014), Brain structure and functional connectivity associated with pornography consumption: The brain on porn. *JAMA Psychiatry*, 71(7), 827–834.
doi:10.1001/jamapsychiatry.2014.93
- Kurose, J. F., & Ross, K. (Eds.). (2021). *Computer networking: A top-down approach* (8th ed.). Pearson.
- Roberts, M. & Ibrahim, T. (2024, May 13). Banks blocking thousands of abusive messages sent in transfer descriptions in apps. ABC News. <https://www.abc.net.au/news/2024-05-13/nsw-bank-transaction-technology-financial-abuse/103801120>
- Tomkins, L., & Bristow, A. (2023). Evidence-based practice and the ethics of care: “What works” or “what matters”? *Human Relations*, 76(1), 118–143.
<https://doi.org/10.1177/00187267211044143>